Canada Law Journal.

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DIARY FOR AUGUST.

1. Sun.....*6th Sunday after Trinity.* Slavery abolished in British West India Islands, 1838.
6. Fri.....Thomas Scott 4th C. J. of Q. B., 1806.
8. Sun.....*7th Sunday after Trinity.*
15. Sun.....*8th Sunday after Trinity.*
17. Tues...Primary Exam. of students and articled clerks.
19. Thur...Graduates seeking adm. to L. S. to present papers.
20. Fri.....Ashburton treaty concluded 1842.
21. Sat.....Last day for filing papers with Sec. Law Soc., before call or admission.
22. Sun.....*9th Sunday after Trinity.* Ont. Jud. Act came into force 1881.
24. Tues....First intermediate examination.
25. Wed....Last day for setting down for Div. Court Chan. Div.
26. Thur...Second intermediate exam.
29. Sun.....*10th Sunday after Trinity.*
31. Tues....Solicitors' examinations. Long Vac. in Sup. Ct. and Exch. Court ends.

TORONTO, AUGUST 1, 1886.

WE are indebted to the courtesy of Mr. Wicksteed, Q.C., Law Clerk of the House of Commons, for an early copy of the Act of last session as to Real Property in the North-West Territories. It was brought forward in the Senate in 1885, by Sir Alex. Campbell, but not then passed. This year it was introduced by the Minister of Justice. It is an important measure for that new country. It makes more radical and drastic changes than were recently effected in Ontario in the same direction. It does not come into force until next year.

RECENT ENGLISH DECISIONS.

SPECIFIC PERFORMANCE—DEFENDANT PURCHASER IN DEFAULT—FORM OF ORDER.

In *Morgan* v. *Brisco*, 32 Chy. D. 192, Bacon, V. C., was asked to settle the form of order in an action for specific performance by a vendor, where the defendant made default in payment of the purchase money pursuant to the judgment. The plaintiff was given liberty to deposit the conveyance executed by him as an escrow, and the title deeds, with an officer of the Court; and thereupon an order was made for payment to the plaintiff in four days after service of the order of the amount of the purchase money, interest, and costs.

MORTGAGE ACTION—RECEIPTS BY RECEIVER AFTER REPORT.

In *Hoare* v. *Stephens*, 32 Chy. D. 194, Bacon, V. C., held that the receipt by a receiver of a sum of money after report, was no bar to a final order for foreclosure being granted, and he refused to follow *Jenner-Fust* v. *Needham* 31 Chy. D. 500, which we noted *ante*, p. 158, where Pearson, J., under the like circumstances, directed a new day to be appointed.

TRUSTEE—INVESTMENT—TRADE PREMISES.

In re Whitely, *Whitely* v. *Learoyd*, 32 Chy. D. 196, Bacon, V. C., held that a trust to invest in "real securities" does not authorize an investment in freehold property—such as a brickyard—dependent for its value on a trade or business carried on upon the premises, in this respect refusing to follow a decision of Pearson, J., in *Re Pearson*, 51 L. T. N. S. 692. But an investment in freehold houses, which was made on a proper valuation by a competent person, was held to be proper, notwithstanding a subsequent depreciation in value of the property.

MORTGAGEE IN POSSESSION—RECEIVER—[J. A. s. 17, ss. 8 (ONT.).]

Mason v. *Westoby*, 32 Chy. D. 206, was a case in which a mortgagee in possession applied for a receiver, notwithstanding that he had been paid all his interest and costs out of rents received by him while in possession, and had a surplus of rents in his hands. Bacon, V.C., held that under the provision of the Judicature Act, which enacts that "a receiver may be appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just and convenient that such order should be made," the plaintiff was entitled to what he asked, and he directed the surplus in the plaintiff's hands to be paid to the receiver.

Recent English Decisions.

TRUSTEE ACT, 1850, s. 2—TRUSTEE EXTENSION ACT, 1852, s. 3.

In re Findlay, 32 Chy. D. 221, was an application under the Trustee Acts. A legacy belonging to an infant under a Scotch will, which made no express provision for maintenance, was paid over to a *curator bonis* appointed by a Scotch court, and was invested by him in New Zealand stock in the sole name of the infant. The Scotch court authorized the *curator* to advance from time to time sums out of the capital not exceeding in all £100, to supplement the income of the infant, and to enable her to be placed at a suitable school. The stock was transferable at the Bank of England, and the *curator* presented a petition asking that the right to transfer £100 of the stock might be vested in him with liberty to sell and transfer the same; and that the accrued and future accruing dividends of the rest of the stock might be paid to him, he undertaking to apply them towards the maintenance of the infant, and also that he might be appointed guardian. North, J., made the order, holding that the infant was a "trustee" of the stock within the meaning of the Trustee Acts.

TRUSTEE ACT, 1850, ss. 33, 34—APPOINTMENT OF NEW TRUSTEE.

Davis v. *Hodgson*, 32 Chy. D. 225, is another case under the Trustee Act, 1850, in which the court (North, J.) appointed three existing trustees, new trustees in place of themselves and another trustee who was bankrupt and had absconded, there being difficulty, owing to the litigation, in procuring a fourth person to accept the office; but the new trustees were required to undertake to pay and transfer the trust estate when received into court.

ACCUMULATION—MAINTENANCE.

In re Collins, Collins v. *Collins*, 32 Chy. D. 229, a testator having directed the income of all his residuary, real and personal estate to be accumulated for twenty-one years, and having given the accumulated estates to his sister for life, then to her three sons successively in tail male, on an application by the three sons by their next friend for an allowance of £2,000 a year for their maintenance and education out of the income directed to be accumulated, Pearson, J., following *Havelock* v. *Havelock*, 17 Chy. D. 807, made the order asked.

INCHOATE MARRIAGE SETTLEMENT—CANCELLATION.

Bond v. *Walford*, 32 Chy. D. 238, was a suit to cancel a marriage settlement made in contemplation of a marriage which was never solemnized. The engrossment had been executed by the intended wife and her father, and provided *inter alia* for the settlement of certain funds to be provided by the father, and also the present and after-acquired property of the lady, and was delivered to the solicitor of the intended husband, but had never been executed by him nor the trustee. The engagement was broken off by mutual consent, and after the lapse of three years and a half, the court (Pearson, J.) declared the engrossment void as a settlement, and ordered it to be given up.

ADMINISTRATION—COSTS—BANKRUPT EXECUTOR DEBTOR TO ESTATE.

In re Vowles, O'Donaghue v. *Vowles*, 32 Chy. D. 243, was an administration action, the sole executor, who was a defendant, became bankrupt after the administration judgment. He was a debtor to the estate in respect of a loan made to him by the testator. Upon the question of costs, Pearson, J., held that he was entitled to his costs, subsequent to the bankruptcy, out of the estate, but that his prior costs must be set off against the debt due him, following *Re Basham*, 23 Chy. D. 195.

SOLICITOR—AGENT—RETAINER.

The point of practice determined *In re Scholes*, 32 Chy. D. 245, was that an order for taxation of costs obtained by London agents acting for a country principal was irregular, because the names of the London agents were indorsed on the petition as principals, and the order was therefore discharged on motion of the client on whose behalf it was issued, but without costs.

RECURRING DAMAGE—CAUSE OF ACTION—LIMITATION.

Taking up now the Appeal Cases, the first that demands attention is the important case of *The Darby Main Colliery Co.* v. *Mitchell*, 11 App. Cas., 127. This is a decision of the House of Lords on the question whether after a plaintiff has once recovered damages for an injury to his property caused by an act of the

defendant, not wrongful *per se*, he can, on a further damage subsequently arising from the same cause, bring an action to recover therefor, after the lapse of more than six years from the original act. The Lords determined this question in the affirmative; Lord Blackburn, however, dissented. The damage in question was occasioned by the subsidence of the plaintiff's land, owing to the defendants' mining operations. These operations ceased in 1868, when a subsidence took place, and a further subsidence took place in 1871, by which the plaintiff suffered damage, and for which the defendants made compensation. Within six years before the present action a further subsidence took place, and the question was whether any action would lie for it. Lord Blackburn was of opinion that the cause of action arose when the removal of the support was followed by the first subsidence, and therefore, the plaintiffs could not recover; but the majority of the Lords adhered to the opinion that each subsidence constituted a fresh cause of action, although having its origin in the same act of the defendant.

The views of Lord Blackburn and the other learned law lords may be gathered from the following extracts from the judgments of Lord Blackburn and Lord Fitzgerald. Lord Blackburn, at p. 141, says:

I think that *Bonomi* v. *Backhouse*, 9 H. L. C. 503, does decide that there is no cause of action until there is actual damage sustained, and does decide that the Court of Exchequer erred when in *Nicklin* v. *Williams*, 10 Ex. 259, they said that there was an injury to the right as soon as support was rendered insufficient, though no damage had occurred. But I do not think that it at all follows from this, that the act of removing the minerals to such an extent as to make the support insufficient is an innocent act rendered wrongful by the subsequent damage. That would be a great anomaly, for I think there is no other instance in our law where an action lies in consequence of damage against a person doing an innocent act. There are many where no action lies against the doer of an improper act, unless or until damage accrues.

On the other hand Lord Fitzgerald, at p. 151, says:

It seems to me that *Bonomi* v. *Backhouse* did decide that the removal of the subjacent strata was an act (I will not say an innocent act) done in the legitimate exercise of ordinary ownership, which, *per se*, gave no right of action to the owner of the surface, and that the latter had no right of action until his enjoyment of the surface was actually disturbed. The disturbance then constituted his right of action.

There was a complete cause of action in 1868, in respect of which compensation was given; but there was a liability to further disturbance. The defendants permitted the state of things to continue without taking any steps to prevent the occurrence of any future injury. A fresh subsidence took place, causing a new and further disturbance of the plaintiff's engagement, which gave him a new and distinct cause of action.

NEW TRIAL—VERDICT AGAINST EVIDENCE.

The Metropolitan Ry. Co. v. *Wright*, 11 App. Cas. 152, was an appeal from a refusal of the Court of Appeal to grant a new trial on the ground that the verdict of the jury was against the weight of evidence. The House of Lords affirmed the courts below, holding that a new trial ought not to be granted on the ground of the verdict being against the weight of evidence, unless the verdict be one which a jury, viewing the whole of the evidence reasonably, could not properly find.

NEWSPAPER—LIBEL—PRIVILEGE—PUBLIC OFFICER.

Davis v. *Shepstone*, 11 App. Cas. 187, was an appeal to the Privy Council from the Supreme Court of Natal refusing a new trial. The action was one for libel, published in the defendants' newspaper. The libel in question consisted of certain statements of alleged particular acts of misconduct of the plaintiff in his official capacity as a public officer, for the truth of which the defendants vouched, and on the assumption of their truth, they commented on the defendant in highly offensive and injurious language.

On the trial, it was proved that the charges were without foundation, but that they had been made to the defendants, and published by them believing them to be true. But it was held by the Privy Council, affirming the court below, that the privilege, which protects fair and accurate reports of proceedings in Parliament and Courts of Justice, does not extend to fair and accurate reports of statements made to editors of newspapers. The appeal was therefore dismissed.

LEGISLATIVE ASSEMBLY—SUSPENSION OF MEMBER—TRESPASS.

Barton v. *Taylor*, 11 App. Cas. 197, was an action brought by a member of the House of Assembly of N. S. Wales, against the Speaker of the House, for trespass in causing the plaintiff to be removed from and prevented from entering the House after a resolution had been passed, that he, the defendant, "be suspended from the service of the House." The defendant pleaded justification, setting up the resolution, and the orders of the House, whereby the rules, forms and usages in force in the British House of Commons were adopted. The plaintiff demurred, and the case came before the Privy Council on appeal from the judgment allowing the demurrer, and their Lordships held, that the resolution must not be construed as operating beyond the sitting during which it was passed, and further, that the order of the House of Assembly adopting the rules of the British House of Commons, though valid as far as it went, must be construed as relating only to such rules, forms and usages as were in existence at the date of the order, and would not have the effect, unless expressly so worded, of introducing rules, orders or usages, subsequently adopted in the British House of Commons. Their lordships further laid down that the powers inherent of necessity in a Colonial Legislative Assembly are only such as are necessary to the existence of such a body and the proper exercise of the functions which it is to execute, and do not authorize it to exercise punitive measures or unconditional suspension of a member during the pleasure of the Assembly. But the power of the Assembly to pass a standing order giving itself power to punish an obstructing member, or remove him from the Chamber for any longer period than the sitting during which the obstruction took place, was conceded, and the judgment of the court below was affirmed on the ground that this was not done, not that it could not have been done.

LEAVE TO APPEAL.

The only remaining case to be noted is the *Attorney General of Nova Scotia* v. *Gregory*, 11 App. Cas. 229. In this case, by special agreement sanctioned by the court, the petitioner had come in and consented to be made a party to the cause in appeal, and to be bound by the order of the Supreme Court to be made therein, but by the terms of the agreement, the powers of the Supreme Court were defined and restricted, and its order was "to be construed a final disposition of all contentions whether now in litigation or not." The petitioner applied for leave to appeal from the decision of the Supreme Court, but it was held by the Privy Council, that the Supreme Court was acting under the terms of a special reference and not in its ordinary jurisdiction as a Court of Appeal, and leave to appeal was therefore refused.

LAW SOCIETY.

RESUME OF PROCEEDINGS OF CONVOCATION.

HILARY TERM, 1886.

FRIDAY, FEBRUARY 12TH.

Convocation met.

Present—The Treasurer and Messrs. Britton, Crickmore, Falconbridge, Ferguson, Foy, Hoskin, Irving, Kerr, Mackelcan, Maclennan, Morris, Moss, Murray, McCarthy, Purdom, Smith.

Mr. Moss, from the Committee on Legal Education, reported on the petition of John Geale.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same Committee, reported on the petition of Mr. G. E. Martin, recommending that he be allowed on the 16th, to prove completion of service, and that he do then receive his certificate.

Ordered for immediate consideration. Adopted and ordered accordingly.

Mr. Moss, from the same Committee, reported on the case of Mr. Banguier.

Ordered for immediate consideration. Adopted and ordered, that Mr. Banguier be allowed his Second Intermediate Examination.

Ordered, That Mr. Raymond receive his Certificate of Fitness.

LAW SOCIETY.

Mr. Maclennan, from the Reporting Committee, presented their report as follows:

1. The work of reporting in all the Courts is now in a reasonably satisfactory state, and the arrangements which were made by Mr. Grant are bringing up the arrears in the Court of Appeal.

A detailed statement prepared by the Editor is submitted herewith.

2. Your Committee have considered the letter of Mr. Taylor, of Winnipeg, referred to them, and recommend that all Solicitors and Barristers of Manitoba be allowed to receive the reports for the sum of seventeen dollars per annum, and fifty cents to cover the expense of mailing, payable at the same time, and with the same penalty for delay in payment, as the fees for Solicitors' certificates.

3. Your Committee also recommend, that all members of the Ontario Bar, not being Solicitors, be entitled to receive the reports for the sum of fifteen dollars per annum, in addition to the Barrister's fee, and payable as above, and that payment for them may be received for the present year up to the first day of May in both cases.

The report was adopted.

Mr. Moss, from the Committee on Legal Education, reported on the case of Mr. H. H. Robertson and others, referred to them as follows:

The Committee on Legal Education beg to report, that in the cases of Mr. H. H. Robertson, and other unsuccessful candidates for call at the last examination they have examined the answers of these gentlemen and conferred with the examiners, and on the whole they see no ground for interference with the examiners' report.

The Committee are of opinion that, unless under the most exceptional circumstances there should not be revision by Convocation of the results arrived at by the examiners in any particular case. Cases, such as accidental omissions, to include marks allowed or intended to be allowed in a final summing up of marks or any other case of clear mistake or the like, might be suggested as justifying the interposition of Convocation to correct but such cases are obviously different from interfering to correct errors or supposed errors in judgment.

The report was adopted.

Mr. Moss, from the Committee on Legal Education, with reference to the resolutions adopted on the motion of Mr. Purdom as to Legal Education, reported that that gentlemen had attended the meeting, and suggested that it would be impossible to deal with the subject in time for the meeting of Convocation to-day, of which opinion were the Committee, and the consideration of the resolution was accordingly adjourned.

Mr. Murray, from the Finance Committee, reported in pursuance of the resolution of the first day of this term, submitting a statement of the assets and liabilities of the Society, as of the 31st day of December last.

Ordered, That the Finance Committee be requested to ascertain the cost of a valuation of the Library, and if they think it advisable to procure such a valuation.

Mr. Kerr, from the Committee on the Journals, reported, submitting their draft of the consolidation of the rules.

Ordered, That the Committee be authorized to have the draft printed for the consideration of Convocation before next term, and distributed to the members of Convocation, the type to be kept standing.

The letter of L. A. Carscallen, of Napanee, was read; ordered that it be referred to the Committee on Discipline to ascertain and report whether there is a *prima facie* case for enquiry.

The letter of A. Grant, Esq., Reporter of Court of Appeal, dated 6th February, was read.

Ordered, That the letter be taken into consideration on the first day of next term.

Mr. Maclennan reported that he had complied with the request of Convocation in the matter of Mr. D. R. Davis' petition to the Ontario Legislature.

Ordered, That a Committee composed of the Treasurer and Messrs. McCarthy, Moss and Kerr, be appointed to represent to members of the Legislature, the views of Convocation as to special legislation, on the subjects of call and admission, with power to present a petition on behalf of Convocation to the assembly, and to appear before the Private Bill Committee on the Bill of Mr. Davis, if they think it expedient.

ABSTRACT OF INCOME AND EXPENDITURE FOR 1885.

RECEIPTS.

Certificate and Term Fees, Costs, Fines and Arrears $689	$19,318 84	
Less Fees returned	76 00	
		$19,242 84
Notice Fees	$692 00	
Less Fees returned	4 00	
		$688 00
Attorneys' Examination Fees	$7,761 00	
Less Fees returned	1,000 00	
		$6,761 00
Students' Admission Fees	$7,240 00	
Less Fees returned	658 00	
		$6,582 00

LAW SOCIETY.

Call Fees	$13,521 00	
Less Fees returned	$3,519 00	
		$10,002 00
Interest and Dividends		$2,864 93
Sundries.		
Fees on Petitions, Diplomas and Certificates of Admission		$169 00
Wardrobe Keys sold		36 80
		$46,346 57

EXPENDITURE.

Reporting.		
Salaries	$8,600 00	
Printing	9,966 63	
Notes for *Law Journal* and *Law Times*	339 50	
	$18,906 13	
Less Reports sold	3,019 60	
		$15,886 53
Examinations.		
Salaries	$3,200 00	
Scholarships	1,480 00	
Printing and stationery	275 15	
Prizes in books (Law School)	25 00	
Engrossing Diplomas and Certificates		
Examiners for Matriculation	240 00	
		$5,220 15
Library—		
Books, Binding and Repairs		$2,836 59
General Expenses.		
Salaries—		
Secretary, Sub-Treasurer and Librarian	$2,000 00	
Assistants	1,254 15	
Housekeeper	360 00	
		$3,614 15
Lighting, Heating, Water and Insurance.		
Gas	$232 88	
Water	95 64	
Insurance	685 00	
Fire Grenades	10 00	
Fuel	433 26	
Repairs to Apparatus	482 89	
		$1,939 67
Grounds.		
Gardener and Assistant	$624 26	
Tools	1 00	
Seeds and Fertilizer	16 15	
Snow Clearing	43 80	
		$685 21
Sundries.		
Postages	$53 51	
Advertising, including LAW JOURNAL, account	102 75	
Law Costs	547 21	
Furniture	1,175 55	
Repairs	496 26	
G. T. Berthon, and S. E. Roberts, Portraits	308 75	
Grant D. B. Read, Q.C.,	2,000 00	
Term Lunches	611 42	
County Libraries Aid	2,489 60	
Telephone Office	345 76	
Auditor, $100, Aikenhead & Co., $21.40	121 40	
Dawson Telephone Office, $20, Engrossing, $15	35 00	
Resumé, $36, Hardy, $6.25, Finch, $23.75	66 00	
Watchman	107 50	
Washing towels etc., $9 04, Dusting Books, $18.13	27 17	
Ellis, $5, Guarantee, Co. $20, Ice, $21	46 00	
Oiling Floors, etc., $30.75, J. A. Fleming, travelling ex. $11	41 75	
Petty charges	59 80	
Stationery, Printing, etc.	262 91	
		$8,898 34
Balance		7,265 93
		$46,346 57

Audited and found correct, Toronto, 28th Jan. 1886. (Sgd.) HENRY WM. EDDIS, Auditor.

EASTER TERM, 1886.

MONDAY, MAY 17TH.

Convocation met.

Present—Messrs. Edward Blake, S. H. Blake, Britton, Falconbridge, Ferguson, Foy, Irving, Kerr, Mackelcan, Maclennan, Morris, Moss, Murray, McMichael, Osler, Pardee, Robertson, Smith.

On motion of Mr. Robertson, seconded by Mr. Irving, it is ordered that Edward Blake Q.C., do take the chair.

The Secretary read the report of the scrutineers, and declared the following persons to be elected Benchers of the Law Society for the ensuing five years, namely:—W. R. Meredith, Charles Moss, D. McCarthy, C. Robinson, B. M. Britton, W. G Falconbridge, A. Hudspeth, B. B. Osler, D. Guthrie, F. Mackelcan, James Maclennan, E. Martin, T. B. Pardee, John Bell, Æ. Irving, C. F. Fraser, A. S. Hardy, John Hoskin, J. J. Foy, J. K. Kerr, Z. A. Lash, Dr. McMichael, J. H. Ferguson, Thomas Robertson, J. H. Morris, Dr. L. W. Smith, James Beaty, H. Cameron, H. W. M. Murray, T. H. Purdom.

Mr. Robertson moved, and Mr. Irving seconded, That Edward Blake be elected

Treasurer for the ensuing year. Carried unanimously.

The Treasurer took the chair.

Ordered, That the Treasurer, and Messrs. Maclennan, Murray, Irving, Moss, Kerr, Robertson, and Mackelcan, be appointed a Committee to strike the Standing Committees to be selected by Convocation in accordance with Rule 100.

During this Term the following gentlemen were called to the Bar, namely:—Messrs. George Goldwin Smith Lindsey, Arthur Eugene O'Meara, Edward Albert Holman, Alson Alexander Fisher, Edmund James Bristol, Henry James Wright, Alexander McLean, Robert George Code, Robert Alexander Dickson, Donald Macfarlane Fraser, Peter Doy Cunningham, Robert Franklin Sutherland, John Mortimer Duggan, John Graham Forgie, Thomas Hobson, Thomas Evan Griffith, William Morris, Herbert Macdonald Mowat, Joseph Mackenzie Rogers, Hugh Thomas Kelly, William James Church, Harry Hyndman Robertson, George Herbert Stephenson, Richard Armstrong, John Thacker, George Edgar Martin, William Davis Swayzie.

The following gentlemen received Certificates of Fitness, namely:—Mr. T. E. Griffiths, who passed in Michaelmas Term, 1885; and Messrs. R. Armstrong, E. J. Bristol, A. E. Kennedy, E. A. Holman, A. A. Fisher, G. Wall, D. A. Givens, W. T. McMullen, N. A. Bartlett, Thomas Hobson, F. C. Powell, H. F. Jell, J. C. Mewburn, W. G. Fisher, A W Ford, D. C. Hossack, W. G. McDonald, W. R. Smyth, G. H. Stephenson.

The following gentlemen passed the First Intermediate Examination, namely:—Messrs. Lake, Holmes, Williams, Hunter, Burns, Dumble, McNeill (J. H.), Walker, Osborne, Walmsley, Kelly, Kemp, Baird, Macdonald, McNeill (E. P.), Featherstonehaugh (as a Student-at-Law only), Gould, Hastings, Scott, Scatcherd, Church, Wigle, Coe, Bridgman, Bannerman, Simpson, Box, Mealey, Wallbridge, Carey, Cartwright, Edgar, Graham, Lyon, Thompson, Vickers.

The following gentlemen passed the Second Intermediate Examination, namely:—Messrs. Holmes (G. W.), Johnston, Scott, Page, McGovern, Weekes, Holmes (W. H. F.), Torrance, Fletcher, Langton, McCrimmon, Fitch, Mussen, Dods, Montgomery, Bruce, Code, Gibson, Doyle, Henderson, Lahey, Dixon, Greene.

The following gentlemen were admitted into the Society as Students-at-Law, namely:

Graduates. — John Howard Hunter, M.A., Archibald Bain McCollum, M.A., Arthur James Forward, B.A., William Henry Irving, B.A., George E. Kynaston Cross, B.A.

Matriculants of Universities —William James Fleury.

Junior Class.—William Hardy Murray, D'Arcy Fenton, Norman MacKenzie, William John Glover, William Senkler Buell, Arthur Hervey Selwyn Marks, David Mackenzie, Thomas Joseph Murphy, Newton Wesley Rowell, James William McColl, Alexander Grant McLean, Herbert Lavallin Puxley, Percy Allan Malcolmson, Robert Burnham Revell, Robert Moore Noble, Robert Alexander Montgomery, James Albert McMullen, William Alexander Sutherland.

Mr. Irving, from the Select Committee appointed to strike Standing Committees, presented their report, which was adopted.

Ordered, That the following gentlemen do compose the several Standing Committees for 1886, namely:

Finance.—Messrs. S. H. Blake, J. J. Foy, Æ. Irving, E. Martin, Z. A. Lash, L. W. Smith, H. W. M. Murray, T. H. Purdom, W. G. Falconbridge.

Reporting.—Messrs. B. M. Britton, Hector Cameron, F. Mackelcan, E. Martin, D. McCarthy, H. W. M. Murray, B. B. Osler, James Maclennan, W. G. Falconbridge.

Discipline.—Messrs. C. Robinson, A. Hudspeth, J. K. Kerr, F. Mackelcan, James Maclennan, D. McMichael, Thos. Robertson, L. W. Smith, John Hoskin.

Library.—Messrs. James Beaty, C. Robinson, S. H. Blake, Hector Cameron, J. H. Ferguson, Dr. McMichael, J. H. Morris, Charles Moss, Æ. Irving.

Legal Education.—Messrs. Z. A. Lash, J. H. Ferguson, B. B. Osler, John Hoskin, F. Mackelcan, W. R. Meredith, J. H. Morris, Charles Moss, C. Robinson.

Journals and Printing.—Messrs. B. M. Britton, J. J. Foy, C. F. Fraser, John Hoskin, John Bell, D. McCarthy, Charles Moss, J. K. Kerr, T. B. Pardee.

County Libraries Aid.—Messrs. B. M. Britton, Hector Cameron, D. Guthrie, A.

Hudspeth, A. S. Hardy, J. K. Kerr, W. R. Meredith, Thomas Robertson, E. Martin.

The Select Committee, appointed last term in reference to special legislation as to call and admission, presented their report, which was adopted.

Mr. Murray presented the report of the Finance Committee with reference to the maturing of certain debentures held by the Society, and as to the condition of the lattice walks in front of Osgoode Hall.

Ordered, That the Finance Committee do arrange for the re-investment of the maturing debentures on the best terms.

The report of the Select Committee on honors and scholarships in connection with the Intermediate Examinations was read and received.

Ordered, That Messrs. W. F. Johnston, G. H. Holmes and W. L. Scott, be declared to have passed their Second Intermediate Examination with honors.

Ordered, That Mr. Johnston do receive a scholarship of one hundred dollars, Mr. Holmes a scholarship of sixty dollars, and Mr. Scott a scholarship of forty dollars.

The petition of Mr. Michael Sullivan was received and read. Ordered to be referred to the Finance Committee with power to act.

Mr. M[illegible], from the Committee on Legal Education in the case of W. R. Smythe referred to them, reported recommending that his term of service should be allowed.

Ordered, That Mr. Smythe receive his Certificate of Fitness.

The letter of C. P. Simpson was received and read.

Ordered, That the letter be referred to the Finance Committee for inquiry and report.

The letter of Mr. Poussette was read, and referred to the Finance Committee with power to act.

The letter of Andrew Clarke as to a solicitor was read.

Ordered, That it be referred to the Discipline Committee to enquire as to whether there is a *prima facie* case for action.

Mr. Grant's letter was brought up for consideration.

Ordered, That it be considered on May 18th.

Mr. Britton gave notice that on the last day of the sitting of Convocation in this term he would move a Rule to the effect that the Supreme Court reports be furnished as formerly, and that all orders or rules to the contrary be reconsidered.

Ordered, That the scrutineers appointed to act and count the votes at the late election of Benchers having found it advisable to ask Mr. Maclennan (who was appointed to act as and for the Treasurer) to act along with them in order to save time, and Mr. Maclennan having acted, that he be paid the same fee as the said scrutineers.

TUESDAY, MAY 18TH.

Convocation met.

Present—The Treasurer and Messrs. S. H. Blake, Falconbridge, Foy, Hardy, Hudspeth, Irving, Maclennan, Martin, Meredith, Morris, Murray.

The letter of Mr. Grant, reporter of the Court of Appeal, of Feb. 6th, 1886, was read and considered, and it was resolved that Mr. Grant be informed that his proposal cannot be accepted.

The petition of A. J. F. Sullivan was received, read and referred to the Legal Education Committee for enquiry and report.

The report of the Lecturers on the Law School was received and read.

The Secretary reported on the case of T. E. Griffiths, reserved from Michaelmas Term, that he had completed his papers and was entitled to receive his Certificate of Fitness.

Ordered, That Mr. Griffith receive his Certificate of Fitness.

SATURDAY, 22ND MAY.

Convocation met.

Present — Messrs. Cameron, Falconbridge, Irving, Kerr, Lash, Maclennan, McMichael, Meredith, Morris, Moss, Murray, Robinson, Smith.

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

Mr. Maclennan presented the report of the Reporting Committee, accompanied by the Editor-in-Chief's report upon the state of the work, which was adopted.

The Chairman of the Library Committee presented the report of the Committee with reference to the salary of the Junior Assistant in the Library. The report was adopted.

Mr. Murray gave notice of a rule founded on the report to amend Rule 119, sub-section 2, by taking out the word "five," and inserting the word "six" in lieu thereof.

Mr. Murray, from the Finance Committee, presented the report of the Committee on the subject of Mr. C. P. Simpson's letter, *re* his fees and fines.

The report was ordered to be taken into consideration on Friday next, 28th inst.

The Secretary laid before Convocation the petition of L. U. C. Titus to the High Court of Justice, Chancery Division, praying for his reinstalment, and that his name be restored to the list of solicitors, he having been struck off the roll of that division.

Ordered, That the solicitor of the Society be instructed to appear upon the motion.

Mr. Moss, from the Legal Education Committee, reported on the case of Mr. Arthur G. Browning, which was adopted, and it was ordered, That Mr. Arthur G. Browning be admitted as a Student-at-Law in the Graduate Class.

Mr. Grant's letter to the Secretary of May 20th was read.

Mr. Murray, pursuant to notice, moved to amend the Rule relating to the number of persons to be present at the Examinations in the Law School for the awarding of prizes, by striking out the "eight or more students have competed thereat."

Ordered, That leave be granted to introduce the Rule, and that the said Rule be read a first time.

Mr. Murray moved, pursuant to notice, that the Rule 128 be amended by striking out the words "last Friday."

Ordered, That the Rule be read a first time.

FRIDAY, 28TH MAY 1886.

Convocation met.

Present—Messrs. Falconbridge, Foy, Fraser, Guthrie, Hardy, Irving, Kerr, Lash, Mackelcan, Maclennan, Morris, Moss, Murray, Osler.

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

The petition of Mr. Ronald David Gunn was read and received praying for a re-examination of his answers, and stating that through omission or oversight in the examination of his papers by the examiners, he had not obtained his Certificate of Fitness.

Convocation having inspected the examination papers, directed the Secretary to inform Mr. Gunn that there had been no omission or oversight in the examination of his papers.

Ordered, That the consideration of Mr. C. P. Simpson's letter, *re* his fines, be postponed until Saturday, the last day of Term.

The Rule continuing the Law School was read a first time.

Ordered, That the Rule be read a second time on Saturday, June 5th.

Ordered, That a call of the Bench be made for the consideration of the same, and that meanwhile, the report of the Lecturers be printed and distributed.

Mr. Murray moved the second reading of the following rule.

Rule number 6, for the encouragement of Legal Studies, is hereby mended by striking out the words, "and hat eight or more students have competed thereat."

Ordered, That the second reading be deferred until Saturday, 5th June, and that notice be given as in the case of the Rule continuing the Law School.

On motion of Mr. Murray.

Rule 119, Sec. 2, was amended so as to read as follows:

"The salary of one of the General Assistants shall be $800 per annum, and of the other General Assistant $600 per annum, payable monthly."

On motion of Mr. Murray, the Rule amending Rule number 128, was read a second and third time.

Mr. Osler moved that the application of the County of York Law Association be referred to the County Libraries Committees, who are asked to report to Convocation at its next meeting, in order that it may be considered.

Ordered, That the application of the County of York Law Association be referred to the County Libraries Aid Committee, who are asked to report to Convocation at its next meeting, in order that it may then be considered.

SATURDAY, 5TH JUNE, 1886.

Convocation met.

Present—The Treasurer and Messrs. S. H. Blake, Britton, Falconbridge, Foy,

Hardy, Irving, Kerr, Lash, Meredith, Morris, Moss, Murray, Osler, Robertson, Robinson, Smith.

Mr. Moss, from the Legal Education Committee, reported in the case of Eudo Saunders, recommending that he be admitted to the books of the Society as a Student-at-Law, as of Trinity Term 1880.

Ordered for immediate consideration and adopted.

Mr. Martin, from the County Libraries Aid Committee, presented the report of the Committee, which was ordered for immediate consideration. The report was adopted.

Ordered, That the sum of $1,500 be paid to the County of York Law Association as an initiatory grant, and that the annual grant be at the rate of two dollars a year for each member paying two dollars, and one dollar a year for each member paying one dollar.

The petition of John King, Barrister-at-Law, as to a Solicitor, was read, and ordered for immediate consideration.

Ordered, That the petition be referred to the Discipline Committee to report whether a *prima facie* case is made by the petitioner.

The letter of Mr. Kingsford as to the remuneration of the examiners on the Primary Examination, was received and read.

Ordered, That it be referred to the Committee on Legal Education, and to the Finance Committee so far as the question of remuneration is concerned, to report to Convocation.

The second reading of the Rule as to the Law School, was ordered to be postponed till the 29th June, notice to be given by the Secretary.

The second reading of the Rule as to examinations under the Rule for the encouragement of legal studies to be postponed to the same date, notice to be given by the Secretary.

Mr. Britton, pursuant to notice, moved the introduction of a Rule providing for the supply of the Supreme Court reports to the profession.

Leave was given to introduce the Rule. The Rule was read a first time.

Ordered for a second reading at next sitting of Convocation, notice to be given by the Secretary.

Mr. Martin gave notice that he would move on 29th June next to amend Rule 142, Section E, and to further amend the Rule by permitting the increase of grants to County Libraries in outer counties, and to permit advances to be made in special cases, repayable out of future annual grants.

Convocation adjourned.

(Sgd.) Edward Blake,
Treasurer.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

Matthews v. Hamilton Powder Company.

Explosion in a powder mill—Neglect of superintendent to repair, the neglect of a fellow-workman—Liability of Company through express direction of director to repair.

The plaintiff sued as administratrix of George Matthews, who was killed on the 9th of October, 1884, by an explosion of the defendants' mills for the manufacture of powder, at the Village of Cumminsville, in the County of Halton. The head offices of the defendant company were located in Montreal. The works at Cumminsville were carried on by means of a superintendent, whose duty it was to hire, discharge and pay the workmen, keep the machinery, works and buildings in repair, and generally to manage and control the business, subject, however, to such instructions as he might receive from the head office, and subject to the further superintendence of one Watson, one of the directors, who lived in Hamilton, and who occasionally visited the works.

Some time prior to the said explosion, and while the works were idle during the summer months, Watson visited the works. At that time the shaker, a machine used in the manufacture of powder in one of the several buildings composing the works, called the crackers, was out of repair. Watson gave instructions to Corlett, the superintendent, and to Dent, a carpenter employed on the premises, to have this machine repaired prior to commencing operations. The machine was not repaired, through the neglect of the superintendent or through the company having sent orders to be filled before the repairs could be made.

Held, that though the superintendent's neglect was the neglect of a fellow-workman, yet Watson, a director, having given express instructions to have the repairs made, Corlett's neglect to repair the shaker was the neglect of the company, and the defendants were liable.

Robinson, Q. C., and *E. Martin*, Q. C., for motion.

Fullerton, contra.

RYAN v. BANK OF MONTREAL.

Bills and notes—Estoppel—Forgery.

The plaintiff made an arrangement in Toronto with one Hamilton Young, an employe of the Hamilton Cotton Company, to discount their draft on J. P. Billings & Co., of New York, for $4,989.65, at three months, and in pursuance of this arrangement a draft was drawn in Hamilton, by Hamilton Young, in the name of the Hamilton Cotton Company, on the plaintiff, payable on demand to their own order for $4,800, dated 23rd July, 1883. This draft was taken by Hamilton Young to the defendants' banking house at Hamilton, and there discounted by him and the proceeds of the discount drawn in cheques in the name of the company. The draft was then forwarded by the defendants to their house in Toronto, who presented the same to the plaintiff for acceptance and payment. The plaintiff then discounted the first mentioned draft with the defendants at Toronto, and with the proceeds paid the draft for $4,800. The plaintiff, about the 11th September, 1883, discovered that both drafts had been forged by Hamilton Young, and immediately notified the defendants of the forgery and demanded payment of the amount of the demand draft, which payment the defendants refused. The plaintiff paid the first mentioned draft at maturity.

Held, that although the plaintiff, by acceptance and payment, was estopped from disputing the signature of the drawers, the Hamilton Cotton Company, to the bill, yet he was not estopped from denying their signature as endorsers, even though it was on the bill at the time of acceptance and payment.

Held, also that the defendants, having no title to the bill, the endorsement being a forgery, were not entitled to receive payment, and having been paid, the plaintiff was entitled to recover the amount so paid.

Held, also that the plaintiff was not estopped by his delay in discovering the forgery, there being no actual genuine party on the bill to whom the defendants might have recourse, and having lost no remedy by such delay.

Maclennan, Q. C., and *Haverson*, for motion.

Bruce, Q. C., contra.

RE SUMERFELDT v. WORTS.

Gambling debt—Prohibition—Note of hand—Division Court Act.

A note given in settlement of losses at matching coppers is a note of hand given in consideration of gambling debt within sec. 53, subsec. 3, R. S. O., ch. 47, and such a security is void under 9 Anne, ch. 14, even in the hands of a *bona fide* holder for value.

Upon proceedings being taken in the Division Court in an action in which that court has not jurisdiction, the defendant is entitled to prohibition immediately upon the action being brought and the fact of no notice of statutory defence being given under sec. 92 of R. S. O., ch. 47, does not affect the defendant's right to prohibition.

MACMILLAN v. G. T. R. Co.

Common carriers—Shipment of goods to a point beyond defendants' line—Negligence—Release of co-defendants.

The goods in question were shipped by plaintiff's agent in T. to the plaintiff at M., Man. After much delay some of the goods were delivered in a damaged condition by the C. P. R., whose line touches at M., and some were never delivered at all. Plaintiff brought his action for $2,000 damages against the G. T. R., and subsequently the C. P. R. were made party defendants. The statement of claim charged the G. T. R. on the contract and the C. P. R. in tort. The G. T. R. set up a special contract, providing, amongst other things, for exemption from liability in case the goods were delayed, lost or damaged beyond their line, which ended at Fort G. Before trial plaintiff settled with the C. P. R. for $650, and executed a release to them reserving his right to proceed against the G. T. R. for the balance, and notified the solicitor for the G. T. R. At the trial no reference was made to this release. The plaintiff's agent stated that the contract was a purely verbal one, and that he paid freight through to M., and received a receipt which he did not read, but forwarded it to the plaintiff. Defendants gave evidence that their contracts of shipment were always contained in a bill of lading (signed by the shipper and retained by the company), and in a corresponding shipping receipt (signed by the company and handed to the shipper). The goods in question were carried in a sealed car from T. to Fort G., and the car was still sealed when delivered to the next carriers *en route*. The learned Judge thought there was no evidence of negligence so far as the line of the G. T. R. extended, but it was not disputed that the goods had been damaged and lost by negligence before they reached the plaintiff.

The jury found that the contract was verbal. In answer to question put by the court, the foreman stated that the bill of lading was signed by one of the defendant's clerks, and that a receipt with the usual conditions endorsed was handed to plaintiff's agent at the time of shipment. Judgment was thereupon directed to be entered for defendants.

On motion by plaintiff to set aside this judgment, and to have judgment entered for him for $1,350, the balance claimed.

Held, that the contract, whether verbal or on one of the company's printed forms, was a through contract from T. to M., and that all corporations and persons employed *en route* were servants of the G. T. R. within the meaning of the Consol. R'y Act, 1879, sec. 25, subsec. 11, and that the loss having been admittedly occasioned by negligence, the defendants could not be relieved by any notice, condition, or declaration.

Held, also that notice of the value to the C. P. R. having been given by the G. T. R. before the trial the G. T. R. were not entitled to a new trial on the ground of surprise or the discovery of new evidence,

Held, also that the G. T. R. and C. P. R. were not joint contractors or joint tort feasors, and that proof of the alleged release would not relieve the G. T. R. from liability.

OLMSTEAD v. ERRINGTON.

Division Court—Prohibition—Practice—Cost of application for writ—Entitling of affidavits—O. J. A., secs. 23 and 25—Amendment—Marginal rule, 474.

Where a defendant, upon being sued in the First Division Court in the county of Middlesex, filed a notice disputing the jurisdiction and served a notice of motion returnable before a Judge in Chambers for an order directing the issue of a writ of prohibition to the said Division Court to prohibit the Judge thereof and the plaintiff from proceeding with the suit in that Division Court on the ground of want of jurisdiction in that Court to hear and determine the same, but did not entitle his notice of motion, nor the affidavit in support of the motion, in any division of the High Court of Justice.

Held, (affirming the order of O'CONNOR, J., in Chambers, granting the writ) not a fatal objection, but one which could and should be amended (under Marginal Rule 474).

Held, also that although the motion for prohibition came on to be heard, the plaintiff in the Division Court caused the plaint to be transferred to the proper Division Court in the

County of Lambton, nevertheless the defendant, upon being sued in a wrong Division Court, had the right to apply for prohibition, and the learned Judge in Chambers, having in his discretion given the defendant the costs of the motion for prohibition, that discretion could not be interfered with.

QUEEN v. SHEVELEAR.

Conviction for selling intoxicating liquors on voting day for Scott Act—The word "County," as used in the Act, means County for judicial and not for electoral purposes.

The defendant was convicted of having sold intoxicating liquors on the 16th day of December, 1884, at the Township of Oakland, in the County of Brant, being the day on which the vote for the passage of the Canada Temperance Act for the County of Brant was taken.

The townships of Oakland and Burford, in the said County of Brant, had been, for the purposes of Dominion elections, separated from the County of Brant and annexed to the adjoining county.

Certain portions of the County of Brant consist of Indian lands, and the sale of liquor in these lands is regulated by the Indian Act of 1880, and amendments thereto.

Held, that the word "county," as used in the Act, means county for judicial and not for electoral purposes.

Held, also that under the eighth objection to the conviction that it did not appear that the votes of the electors on the Indian lands in the county were taken upon the petition for the Act, or that proper means were taken to enable them to exercise their franchise, or that they were permitted to exercise it, the proceedings by certiorari did not properly bring the matter before the court.

NEWCOMBE v. ANDERSON ET AL.

Replevin—Boarding-House Keeper—Lien—R. S. O. ch. 147.

One J. and his wife took rooms in premises, called the "Shandon House," kept by defendants, partly furnishing them, and agreeing to pay $50 a month therefor and for their board. They subsequently rented from plaintiff a piano.

Held, that the relation between defendants and J., was not that of an inn-keeper and guest, but of boarding-house keeper and boarder.

Held, also, that the piano was not part of the baggage of J. or his wife, and that under R. S. O. ch. 147, defendants had no lien upon it for their board.

Quaere, whether the house kept by defendants was an "inn" within the meaning of R. S. O. ch. 147, s. 1.

Maclaren, Q.C., for plaintiff.

Ritchie, Q.C., contra.

TUCKER v. MCMAHON.

Corroborative evidence—R. S. O. ch. 92, sec. 10.

The plaintiff, after the death of her husband and about twenty-five years before action brought, went to live with testator, her son-in-law, a blacksmith by trade, residing with him as a member of his family up to the time of his wife's death, which took place about twelve years before action. She alleged that after her daughter's death, testator agreed that he would pay her wages if she would continue to live with him and take care of his family. She accordingly continued so to reside with him up to the time of his death in 1885, to which time she had received no wages whatever from him. In an action for wages against testator's executors, the plaintiff relied upon the evidence of a witness, that testator about two years before his death told witness "she (the plaintiff) shall be handsomely paid for what she does for me," and the evidence of G., another son-in-law, that two or three years before his death, testator said to the witness, speaking of plaintiff, that he would

pay her well for her services. This was the only evidence in corroboration of plaintiff. It appeared, also, that testator by his will directed that upon his death all his property should be converted into money, and invested upon mortgage security, and the whole income thereof paid to plaintiff during her life; but there was no evidence to show the value of this bequest, and it was suggested that after payment of the testator's debts, the residue would be very small.

Held, that there was no sufficient corroboration of plaintiff's claim to satisfy R. S. O. ch. 62, sec. 10.

T. G. Blackstock, for motion.

Aylesworth, contra.

WEIR v. GRAPE VINE CO.

Held, that the grantee in a subsequent conveyance registered before the registry of a previous conveyance from the same grantor, of which the said grantee had no actual notice, was entitled to maintain an action to have his subsequent conveyance declared to have priority over the previous conveyance, and that this court had power to so order upon such terms as seemed just.

W. Bell, for motion.

Osler, Q.C., contra.

PRACTICE.

Mr. Dalton, Q.C.] [May 22.

Proudfoot, J.] [May 31.

BROWN v. COUSINEAUX.

Adding Parties—Rule 109, O. J. A.—Pleading.

In an action for the price of goods sold, C., to whom the defendant had paid the price of the goods, believing him to have a better title than the plaintiff, and J. C. F., and A. F., who were charged by C. with having fraudulently obtained possession of the goods and made a pretended sale of them to the plaintiff, were added as parties defendant under Rule 109, O. J. A., with a direction that C. should in his pleading, state his case against J. C. F. and A. F., and that they should be at liberty to reply.

Shepley, for the defendant and C.

MacGregor, for the plaintiff.

C. P. Div.] [May 25.

HARE v. CAWTHROPE.

Notice of trial—Joinder of issue—Close of pleadings—Counter-claim.

The plaintiff delivered a reply to the defendant's statement of defence and counter-claim, simply stating that the plaintiff joined issue upon the defence and counter-claim.

Held, that this reply closed the pleadings, and notice of trial served with it was therefore regular.

Shepley, for the defendant.

Aylesworth, for the plaintiff.

Mr. Dalton, Q.C.] [May 27.

CAMPBELL v. JAMES.

Joinder of causes of action with claim for recovery of land—Rule 116, O. J. A.—Trial at which leave may be granted.

Where the writ of summons was indorsed with a claim for the recovery of land and for mesne profits, but the statement of claim asked specific performance of the contract by the defendant to buy the land from the plaintiff, and, in the event of specific performance not being decreed, possession, etc., and no order had been obtained for leave to join another cause of action with a claim for the recovery of land as required by rule 116, and a motion was made to set aside the writ of summons and statement of claim or one of them.

Held, that the causes of action were improperly joined in the statement of claim without leave; but, inasmuch as the two causes of action could not conveniently be separately prosecuted, leave was given *nunc pro tunc*.

Hoyles, for the plaintiff.

Shepley, for the defendant.

O'Connor, J.] [May 28.

RE TAYLOR AND ONTARIO AND QUEBEC RY. CO.

Award—Interest—Con. Ry. Act, 1879 (D.).

Money was paid into the bank under Con. Ry. Act, 1879 (D.), sec. 9, sub-sec. 28, and an order for immediate possession of lands expropriated by the company was made by a judge under the same sub-section, and an award of compensation was subsequently made.

Held, that the land owner was entitled to interest on the amount awarded him, only at the rate allowed by the bank on the money paid in, and not at the legal rate.

Leys, for the land owner.

MacMurchy, for the company.

Proudfoot, J.] [May 31.

MULKINS V. CLARKE.

Sale—Vendor's solicitor—Deposit—Default—Responsibility of vendor.

Where the plaintiff's solicitor made default in payment into Court of the ten per cent. deposit paid to him at the time of sale.

Held, that the other parties entitled to the purchase money should not suffer thereby, but that the plaintiff's share should be charged with the deficiency.

Watson, for the plaintiff.

Harcourt, for the infants.

Mr. Dalton, Q.C.] [May 31.
Galt, J.] [June 4.

CONMEE ET AL. V. CANADIAN PACIFIC RY. CO.

Staying trial—Interlocutory appeal.

The trial of the action was stayed pending an appeal to the Supreme Court of Canada from the judgment of the Court of Appeal upon a question arising in the action as to the method of trial.

Osler, Q.C., for the plaintiffs.

R. M. Wells, for the defendants.

O'Connor, J.] [June 11.

REGINA EX REL. WILSON V. DUNCAN.

Controverted election — Municipal Act, 1883—Master in Chambers, jurisdiction of.

The Master in Chambers is not, in any sense, by delegation or otherwise, a judge of the High Court of Justice to whom power is given by the Municipal Act, 1883, to try and determine cases of controverted or disputed municipal elections.

J. K. Kerr, Q.C., for the testator.

McMichael, Q.C., for the respondent.

Galt, J.] [June 11.

MCNAB V. OPPENHEIMER.

Sheriff—Poundage—Arrest—No money made on execution.

A sheriff, upon arresting a judgment debtor under a *ca. sa.*, thereby becomes at once entitled, as against the execution creditor, to full poundage on the amount of the execution.

Aylesworth, for the sheriff of York.

Kappele, for the plaintiff.

O'Connor, J.] [June 12.

BOSWELL v. GRANT ET AL.

Master in Ordinary, jurisdiction of—Consolidating actions—Judgment.

The Master in Ordinary has no jurisdiction to consolidate actions in which judgments have been entered and in which references are pending in his office.

E. H. E. Eddis, for the plaintiff.

Harrison, for the defendants.

Boyd, C.] [June 12.

RE MONTEITH, MERCHANTS' BANK v. MONTEITH.

Costs—Appeals—Administrator—Creditors—Rule 544, O. J. A.

Costs of appeals are not carried by the words "Costs of suit as between solicitor and client," but require to be specially mentioned in the order for taxation.

The administrator is a necessary party to an administration writ, and as such should get his general bill of costs incurred in the ordinary proceedings in which he took part; but where an estate is insolvent the creditors are the persons really interested in the litigation, and it is for them, and not for the administrator, to take active steps by way of appeal to reduce the claims of the secured creditors. The administrator is entitled to attend upon the appeals and to tax a watching brief, but not such costs as if he were the principal litigant.

An appeal lies to a judge in Chambers from the decision of the Master in Chambers under Rule 544, upon appeal from a pending taxation.

Rae, for the secured creditors.

J. A. Paterson, for the unsecured creditors.

MacGregor, for the administrator.

Galt, J.] [June 25.

COCHRANE MANUFACTURING CO. v. LAWSON.

Arrest — Ca. sa. — Discharge — Powers of local judge.

A local judge of the High Court has no power to order the discharge of a defendant held in custody under a *ca. sa.* issued out of the High Court.

Aylesworth, for the plaintiffs.

W. R. Meredith, Q.C., for the defendant.

Boyd, C.] [June 29.

GEORGE T. SMITH CO. v. GREEY ET AL.

Examination—Party resident out of jurisdiction—Conduct money—Objections.

The president of the plaintiff's company lived in the United States, but being in Toronto he was there subpœnaed on the 22nd April to attend on the 28th April for examination for discovery before a special examiner at Toronto. He was paid $1, and made no objection as to the amount, nor did he object that he was prevented by engagements from being present on that day, but he failed to attend.

Held, that the president should have attended for examination on the day appointed, and that the fact that there were then pending against him, at the instance of a stranger to this action, proceedings for perjury which might affect some point in controversy in this action, though it might be a reason for his refusing to answer any question on this point, was not a reason for his refusing to attend at all, and the president was ordered to attend for examination at Toronto at his own expense.

Arnoldi, for the plaintiffs.

H. D. Gamble, for the defendants.

Boyd, C.] [July 2.

RE PHILBRICK AND THE ONTARIO AND QUEBEC RY. CO.

Award—Interest — Con. Ry. Act, 1879 (D.)—Arbitrators' fees—Summary order.

An order was obtained for immediate possession of land under the Con. Ry. Act, 1879 (D.), and money was paid into the Canadian Bank of Commerce under the same sub-section by the company.

Held, that the land owner was entitled to interest upon the amount subsequently awarded him from the date of the award, only at the rate allowed by the bank upon a deposit and not at the legal rate of six per cent.

It was determined in this matter that neither party was entitled to the costs of arbitration under the statute; but the company, in order to take up the award, paid the whole of the arbitrators' fees.

Held, that a summary order could not be made to recoup the company for one-half the fees out of the moneys payable to the land owner, and such order was refused without prejudice to an action for the same purpose.

Alfred Hoskin, Q.C., for the land owner.

G. Tate Blackstock, for the company.

FLOTSAM AND JETSAM.

ACCIDENT POLICY—SUICIDE.—In our last issue we noticed the very interesting case of *Crandall* v. *Accident, etc., Co.*, in which it was held that when a person holding an accident policy commits suicide by hanging himself while insane, his death is in contemplation of law an accident within the policy, and that the insurance company is liable. The policy excepted death caused "wholly or in part by bodily infirmities or disease." Approving the general line of argument which led to this conclusion, we asked: "Now has this expression, 'in part' no significance whatever? And, if any, what does it mean? Can it be that under that expression a remote cause can be admitted to be 'in part,' and concurrently with the proximate, the cause of death? Cannot the insanity of the person who took his own life be regarded in part the cause of his death? On this point we are entirely satisfied."

Since writing this our attention has been called to several authorities, which tend strongly to answer our questions in favour of the conclusion reached by the court. In one of the cases (*Lawrence* v. *Accidental, etc.*, I. L. R. (Q. B. Div.) 216), there was an exception in the policy of deaths caused by "fits," and yet the court held that the assured having a fit, and while in it falling on the track of a railway and being immediately killed by a locomotive, died by accident and not by the fit. And in that case the policy excepted deaths caused by fits, "directly or jointly with accidental injury." The word "jointly" in this case seems to be equivalent to the words "in part" as used in the Crandall policy. The court said in this case: "But it is essential that it should be made out that the fit was a cause in the sense of being the proximate and immediate cause of death." From this it would seem that the disease or disability which is excepted in the policy must be "jointly," or "in part," concurrent with the accident in the proximate cause of the death. It is not sufficient that it renders possible the proximate cause of death, the accident. If this is as we are inclined to think the proper view, the insanity in the Crandall case and the fit in the Lawrence case were not parts of the proximate cause of death, but the secondary or remote cause the *causa causans*, and cannot therefore be regareed as operating "jointly or in part" with the accident to produce the death. An analogous case may be cited in support of this view (*Carter* v. *Towne*, 103 Mass., 507). A man sold gunpowder to a small boy, he kept it several days with the knowledge of his mother, and afterwards was injured by its explosion. Suit was brought against the vendor, but the court held that he was not legally responsible, that the sale of the powder was not the immediate or proximate cause of the injury. And yet the sale of the powder to the boy rendered explosion possible, just as the insanity rendered possible the accident by which Mr. Crandall came to his death.

There is, however, another reason equally strong, perhaps stronger, why the saving clause, relied upon to protect the insurance company, should fail to do so. That clause is an exception to the general obligation which the company assumed. The rule is that words of exception shall be construed, in cases of doubt, most strongly against the party in whose favour they are introduced (2 Whart Contr., s. 677). If, therefore, there is any doubt whether by the "in part" exception was meant a proximate cause or remote cause, the construction should be that the cause meant was a proximate cause, and that construction would manifestly defeat the defence relied upon.—*Central Law Journal.*

Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 49 VICT., 1886.

During Hilary Term the following gentlemen were called to the Bar, namely: Messrs. Edward K. C. Martin and George L. Taylor, who passed their examination for Call last Term, and Messrs. Ernest Frederick Gunther, John Greer, Daniel Coughlin, Albert Edward Kennedy, Francis Robert Latchford, Frederick Weir Harcourt, Henry Wissler, Alfred Mitchell Lafferty, Thomas Davy Jermyn Farmer, John Wendell McCullough, Jos. Nason, Frederick Sheppard O'Connor, William Edward McKeough, Robert Bertram Beaumont, Charles Franklin Farewell.

The following gentlemen were granted Certificates of Fitness, namely: Messrs. J. A. McIntosh, W. D. McPherson, H. J. Wright, T. B. Lafferty, M. Wilkins, Jr., T. D. J. Farmer, C. E. Fleming, J. Nason, A. B. Shaw, W. Morris, A. S. Campbell, R. Walker, E. A. Wismer, E. M. Yarwood, W. E. McKeough, J. F. Williamson, H. Wessler, R. B. Beaumont, J. S. Mackay, D. Coughlin, J. Thacker, W. B. Raymond, J. W. McCullough, A. McKechnie, G. E. Martin.

The following gentlemen were admitted as students-at-law, namely:

Graduates.—Victor Crossley McGirr, Archibald Weir, Isaac Newlands.

Matriculants.—Frederick William Hill, Arthur Franklin Crowe, Edward Lindsay Middleton, James Hamilton McCurry, Robert Ernest Gemmell, Hugh James Minhinnick, Merritt Oaklands Sheets, A. E. Slater.

Juniors.—George Edmund Jackson, John Agnew, George Turbill Falkiner, Dighton Winans Baxter, Charles Edwin Oles, Charles James Notter, William Carnew, Henry Lumley Drayton, Charles Franklin Gilchriese, Edward John Harper, William Herbert Cawthra, John Francis Lennox, Augustus Grant Malcolm, Honore Chatelaine.

Articled Clerk.—Alfred James Fitzgerald Sullivan passed the Articled Clerks' Examination.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- 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.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem —

1884.—Elegy in a Country Churchyard. The Traveller.

1885.—Lady of the Lake, with special reference to Canto V. The Task, B. V.

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.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or Natural Philosophy.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

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.

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.

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 Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

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 Socity 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, six 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 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.

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.

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

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1886. Cicero, Cato Major.
Virgil, Æneid, B. I., vv. 1-304.
Cæsar, Bellum Britannicum.
Xenophon, Anabasis, B. V.
Homer, Iliad, B. VI.

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. (vv. 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. (vv. 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:—
1886—Coleridge, Ancient Mariner and Christabel.
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 51 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, 1890: Souvestre, Un Philosophe sous le toits.
1887, 1889: Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886; and 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.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.