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IT will by this time be known to our readers that the vacancy in the Chancery Division has been filled by the appointment of Mr. Richard M. Meredith, of London. Rumor had given no sound as to who might be a likely recipient of the honor, and the appointment of one but little known outside of his own circuit caused some surprise in legal circles—a surprise which was not lessened by the fact that the Crown had selected a man from the outer bar. This, of course, is not without precedent. But it does appear to be somewhat of an unkind cut to the shoals of gentlemen now wearing silk, that they should all have been passed by and that one of the comparatively few left to the outer bar should have been selected. Possibly none of the newly appointed Q.C.s. would accept a seat on the Bench! The fact is, men in the front rank of the profession cannot be induced to give up their practice for a seat on the Bench. This is a great evil and one which we are surprised the Government takes no means to remedy. There are difficulties doubtless in the way; the French-Canadian question cropping up here, as it does in other ways, where Ontario is concerned. The question, however, must be faced sooner or later, and the sooner the better. We have already in the High Court of Justice a representative of the western metropolis who does it credit, and has proved a most useful and excellent judge. We trust that the gentleman who is now congratulated upon his promotion may be as great a success.

AMONG the judicial deliverances which will hereafter serve as landmarks of the development of constitutional government will be found, we believe, the learned and able judgment of the Chancellor of Ontario, on the case recently submitted to the Chancery Divisional Court, regarding the constitutionality of the Act of the Provincial Legislature (51 Vict., c. 5), vesting in the Lieutenant-Governor the power of pardoning offences against statutes within the competence of the Local Legislature. The learned Chancellor places the prerogative of pardon on this basis, that it is not a mere personal right vested in the sovereign, to be exercised capriciously, but is a necessary constituent element and supplement of the law-making power, wherever that power may be vested by the constitution. From these premises he draws the conclusion, that where the power to make a law is vested, there also resides the power to pardon for breaches of that law, a power to be exercised constitutionally and subject to the advice of ministers responsible to the people. The result therefore is arrived at, that so far as the B.N.A. Act has vested in the Provincial Legislature power to make laws, so far it has also

ex necessitate vested in it the power to pardon for breaches of those laws; and, having that power, it is also competent for it to delegate its exercise to its chief executive officer. In connection with this subject, which is one of great general interest, we publish a letter from a correspondent who takes exception to the conclusion arrived at by the learned Chancellor. He is a courageous man who measures swords with that eminent jurist, and it would be a matter of surprise to us if the latter should prove to be wrong. However, let "Lex" speak for himself.

THE Law Society has been recently launching out in the way of expenditure. A handsome new carpet now graces the floor of the library at Osgoode Hall, which, moreover, is about to be lit with all the brilliancy of electric lights. We do not complain of such expenditure, if the Society can afford it. We were, however, under the impression when the Law Society decided to dock off its annual contribution to the Osgoode Hall Tennis Club of $6, for the water-rates for watering the lawn, that it was in an impoverished condition; otherwise, it is difficult to understand the necessity for such rigid economy. We venture to think instead of cutting off this insignificant allowance, it would have exercised a very legitimate and proper discretion if it had very considerably increased its assistance to the Club, which is now, we hear, in a somewhat languishing condition for want of funds. The Canadian Bank of Commerce, during the past season has provided, at its own expense, a tennis ground and the paraphernalia of the game, for its employees. Such liberality—but we are forgetting—"comparisons are odious."

THERE can be no doubt that it is in the best interest of the community that the legal profession should, as a rule, be well versed in the laws, which they have to assist in administering. One important branch of law is that embodied in the statutes, and it must be confessed that year by year it becomes a more difficult one to master. No less than three legislatures are empowered to make laws for us, viz., the Imperial Parliament, the Dominion Parliament, and the Provincial Legislature. The former, of course, now intervenes, as far as we are concerned, only in exceptional cases; but in those exceptional cases it has sometimes a concurrent, and sometimes an exclusive, jurisdiction. Not only has the student who would learn the statute law to keep track of the legislation of these three bodies, but he has also in the case of Imperial Statutes to sift out of a vast mass of ancient legislation, the various statutes which have been introduced as part of the law of this Province, not by specific enumeration, but by use of the most general words. No attempt has ever been made, we believe, to collect and publish the various English statutes which are in force here. It is a work of great magnitude, and one which requires for its successful issue not merely the industry and learning of a private individual, but also, in order to give authority to the conclusions arrived at, it demands the sanction of the legislative body. The work is, for this reason, almost beyond the competence of mere private effort, and is one that should be taken in hand under the authority of the Legislature.

Fortunately the labor attending any such step is materially lightened by the labors of the revisers of the Imperial statutes; but it must be remembered that this revision has no legal effect in Ontario, and that, so far as this Province is concerned, it may be found that not a few ancient English statutes which have been repealed upon the recommendation of the Imperial Commissioners for the revision of the Statutes, are still in force in Ontario. The labor of learning the Statute Law, so far as the Dominion and Provincial statutes are concerned, is materially facilitated by a periodical revision of the statutes, and what is now needed is the publication of a volume containing the Imperial statutes which are in force in Ontario. We commend this subject to the serious consideration of the Ontario Government, and believe that its accomplishment will prove a boon, particularly to the legal profession, and indirectly to the public at large. It is a step which it appears to us has been already too long delayed.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for August comprise 25 Q.B.D., pp. 193-328; 15 P.D., pp. 133-148; 44 Chy.D., pp. 329-502; and 15 App. Cas., pp. 249-309.

NEGLIGENCE—MASTER AND SERVANT—EMPLOYERS' LIABILITY ACT, 1880 (43 & 44 VICT., C. 42), S. 1, S-S. 3 (R.S.O., C. 141, S. 3, S-S. 4).

In *Snowden* v. *Baynes*, 25 Q.B.D., 193, the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) unanimously affirmed the decision of the Divisional Court, 24 Q.B.D., 568, noted *ante* p. 296, on the ground that Sellick, under whose directions the plaintiff had acted, had no authority from the defendant to give directions to the plaintiff, and consequently there was no evidence of any order being given by any one to the plaintiff which he was bound to obey, within the meaning of s. 1, s-s. 3 (R.S.O., c. 141, s. 3, s-s. 4).

PRACTICE—PRODUCTION OF DOCUMENTS BY PERSONS NOT PARTIES—ORD. XXXVII. R. 7—(ONT. RULE 580).

In *Elder* v. *Carter*, 25 Q.B.D., 194, the Court of Appeal (Lindley and Bowen, L.JJ.) were of opinion that under Ord. xxxvii., r. 7 (see Ont. Rule 580), the Court could not properly order a person not a party to the proceedings, to produce documents, merely for the purpose of discovery, but only for the purpose of a pending trial, hearing, or application, or in order to carry out or complete an order which has already been obtained. In other words, unless the party is entitled to the production of such document at the moment the order is made, it ought not to be granted. Lindley, L.J., was of opinion that if the rule purported to give the right of discovery as against strangers to the action, it would be *ultra vires*.

CRIMINAL LAW—EVIDENCE OF GIRL, NOT GIVEN UPON OATH—INDECENT ASSAULT.—48 & 49, VICT., C. 69—(53 VICT., C. 37, S. 13, D.).

The *Queen* v. *Paul*, 25 Q.B.D., 202, may be usefully referred to as throwing light on the law of evidence in criminal cases. By an English statute (48 & 49 Vict., c. 69; (and see now a similar provision in the recent statute, 53, Vict., c. 37, s. 13, D.) it is provided that upon a trial of a charge of unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of any girl under thirteen, the evidence of the girl, if she be of too tender years to understand the nature of an oath, may be received without oath. The prisoner was charged with an attempt to have carnal knowledge of a girl under thirteen, and also with an indecent assault. The evidence of the girl was taken without oath, and the jury acquitted the prisoner of the first charge, and on the second charge it was contended that the evidence not under oath was not admissible, but the Judge submitted it to the jury, and the prisoner was convicted of the assault. This the Court for Crown cases reserved (Lord Coleridge, C.J., Hawkins, Mathew, Day, and Grantham, JJ.), held was erroneous, and they quashed the conviction; and, notwithstanding a passage in Hale's Pleas of the Crown, vol. 1, p. 634, to the contrary, Hawkins, J., lays it down that whatever may have been done in particular cases before the Act in question, no testimony whatever could in a criminal trial be received except upon oath, and that the Act made the unsworn evidence admissible only on the two specific charges, and it was left as it was before the Act, as regards the charge of indecent assault, and therefore as to that it was inadmissible, and could not be considered by the jury.

PRACTICE—OFFICIAL REFEREE—APPEAL—POWER OF COURT TO ENTER JUDGMENT—ORD. XXVI., R. 52, ORD. XL., R. 10—(ONT. RULES 37, 755).

Clark v. *Sonnenschein*, 25 Q.B.D., 226, may be referred to for the purpose of pointing out a difference which exists between the English rule, Ord. xxvi., r. 52, and Ont. Rule 37. Under the former a referee, to whom a cause is referred, has power to order judgment to be entered, but under the Ont. Rule 37, this part of the English rule is omitted. In the present case it was held that on an appeal from an official referee, who has ordered judgment to be entered for the plaintiff, a Divisional Court has power, not only to set aside the judgment, but also, under Ord. xl., r. 10, to enter judgment for the defendant. Ont. Rule 755.

PRACTICE—APPEAL—JURISDICTION—"CRIMINAL CAUSE OR MATTER"—STRIKING SOLICITOR OFF THE ROLLS.

In re Eede, 24 Q.B.D., 228, the Court of Appeal (Lord Esher, M.R., and Lindley, L.J.) hold that an order striking a solicitor off the rolls, for having permitted his name to be used by an unqualified person, is not a criminal cause or matter, and is therefore appealable to the Court of Appeal.

PRACTICE—TIME—NOTICE OF MOTION—"APPLICATION."

In re Gallop & C.Q.M. Export Co., 25 Q.B.D., 230, is a case upon the construction of the rule regulating the time for moving against an award, in which Den-

man and Charles, JJ., held that if notice of motion be served within the time limited by the Rule, the application is made in time, although the motion may not be actually put in the paper or brought on to be heard until the time mentioned in the Rule had expired; see *Re Sweetman* v. *Gosfield, ante* p. 380.

PRACTICE—DISCOVERY—PENAL ACTION—ACTION FOR FRAUDULENT REMOVAL OF GOODS.

In *Hobbs* v. *Hudson*, 25 Q.B.D., 232, the Court of Appeal (Lord Esher, M.R., Lindley and Lopes, L.JJ.) decided that an action for double value under II. Geo., 2, c. 19, s. 3, for the fraudulent removal of goods by a tenant, is a penal action, and one, therefore, in which the plaintiff is not entitled to examine the defendant for discovery.

PRACTICE—WRIT ISSUED BEFORE JUDICATURE ACT—RENEWAL WITHOUT LEAVE—ORD. VIII., R. 1. (ONT. RULE 238).

In *Hume* v. *Somerton*, 25 Q.B.D., 239, the writ of summons had been issued before the Judicature Act, and had been kept renewed in the manner prescribed by the Common Law Procedure Act, until 1890, when it was served, no leave of the Court or a Judge to renew having been obtained under Ord. viii., r. 1, (Ont. Rule 238). The defendant applied to set aside the writ. The Divisional Court (Denman and Charles, JJ.) were of opinion that the provisions of the Common Law Procedure Act, regarding the renewal of writs, had been suspended by the Judicature Rules, and therefore that the writ had not been duly renewed, and it was set aside.

PROHIBITION—INFERIOR COURT—WANT OF JURISDICTION—WAIVER OF OBJECTION.

Moore v. *Gamgee*, 25 Q.B.D., 244, was an application for a prohibition to a County Court, on the ground that the action had been commenced against the defendant in a county in which he did not reside. The Court would have had jurisdiction to entertain the action if leave had been obtained to sue in that Court. The leave had not been obtained, but the defendant appeared, and the case was partly heard, and then adjourned to a future day. At the second hearing, the defendant, for the first time, raised the objection to the jurisdiction of the Court. Under these circumstances the Divisional Court (Cave and A. L. Smith, JJ.) decided that the objection had been waived, and the prohibition was refused. Cave, J., points out the difference between the case where in no circumstances would the inferior court have jurisdiction, and the case where it has a jurisdiction contingent upon some proceeding being taken; in the former case the defendants taking a step does not waive his right to object to the jurisdiction, whereas in the latter case it does.

JURISDICTION—COMPLAINT OF JUSTICES—SUMMONS ISSUED BY JUSTICE WHO HAS NOT HEARD COMPLAINT—INVALIDITY OF PROCESS—APPEARANCE UNDER PROTEST.

Dixon v. *Wells*, 25 Q.B.D., 249, was a case stated by a magistrate for the opinion of the Court. The respondent had preferred a complaint against the

appellant for selling adulterated goods, before two justices, who, having considered the complaint, granted a summons, but did not sign it; the respondent then procured another justice, who had not heard the complaint, to sign and issue the summons. The appellant appeared and objected to its validity, but the magistrate before whom it was returnable overruled the objection, and tried and convicted the appellant. Lord Coleridge, C.J., and Mathew, J., quashed the conviction on the ground that the summons was no summons at all, and that although in some cases the accused might be held to waive any objection to the validity of a summons by appearing on it, yet in the present case as the time limited by statute for commencing the prosecution had then expired, the appearance could not have that effect.

MISCHIEVOUS ANIMAL—ANIMAL FERÆ NATURÆ—LIABILITY OF OWNER—SCIENTER.

In *Filburn* v. *The People's Palace Co.*, 25 Q.B.D., 258, the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) came to the conclusion that an elephant must be classed with lions and tigers and other ferocious animals; and that he who keeps one does so at his peril, and is liable for any damage done by it, though ignorant of its having any dangerous disposition.

BILL OF SALE—DESCRIPTION OF CHATTELS.

In *Hickley* v. *Greenwood*, 25 Q.B.D., 277, the sufficiency of a description of chattels in a bill of sale was in dispute; the chattels were described as "Roan horse, 'Drummer,' brown mare and foal; three rade carts." "Rades," we learn from Holliwell's Dictionary of Archaic and Provincial Words, cited by the reporter in a note, are, "the rails of a waggon." The Court (Cave and A. L. Smith, JJ.) held that in the absence of evidence showing that the description was not specific, it was sufficient.

FOREIGN JUDGMENT, ACTION ON—DEFENCE ALLEGING FRAUD—RE-TRIAL OF CASE ON ITS MERITS.

In *Vadala* v. *Lawes*, 25 Q.B.D., 310, the principle established by *Abonloff* v. *Openheimer*, 10, Q.B.D., 295, was reaffirmed by the Court of Appeal (Lindley and Bowen, L.JJ.), viz., that where an action is brought upon a foreign judgment, the defence may be raised that the judgment was obtained by the fraud of the plaintiff, even though the fraud alleged is such that it cannot be proved without re-trying the questions adjudicated upon by the foreign Court. The fraud alleged in this case was the action that the judgment was recovered in respect of certain bills of exchange which he alleged before the foreign Court to be commercial bills, whereas they were in fact given for gambling transactions.

SALVAGE—INEQUITABLE AGREEMENT.

Turning to the cases in the Probate Division, *The Mark Lane*, 15 P.D., 135, deserves a brief notice. The action was for salvage. The plaintiffs were the owners of a steamer, which fell in with another steamer on the Atlantic in distress. The master of the plaintiff's vessel agreed to tow the distressed vessel to Halifax for £5,000 if successful, or for a sum for the work done if not successful.

The £5,000 was more than a fifth of the value of the salved vessel, her cargo, and freight—but the master agreed to the terms, believing that his vessel would be abandoned if he did not. The vessel was towed into Halifax, a distance of 350 miles. The present action was to recover the £5,000 stipulated for, but the Court thought that the agreement was made under compulsion, and was therefore not enforceable, as the sum was exorbitant, and treating the agreement as inoperative, awarded the salvors £3,000 and costs.

SALVAGE—ACTION IN PERSONAM.

In *Five Steel Barges*, 15 P.D., 142, the President decided that an action for salvage will lie *in personam* against the owner of the salved vessel, though it may have been delivered up to third persons by the salvor, and the lien thereon lost.

PROBATE—TWO WILLS.

In re Callaway, 15 P.D., 147, a testator having estates in England and Africa, made two wills, each purporting to be independent of the other—the one disposing of his African, and the other of his English, estates; and it was held that probate might be granted of the English will alone, without requiring the African will to be brought in, but an affidavit exhibiting an attested copy of the latter was required to be filed, and a statement was inserted in the probate that such affidavit had been filed.

BUILDING SOCIETY—NOTICE OF WITHDRAWAL BY MEMBER.

Sibun v. *Pearce*, 44 Chy. D. 354 may be referred to as throwing light on the legal effect of a notice of withdrawal given by a member of a building Society, under the Rules of which Society it was provided that a member who had given notice of withdrawal should cease to take part in the affairs of the Society. The Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) affirming North, J., held that notwithstanding the Rule above referred to, that until the member who had given notice of withdrawal had been paid the amount due to him, he did not cease to be a member, and must be taken into account in ascertaining the majority of members required by statute to sign an instrument for the dissolution of the Society.

PARTIES—PATENT—RIGHT OF MORTGAGOR TO SUE FOR INFRINGEMENT.

Van Gelder v. *Sowerby Bridge Society*, 44 Chy. D., 374, was an action brought by a mortgagor of a patent to restrain an infringement. The mortgagee refused to be made a plaintiff and no application had been made to add him as a defendant. Kekewich, J., before whom the action came on for trial, dismissed the action on this preliminary objection, that the mortgagor could not maintain the action without going into the merits. But on appeal (Cotton, Lindley, and Bowen, L.JJ.) reversed his decision, holding that the mortgagor could maintain the action without the mortgagee being a party, and even if he were a necessary party, the action ought not to have been dismissed, but the Court should have added the mortgagee as a party.

STATUTE—CONSTRUCTION—"OWNER"—RECEIVER.

The short point in *Bacup* v. *Smith*, 44 Chy. D., 395, which Chitty, J. had to consider, was whether under The Public Health Act, 1875, a receiver was an "owner" within the meaning of the Act on whom a notice could be served by the urban authority, requiring him to level and make good the street on which the premises, of which he was receiver, fronted. This question he decided in the negative.

BUILDING SOCIETY—INVESTMENT—DIRECTORS, LIABILITIES OF, FOR LOSSES ON INVESTMENT.

Sheffield & South Yorkshire Permanent Building Society v. *Aizlewood* 44 Chy. D., 412, was an action brought by the liquidator of a building society against the directors of the society to make them responsible for losses occasioned by alleged improper investments. The case is reported at considerable length and involves numerous points which it is impossible here to refer to in detail, but the salient principle deducible from the case is that directors of a building society are not governed in sanctioning investments by the strict rules of law which regulate the duty of trustees, and unless the rules of the society expressly limit their power so to do, they may, in the exercise of the ordinary prudence of business men, invest on second mortgages, and having invested on a second mortgage they may also sanction further advances in order to protect the security, by redeeming the first mortgage, or by taking possession of, and working, the mortgaged property, and paying the rent to which it is subject; and that where an unauthorized security is included as a collateral security for a loan on a security which is authorized, the inclusion of the unauthorized security does not necessarily vitiate the loan altogether, but the propriety of the loan must be tested, as if no such unauthorized security had been included. But although the Court (Stirling, J.) came to this conclusion in favor of some of the defendants who appeared and defended the action, yet other defendants who made no defence were held liable because they had not denied the alleged impropriety of the investments in question.

COMPANY—ALLOTMENT OF SHARES—CONTRIBUTORY—DIRECTORS, APPOINTMENT OF.

In re Great Northern Salt & Chemical Works, 44 Chy. D., 472, was an application by a liquidator of a company in liquidation to settle one Colin Kennedy on the list of contributories. The application was resisted on the ground that there had been no valid appointment of directors, and therefore that there had been no allotment of shares, and that there was no evidence of any valid allotment. The case turns, to some extent, on the provisions of the English Companies Act, 1862. The points decided by Stirling, J. were, first,—that a memorandum signed by all the subscribers of the articles of association appointing directors was valid without their holding any meeting for the purpose. Second, that though the Act provides that, at the first ordinary meeting, the first named directors shall retire, yet where they did not retire, but a resolution was passed continuing them as directors, it was valid. Thirdly, that where four directors have resolved that two of them shall be a quorum, an allotment of shares made by

two of them was valid. As regards 300 shares in respect of which Kennedy was claimed to be liable, he admitted that he had applied for them, and had received an allotment of them. By the company's allotment book it appeared that the 300 shares were alloted to him on Sept. 20th, 1888, but no minutes were kept after August 20th, 1888. At the time the company was ordered to be wound up, Kennedy appeared on the register as holder of 500 shares. As Kennedy was a contributory in respect of 200 shares it was held that under section 154 of the Act, the allotment book was *prima facie* evidence against him of an allotment of the 300 shares, and, coupled with his admission, threw upon him the burden of proving that the allotment was invalid which he had not discharged.

WILL—CONSTRUCTION—LEGACY—GIFT TO NEXT OF KIN OF PERSON DEAD AT DATE OF WILL—PERIOD OF ASCERTAINMENT OF CLASS.

In re Rees, Williams v. *Davis* 44 Chy. D., 484, Stirling, J., was called on to construe a will whereby a testatrix, who was a widow, bequeathed her personal estate "to such person or persons as would have become entitled to my said husband's personal estate under and by virtue of the Statute of Distributions had he died intestate, and without leaving any widow him surviving." The statutory next of kin at the time of the husband's death were M. S. and R. R., who were both alive at the date of the will, but M. S. predeceased the testatrix. The learned judge came to the conclusion that the words "without having any widow him surviving" took the case out of the general rule laid down in *Wharton* v. *Barker*, 4 K. & J., 483, 502, and that the persons to take must be ascertained at the death of the husband, and consequently that the share of M. S. had lapsed.

VENDOR AND PURCHASER—MORTGAGEE SELLING UNDER POWER—OFFER TO CONCUR IN SALE BY PARTIES INTERESTED IN EQUITY OF REDEMPTION—WAIVER OF NOTICE.

In re Thompson and Holt, 44 Chy. D., 492, mortgagees had sold under a power of sale in their mortgage, but they had not given the notice required, but the sale was had with the approval of the parties interested in the equity of redemption, subject to a condition of sale which stipulated that the purchaser should accept a conveyance from the vendors without the concurrence of any other persons. Subsequently, upon an objection being raised by the purchaser to the right of the vendors to sell under the power without notice, the parties interested in the equity of redemption agreed to concur in the sale. Upon an application under *The Vendors and Purchasers Act* it was held by Kekewich, J., that the parties interested in the equity of redemption had in effect waived notice, but the order affirming the Chief Clerk's certificate in favor of the title was prefaced with a declaration that the owners of the equity of redemption were willing to concur in the sale, and that the vendors undertook, at their own expense, to procure them to join in the conveyance.

TRADE MARK—WORDS CALCULATED TO DECEIVE.

Turning now to the Appeal Cases we find in *Eno* v. *Dunn*, 15 App. Cas., 252, that the House of Lords have reversed the judgment of the Court of Appeal (41

Chy. D., 439, noted *ante* vol. 25, p. 465) and hold that The Patents Design and Trade Marks Act, 1883, confers upon the comptroller a discretion whether to register a trade mark or not, and that he ought to refuse to register where it is not clear that deception may not result. In the present case the respondent claimed to register as a trade mark "*Dunn's Fruit Salt Baking Powder.*" The appellant had, for many years, used the words "Fruit Salt" as a trade mark for a powder used in producing an effervescing drink, and opposed the application. The majority of the house (Lords Watson, Herschell, and Macnaghten) were of opinion on the evidence that the respondent's proposed trade mark was calculated to deceive, and registration ought to be refused, but from this view Lord Halsbury, L.C., and Lord Morris dissented.

SHARES—PLEDGE OF CERTIFICATES—BLANK INDORSEMENT—BROKERS—FRAUDULENT TRANSFER—ESTOPPEL.

In the *Colonial Bank* v. *Williams*, 15 App. Cas., 267, the House of Lords have unanimously affirmed the decision of the Court of Appeal, 38 Chy. D. 388, which we noted *ante* vol. 24, p 456. It may be remembered that the subject of the contest was certain shares in the New York Central Railway Co. The owner of these shares held certificates which stated that the shares were transferable in person or by attorney on the books of the Company only on the surrender and cancellation of the certificates by an indorsement thereof. The indorsement was in the form of a transfer for value received, blanks being left for the names of the transferor and transferee, with a power of attorney in blank to carry out the transfer. On the death of the owner his executors, in order that the shares might be registered in their own names, signed, as executors, the transfers on the back of each certificate without filling up the blanks, and sent the certificates to their broker, who fraudulently deposited the certificates with a bank, which took them *bona fide*, and without notice, as security for advances. The bank retained the certificates and took no steps to register the transfers. By the law of New York such a delivery of the certificates with signed transfers by the registered owner would estop him from setting up his title against a purchaser for value without notice. But neither on the New York nor London Stock Exchanges are such transfers signed by executors, treated as being in order, or as sufficient security for advances unless duly authenticated. Their Lordships determined that as all the dealings with the certificates had taken place in England, the rights of the parties were governed by English law, and that, as the conduct of the executors in signing and delivering the transfers was ambiguous, and according to the evidence was consistent with their intention to have themselves registered as owners, they were not estopped from setting up their title as against the bank, which ought to have enquired into the broker's authority.

Correspondence.

THE PARDONING POWER.

Editor of THE CANADA LAW JOURNAL:

The decision of the Chancery Division of the High Court of Justice in the case of *Canada* v. *Ontario*, upholding the constitutionality of the Ontario statute 51 Vic., cap. 5, enabling the Lieutenant-Governor to pardon offences committed under the laws of that province, is so important as to challenge criticism.

The first section of the statute which has been upheld, would seem to be a mere affirmance of the power given to a Lieutenant-Governor by section 65, of the B. N. A. Act, though the language is by no means the same, and there would appear no great objection to it from a Dominion point of view, especially as it is made, "subject always to the royal prerogative."

The difficulty which this Ontario statute presents arises from the second section, which provides that "the powers mentioned in the first section shall be deemed to include the power of remitting sentences for offences against the laws of this province." The question then is, was it competent for the Legislature of Ontario to confer the prerogative of pardoning the offences referred to upon the Lieutenant-Governor. The three judges of the Chancery Division of the High Court of Justice have held that it was, though the learned Chancellor was the only one who gave a written judgment on the subject. It might here be incidently remarked that the practice which some judges adopt of merely "concurring" in the written opinions of other judges instead of preparing written opinions for themselves, to borrow a remark made in Taylor on Evidence (section 25, latter part) as to a certain peculiar habit some judges have of addressing jurors, "though sanctioned by the practice of many able but somewhat lazy judges, is but little calculated to promote the attainment of truth."

The learned Chancellor in his polished judgment has allowed several important sections of the B. N. A. Act to escape his distinguished attention, and the result is both surprising and disappointing. If he had referred to section 12 with reference to the powers of a Governor-General, he would have seen that the same language was used with reference to the powers of His Excellency as are used in section 65 with reference to the powers of a Lieutenant-Governor, with this important addition, "as far as the same continue in existence," which is not to be found in section 65. Surely this 12th section means that the prerogative rights of the crown, which the Queen's representative had before Confederation been wont to enjoy and exercise under express grant from the crown, were to continue unimpaired, especially as they are re-granted to every succeeding Governor-General of Canada, so that section 65 is subordinate to section 12.

Now the power to pardon is a branch of the prerogative of the crown. It belongs to the king *de facto* and not to the king *de jure*. It is an uncommunicable prerogative except by grant from the crown: Chitty on Prerogative, 89-90; so that if there be no grant of prerogative there can be no prerogative to exer-

cise. The Chancellor substantially says it springs from the other powers conferred—practically that it is implied from those powers, but the above quotation from Chitty shows it is "incommunicable" except from special grant from the crown and therefore it cannot be implied.

But there is a further answer which arises from an indisputable proposition that the prerogatives of the crown cannot be taken away except by express words (*vide Cushing* v. *Dupuy*, Cartwright 252); and to this proposition, it will be seen that that part of the first section of the Act which we have quoted above, declaring that it is "subject always to the Royal prerogative, as heretofore," gives an unqualified support. But how is the expressed intention of that part of the section, so inconsistent with the other parts of the document, to be carried out? Mr. Mowat virtually says in one place, that the Royal prerogative of mercy is not to be extended towards the thousands of saloon-keepers who obtain their licenses from him, and therefore love him and keep his political commandments, but who nevertheless violate his criminal laws, yet that it is to be exercised. Was it intended that the latter part of the first section should only receive the distinguished consideration of saloon-keepers and not that of the court? To try and make the holders of Provincial licenses, in a sort of Masonic signal kind of way, understand—and a nod is as good as a wink to a Grit—that if they did not support him, he could not stoop to advise the exercise of the Royal clemency in his favor; but that, if they did, he might.

While giving Mr. Mowat time to answer this latter question, which he might find it difficult to do without "consideration," let us ask him how he can make the first and second sections of the Act harmonize? One section says the Act *is* to be subject to the Royal prerogative, another says that it is *not;* that, on the contrary, the Royal prerogative is to be exercised. How is that? Are they not contradictory? Is harmony, therefore, between them not quite impossible? Does not the question suggest that the statute attacked is a fair specimen of Mr. Mowat's usual and brilliant way of expressing himself in the Acts of his Legislature, and which make the laws of that body such light and entertaining literature for the young men of the profession?

But how is it that the learned Chancellor did not try to reconcile the last clause of this first section with the second section? Why did he not attempt an explanation of the paradox, or even say something about it? Was it not because, in view of the avowed objects of the Act, he considered it nonsense?

The court had less reason to avoid another limb or twig of the Act attempting to confer the powers in question upon the Lieutenant-Governor, viz.: that part which says, "over which the legislative authority of the Province extends." We venture to think the court had less reason to avoid that portion of the Act, because it is consistent with the purpose of the Act itself, and because at all events, Mr. Justice Ferguson, on the argument, thought it created formidable difficulty, and it was due to his dialectic wrestling with it that it should have been considered in the court.

There are, however, other parts of the Union Act which escaped the eagle eye of the learned Chancellor, and from which a strong argument against the

constitutionality of the local statute in question may be derived, viz.: sub-section 27 of section 91 and sub-section 14 of section 92, which both expressly and impliedly prohibit a local legislature from passing a criminal "procedure" Act. Conceding that a local legislature has power "to impose a fine, penalty or imprisonment, to enforce any provincial law" under sub-section 15 of section 92 which is, that it has power to that extent to create an offence or crime, as to which there can be no doubt, still, it is perfectly plain from the two sections quoted, that authority to provide "procedure" in such a case of the creation of a crime by a local legislature can only come from the Parliament of Canada.

This shows that a local legislature though it has power to impose a fine, etc., to enforce any provincial law, has not complete control over the subject involved in such a law, and that it was intended to restrict its functions within certain limitations. This was only natural in a legislative body which was to be only an arm of the body of Parliament, and excludes the idea that such an arm was to have all the force of the whole body. Powers or incidents, therefore, which might be inferred from, or regarded as attached to, a perfect body, cannot be said to spring from a mere part of the body, otherwise a part would be equal to the whole which would be absurd.

There is a great difference between the source from which the powers which were conferred upon Lieutenant-Governors before confederation were derived and that, from which such functionaries derive their powers under the B. N. A. Act, because, while in one case power was conferred by direct and special grant from the crown and unlimited, in the other it was not only not conferred by the crown, for the crown is not a part of the local legislature, but the power is expressly limited by the act of union. In other words the power in the former case is expressly given by grant and is unlimited; in the latter it is not given by grant from the crown at all, and is limited within certain defined boundaries by the Imperial Parliament. The authority, there, cited by the learned judge, viz.: *Re Bishop of Natal* v. *Crown* 3 Moo., N.S. 148, has no application to the Ontario statute at all.

Then, might it not be urged that the exercise of the royal clemency is a question of "procedure"? It was so treated in our former criminal procedure act, 29 and 30 Vict., cap. 28, section 126, and though it now forms part of cap. 181, entitled "An Act respecting Punishments, Pardons and Commutation of Sentences," it is still not a matter of "procedure"? Besides does this enactment, giving His Excellency exclusive power to exercise the prerogative of pardon, not show an express intention on the part of Her Majesty to prohibit its exercise by any other person?

Expressio unius est exclusio alterius.

But, without reference to these last points, is the conclusion to be drawn from the preceding reasoning not irresistible, that the local statute in question is clearly *ultra vires*, and that the judgment in question instead of having been given for the Province should have been given for the Dominion?

LEX.

Notes on Exchanges and Legal Scrap Book.

OUR JUDGES.—Is it possible that that swearing parson from North Carolina has succeeded to the editorial charge of the *American Law Review?* In the current number of the *Review* is an account of a British judge, who said to counsel who was cross-examining a witness as to his religious belief, and had asked him if he believed in God, "Who does?" and intimated pretty clearly that he did not. This incident, says the *Review*, has caused some pious person "spasms in the bowels." This seems a rather coarse way of putting it, but perhaps the *Review* writer had Judas in his mind. We do not wonder that people were shocked by the incident. It seems shocking to us that a judge should not believe in God, and still more that he should parade it. In our opinion, no man is fit to be a judge who does not believe in God. How can a man so destitute of reason as to deny the existence of God be qualified to pronounce the law, which has been said to be "the perfection of reason"? We do not insist that a judge should believe in a devil or a devilish God, but if we had a suit in court we should much prefer to have it tried by a judge who believes in a beneficent God, and in some reasonable way holds himself accountable to Him. Probably there are very few atheists who would not prefer to be tried by a judge who acknowledges a supreme ruler. Even the worst criminals would prefer to be tried by a magistrate who bows to a higher power than man. What a farce it would be to allow a judge who does not believe in God to shut a man up in prison for years for perjury! The faculty of judging is a truly divine attribute, and when a human being exercises it he comes nearest to the functions of the Judge of all the earth. —*Albany Law Journal.*

A NEW LAW FOR BOOK BUYERS.—The amazing amount of litigation of late years, caused by the advent of the individual commonly known as the "book-fiend," has become such a remarkable feature of Australian social life that in New South Wales a Bill has been introduced into the Legislative Council to restrict, or rather to define, the nature and form of the contract for the purchase of books in parts that are to be delivered. At present, of course, buying a book or illustrated series of works of whatever description is subject only to the ordinary laws of contract and evidence. The result has been in effect calamitous in many cases to alleged buyers, because there is not the slightest doubt in the minds of most practising lawyers that a vast amonnt of perjury and forgery has been committed in reference to these matters during the last few years, to say nothing of the expense incurred by unfortunate litigants. It is the weight of such considerations as these that has stirred legislation in New South Wales to seek for a remedy and preventive; and the problem is how, without unnecessarily limiting the ordinary freedom of contract, safeguards may be raised for the purchaser against the wiles or the fraud of the canvasser and his satellites. Dr. Creed, who has introduced the Bill in New South Wales, proposes to do this by having a peculiar form of contract, with certain portions of it to be written in red ink and

so forth; arguing, doubtless, that the unusual appearance of the document will be both a warning to the unwary, and a material help to jog the memory of the purchaser when brought to Court, or threatened with legal proceedings. We think this well enough as far as it goes, but we contend it does not go far enough, as it does not really grapple with one of the most characteristic evils of the book canvassers' business, viz., the risk of forgery of signature which is incurred by the alleged purchaser. Given as these orders for books often are, in lonely places in the country, by persons not fairly matched in dealing capacity with the over-persuasive book fiend, nothing would be easier than to have these contracts with their colored inks prepared for proof as is done now-a-days. These would simply be a substitution for our old friend the indelible (so called) blue or purple pencil, a form of contract which would have the function of law, and would therefore probably be all the harsher in its effect against the alleged buyer. We think what is wanted is the protection of the buyer by independent evidence outside the contract; that is the evidence of witnesses who were present at its formation and who can swear that the signature is genuine. To accomplish this we would recommend the insertion of a provision in the proposed Act which would insure the presence of witnesses. If, for instance, it were compulsory, in every contract of this kind, that it should be signed in the presence of a witness who should also sign it at the same time, perfect safety against fraud would be insured, especially if it were a condition that the witness should not be an assistant of the plaintiff or of the canvasser. The presence of a little flesh and blood like this is worth fifty conditions as to red ink or the particular size and shape of the paper on which the contract is to be made.

There is another, and perhaps more important, point to be considered, however, and that is whether contracts of this kind which involve the delivery of a book or work of art (so called) at a future date in parts should not be decreed to be void if the terms are not fulfilled to the letter, in other words that time should be of the essence of the contract, and that a breach in that respect should make the whole voidable. A buyer very often contracts that certain numbers should be delivered, and paid for, at regular intervals, and he finds after a lapse of time that a pile of volumes are delivered at one blow, and a demand made for the price, which was manifestly not the intention of the contract at the date of its making. These suggestions are apart altogether from the larger questions as to whether the practice of book-hawking ought not to be forbidden altogether. When we inquire into the merits of the bargain and seek to find what is the worth of volumes or pictures which is being proffered, we discover that it is generally grossly inadequate to the price asked. Perhaps this is an evil inevitable under a system of credit, and under the present composition of human nature. While on the one hand the public should be protected against fraud, on the other the practice of spoon-feeding adults by grandmotherly legislation may create greater evils than those it is proposed to cure. Perhaps a reasonable solution of the credit system as applied to book-canvassing would be a declaration by Act of Parliament that all contracts of the sort which were not to be completed and were not actually completed within a year should be voidable at the option of the pur-

chaser. This qualification of contracts would pretty effectually stop the present iniquitous system of hawking about rubbish under the name of literature and art at a high price.—*The Australian Law Times.*

CONTEMPT OF COURT BY NEWSPAPERS.—Owing to the recent decision in *O'Shea* v. *O'Shea and Parnell* public attention has been much called to the law of contempt of Court by newspapers pending the hearing of legal proceedings. In that case, it will be recollected, the printer and the publisher of *The Freeman's Journal* was fined £100 and costs for contempt of Court, viz.: the publication in that paper of an article commenting on the above suit before it came on for hearing. Another similar motion was brought the other day in Dublin against *The Dublin Evening Mail* in connection with the yet unheard case of *Lynch* v. *Macan*. So, too, in *Peters* v. *Bradlaugh* (4 Times L. R. 414), the editor of *St. Stephen's Review*, was fined £20 and all costs for inserting some parapraphs in that paper calculated to prejudice the defendant in the conduct of his defence. Had he not given an ample apology the fine would probably have been much heavier. Political motives were held—and rightly held—in that case to be no justification, but quite the reverse. Lord Hardwicke, C., in 1742, laid down a classification of contempt of Court which has always been adopted. One kind of contempt consists in scandalising the Court itself; secondly, in abusing parties who are concerned in causes in the Court; thirdly, in prejudicing mankind against persons before the cause is heard. There cannot, says he, be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters. It is necessary, therefore—to constitute contempt of Court—that the contempt should be in court, or that it should be contempt of a Judge sitting in Court. All that is necessary is that it should be a contemptuous interference with judicial proceedings in which a Judge is acting as a judicial officer. It is a contempt, not of the Judge, but of the High Court, as a Judge of which he is acting. The principle is equally applicable to a Master of the Court exercising judicial functions. Distance, in point of time or space, should be a matter taken into consideration when determining whether there has been an interference with the course of justice: *per* Lord Esher, M.R., in *Re Johnson*, 20 Q. B. D., 71. So again, "The object of the discipline enforced by the Court in case of contempt is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice, and that is the question in each case": *per* Bowen, L.J., in *Helmore* v. *Smith*, 35 Chy.D., 455. It would not, as a rule, be worth the while of a Judge to take any steps, as far as his personal dignity is concerned, but attempts are often made by persons to interfere with the ordinary course of justice. Sometimes, though rarely, it is done by an attack on the Judge, sometimes by trying to induce him to change his opinion by flattery or bribery. The most common mode (of which we have recently seen only too many instances in Ireland) is by attacking, deterring, or frightening witnesses. Another way is by commenting, and thus appealing to the public by

statements made *en parte* to prejudice the case without even hearing the other side. The Court has a summary jurisdiction to interfere and prevent this being done (*Skipworth's case*, L. R. 9 Q. B., 232; *Carleton's case*, 2 My. & Cr., 316); and we purpose reviewing the somewhat numerous and important decisions bearing on the subject. Newspapers frequently commit technical contempt of Court by publishing reviews or comments on judicial proceedings whilst they are *sub judice*. It has often been laid down that a publication before a cause has begun, if tending to prejudice the parties, is contempt, and renders the publisher liable to committal: *Tichborne* v. *Tichborne*, 39 L. J., Ch. 398; *Macartney* v. *Corry*, 9 Ir. R. C. L., 242; *Reg.* v. *Parnell*, 14 Cox, C. C., 474; *Hunt* v. *Clarke*, 61 L. T., 343. The ground of the contempt is that the report may prejudice the trial: *Daw* v. *Eley*, 7 L. R., Ex. 55; *Tichborne* v. *Mostyn*, ib. If the minds of either the judge or the jury who are to try the case, or the witnesses in it (*Guilding* v. *Mosel*, 4 I. L. R., 198), might have been injuriously affected by it, the publication is a contempt. The reason for committing persons thus acting for contempt is not merely for the sake of the party injured by the publication, but for the sake of the public proceedings in the Court, to hinder advertisements or publications tending to prepossess people as to the proceedings in the Court: *Anon.* 2 Ves. sen., 520. It is for the protection of the Court itself and not owing to the offences against any given individuals. Malins, V. C., says: "It appears to me that whenever a newspaper, either on its own motion or at the instigation of others, publishes the proceedings in a case before the hearing, it tends to prejudice the minds of the public." "As regards intention to prejudice, you can only judge of men's intentions by their acts": *The Cheltenham & S. Ry. C. Co.*, L. R. 8 Eq., 583. But surely it is not to be inferred from this that *any* mention by a newspaper of a cause about to be heard or *any* comment not malevolent, untrue or libellous, made before the hearing, is, in itself, a contempt; unless the publication really interferes with the course of justice the Court ought not to interfere: *Plating Company* v. *Farquharson*, 17 Chy.D., 49; *Vernon* v. *Vernon*, 40 L. J., Ch. 118. The Court will not restrain even the publication of every unfair report purporting to represent what takes place in open Court: *Brook* v. *Evans*, 29 L. J., Ch. 616. Cotton, L. J., thus lays down the principles which should regulate applications to commit newspapers for contempt: "There should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the Court in order to enable justice to be duly and properly administered without any interpretation or interference. This is what we have to consider. The question is not whether, technically, a contempt has been committed, but whether it is of such a nature as to justify and require the Court to interfere": *Hunt* v. *Clarke*, *supra*. The exercise of this jurisdiction to commit should be most jealously and carefully watched, and exercised with the greatest reluctance and the greatest anxiety on the part of the Judges to see whether there is no other mode not open to the objection of arbitrariness, and which cannot be brought to bear upon the subject: *Re Clements*, 46 L. J., Ch. 375. The reason, says Fry, L. J., why the Court interferes in a summary manner when such prejudice is created, is the natural tendency to pre-

vent a fair trial, and the very fact that we have a lay element in the jury renders it all the more incumbent upon public writers not to attempt by innuendo or in any manner whatever to influence the mind of the public before the trial takes place. But on the other hand, there is an anxiety on the part of the Court not to encourage trifling and useless applications, and not to assist applications made for summary jurisdiction when there are other and less summary modes of relief. If, therefore, the motion for attachment is not a *bona fide* one, but merely seeks to mulct the defendant in costs, and the publication is not calculated to influence or substantially prejudice the Court or jury in its decision, an order to commit will not be granted.—*Irish Law Times.*

PAYEE'S METHOD OF REDRESS IN CASES OF FORGERY.—The following interesting communication from a New York city reader has been received:

"Having recently had my attention called to a method of procedure in obtaining redress in a class of cases only of too frequent occurrence in banking circles, where drafts are stolen and payment obtained upon forged indorsements, I take the liberty of bringing it to your notice, with the view that if it impresses you as of sufficient interest, you might give it attention in your valuable journal. I am inclined to believe that it will so impress you, judging from the surprise manifested by bank officers and even by their attorneys, when first made known to them by a practical illustration. Not being versed in legal phraseology, perhaps I can more clearly explain myself and the method of procedure to which I refer by citing an imaginary transaction, or series of transactions, involving the method referred to, and being a first example I give it very fully.

"A. is a merchant of this city, selling goods through the various states, receiving payment in drafts drawn upon various New York city banks, payable to or indorsed to his order, purchased by his customers from their local banks for remittance. A.'s trusted employee, having access to the mail, purloins his draft or drafts, and, forging his indorsement, obtains payment from the bank upon which they are drawn, either directly or indirectly. Sooner or later discovery follows. How shall A. obtain redress? To write to his customers, notifying them of his loss, with request that they seek redress from the parties from whom they purchased the drafts, who in their turn would seek redress from their New York correspondents, was and is, if I mistake not, the usual custom, entailing a long and tedious correspondence if nothing more, especially when the drafts have passed through several hands.

"Recently, in certain cases of this character which have come under my observation, a different method of procedure has been followed, whether new and novel, I am not competent to say. Certainly it so appeared to me, and I should judge it so appeared to others from the astonishment it provoked; astonishment not at the nature of the fraud, which is common enough, but at the method by which redress was sought, and at the quarter from which it proceeded.

"In these recent cases, of which A.'s is an example, the following was the course pursued: A., instead of reaching through his distant customers to obtain

redress and, of course, awaiting the success of their efforts in a like pursuit, obtains through them, or the distant banks, sellers of the drafts, the returned cancelled vouchers, learns from an inspection of them the names of the banks collecting from the New York bank upon which they are drawn, they being likewise almost invariably banks of this city, and then makes his demand direct upon the latter for unlawful collection and conversion, thus saving the delay and trouble of the old method first described, and greatly narrowing the field of battle and concentrating the opposing forces. In the instance last brought to my knowledge, wherein a large number of drafts were included, drawn upon and collected by various different banks—the demand for redress being made by what I have termed the new method—the effect produced upon the minds of the officers of the banks was invariably one of astonishment, mingled with amusement—not at the nature, but at the source or position of the party making the demand.

"To return to A.: applying draft in hand for redress, he is met with a smile or frown of superior wisdom, depending upon the amount of money involved, and politely informed that he is not known in the matter, and that the only one in a position to call the bank collecting the draft to account is the bank upon which it is drawn, and that he must seek relief elsewhere. Mr. A. replies: 'You may not know me in the matter, but I know that you have unlawfully collected and converted to your own use a draft belonging to me, bearing a forged indorsement; and pay you will, or I sue.' B., the bank president, is puzzled. He little relishes the accusations of forgery and unlawful collection and conversion, and yet the facts as stated carry a strong flavor of truth that is alarming. 'Hold on, my dear friend,' says B., maintaining his official dignity; 'if the indorsement is a forgery, as you state, of course we will have to pay sooner or later, but you entirely mistake the way to go about it, don't cher know,' etc., etc.

"A consultation of lawyers of A. and B. follows, preparation of affidavit, perhaps, and reference to recent cases such as *Robinson* v. *Chemical Bank*, 86 N. Y., p. 404, and *People* v. *Bank of N. America*, 75 N. Y., p. 547, is made, and, presto! a satisfactory conclusion is reached between A. and B.—a conclusion satisfactory to A. because speedy redress follows, and satisfactory to B. because he would have had to pay, in any event, ultimately; and, if so, the sooner he is in position to hit back at his depositor or the party from whom he received the spurious draft, the better.

"I have been thus prolix because I am unaccustomed to boil down my words in lawyers' style, but if I have succeeded in adducing anything new and interesting to some of your readers, my success in so doing—otherwise my good intentions—must be my apology."

The method of procedure thus disclosed is interesting, and is an application of the "short-cut" principle for which the American people are famous. In cases of loss, before indorsement, by a payee or subsequent indorsee, and collection through forgery, a frequent method of redress, as shown by our contributor, is for the payee or indorsee to look to antecedent parties for reimbursement, they in turn coming down on the paying bank, and the latter seeking to recover from

the receiving bank in case the paper has been paid to such bank, and not directly to the forger. This old method, as he terms it, is tedious and circuitous, taking a long time to reach the party finally liable; and hence the adoption in New York of a new method of procedure whereby the payee or indorsee proceeds direct to the fountain of ultimate liability, and is enabled to immediately quench his thirst for redress.

But we are sorry to disappoint our contributor by saying that the honor for the invention of this new process rests not with New York, but that a man in Indiana named *Holtsclaw* appears on record as having hit upon about the same thing. *Indiana Nat. Bank* v. *Holtsclaw*, 98 Ind., 85.

Holtsclaw was payee of a draft. His name was forged, and Indiana National Bank purchased the draft from the forger. Subsequently it collected it from the paying bank. Holtsclaw brought suit against the Indiana National Bank and was allowed to recover the amount the latter had collected on the draft. The case was a little different from the case put; nevertheless, it presents the idea of feature of the payee looking directly to the collecting bank for redress. Holtsclaw did not have possession of the draft when he brought suit, but had previously demanded it. Furthermore, Holtsclaw had originally sued both check drawer and bank, but amended by dropping the check drawer and continuing against the bank.

Upon this subject of payee's method of redress, the suggestion may be presented of still a third method, also "short cut," which in certain cases might prevail, namely, remedy by the payee or indorsee against the paying bank to obtain a second payment. Of course, the new method suggested by our contributor would only apply to those cases where a check or draft had been collected through the mediumship of a collecting bank ultimately liable to refund. Where payment has been made by the drawee to the forger direct in a case where it is concededly ultimately liable, the expediency of a second payment to the true owner, thus avoiding the circuity of action heretofore described, is apparent. But if the paying bank refuses, has the payee any legal right to demand payment?

There is a conflict in the laws of many states whether the holder of a check or draft before acceptance has any right of action against the bank thereon. In some states he has; in others, he has not. In those states where the holder of an unaccepted check has such a right of action, this method of procedure would be open to him. But in states where the contrary is held, such as New York, Pennsylvania, and many others, what would be his rights after loss, forged indorsement, and payment to the forger?

The cases on this point have been collected and the question discussed in an article in volume 2, page 228, of this publication, under the title "Liability to true owner after payment of check to wrong party," and the prevailing rule—Tennessee contra—wherever the holder of a check or draft cannot sue the bank before acceptance. is shown to be that the act of payment to a wrong party does not constitute an acceptance by the bank entitling the real owner to sue. Ordinarily, therefore, in such jurisdictions, the payee would not have such a right of action. But, nevertheless, circumstances might be such that he could maintain the action, and we will cite *Graves* v. *The American Exchange Bank*, 17 N. Y., 205, as an instance. There the drawee bank had paid a draft on the forgery of the payee's signature. The real payee demanded the draft from the paying bank. It refused. He then brought suit for the *conversion of the draft*, was adjudged the true owner entitled to its possession, and the bank having refused to give it up, was held liable for its conversion.

But suppose the bank had given it up, or had previously surrendered it to the drawer. In such case, under the law previously announced, the payee would probably have no legal remedy against the bank.—*Banking Law Journal.*

DIARY FOR OCTOBER.

1. Wed.....County Court Non-Jury Sittings except in York. William D. Powell, 5th C.J. of Q. B., 1816.
5. Sun.....*18th Sunday after Trinity.*
6. Mon.....County Court Sittings for Motions, except in York.
7. Tues.....Henry Alcock, 3rd C.J. of Q.B., 1802. R. A. Harrison, 11th C.J. of Q.B., 1875.
8. Wed.....Sir W. B. Richards, C.J. Sup. Ct., 1875.
11. Sat.....County Court Sittings for Motions, except in York, end. Columbus discovered America 1492.
12. Sun.....*19th Sunday after Trinity.* Battle of Queenston, 1812.
13. Mon.....County Court Sittings for Motions in York begin. Sur. Ct. Sittings
15. Wed.....English law introduced into Upper Canada, 1791.
18. Sat.....St. Luke. County Court Sittings for Motions in York end.
19. Sun.....*20th Sunday after Trinity.*
20. Mon.....County Court Non-Jury Sittings in York. Last day for Law Society notices.
21. Tues.....Battle of Trafalgar, 1805.
22. Wed.....Supreme Court of Canada sits.
24. Thur.....Lord Lansdowne, Governor-General, 1883.
25. Fri.....Sir. J. H. Craig, Governor-General, 1807.
26. Sun.....*21st Sunday after Trinity.*
27. Mon.....Hon. C. S. Patterson, app. Judge of Sup. Ct., 1888. Jas. Maclennan, app. Judge of Ct. of Appeal, 1888.
28. Tues.....Supreme Courts sits. St. Simon and St. Jude.
29. Wed.....Battle of Fort Erie, 1813.
31. Fri.....All Hallows' Eve.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ont.] [March 10.

O'KEEFE v. CURRAN.

Partnership—Terms of—Breach of conditions—Expulsion of one partner—Notice—Waiver—Good-will.

Partnership articles, for a firm of three persons, provided that if any partner was guilty of breaking certain conditions of the terms of partnership the others could compel him to retire by giving three months' notice of their intention so to do, and a partner so retiring should forfeit his claim to a share of the good-will of the business. One of the partners having broken one of said conditions the others verbally notified him that he must leave the firm; and to avoid publicity, he consented to an immediate dissolution, which was advertised as "a dissolution by mutual consent." After the dissolution the retiring partner made an assignment of his good-will and interest in the business, and the assignee brought an action against the remaining partners for the value of the same.

Held, reversing the judgment of the court below, FOURNIER, J., dissenting, that the action of the defendant in advertising that the dissolution was "by mutual consent" did not preclude them from showing that it took place in consequence of the misconduct of the retiring partner; that such advertisement could not be invoked to support a claim which could have been made if the dissolution had really been by mutual arrangement; that the forfeiture of the good-will was caused by the improper conduct which led to the expulsion of the partner in fault and not by the mode in which such expulsion was effected; and, therefore, the want of notice required by the articles of intention to expel could not be relied on as taking the retirement out of that provision of the articles by which the good-will was forfeited.

Appeal allowed with costs.

Christopher Robinson, Q.C., and *Moss*, Q.C., for the appellants.

McCarthy, Q.C., and *Worrell*, for the respondents.

N.B.] [March 10.

O'BRIEN *v.* O'BRIEN.

Partnership—Action by partners—Set-off—Dissolution—Notice to defendant.

An action was brought by three partners in the lumbering business for the amounts due from the defendant, for whom they had been getting out lumber during the years 1880, 1881, and 1882, as appeared by the accounts made out by the defendant at the end of each year. To this action a set-off was pleaded, the greater part of which was for goods supplied after the year 1882, and the plaintiffs contended that such goods were supplied to one of them only; that the partnership had been previously dissolved and the other plaintiffs had nothing to do with the dealings connected with the set off. The issues involved in the action were, first, whether or not the partnership had been dissolved before the goods covered by the set-off were supplied by the defendant. Secondly, if it had been so dissolved, whether or not the defendant had notice of the dissolution.

On the trial the plaintiffs made a *prima facie* case by proving the accounts of the defendants at the end of each year, showing the several balances claimed in the action, and after evidence was taken on the set-off, the plaintiffs caused the books of defendant to be procured to show that the goods supplied after 1882 were charged to P. B., whereas during the previous years the charges were to P. B. & Bros., the name of the plaintiffs' firm. To rebut

this the defendant was allowed, subject to objection, to show that entries had sometimes been made during the existence of the partnership against P. B., and the judge in charging the jury told them that they could inspect the books and see how they were kept for both periods, and see if there was any difference between the years 1880-83 and the subsequent years.

The jury found the issue in favor of the defendant, who obtained a verdict on his set-off. This was affirmed by the full Court, subject, however, to the defendant consenting to his verdict being reduced by deduction of an amount as to which the trial judge had certified there was not satisfactory evidence, and unless defendant consented to such reduction a new trial would be ordered. On appeal from this decision to the Supreme Court of Canada,

Held, STRONG and GWYNNE, JJ., dissenting, that there was no misdirection in the trial judge charging the jury as he did; that the jury having on the evidence found the facts in favor of defendant and their finding having been confirmed by the full Court, it should not be disturbed; and that substantial justice was done by the reduction of defendant's damages.

Held, per GWYNNE, J., that there should be a new trial; that the evidence from defendant's books, which was objected to, should not have been received; and that the course pursued at the trial, and by the learned judge in his charge, seemed based on the assumption that because the plaintiffs had at one time been partners in special transactions, they should be deemed to be partners subsequently in an entirely different business, which assumption was utterly without warrant.

Held, also, per GWYNNE, J., that the Court had no right to compel the defendant to consent to a reduction of damages, as such a course has never been pursued except in an action for unliquidated damages where the sum awarded was considered excessive.

Appeal dismissed with costs.

G. F. Gregory for the appellants.

Gilbert, Q.C., for the respondent.

N.B.] [March 10.

SEARS *v.* CITY OF ST. JOHN.

Lessor and lessee—Covenant for renewal—Option of lessor—Second term—Possession by lessee after expiration of term—Effect of—Specific performance.

A lease for a term of years provided that when the term expired any buildings or improvements erected by the lessee should be valued, and it should be optional with the lessors either to pay for the same or continue the lease for a further term of like duration. After the term expired the lessees remained in possession for some years, when a new indenture was executed which recited the provisions of the original lease, and after a declaration that the lessors had agreed to continue and extend the same for a further term of fourteen years from the end of the term granted thereby, at the same rent and *under the like covenants, conditions, and agreements* as were expressed and contained in the said recited indenture of lease, and that the lessees had agreed to accept the same, it proceeded to grant the further term. This last mentioned indenture contained no independent covenant for renewal. After the second term expired the lessees continued in possession, and paid rent for one year, when they notified the lessors of their intention to abandon the premises. The lessors refused to accept the surrender, and, after demand of further rent, and tender for execution of an indenture granting a further term, they brought suit for specific performance of the agreement implied in the original lease for renewal of the second term at their option.

Held, affirming the judgment of the Court below, RITCHIE, C.J., and TASCHEREAU, J., dissenting, that the lessees were not entitled to a decree for specific performance.

Held, per GWYNNE, J., that the provision on the second indenture, granting a renewal under the like covenants, conditions, and agreements, as were contained in the original lease, did not operate to incorporate in said indenture the clause for renewal in said lease, which should have been expressed in an independent covenant.

Per GWYNNE, J., PATTERSON, J., hesitante, that assuming the renewal clause was incorporated in the second indenture, the lessees could not be compelled to accept a renewal at the option of the lessors, there being no mutual agreement therefor; if they could, the clause would operate to make the lease perpetual at the will of the lessors.

Per GWYNNE and PATTERSON, JJ., that the option of the lessors could only be exercised in case there were buildings to be valued erected during the term granted by the instrument con-

taining such clause ; and if the second indenture was subject to renewal, the clause had no effect as there were no buildings erected during the second term.

Per GWYNNE, J., the renewal clause was inoperative under the Statute of Frauds, which makes leases for three years and upwards, not in writing, to have the effect of estates at will only, and consequently there could be no second term of fourteen years granted, except by a second lease executed and signed by the lessors.

Per RITCHIE, C.J., and TASCHEREAU, J., that the occupation by the lessees after the t rm expired must be held to have been under the lease and to signify an intention on the part of the lessees to accept a renewal for a further term as the lease provided.

Appeal dismissed with costs.

Gilbert, Q.C., and *Sturdee*, for the appellant.

I. Allen Jack for the respondent.

N.B.] [March 10.

VAUGHAN *v.* WOOD.

Dog—Injury committed by—Ownership—Scienter—Evidence for jury.

W. brought an action for injuries to her daughter, committed by a dog, owned or harbored by the defendant, V. The defence was that V. did not own the dog, and had no knowledge that he was vicious. On the trial it was shown that the dog was formerly owned by a man in V.'s employ, who lived and kept the dog at V.'s house. When this man went away from the place, he left the dog behind with V.'s son, to be kept until sent for ; and afterwards the dog lived at the house, going every day to V.'s place of business with him, or his son, who assisted in the business. The savage disposition of the dog on two occasions was sworn to, V. being present at one, and his son at the other. V. swore that he knew nothing about the dog being left by the owner with his son, until he heard it at the trial. The trial judge ordered a non-suit, which was set aside by the full Court, and a new trial ordered.

Held, affirming the judgment of the Court below, that there was ample evidence for the jury that V. harbored the dog, with knowledge of its vicious propensities, and the non-suit was rightly set aside.

Appeal dismissed with costs.

Weldon, Q.C., for the appellant.

Alward for the respondent.

N.B.] [June 12.

FERGUSON *v.* TROOP.

Lessor and lessee—Eviction—Entry by lessor to repair—Intent — Suspension of rent—Construction of lease.

A lease of business premises provided that the lessor could enter upon the premises for the purpose of making certain repairs and alterations at any time within two months after the beginning of the term, but not after, except with the consent of the lessee. An action for rent under the lease was resisted, on the ground that the lessor had been in possession of part of the premises after the specified time, without the necessary consent, whereby the tenant had been deprived of the beneficial use of the property, and had been evicted therefrom. On the trial, the jury found that no consent had been given by the lessee for such occupation, and that the lessee had no beneficial use of the premises while it lasted.

Held, per TASCHEREAU, GWYNNE, and PATTERSON, JJ., reversing the judgment of the Court below, that the evidence did not justify the finding of no assent ; that an express consent was not required, but it could be inferred from the conduct of the tenant ; and there being no limitation of time for the completion of the repairs, the limitation being confined to the entry, and there being evidence that the lessee acquiesced in the occupation by the lessor after the time limited, the plea of eviction was no proved.

Held, per RITCHIE, C.J., and STRONG, J., approving the judgment of the Court below, that the jury having negatived consent by the lessee, and having found that the interference with the enjoyment by the tenant of the premises was of a grave and permanent character, the rent was suspended in consequence thereof.

Held, per PATTERSON, J., that interference by a landlord with his tenant's enjoyment of demised premises, even to the extent of depriving the tenant of the use of a portion, does not necessarily work an eviction ; a tenant may be deprived of the beneficial occupation of the premises for part of his term by an act of the landlord which is wrongful as against him, but unless the act was done with the intention of producing that result it would not work an eviction.

Appeal allowed with costs.

Gilbert, Q.C., for the appellant.

Weldon, Q.C., for the respondent.

Ont.] [June 12.

HISLOP *v.* TOWNSHIP OF MCGILLIVRAY.

Municipality—Duty of—Road allowance—Obligation to open—Substitution in lieu thereof—Jurisdiction of court over municipality—C.S.U.C., c. 54.

H. was owner of, and resided on, a lot in the eight concession of the Township of McGillivray, and under the provisions of C.S.U.C., c. 54, an allowance was granted by the township for a road in front of said lot. This road was, however, never opened, owing to the difficulties caused by the formation of the land, and a by-law was passed authorizing a new road in substitution thereof. Some years after H. brought a suit to compel the township to open the original road, or, in the alternative, to provide him with access to his lot, and also to keep said road in repair, and pay damages for injuries caused by the road not having been opened.

Held, affirming the judgment of the court below, that the provisions of the act C.S.U.C., c. 54, requiring a township to maintain and keep in repair roads, etc., and prohibiting the closing or alteration of roads, only applied to roads which have been formally opened and used, and not to those which a township, in its discretion, has considered it inadvisable to open.

Held, also, that the courts of Ontario have no jurisdiction to compel a municipality, at the suit of a private individual, to open an original road allowance and make it fit for public travel.

Appeal dismissed with costs.

R. M. Meredith for the appellant.

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

Ont.] [June 12.

GRANT *v.* BRITISH CANADIAN LUMBER CO.

Action for discovery—Possession of company's books—Evidence.

G. was for some time manager of the British Canadian Lumber Co., and his services were dispensed with by written notice which directed him to hand over the books, etc., to a person named. He demanded an audit of the books, which was begun and partially finished, and while the books were, presumably, in an office formerly occupied by G. as such manager, he ejected from said office a liquidator of the company, which had become insolvent. In an action against G. to compel him to hand over the books or make discovery as to where they were, he alleged that they were not in his possession, or under his control. The trial judge held that they had been in his possession when the liquidator was ejected from the office and that the defence was not made out. He made an order for discovery and his judgment was affirmed by the Divisional Court and the Court of Appeal. On appeal to the Supreme Court of Canada,

Held, affirming the judgments of the courts below, that the judgment of the trial judge, who saw and heard the witnesses, affirmed as it was by two courts, should not be interfered with, only matters of fact being in issue.

Appeal dismissed with costs.

Hoyles, Q.C., and *Wild*, for the appellant.

W. Cassels, Q.C., and *Gordon*, for the respondents.

Ont.] [June 12.

TITUS *v.* COLVILLE.

Solicitor—Action by—Professional services—Election petition—Evidence—Questions of fact.

T., a solicitor, brought an action for professional services rendered in the conduct of a petition against the return of a member of the legislative assembly of Ontario. The defendants in the action were respectively the president, secretary, and treasurer of the Liberal-Conservative Association of the county returning the member whose election was protested. In his statement of claim T. alleged that at a meeting of the association when it was determined to protest the return, a resolution was passed appointing him solicitor to carry on the proceedings, and that defendants retained and employed him as such solicitor. The defence to the action was that defendants never retained T. as alleged, but that he had volunteered to act as such, in the said proceedings without any remuneration. The action was tried without a jury and the trial judge found that there was no evidence of any resolution appointing T. solicitor, or of any retainer of T. by defendants as solicitor in said proceedings, and he gave judgment for the defendants. The Divisional Court reversed this judgment, holding that the retainer was proved; but the Court of Appeal, in turn, reversed the judgment of the Divisional Court and restored that of the trial judge. On appeal to the Supreme Court of Canada,

Held, affirming the judgment of the Court of Appeal, that the only matters in issue being matters of fact which were found in favor of defendants by the trial judge, who saw and heard the witnesses, and was the most competent person to decide these questions, and his judgment having been affirmed by the Court of Appeal, it should not be disturbed by this Court.

Appeal dismissed with costs.

F. E. Titus for the appellant.

Northrop for the respondent.

SUPREME COURT OF JUCICATURE FOR ONTARIO.

COURT OF APPEAL.

From C.P.D.] [June 28.

ANDERSON *v.* CANADIAN PACIFIC RY. CO.

Railways—Destruction of luggage—Act of God—Limitation of action—R.S.C., c. 109, s. 27.

This was an appeal by the defendants from the judgment of the Common Pleas Division, reported 17 O.R., 747, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 15th of May, 1890.

The appeal was limited to two grounds: (1) That the accident was caused by the act of God, or *vis major*; (2) that the defendants were protected by the limitation clause, R.S.C., c. 109, s. 27, the accident having taken place more than six months before action.

As to the first point the Court agreed with the Court below, and thought that the finding of the jury was fully justified by the evidence. Upon the second point the appellants also failed, BURTON and MACLENNAN, JJ.A., adhering to the opinion expressed by them in *McArthur* v. *The Northern and Pacific Junction Ry. Co.*, 17 O.R., 88, that the section was *ultra vires*, and HAGARTY, C.J.O., and OSLER, J.A., thinking that it did not apply to an action of contract, though not fully discussing the question, as such discussion was unnecessary.

Appeal dismissed with costs.

Robinson, Q.C., and *G. T. Blackstock*, for the appellants.

W. Nesbitt and *A. W. Aytoun-Finlay* for the respondent.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Ct.] [June 27.

BRIGGS *v.* SEMMENS.

Way—Severance of tenement by devise—Reasonable enjoyment of parts devised—Necessary rights of way.

Upon the severance of a tenement by devise into separate parts, not only do rights of way of strict necessity pass, but also rights of way necessary for the reasonable enjoyment of the parts devised, and which had been and were up to the time of the devise used by the owner o the entirety for the benefit of such parts.

Moss, Q.C., and *Lynch-Staunton*, for the plaintiff.

J. W. Nesbitt and *M. Malone* for the defendant McDonough.

McBrayne for defendant, Semmens.

Divisional Court.] [June 27

BLACK *v.* ONTARIO WHEEL CO.

Master and servant—Accident to servant—Fall of elevator—Negligence—Master's knowledge of defects—Want of reasonable care—Common law liability—Workmen's Compensation for Injuries Act—Factories Act, R. S. O., c. 208, s. 15, s-s. 4.

In an action by a workman against his employer to recover damages for injuries sustained owing to the falling of the cage of an elevator in the defendants' factory, the negligence charged was in the manner in which the heads of the bolts were held, and in the nature of the safety catch used upon the cage.

There was no evidence to show that the defendants were, or should have been, aware that the bolts were improperly sustained. They had employed a competent contractor to do this work for them only a few weeks before, and it was not shown that the alleged defect might readily have been discovered.

Held, that the defendants were not liable upon this head.

Murphy v. *Phillips*, 35 L. T. N. S., 477, distinguished.

The safety catch was made for the defendants by competent persons, and there was no evidence that it was not one which was ordinarily used.

Held, that the defendants were not liable on this head unless there was a want of reasonable care on their part in using the appliance which they used; and it was no evidence of such want of reasonable care merely to show that a safety catch of a different pattern was in use ten years ago by others, or even that it was at present in use, and that a witness thought it might have prevented the accident; and, as no negligence was shewn, the defendants were not liable either at common law or under the Workmen's Compensation for Injuries Act.

By s. 15, s-s. 4, of the Factories Act, R. S. O., c. 208, "All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device, to be approved by the inspector, whereby the cab or car will be securely held in the event of an accident," etc.

There was no evidence to show whether this particular safety catch had been approved by the inspector.

Held, that the onus was upon the plaintiff to prove that the catch had not been approved; and if it had neither been approved nor disapproved, the question still was whether the catch used was of such a character and pattern as to make the use of it unreasonable.

Britton, Q.C., for the plaintiff.

E. D. Armour, Q.C., for the defendants.

Chancery Division.

Boyd, C.] [June 6.

STOTHART *v.* HILLIARD.

Easement—Prescriptive rights—Dominant and servient tenements—Rectory lands—Lease of servient tenement—Unity of possession—Suspension of easement—Joint owners of mill dam—Injunction—Damages.

In an action, begun in 1889, for an injunction to restrain two joint owners of a mill dam, having mill properties respectively on the east and west sides of a river, from damming back water against the plaintiff's land, and for damages, the defendants asserted an easement gained by prescription under R. S. O., c. 3, through user since 1838 and 1842. The plaintiff's land was patented in 1836 as glebe land appurtenant to a rectory, and the title vested in the rector and his successors as a corporation sole. In 1863 an Act was passed empowering the fee simple of this rectory land to be sold. The mill-owner on the west side of the river was in possession as lessee from 1866 till 1887 of the glebe land, which the plaintiff purchased in 1875, but did not get possession of till 1887.

Held, that no prescriptive right in the defendants to an easement over the plaintiff's land could have arisen prior to 1863, because the rector could not have alienated the fee, and an actual grant of the easement in perpetuity or in fee would have been invalid.

2. That the mill-owner on the west side had gained no prescriptive right since 1863, because between 1866 and 1887 there was such unity of possession in both dominant and servient tenements as caused a suspension of the easement.

3. That the mill-owner on the east side was not affected by the lease of the servient tenement, his user having been begun adversely, and the easement having been enjoyed by him as of right continuously and uninterruptedly for twenty years before action.

4. That the defendants being joint owners of the dam, the defendant on the east side was entitled to the supply of water as furnished by the existing dam all the way across the river, and therefore the plaintiff's remedy against the defendant on the west side was not an injunction, but damages.

Moss, Q.C., and *R. E. Wood*, for plaintiff.

D. W. Dumble and *C. J. Leonard*, for defendant Hilliard.

Wallace Nesbitt and *R. M. Dennistoun* for defendants Auburn Woollen Co.

ROBERTSON, J.] [Aug. 11.

IN RE GING.

Building societies—R.S.O., c. 169, s. 47—"Obligation"—Moneys deposited upon savings bank account—Reasonable doubts—Petition—Costs.

A person died in the United States of America having moneys to his credit deposited upon savings bank account with two building societies doing business in Ontario, incorporated under R.S.O., c. 169. An administrator appointed by a Court in the foreign country applied to the building society to have the moneys transferred

to him, but the societies entertained doubts whether the words of s. 47 of R.S.O., c. 169, "share, bond, debenture, or obligation," applied to a savings bank account, and petitioned the Court under s. 49.

Held, that the word "obligation" covered the liability of the petitioners to repay the amounts deposited with them.

Held, also, that the doubts of the petitioners were reasonable, and they were entitled to costs.

Gibbons, Q.C., for petitioners.

Full Court.] [Sept. 4.

FINLAY *v.* MISCAMPBELL.

Master and servant—Workmen's Compensation for Injuries Act—Factories Act—R. S. O., c. 141—Ib. c. 208.

The plaintiff was employed by a sub-contractor to do work upon lumber after it had left the defendant's sawmill, and before it was shipped. The sub-contractor supplied water for the use of his men. The plaintiff, however, to get some fresher water to drink, went through the saw-mill (in which he had no business in connection with his work), and in returning, going out of his way through the mill, to assist a workman who was in difficulty with some planks, he fell into a hole in which a saw was working, and got injured.

Held, that under these circumstances, the plaintiff could have no claim against the defendants, either under the Ontario Factories Act, R. S. O., 1887, c. 208, or the Workmen's Compensation for Injuries Act, ib. c. 141.

Laidlaw, Q.C. and *Kerr*, for the plaintiff.

McCarthy, Q.C., and *Osler*, for the defendant.

Practice.

ARMOUR, C.J.] [June 26.

OUTWATER *v.* MULLETT.

Costs of the day—Postponement of trial—Counsel fees.

When the action came on for trial a postponement was applied for by the defendant, and was ordered upon payment of the costs of the day.

Held, that counsel fees were chargeable and taxable according to the discretion of the taxing officer, and not according to any arbitrary limit.

Hogg v. *Crabbe*, 12 P.R., 14, dissented from.

D. Armour for the plaintiff.

C. J. Holman for the defendant.

Maclennan, J. A.] [Sept. 8.

FOSTER *v.* EMORY.

Division Court appeal—Judgment for $100—Subsequent interest—R. S. O. c. 51, s. 148.

The "sum in dispute" upon an appeal from a Division Court, under R. S. O., c. 51, s. 148, is the sum for which judgment has been given in the Division Court.

Where judgment was given for $100,

Held, that subsequently accrued interest did not make the sum in dispute exceed $100.

A. C. Galt for the appellant.

Middleton for the respondent.

The Master in Ordinary] [June 2.

WANZER *v.* WOODS.

Domicile—Residence within Ontario—Rule 271 (c.)

The action was brought by a foreign company upon a contract made in a foreign country against two defendants, one of whom resided in Manitoba, and was there served with process. Upon a motion by this defendant to set aside the service it was contended by the plaintiffs that the other defendant was ordinarily resident or domiciled in Ontario, within the meaning of Rule 271 (c.), and therefore that the Court had jurisdiction.

It appeared that at the time of the motion the latter defendant was an employee of the government of the Province of Quebec; that prior to 1883 his domicile was in Quebec, whence he removed to Manitoba, where he resided till 1886; that he then went to Australia; that in 1887 or 1888 he returned to Canada, and resided part of the time in Toronto, and part of the time in Winnipeg, until September, 1889, when he returned to Quebec; that he remained while in Toronto for only three months at a time; that his wife had recently gone to

Europe and did not intend to return to Toronto; that his family were still in Toronto, but his intention was to keep them there only until he got something to do; that Toronto was never looked upon as a permanent home for the family; and that it was the intention of the family to go to him as soon as he should send for them.

Held, that he was neither domiciled nor ordinarily resident within Ontario; and the service was set aside.

W. M. Douglas for plaintiffs.

H. E. Ridley for defendant, J. H. Woods.

Mr. Dalton.] [Sept. 12.

HOLLISTER *v.* ANNABLE.

Discovery—Seduction—Examination of plaintiff's daughter.

The plaintiff in an action of seduction was examined for discovery by the defendant, but was able to give very little information.

Held, nevertheless, that the defendant was not entitled to examine the plaintiff's daughter.

The defendant having made an affidavit denying the seduction and all knowledge of it, an order was made for particulars of specific acts.

Turner v. *Kyle*, 2 C. L. T. 598; 18 C. L. J. 402, explained.

W. H. Blake for plaintiff.

Marsh, Q.C., for defendant.

Flotsam and Jetsam.

INSTRUCTOR (*at a law school*). What is an accommodation note?

STUDENT. One which the maker dosen't have to pay until he is ready to. (*Actual fact!*)

A NEGRO witness giving evidence in court was asked if he knew the reputation of a neighbor for honesty.

"I don' know nuffin ag'in him, Jedge," was the reply; "but if I war a chickun, I 'd roost high when he wuz hangin' round."

A CERTAIN Mr. F—— of the Western Circuit, conducting the defence of a woman charged with causing the death of her child by not giving it proper food, while addressing the jury, said: "Gentlemen, it appears to be impossible that the prisoner can have committed this crime. A mother guilty of such conduct to her own child! Why, it is repugnant to our better feelings;" and then being carried away by his own eloquence, he proceeded: "Gentlemen, the beasts of the field, *the birds of the air, suckle their young*, and—" But at this point the learned judge interrupted him and said: "Mr. F——, if you establish the latter part of your proposition, your client will be acquitted for a certainty."

A JUDGE in a neighboring State once intervened to prevent a waste of words. He was sitting in Chambers, and seeing, from the piles of papers in the lawyer's hands that the first case was likely to be hardly contested, he asked, "What is the amount in question?"

"Two dollars," said the plaintiff's counsel.

"I 'll pay it," said the judge, handing over the money; "call the next case."

He had not the patience of taciturn Sir William Grant, who, after listening for a couple of days to the arguments of counsel as to the construction of an act, quietly observed when they had done: "That act has been repealed."

THE following story is told of the chairman of the Bench of County Magistrates somewhere in the North. The gentleman in question, who was a large landed proprietor, had among his laborers a very useful man, who was somewhat of a favorite of his. This person had taken a fancy to some of his neighbor's fowls, was arrested and sent before his master for trial. Upon the case being called on, the prisoner, in answer to the charge, pleaded "Guilty." The chairman, nevertheless, went on trying the case, just as though the plea had involved a denial of the accusation. Knowing that the chairman was very deaf, a counsel present jumped up, and as *amicus curiæ*, ventured to interpose, and remind his lordship that the prisoner had confessed his guilt. Upon this the presiding genius flew into a tremendous passion, begged the learned counsel would not interrupt him, and exclaimed: "Pleaded guilty! I know he did; but you don't know him as well as I do. He 's one of the biggest liars in the neighborhood, and I wouldn't believe him on his oath." The trial proceeded; and while the result is not given, the probabilities are that the prisoner was acquitted.

Law Society of Upper Canada.

LAW SCHOOL—HILARY TERM, 1890.

LEGAL EDUCATION COMMITTEE.

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This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, Q.C.

Lecturers: E. D. ARMOUR, Q.C.
A. H. MARSH, B.A. LL.B. Q.C.
R. E. KINGSFORD, M.A. LL.B.
P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition.

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or

Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.
