Canada Law Journal.

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DIARY FOR OCTOBER.

21. Sun.... *Twenty-second Sunday after Trinity.* Battle of Trafalgar, 1805.
23. Tues..... Supreme Court Session begins. Lord Monck, Gov.-Gen., 1861.
24. Wed.... Sir J. H. Craig, Gov.-Gen., 1807.
25. Thurs... Battle of Balaclava, 1854.
28. Sun.... *Twenty-third Sunday after Trinity.*
30. Tues.... Primary Examination.
31. Wed..... All Hallow Eve. Primary Examination.

TORONTO, OCT. 15, 1883.

OUR lively cotemporary the *Albany Law Journal* (with whom it is charming to have an occasional tilt—his wit is keen and his repartee, though sharp, good natured) waxes even more funny than usual over the absurdity of Lord Coleridge "endangering his health by any such hyperborean journeys as the Canadians would gladly tempt him to . . . They might persuade his Lordship into an Arctic exploring expedition." The intoxication resulting from the presence of a real live lord all to themselves seems to have been too much for our republican friends. "'Twas ever thus," however. We have no doubt their distinguished guest will have many a good story to tell of men and things in that connection, when he returns to his ain fireside. As for ourselves we suppose living so near the North Pole keeps us cool in the presence of one with a long handle to his name, to say nothing of our being necessarily somewhat more used to it. The writer also tells us that the Chief Justice had all his expenses paid by the New York Bar Association "from his own door," until his return, $2,500 being appropriated for the purpose. Jumbo would have cost more, but would have drawn a larger though not such a select crowd. Waiving the question as to the good taste of the Lord Chief Justice of England accepting the invitation on such terms, we can join with *Punch* (probably the best exponent of English sentiment on such a proceeding) in hoping that the "large takings confidently expected" by the managers have been duly realized.

THE *Law Journal* (London) has evidently misconceived the feeling of the Bar here on the subject of Lord Coleridge not visiting the Dominion. The feeling was generally one of regret that the Chief Justice could not come, to which was added surprise when it became known that he had, before leaving England, accepted the invitation of our Bar to be in Toronto on a certain day, which fact was known to and accepted by the New York Bar Association, as evidenced by the fact that their secretary wrote to the civic authorities in Toronto warning them of the proposed visit, "that you might have the opportunity of extending to Lord Coleridge any civilities which you may desire." A few days before the day appointed his Lordship wrote the secretary of our committee saying he could not come. There was of course nothing to do but express regret at the fact, and countermand the almost competed arrangements. Some thought an engagement so made should not be so lightly broken. Others again were somewhat flabbergasted at the suggestion in his letter that though he, the invited guest, to whom, as occupant of so high an office, we desired to pay our respects, could not eat our dinner, he would, if we liked, send some one else for that purpose This seemed a singular suggestion, but was doubtless made with the best motives, and was so received. Regrets were courteously expressed, and there was an end of the matter. No one was "snubbed"

that we know of, in fact the occasion for such a process did not arise, unless, indeed, it occured to his Lordship by reason of his suggestion not being accepted, which, under the circumstances, was impossible.

RECENT ENGLISH DECISIONS.

The August numbers of the Law Reports comprise 8 App. Cas. pp. 337-576, 11 Q. B. D. pp. 145-313, 8 P. D. pp. 129-150, and 22 Ch. D. 577.

STATUTORY PENALTY—CROWN AND COMMON INFORMER.

In the last article on Recent English Decisions in this journal reference was made to the case of *Clarke* v. *Newdigate*, and now the first case to be noticed in the above number of Appeal cases is the case of *Bradlaugh* v. *Clarke*. It does not, however, seem necessary to dwell here upon the question therein decided, of the construction of the particular statute under which the action was brought, or to do more than allude to the somewhat different view which Lord Selborne and Lord Blackburn appear to take as to the principles on which statutes, which expressly repeal former statutes *in eadem materia*, are to be interpreted. It may, however, be stated that the House of Lords affirms what in the Court of Appeal had been acknowledged as an incontestable proposition of law, viz., that "where a penalty is created by statute, and nothing is said as to who may recover it, and it is not created for the benefit of a party grieved, and the offence is not against an individual, it belongs to the Crown, and the Crown alone can maintain a suit for it." This, Lord Selbourne says, p. 358, rests on a very plain and clear principle: "No man can sue for that in which he has no interest; and a common informer can have no interest in a penalty of this nature unless it is expressly, or by some sufficient implication, given to him by statute. The Crown, and the Crown alone, is charged generally with the execution and enforcement of penal laws enacted by public statutes for the public good, and is interested, *jure publico*, in all penalties imposed by such statutes; and therefore may sue for them in due course of law, where no provision is made to the contrary. The *onus* is upon a common informer to show that the statute has conferred upon him a right of action to recover the particular penalty which he claims."

CONSTRUCTION OF STATUTES—GENERAL INTENTION.

Attention may also be called to an interesting *dictum* of Lord Blackburn's as to the construction of statutes, at p. 373, to the effect that, "in modern times much more weight has been given to the natural meaning of the words than was done in the time of Elizabeth; and in some cases in which the old judges have given effect to the general intention as over-ruling the particular words, a modern court would have given effect to the particular words as showing that the intention really went further than what was supposed."

HUSBAND AND WIFE—DISABILITIES OF MARRIED WOMEN.

In the case of *Cahill* v. *Cahill*, p. 420, which is the next requiring special notice, Lord Selborne delivers a very learned judgment on the subject of married woman's disabilities. He repudiates, as does also Lord Blackburn, p. 438, the notion that the common law of England, as to the disabilities of married women was founded on any presumption against the spontaneity or freedom of acts done by the wife when under marital control, or that it was subject to exception whenever there might be circumstances sufficient to repel such a presumption. "The principle of the disability of coverture," he says, "was that stated by Littleton, (sect. 168): 'a man and his wife are but one person in the law,' which is the reason why 'a man cannot grant or give his tenements to his wife during the coverture;' and (as Lord Coke says, in his comment on the same place), 'she is disabled to contract with any without the consent of her husband: *omnia quæ sunt uxoris sunt ipsius viri.*'" But Lord Selborne goes on to point

out that although a married woman could not contract or convey property (not separate) except so far as by common or statute law she was enabled to join with her husband in doing so, she might always, when her interests required it, sue and be sued jointly with her husband, or (in equity) apart from her husband by a next friend; and that one consequence of the *locus standi in curia* of a married woman for the purpose of asserting or defending her rights of property (whether with her husband or by a next friend), and of having the rights of others asserted against her, was that her interests in the subject matter of the litigation to which she was so made a party, might be bound by way of transaction or compromise—which has been in modern times extended to compromises out of as well as in court. It was on this foundation, he says, that the forms of judicial assurance, by which freehold estates of married women were alienated at common law, down to the passing of the Act for the Abolition of Fines and Recoveries, originally rested. But, he continues, "there is no case in the books, before the Act for the Abolition of Fines and Recoveries, in which a married woman was held bound, on the footing of contract (without fine), to alienate her freehold lands or hereditaments not settled to her separate use. And the means of alienating such lands, substituted by those Acts for fine, although no longer founded on the fiction of judicial transaction or compromise, can only be made available by following the procedure which those Acts prescribe." This brings him down to the crucial question in the case before the House. There a married woman, with a view to a compromise of a suit for restitution of conjugal rights brought by the husband, had signed a document by which it was stipulated that she should release part of a jointure rent-charge to which she was entitled by an anti-nuptial settlement. The House of Lords now decided that, even if a final agreement had been come to, the wife was not bound by it, there having been no acknowledgment as required by the Act for the Abolition of Fines and Recoveries.

Passing over *Danford* v. *McAnulty*, p. 456, which will be found among the Recent English Practice Cases, in our last number, the case of *Maddison* v. *Alderson*, p. 467, is reached, this being the last stage of this interesting case, which was noticed at length in this journal, Vol. 18, p. 334, in connection with the case of *Roberts* v. *Hall*, 1 O. R. 388.

PROMISE TO MAKE A WILL—PAROL CONTRACT—PART PERFORMANCE.

In the judgments of the House of Lords, which we are now about to notice, "the strict boundaries of the law on the subject of part performance exempting a case from the operation of the statute of frauds are emphatically fixed," to use the words of Mr. Chancellor Boyd, in his judgment in the recent case of *Campbell* v. *McKerricher*, (Sept. 15, 1883,) noted in our present number. The facts of the two cases were curiously similar; in both there was an alleged service by the plaintiff, for many years, on the faith of a promise by the deceased to leave him a certain property by will, and in both a will was produced in evidence, or sworn to have been made, actually leaving the property to the plaintiff, but inoperative in the one case from want of proper attestation, and in the other by reason of the execution of a subsequent will, and, to again revert to the words of the Chancellor, in *Campbell* v. *McKerricher* the Chancery Divisional Court "but adopts the principles of law laid down" in the case of *Maddison* v. *Alderson*, the effect of which was, in both cases, to find the plaintiff not entitled to recover. Dealing, then, with the doctrine of equity as to part performance of parol contracts, Lord Selborne commences by saying that he agrees with the observation of Lord Justice Cotton in *Britain* v. *Rossiter*, L. R. 11 Q. B. D. 130, noted in this journal, *supra* p. 268, that it is not an adequate explanation of this doctrine to say summarily that it rests upon the principle of fraud, tha

Courts of Equity will not permit the statute to be made an instrument of fraud. Lord Blackburn, indeed, says (p. 488) that he had not been able to discover to his satisfaction what is the principle which is involved in the numerous cases in equity on the subject, but the rest of their Lordships concur in the exposition of the law given by the Lord Chancellor, (p. 475), which is as follows;—"In a suit founded on part performance of a parol contract, concerning land, the defendant is really charged upon the equities resulting from the acts done in execution of the contract, and not (within the meaning of the statute) upon the contract itself. If such equities were excluded, injustice of a kind which the statute cannot be thought to have had in contemplation would follow. Let the case be supposed of a parol contract to sell land, completely performed on both sides, as to everything except conveyances; the whole purchase money paid; the purchaser put into possession; expenditure by him (say in costly buildings) upon the property; leases granted by him to tenants. The contract is not a nullity; there is nothing in the statute to estop any court which may have to exercise jurisdiction in the matter from inquiring into and taking notice of the facts. All the acts done must be referred to the actual contract, which is the measure and test of their legal and equitable character and consequences. If, therefore, in such cases, a conveyance were refused, and an action of ejectment brought by the vendor, or his heir, against the purchaser, nothing could be done towards ascertaining and adjusting the equitable rights and liabilities of the parties without taking the contract into account. The matter has advanced beyond the stage of contract, and the equities which arise out of the stage which it has reached cannot be administered unless the contract is regarded. The choice is between undoing what has been done (which is not always possible, or, if possible—just) and completing what has been left undone. The line may not always be capable of being so clearly drawn as in the case which I have supposed; but it is not arbitrary or unreasonable to hold that when the statute says that no action is to be brought to charge any person upon a contract concerning land, it has in view the simple case in which he is charged upon the contract only, and not that in which there are equities resulting from *res gestæ* subsequent to and arising out of the contract. So long as the connection of those *res gestæ* with the alleged contract does not depend upon mere parol testimony, but is *reasonably to be inferred from the res gestæ themselves*, justice seems to require some such limitation of the scope of the statute, which otherwise interposes an obstacle even to the rectification of material errors, however clearly proved, in an executed conveyance, founded upon an unsigned agreement."

In the light of the above it is easy to understand the remark of Lord O'Hagan, at p. 483, that an erroneous course had been taken in the argument in the case, inasmuch as "instead of seeking to establish primarily such a performance as must necessarily imply the existence of the contract, and then proceeding to ascertain its terms, it reversed the order of the contention," or, in other words, as said by the Chancellor in our recent case of *Campbell* v. *McKerricher*, the proper order of marshalling the evidence is first to prove the part performance in order to let in parol evidence of the agreement which is sought to be enforced.

PRACTICE—PETITION FOR SPECIAL LEAVE TO APPEAL.

Lastly must be noiced the case of *Canada Central R. Co.* v. *Murray*, where leave was sought to appeal from the judgment of the Supreme Court of Canada, of May 17, 1883, and leave to appeal was refused on the ground that the questions raised in the cases involved no issue except an issue of fact. Their Lordships also lay down the rule in this case that a petition for leave to appeal to the Privy Council must state fully, but succinctly, the grounds upon which it is based.

A. H. F. L.

LAW SOCIETY.

TRINITY TERM—47 VICT. 1883.

The following is the *resume'* of the proceedings of the Benchers during Trinity Term, published by authority:—

During this term the following gentlemen were called to the Bar, namely—Messrs. Hugh Archibald McLean, William Jno. Martin, Harry Thorpe Canniff, Henry Carleton Monck, David Haskett Tennent, Robert Peel Echlin, Charles Henderson, Alexander John Snow, Robert Taylor, Frank Howard King, William Armstrong Stratton, Robert Kinross Cowan, Thos. Parker, Daniel K. Cunningham, David Mills.

The following gentlemen received Certificates of Fitness, namely—Messrs. H. A. McLean, D. M. Fraser, A. J. Reid, A. S. Clarke, W. J. Porte, R. H. Holmes, E. J. Hearn, J. P. Fisher, H. C. Monk, J. N. Marshall, W. L. Haight, M. McFadden, T. Parker, R. Patterson, W. J. Martin, G. W. Ross, G. Morehead, W. A. Stratton, H. T. Canniff, J. A. McCarthy, J. A. Mulligan, R. P. Echlin, P. J. King, T. Chapple, C. W. Phillips.

The following gentlemen passed the Frst Intermediate Examination, namely—W. S. Brewster, (Honours and First Scholarship), P. D. Cunningham, (Honours and Second Scholarship), E. C. Higgins, J. G. Godfrey, T. H. Hill, C. T. Glass, W. Creelman, H. T. Shibley, W. Douglas, J. Campbell, F. R. Latchford, A. A. Fisher, G. F. Bell, J. M. Rogers, A. W. Marquis, D. McArthur, A. McMurchy, A. McKechnie, E. F. Gunther, G. H. C. Brooke, F. W. G. Thomas, A. D. Hardy, R. A. Pringle, J. W. White, W. A. D. Lees, E. M. Yarwood, R. G. Code, A. W. Chisholm, E. C. Emery, A. W. A. Findlay, G. S. Macdonald, O. L. Spencer, A. C. Steele.

The following gentlemen passed the Second Intermediate, namely—R. Smith (Honors and First Scholarship), L. H. Patten, W. H. Matheson, J. Macpherson, F. G. Lily, D. Macdonald, J. W. St. John, G. H. Jarvis, J. Tytler, M. Wilkins, Jr., E. Weld, T. Johnson, J. W. Berryman, H. Cowan, J. B. Jackson, H. H. Bolton, J. Heighington, J. W. Duncan, I. J. Blair, P. S. Campbell, E. W. M. Flock, J. A. Forin, S. O'Brien.

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

GRADUATES—John Murray Clarke, Robert Urquhart Macpherson, George Somerville Wilgress, George Henry Kilmer, Robert Charles Donald, Arthur Freeman Lobb, John Joseph Walsh, Francis Edmund O'Flynn, John Hampden Burnham, William Smith Ormiston, Lyman Lee, John Samuel Campbell, Alfred David Creasor, Henry Smith Osler, Charles Perley Smith, Herbert Hartley Dewart, Duncan Ontario Cameron, Wellington Bartley Willoughby, Alexander Lillie Smith, William Chambers, Edward Cornelius Stanbury Huycke, William Hope Dean, Allan McNabb Denovan, Alexander Fraser, William Ernest Thompson, Alfred Buell Cameron.

MATRICULANTS — Alexander James Boyd, John William Mealy, Robert Sullivan Moss, Arnold Morphy, Thomas R. Ferguson, Robert James McLaughlin, William Henry Campbell, Malcolm Wright.

JUNIORS—Wentworth Green, Frank Sangster, Daniel Frederick McMartin, Frank Reid, Jonathan Porter, William Woodburn Osborne, George Frederick Bradfield, Charles Downing Fripp, Robert Franklyn Lyle, William Charles Fitzgerald, William Edward Fitzgerald, John Wesly Blair, Alexander Duncan Dickson, William George Munro, Edward Henderson Ridley, Alexander Purdom, George Chesly Hart, William Henry Lake, Robert Ruddy.

Monday, September 3rd, 1883.

Present—The Treasurer, and Messrs. Crickmore, Leith, Becher, Moss, Kerr, Maclennan, Robertson, Cameron, Beaty, Bethune, Reid, J. F. Smith, Irving.

Mr. Kerr, from the Committee of the Journals of Convocation, reported that the Committee had prepared a book containing the rules as directed by the resolution of Convocation, with an Index, and the book was laid on the table.

Mr. Read reported that, as Chairman of the Finance Committee, he authorised the use of the Examination Hall by the Congress of Shorthand Writers, and laid their letter of thanks on the table.

Tuesday, Sept. 4th, 1883.

Present—The Treasurer, and Messrs. Becher, Irving, Mackelcan, Bethune, Maclennan, Leith, Crickmore, Cameron, Bell, Murray, Pardee, Read Kerr, J. F. Smith, and McCarthy.

Mr. Irving presented the Report of the Library Committee, as to the Supplementary Catalogue.

Saturday, Sept. 8th, 1883.

Present—The Treasurer, and Messrs. Crickmore, Maclennan, Cameron, Read, Irving, Moss, Hardy, McCarthy, Foy, Kerr, and Bethune.

Mr. Maclennan, from the Committee on Reporting, presented their reports as follows :—

REPORT.

To the Benchers of the Law Society of Upper Canada.

The Committee on Reporting beg leave to report as follows :—

All the work of Reporting continues to be in a satisfactory state but the Chancery Reports and the Appeal Reports.

The cases decided in the Queen's Bench and Common Pleas Divisions are all brought down to the present time, but the Committee regrets to find that in the Chancery Division there are large arrears and that the same is the case with the Court of Appeal.

There are between thirty and forty old Chancery Cases in Mr. Grant's hands, which have been in print for a long time, and which are not yet issued, and which should complete Volume 29 of Grant's Reports.

Mr. Lefroy has done an extraordinary amount of work since his illness, but there are still 88 cases unreported, of which about 60 are in print and in various stages of progress. It has now become a question whether one person can do the reporting for this Division efficiently, and whether the Reporters of the other Divisions should not render assistance, or whether there should not be two Reporters on the Chancery Division.

The Appeal Cases unreported number forty, of which twelve were decided in the beginning of February, four in the beginning of March, ten in the end of March, and thirteen in the end of June, none of these cases have yet been delivered to the printer, nor was any note of thirteen of them delivered to the LAW JOURNAL.

The Practice Reports appear to be fairly up, thirty cases have been issued since last Term, and there are fifty-three cases now in print.

The Triennial Digest is said to be ready for the press, and is only kept back in order to include, if possible, the 29th Volume of Grant's Reports, which is not yet issued. All which is respectfully submitted.

(Signed) JAMES MACLENNAN,
Chairman.

Ordered that it be referred back to the Reporting Committee to confer with the Editor-in-chief and Mr. Grant as to the backward state of 29 Grant, and of the Appeal Reports, to obtain any explanations or suggestions these gentlemen may have to offer, and to consider and report to Convocation what remedy should be applied.

Ordered that the further consideration of the report be adjourned to the next meeting of the Convocation.

Convocation adjourned.

(Signed) EDWARD BLAKE.

Sept. 14th, 1883.

Present—The Treasurer, and Messrs. Crickmore, Becher, Moss, Maclennan, Hardy, Mc Carthy, Foy, Irving, Murray. Britton, J. F. Smith, Mackelcan, Read.

Mr. Maclennan from the Committee on Reporting, reports as follows :—

1. They have conferred with Mr. Robinson and Mr. Grant, with reference to the incomplete volume of Grant's Reports, and the backward state of the Appeal Reports. and they recommend that Mr. Grant be required to prepare notes of the unreported Chancery Cases, to be inserted in the Digest, without waiting for the publication of the volume, that such notes be all prepared and delivered to the Editor, and to the LAW JOURNAL, on or before the 1st day of October, and that volume 29 be completed within two months from this date.

2. The Committee report that no satisfactory reason has been given for the backward state of the Appeal Reports, and Mr. Grant thinks the forty cases now unreported cannot be issued before January next.

The Committee propose to meet at an early date to resume the consideration of the subject and to report fully at the next meeting of the Convocation. All which is respectfully submitted.

(Signed) JAMES MACLENNAN,
Chairman.

The Report of the Reporting Committee, presented on Saturday last, and ordered to be further considered, was taken up.

Ordered that the paragraph respecting the Chancery Reports be referred back to the Reporting Committee, with instructions to consider and report what remedy should be applied to meet the difficulty stated.

Convocation adjourned.

SELECTIONS.

WHAT DEBTS CAN BE ATTACHED?

THE case of *Webb* v. *Stenton*, decided by the Court of Appeal, and reported in the September number of the LAW JOURNAL REPORTS, sets at rest one of those numerous doubts raised by the fusion of law and equity. It was a special case stated in reference to a garnishee order. The judgment debtor became, in August, 1882, entitled under a will to 85*l.* a year for his life, payable by trustees in February and August out of the income of a trust fund. On November 11, 1882, a garnishee order *nisi* was made; but an issue was taken on the question whether at that date there was "a debt owing or accruing" from the trustees to the judgment debtor, and the special case was stated in order to decide this question. On the one hand, it was clear that on November 11 there was no sum actually due to the judgment debtor from the trustees; and, on the other, it was equally clear that, in the February following, some 42*l* 10*s.* would be due from the trustees to the judgment debtor. Could this sum be said to be a "debt accruing" from them to him? The Divisional Court, composed of Mr. Justice Cave and Mr. Justice Day, decided that it could not; and the Court of Appeal has now affirmed that decision.

The process of attachment of debts was the invention of the Common Law Procedure Act, 1864, and in regard to the debts attachable the words used are the same now. Section 61 of the Common Law Procedure Act, 1854, applied the process to "debts owing and accruing" from the garnishee to the judgment debtor. The moribund Order XLV. used the same words, which re-appear in Order XLV. as it is to be in October 24. It may be as well to remark in passing that the new order, although it does not affect the character of debts which may be attached, makes an important extension of the process by allowing it to be employed, not only by a judgment creditor, but by a person who has obtained an order for the payment of money. The reason for the addition is probably to be found in the rules themselves, which not unfrequently allow orders to be substituted for the more formal process of judgments. The addition may be justified without much difficulty. No doubt a judgment has a deliberation about it not possessed by an order, but it is not to be assumed that an order is likely to be less just, especially when appeals are so freely given; and if a person is adjudged entitled to have money from another, he ought to be allowed to call on the debtors of that other to hand over their debts to him, whether his title depends on an order no less than when it depends on a judgment. With regard to the words "debts owing or accruing," which have been used from the beginning, their meaning is at first sight doubtful, and it may be supposed that an "accruing debt" means something which will, in progress of time, ripen into a debt. The words had, however, clearly been interpreted under the Common Law Procedure Act to mean present debts payable immediately or in the future as in the cases of *Jones* v. *Thompson*, 27 Law J. Rep. Q.B. 234, and *Tapp* v. *Jones*, 44 Law J. Rep. Q.B. 127. With one exception, no doubt seems to have been thrown upon these cases, the first of which was decided in 1858. The Court of Appeal was not likely to disturb so uniform an interpretation of an ambiguous phrase except for very clear reasons, and the exception referred to was of considerable weight. In the case of *Re Cowans*, 49 Law J. Rep. Chanc. 402, Vice-Chancellor Hall, in considering the question whether a garnishee order could be made on a receiver appointed in the Chancery Division, and deciding the question in the affirmative, said: "There are authorities which countenance the notion that the attachment must be confined to anything due when the order is made; but I think that good sense goes along with the decision in *Tapp* v. *Jones* which cannot be taken as having depended on the circumstance that the money in the particular instance was owing at the time." This expression of opinion was not a mere *obiter dictum*, because the Vice-Chancellor made an order extended to moneys coming into the hands of the receiver in the future; but it must now be considered as overruled, being given on a misapprehension of *Tapp* v. *Jones*.

It may be asked why this *status* should be given to present debts payable in the future,

but denied to such thing as annuities payable in the future. The latter are of as substantial a character as the former, or rather more substantial, especially if secured by a trust fund. The answer is that an annuity is a piece of property, and not a debt. A debt only arises out of it when the person who has to pay it might be sued for an instalment. In the case of a trustee this only happens when he has the money in his hands. It may be that the process of attachment ought to be applicable to property of this character, but as yet the legislature has not so applied it. It would be easy to create a sort of compulsory charge on annuities, and money paid periodically. Whether it would be expedient is another question. At present the right to attach is simply and clearly confined to debts, and although the phrase "accruing debts" is capable of meaning an embryo debt, yet such an interpretation would lead to great uncertainty. There would be difficulty in drawing the line reasonably, and a very distant approach to a debt such as the negotiation for a contract might be considered as within the phrase. So far as the attachment of debts is concerned, proper effect has, we think, been given to the law by the decision in question. If property not of the tangible kind which can be reached by a *fi. fa.* is to be dealt with by any similar proceeding, another and separate definition of the thing to be attached is necessary.—*Law Journal.*

THE vexed question for a provision for attorney's fees in a note was decided in favor of the negotiability of such a note, in *Adams* v. *Addington*, United States Circuit, Northern District of Texas, January, 1883, 16 Feb. Rep 89, Pardee, J. "As shown by the note of Mr. Adelbert Hamilton to the case of *Merchants' Nat. Bank* v. *Sevier*, 14 Feb. Rep. 662, the weight of authority is in favor of the negotiability of instruments containing stipulations similar to those contained in the one sued on. And, on principle, why should such instruments not be negotiable? The amount to be paid at maturity is fixed and certain. As to what amount is to be paid in case of dishonor, and after maturity, there may be uncertainity, depending upon contingencies, Is not the same true of every promissory note negotiable by the law merchant? The simplest one in form will carry with it an obligation to pay protest fees and interest in case of dishonor. The protest fees are contingent upon protest being made, and upon the number of indorsers notified. The interest payable is contingent upon time. Bills of exchange, which, in the matter of certainty of amount, stand upon the precise footing of promissory notes, carry with them an implied contract in case of dishonor to pay notarial expenses and interest (and in case of foreign bills payable abroad), re-exchange and expenses besides. That makers of promissory notes may make stipulations affecting their liability and the remedies to be taken against them in case of dishonor, and after maturity, without destroying the negotiable character of the notes, seems to be well settled. A note in the usual form to which is added, 'Waiving right of appeal and of all valuation and exemption law,' is negotiable. *Zimmerman* v. *Anderson*, 57 Penn. St. 421; *Wollen* v. *Ulrich*, 64 Ind. 120. So is one with a power of attorney to confess judgment attached. *Osborn* v. *Hawley*, 19 Ohio, 130; *Kirk* v. *Cushman* v. *Welsh*, 19 Ohio St. 536; *Ins. Co.*, 39 Wis. 138; S. C. 20 Am. Rep. 39. So is one directing the appropriation of the proceeds of the note. *Treat* v. *Cooper*, 22 Me. 203. Likewise a stipulation may be made that no interest shall accrue prior to a certain date. *Helmer* v. *Krolick*, 36 Mich. 371. Or, if not paid at maturity, the note shall bear interest at an increased rate. *Houghton* v. *Francis*, 29 Ill. 244; *Towne* v. *Rice*, 122 Mass. 67; *Parker* v. *Plymell*, 23 Kans. 402. * * * In all the foregoing instances of notes and bills of exchange, the amount to be paid at maturity was certain; the collateral or additional contract, embodied in the instrument or supplied by the law, relating solely to the amount promised to be paid in the contingency of dishonor, and expenses thereby incurred. Now if negotiable instruments may carry with them, either as 'ballast' or 'baggage,' a collateral contract in case of dishonour to pay reduced or increased interest, to waive delays and homestead exemptions, to confess judgment, to appropriate the proceeds, to sell collateral security, to pay (in cases of bills) re-exchange and expenses, all without losing their negotiable character, there is no principle founded in reason which shall declare a promissory note to be not negotiable because it contains a collateral contract that in case of dishonor the maker shall pay the expenses directly resulting from his own miscarriage or default. It seems to me, both on principle and authority, we properly ruled on the trial of this case.

that the note sued on was negotiable. If the note was negotiable, the plaintiffs, who are innocent holders, may enforce the stipulation for attorney's fees against the maker. *Hubbard* v. *Harrison*, 38 Ind. 323; *British Bank* v. *Ellis*, 6 Sawy. 97; Dan. Neg. Inst, § 62; and see *Miner* v. *Bank*, 53 Tex. 559." See *ante*, 447; *Johnston* v. *Speer*, 92 Penn. St. 227; S. C. 38 Am. Rep. 675, and note 677. —*Albany L. J.*

A STRIKING exemplification of the danger of "helping one's self" in a shop, and of trying to get more than one's money worth, is shown in *Gwynn* v. *Duffield*, Supreme Court of Iowa, April, 1883, 15 Rep. 786. This was an action of negligence against an apothecary. The plaintiff ordered some extract of dandelion, and the apothecary by mistake served him out of the belladonna jar, and was doing the package up. Then, as the court state, "the plaintiff went to the jar containing belladona and took out, on the point of his knife, what he thought was a dose of the extract of dandelion, and called the attention of one of the defendants to it, and asked if that was a proper dose; and the defendant, supposing that it was the extract of dandelion, told the plaintiff that the amount on his knife was a proper dose, and therefore the plaintiff took it. The jar, it appears, was properly labelled, and the plaintiff's negligence, if any, consisted in not discovering that the jar contained belladonna. There is no pretence that he could not read. The only excuse for him was, so far as we can discover, that the defendant, whom he consulted in regard to the size of the dose, had just made the same mistake. He had just taken from that jar, as the plaintiff had seen, a portion of its contents to fill an order for the extract of dandelion, given by the plaintiff, and was doing up the package when the plaintiff proceeded to help himself to a dose from the jar as above set forth. There is not the slightest evidence that the defendant discovered the plaintiff's danger." The court charged the ordinary doctrine of contributory negligence, but added the exception that the plaintiff might recover, in spite of his own contributory negligence, if the defendant, after seeing the danger of injury, did not use ordinary care to avert it. The court said: "The jury then should have been instructed without qualification that if the plaintiff was guilty of negligence contributing to the injury he cannot recover."—*Albany L. J.*

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

MASTER'S OFFICE.

DARLING V. DARLING.

Production of documents—Delivery out after inspection.

The object of the production of documents in actions, is to enable either party to discover the existence and acquire a knowledge of the contents of the deeds and writings relevant to the case, which are in the possession or control of the opposite party; and when that object is accomplished the documents will go back to the custody of the party producing them.

The Court will not impound documents which appear to have been tampered with, but will retain them for a reasonable time for inspection, or to allow criminal proceedings to be taken in respect of them.

The Master has a discretion to direct parties to leave documents in his office so long as any useful purpose may be answered by their remaining there, and then to allow the party producing to take them back.

[Toronto—Mr. HODGINS, Q.C.

This was an application by the defendant for the delivery out to him of certain account books brought into the Master's office in March, 1882, pursuant to an order for production.

Bain, for the defendant, filed an affidavit showing that the books were material to the defendant's business in Montreal.

W. Barwick, contra, objected on the grounds that the defendant intended to remove the books to Montreal, out of the jurisdiction of the Court, and that the books showed that they had been tampered with—leaves having been torn out and balances altered.

THE MASTER IN ORDINARY—The jurisdiction of the Court in ordering the production of documents evidently comes from the *actiones ad exhibendum* of the Roman Law, which enabled the owner of a thing in the possession of another to compel its production or exhibition so as to enable the owner to establish his claim to it: Sanders' Justinian, 191. This Court by its order enables either party to an action to discover the existence and acquire a knowledge of the contents of the deeds and writings releva

to the case, which are in the possession or power of the opposite party; that is a discovery in aid or for the purposes of proof, so far as re-relates to the party's case.

When the object of the production is accomplished it may be reasonably inferred that the Court will not constitute itself the custodian of such documents, or impound them in the interest of either party; and the cases bear out this view.

In *Small* v. *Attwood*, 1 Y. & C. Ex. 37, the Court held that when books, etc., were brought into Court for the inspection and examination of the plaintiff, that object having been answered the books should go back to the custody of the party producing them; and that if subsequently required for the purposes of any inquiries directed by the decree, the Master would use his discretion in requiring them to be produced in his office.

But the plaintiffs ask that, in consequence of the way in which the books have been tampered with, they should be impounded until the inquiry is terminated. *Beckford* v. *Wildman*, 16 Ves. 483, is against this proposition In that case a bill was filed to set aside two conveyances of the Quebec Plantations, in Jamaica, and a motion was made that these instruments should be deposited with the Master for safe custody, on the ground that there were material variations between them. Lord Eldon refused the motion, stating that where the object of the suit was to destroy the deed, the plaintiff had a right to have it produced, and left in the hands of the Clerk of the Court, for the usual purposes of inspection, &c.; that, although the variations complained of did exist, he would not order the deeds to be deposited or impounded for safe keeping, no case of danger that they would not be produced at the hearing, having been established.

In *Walker* v. *Cooke*, 3 Y. & C. Ex. 277, a motion was made to re-deliver to the defendant certain bills of exchange and promissory notes which had been deposited by him in Court under the usual order. The motion was opposed on the ground that the plaintiff was advised to take criminal proceedings against the defendant, in respect of such bills and notes—the plaintiff denying the genuineness of his apparent endorsement to one of the notes. Alderson, B., said he would make no order then, but directed that the bills and notes should remain a reasonable time in Court, to see whether the plaintiff would take the intended criminal proceedings against the defendant.

As to the books being taken out of the jurisdiction, *Gabbett* v. *Cavendish*, 3 Swans. 267, may be referred to, where, on proof that certain books in Dublin "were of consequence to the business carried on there," Eyre, C. B., excused their non-production in London, and made an order that the defendant should deliver a schedule upon oath of the papers in Dublin, and that the plaintiff should have copies of all such as he pleased. It is proved here that the books now asked for are material to the defendant's business in Montreal.

The case of *Sidden* v. *Siddiard*, 1 Sim. 388, decides what is the jurisdiction of the Master in similar cases. In that case Sir Anthony Hart, V.C., after consultation with Lord Lyndhurst, L.C., and Sir John Leach, M.R., held, that under the usual order for the production of documents in the Master's office, the Master was at liberty to direct either party to leave them in his office so long as he thought any useful purpose might be answered by their remaining there, and then to allow the party producing to take them back. See, also, *Hanna* v. *Dunn*, 6 Madd. 340 and Cons. Ch. Orders 222.

In *Ex parte Clarke*, Jac. 389, the documents produced in the Master's office were directed to be retained until a proper inspection of them was obtained, and six weeks was allowed for that purpose. Here the books have been in the office for about a year; but in case the plaintiffs desire a further inspection they may be detained in the office for a week and then delivered out to the defendant.

ASSESSMENT APPEALS, COUNTY OF ONTARIO.

RE MIDLAND RAILWAY AND TOWNSHIPS OF UXBRIDGE AND THORAH.

Assessment of railways—Average value of land in locality—Fences.

Held, that the average value per acre of the lots or farms through which the railway passes must be taken as the value per acre of the roadway occupied by the company.

Also, that the value of the buildings on the farms should not be excluded from such average value.

Also, that the railway fences are part of the superstructure, and, as such, exempt from assessment.

[Whitby, July 26th, 1883.

The Midland Railway Company appealed on various grounds against their assessment. In all their appeals they contended (1) that the value of the buildings upon the lands in the locality should be deducted from the total value before ascertaining the average value of the lands in the locality; (2) that the "lands in the locality" means the lands through which the railway actually passes; and (3) that the fences are part of the superstructure, and, as such, exempt.

Biggar, for the company.

J. E. Farewell, for the township of Thorah.

E. C. Campbell, for the township of Uxbridge.

DARTNELL, J.J.—Many such appeals as these in question must have come before the County Judges, but, as far as I am aware, there are but few reported cases, and these are all noted in a judgment of His Honor Judge Daniel in *Re The Canadian Pacific Ry.*, 18 C. L. J. 285.

I am asked to interpret the meaning of the words, "average value of land *in the locality*." I think the safest and best course, as well as the fairest for both Municipality and Company, will be to hold that these lands are those through which the Railway *actually* passes, and I will take the average value of these lands, "as rated on the assessment roll of the previous year," as forming a basis upon which the value of the roadway shall be determined. I cannot accede to the contention of the Company that the value of the buildings upon these lands is to be deducted from the assessed value as appears upon the roll. The words of the Act are, "as rated upon the Assessment Roll of the previous year." Now, there is no separate assessment of the lands, apart from the buildings, but both are assessed together as "lands." Without the material at hand upon the face of the Assessment Roll to determine the value of the land apart from the buildings erected thereon, an enquiry on this head in respect of every lot of land through which the Railway passes would be necessary. This would be, if not impracticable, at least interminable. I take it, under the Assessment Act, "land" includes all buildings erected thereon.

In the township of Uxbridge, the roadway, according to my view, is properly assessed, but the Court of Revision have separately assessed the Railway *fences* at the sum of $2,884.

The Road-bed of the Railway occupies about 80 acres of land in the township. The Court of Revision assumes that a *farm* of this size would have on the average about 800 or 900 rods of fencing, whereas the Company have erected about 5,000 rods, and they are assessed for the excess.

I think they are improperly assessed, and that the fences are as much part of the superstructure as is the iron, ties, ballast, &c., which have been held to be exempt. The Company is bound to maintain these fences for all time to come. Unlike other adjoining owners, the Company is solely bound to erect and maintain their fences, and the owners of the adjacent lands have no interest therein, or any obligations in respect of their maintenance and repair. Being of opinion that the Railway is not assessable in respect of their fences. I allow the appeal in respect of the sum they have been assessed therefor.

FIFTH DIVISION COURT, LEEDS AND GRENVILLE.

McCREA v. EASTON.

Line Fences Act.

In an appeal from the award of fence viewers to the County Judge in a case in which part of the land in one county, and the remaining part in another,

Held, a case not provided for and no jurisdiction.

The facts were as follows:—The land of the appellant, McCrea, was lot 7 in Concession A, of the Township of Montague, in the County of Lanark; and that of the respondent, Easton, was the south-east quarter of lot 8 in the same concession, but was within the limits of the incorporated village of Merrickville, in the County of Grenville, one of the United Counties of Leeds and Grenville. The parties not being agreed as to a fence or fences, the respondent notified appellant that three fence viewers of Merrickville would arbitrate in the premises, and also notified the fence viewers. All parties attended, and an award was made. From such award the appellant appealed to the Judge of the County Court of said United Counties, who appointed the 28th of September, at Merrickville, for the hearing of the appeal; on which day, (day of sitting of Division Court),

Joseph Deacon, of Brockville, appeared for the appellant. The respondent appeared in person.

The appellant put in a copy of the award of the fence viewers, certified by the clerk of the village of Merrickville. Upon looking at it and at the Act, the judge entertained grave doubts as to his jurisdiction, and reserved judgment, to be given at the office of the clerk of the Division Court.

MCDONALD, Co. J.—This is an appeal to me, as Judge of the County Court of the United Counties of Leeds and Grenville, from an award of three fence-viewers of the village of Merrickville, in said United Counties. The 3rd section of the Line Fences Act provides, in case of dispute, that there shall be arbitration by "three fence-viewers of the locality." The 7th section provides that "the award shall be deposited in the office of the Clerk of the Council of the Municipality in which the lands are situate." The 11th section provides for appeal to "the Judge of the County Court of the County in which the lands are situate," and for the delivery of a copy of the notice of intention to appeal "to the Clerk of the Division Court of the division in which the land lies." Now in the case in question it is impossible that all these provisions can be complied with. For although it should be urged that the word "locality" in section 3 is wide enough to cover the surrounding country, without regard to municipal divisions, and that the provisions of the 7th section would be complied with by having the award executed in duplicate, and by depositing one of such duplicates in the office of the Clerk of *each* Municipality in which a portion of the lands is situate, I think that such a construction would, as to both the 3rd and 7th sections, be a very strained one, and quite at variance with the reading of the Act as a whole. And, at any rate, there is not any mode that I can perceive of getting around or surmounting the difficulties presented by the provisions of the 11th section, as to the Judge to whom the appeal shall be made, and the Division Court Clerk to whom a copy of the notice is to be delivered. The words are "the Judge of the County Court of the County in which the lands are situate," and "the Clerk of the Division Court of the Division in which the land lies." In the case now under consideration the lands are not situate wholly in one County, and do not lie wholly in one Division, and I must therefore decide, and do decide, that the provisions of the statute as to appeal do not extend to or cover such case, and that I have not jurisdiction to hear and determine the appeal. I presume that the person who drafted the Act had not in his mind a thought of the possibility of such a contingency occurring, and may mention, in this connection, that Mr. Edmund Reynolds (who has appeared under instructions from Respondent) has drawn my attention to the fact that, by the legislation contained in chapter 12 of the statutes of 1878 (O), provision has been made to meet such a case as this, when the question arises under the Act as to ditching water-courses. I presume if the attention of the Legi lature is called to the matter similar provision will be made for a like state of facts under the Lines Fences Act.

It is, in my opinion, a debatable point, whether I have jurisdiction over costs. It is possible that marginal rule 489 of the Judicature Act confers such jurisdiction, but even if it does, I do not think this a case in which costs should be allowed, and I make no order in reference to them.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

[Sept. 18.

WOLVERTON V. TOWNSHIPS OF NORTH AND SOUTH GRIMSBY.

High School District—By-Laws annexing parts of two Municipalities—Repeal.

In 1879, the Township of Grimsby passed a by-law attaching a certain portion of the township to the village of Grimsby for High School purposes. In 1881, the same county similarly annexed another portion. Corresponding by-laws were passed by the village of Grimsby. By 45 Vict., cap. 33, O., the township was divided into two townships of North and South Grimsby. In 1882, the the council of the township passed a by-law on the petition of less than two-thirds of the ratepayers repealing the two former by-laws.

Held, that the two township by-laws, with the corresponding village by-laws, formed an agreement, pursuant to R.S.O., cap. 205, sec. 30, as amended by 42 Vict., cap. 34, sec. 32, which could not be rescinded by one of the municpalities without the concurrence of the other; and therefore, that the repealing by-laws should be passed only upon the petition of two-thirds of the ratepayers.

Aylesworth, for applicant.

Muir, contra.

[Sept. 28.

IN RE CAMERON, (a Solicitor.)

Solicitor's undertaking to produce client—Failure to produce—Liability of solicitor.

It was alleged that a solicitor, whose client had been summoned to be examined as a judgment debtor, in a Division Court action, gave a verbal undertaking that if the summons was enlarged the judgment debtor would appear to be examined at the next court. During the enlargement the judgment debtor disposed of his property and left this country, and a motion was made to compel the solicitor to pay the debt and costs.

Held, that the undertaking did not impose on the solicitor any liability other than the duty to produce his client at the Court on the day of its sittings.

Semble, that the solicitor's pecuniary liability on his undertaking would amount only to the expense which the creditor might be put to of attending at the time and place of the adjournment, if the debtor failed to appear, though other damage might possibly be proved. The undertaking having been denied by the solicitor for the debtor, the notice was dismissed.

Aylesworth, for applicant.

Cattanach, contra.

CHANCERY DIVISION.

Boyd, C.] [Sept. 29.

MUNDELL V. TINKISS.

Absolute deed—Parol evidence—Rectification—Fraudulent purpose—Mortgage or no mortgage.

Where the plaintiff brought an action to redeem a certain property conveyed by him by a deed absolute in form; and it appeared that the deed in question, which he now sought to cut down to a mortgage, had indeed been executed by him for the purpose of securing a debt due to the grantee, but that the main object of the transaction was to protect the property from the claims of an apprehended creditor:

Held, under these circumstances evidence was not admissible to rectify the form of the instrument, for, as said by Esten, V.C., in *Phelan* v. *Fraser*, 6 Gr. 337, this Court never assists a person who has placed his property in the name of another in order to defraud his creditor; nor did it signify whether any creditor had been actually defeated or delayed, for the language of the M. R. in *Symes* v. *Hughes*, L. R. 9 Eq. 479, is too broad when he says, "if the purpose for which the assignment was given is not carried into execution, and nothing is done under it, the mere intention to effect an illegal object when the assignment was executed does not deprive the assignor of his right to recover the property from the assignee who has given no consideration for it." The decided weight of authority, and authorites in our own courts, is that after the property passes, whether by the execution of a written instrument or by other means sufficient in law, it is not open for the fraudulent grantor to undo the matter either out of court or by the aid of the court.

Where one has executed an absolute deed, as, in reality, security for payment of a debt only, and has, after the execution thereof, continued in possession of the land conveyed through tenants, that fact would be enough in ordinary circumstances to justify the reception of evidence for the purpose of rectifying the form of the instrument.

Boyd, C.] [Sept. 29.

ONTARIO BANK V. LAMONT.

Assignment in trust for creditors—Impeaching such assignment — Fraudulent preference — Discretion of assignee in trust.

Where it was sought to set aside a certain assignment of real and personal property made by a debtor to a trustee for creditors, and it appeared that the assignor had, before the execution of it, satisfied some of his creditors in full

by transferring his goods to them in a manner alleged to be preferential, but the instrument impeached did not require the creditors to submit to any conditions, and did not provide for a release of the debtor in any manner:

Held, the instrument could not be set aside, and the action must be dismissed with costs.

A distinction drawn between such a case as this and the American cases which embody the principle that a debtor shall not be allowed to dispose preferentially of part of his estate, and as part of the same scheme to turn over the remainder of it to trustees for creditors, by an instrument which provides for his discharge; that, in fact, he cannot be allowed to coerce his creditors into an acceptance of the fragments of his estate as a satisfaction in full of their claims while he has disposed of other parts of his property to pay preferred creditors in full. Here the only effect of the deed was to vest the estate in the hands of a trustee for equal distribution, so that the whole might not be swept off upon a forced sale at the instance of an execution creditor.

The duties of assignees under such instruments as the one in question here are analogous to those of executors and trustees administering estates, and the Court will consider that a year is a proper time within which the sale of the property assigned, (when such sale is left by the instrument in the discretion of the assignee), is to be made. If not made within that time the *onus* will be cast on the assignee of satisfying the court of his *bona fides* in seeking further delay. Execution creditors cannot sell the land for a year, and a delay of that time cannot be said to prejudice them, and render such an assignment on that ground impeachable under the statutes of Elizabeth.

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

Boyd, C.] [Oct. 10.

MERCHANTS' BANK OF CANADA v. HANCOCK ET AL.

Company—Raising Money on Warehouse Receipts—Ultra Vires—Locus standi of execution creditors—Directors.

Interpleader issue between the Merchants' Bank of Canada and certain execution creditors. The former claimed that they were entitled to the property in question, which had been taken in execution, as security for certain advances made by them to the Hamilton Knitting Company, by virtue of certain warehouse receipts covering the said property, and delivered to and deposited with them by the said Hamilton Knitting Company, as security for such advances:

Held, the Hamilton Knitting Company could not have resumed possession of the goods without satisfying the bank's lien, and execution creditors had no higher rights as to property seized in execution than the original debtor. For, under the general act applicable to the Company, R.S.O. c. 150. (see secs 14, 28, 30, subs. 2,) the Company was enabled so to pass the property in the goods to the Bank, as security for advances made, and even if a by-law were, strictly speaking, requisite in such a case, yet, where no complaint had been made by the Company, or any of its shareholders, because of any irregularity or informality in what was done, an execution creditor could not be allowed to interfere, there being no imputation of fraud or illegality in its broad and culpable sense,

But, *semble*, apart from this, the depositing of goods in a warehouse, and the raising of money on the security thereof, seemed upon the evidence to have been an important constituent for the successful prosecution of the Company's business, and to be such a matter as would fall within the competence of the directors to cause to be done through their manager, as was the course of dealing in this case.

Boyd, C.] [Oct. 10.

CULHANE v. STUART.

Following trust money—Earmark—Holder for value.

Where C., an insolvent, had assigned all his assets and stock-in-trade to S., as trustee for creditors, and the plaintiff claimed to be entitled to a specific lien upon the property so assigned to the extent of certain trust moneys, which he alleged had come into C.'s hands as trustee and executor under the will of his (the plaintiff's) father, but had been wrongfully converted by C. to his own use, and employed in his own business to pay his trading debts, but there did not appear any sort of identification or connection between the trust money thus used in pay-

ing C.'s debts, and the proceeds of his stock-in-trade now in the hands of S., the assignee :

Held, the plaintiff was only entitled to a dividend with the other creditors on the full amount down to the assignment ; for the trust fund, having been dissipated by the using of it to pay debts, could not be followed after that into the hands of holders of value, such as were the other trade creditors, though the plaintiff was entitled to the full amount of the trust fund, with interest, as against the defendant C.

The law is still as laid down by Lord Ellenborough in *Taylor* v. *Plumer*, 3 M. & S. 562, that the product of, or substitute for, the original thing still follows the nature of the thing itself as long as it can be ascertained to be such, and the right only ceases when the means of ascertainment fail.

DIVISION COURTS.

THIRD DIVISION COURT, LEEDS AND GRENVILLE.

AWBERRY V. MCLEAN.

Wages—Counter-claim—Damages.

Action for wages. Defendant filed a notice disputing the claim, and put in a counter-claim for damages for breach of contract, by reason of plaintiff's leaving his employment. See Judicature Act, ss. 77, 80, Rule 127, sec. 3.

MCDONALD, Co. J., held that the defendant had a right to put in the counter-claim.

Judgment in the case was for defendant, with costs.

ASSESSMENT CASES.

COUNTY OF ONTARIO.

RE PHILP V. MUNICIPALITY OF REACH.

Assessment—Superannuated minister—Exemption—R. S. O. c. 180, sec. 6, ss. 23.

DARTNELL, J.J.—The dwelling house of a superannuated minister of the Methodist Church is exempt from taxation so long as he continues in actual connection with his church, and does duty as such minister, notwithstanding he may not be in charge of a congregation or parish.

The word "church" does not here mean a parish or congregation, but a "religious body :' *Re Stewart and Kincardine*, 18 C.L.J. 322 ; and *Re O'Connor and Barrie*, 13 C.L.J. 273, referred to and discussed.

BOOK REVIEW.

PRINCIPLES OF CONVEYANCING. An Elementary work, for the use of Students. By Henry C. Deane, Lincoln's Inn, Barrister-at-law. Second Edition. London : Stevens & Haynes, Law Publishers, 1883.

The first Edition came out in 1874,—the book rapidly obtained the favour of the profession, and was looked upon as remarkably clear in arrangement, very pleasantly written, giving information on a dry subject in a manner calculated as far as possible to win the attention of students. Williams on Real Property, will remain *the* book for students for many a long year to come ; but Mr. Deane's work has many advantages, is fuller and useful to others besides students. Part I discusses corporeal hereditaments, their nature and incidents. Part II is devoted to conveyancing, and is of especial value as a book of reference in this country. We can confidently recommend this excellent work to our readers if they have not already possessed a copy of the first edition.

THE CONSOLIDATED MUNICIPAL ACT, 1883, with an Index, by G. Bell, Esq., Barrister.

It is a pity that the statutes are not always provided with such good indices as that here made by Mr. Bell. This edition of the Act, has had a large sale to the profession as well as, of course, amongst the Municipal officers.

Law Society of Upper Canada.

OSGOODE HALL.

TRINITY TERM, 1883.

During this term the following gentlemen were entered on the books of the Society as students-at-law, namely :—

Graduates—John Murray Clarke, Robert Urquhart Macpherson, George Somerville Wilgress, George Henry Kilmer, Robert Charles Donald, Arthur Freeman Lobb, John Joseph Walsh, Francis Edmund O'Flynn, John Hampden Burnham, William Smith Ormiston, Lyman Lee, John Samuel Campbell, Alfred David Creasor, Henry Smith Osler, Charles Perley Smith, Herbert Hartley Dewart, Duncan Ontario Cameron, Wellington Bartley Willoughby, Alexander Lillie Smith, William Chambers, Edward Cornelius Stanbury Huycke, William Hope Dean, Allan McNabb Denovan, Alexander Fraser, William Ernest Thompson, Alfred Buell Cameron.

Matriculants—Alexander James Boyd, John Wm. Mealy, Robert Sullivan Moss, Arnold Morphy, Thos. R. Ferguson, Robert James McLaughlin, William Henry Campbell, Malcolm Wright.

Junior Class—Wentworth Green, Frank Langster, Daniel Frederick McMartin, Frank Reid, Jonathan Porter, William Woodburn Osborne, George Frederick Bradfield, Charles Downing Fripp, Robert Franklyn Lyle, William Charles Fitzgerald, William Edward Fitzgerald, John Wesly Blair, Alexander Duncan Dickson, William George Munroe, Edward Henderson Ridley, Alexander Purdom, George Chesly Hart, William Henry Lake, Robert Ruddy.

The following gentlemen were called to the Bar, namely :—Messrs. Hugh Archibald McLean, William John Martin, Harry Thorpe Canniff, Henry Carleton Monk, David Haskett Tennent, Robert Peel Echlin, Charles Henderson, Alexander John Snow, Robert Taylor, Frank Howard King, William Armstrong Stratton, Robert Kinross Cowan, Thomas Parker, Daniel K. Cunningham, David Mills.

On and after Monday, October 1st, lectures will be delivered in the Law School as follows: —Senior class, Mondays and Tuesdays. Junior class, Thursdays and Fridays of each week, at 8.45 a.m.

Special Notice.—No candidate for call or certificate of fitness who shall have omitted to leave his petitions and all his papers with the secretary complete on or before the third Saturday preceding the term, as by rules required, shall be called or admitted, except after report upon a petition by him presented, praying special relief on special grounds.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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 upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

From 1883 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1883, 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 year.

Students-at-Law.

CLASSICS.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad. B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

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. & III.

ENGLISH.

A paper on English Grammar.

Composition.

Critical Analysis of a selected Poem :—

1883—Marmion, with special reference to Cantos V. and VI.

1884—Elegy in a Country Churchyard.
The Traveller.