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THE law relating to contracts entered into for the purpose of stifling a prosecution has been recently discussed in two cases, and the grounds on which a person is entitled to be relieved from a contract entered into with that object have been clearly laid down by the Court of Appeal. The cases we refer to are *Jones* v. *Merionethshire P.B. Soc'y* (1891), 65 L.T.N.S. 685, and *McClatchie* v. *Haslam*, 65 L.T.N.S. 691. In the former case the action succeeded; in the latter it failed. The rule of courts of equity in relation to such contracts is thus stated by Lindley, L.J., in the former case: "As plaintiff is not entitled to relief in a court of equity on the ground of the illegality of his own conduct, he cannot make his own illegality a ground for relief at all. In order to obtain relief in equity he must prove not only that the transaction is illegal, but something more. He must prove either pressure or undue influence. If all he proves is an illegal agreement, he is not entitled to relief." This puts the case in a nutshell. In *Jones'* case this evidence of pressure was forthcoming: in the *McClatchie* case it was not. The well-known maxim of courts of equity, "*In pari delicto potior est conditio possidentis*," will be an answer to any action brought to set aside any such transaction for illegality unless the additional elements of pressure and undue influence can be proved to exist.

LAW REFORM IN ENGLAND

A correspondent, in sending us an extract from a London (Eng.) paper, and from which we quote below, says: "I hope you will consider how far it is applicable to the law, judges, and practice in Ontario, or any other Province where English law and equity in the technical sense prevail. Manitoba is considering how far the judicature acts have attained their object. You have in your issue for February 1st shown that (as in the case of *Thorne* v. *Williams*, 13 O.R. 577) the present system renders titles insecure, and all must agree with you that if the Torrens system is the best it should be adopted. In a letter to your journal of April 16, 1890, I questioned the justice of making a suitor who has obtained a judgment pay heavily *for having obtained it*, if the court which pronounced it is declared by another court to have erred in so doing, and also the policy of granting appeal upon appeal in any case, and I asked to be shown any fallacy in the argument I used in support of my position, which the article referred to seems to strengthen."

Much of public as well as legal interest attached to the meeting of the judges of the Supreme Court of Judicature, recently, at the Royal Courts of Justice in

London (Would not a similar meeting be useful in Canada?). In a correspondence since made public between Lord Coleridge and Lord Halsbury, the Lord Chief Justice drew attention to various defects in the law which needed alteration, and at this meeting such subjects as the defects in the circuit system, the block in the Chancery Division, and what Lord Coleridge has described as the "disappearance" of commercial cases from the courts. The paper we have referred to feels that the "gratification that the community will feel when it realizes that the judges are actually condescending to consider the interests and convenience of litigants" is somewhat modified by the judges appropriating for their meeting a judicial day sacred to litigants, and says, "The judges have met to discuss the law's delay, and in doing so have appreciably increased the grievance which they are attempting to remedy. This, however, is a mere bagatelle compared with the far weightier question of the complaints heard on all sides against the present administration of justice and of the measures of reform by which those complaints can be silenced. Not least among the practical grievances under which the public groans is the difficulty, or utter impossibility, of obtaining satisfactory and speedy decisions in commercial matters. Some time ago it was recognized in judicial circles, with dismay, that merchants and bankers, and city men generally, were conspiring together to give the courts a wide berth. When this gloomy fact became apparent, the plan was attempted of reviving the old sittings at Guildhall: but hitherto the remedy has not proved efficacious. For some reason or other commerce shuns the law; and what those reasons are we may be sure that the conclave of judges either already know, or could very easily discover upon inquiry in the right quarters. Business men complain that the judges who try intricate commercial matters are often quite inexperienced in such questions. They may be fortunate enough to have their disputes heard before a judge who has spent all his previous career as an advocate in fighting such cases; but even then they have the jury to take into consideration, and juries are unknown quantities, whose verdicts may be admirable to-day and fatuous to-morrow. Added to this uncertainty as to obtaining real justice is the delay which occurs before the trials take place. This is not the fault of the judges but of the system. . . . The expense of litigation is enormously increased by the facilities which the law still gives for appeals, and appeals not only from the ultimate decision, but also on minor and 'interlocutory' points. Before a case gets into court at all, it is possible for half a dozen appeals to have been made, heard, decided, and overruled on the question of whether the plaintiff, who has brought an action to recover fifty thousand pounds for breach of a trade contract, shall be forced to disclose some highly unimportant particular connected with some subsidiary part of his claim. The retention of two Courts of Appeal is another fruitful cause, both of delay and expense. When the Judicature Acts were framed it was proposed to take away the appellate jurisdiction of the House of Lords, and to create one strong Court of Final Appeal instead. The spirit of compromise intervened, with the result that we have both the Court of Appeal and the appellate jurisdiction of the House of Lords—a profusion of judicial blessings which is more than a litigant expects and a good deal more than he in any

way desires. It may be too soon to decide exactly in what direction reform is needed. The consideration of this question must be left, for the present, to the council of judges which has taken it up. The public will await with anxious expectancy the result of their deliberations; the one point which is already quite clear and unmistakable being the need of some reform which will put a stop to the intolerable expense and delay involved in a trial in the High Court, and which will satisfy the commercial world that they are likely to have their differences adjusted promptly and satisfactorily. As things are now, there is a certain mystery hanging over the direction in which commercial 'business' has fled. Are disputes taken before arbitrators, or are they patched up privately in solicitors' offices, or are they settled by the even more questionable device of the toss of a coin? Each explanation is probably partly correct, and it is a grave reflection on our judicial system that shrewd men of the world should show such a profound disinclination to visit the oracles of the Royal Courts and listen to the very expensive responses there obtainable. What must be insisted upon is the broad and simple fact that the Judicature Acts, which were intended to simplify and cheapen the administration of justice, have failed in attaining their object. It surely is not beyond human ingenuity to discover where the fault lies, and to apply the fitting remedy. It is said by lawyers that a lawsuit must always be an expensive affair when scores of precedents have to be hunted up and compared together before a decision can be reached. The intricacy of the law and the multiplication of reported cases necessitate the trained expert; and the employment of trained experts always costs money. As far as this plea is a valid one, it is an argument in favor of speedy codification of the law. Yet, even supposing that the unearthing of the one decision which settles any particular dispute must be a matter for skilled inquiry, there is no reason why the natural costliness of the system should be enhanced by artificial devices and obstacles of all kinds. A council of judges cannot be more usefully employed than in pointing out to legislators exactly the cause of all existing deficiencies in the legal machinery; but whether as a result of the efforts of the bench or of the growing discontent of the public, it is certain that before long the whole question of law reform will become one with which Parliament will be called upon to deal."

POWER TO EXTEND TIME AFTER STATUTORY LIMIT EXPIRED.

R.S.O. C. 124, S. 20, S-S. 5, 1887, AND SIMILAR SECTIONS.

Where power is given to a judge to do certain acts, the question often arises as to the extent of his power, and whether or not he may exercise a discretion beyond the letter of the law conferring the power on him. The object of the writer is to deal with this question, taking for the immediate subject of discussion s-s. 5, s. 20, c. 124, R.S.O. The principles contended for are of considerable importance, as there are many cases more or less governed by their application. The law affecting the question is very different to that which is applicable to cases arising under the Judicature Act. The court is allowed, under that Act,

great discretion in dealing with litigious and other matters, whilst here the authority is limited, and in nearly all similar cases there is no discretion whatever.

The judge of the County Court empowered to act under the above and similar sections is *persona designata*. In such cases his authority is strictly limited to the power conferred on him by statute. He has not the discretion of a court, except so far as the statute under which he acts gives it to him. A provision similar in its nature is found in the Dower Act, R.S.O., c. 133, s. 9, where an application may be made to a High Court judge for power to mortgage or sell free from dower.

In the case of *In re Rush*, *post* p. 127, it was held by the Divisional Court that there was no appeal from the finding of the judge on the ground that he was *persona designata*. The same principle governed in *Re Godson and the City of Toronto*, 16 A.R. 452. It is, therefore, necessary to construe this section both strictly and technically.

The sub-section specially referred to gives certain rights to claimants, but it also gives rights to the assignee and the creditors. If a claimant does not bring his action and serve his writ within thirty days after service of notice, "the claim to rank on the estate shall be forever barred." This creates, after the expiration of the thirty days, a vested right as against the claimant. The statute gives no power to the County Court judge to disturb this vested interest. There is no difference between this case and the case of a claim barred by the Statute of Limitations. The remedy in both cases is gone by virtue of the statutory law. Both Acts relate to the remedy and the time within which it is to be enforced. If we once admit that the judge may, after the expiration of thirty days, relieve against the operation of the statute, we must assume that the Legislature intended that the judge should have power to render the Act inoperative, and that he has practically the right to destroy vested rights created by the Act. This does not appear to be the true meaning of the section. The evident intention is that the judge is to aid the statute in its operation where the right is not barred and where circumstances arise under which, without any fault on the part of the claimant, the arbitrary provision of the law might work an injustice—not that he can destroy rights which the statute has created previously, or restore a remedy which has been "forever barred." One can readily suppose a case where a claimant, being unable to serve his writ owing to no fault of his, would suffer great loss and injustice if the power in question did not exist, but this does not enlarge the rights of the claimant or entitle him to a restoration of his rights once they are gone.

A strong case in point is *Doyle* v. *Kaufman*, L.R. 3 Q.B.D. 7, and in appeal, same volume, page 340. There, a writ issued for service out of the jurisdiction had ceased to be in force, not having been served within twelve months, as required by Order 8, Rule 1. In the meantime, the period had expired after which, if no action had been previously brought, the claim would be barred by the Statute of Limitations. Under another rule—Order 57, Rule 6—time for service might be enlarged if the justice of the case required it, and this was relied on as authority for granting the indulgence. It was held that the applica-

tion must be refused. Cockburn, C.J., said that the "power to enlarge the time cannot apply when by virtue of a statute the cause of action is gone." This, we take it, is the case here. The right is barred at the end of thirty days unless the claimant has brought himself within the saving clause. The Appellate Court agreed with the court below, but decided that in any event the plaintiff had been guilty of such laches as disentitled him to the relief asked for.

On the same principle is *Whistler* v. *Hancock*, same volume, page 83, and referred to and approved of in *The Glengarry Election Case* cited below. An order was made dismissing the action for want of prosecution unless a statement of claim should be delivered within a week. Default was made in delivering the statement of claim, and it was held that the action was at an end, and that there was no jurisdiction to make an order extending the time for the delivery of the statement of claim.

An analogous case is supplied by the Ontario Controverted Elections Act, R.S.O., c. 10, s. 15, as to service of petition and notice of presentation, which must be made "within five days after the day on which security for costs is given, or within such longer time as the court may, under special circumstances of difficulty in effecting service, allow." The Court of Appeal passed rules governing the practice under this Act by virtue of s. 109. By s-s. 2 of that section, these rules must not be inconsistent with the Act itself. By one of the rules—number 14—the judges have ordered that an application for extension of time for the service of the petition and notice must be made within the five days. This shows clearly their opinion as to what is meant by s. 15, for if the application could be made *after the expiry of the five days*, the rule would be inconsistent with the Act, and consequently void. If the rule is valid, then s. 15 means that an application must be made before the time expires. This rule is practically a judgment on the construction of the section. The courts, in the late Ontario election trials, adopted this construction, and held that the application must be made in all cases within the five days.

Another very strong argument in favor of the view here taken is to be found in the judgments of the Supreme Court judges in *The Glengarry Election Case*, 14 S.C.R., p. 453.

The Dominion Controverted Election Act provides that the trial of the petition shall be brought on within six months from the time when the petition has been presented, and, if the respondent's presence is necessary at the trial, such trial shall not be commenced during any session of Parliament, and the time of the session shall not be included in the six months: R.S.C., c. 9, s. 32. By s. 33, the court or judge may, notwithstanding this section, from time to time enlarge the time for the commencement of the trial if it appears on an application supported by affidavit that the requirements of justice render such enlargement necessary. The Supreme Court held that all trials must be commenced within the six months unless an order had been obtained enlarging the time *on application made within said six months*, and that an order granted on an application made after the six months is invalid and can give no jurisdiction to try the petition, which is then out of court. See particularly the judgment of

Taschereau, J., pp. 477 and 478, and quotation from *Wheeler* v. *Gibbs* and comments thereon, pp. 481-482. See also page 483 as to words being imperative.

This authority seems to be conclusive. The case under discussion is even stronger than the principle in the Glengarry case, because here the matter is not one in court, and never is in court, and is not a question of public policy, so that the reasons for the overruled judgments in the courts below in *The Algoma Case*, 1 Ont. Elec. Cas. 448, *The West Middlesex Case*, 10 P.R. 27, and other similar cases, do not apply at all. And it is to be observed that it was held in the Glengarry case that, even to such pul matters as an election trial, these reasons cannot be held applicable.

If the judge can exercise the discretion contended for after the thirty days have elapsed, within what time is the limit to the exercise of his discretion to be placed? A motion to enlarge the time might be made a year after the expiry of the thirty days. The whole estate might then be wound up, and all the assets legally and fully distributed by the assignee, and yet the claimant might show good grounds for the intervention of the judge, assuming the judge had jurisdiction. The action brought under these circumstances would be fruitless as regards the estate in the hands of the assignee. Surely this was not the intention of the Legislature. Under s-s. 2 of this section, the judge has power to compel a claimant to prove his claim within a time to be limited by the order, "or within such further time as the said judge may by subsequent order allow," and, if the claim be not proved, the estate may be distributed as if no such claim existed. Does this mean that the judge can make half a dozen independent orders? Or does it mean that he may extend the time limited by his first order? If the latter is meant, then must not the application be made within the original time? for, if not, would not the second order have the effect of creating not "further time," but a new and independent period? Then again, if the application need not be made within the time limited by the original order, and the claimant has *existing rights* at the time of the second application, which rights, in order to be then existing, must have continued during the interval between the two orders, what would be the relative rights of the parties if the assignee, with notice of the claim and the first order, should distribute the estate before the second order granting further time is made? What remedies would the claimant have and how could they be enforced? On complying with the provisions of the Act as to notice, etc., the assignee is protected under R.S.O., c. 110, s. 36; but if the rights of the claimant are not barred on the expiration of the first order, the assignee could not plead distribution of assets as an answer to the claimants' action. Now this is very similar to s. 5, and there is no good reason why the same argument should not apply, and the same anomalous results follow, if the right to make the order is conceded to exist after the first one has expired.

It is clear there is no more virtue in the limit of thirty days fixed by the Legislature than there would be in a limit of three months. The time is arbitrary, and arbitrarily fixed for a certain purpose, namely, to enable the assignee in the interest of the creditors to wind up the estate as soon as possible and to give

rights to claimants after the time limited within which they are to move would be to defeat the very objects of the statute. The whole scope of the Act is to provide a means for speedy distribution. See ss. 20, 21, and 22, amongst others, for an illustration of this view.

The practice cases in our provincial courts cannot be cited as authority in the construction of s-s. 5. They apply to a totally different state of law and facts, for by Rule 485 there is power to extend the time notwithstanding that the application is made after the time for doing the act has elapsed.

Another illustration of the question under discussion may be found in cases of arbitration where the time for making an award has elapsed without previous enlargements. The arbitrator, unless express power is given to him by the submission, has no power to extend the time either before or after the expiry of the time limited, nor had the court any authority to extend or fix a time where no time was mentioned by the submission to arbitration.

The court first obtained power by statute 3 & 4 Wm. IV., c. 42, s. 39, to enlarge the time for making an award after the expiration of the original or enlarged time. This was held in *Leslie* v. *Richardson*, 6 C.B., p. 378, and the language of Coltman, J., who delivered the judgment of the court in that case, is instructive and to the point. At page 373 he says, with reference to the statute giving power to the court to enlarge the term "from time to time": "If these words occurred, as they often do, in a submission to arbitration in which power is usually given to the said arbitrator from time to time to enlarge the time for making the award, there seems no doubt that they would not authorize an enlargement made after the time had expired. But it is given to the arbitrator, in his character of arbitrator—which character is not absolute and perpetual, but conditional and limited—if he shall make his award on or before, etc.; whereas the power given by the statute 3 & 4 Wm. IV. is conferred on the court, which has perpetual existence, and is given absolutely, and not conditionally." Similar provision is made in our Act, R.S.O., c. 53, s. 43. Russell on Awards, 7th ed., p. 149, points out that "without the consent of the parties, neither the court nor a judge could at common law grant any enlargement when the time had lapsed; the authority of the arbitrator was gone and all the proceedings already taken became ineffectual." The Act of Wm. IV. was passed to remedy this inconvenience. The principle is reasonable, and is quite different to the case of a claimant under the statute relating to assignments. The ends of justice and the rights of the parties to the reference should not be defeated by any default or mistake on the part of an arbitrator as to formalities. The right to extend the time is in the interest of all the parties concerned. The failure of an arbitrator to make an award within the time limited either by the submission or by lawful extension creates no vested interests in any of the persons before him. Until the award is made and published, all rights remain as they did before the submission. We are not aware of any exception to this rule, except, perhaps, that the parties are prevented from taking, in the meantime, other proceedings by reason of the submission; but this is a disability and not an interest. The right to extend the time, under the statute we are discussing, would be in the

interest of the defaulter only, and be clearly adverse to the rights of another which have become vested by reason of the statute and of the default of an opposing litigant who seeks the indulgence of the judge.

The conclusion must, therefore, be that the application for further time in these cases must be made within the time originally limited; otherwise the rights of the claimant are barred and the jurisdiction of the judge of the County Court is at an end.

His Honor Judge McDougall, Judge of the County Court of the County of York, has also held, after reserving the point, in accordance with the views above expressed, and his judgment in these matters is entitled to great weight.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for December.—*Continued.*)

PRACTICE—MOTION TO COMMIT—PERSONAL SERVICE OF NOTICE OF MOTION—APPEARANCE ON MOTION—WAIVER—SUBSTITUTED SERVICE.

Mander v. *Falcke* (1891), 3 Ch. 488, was a motion to commit the defendant for disobedience of an order. A preliminary objection was taken, that the defendant had not been personally served with the notice of motion. The objection was allowed, and it was held by Kekewich, J., that the appearance of counsel for the defendant to take the objection was no waiver of it. In such a case an order for substituted service will not be made, nor personal service dispensed with, until the court is satisfied that every endeavor has been made to effect personal service. Notice to the defendant's solicitor is not sufficient to dispense with personal service.

TRUST FUNDS—INVESTMENT—APPROPRIATION OF INVESTMENT TO ANSWER PARTICULAR TRUST—TRUSTEES—TRUST INVESTMENT ACT, 1889 (52 & 53 VICT., C. 32)—(R.S.O., C. 110, SS. 29 & 30; 52 VICT., C. 18 (O.))

In re Owthwaite, Owthwaite v. *Taylor* (1891), 3 Ch. 494, Kekewich, J., decides that although trustees have power under the Trust Investment Act, 1889, (see R.S.O., c. 110; 52 Vict. c. 18 (O.)), to invest trust funds in the securities specified in the Act, that Act gives no power to appropriate, or set apart, any of such investments to answer a particular purpose; *e.g.*, to provide for an annuity given by will, so as to facilitate the distribution of the rest of the estate. Here the testator had authorized the trustees to set apart sufficient of his estate to be invested in certain specified securities to answer the annuity, but the securities named were not securities authorized by the statute and it was held that the authority to set apart could not be extended to the investments authorized by the statute. This is an important limitation of the right of trustees to invest under the statute, and one that the legal advisers of trustees will do well to bear in mind.

ANNUITY—CASH PAYMENT IN LIEU OF ANNUITY—VALUE OF ANNUITY, HOW TO BE ASCERTAINED.

In *Hicks* v. *Ross* (1891), 3 Ch. 499, the question for determination was, on what basis is the present cash value of a perpetual annuity to be ascertained?

Kekewich, J., held that it was such sum as at the price of the day will purchase sufficient Government 2½ % stock to produce the annuity free of charge for brokerage.

DEED—CONSTRUCTION—MINE—RESERVATION OF RIGHT TO MINE, EFFECT OF—MISTAKE.

Sutherland v. *Heathcote* (1891), 3 Ch. 504, discloses a somewhat curious state of facts. The plaintiff's predecessors in title had in 1783, in pursuance of a power of appointment then vested in them, granted certain lands to the defendant's predecessor in title, reserving to themselves and their heirs full and free liberty to get and carry away the coal within the said lands. The plaintiff had only recently become aware of his rights under this deed, and neither he nor his predecessors in title had ever worked the coal therein referred to; and, in 1877, the plaintiff had accepted a lease from the defendant of a portion of such coal. The plaintiff now claimed the exclusive right to the coal by virtue of the reservation of the deed of 1783, and the action was brought to establish his title: he also claimed to have the lease of 1877 set aside. Williams, J., dismissed the action on the ground that the reservation in the deed of 1783 operated not as an exception, but as a re-grant, by the defendant's predecessor in title, of a license; and the deed did not contain a sufficient indication of an intention to exclude the grantor, and, therefore, that the plaintiff was not entitled to the exclusive right to the coal which he claimed. He also held that the plaintiff was not entitled in the present action to a rectification of the lease, because his claim to that relief was based on his alleged exclusive right to the coal, which had failed. It may be noted that the crucial point of the case seems to be that the grantors in the deed of 1783 had not the legal estate, but merely a power, and that the reservation was not in favor of the owners of the legal estate, but of the donees of the power.

CONTRACT TO MAKE ARTICLE ON PREMISES OF THIRD PERSON—PROPERTY IN INCOMPLETE ARTICLE—LIEN FOR PURCHASE MONEY—SUB-CONTRACT.

In *Bellamy* v. *Davey* (1891), 3 Ch. 540, a question on the law of contracts is discussed. The facts of the case are that Bramham & Co. had a contract with Davey & Co. to build two oil tanks on their premises, to be paid for on completion. Bramham & Co. employed the plaintiffs to do the work, and before the tanks were completed, Bramham & Co., who were a limited company, became insolvent and a receiver was appointed in a debenture holder's action. The tanks were not fixed to the soil, but were too heavy to move. The plaintiffs claimed a declaration that the tanks were their property, and that they were entitled to a lien on the purchase money payable by Davey & Co. to Bramham & Co. for the price due to them, and also an injunction restraining Bramham & Co. and the receiver from receiving the purchase money without first satisfying the plaintiff's claim. Romer, J., held that the property in the tanks was in the plaintiffs, as claimed, and he gave the plaintiffs the relief they asked.

MORTGAGE—REDEMPTION AFTER TIME APPOINTED—SIX MONTHS' INTEREST—MORTGAGE OF REVERSION IN FUND IN COURT.

In *Smith* v. *Smith* (1891), 3 Ch. 550, Romer, J., holds that a mortgagee of a reversionary interest in a fund in court, is after the time fixed for redemption by

the mortgage has expired, entitled to six months' notice of payment, or six months' interest in lieu of notice, as in the case of other mortgages. This right, however, does not exist in this Province, as regards mortgages made after 1st of July, 1888, unless expressly stipulated for. See 51 Vict., c. 15, s. 2 (O.)

INFANTS MARRIAGE SETTLEMENT—AGREEMENT TO SETTLEMENT AFTER ACQUIRED PROPERTY—REPUDIATION OF SETTLEMENT MADE DURING INFANCY—REASONABLE TIME—COMPENSATION.

In *Carter* v. *Silber* (1891), 3 Ch. 553, two infants married each other; a marriage settlement was made between them, approved by the court on behalf of the wife, but without the sanction of the court as regarded the husband. By the settlement the husband's father covenanted to pay the trustees £1500 a year, which was to be paid to the husband until some event should happen whereby the same, if absolutely belonging to the husband, would become vested or payable to some other person, in which event there was a discretionary trust over. The settlement contained a covenant on the part of the husband to settle after acquired property. The settlement was made in October, 1883, and the husband attained his majority in November, 1883. In 1887 his father died, and he then became entitled to property, which he refused to settle, and repudiated the settlement. It was held by Romer, J., that he was entitled within a reasonable time after attaining his majority to repudiate the settlement, and under the circumstances he had repudiated it within a reasonable time: but that he was bound to repay sums received after his father's death under the settlement, and that out of such moneys, and any others which the husband was entitled to under the settlement, the parties who were disappointed by the husband's repudiation were entitled to be compensated; and it was held that the trustees of the settlement were entitled to be repaid the sums paid to the husband after his father's death, out of the money coming to the husband from his father's estate in priority to the husband's mortgagees and his trustee under a deed of arrangement: and that the husband's repudiation of the settlement worked a forfeiture of the annuity of £1500, and that the discretionary trust over took effect.

COURT OF ULTIMATE APPEAL COMPOSED OF EVEN NUMBER OF JUDGES.

Little v. *Port Talbot* (1891), A. C. 499, is an admiralty case of no special interest in this country, except as showing the extreme inconvenience to suitors of a court of ultimate appeal being composed of an even number of judges. It necessitated this case being twice argued before the House of Lords; and in a recent case before the Privy Council (*Kingstone* v. *Baldwin*), the same delay and expense has also been occasioned, owing to the like cause. It is about time that the responsible authorities should take effectual steps to prevent the recurrence of this grievance—for it is a grievance, and a serious one, too. It occasions not only a good deal of delay, but a great waste of money in costs, which are already sufficiently burdensome on litigants.

BILL OF EXCHANGE—ACCEPTANCE QUALIFIED—WORDS PROHIBITING TRANSFER—ACCEPTANCE IN FAVOR OF DRAWER ONLY—BILLS OF EXCHANGE ACT, 1882 (45 & 46 VICT., C. 61), SS. 8, 19, 36—(53 VICT., C. 33, SS. 8, 19, 36, (D.))

Meyer v. *Decroix* (1891), A. C. 520, is an appeal from the decision *Decroix* v. *Meyer*, 25 Q B.D, 343, noted *ante* vol. 26, p. 483. A bill of exchange was drawn

by L. D. Flipo payable to order of Mr. L. D. Flipo. The drawers accepted it in the following words: "*In favor of Mr. L. D. Flipo only*, No. 28 accepted, payable at Alliance Bank, London." The word "order" was struck out, but when or by whom did not appear. The question was whether this acceptance was qualified so as to render the bill not negotiable. The House of Lords (Lord Halsbury, L.C., Lords Watson and Herschell) (Lords Bramwell and Morris dissenting) affirmed the decision of the Court of Appeal that the acceptance was not qualified. The decision turns on the peculiar way in which the acceptance appeared on the bill. The words we have italicised above being written, and forming a separate and distinct clause from the rest of the acceptance, which was printed with a stamp. Under these circumstances it was considered that if it was intended to qualify the acceptance it had not been done clearly and unequivocally, and, therefore, the words "in favor of Flipo only" did not have the effect of qualifying the acceptance. Lord Herschell says, "it may be that if the same words had been found in the body of the acceptance, following the word 'accepted,' they would have amounted to the qualification contended for." The presence of the words "No. 28" was considered to have an important effect.

MANDAMUS.

The Commissioners of Income Tax v. *Pemsel* (1891), A. C. 531, seems to require notice merely on the ground that the House of Lords determined that where commissioners, appointed under a statute, are empowered by statute to make an allowance for the return of income tax in certain cases, and the commissioners refused to grant such an allowance in a case which the court thinks it ought to have been granted, a mandamus may be awarded to compel them to do so.

BILL OF EXCHANGE CANCELLATION OF BILL WITHOUT AUTHORITY—DAMAGES FOR WRONGFUL CANCELLATION OF BILL.

In *Bank of Scotland* v. *Dominion Bank* (1891), A. C. 592, the action was brought by the holders of a bill of exchange against their agents, to whom they had entrusted the bill for collection, to recover damages for its wrongful cancellation, under the following circumstances: On the bill being presented to the acceptors for payment, they refused to pay the full amount claimed to be due on it, but tendered a sufficient sum to cover all they admitted to be due, subject to a condition that if the sum paid was not accepted in full the money was to be returned. The agent took the money, gave up the bill and marked it paid, and the acceptors cancelled their signature. The plaintiffs refused to accept the sum thus paid in full, and claimed to have the bill returned to them. This was done; but owing to the bill appearing to be cancelled, the holders were unable to take summary proceedings for its recovery, but had to bring an ordinary action, in which they ultimately recovered judgment against the acceptors for the full amount. The acceptors, however, became bankrupt, and in consequence of the delay thus occasioned in the proceedings to enforce payment, the greater part of the debt was lost. As Lord Selborne observes, the case was a hard one on the agents of the Bank of Scotland, but, notwithstanding this, their Lordships were compelled to hold them liable for the loss, subject to the right, to which the plaintiffs submitted, of their being subrogated to any rights which the plaintiffs might have against the drawers of the bill.

Notes on Exchanges and Legal Scrap Book.

DAMAGES FOR MENTAL SUFFERING.—Damages may be recovered by a widow for mental suffering resulting from the negligence of a railroad company in failing to carry promptly the corpse of her husband: *Hale* v. *Bonner*, 17 S. W. Rep., 605.

LIFE INSURANCE—PAYABLE TO CHILDREN.—Where an insurance company by its policy agrees "to pay the sum of the insurance to the children of the insured," and the person so insured died before any children are born, her administrator cannot recover the amount of the insurance: *McElwee* v. *New York Life Insurance Co.* 47 Fed. Rep., 798.

THE VALUE OF HUMAN LIMBS.—The age of heavy damages is not yet past. The New York Court of Appeals, on February 9th, affirmed a judgment obtained by one Frank Erhman, an infant, against the Brooklyn City Railroad Company, whereby the defendants were mulcted in damages to the tune of $25,636 for the loss of a leg. The plaintiff can now afford to have "a leg of gold, solid gold throughout," which Tom Hood tells us was the composition of "that precious leg of 'Miss Kilmansegg.'"

BANKS—FORGED CHEQUES—LACHES.—A banking corporation having allowed over three months to elapse before it returned to a depositor a forged check drawn on his account which it had paid, could not defend an action brought for the amount of the check upon the ground that the depositor was estopped by his laches in not giving the bank notice of the forgery immediately upon the return of the check, it having been shown that such notice would not have enabled it to relieve its loss: *Janin* v. *London & San Francisco Bank*, 27 Pac. Rep. 1100.—*Banking L. J.*, vol. vi., 105.

DELIVERY OF TELEGRAPH MESSAGES.—In order to sustain an action for damages for failure to deliver a telegram, it must be shown that a contract, actual or implied, existed between the sender of the message and the company. Where a man writes a message out on a leaf and sends it by a messenger to the telegraph office, without paying or offering to pay or agreeing to become responsible for the charges for sending it, no contract exists between the parties, and no recovery can be had against the company for failure to deliver. *Western Union Telegraph Co.* v. *Liddell*, Sup. Ct. of Miss. *Quære:* Could not the telegraph company collect its usual rate as on an implied contract? ED. C.L.J.

WAIFS IN VERSE.—Our old friend and valued correspondent, Mr. G. W. Wicksteed, Q.C., late Law Clerk of the House of Commons, has republished his "Waifs in Verse," with additions from his graceful and facile pen. Many

years of hard work have passed over the honored head of Mr. Wicksteed, but there are few, like him, who use their hard-earned rest and "elegant leisure" to such good advantage, and therein give so much pleasure to their literary friends and so much of interest to the public. A well-stored mind, a retentive memory, and a quick and intelligent apprehension of passing events enables him to ; y with truth, beyond the great majority of men, "My mind to me a kingdom is ; and it is a kingdom the treasures of which he freely invites his friends to share.

IMPUTED NEGLIGENCE.—In *Creek* v. *Louisville, etc., Ry. Co.*, in the Supreme Court of Indiana, a wife, while driving with her husband, was killed by the defendants' train on a crossing. Negligence on the part of the defendants was proved, but it was contended that the husband was guilty of contributory negligence, and that because of the husband's duty to protect his wife, and the fact that she placed herself in his care by riding in a conveyance driven and controlled by him, that his negligence was her negligence, since it must be imputed to her. The court held that the relation of husband and wife did not come within the rule laid down in *Town of Knightstown* v. *Musgrove*, 116 Ind. 122, and 18 N.E. Rep., at p. 453: "Before the concurrent negligence of a third person can be interposed to shield another, whose neglect of duty has occasioned an injury to one who was without personal fault, it must appear that the person injured and the one whose negligence contributed to the injury sustained such a relation to each other in respect to the matter then in progress as that in contemplation of law the negligent act of the third person was, upon the principles of agency or co-operation in a common or joint enterprise, the act of the person injured," and refused to extend the rule, considering that the wife was none other than a mere passive guest without authority to direct or control her husband's movements and without reason to mistrust his skill. The mere existence of the marital relation will not impute to one the negligence of the other.

LIFE INSURANCE.—What is known as the Maybrick case has been the occasion of much agitation in English legal circles. It will be remembered that Mrs. Maybrick was convicted of murdering her husband. He had insured his life for her benefit. After his death she assigned her interest under the policy. The assignee, joining with the executors of the deceased, sued the company to recover the amount due under the policy. The lower court held that they were not entitled to recover. The Court of Appeal, however, while denying the right of plaintiffs to recover for Mrs. Maybrick, affirmed their right to recover for the estate, upon the ground that, though public policy required that a criminal should not benefit by a contract, yet the crime should not be allowed to interfere with the rights of third parties. In both courts, however, it was admitted that a wife who murders her husband is not entitled to insurance money made payable to her. In connection with this case will be remembered the remarkable case of *Riggs* v. *Palmer*, decided by the New York Court of Appeals some years

ago, in which it was held that a beneficiary who murders his testator cannot take under the will. 29 Central L. J. 461, 470. Though there may be some doubt as to the correctness of the conclusion of the New York court in the latter case, as will be seen by the dissenting opinion of Gray, J., therein, the same doubts do not seem to have arisen in the Maybrick case, in which is involved simply the construction of the terms of a contract of insurance.—*Central Law Journal.*

NEWSPAPER CRITICISM AND LIBELLOUS MATTER.—An action for libel against the proprietor of a newspaper for statements in connection with a club, the defendant pleading that the offending letter was a fair comment on the proceedings of the club, is notable for Mr. Justice Lawrance's plain remarks to newspaper editors. An editor might not set up in his paper a statement reflecting on another man and call it comment. If a prisoner were convicted of murder, the newspaper was at liberty to discuss the conduct of the judge and jury in the case with great latitude; but, if the prisoner were acquitted, the newspaper could not even attack his character by saying he ought to have been convicted. Editors often made a mistake by putting a statement in a paper and calling it comment. It was not comment. The newspaper editor, too, thought that he was justified in printing a statement and calling upon those upon whom it reflected to defend themselves. But no man was obliged to defend himself in the columns of a newspaper, and a newspaper had no more right than an individual to criticise any body unfairly. Merely nominal damages were given by the jury.—*Law Journal.*

CONTRACTS OF RAILWAY PASSENGERS.—A remarkable point was argued at the assizes in *Case* v. *The Lancashire and Yorkshire Railway Company*, where the plaintiff sought to recover damages for injuries sustained in a collision. It appeared that the plaintiff and some other young men arranged to go to Bolton as excursionists at a cheap rate to play a billiard match, but plaintiff being late no ticket was obtained for him, and he had to pay single fare to Bolton. When returning, he forgot he had no ticket, and got into the train notwithstanding. Almost immediately afterwards the plaintiff was injured by a Midland train running into the one wherein he was seated. His counsel argued that the real question at issue was whether the plaintiff was a passenger in the technical sense. In order to justify the contention that he was not a passenger, it must be alleged that the reason why he did not book was that he intended to defraud the company by travelling without paying his fare, whereas if the accident had not happened it would have been in the ordinary way when tickets were collected. Defendant's counsel submitted that the railway company had made no contract to carry the plaintiff, and, in the absence of a contract, the plaintiff, who was not there with their permission or invitation, must be regarded as a mere trespasser, to whom they did not owe any duty. Counsel referred to a case in the Exchequer Chamber in Ireland of *M'Carthy* v. *The Dublin, Wicklow*

and Wexford Railway Company. Mr. Justice Lawrence said that as far as he knew the point had never been decided. He founded his decision upon the *dicta* of the several judges in the case of *Foulkes* v. *The Metropolitan District Railway*, one of the cases quoted, and it also came under the principle laid down by Lord Justice Blackburn in the case of *Marshall* v. *The York and Newcastle Railway Company.* The right of a passenger was to be carried safely, and it did not depend upon his contract with the company. This was not a question whether the plaintiff was travelling fraudulently or not. The company accepted him as a passenger, and he would have paid his fare or had a ticket given him when at the other end. His judgment must be for the plaintiff, on the ground that he was received as a passenger, and the railway company therefore had a duty cast upon them to carry him safely, independent of whether he made a contract with them for a ticket or not.—*Law Journal.*

Reviews and Notices of Books.

The Monthly Law Digest and Reporter, containing a complete digest of all the decisions of the month relating to Mercantile Law, the Law of Corporations, Evidence, Torts, Patent, Copyright, Constitutional, Criminal, and other branches of law of general interest, etc. By F. Longueville Snow. Montreal: A. Periard, Law Publisher, 1892.

We have received the initial number of this digest. The proposed object is very commendable; but if it is intended to be a continued publication and useful to the profession in Ontario, it will be necessary that more attention be paid to the decisions of the courts of this Province. Less than four per cent. are Ontario cases, and even where these are given no reference is made—when the case is not yet reported—to the page of an Ontario legal journal whence it could easily be traced. There are a number of clerical errors which, perhaps, in a monthly work of this kind, are not of so much importance and will probably become less as time goes on.

An article embodying the decision on the relation between electric railways and telephones, so interesting that we may insert it later, is taken without acknowledgment from *The Central Law Journal.* This is either forgetfulness or an inadequate appreciation of *meum* and *tuum.*

Correspondence.

REVISED STATUTES CORRIGENDA.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—I have lately had occasion to make marginal references in a set of the Revised Statutes of Ontario, 1887, to the amendments made thereto since that year, and I thought it might be opportune, now that our law-makers have just

met, to mention a few clerical errors I happened upon while so doing, some of which may be thought worth the trouble of correction. These are scarcely to be wondered at when we find that the table of *addenda et corrigenda* in the Revised Statutes itself needs correction in the following points: Page 849—"Section 49" should read "Section 4"; page 2351—the reference at s. 5 we are told should be "R.S.O. (1877), c. 196, s. 5," *which it is.*

Taking the chapters of the Revised Statutes in their order, we find the following seeming anomalies:

Chapter 13 is, by 51 Vict., c. 8, s. 3, "further amended so far as the same restricts the Executive Council to six members," but how? Is the number further restricted, or is the restriction removed in whole or in part?

Chapter 104, s. 68, has two sub-sections numbered 2; the first, with sub-section 3, having been added by 51 Vict., c. 16, s. 1, and the second by 53 Vict., c. 28, s. 1.

Chapter 114, s. 95, as amended by 53 Vict., c. 30, s. 8, has an aching void between its sub-sections 12 and 14.

Chapter 184, s. 24, having originally three sub-sections, by 51 Vict., c. 28, s. 2, received an addition of numbers 4, 5, 6, and 7, and by 53 Vict., c. 50, s. 1, a further addition of numbers 2, 3, 4, 5, 6, and 7. What a pretty tangle the unlettered municipal annexationist would get himself into in attempting to cite these sub-sections!

Chapter 184, s. 73, gets from 51 Vict., c. 28, s. 9, s-ss. 2 & 3, and from 53 Vict., c. 50, s. 4, another s-s. 2. Truly this is a liberal government!

Chapter 184, s. 382, is twice amended in the same way, once by 53 Vict., c. 12, s. 1, and again by 53 Vict., c. 50, s. 10. Do these amendments run concurrently, or are they cumulative?

If the cumulative principle be applied to c. 190, s. 5, as amended by s. 1, and again by s. 4 of 54 Vict., c. 44, the result is not artistic, as one may see by making the amendments literally and in order of time, and then attempting to read the section as amended.

Chapter 221, s. 12, as amended by 53 Vict., c. 70, s. 2, has two s-ss. 2. There is really no excuse in this instance for the oversight, for the original s-s. 2 is amended by the very next section of the amending act, which might surely have drawn attention to the double numbering.

Turning next to the acts passed since the revision, we find that s-s. 3 of s. 15 of 51 Vict., c. 13 is, by 52 Vict., c. 17, s. 6, replaced by a new one with the same number, and afterwards, by s. 10 of the latter act, s-s. 3 of s. 15 of the former is repealed. Does this mean the old s-s. or the new, or both? The same process is applied to s-s. 1 of s. 21 of 51 Vict., c. 13, by ss. 8 & 10 of 52 Vict., c. 17. The usual practice of repealing and replacing by means of the same section would have left the matter in no doubt.

As an example of amendments made at leisure and repented in haste, take the following: 51 Vict., c. 28, s. 24 (itself an amending section), is by 52 Vict., c. 36, s. 26, amended by striking out certain words in the third and fourth lines and inserting others. This latter amending section is repealed by 53 Vict., c. 50, s.

27, and the original amendment to the amendment again made, and its operation referred back in time to the commencement of 51 Vict., c. 28; at least this is what seems to have been intended by 53 Vict., c. 50, s. 28, a perusal of which might interest the grammarian as well as the legislator. If either could tell us why it was necessary to enact that s. 24 of the Municipal Amendment Act of 1888 should be read as a part of itself, and *what* is to be "deemed to have been the true intent and meaning of the statute," etc., he would place under obligation at least one law student who is too stupid to understand.

Are those parts of 53 Vict., c. 71, which affect public schools still in force? They are not repealed by 54 Vict., c. 55, s. 213, along with the other act amending the now repealed Public Schools Act.

But perhaps I had better stop before wandering any further from my original design of pointing out clerical errors, though before doing so it might be well to mention that the tables of amended and amending acts at the end of the volume of each session's acts are not to be implicitly trusted in.

W. A. D. L.

OTTAWA, February 13th, 1892.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1891.

(Continued from page 87.)

Friday, September 25th.

Convocation met.

Present: The Treasurer and Messrs. Kerr, Britton, Irving, Moss, Hardy, Ritchie, and Barwick.

The minutes of last meeting were read and approved.

Ordered, that the report of the Reporting Committee presented at last meeting be considered at next meeting.

Ordered, that the third reading of the Rule proposed by Mr. Shepley at last meeting be considered at next meeting.

Mr. W. A. Cameron was called to the Bar.

Mr. Moss, from the Legal Education Committee, reported:

In the case of Mr. J. Howard Hunter, finding that Mr. Hunter had complied with the regulations applicable to his case, save as to the form of notice, in which there had been a substantial compliance with the Rule, and recommending that he do receive his certificate of qualification for admission as Solicitor.

Ordered for immediate consideration, and adopted.

Ordered, that Mr. Hunter do receive his certificate of qualification.

Mr. Moss, from the Building Committee, presented a report, as follows:

The Law School Building Committee beg to report as follows:

(1) Since the date of their report on the 30th June last, the Committee have from time to time authorized the issue of cheques to the contractors upon the architect's certificates, and up to this date cheques have been authorized to the amount of $22,450, as follows:

(a) Benjamin Brick, contractor for stone, brick, and excavation, 5 certificates	$11,000
(b) J. C. Scott, carpenter work, 7 certificates	6,050
(c) Pendrith & Hutton, contractors for ironwork, 3 certificates	1,250
(d) Smead, Dowd & Co., contractors for heating, etc., 2 certificates	1,300
(e) Geo. Duthie & Sons, contractors for deck-roofing and slating, 1 certificate	500
(f) John Douglas & Co., contractors for galvanized iron, 1 certificate	350
(g) C. R. Rundle, contractor for plastering, 2 certificates	800
(h) Gast & Atcheson, contractors for mineral wood work, 1 certificate	300
(i) Joseph Wright, contractor for plumbing and gasfitting, 1 certificate	400
(k) M. O'Connor, contractor for painting, 1 certificate	500
Total to date	$22,450.

(2) The architect now reports that, contrary to his expectations, the building will not be in a sufficiently advanced condition by the 28th inst. to enable lectures to be commenced in the new lecture rooms, though he believes there is every prospect of the building being completed within the time stipulated for in the contract.

All which is respectfully submitted.

(Signed) CHARLES MOSS,
Chairman.

September 25th, 1891.

Ordered to be considered at next meeting of Convocation.

The Secretary reported that Mr. J. E. Jones had completed his papers and was entitled to his certificate of fitness. Ordered accordingly.

The letter of Mr. Grasett was read, and the Secretary reported that Mr. Grasett had received his cheques.

The petition of W. B. Laidlaw on the subject of his application for admission was read and received, and the correspondence was read. It appearing that application had been made in due time for the necessary information, and that it had not been received till after the expiry of the time for giving notice,

Ordered, that the notice stand good.

Ordered, that when Convocation stands adjourned, it do stand adjourned till Saturday, 3rd of October next, at 11 a.m., and that at that meeting it do proceed to the election of a Librarian.

Convocation adjourned.

Saturday, October 3rd.

Present: The Treasurer, Sir Adam Wilson, Messrs. Proudfoot, Irving, McCarthy, Douglas, Robinson, Idington, Watson, Aylesworth, Hoskin, Martin, Barwick, Ritchie, Kerr.

The minutes of last meeting were read and approved.

Mr. Hoskin, from the Discipline Committee, presented their Report in the matter of Mr. J. G. Currie's notice. Ordered to be considered forthwith.

Mr. Hoskin moved that the Report be adopted.—Carried.

Ordered, that counsel be instructed to appear for the Law Society on Mr.

Currie's application, to oppose the same on the ground of the order of the Court of Chancery set forth in the Report, and to communicate to the court the letter of Messrs. Lount, Marsh, Lindsay & Lindsay, and also the fact of any other applications which may have been made against Mr. Currie.

Ordered, that the direction of Convocation be communicated to Messrs. Lount, Marsh, Lindsay & Lindsay.

The Report of the Library Committee was read, as follows:

The Library Committee, pursuant to order of Convocation of 19th September, 1891, beg to report as follows:

That they have received applications for the vacant office of Librarian of the Law Society from the persons named in this Report, and beg to submit the several applications herewith to Convocation.

All which is respectfully submitted.

October 3, 1891. (Signed) EDWARD BLAKE,

The Report was ordered for immediate consideration.

The applications were read.

Mr. Hoskin moved, seconded by Mr. Barwick, that the matter of the appointment of the Librarian be postponed, and that it be referred to the Library Committee to readvertise and to report at the next meeting upon the applications made and to be made, and upon the qualifications of the applicants, and upon any other matter connected with the proposed appointment of Librarian.

Mr. Martin moved, in amendment, to insert before "Library" the words "Committee composed of the Finance and." The amendment was lost. The main motion was adopted.

Mr. Moss, from the Legal Education Committee, reported as follows:

(1) They have examined the Diplomas and other papers of the following candidates for admission as students-at-law as graduates of the universities named whose notices of intention to apply for admission have been ordered by Convocation to stand good as for Trinity Term, and recommend that they be admitted and entered on the books of the Society as students of the graduate class as of Trinity Term, 1891, viz.:

1. Charles R. Webster, B.A., Queen's College.
2. Archibald John Mackinnon, B.A., Toronto University.
3. Donald Ross, B.A., Toronto University.

Mr. Isaac R. Carling appears to have passed the required examination for B.A. at the University of Toronto, but has not yet received his Degree or obtained his Diploma.

The Committee recommended that he be admitted and entered, provided he produce his Diploma within one month.

(2) The Committee have also examined the papers and certificates of the following candidates for admission as students of the matriculant class whose notices of intention to present themselves have been ordered by Convocation to stand good for Trinity Term, and recommend that they be admitted and entered on the books of the Society as students-at-law of the matriculant class as of Trinity Term, 1891, viz.:

1. John Gordon Mackay, University of Toronto, 1888.
2. Holton R. Morwood, " " " 1890.
3. Wm. Matthew Charlton, Victoria College, 1891.
4. Richard Alexander Leo Defries, Trinity College, 1891.

The following candidates for admission as students of the matriculant class whose notices have been ordered by Convocation to stand good for Trinity Term presented certificates showing

they have passed the junior matriculation examination at the departmental examinations held in lieu of the university matriculation examinations.

While these do not bring the candidates strictly within the Rule as at present framed, the Committee are satisfied that the examination passed is the equivalent of the examination required by the Rules, and is such as would have been presented by the universities, and it is accepted in lieu of the matriculation examination.

The Committee therefore recommend that the candidates in question be admitted and entered on the books of the Society as students-at-law of the matriculant class as of Trinity Term, 1891, viz.:

1. Harold Edward Mayer Choppin.
2. Edward C. Kenning.
3. Walter B. Laidlaw.
4. Alexander Stewart.

Mr. Wm. J. Moore failed in one subject and had to take the supplemental examination in this. The Committee recommend that he be admitted and entered of the matriculant class on production within one month of proof of his having duly passed the supplemental examination.

(3) The Committee are of opinion that Convocation should make some general provision dealing with the cases of candidates in the matriculant class who may have taken the departmental examinations, and recommended that a Rule providing for such cases be passed.

All which is respectfully submitted.

(Signed) CHARLES MOSS,
Chairman.

October 2nd, 1891.

The Report was ordered for immediate consideration, adopted, and it was ordered accordingly.

Mr Moss, from the Legal Education Committee, reported:

(1) On the case of Mr. Wm. Wright, recommending that a certificate from Mr. Pollard be dispensed with, his service allowed, and that he do receive his certificate.

Ordered for immediate consideration, adopted, and ordered accordingly.

(2) On the case of P. A. Malcolmson, recommending that his examination for certificate be accepted, and that he do receive his certificate.

Ordered for immediate consideration, adopted, and ordered accordingly.

(3) On the case of Mr. H. E. McKee, recommending that he be required to re-article himself for eight months, and that his examination for certificate do stand for favorable consideration at the expiration of his service.

Ordered for immediate consideration, adopted, and ordered accordingly.

(4) In the case of Daniel O'Connell, who prays that his attendance at the Law School may be dispensed with, recommending that the petition be not granted.

Ordered for immediate consideration, adopted, and ordered accordingly.

(5) In the case of G. D. Grant, who prays that his attendance at the Law School may be allowed, and that he be permitted to present himself for examination for call to the Bar and admission as Solicitor at the ordinary examinations in November next, recommending that the prayer be granted.

Ordered for immediate consideration, adopted, and ordered accordingly.

(6) In the case of —— McAvoy, recommending that he be allowed his first intermediate examination.

Ordered for immediate consideration, adopted, and ordered accordingly.

(7) In the case of V. M. Hare, recommending that his attendance at lectures and examination be allowed on his attending during this term ten lectures in excess of the total minimum, such excess to be in the lectures on contracts.

Ordered for immediate consideration, adopted, and ordered accordingly.

(8) In the case of A. C. McMaster, recommending that his attendance and examination at the Law School be allowed.

Ordered for immediate consideration, adopted, and ordered accordingly.

(9) In the case of E. J. Senkler, recommending that the decision on his application be deferred till after the close of this term.

Ordered for immediate consideration and adopted.

Mr. Moss, from the Legal Education Committee, presented their Report on the Principal's letter as to the division of attendance in the Law School in certain cases, as follows:

The Legal Education Committee beg to report as follows:

(1) They have considered the suggestions contained in the annexed letter from the Principal of the Law School with reference to permitting students in the position mentioned in the letter to divide their work and attendance for their final year between the course of the year 1891-1892 and that of 1892-1893, and are of opinion that the recommendation should be adopted and that provision should be made to carry it into effect.

(2) The Committee have requested the Principal to consider and report as to whether it might not be desirable to extend his recommendation to the cases of all students who might desire to divide the work of the first year's and second year's courses over three or four years instead of taking it in two years as now required by the rules.

All of which is respectfully submitted.

Signed) CHARLES MOSS,
Chairman.

October 2nd, 1891.

The Report was ordered for immediate consideration and was adopted.

The Secretary reported that Mr. R. McKay and Mr. K. H. Cameron had completed their papers and were entitled to their certificates of fitness.

Ordered accordingly.

The Report from Mr. Osler of the Reporting Committee laid before Convocation and ordered to be considered this day was read.

Ordered, that Convocation express its surprise that so much delay has taken place in the preparation by Mr. Joseph of the digest, and ordered that this expression of disappointment be conveyed to him, coupled with the request that steps be immediately taken by Mr. Joseph to complete the work in question without further delay.

Mr. Moss moved for leave to introduce a rule based on the Report of the Legal Education Committee as to the division of attendance in the Law School. Ordered—

Those students and clerks who have already been allowed their examination of the second year in the Law School or their second intermediate examination, and under existing rules are required to attend the lectures of the third year of the Law School course during the school term of 1892-3, may elect to attend during the term of 1891-2 the lectures on such of the subjects of the said third year as they may name, provided the number of such lectures shall, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said

third year, and complete their attendance on lectures by attending in the remaining subjects during the term of 1892-3. Every student or clerk desiring so to elect must, before commencing to attend, deliver to the Principal his written election specifying the subjects of the lectures he so elects to attend during the term of 1891-2, and obtain the approval of the Principal thereto, and must at the same time deliver to the Principal a certificate of the sub-treasurer showing that he has paid the school fee, and no such student or clerk having paid the said fee and having had his attendance duly allowed in respect of the lectures which he shall so have elected to attend, and of the lectures on each of the subjects named in his election according to existing rules, shall be required to attend any lectures on the same subjects during the term of 1892-3, or to pay any school fee for the said last mentioned term.

No students or clerks so attending shall be examined in the third year until the completion of their attendance as herein provided.

Ordered, that the Rule be read a second time on the first day of next term.

Ordered, that in the interim the Committee do act on the Report.

Mr. Moss gives notice that on the first day of next term he will introduce a Rule to provide for the cases of candidates for admission in the matriculant class who pass the departmental examinations in lieu of the matriculation examination at universities.

The Report of the Building Committee presented on September 25th was considered and adopted.

The Rule proposed by Mr. Shepley and read a second time last meeting was ordered to be read a third time and passed as follows:

(1) Rule 134 *a* is renumbered 132 *a*.

(2) Rule 134 is hereby repealed.

(3) Rule 135 is renumbered as 134.

(4) The following is hereby enacted as Rule 135: (135) The notice required by the preceding Rules may be given within three months prior to the taking of his degree by a graduate, or to the passing of his examination by a candidate seeking admission under Rule 134.

The communication of the examiners addressed to the chairman of the Legal Education Committee for an increase of salary was read and ordered for immediate consideration.

Ordered, that Convocation does not see fit to grant any increase to the present salaries of the examiners.

The letter of H. B. Travers was read, asking for the return of certain papers connected with his petition.

Ordered, that he be informed that Convocation cannot permit the papers to be removed.

Convocation adjourned.

J. K. KERR,

Chairman Committee on Journals.

DIARY FOR MARCH.

1. Tues. ...Court of Appeal sits. General Sessions and County Court sittings for trial in York.
2. Wed. ....Ash Wednesday.
5. Sat. .....York changed to Toronto, 1834.
6. Sun .....*1st Sunday in Lent.*
10. Thur. ...Prince of Wales married, 1863.
13. Sun .....*2nd Sunday in Lent.* Lord Mansfield born, 1704.
17. Thur. ...St. Patrick's Day.
18. Fri. .....Arch. McLean, 8th C.J. of Q.B. Sir John B. Robinson, C.J., Court of Appeal, 1862.
19. Sat. .....P. M. S. Vankoughnet 2nd Chancellor of U.C., 1862.
20. Sun .....*3rd Sunday in Lent.*
23. Wed. ....Sir George Arthur, Lieut.-Gov. of U.C., 1838.
26. Sat. .....Bank of England incorporated, 1694.
27. Sun .....*4th Sunday in Lent.*
28. Mon .....Canada ceded to France, 1632.
30. Wed. ....B.N.A. Act assented to, 1867. Lord Metcalfe, Gov.-Gen., 1843.
31. Thur. ...Slave trade abolished by Britain, 1807.

Reports.

ONTARIO.

(Reported for THE CANADA LAW JOURNAL.)

WEST *v.* SINCLAIR.

Mechanics' lien—Jurisdiction of Master, under 53 Vict., c. 37, to declare deeds fraudulent—Actual or constructive notice to affect mechanics' lien.

On a claim filed by a lienholder under the Mechanics' Lien Procedure Act, 53 Vict., c. 37, alleging that the owner had, after the contract with the plaintiff, conveyed the property to his wife, with notice of the plaintiff's lien; and that the wife had thereafter mortgaged the property to one M., with like notice of the plaintiff's lien, it was

Held, (1) That the jurisdiction conferred upon the Master by the said Act is statutory, and that although the Act is silent as to the jurisdiction to invalidate deeds for fraud, and the presumption of the law is against extending a statutory grant of judicial power, yet as the parties had proceeded as if the Master had jurisdiction in mechanics' lien cases to declare deeds fraudulent and void under the Statute of Elizabeth, and R.S.O. (1887), chaps. 96 and 124, it was proper in the interests of justice, and in obedience to the maxim *ampliare justiciam*, to dispose of the questions raised as to the invalidity of the deed and mortgage.

(2) That the protection given to instruments registered prior to the registration of a mechanics' lien applies only to instruments registered by innocent purchasers or mortgagees who had not actual notice of the mechanics' lien.

(3) That the notice which is necessary to postpone a registered instrument, so as to give priority to a mechanics' lien, must be actual notice; and that a notice which merely puts a party upon inquiry as to facts of which it is material he should have actual knowledge is insufficient to postpone a registered instrument.

(4) That seeing work being done on a building, or materials being delivered on the premises to be used in such building, is not actual or sufficient notice that a mechanic doing such work, or furnishing such material, is unpaid, or that he is entitled to a mechanics' lien in respect therefor.

[Toronto, January 14, 1892.

The plaintiff filed his statement of claim in respect of a mechanics' lien before the Master in Ordinary, under the Act 53 Vict, c. 37, setting out a contract with the defendant George Sinclair, who was then the owner of the property. The claim alleged that the defendant George Sinclair had, after the contract and prior to the registration of the plaintiff's lien, conveyed the property to his wife, the defendant Margaret Sinclair, with notice of the plaintiff's claim; and that the last named defendant had mortgaged the said property to the defendant McCausland, giving like notice of plaintiff's claim.

D. Macdonald for plaintiff.

Vickers for McDonald & Co.

Haverson for McCausland.

Abbott for the Sinclairs.

MR. HODGINS, Q.C., MASTER IN ORDINARY: The question of the right of a Master or Referee, acting under the statutory jurisdiction in respect of mechanics' liens conferred upon them by the Act 53 Vict., c. 37, to try cases involving the validity or invalidity of conveyances and mortgages of land alleged to be fraudulent and void against creditors and lienholders under the Statute of Elizabeth, and R.S.O. (1887), chaps. 96 and 124, though incidentally referred to in this case, has not been argued.

The statute is silent as to this jurisdiction, although another statute appears to have been necessary to give a jurisdiction to the Master in Chambers (R.S.O. (1877), c. 49, s. 10, now Con. Rule 1007) in cases where a judgment creditor is impeded in his remedy by a fraudulent conveyance; and it may be further noted that a special statutory provision was considered necessary to vest in the referee in drainage cases the powers of the High Court (54 Vict., c. 57), but no similar powers have been conferred upon the Master under the Mechanics' Lien Act, 53 Vict., c. 37. In ordinary cases, a simple contract creditor must seek his remedy against the fraudulent conveyance by action, *Longeway* v. *Mitchell*, 17 Gr. 190.

The Act of 1890 gives an original and special jurisdiction to certain judicial officers, and therefore comes within the rules governing statutory powers conferred upon a judge or officer as a *persona designata*. It has been held that no jurisdiction other than that given by an Act, or necessarily incident to the statutory jurisdiction, can be exercised; that statutes creating special

jurisdictions are not to be extended beyond the fair import of the statutory grant; and that presumptions of law which are incident to the ordinary tribunals are not allowable in importing judicial powers into the statutory jurisdiction other than those specially given by the legislature.

The statutory powers under this Act might have been vested in a justice of the peace, or a registrar of deeds, instead of the judicial officers named, and it would appear with the like result as to jurisdiction, for it is not clear whether the intention of s. 23 of the Act, importing the rules respecting sales only, was to exclude the other Consolidated Rules defining the delegated powers of the Master, or whether the intention of ss. 38 and 40 was to import them into this procedure. These points were not argued.

But although courts have intimated that, where doubts exist as to the limits of the jurisdiction of statutory officers, it is inadvisable that such officers should act under such doubtful powers, I think in the interests of justice I ought to dispose of the questions raised under the evidence given by both sides as necessarily incident to the statutory jurisdiction giving me power over the subject matter in obedience to the maxim *ampliare justiciam*,* and leave to a higher tribunal the limitation of my judicial powers.

In *Reinhart* v. *Shutt*, 15 O.R. 325, it was decided that under a reference in a mechanics' lien case the master had no power to add, as a party defendant, a prior mortgagee, so as to give the Master jurisdiction to try the validity of the mortgagee's title or claim on the contention of the plaintiff that, though prior in registration, he ought to be adjudged as a subsequent incumbrancer to such plaintiff.

This decision is in harmony with *McDougall* v. *Lindsay Paper Mill Co.*, 10 P.R. 247, and *Wiley* v. *Ledyard*, 10 P.R. 182, in both of which cases the extent of the delegated jurisdiction of the Master to try questions properly triable in court was considered, and was shown to be as stated by STRONG, J., in *Bickford* v. *Grand Junction Ry. Co.*, 1 S.C.R. 696.

But as this case does not come before me under my delegated jurisdiction as defined in in the Con. Rules, nor under a judgment of the court giving me jurisdiction over a specific question or issue, for the reason stated above I proceed to dispose of it on the merits.

In *McVean* v. *Tiffin*, 13 A.R. 1, it was held that a lienholder had no priority over a mortgagee who had obtained his mortgage while the work was in progress and had registered it prior to the registration of the lien of the plaintiff-mechanic. In *Wanty* v. *Robins*, 15 O.R. 474, the rule laid down in that case was construed to apply only to innocent purchasers or mortgagees, who had not actual notice of the lien of the mechanic at the time they paid the money and registered the deed or mortgage. And in *McNamara* v. *Kirkland*, 18 A.R. 271, OSLER, J.A., who delivered the judgment in *McVean* v. *Tiffin*, took occasion to add the following observation to what he had said in that case: "If the lien exists, and the purchaser has notice of it, there is no reason why he should not be held to take subject to it," and he further intimated an agreement with what had been said by BOYD, C., in *Reinhart* v. *Shutt*, and *Wanty* v. *Robins*, *ante*.

This then brings this case down to the question whether the mortgagee McCausland had actual notice of the plaintiff's lien.

In *Rose* v. *Peterkin*, 13 S.C.R. 677, STRONG, J., citing Sir James Wigram's definition of notice given in *Jones* v. *Smith*, 1 Hare 55, held, that notice which merely puts a party upon enquiry, as to the facts of which it is material he should have knowledge, is clearly insufficient to postpone a registered instrument; and in *Richards* v. *Chamberlain*, 25 Gr. 402, SPRAGGE, C., held, that it would be holding mortgagees to a stricter course than lienholders if mortgagees were to be taken to have notice of a lien merely because they saw the work being done and materials for it furnished. And his decision in that case is in harmony with *Grey* v. *Ball*, 23 Gr. 390, where he held that possession of a piece of land was not notice of an equitable title claimed by the party in possession. See also *Cooley* v. *Smith*, 40 M.C.Q.B. 543.

There is evidence that the defendant McCausland was told that the contracts were let, and the work on the buildings was going on, before he took his mortgage, but there is no evidence that he had actual notice that this

*This maxim is sometimes quoted as *Boni judicis est ampliare jurisdictionem* (*Collins* v. *Aron*, 4 Bing. N. C. 235), but Lord MANSFIELD, C.J., in *Rex* v. *Phillips*, 1 Burr 304, says, "The true text is *Boni judicis est ampliare justiciam*, not *jurisdictionem*; as it has been often cited."

plaintiff was furnishing the materials, or that any moneys were due to him in respect of the materials, for which he now claims a lien.

The evidence as to notice is at best only constructive notice, and is, I think, insufficient to affect his title under the cases to which I have referred; and I must therefore hold that the defendant McCausland's mortgage is not affected by such notice and is prior to the lien claimed by the plaintiff.

At the close of the argument, as to the validity of the deed from the defendant Sinclair to his wife, I intimated—no counsel then appearing for the Sinclairs—that on the evidence given in this case I must find that Mrs. Sinclair took it with actual notice of the plaintiff's claim, and that her title is therefore void as against the plaintiff's lien.

See also *De Wallis* and *Vokes*, 18 O.R. 8.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[Jan. 8.

WARD *v.* CALEDON.

ALGIE *v.* CALEDON.

License—Liability of licensor for negligence of licensee—Damage by breaking of mill dam—Rights and liabilities of riparian proprietors for damage.

A mill owner having a license from the township to construct his mill dam in such a way as to flood a part of the highway constructed it so negligently that it gave way, causing damage to proprietors below.

Held, that the license to dam water back upon the highway was (except in so far as it might be a public nuisance affecting travellers on the road) a lawful thing, and the damage being caused by the negligence of the mill-owner the township was not liable.

Judgment of MACMAHON, J., at the trial reversed.

Mowat, Attorney-General, *Robinson*, Q.C., and *Langton*, Q.C., for the township of Caledon.

Moss, Q.C., and *W. L. Walsh* for plaintiff Algie.

E. Meyers for plaintiff Ward.

J. Reeve, Q.C., for the McLellands (third parties).

THE ATTORNEY-GENERAL FOR CANADA *v.* THE ATTORNEY-GENERAL OF ONTARIO.

Constitutional law—Royal prerogative—Commuting and remitting sentences—Powers of Lieutenant-Governors—51 Vict., c. 5 (O.).

The Act 51 Vict., c. 5 (O.), which declares that in matters within the jurisdiction of the legislature of the Province all powers, etc., which were vested in or exercisable by the Governors or Lieutenant-Governors of the several Provinces before Confederation shall be vested in and exercisable by the Lieutenant-Governor of this Province, is valid and within the power of the provincial legislature to enact.

The power of commuting and remitting sentences for offences against the laws of this Province, or offences over which the legislative authority of the Province extends, which by the terms of the Act is included in the powers above mentioned, does not affect offences against the criminal laws of this Province which are the subject of Dominion legislation, but refers only to offences which are within the jurisdiction of the provincial legislature, and in that sense this enactment is *intra vires* the provincial legislature.

Judgment of the Chancery Division affirmed.

Robinson, Q.C., and *Lefroy* for the appellant.

E. Blake, Q.C., and *Irving*, Q.C., for the respondent.

WATEROUS *v.* PALMERSTON.

Corporation—Contract—Sale—Corporate Act—Necessity of by-law.

Section 282 of the Municipal Act, R.S.O., c. 184, enacts that the powers of municipal councils shall be exercised by by-law when not otherwise authorized or provided for. Section 480 of the Act authorizes the council to purchase fire apparatus, etc., but says nothing about passing a by-law for the purpose.

The plaintiffs here sued upon an alleged contract for the sale by them to the defendants, the corporation of the town of Palmerston, of a fire engine and hose. The alleged contract was signed by the mayor of the town and by the clerk of the council, and the seal of the

corporation was attached. No by-law was, however, passed authorizing the purchase. The engine was sent by the plaintiffs to Palmerston, but was not accepted by the defendants.

Held, that the want of a by-law was fatal, and the instrument under the seal of the corporation invalid.

Judgment of the Divisional Court of the Chancery Division, reported 20 O.R. 411, affirmed.

Wilkes, Q.C., for appellants.

A. M. Clarke for respondents.

TENNANT *v.* UNION BANK.

Warehouse receipt — Bank Act — Promise to transfer warehouse receipts — Goods in transit.

Christie, Kerr & Co. entered into an agreement with Peter Christie whereby the latter agreed to make advances to the firm for the purpose of enabling them to get out logs from the woods, the firm agreeing that Peter Christie should have security upon the logs and the lumber to be manufactured therefrom. Peter Christie borrowed the money from the Federal Bank, assigned the agreement to the bank, and advanced the money to the firm as agreed. The defendants subsequently arranged with Christie, Kerr & Co. and Peter Christie to advance the money to pay off the Federal Bank, the firm and Peter Christie on their part giving to the defendants as security a document in the form of a warehouse receipt on the logs which were then in course of transit to the mill, and further promising to give warehouse receipts on the lumber when manufactured from the logs. Warehouse receipts were given to the defendants upon the manufactured lumber stored in the firm's yard. The firm became insolvent, the defendants seized the lumber, and this action was brought by the firm's assignee for the benefit of creditors for the alleged wrongful seizure and conversion.

Held (BURTON, J.A., dissenting), that the promise made to the bank supported the subsequent transfer to them of the warehouse receipts for the manufactured lumber under s. 53, s-s. 4 of the Bank Act (R.S.O., c. 120), and were consequently valid.

The document given to the defendants at the time of the arrangement with them was not a valid warehouse receipt within the meaning of the Act, as the logs were then in transit.

Judgment of BOYD, C., delivered 4th June, 1890, affirmed.

McCarthy, Q.C., for appellant.

Robinson, Q.C., for respondents.

HIGH COURT OF JUSTICE.

Chancery Division.

Div'l Court.] [Dec. 5.

GIBBONS *v.* TOMLINSON.

Husband and wife — Conveyance taken in wife's name — Effect of.

In December, 1885, W.T. purchased certain land, paying the purchase money himself, but caused the conveyance to be taken in his wife's name. In 1888, at the request of the husband, the wife executed a declaration of trust in favor of G.T., and in 1870 she executed a deed thereof to him for $1200. In an action by a creditor of the wife to have such deed set aside,

Held, by FALCONBRIDGE, J., that on the evidence the conveyance to the wife must be treated either as a gift or for the purpose of protecting the property against the husband's creditors, and the conveyance by the wife to G.T. could not therefore stand, but must be set aside.

On appeal to the Divisional Court,

Held, that so far as the fact of its being a gift the evidence did not so establish, but rather that the conveyance was taken in the wife's name to please her, and that whether so taken or as a protection against creditors, in either event the conveyance by the wife was valid.

Lash, Q.C., for the plaintiff.

Fullerton, Q.C., for the defendant.

Div'l Court.] [Dec. 23.

STEVENSON ET AL. *v.* DAVIS.

Vendor and purchaser — Possession at once — Payment of interest until conveyance made — Delay in completion — Appropriation of money.

In a contract for the sale of land where possession is taken at once and the contract stipulates for the payment of interest, the purchaser must pay interest from the date of the contract, unless there should be unreasonable delay in the completion attributable to the vendor, and

there should be an appropriation of the purchase money and notice to the vendor.

In an action on a contract where the vendor was to prepare the deed, and the purchaser got his purchase money ready to pay over and deposited it in the bank, at first to his own credit in his general account, but afterwards to the credit of a special account, of which he gave the vendor notice, and there was a delay of over two years in preparing the deed,

Held, (varying the judgment of ARMOUR, C.J., Q.B.) that the purchaser was bound to pay interest at the legal rate up to the time he deposited it to the credit of the special account, but that after that he was only bound to pay at such rate as he received from the bank.

Furlong and *George C. Thomson* for the purchaser.

C. W. Colter for the vendor.

Div'l Court.] [Jan. 22.

HAYER *v.* ELMSLEY.

Vendor and purchaser—Proceedings to rescind contract—Wilful default—Interest on purchase money.

The taking of proceedings by a vendor to rescind an agreement for sale of land, successful at first, but ultimately reversed on appeal, is a wilful default and the purchaser is not bound to pay interest on the purchase money for the period of time between the first trial rescinding and the decision in appeal restoring the contract.

The judgment of ROSE, J., varied.

Meredith, Q.C., and *Donovan* for plaintiff.

Cassels, Q.C., and *D. T. Symons* for defendant.

TRUST & LOAN CO. *v.* STEVENSON ET AL.

Mortgagor and mortgagee—Payments of interest by a stranger after conveyance to a purchaser—Statute of Limitations—Title by possession.

The plaintiffs were mortgagees of certain lands in 1863. J. S. was a subsequent mortgagee, and became the owner in May, 1869. He paid the interest as it became due to the plaintiffs, and in September, 1869, sold to a purchaser for value, through whom the defendant P. claimed title, covenanting that the land was free from encumbrance and that he had done no act to incumber. He went on paying the interest regularly to the plaintiffs up to the time of his death in 1884, and his executors paid interest up to 1890, when they ceased paying. The defendant P. had become the owner in 1888, deriving title from the grantee of J. S., and claimed title by possession without any notice of the plaintiffs mortgages.

On a special case stated for the opinion of the Divisional Court it was

Held, that the payments made by J. S. after his conveyance in 1869 were made by him as a stranger, and would not prevent the Statute of Limitations running in favor of the defendant P., and that he had acquired title by possession.

Marsh, Q.C., for the plaintiffs.

Delamere, Q.C., for the defendant Perry.

G. F. Ruttan for the executors.

FRONTENAC LOAN & INVESTMENT SOCIETY *v.* HYSOP.

Mortgage—Covenant by purchaser to pay off—Right of mortgagee to bring action—Privity—Costs.

The defendant purchased part of certain lands which were mortgaged to the plaintiffs, and in his purchase deed covenanted with his vendor to pay $3,000 to the plaintiffs. In an action by the plaintiffs to recover that amount it was

Held, (affirming ARMOUR, C.J., Q.B.) that there was no privity between the purchasers and the mortgagees, and that the plaintiffs could not recover.

The plaintiffs' statement of claim alleged a covenant to pay the plaintiffs, and that the defendant had asked for and obtained time for payment from the plaintiff.

Held, that it would not have been safe for the defendant to demur in the face of these averments, and the usual costs of an action were given.

Walkem, Q.C., for the appeal.

H. V. Lyon contra.

Div'l Court.] [Jan. 27.

BURNS ET AL. *v.* DAVIDSON ET AL.

Fraudulent conveyance — Lands in foreign country—Jurisdiction.

In an action by a judgment creditor to declare a conveyance made by a debtor of property situate in a foreign country, subsequently acquired by him, fraudulent and void where

both the debtor and his grantee resided within the jurisdiction, the court declined to interfere.

Per BOYD, C.: A provincial court is not justified in intermeddling with territorial rights acquired or subsisting in a foreign country. There is no case of contract or obligation *inter partes;* no fraud of a personal character in regard to specific property claimed; no personal equity attaching to the defendants in respect of the lands which the court could lay hold of; but only a right sought of having execution against alleged foreign assets held in fraud of creditors, which right *in rem* can only be effectually pursued in the forum of the site of the land. All questions as to the burdens and liabilities of real estate situate in a foreign country, in the absence of any trust or personal contract, depend simply upon the law of the country where the real estate exists.

Harrison v. *Harrison*, L.R. 8 Ch. 346, followed.

Gibbons, Q.C., for the plaintiff.

Purdom for the defendants.

Div'l Court.] [Feb. 1.

REGINA *v.* BITTLE.

Constitutional law—Provincial crimes—Power of legislature to enact procedure—Competency of defendant to give evidence.

Notwithstanding the reservation of criminal procedure to the Dominion Parliament, the Provincial Legislature has power to regulate and provide for the course of trial and adjudication of offences against its lawful enactment, in this case breaches of the Liquor License Act, even though such offences may be termed crimes; and therefore to regulate the giving of evidence by defendants in such cases, which they have done by R.S.O., c. 61, s. 9, providing that where the proceeding is a crime under the provincial law the defendant is neither a competent nor compellable witness.

Du Vernet for the applicant.

J. R. Cartwright, Q.C., for the Crown.

BANK OF BRITISH NORTH AMERICA *v.* GIBSON.

Equitable assignment—Order for payment of money.

S., the contractor for building a church, being indebted to D. for materials furnished therefor, gave D. the following order on the trustees, of which they were duly notified: "Pay to the order of D. the sum of $306 out of certificate of money due to me on the 1st June for materials furnished to above church."

Held, a good equitable assignment of money, due on the 1st of June.

MacBeth for the plaintiff.

Moncrief for the defendant.

ROBERTSON *v.* LONSDALE.

Promissory note—Endorsement—Guarantee or trust—Evidence of.

L., being indebted to R., gave him his promissory note for $326.57, payable three months after date to R.'s order. Some years afterwards L. conveyed his farm to his son, J.L., on an undertaking or verbal agreement between them that J.L. should pay L.'s debts, including this note. After the conveyance, on R. pressing L. for security, J.L., without R. having endorsed the note, wrote his name on the back thereof, the parties thinking that J.L. thereby rendered himself liable, and he subsequently paid R. $50 on account. No notice of the arrangement between L. and J.L. was communicated to R., nor any agreement made releasing L. from liability and substituting J.L. as debtor, R. having always considered L.'s liability as subsisting, and on this action sued him as maker and J.L. as endorser.

Held, that no liability was imposed on J.L. (it being admitted that he was not liable as endorser), that he could not be treated as a guarantor, nor as a trustee of the property conveyed, so as to be liable to account to the plaintiff for the amount of the note.

Middleton for the plaintiff.

No one showed cause.

Div'l Court.] [Feb. 6.

REGINA *v.* WESTLAKE.

Liquors—Selling without license—Evidence of—Costs.

The defendant purchased for $25, from a duly licensed hotel-keeper, the day's receipts of the bar, and at the close of the day was paid over such receipts.

Held, that a conviction against the defendant for selling liquor without a license could not be

maintained, and the conviction was quashed, but without costs.

Remarks on the question of costs in such cases.

Aylesworth, Q.C., for applicant.

Langton, Q.C., *contra.*

REGINA *v.* WESTGATE.

Conviction — Quashing — No offence shown — Question of costs considered.

A conviction under s. 1 of 52 Vict., c. 43 (D.), for supplying to a cheese factory milk from which the cream had been removed, was quashed, as neither in the evidence nor in the conviction was any offence against the Act shown, it not having been proved that the milk was supplied to be manufactured, but without costs.

The court, in considering the question of costs, suggested that in future with the notice of motion for a certiorari a notice might also be served stating that unless the prosecution was then abandoned and further proceedings rendered unnecessary, costs would be asked for and a strong case would then be made for granting the defendant costs in cases in which it would be unjust and unfair to put defendant to such costs.

Aylesworth, Q.C., for applicant.

D. W. Saunders contra.

Div'l Court.] [Feb. 9.

REGINA *v.* YEAMAN.

Gambling — Conviction for — No evidence to sustain charge — Quashing — Costs.

A conviction for unlawfully gambling contrary to a municipal by-law was quashed, as no offence was disclosed, and also on grounds of irregularity, but without costs, as the prosecutor, a constable, apparently acted in good faith in instituting and carrying on the prosecution.

Regina v. Westgate supra referred to.

M. G. Cameron for the applicant.

No one showed cause.

STREET, J.] [JAN. 4.

ALLEN *v.* FAIRFAX CHEESE COMPANY.

Partnership — Action by partner to recover share of monies paid firm — Prohibition.

Held, that an action was maintainable in the County Court by a partner to recover his share of insurance monies paid to the firm, and prohibition therefor was refused.

Beaumont for plaintiff.

Aylesworth, Q.C., for defendant.

BOYD, C.] [Feb. 8.

WALLIS *v.* SKAIN.

Mechanics' lien — Form of claim — Omission of name and residence of person on whose credit work done — Demurrer — Costs.

The omission from the registered claim of lien of the name and residence of the person for whom or upon whose credit the work was done or materials furnished required by s. 16 of the Mechanics' Lien Act, R.S.O., c. 126, is fatal to the lien, and the objection can be taken by the contractor as against the sub-contractor.

Where the objection was taken by the defendant contractor at the trial, costs were allowed him as of a successful demurrer, to be set off against the costs of a judgment for the plaintiff on the pleadings for an admitted debt.

McMichael, Q.C., and *J. A. Mills* for the plaintiff.

G. G. Mills for the defendant McNamara.

BOYD, C.] [Feb. 17.

ROBERTS *v.* DONOVAN ET AL.

Contempt of Court — Non-performance of an act necessitating the payment of money — Committal.

On a motion to commit defendants for non-compliance with a judgment by consent, directing him to discharge a certain mortgage, it was

Held, following *Male v. Bouchier*, 1 Ch. Ca. 359, and 2 Ch. Ch. 254, that if in effect and substance the essential thing to be done is the payment of money, whether by a party or a stranger, an order to commit would be a contravention of the statute (then C.S.U.C. c. 24, ss. 3 & 14, now R.S.O. (1887), c. 67, s. 6.)

Hoyles, Q.C., for the plaintiff.

Donovan in person.

A. C. Macdonell for defendant Hayes.

Practice.

BOYD, C.] [Jan. 14.

IN RE CLARK.

Lunacy—Declaration of—Dispute as to property and custody of supposed lunatic.

Where a petition to have C. declared a lunatic was presented by one of his daughters, and it appeared that it was presented with a view to attack a disposition which C. had made of his estate in favor of another daughter, with whom he lived, for which purpose an action had already been begun in C.'s name by a son as next friend, and it also appeared to the judge that there was no reason why C. should not remain in the custody and care of the daughter The petition was dismissed, although C. was undoubtedly a lunatic.

Hoyles, Q.C., for the petitioner.

W. M. Douglas contra.

MEREDITH, J.] [Jan. 21.

ARNOLD *v.* PLAYTER.

Infants—Discovery — Examination—Rule 487.

In a proper case an infant party to an action may now be examined by the opposite party for discovery before the trial, under Rule 487, in the same way as an adult.

Mayor v. *Collins*, 24 Q.B.D. 361, distinguished.

Bristol for the plaintiff.

Kilmer and *H. C. Boultbee* for the defendants.

MR. WINCHESTER.] [Jan. 25.

BEATY *v.* HACKETT.

Attachment of debts—Final order for payment by garnishee — Notice to judgment debtor—Assignment of debt attached—Rescission of final order.

Where a judgment creditor obtains an order attaching debts due to the judgment debtor, notice of the application for a final order for payment over by the garnishee should be served upon the judgment debtor.

Ferguson v. *Carman*, 26 U.C.R. 26, specially referred to.

A garnishee order binds only so much of the debt owing to the debtor from a third party as the debtor can honestly deal with at the time the garnishee order *nisi* is obtained and served.

Where a final order for payment over has been issued and it afterwards appears that the debt had been assigned before the attaching order was moved for, the final order should be rescinded.

Snow for the judgment creditor.

F. W. Garvin for the garnishee.

H. L. Drayton for the claimants.

OSLER, J.A.] [Jan. 28.

ROBINSON *v.* HARRIS.

Appeal bond—Appeal to the Supreme Court of Canada—Parties to bond—Appellant a party—Non-execution by appellant—Condition of bond—Costs awarded by judgment appealed from.

In an appeal to the Supreme Court of Canada it is not necessary that the appellant should be a party to the appeal bond; but if the appellant is made a party and does execute the bond, the respondent is entitled to have it disallowed, for it is unreasonable to ask the respondent to accept a bond to which the sureties may hereafter attempt, whether successfully or not, to raise the defence that they only executed it upon the faith that the appellant would be one of the obligees.

In an appeal bond, where the object was not only to secure payment of the costs which might be awarded by the Supreme Court of Canada under s. 46 of R.S.C., c. 135, but also under s. 47 (e) procure a stay of execution of the judgment appealed from as to the costs thereby awarded against the appellant, the condition was, "shall effectually prosecute the said appeal, and pay such costs and damages as may be awarded against the appellant by the Supreme Court of Canada, and shall pay the amount *by the said mentioned judgment* directed to be paid, either as a debt, or for damages, or for costs," etc.,

Held, that this did not cover costs awarded against the appellant by the judgment appealed from.

Woodworth for the appellant.

F. E. Hodgins for the respondent.

MACLENNAN, J.A.] [Feb. 16.

DRAPER *v.* RADENHURST.

Appeal to Supreme Court of Canada—Notice of appeal—R.S.C., c. 135, s. 41—"Special case," meaning of.

The judgment upon a special case, intended in s. 41 of the Supreme and Exchequer Courts Act, R.S.C. 135, is a judgment on the kind of case well known by that name, and it has no reference to the case which, by the practice of the Court of Appeal for Ontario, is prepared for the purpose of the appeal.

An objection to a bond on appeal from the Court of Appeal to the Supreme Court that notice of appeal was not given within twenty days pursuant to s. 41, upon the ground that every appeal from the Court of Appeal is "upon a special case," was therefore overruled.

W. H. Blake for the appellants.

Masten for the respondent.

Div'l Court.] [May 20, 1890

IN RE RUSH.

Appeal—R.S.O., c. 133, s. 9.

Held, that an appeal does not lie to a Divisional Court from the order of a judge of the High Court of Justice under R.S.O., c. 133, s. 9, dispensing with the concurrence for the purpose of barring her dower of the wife of an owner of land, selling or mortgaging it free from dower.

Masten for the appeal.

Kappele contra.

Notes of U. S. States Cases.

WEST VIRGINIA COURT OF APPEALS

[Nov. 14.

MCCLAIN *v.* LOWTHER.

Cheque — Delay in presenting — Liability of drawer.

Held, (1) that the drawing and delivery of a cheque implies the indebtedness of the drawer to the payee to the amount of the cheque, and in an action upon the cheque it is unnecessary to aver in the declaration any further consideration.

Held, (2) that where a cheque is not presented in time, and notice of non-payment is not given, injury to the drawer will be presumed; but a cheque is always presumed to be drawn on actual funds; and while if the holder has been guilty of laches in not presenting it in due time, or in failing to give notice of non-payment, it becomes incumbent upon him to show that the drawer has not been injured by the dereliction, yet, on the other hand, if he shows that drawer had no funds in the bank against which he drew, the burden of proving actual damage is shifted upon the drawer, and in the absence of such proof, the plaintiff is entitled to recover.

Appointments to Office.

COUNTY COURT JUDGES.

County of Brant.

William David Jones, of the City of Brantford, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-Law: to be Deputy Judge of the County Court of the County of Brant, in the said Province of Ontario.

United Counties of Stormont, Dundas and Glengarry.

Robert Abercrombie Pringle, of the Town of Cornwall, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-Law: to be Deputy Junior Judge of the County Court of the United Counties of Stormont, Dundas and Glengarry, in the said Province of Ontario.

REGISTRARS IN ADMIRALTY.

District of British Columbia.

James Charles Prevost, of the City of Victoria, in the Province of British Columbia, Esquire: to be Registrar in Admiralty of the Exchequer Court in and for the District of British Columbia.

COUNTY ATTORNEYS.

County of Welland.

Thomas Dalziel Cowper, of the Town of Welland, in the County of Welland, Esquire, Barrister-at-Law: to be County Attorney and Clerk of the Peace in and for the said County of Welland, in the room and stead of Lorenzo Dulmage Raymond, Esquire, deceased.

CORONERS.

County of Dufferin.

Charles Merrill Smith, of the Town of Orangeville, in the County of Dufferin, Esquire, M.D.: to be an Associate-Coroner within and for the said County of Dufferin.

County of Ontario.

William Franklin Eastwood, of the Village of Claremont, in the County of Ontario, Esquire, M.D.: to be an Associate-Coroner in and for the said County of Ontario, in the room and stead of David William Ferrier, Esquire, M.D., removed from the county.

DIVISION COURT CLERKS.

County of Grey.

Richard Stephens, of the Village of Markdale, in the County of Grey, Gentleman: to be Clerk of the Eighth Division Court of the said County of Grey, in the room and stead of Patick McCullough, resigned.

County of Halton.

Neil McPhail, of the Township of Nassagaweya, in the the County of Halton, Gentleman: to be Clerk of the Fifth Division Court of the said County of Halton, in the room and stead of S. R. Lister, deceased.

County of Hastings.

Dermot Kavanagh, of the Village of Umfraville, in the County of Hastings, Gentleman: to be Clerk of the Twelfth Division Court of the said County of Hastings, in the room and stead of John Wilson, deceased.

County of Middlesex.

John Wilson McIntosh, of the City of London, in the County of Middlesex, Gentleman: to be Clerk of the First Division Court of the said County of Middlesex, in the room and stead of W. J. McIntosh, resigned.

DIVISION COURT BAILIFFS.

County of Waterloo.

Peter Gillies, of the Town of Galt, in the County of Waterloo: to be Bailiff of the Second and Third Division Courts of the said County of Waterloo, in the room and stead of John Kirkpatrick, deceased.

COMMISSIONERS FOR TAKING AFFIDAVITS.

County of London (Eng.).

Frederick Thomas Rushton, of 14 New Inn Strand, in the County of London, in that part of Great Britain and Ire and called England, Gentleman, Solicitor: to be a Commissioner for taking Affidavits within and for the said County of London, and not elsewhere, for use in the Courts of Ontario.

State of Connecticut (U.S.).

Livingston Warner Cleaveland, of the City of New Haven, in the State of Connecticut, one of the United States of America, Gentleman, Attorney-at-Law: to be a Commissioner for taking Affidavits within and for the said State of Connecticut, and not elsewhere, for use in the Courts of Ontario.

State of Michigan (U.S.).

Ethelwolf Scatcherd, of the City of Grand Rapids, in the State of Michigan, one of the United States of America, Gentleman, Attorney-at-Law: to be a Commissioner for taking Affidavits within and for the said State of Michigan, and not elsewhere, for use in the Courts of Ontario.