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TABLE OF CANADIAN CASES

REPORTED AND NOTED IN THIS VOLUME.

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DIARY FOR JANUARY.

1. Fri.....*New Year's Day* Holiday in H. C. J.
3. Sun ....*2nd Sunday after Christmas.* Lord Eldon died, 1838, æt. 87.
4. Mon....County Court term begins.
6. Wed...*Epiphany* Chrismas vacation H. C. J. ends.
8. Fri.....Christmas vacation in Exchequer Court ends.
9. Sat.....County Court term ends.
10. Sun ....*1st Sunday after Epiphany.* L. Ch. Erskine born, 1750. Christmas vac. in Sup. Ct. Can. ends.
12. Tues...Sittings of Court of Appeal begin. Primary Exam. of students and articled clerks.
14. Thur...Graduates seeking admission to L. S. to present papers.
16. Sat.....Last day for filing papers with Sec. L. S before call or admission.
17. Sun ....*2nd Sunday after Epiphany.*
18. Mon....Sittings Supreme Court of Canada begin.
19. Tues ..First Intermediate Examination. Lord Lanedale appointed M. R., 1836.
21. Thur...Second Intermediate Examination.
22. Fri .....Lord Bacon born, 1561.
24. Sun ....*3rd Sunday after Epiphany.*
26. Tues...Solicitors' examination.
27. Wed. ..Barristers' examination.
30. Sat .....Charles I. beheaded, 1649. æt. 50.
31. Sun ....*4th Sunday after Epiphany.*

TORONTO, JANUARY, 1886.

WE send to subscribers for the current year our usual Sheet Almanac. It contains some additional information, and will doubtless be as welcome as hitherto. Instead of publishing for this month two numbers as usual, we now issue a double number as more convenient under the circumstances. Whilst wishing our friends—new and old—a Happy New Year, it is pleasant to know that a steadily increasing list shows that our efforts to supply them with good value for their money are appreciated.

THE COUNTY OF YORK LAW ASSOCIATION.

PURSUANT to a notice previously circulated, a meeting of members of the Bar residing in the county of York was held in the Convocation Room at Osgoode Hall, on Thursday, December 17th, 1885. Between fifty and sixty members of the Bar put in an appearance. On motion of Mr. D. B. Read, Q.C., Mr. B. B. Osler, Q.C., was requested to take the chair; and on motion of Mr. Moss, Q.C., Mr. Lefroy was requested to act as Secretary of the meeting. Mr. Osler opened the proceedings by briefly stating the object of the meeting, which, he said, was to organize a Bar Association in the county of York, with a view, principally, of securing, in the method provided for by statute, library accommodation in the Court House. He pointed out that if such an association was to be formed, now was the time to do it, and that, when formed, it would be entitled to a considerable grant from the Law Society, and also to the necessary accommodation in the Court House for the purposes of a library, which would be the more necessary inasmuch as, in addition to Courts already sitting in the Court House, the Chancery sittings would also probably be held there when the new Court House was an accomplished fact. He also referred to the success and usefulness of the existing association at Hamilton, and pointed out that all barristers and solicitors were eligible to such an association, and special tickets might also be given to students. The library would be free to all members of the Bar resident outside the county and to all judicial and Court officers.

Mr. Read, Q.C., seconded by Mr. Watt, then moved the first resolution in favour of the establishment of such an association, which was carried unanimously.

The question of the name was then debated, the following were suggested by various gentlemen: "York Law Associa-

tion," "County of York Law Library Association," "Toronto Law Association," and "County of York Law Association." The last name was ultimately carried by a large majority.

The next question moved was the number of the trustees, which was ultimately fixed at nine.

A great number of gentlemen were then nominated as trustees, and on motion of Mr. Worrell the following gentlemen were selected as a committee to consider the nominations and report: C. Robinson, Q. C., C. Moss, Q.C., and N. Kingsmill.

Having retired, the committee returned after a few minutes and reported the following names as a desirable board of trustees: B. B. Osler, Q.C., J. K. Kerr, Q.C., W. Lount, Q.C., C. H. Ritchie, Q. C., T. J. Robertson (Newmarket), G. F. Shepley, E. D. Armour, G. T. Blackstock, W. Barwick, and the report of the committee having been voted on was accepted by the meeting, and the above gentlemen chosen to be the first trustees of the association.

After some discussion the membership fees were settled at $5 per share and an annual fee of $2 a year, and the proceedings concluded by a great number of gentlemen signing for shares in the association. It may be added that at the conclusion Mr. G. T. Blackstock proposed a committee of gentlemen to organize a dinner during the Christmas vacation, in honour, we presume, of the infant association. The idea proved acceptable to the meeting, and a committee, consisting of H. Cameron, Q.C., B. B. Osler, Q.C., C. Moss, Q.C., W. Lount, Q.C., G. T. Blackstock, H. Murray, W. Barwick, G. F. Shepley, J. A. Worrell, and A. M. Grier, was accordingly formed; but we believe these gentlemen have resolved, as it appears to us very wisely, to postpone the dinner until term time.

LAND LAW REFORM IN ENGLAND.

AT the recent meeting of the English Incorporated Law Society, at Liverpool, the subject of land law reform formed a prominent topic of discussion, both in the President's address and also in the papers of Messrs. J. Hunter and T. G. Lee, which were read before the Society.

The abolition of the law of primogeniture was advocated by Mr. Lee, and also the principle that the real estate of a deceased person should, notwithstanding any testamentary disposition, devolve in the first instance upon his legal personal representative and be subject to the payment of his debts.

That the law of primogeniture should have been maintained so long in force in England, in spite of its manifest injustice, is certainly wonderful. Some of our readers may be familiar with a popular comedy in which the absurdity and injustice of that law are cleverly satirized by one of the characters who mournfully soliloquizes on the inconvenience of having been born seven minutes after his brother, inasmuch as that seven minutes' start had given his brother a coronet and £80,000 a year, and left him a commoner with £300 a year!

The prejudice of the aristocratic portion of the community in favour of the maintenance of this state of things is strong, however, and it is an antiquated notion that will die hard in England.

In this country, where we have no aristocracy, we had no great difficulty in amending the law, thirty years ago, so as to give all the children of an intestate equal rights in his estate.

We have not, however, in this Province yet adopted the other amendment which Mr. Lee advocates, viz., the devolution of the real estate of a deceased person on his personal representative. This, how-

ever, is a reform that is sure to be effected here at no distant day, and without the present generation wasting a lifetime thinking about it. In fact it nearly became law at the last session of the Legislature; the principle met with universal approval, and it was not due to any opposition that the Bill failed to pass the third reading. That it was dropped, was more probably due to doubts being raised as to whether the Bill as framed would satisfactorily accomplish the end in view, rather than to any doubts as to the advisability of the principle of the measure.

The question of registration of titles was another matter discussed, but it does not seem to meet with much favour with our English brethren. Although manifestly alive to the disadvantages of a system of conveyancing which necessitates the tracing title through successive owners for a long period of years on the occasion of every transfer or dealing with a piece of land, yet they do not apparently seem to think it is any great object to the public to get rid of that objection to the present system. The kind of argument against registration of title which appears to satisfy English solicitors may be gathered from the following extract from Mr. Lee's paper:—"The necessary publicity of registration of title is also a very strong argument against its adoption. The advocates of registration of title always appear to me to be placed in this dilemma: If the vendor's title is really simple, registration confers no advantage either on him or the purchaser; if the vendor's title is in fact complicated, registration cannot make it simple." With regard to the publicity of a public registry, the same arguments used to be urged in this Province. It was assumed that there was a large class of busy-bodies who had nothing else to do but to go round to the Registry Office, to find out all about their neighbours' private affairs, and for a long time, in deference to this absurd supposition, the system of registration by memorial prevailed in this Province. In 1864, however, a change was made requiring a duplicate of every deed to be registered in full, and the result of twenty years' experience has been eminently satisfactory in every respect, and we doubt if any one could be found in this Province who would be willing to return to the former plan of registration by memorial.

The dilemma which Mr. Lee proposes we are inclined to think is no dilemma at all. Registration of title according to the Torrens plan gets rid of "the chain of title" altogether. The enquiry, Who has owned the property in question from time to time during the last forty years or so? becomes a matter of mere antiquarian interest. For the practical business of life the question, Who is the present owner, and to what charges or qualifications, if any, is his title subject? is the only question to be considered. And a registered title supplies the answer to this question, not by reference to a long string of deeds, but to one instrument only, in which all the information necessary to be known is contained. Now, whether a person has a simple or a complicated title, this advantage accrues by registration. No matter how simple a title may be under the present system of conveyancing it depends on, a chain of deeds, and it can hardly be said that it is not simplified when, in place of several title deeds one is substituted, and certainly Mr. Lee is hardly justified in saying that a complicated title is not by registration made simple. On the contrary, a simple title is made still simpler, and is prevented from getting complicated; and a complicated title is not only made simple, but is also prevented from again becoming entangled. There is, besides, the further benefit to persons dealing in land under the Torrens system of registration afforded by the guarantee of

the Government of the correctness of the register, which is practically an insurance of the title of the very best description.

Mr. Hunter graphically describes the disadvantage of the present system of conveyancing, and asks: "What would stock-brokers say if before they could sell £1,000 stock or consols, they had to show to whom the stock had belonged for the last forty years—to show that all duties which had accrued to the crown during that period had been paid? That every person to whom the stock had descended by death during that period was legitimate? That no former owner had acquired the stock by voluntary gift; and, if the actual sellers were trustees, if the purchase money could only be paid to them in person, or to their bankers. Would ten per cent. be considered a sufficient remuneration for this? Would not the necessity for such proofs put a stop to ninety-nine per cent. of the business of the Stock Exchange? Why should owners of land continue to be liable to these disabilities which owners of no other class of property are under?"

But though Mr. Hunter discourses so eloquently on the evils of the system of land transfer at present prevailing in England, we look in vain through the catalogue of remedies which he proposes for one that will effectually get rid of that greatest defect of all, viz., the necessity of investigating the "chain of title." The "chain of title" is the principal source of all the trouble and difficulties attending land transfer under the English system, and it is only by some system of registration of title, similar to that devised by the late Sir R. Torrens, that that defect can be effectually remedied.

OUR ENGLISH LETTER.

LEGAL machinery was very long in reaching what may be called thorough working order after the long vacation. First came the circuits, which were combined for the most part to the clearing of the gaols, and then the general election, which kept a great number of leading men away from the Courts. These two facts must form my apology for postponing this letter, which, indeed, comes to this that, except the Stead trial, which was unsavoury, there was nothing at all to write about. This is said on the supposition that Canadian circles would not be keenly interested in the discussion of obscure points in our new franchise law. The sum total of the decisions may be said to consist in the fact that the legislature was, by no means for the first time, frustrated in its intentions by reason of bad drafting. It enfranchised some classes by accident and equally involuntarily left others without votes. Perhaps the most comic case was that of the undergraduates of Oxford and Cambridge. Their enfranchisement was described as *un fait accompli*, but, lo and behold, when the terms of their tenure were examined, it was found that the work had been insufficiently performed.

This is an era of new men. We have in Lord Halsbury a Lord Chancellor who attends far more closely than his predecessor to judicial work, who is by no means averse to the giving of silk gowns, and whose one failing is an obvious tendency to nepotism. The result is that there is an opportunity of studying the rise of new men in leading business, and it cannot be denied that some of them are showing great promise. Foremost among them are Mr. Ffrench, Q.C., of the Northern Circuit, whose opinions upon points of election law are quoted with almost the same respect as that which is paid to the

OUR ENGLISH LETTER.

decision of a judge, and Mr. Cramp, Q.C., whose successes have, judging from the papers, been almost phenomenal. Totally unlike Lord Halsbury in manner, he has the same versatility. When the registration appeals were being heard his name was a standing dish. He has been known to appear in Equity cases, he appears in the Divorce Court—in fact he seems to be equally at home everywhere. Now, it is not often that a man called within the Bar achieves success with such rapidity as has been described, and for this reason one may have to look for some external causes. In the first place, it is obvious that there must have been an opening of tolerable width. How came it? Partly, no doubt, from the invincible repugnance of the late Lord Chancellor towards the creation of "silks," which prevented the inner Bar from being recruited at the ordinary rate. Then, the present Lord Chancellor's promotion to office sent much work loose about the Temple. Lately, again, Mr. Justice Wills has been raised from a large practice to the Bench, and last, but by no means least, Mr. Charles Russell, Q.C., has broken down temporarily. When one of the most hard-worked men at the Bar gives up his long vacation to a criminal case, and follows this weary work with a violent electioneering campaign, he must expect to pay the penalty by wintering in the South of France.

There have been changes also upon the Bench. Lord Justice Baggallay, who had long been ailing, retired from the Court of Appeal last week, and his place was taken by Sir Henry Lopes. The appointment is neither popular nor unpopular. As a lawyer Sir Henry Lopes was not qualified for promotion, and he was not chosen for his legal capacities. On the other hand the Queen's Bench Division is not strong in genuinely learned judges. Failing, therefore, an appointment direct from the Bar; the choice might just as well fall upon Sir Henry Lopes as any one else. Moreover, his political claims were strong, and he is one of the pleasantest of the Judges in manner. The experience of late years has shown, however, that appointments directly from the Bar are successful. Thesiger and Holker, L.JJ., left great reputations behind them, though their careers were short, and Bowen, L.J., is an extraordinarily good Judge of Appeal. All three were promoted directly from the Bar. Meanwhile Sir Henry Lopes leaves a vacancy for a new judge and speculation is rife. Rumour first fixed the honour upon Sir John Eldon Gorst, Q.C., who is a lawyer of the purely political type. Your correspondent has known the Courts for more years than he cares to reckon, yet never saw he Sir J. E. Gorst, Q.C., appear in any case until he became Solicitor-General, nor does he ever remember a law officer with less work than Sir J. E. Gorst, Q.C. His place is in Parliament, and not upon the Bench and, according to the latest rumours, he himself is aware of the fact, and has refused the proffered honour. If so the choice lies between Mr. Grantham, Q.C., and Mr. Edward Clark, Q.C. Now the latter has been shelved once, which bodes ill for his chances; the former, on the other hand, has deserved exceedingly well of his party, and has a perfectly safe seat at Wandsworth, a consideration which is likely to have considerable weight, especially having regard to the fact that since Mr. Clark was elected at Plymouth the *Times* has published a damning exposure of the proceedings of the Conservative Association of that town. From what has been written your readers will see that men and their ambitions are the leading topics of the day in legal circles. In another fortnight, however, we shall settle down into the old and steady grooves.

TEMPLE, *December 7.*

THE MARRIED WOMAN'S PROPERTY ACT OF 1884.

THIS Act was passed, no doubt, with the intention of extending still further than has been done by previous Acts the power of married women to bind by contract, and otherwise to deal with their property and earnings; but how far the process of emancipation has gone can hardly yet be determined. Some light, however, can be drawn from an Act, much similar in its character and containing many clauses in identical words, passed by the Imperial Legislature, entitled "Married Woman's Property Act of 1882."

It may be necessary for a moment to state just how far previous Acts relating to married women have enabled such married women to hold, bind by contracts, and part with and enjoy their property, even, it may be, against the will of their husbands.

By common law, the entire personal property of a woman on marriage became her husband's absolutely, and her choses in action, when reduced into possession by the husband, were also his absolutely; and he could at will, by instituting an action at law or suit in equity, reduce her choses in action into possession, on obtaining a judgment at law or decree in equity. As regards her real estate, he became entitled on marriage to a freehold estate during their joint lives, and after the birth of living issue capable of inheriting it, he also became entitled on the death of his wife as tenant by curtesy to a freehold estate during his life.

The hardships that might result to a married woman possessing property at the time of her marriage, or becoming so entitled to the same during coverture, were largely obviated by marriage settlements and by the interposition of trustees, and where by such means her property was held with power of anticipation, it was hers as absolutely as if she were of full age and unmarried, nor was it absolutely necessary, even before 35 Vict. cap. 16, that trustees should be appointed if the clear intention of both husband and wife was that a particular portion of the wife's property should be held and enjoyed by her as her separate estate. See *Slanning* v. *Style*, 2 P. Will. 337, and *Mangey* v. *Hungerford*, 2 Equity Ca. Abr. 156, in margin; see also the judgment of Spragge, Chancellor, in *Adams* v. *Loomis*, 24 Grant, 242. In the latter case the learned Judge held that, as the husband and wife had divided the farm of the husband, the wife receiving half thereof, in settlement of her claim to alimony, and as both intended that she should hold her portion free from her husband's control, as her own property, she had full power of alienation quite irrespective of "The Married Woman's Act of 1872." In the absence of the appointment of any trustees to protect the wife's separate property, from the effect of the common law rights of the husband, and where it was intended that such property should be her separate estate, the husband in equity became, so far as it was necessary, a trustee for the purposes of preserving his wife's separate estate from its common law incidents.

By 22 Vic. cap. 34 (Con. Stat. U. C. cap. 73), the right was given to a married woman under the circumstances referred to in that Act, to use and enjoy all such real and personal property as was not, on the 4th day of May, 1859, reduced into the possession of her husband, and in case the marriage took place after that date, she had like rights in respect of all her real and personal property free from the control or disposition of her husband, without her consent, and in as full and ample a manner as if she had continued sole and unmarried. This, however, did not give her an absolute title to her real estate, but merely a right of enjoyment. Such real estate could not be bound by her

contracts, nor could it be conveyed by her except with the concurrence, and by the assistance of her husband. With respect to her personal property acquired after the passing of that Act, or not then reduced into the possession of her husband, notwithstanding it was a long time questioned whether she had the right to bind it by her contracts, or in other words, whether it was her separate property, possessing all the incidents of separate property, including the power of alienation, it was finally held in the Court of Appeal in *Lawson* v. *Laidlaw*, 3 App. R. 77, Patterson, J.A., delivering the judgment of the Court, that such personal property was her separate estate, and would be bound by her contracts.

A great advance was made, however, in the emancipation of married women so far as their real estate was concerned, by 35 Vict. cap. 16, generally known as the Married Woman's Act of 1872, and afterwards consolidated in Revised Statutes of Ontario cap. 125. It may be pointed out, however, that the Revised Statute is not a precise consolidation of 32 Vict. cap. 16, as the effect of section 1 of this Act was changed by Sched. A. (156) 40 Vict. cap. 7, by which latter Act the Act of 1872 is confined to the case of marriages taking place after the 2nd March, 1872, while by 35 Vict. cap. 16, section 1, the Act would seem to have embraced the case of a woman married before the passing of the Act, but acquiring real estate after that date. The judgment of Vice-Chancellor Blake, in *Adams* v. *Loomis*, 22 Grant, 99, proceeds upon the ground that the Act of 1872 enabled a married woman, no matter when married, to deal with, bind by contract and convey real estate acquired after the 2nd March, 1872. See also the remarks of the late Chief Justice Spragge, then Chancellor, upon the same subject, in the case of *Griffin* v. *Pattison et ux.*, 45 U. C. Q. B., 536. The effect of this latter Act, confining it entirely to cases arising under Revised Statutes of Ontario cap. 125, is that women married after the 2nd day of March, 1872, have complete control over, and full power to bind by their contracts, as well as to convey, their real estate, nor are their husbands necessary parties to such conveyances notwithstanding the very general language of Revised Statutes of Ontario cap. 127. See *Boustead* v. *Whitmore*, 22 Grant, 222, and *Bryson et al* v. *Ontario and Quebec Railway Co.* 8 O. R., 380; though as to the effect of this Act upon the husband's right as tenant by curtesy, see *Furness* v. *Mitchell*, 3 App. R. 510.

However, as to the contracts of married women under the Act of 1872, such contracts only bound such separate estate as she possessed at the time of her making such contract, and which was still in esse at the time the contract was sought to be enforced. See *Lawson* v. *Laidlaw*, 3 App. R. 77, and *Pike* v. *Fitzgibbon*, 17 Chy. Div. 454, nor would an injunction be granted to restrain a married woman from parting or dealing with her separate estate, while her contract was still in esse, and no judgment had been entered in the suit to enforce such contract.

It is difficult as yet to determine how far a married woman's liability and her capacity to contract and to sue and to be sued, have been increased by the Married Woman's Property Act of 1884, which, as has been before stated, is in many respects similar to the Married Woman's Act of 1882, of the Imperial Legislature. Some decisions, however, have been given both here and in England, which to a certain extent will be of assistance, in enabling us to arrive at a proper construction of the Act in question.

It has been decided in the case of *Re Shakespeare, Deakin* v. *Lakin*, 30 Chan. Div. 169, that if a married woman having no separate estate enters into a con-

tract she will not be liable, although at the time the contract was sought to be enforced she had separate estate from which the damages arising from a breach of such contract could be secured. This decision would seem to be correct for two reasons--1. This Act is enacted for the benefit only of married women having separate estate, and to give such married women more extended powers of dealing with such estates, and, seemingly, the Act is not intended to affect in any way a married woman having no separate estate. 2. By the very language of sub-section 4, section 2, only such contracts of married women are affected as are entered into with respect to, and to bind, the separate estate of such married women, and the contract seems to bind not only such separate estate as such married woman then possesses, but subsequently acquired separate estate. If she has, when attempting to enter into the contract, no separate estate, then the Act does not reach her case, and her disability is not in any way affected or removed by the Act.

A pertinent question may, however, be here raised, and that is: What would be the effect, if a married woman having a small amount of separate estate makes a contract which involves her in a liability for a very much larger amount than the separate estate she had at the time of her entering into such contract, and to what extent would her future separate estate be liable? Suppose for example, she endorses her husband's note, say for $1,000, having separate estate to the value of $100, and afterwards acquires, or becomes possessed of, abundant separate property, amply sufficient to satisfy such liability. Will she be liable, only to the amount of the value of the separate estate she had when she entered into such contract; or, will she be liable to the fullest extent of her subsequently acquired separate estate? It would almost seem by strict reasoning that as she is not liable at all in case she has no separate estate, she should not be made liable, as against her after acquired separate estate, to a greater amount than the separate estate she possessed at the time she made the contract. It seems to be a true principle with reference to such contracts, that if a married woman makes a contract, having separate estate, it is assumed that she intended that some effect should be given to such contract, namely, that it should be paid so far as she has means to pay it; but it can hardly be said that if a married woman makes a contract incurring liability far beyond the amount of her separate estate, she can intend to bind her separate estate further than the means she then had would enable her so to do, and as to the remainder of such liability, it would almost seem that no such intention could be implied. There has as yet been no decision upon this point, but no doubt such a case will soon arise. Baggallay, L.J., intimates that the form of judgment in the case of *Turnbull* v. *Forman*, 15 Q. B. D. 234, may not be a proper form, and the difficulty referred to seems to have entered his Lordship's mind. A perusal, however, of the form of that judgment would lead to the inference that the judgment is intended to be limited in its operation in the manner above pointed out, and that it leaves the principle to be applied by the officer of the Court who takes the necessary accounts under the judgment.

It may be here pointed out that the form of judgment in the case of *Quebec Bank* v. *Radford*, 10 P. R. 619 and *Cameron* v. *Rutherford et al.* 10 P. R. 620, is wrong in the case of a contract made before the passing of this Act, and also may be wrong as to the quantum of separate estate that may be affected by a judgment under this Act against married women. It is clear from the decision in the case of *Turnbull* v. *Forman*, 15 L. R. Q. B. D., overruling *Bursell* v. *Tanner*, 13 L. R. Q.

B. Div., and affirming *Coulson* v. *Ingram*, 27 Chy. Div. 632, that this Act is not retrospective, and in no way affects the contracts of married women made before the Act was passed.

It has been decided that a married woman under this Act may bring an action for the recovery of damages in respect to torts suffered by her before the Act came in force. See *Weldon* v. *Winslow*, 13 Q. B. Div. 784. In the case of *Weldon* v. *Debathe*, 14 Q.B. Div. 339, it was decided that a woman married since the Married Woman's Act of 1870 of the Imperial Legislature (which is similar to our Married Woman's Act of 1872), and acquiring by her own earnings a dwelling-house, can bring an action for trespass against any one entering her dwelling under her husband's authority and for a purpose unconnected with her husband's desire to cohabit with her. This decision leaves yet undecided whether a married woman can expel her husband from her dwelling (held by her as separate estate) in case she wishes no longer to cohabit with him. It would seem that if her reason for wishing to expel him were a valid and proper reason, she would have such power; and it would further almost appear (for in the case last cited the question merely was suggested but not decided) that under any circumstances she has such power if she so wishes to prevent her husband from entering her dwelling even for the purpose of cohabitation. In other words, if she expelled him from her dwelling, an action of trespass on his part would not lie against her. This point is incidentally discussed in the case of *McGuire* v. *McGuire*, 23 C. P. 123, where it was held that a married woman could not bring an action of trover against her husband for refusing to deliver to her her furniture, she having left her husband without just cause. The judgment of the Court in that case, given by Mr. Justice Gwynne, has been somewhat shaken by the case of *Lawson* v. *Laidlaw*, so far as the reasoning of the learned Judge is concerned, and it certainly seems strange that a married woman's separate estate should not possess the usual qualities of separate estate when in the joint possession of her husband and herself for marital purposes, when the Act declares that such property is her separate property, and free from the control of her husband. It is not unlikely that if this question be again fairly raised either as regards the furniture of a married woman, or as regards her real estate, the same being her separate estate, it will be decided that she has, under the Act of 1884 at any rate, absolute control over such property, even to the extent necessary to deprive her husband of the enjoyment thereof jointly with herself. It is difficult to see how that which the Act says is the separate property of a married woman, and free from the control of her husband, can have any other quality than that which is ordinarily possessed by the separate property of a married woman. She can certainly sell such property with, or without, her husband's consent, and she can bind it by her contracts, both of which would deprive her husband of the enjoyment of it. The necessary consequence would seem to be that her control over such property is so absolute as to enable her to deprive her husband of the enjoyment thereof under any circumstances when she sees fit so to determine.

Another point necessarily arising in the construction of this Act will be as to the power of a married woman to convey her separate estate. *Boynton* v. *Collins*, 27 Chy. Div. 604, decides that the real estate held by a married woman before the Married Woman's Property Act of 1882 in reversion or remainder, and which has fallen into possession since the passing of that Act, is within section 5 of the Act, and may be transferred by her without the con-

currence of her husband. The same point also seems to have been raised in *Thomson* v. *Curson*, 29 Chy. Div. 177, Kay, J., doubting. It would not be safe, however, to rely upon this judgment as being a final determination of the point, as the effect certainly is to deprive the husband of a vested right, and another and very simple construction of section 5 would leave the husband's right unimpaired. The case of *Fowke* v. *Draycott*, 29 Chy. Div. 996, deciding that an order in the usual form, obtained under section 91 of the Fines and Recovery Act of 1883 by a married woman, and empowering her to dispose of her real estate without the concurrence of her husband, does not deprive him of his common law rights which he acquired in the property by reason of coverture, is an important decision in view of the effect of section 24 of our Act upon Revised Statutes of Ontario, cap. 127. Where under such an order a married woman sold and conveyed her estate and interest in the real estate in which her husband had an interest, her husband refusing to join, it was held that the husband's common law rights arising by coverture remained unaffected by the wife's alienation.

This case may perhaps throw some light upon the recent decision of Ferguson, J., in *Re Coulter et al. & Smith*, 8 O. R. 536, from which it would almost seem that the learned Judge has decided that a married woman, no matter when married, can convey real estate acquired by her at any time, and in which her husband may have a vested interest, without the concurrence of her husband; but the judgment is silent as to the effect of such conveyance upon the husband's estate (if any). In that case, the marriage took place before, and the land in question was acquired after, 1872. It may be that his lordship simply determined that married women in all cases have power to convey their estate in lands owned by them, leaving unaffected the estate (if any) of the husband. This would appear to be the correct view of the Act; for, by the repeal of sections 4 to 12 and from the middle of the tenth line to the close of section 3, of cap. 127 R. S. O., it appears clear that a married woman may convey all and every interest she may have in her real estate without her husband's joining; but this might be done, and yet leave unaffected any estate of her husband therein; as by section 22 of the Act, any right previously acquired by the husband in his wife's estate is left unaffected and still exists, and in such a case, if the husband still has an estate in the lands in question, it would require a conveyance from the husband as well as from the wife to vest in a purchaser the entire estate of the husband and wife in the lands sought to be conveyed. It can hardly be that the learned Judge came to the conclusion that, inasmuch as the sections of cap. 127, Revised Statutes of Ontario above mentioned were repealed by this Act, she may now convey her lands to a purchaser in which her husband may have a vested right, so as to cut out such vested right, even against the will of her husband. It is somewhat unfortunate that the judgment is so short; but as the question to be decided in that case was whether the married woman could convey *her interest* in the lands in question, though the husband if living, had undoubtedly a vested interest therein, the judgment would seem to be quite correct in holding that she could convey under the Act in question her interest in such lands, leaving the purchaser still to deal with her husband, should he ever return; for in that case he had abandoned his wife, and had not been heard of for ten years.

The Courts are certainly very unwilling to interfere with vested rights, and sometimes are inclined to give an entirely

secondary meaning to the language of a Statute seemingly clear enough when read by an ordinary layman, and which, when so read, does interfere with vested rights. See *Hill* v. *East and West India Stock Co*, 9 App. Cases 448, where the language of the Statute referred to in that case was so far tortured by the majority of the Law lords to prevent injustice as to lead Lord Bramwell to use somewhat characteristic language when interpreting the same Statute. In this view attention may also be directed to the case of *Re Docwra*, *Docwra* v. *Faith*, 29 Chy. Div. 693, and *Re Adams Trusts*, 33 W.R. 834.

Many points, no doubt, will yet be raised before the Act has received full investigation. It does seem, however, that it would have been much preferable had our Legislature in 1872 simply enacted that married women should thereafter be treated as having been relieved of every disability arising from coverture, and not have followed the language of the English Statutes where the process of emancipation of married women apparently has been much slower than that called for by the public. No doubt the Imperial Legislature, as well as our own, will soon entirely relieve married women of every disability, and enable them to contract as fully in all respects as if they were unmarried.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

Nova Scotia.]

EUREKA WOOLLEN MILLS COMPANY v. MOSS ET AL.

Appeal—New trial ordered by Court below—Verdict against weight of evidence.

The Supreme Court of Canada will not hear an appeal where the Court below, in the exercise of its discretion, has ordered a new trial on the ground that the verdict is against the weight of evidence.

McIntyre, for the appellants.

Dunlop, for the respondents.

Nova Scotia.]

HOWARD v. LANCASHIRE INSURANCE CO.

Appeal—New trial ordered by Court below—Questions of law—Insurance policy—Insurable Interest — Special condition — Renewal — New contract.

J., manager of the appellant's firm, insured the stock of one S., a debtor to the firm, in the name and for the benefit of the appellant. At the time of effecting such insurance, J. represented the appellant to be the mortgagee of the stock of S.

S. became insolvent and J. was appointed creditor's assignee, and the property of the insolvent was conveyed to him by the official assignee. On March 8th, 1876, S. made a bill of sale of his stock to J., having previously effected a composition with his creditors under the Insolvent Act of 1875, but not having had the same confirmed by the Court.

The insurance policy was renewed on August 5th, 1876, one year after its issue. On January 12th, 1877, the bill of sale to J. was discharged, and a new bill of sale given by S. to the appellant, who claimed that the former had been taken by J. as his agent, and the execution of

the latter was merely carrying out the original intention of the parties. The stock was destroyed by fire on March 8th, 1877, and an action having been brought on the policy, it was tried before a judge without a jury, and a verdict was given for the plaintiff.

The Supreme Court of Nova Scotia set aside this verdict, and ordered a new trial, on the ground that the plaintiff had no insurable interest in the property when the insurance was effected, and that no subsequently acquired interest would entitle him to maintain the action. One of the conditions of the policy was "that all insurances," whether original or renewed, shall be considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which, in all cases, it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings. On appeal to the Supreme Court of Canada,

Held, that the case did not come within the rule laid down in *Eureka Woollen Mills Co.* v. *Moss* (decided this term), and was one properly appealable.

That the appellant having had no insurable interest when the insurance was effected, the subsequently acquired interest gave him no claim to the benefit of the policy, the renewal of the existing policy being merely a continuance of the original contract.

Appeal dismissed with costs.

Gormully, for the appellant.

Tremaine, for the respondents.

New Brunswick.]

BYRNE v. ARNOLD ET AL.

Justices of the peace — Conviction — Canada Temperance Act, 1878, *Sec.* 105 — *Absence — Wrongful arrest—Justification.*

A. and B., Justices of the Peace for King's County, were sued for issuing a warrant of commitment under which B. (appellant) was imprisoned.

The facts, as proved at the trial, were as follows: A prosecution under the Canada Temperance Act, 1878, was commenced by two justices, A. and B., and a summons issued. On the return of the summons, on the application of the defendant, A. and B. were served with a subpœna, to give evidence for the defendant on the hearing; whereupon two other justices (the respondents), at the request of A. and B. under the provisions of sec. 105 of the Act, heard the case and convicted the appellant. A. and B., though present in the court room as witnesses, took no part in the proceedings.

The Supreme Court of New Brunswick ordered a nonsuit to be entered. On appeal to the Supreme Court of Canada,

Held (affirming the judgment of the Court below, HENRY and TASCHEREAU, JJ., dissenting), that as the conviction was good on its face, it was a justification for respondents until set aside, for anything done under it.

Held, also, that upon the facts disclosed A. and B. were "absent," within the meaning of sec. 105 of the Canada Temperance Act, 1878.

Appeal dismissed with costs.

Weldon, Q.C., for appellant.

A. S. White, for respondents.

New Brunswick.]

FAWCETT v. ANDERSON.

Contract—Novation—Sale of land—Delivery of deed for inspection—Receipt for—Action on.

Land was sold at auction by A. (plaintiff), under power of sale in a mortgage to W., and one F. (defendant), became the purchaser; the terms of sale being ten per cent. cash, and balance in one and two years, with interest, secured by joint notes of defendant and some other responsible person. Defendant paid the ten per cent. and a conveyance was prepared and executed by W. in favour of defendant, and was given to plaintiff for the purpose of having sale completed. Plaintiff took the deed to defendant, who said that he wished to show it to his attorney; but plaintiff objecting to part with the deed without something to show that the purchase money had not been paid, defendant signed and gave to plaintiff a receipt as follows: "Received from E. A. (plaintiff) a deed given by W. for a piece of land bought, etc. The above mentioned deed I receive only to be examined, and if lawfully and properly executed, to be kept; if not lawfully and properly executed, to be returned to E. A. When

the deed is lawfully and properly executed to the satisfaction of my attorney, I will pay the amount of balance due on said deed, provided I am given a good warrantee deed, and the mortgage which is on record is properly cancelled if required." In an action brought by plaintiff on this agreement, a verdict was given to the plaintiff for $572 and interest; but the jury found in answer to a question left to them, that the writing signed by the defendant on the 2nd October was not a new agreement for the payment of the purchase money of the land.

This verdict was subsequently set aside by the Supreme Court of New Brunswick, and a new trial ordered. The case having come on for trial again in January, 1884, a verdict was found for the defendant, the present appellant. The plaintiff, the present respondent, afterwards moved to set aside the verdict and for a new trial, or for a verdict to be entered for him, under leave reserved, for nominal damages, (the purchase money having been paid to W., after this suit was brought,) which a majority of the Court ordered, and against which order an appeal was taken to the Supreme Court of Canada, and it was

Held (reversing the judgment of the Court below, STRONG, J., dissenting), that there was no new contract created between appellant and respondent, and the action against appellant was not maintainable.

Appeal allowed with costs.

Hannington, Q.C., for appellant.

Blair, Q.C., for respondent.

New Brunswick.]

TOWN OF PORTLAND v. GRIFFITHS.

Defective sidewalks—Damages—Corporation, Liability of—Contributory negligence.

Declaration by first count alleged that defendants had the care of the public streets of the town of Portland. That it was their duty to keep them in a safe and proper condition, for citizens passing to and fro; that there was a street in such town under such care and subject to such duty, known as Main Street; that plaintiff was walking and passing over said street, and by reason of negligence and improper conduct of defendants, in not keeping the same in repair, etc., was injured.

Second count set out that plaintiff travelling upon said street, and using due care, was injured.

Third count that defendants negligently allowed a hole to remain on said street, and that plaintiff while lawfully using the street, and without negligence on her part, was hurt.

The evidence of the plaintiff showed that the accident whereby she was injured happened while she was engaged in washing the window of her dwelling from the outside of the house, and, that in taking a step backward, her foot went into a hole in the sidewalk, and she was thrown down and hurt. She also swore that she knew the hole was there.

The jury awarded her $300 damages, and the Supreme Court of New Brunswick refused to set aside the verdict.

Held (HENRY, J., dissenting), that the plaintiff was neither walking and passing over, travelling upon, or lawfully using the said street, as alleged in the declaration, and that the verdict must be set aside.

Held, also, that the accident, if occasioned by the defective sidewalk, was due to plaintiff's own negligence.

Appeal allowed with costs.

A. A. Stockton, for appellant.

Skinner, Q.C., for respondent.

New Brunswick.]

CHAPMAN v. RAND.

Canada Temperance Act—Scrutiny—Powers of County Judge.

A judge of the County Court, on holding a scrutiny of votes under the provisions of the Canada Temperance Act, can only determine which side has a majority of the votes polled, by inspection of the ballots, and has no power to enquire into corrupt acts, such as bribery, etc., which might avoid the election. (HENRY, J., dubitante.)

Appeal allowed with costs.

Blair, Q.C., for appellant.

R. B. Smith, for respondent.

New Brunswick.]

TAYLOR v. MORAN.

Marine insurance—Voyage policy—Sailing directions—Time of entering Gulf of St. Lawrence—Attempt to enter—Amendment of pleadings.

In an action on a voyage policy containing this clause, "warranted not to enter, or attempt to enter, or to use the Gulf of St. Lawrence, prior to the tenth day of May, nor after the thirteenth day of October (a line drawn from Cape North to Cape Ray, and across the Strait of Canso, to the northern entrance thereof, shall be considered the bounds of the Gulf of St. Lawrence seaward)," the evidence was as follows: The Captain says: "The voyage was from Liverpool to Quebec, and ship sailed on April 2nd. Nothing happened until we met with ice to the southward of Newfoundland, shortened sail and dodged about for a few days trying to work our way around it. One night ship was hove-to under lower main-topsail, and about midnight she drifted into a large field of ice. There was a heavy sea on at the time, and the ship sustained damage. We were in this ice three or four hours—laid-to all the next day—could not get any further along on account of the ice. In about twenty-four hours we started to work up towards Quebec." The log-book showed that the ship got into this ice on the 7th May, and an expert, examined at the trial, swore that from the entries in the log-book of the 6th, 7th, 8th and 9th of May, the captain was attempting to enter the Gulf of St. Lawrence. A verdict was taken for the plaintiff by consent, with leave for the defendants to move to enter a nonsuit or for a new trial, the Court below to have the power to mould the verdict, and also to draw inferences of fact the same as a jury.

Held (reversing the judgment of Supreme Court of New Brunswick, HENRY, J., dissenting), that the above clause was applicable to a voyage policy, and that there was evidence to go to the jury that the captain was attempting to enter the Gulf contrary to such clause.

Appeal allowed with costs.

Weldon, Q.C., for appellant.

Stockton, for respondent.

Quebec.]

THE QUEEN v. DUNN.

Petition of right—Provincial debt, Liability of Dominion for — Order in Council — Account stated—Consideration—Right to petition.

Prior to Confederation, one T. was cutting timber under license from the old Province of Canada, on territory in dispute between that Province and the Province of New Brunswick. In order to utilize the timber so cut he had to send it down the St. John River, and it was seized by the authorities of New Brunswick and only released upon payment of fines. This continued for two or three years until T. was obliged to abandon the business.

As a result of negotiations between the two Provinces, the boundary line was finally fixed, and a commission was appointed to determine the state of accounts between them in respect to the disputed territory. One member of the commission only reported New Brunswick to be indebted to Canada in the sum of $20,000 and upwards, and in 1871 these figures were verified by the Dominion auditor.

Both before and after Confederation T. frequently urged the Government of Canada to collect this amount, and indemnify the licensees who had suffered owing to the said dispute; and finally, by an order in council of the Dominion Government (to whom it was claimed the debt was transferred by the B. N. A. Act) it was declared that a certain amount was due to T., which would be paid on his obtaining the consent of the Governments of Ontario and Quebec. Such consent was obtained, and payments were made by the Dominion Government to T., and to the suppliant to whom the claim was assigned, and the suppliant proceeded by petition of right to recover the balance; the Government demurred on the ground that the claim was not founded upon a contract and the petition would not lie.

Judge FOURNIER, in the Exchequer Court, overruled the demurrer, and on appeal to the Supreme Court of Canada,

Held (reversing the judgment of FOURNIER, J., FOURNIER and HENRY, JJ., dissenting), that there being no previous indebtedness from New Brunswick, Canada or the Dominion to T. shown, the order-in-council did not create a debt, and petition would not lie.

Appeal allowed with costs.

Blair, Q.C. (*Hogg* with him), for appellant.

Laflamme, Q.C. (*McIntyre* with him), for respondent.

Quebec.]

LEFEBVRE v. CITY OF QUEBEC.

16 Vict. ch. 100—30 Vict. ch. 2, sec. 2—North Shore Railway Company — Authority to use streets — Damages — Non-liability of corporation.

By 16 Vict. ch. 100, P. Q., the North Shore Railway Company was authorized to construct a railway to connect the cities of Quebec and Montreal, with the restriction that the railway was not to be brought within the limits of the city, without the permission of the corporation of the city expressed by a by-law.

In July, 1872, the city council, by resolution, had given to the North Shore Railway Company the liberty to choose one of the streets to the north of St. Francis Street, which had been at one time chosen for that purpose. In 1874 the city council were informed by the company that the company had located the line of the railway in Prince Edward Street; but the corporation did not take any further action in the matter.

In 1875 the company being unable to carry out its enterprise, the railway was transferred to the Government of the Province of Quebec by a notarial deed, and the transfer was ratified by 39 Vict. ch. 2, and by that Act the legislature was authorized to construct the road to deep water in the port of Quebec.

After the passing of this Act the Provincial Government caused the road to be completed, and it crossed part of the city of Quebec from its western boundary by passing through Prince Edward Street along its entire length.

The road was completed in 1876. In 1878 L. (the appellant), owner of several houses bordering on P. E. Street, sued the corporation of the city of Quebec for damages suffered on account of the construction and working of the railway. The corporation pleaded no liability.

Held (affirming the judgment of the Court below), that the corporation was not liable.

Appeal dismissed with costs.

Irvine, Q.C., and *Larue*, Q.C., for appellant.

Pelletier, Q.C., for respondents.

Quebec.]

KNIGHT v. WHITFIELD.

Public company—31 Vict. ch. 25, ss. 11, 17, 19, 20 (P. Q.)—Action for calls—Increased capital—By-law—Insufficient notice.

In virtue of 31 Vict. sec. 11, ch. 25 (P. Q.), at a meeting of the directors of the St. J. Stone Chinaware Co., a by-law was passed increasing the capital stock of the company by the issue of 250 additional shares of $200 each, payable by monthly instalments of ten per cent. each. At the general meeting of the shareholders, subsequently held for the election of directors and other business, the said by-law was confirmed.

In an action brought by the assignee of the company (insolvent) against W., an original stockholder and director, for calls on twenty shares of new stock, the only evidence relating to the adoption of the by-law and the calls having been made on W. were the minutes of the meeting of the directors and of the general meeting of the stockholders, and the Superior Court held there had been no calls made. This judgment was affirmed by the Court of Queen's Bench (appeal side), and on appeal to the Supreme Court of Canada it was

Held (affirming the judgments *a quo*), that no calls had been made on W., and therefore he was not liable.

Per FOURNIER and HENRY, JJ., there was no evidence that the by-law had been confirmed by two-thirds of the shareholders in amount at a special meeting called for the purpose of increasing the stock, as provided by 31 Vict. ch. 25, sec. 11, and on that ground also the appeal should be dismissed.

Appeal dismissed with costs.

Robertson, Q.C., for appellant.

Geoffrion, Q.C., and *Paradis*, for respondent.

Ontario.]

HUNTER v. CARRICK.

Infringement of patent—New invention—Combination—Want of novelty.

A patent was obtained for a baker's oven, the patentee claiming as his invention the following:—

1. A fire-pot or furnace placed within a baker's oven, below the sole thereof, and provided with a door situated above the grate.

2. A fire-pot or furnace placed within a baker's oven, provided with a door above the level of the sole of the oven, and connected with the said furnace by an inclined guide.

3. In a baker's oven a flue leading from below the grate to the main flue.

4. A baker's oven provided with a circular tilting grate, situated above the sole of the oven, and provided with a door.

5. In a baker's oven a cinder grate placed beneath the fire grate in combination with a flue leading from below the grate to the main flue.

And in the specifications the patentee says: "What I claim as my invention is—in combination with a baker's oven—a furnace set within the oven, but below the sole.

Held (affirming the judgment of the Court of Appeal, STRONG and HENRY, JJ., dissenting), that the claim for novelty in the above patent rested upon the position of a door above the grate (all the other parts having been used in bakers' ovens before), and that one alone was not sufficient to enable a patent to issue.

Appeal dismissed with costs.

Cassels, Q.C., for the appellant.

Robinson, Q.C., for the respondent.

Ontario.]

LONG ET AL. v. HANCOCK.

Interpleader issue—Insolvent Co.—Chattel mortgage—Preference over other creditors—Intention to prefer.

The Hamilton Knitting Co., being indebted in a large amount to the appellants, and believing that their charter did not permit them to give a mortgage on their property to secure an overdue debt, agreed to give such mortgage in consideration of an advance by appellants of more than the amount of the debt, the actual amount to be returned to the mortgagees. This arrangement was carried out, and the balance of the amount advanced on the mortgage, after paying the debt, was put into the business of the company.

At the time this was done the company believed that by getting time from these creditors they would be able to carry on their business and avoid failure. This hope was not realized, however, and they shortly after stopped payment, and in consequence, certain of their creditors, the above respondents, obtained judgments on their respective claims and issued executions. The property secured by the said chattel mortgage was seized under these executions, and this interpleader issue was brought to test the title to such property.

The learned Chancellor, before whom the issue was tried, gave judgment for the execution creditors, holding the mortgage void under the statute relating to fraudulent preferences, and the Court of Appeal sustained this judgment by a division of the Court. On appeal to the Supreme Court of Canada,

Held, that as the company *bona fide* believed that by getting an extension of time from the appellants they would be able to continue their business, it could not have been given with a view of preferring the creditors and of defrauding the others, and therefore the appellants are entitled to judgment.

Crerar, for appellant.

Martin, Q.C., and *Furlong*, for respondent, Hancock.

A. D. Cameron, for respondent, Fairgrieve.

Ontario.]

CANADA PUBLISHING CO. ET AL. v. GAGE.

Trade mark—Right to use one's own name—Goods designated by one's own name sold to deceive public.

Gage carried on business in partnership with appellant, Beatty, a valuable asset of the business being a series of copy books designed by Beatty, and sold under the name of "Beatty's Headline Copy Books." Beatty retired from the firm, receiving $20,000 for his share in the business, and Gage subsequently registered as a trade mark the word "Beatty" in connection with the copy books.

After the dissolution, Beatty, under an agreement with the Canada Publishing Co., prepared a series of copy books which were sold under the name of "Beatty's New and Improved Headline Copy Books," and a suit was brought by Gage to restrain the appellants from selling the said books.

Held (affirming the judgment of the Court of Appeal, HENRY and TASCHEREAU, JJ., dissent-

ing), that appellants had no right to sell "Beatty's New and Improved Headlin: Copy Book" in any form or with any cover calculated to deceive purchasers into the belief that they were purchasing Gage's books.

Appeal dismissed with costs.

Robinson, Q.C., and *Maclennan*, Q.C., for Canada Publishing Co., appellants.

Barwick, for Beatty.

Blake, Q.C., and *Lash*, Q.C., for respondent, Gage.

Ontario.]

O'SULLIVAN v. HARTY.

Administrator, acts of—Acting by agent—Next of kin—Costs.

The plaintiff wished to administer to the estate of his brother in the county of Westmoreland (N. B.), but was unable to give the necessary administration bond, until the defendant W. and one J. agreed to become his bondsmen, securing themselves by having the estate placed in the hands of the defendants. A portion of the estate consisted of some English railway stock which the defendants wished to convert into money, but plaintiff would not assist them in doing so.

In passing the accounts of the estate in the Probate Court of Westmoreland county it was found that there were several persons entitled to participate as next of kin of the deceased, and the respective amounts due the several claimants were settled by the Court.

Owing to the plaintiff's refusal to join in realizing the stock, however, the defendants were unable to pay some of these parties their respective shares, and finally plaintiff filed a bill to compel the defendants to pay him his portion of the estate with $1,000, which he claimed as commission, and also to hand over to him the shares of the next of kin. After the hearing a decree was made directing the estate to be disposed of by the defendants, and that they were entitled to their costs as between solicitor and client, which could be retained out of the plaintiff's share of the estate.

On appeal PROUDFOOT, J., reversed that portion of the decree which made the plaintiff's share of the estate liable for the defendant's costs, but the Court of Appeal restored the original judgment. On appeal to the Supreme Court of Canada,

Held (affirming the judgment of the Court of Appeal), that as the misconduct of the plaintiff had caused all the litigation, the Court of Appeal had acted rightly in refusing to compel any of the other next of kin to bear the burden of the costs.

Appeal dismissed with costs.

O'Sullivan, for appellant.

Maclennan, Q.C., and *Whiting*, for respondents.

Ontario.]

WHITE v. CURRIE.

Solicitor and client—Negligence—Omission to include property in mortgage—Omission to register—Laches by client.

C., a member of defendant's firm of solicitors, was employed to prepare a mortgage for W., who gave instructions partly verbal and partly written. Nearly six years after W. brought an action against the firm for neglecting to register the mortgage, and shortly before the trial asked to be allowed to add to his statement of claim an allegation of neglect to include a certain property in the mortgage, which he claimed to have been included in the instructions. There was conflicting evidence at the trial as to the instructions, and judgment was given for the defendants, which judgment was sustained by the Divisional Court and by the Court of Appeal. On appeal to the Supreme Court of Canada,

Held (affirming the judgments of the Courts below), that as the plaintiff had delayed for so long in prosecuting his claim against the defendants, and the judge who heard the case had decided against him, this Court would not interfere with that judgment affirmed by two Courts.

Appeal dismissed with costs.

Osler, Q.C., and *Laidlaw*, for appellant.

Kerr, Q.C., for respondent.

Ontario.]

GRIP PRINTING AND PUBLISHING CO. v. BUTTERFIELD.

Patent—Assignment of interest in—Subsequent infringement—Estoppel—Want of novelty.

C. obtained a patent for The Paragon Black Leaf Check Book, and in his specification claimed as his invention, "in a black leaf check book of double leaves, one-half of which are bound together, while the other half fold in as fly-leaves torn out; the combination of the black leaf bound into the book next the cover and provided with tape across its ends, the said black leaf having the transferring composition on one of its sides only."

A half interest in this patent was assigned to the defendant with whom C. was in partnership, and on the dissolution of such partnership, said half-interest was re-assigned to C. who assigned the whole interest in the patent to plaintiffs.

Prior to the said dissolution the defendant obtained a patent for what he called "Butterfield's Improved Paragon Check Book," claiming as his invention the following improvements on check books previously in use:—1st. A kind of type; 2nd. The membrane hinge for a black leaf, the whole bound by an elastic band to the ends or sides of the lower cover; and 3rd. A totalling sheet;" and after the dissolution proceeded to manufacture check books under his said patent. Plaintiffs brought suit for an injunction, claiming that their patent was infringed, and on the hearing before the Chancellor obtained the relief prayed for. The Court of Appeal, however, reversed the judgment of the Chancellor, holding the plaintiff's patent to be void for want of novelty. On appeal to the Supreme Court of Canada,

Held (reversing the judgment of the Court of Appeal), that the patent of the plaintiffs under which they claimed was a valid patent, and as there was no doubt that it was infringed by the manufacture and sale of defendant's books, the judgment of the Chancellor should be restored.

Appeal allowed with costs.

W. Cassels, Q.C., for appellants.

Kingsford, for respondent.

Ontario.]

ST. LAWRENCE AND OTTAWA RY. CO. v. LETT.

Railway company—Negligence—Death of wife by—Damages to husband as administrator—Benefit of children—Loss of household services—Care and training of children.

Although on the death of a wife, caused by negligence of a railway company, the husband cannot recover damages of a sentimental character; yet the loss of household services, accustomed to be performed by the wife, and which would have to be replaced by hired services, may be a substantial loss for which damages may be recovered, and so also may be the loss to the children of the care and moral training of their mother.

Appeal dismissed with costs.

Robinson, Q.C., for appellants.

McCarthy, Q.C., and *O'Gara*, Q.C., for respondent.

Ontario.]

TORONTO GRAVEL ROAD, ETC., COMPANY v. COUNTY OF YORK.

Agreement with municipality — Construction of tramway—Traction engine—Agreement to withdraw and discontinue use—Right to use steam engine under.

An agreement was entered into under the authority of an act of the Legislature of Ontario, between the municipality of York and the Toronto Gravel Road Co., for a right to construct a tramway from their gravel pits to the City of Toronto. One of the clauses of the agreement was as follows: "So soon as this agreement shall have been ratified by the said corporation, the said company shall forthwith withdraw their said traction engine from the public highway of the said county, and shall discontinue the use and employment of the said traction engine, and of any other traction engine upon or along such public highways."

The company claimed the right to put steam engines upon the road, over such public highway, notwithstanding the above clause in their agreement.

Held (affirming the judgment of the Court of Appeal), that the use of steam engines was an infraction of the said clause.

Appeal dismissed with costs.
Robinson, Q.C., *Osler*, Q.C., for appellants.
Kerr, Q.C., and *Cassels*, Q.C., for respondents.

Ontario.]

KELLY v. IMPERIAL LOAN INV. CO.

Mortgage—Assignment of equity of redemption in trust—Reconveyance—Foreclosure against trustee—Subsequent sale—Power of sale, Exercise of, by deed after foreclosure.

Kelly gave a mortgage of leasehold premises to respondents, with covenant authorizing them to sell on default, with or without notice to the mortgagor, and at either public or private sale. The mortgage conveyed the unexpired portion of the current term and "every renewed term." Afterwards Kelly conveyed the equity of redemption in the mortgaged promises to one O'S. in trust, to carry out certain negotiations, and left the country. During his absence the lease of the ground expired, and it was renewed in the name of O'S. Default having been made in payment of interest under the mortgage, a suit was brought against O'S. for foreclosure, prior to which O'S. having been threatened with such suit, reconveyed equity of redemption to Kelly, but deed was never delivered. O'S. then filed an answer and disclaimer of interest in said suit, which he afterwards withdrew and consented to a decree, and the mortgagees subsequently sold the mortgaged premises to the defendant Damer for a sum less than the amount due on the mortgage; the deed to Damer recited the proceedings in foreclosure, and purported to be made under the decree.

Kelly brought suit to have the decree of foreclosure opened and cancelled, the deed to Damer set aside, and to be allowed to come in and redeem the premises.

Held (affirming the judgment of the Court of Appeal, STRONG, J., dissenting), that even if the decree of foreclosure were improperly obtained, and consequently void, yet the sale to Damer was a proper exercise of the power of sale in the mortgage, and should be sustained, and that it passed the renewed term which was included in the mortgage.

Appeal dismissed with costs.
McCarthy, Q.C., and *Plumb*, for appellant.
Maclennan, Q.C., and *Galt*, for respondents.

COURT OF APPEAL.

C. C. Dufferin.] [Dec. 23, 1885.

PETTIGREW v. THOMAS.

Interpleader—Trial of issue by jury—Evidence for the jury.

Under an execution issued on a judgment recovered by one T. against S. B. S., a married woman, wife of one J. J. S., the sheriff seized a certain mare as the property of the judgment debtor. Upon claim made by the plaintiff, an interpleader order issued directing the trial of an issue in the usual form by a jury in the County Court. Upon the trial, the learned judge held that the plaintiff had failed to make out his title by any evidence proper for the consideration of a jury, and he accordingly withdrew the case from them, and directed judgment for the defendant. He also subsequently refused an order *nisi* for a new trial, and this appeal was brought from his judgment.

It appeared that the plaintiff claimed title to the mare under a purchase from J. J. S., or his wife, for valuable consideration actually paid. There was no bill of sale, but the plaintiff put in evidence to prove that there was an immediate delivery followed by an actual and continued change of possession sufficient to satisfy the statute.

Held, that the question of delivery and change of possession is one proper to be submitted to the jury with proper explanations by the judge as to the object of the statute and the meaning of terms contained therein, and that the case should not have been withdrawn.

Scribner v. *McLaren*, 2 Ont. R. 265, approved.

S. H. Blake, Q.C., and *Elgin Myers*, for the appellant.

Moss, Q.C., for the respondent.

C. C. Elgin.] [Dec. 23, 1885.

CHING v. JEFFERY.

Promissory note—Equity affecting transferee taking subsequent to maturity.

Action upon a promissory note made by defendant, payable to one W. G. A. or bearer, and transferred by W. G. A. to the plaintiff several months after it became due. The defence was that after maturity of the note, and while W. G. A. was still

the holder, it was agreed between defendant and W. G. A., and one R. J. (who was also interested in the note), that the defendant should supply W. G. A. and R. J. and their families with board and lodging, the value of which should be applied in payment or reduction of the note. The rate at which such board and lodging should be supplied was not agreed on, nor did it appear that there had been any subsequent accounting together, or settlement of the amount by the parties. The jury found the fact of such agreement, and that the amount due under it was $100; also that the plaintiff was a *bonâ fide* holder of the note for value, and without notice. The board, etc., had been supplied before the plaintiff became the holder. The learned judge of the County Court held that this was merely the subject of a set-off, which might have been pleaded if W. G. A. were plaintiff, and that "the defence set up did not affect the equities, if any, which subsisted between the original parties to the note arising out of the transactions in which it was given."

Upon appeal to this Court,

Held, that W. G. A.'s title to dispose of the note after its maturity became subject by the agreement to the defendant's right to have the amount due for board, etc., applied in reduction of the note in accordance with the agreement, and that such right was an equity attaching to the note in the plaintiff's hands. *Canadian Bank of Commerce* v. *Ross*, 22 C. P. 491, distinguished, and judgment reversed.

Ermatinger, Q.C., for the appellants.

Aylesworth, for the respondents.

Proudfoot, J.] [Dec. 23, 1885.

McVEAN v. TIFFIN.

Mechanics' lien—Mortgage—Priority of registered mortgage over lien subsequently registered.

This was an action under the Mechanics' Lien Act, R. S. O. cap. 120, brought by the contractor against the owner to enforce a lien. By the judgment, a reference was directed to the Local Master at Chatham in the usual form, to enquire whether any person or persons, and who other than the plaintiffs, except prior mortgagees, had any encumbrance, etc., upon the premises in question. Subsequently the Master made a number of persons, including the appellants, parties in his office, and caused them to be served with notice T, which notice, however, wrongly recited the judgment as directing an enquiry as to encumbrances generally, without the exception as to prior mortgages. Upon being served, the appellants petitioned to discharge the Master's order upon the ground that they were prior mortgagees, and hence not necessary or proper parties to the action.

It appeared that the appellants registered their mortgage before any of the work was done or materials supplied for which the plaintiffs claimed, and advanced the full amount of the mortgage money some months before the plaintiffs' lien was registered, though not all of it before the plaintiffs had done work and supplied materials. The plaintiffs contended for priority to the mortgagees as far as regarded advances made after the commencement of the work. The plaintiffs did not, however, allege that the mortgagees had any actual notice of their lien before it was registered. The learned judge in the Court below dismissed with costs the petition of the appellants, on the ground that it was proper for the Master, under the judgment, to enquire as to moneys advanced upon the mortgage subsequent to the commencement of the work in respect of which the lien arose.

Held, that the appellants' claim was prior to that of the plaintiffs, and that they were not proper parties to the action, being excepted by the terms of the judgment, nor was the Master justified in entering upon any enquiry as to their advances.

Richards v. *Chamberlain*, 25 Gr. 402, and *Hynes* v. *Smith*, 27 Gr. 150, referred to. Appeal allowed.

Bayly, Q.C., for the appellants.

Clement, for the respondents, plaintiffs.

COMMON PLEAS DIVISION.

[December 19, 1885.

FRYE v. MILLIGAN.

Hire contract · False representation — Deceit — Breach of warranty—Damages.

The defendant delivered a piano to the plaintiff on what is known as a hire contract, which provided that the defendant did "neither part with the said piano," nor did the plaintiff "acquire any title" to it, until a note for $400, which was given for the price, was duly paid, and that on default of payment

of the note or any of the instalments, the defendant was authorized to enter the plaintiff's premises and take and remove the piano, and collect all reasonable charges for its use. The price of the piano was $500, which was payable by crediting $100 on an old piano taken in exchange and the balance in monthly instalments, the note being payable by like instalments. The note was discounted by a private banker, the defendants endorsing it. The instalments were not met as they fell due and payment was enforced, and when action was brought there were instalments in arrear.

The plaintiff sued for fraudulent misrepresentation, and for general damages for breach of an implied warranty; the alleged misrepresentations or warranties being that the piano was worth $500, that it was a first-class instrument, and as good as any Steinway or Chickering piano.

Held, that the plaintiff could not succeed as to the false representation, for the evidence showed that after she discovered the piano was not as was represented she did not disaffirm the contract, or offer to return the piano, but treated the contract as subsisting. Nor could she recover in an action for deceit, for she failed to show that the defendant did not believe the statements made to be true, or that the statements were made recklessly; also, no damages were shown; and moreover, though not deciding the point, the statements were such as are properly styled simple commendations.

Held, also, that as the property had not passed, an action for the breach of warranty would not lie.

Falconbridge, Q.C., for the plaintiff.

Meredith, Q.C., for the defendant.

HILLIARD V. GEMMELL.

Landlord and tenant—Tenand holding over after expiration of term—Rent payable therefor.

Where a party, having held for a term at a certain rent, continues to occupy after the expiration of his term, it is presumed, if there is no evidence to the contrary, that he holds at the former rent.

In this case the evidence showed that the plaintiff allowed the defendants to remain in occupation for two months after the expiration of their term, and made no demand for an increased rental; and he was therefore held to have agreed to allow defendants to remain on the terms of paying the rent reserved by the expired lease, but as they received notice that if they desired to remain on longer they must pay an increased rental, they were held chargeable with such increased rental.

Dumble, for the plaintiff.

Edminson, and *Wallace Nesbitt*, for the defendants.

MCCANN V. PRENEVEAU.

Malicious prosecution—Termination of criminal proceedings—Original indictment—Admissibility of—Slander, evidence of—Amendment.

Action for malicious prosecution and slander. The malicious prosecution arose out of an indictment preferred at the Quarter Sessions. In proof of the termination of the criminal proceedings, the plaintiff produced in evidence, which was admitted subject to objection, the original indictment endorsed "no bill."

Held, that this was not sufficient, but that a record should have been regularly drawn up and an examined copy produced.

Held, also, that evidence of the motives which induced the defendant to lay the charge before the magistrate is properly receivable, and should not have been rejected as was done here.

There was no evidence to sustain the slander as laid, but an amendment was allowed to comply, as was alleged, with the evidence. The only objection made by defendant was that he should be allowed to examine the witnesses again on the new count. An objection in term to the amendment was, therefore, not allowed.

The evidence in support of the amended count consisted, not of statements voluntarily made by the defendant, but of answers to questions put to him, after he had laid a charge against the plaintiff, as to what the charge was.

Held, that this would not be sufficient to base an action of slander; and, moreover, the evidence itself failed to substantiate the slander.

G. T. Blackstock, for the plaintiff.

Osler, Q.C., for the defendant.

CLARKSON v. SNIDER.

Stock—Pledge by broker—Recovery of purchase value.

On 28th February, 1884, and 1st May, 1884, respectively, a firm of brokers was employed by defendant to purchase ten several shares of Federal Bank stock, at the respective rates of $138.25 and $126, with ¼ per cent. commission. The price paid by the brokers was to be repaid on demand, with interest at six per cent., and the stock held by the brokers as collateral security for repayment; the brokers also receiving a ten per cent. margin. The brokers took the stock in their own names, and then transferred it to a loan company, together with other stock of the same character, the transfer, though absolute in form, being in fact a pledge to secure the repayment of a much larger amount than the sum payable by defendant. The pledge had no reference to the transaction with defendant, but was for the brokers' own purposes. The defendant was not informed of the transfer, and calls for further margins were made on him from time to time as the stock fell. On 27th June, 1884, the brokers suspended payment, at which date the stock had fallen to 82 or 18 below par; and on the 26th December they made an assignment to the plaintiff for the benefit of creditors. Neither at the time of the suspension or assignment was any unpledged or unhypothecated stock held for, or held by, the brokers, nor was any transferred to the plaintiff. There was only the right vested in plaintiff to redeem any stock that might have remained undisposed of by the pledgees. On 4th August, 1885, after the stock had by legislative enactment been reduced to one half its original par value, or from $100 to $50, the plaintiff offered to transfer twenty shares of the reduced stock, which defendant refused to accept. The plaintiff then brought an action against the defendant to recover the alleged balance due on the stock.

Held, there could be no recovery.

When as a jury case the learned judge at the trial enters a nonsuit, a notice of motion and order *nisi* is the proper mode of moving against the nonsuit.

F. Arnoldi, for the plaintiff.

Fullerton, and *Cook*, for the defendant

UDY v. STEWART.

Seduction—Survival of action—Evidence, admissibility of—O. J. Act—Rule 383.

In an action of seduction the plaintiff obtained a verdict, and judgment was directed to be entered in his favour. In the following sittings of the Divisional Court an order *nisi* was obtained to set aside the verdict and judgment, and to enter judgment for the defendant on the ground of the improper admission of the evidence of the seduced girl by reason of her incompetency to give evidence. The order was set down, and on its coming on for argument, it appeared that after the order had been served the plaintiff had died.

Semble, that, under O. J. A. Rule 383, the action abated by reason of the death of the plaintiff: but,

Held, that the girl's evidence was improperly received, as it clearly appeared that she was not capable of understanding or appreciating the nature of an oath, or the obligation she assumed in swearing to tell the truth, and was therefore incompetent to give evidence, and without her evidence the verdict could not be supported.

Under the circumstances, an order was granted staying further proceedings in the action.

G. T. Blackstock, for the plaintiff.

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

REGINA v. BENT.

Criminal law—Evidence—Admissibility.

The prisoner was indicted along with W., the first count charging W. with forging a circular note of the National Bank of Scotland, and the second with uttering it knowing it to be forged. The prisoner was charged with being an accessory before the fact. Evidence was admitted showing that two persons named F. and H. had been tried and convicted in Montreal of uttering similar forged circular notes; that these notes were printed from the same plate as those uttered by W.; that the prisoner was in Montreal with F., they having arrived and registered their names there together at the same hotel, and occupied adjoining rooms. At the trial in Montreal, after F. and H. had been convicted on one charge, they admitted

their guilt on several others. It was also proved that a number of these circular notes were found on F., and a number on H., and these letters were produced on the trial of the prisoner.

Held, that the evidence was properly received in proof of the guilty knowledge of the prisoner.

MacMahon, Q.C., for the Crown.

Bigelow, for the defendant.

REGINA v. MCDONALD ET AL.

Criminal law—Separate indictments for similar offences—On trial of one of the indictments evidence received of charge on other—Admissibility.

Two indictments were preferred against the defendants for feloniously destroying the fruit trees respectively of M. and C. The offences charged were proved to have been committed on the same night, and the injury complained of was done in the same manner in both cases. The defendant was put on his trial on the charge of destroying M.'s trees; and evidence relating to the offence charged in the other indictment was admitted, as showing that the offences had been committed by the same person.

Held, that the evidence was properly received.

Johnston, Deputy Attorney-General, for the Crown.

G. T. Blackstock, for the defendants.

FRIENDLY v. CANADA TRANSIT CO.

Sale of goods—Consignor and consignee—Property passing—Right of action.

L. gave a verbal order to the plaintiffs for certain goods exceeding in amount $400, which were shipped on defendant's steamer. The goods were insured by the plaintiffs, loss, if any, payable to them. The vessel arrived, and there being no wharf, a sort of gangway was constructed by means of which the cargo was discharged. One of the cases was duly landed and received by L., one slipped from the gangway into the water and was damaged, while the third remained on board in consequence of the purser requiring payment of the freight, not only on these cases, but on a variety of other goods consigned to L. before he would deliver it up, which L. refused to do unless he had an opportunity of checking over the goods. Before the dispute was settled the steamer left, and, a few days afterwards, was lost with this case of goods.

Held (GALT, J., dissenting), that the property in these cases of goods had passed to the consignee L., and that the plaintiffs could not maintain an action for the loss and damage done to the goods.

D. E. Thomson, for the plaintiffs.

Tilt, Q.C., for the defendants.

CHANCERY DIVISION.

Proudfoot, J.] [Nov. 11, 1885.

CLARKE v. UNION FIRE INS. CO.—SHOOLBRED'S PETITION.

Company—Winding up—45 Vict. c. 23, (D.)—47 Vict. c. 39, (D.).

There is nothing in 47 Vict. c. 39, s. 2, to limit its application to companies being wound up at the date of 45 Vict. c. 23, (May 17th, 1882.) It applies to a company in liquidation, or in process of being wound up. Liquidation would apply to a company insolvent, though not technically being wound up, and against which proceedings are being taken to realize its assets and pay its debts.

Notice need be given to the company only, as was done in this case, and perhaps also to creditors, who have brought actions against the company, and whose actions would be stayed by the winding up order.

It is not correct to say that there is no power to refer the appointment of a liquidator under these Acts to the Master.

Proudfoot, J.] [November 11, 1885.

RATTE v. BOOTH.

Riparian proprietor—Navigable stream—Reservation in patent.

J. A. was the patentee of a certain water lot on the River Ottawa, and the description covered the lot, and two chains distant from the shore, but the patent contained a reservation "of the free uses, passage and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter

found in or under, or be flowing through or upon any part of the said parcel of land hereby granted." J. A. afterwards granted the said water lot to A. R., but the description in the deed only went to the water's edge.

In an action by A. R., against some owners of saw-mills on the river above his lot to prevent them from throwing sawdust, slabs, etc., into the river to his detriment in the use of his water lot, it was

Held, that the Ottawa River is a navigable stream in fact, and a riparian proprietor as such would, therefore, only be entitled to the water's edge. The reservation in the patent still leaves that part of the river a navigable stream, and does not convey an exclusive right to the grantee of the Crown, and being such, the conveyance to the water's edge would not carry the right further than to that edge. It is only by the special grant that a title passed to the two chains, and still left the river with all its characteristics of a navigable stream. Any structure on the water, even if erected for twenty years, would be an interference with the free use of the river reserved by the Crown, and the right to do so could not be acquired in that way. The action was therefore dismissed.

Cassels, Q.C., for the plaintiff.

Gormully, for the defendants, Bronson and Weston.

McCarthy, Q.C., and *Christie*, for the other defendants.

Proudfoot, J.] [Nov. 18, 1885.

SCHRADER V. LILLES.

Agreement—Cigarmakers' union—Consideration—Restraint of trade—Penalty—Liquidated damages.

By agreement, dated May 27th, 1885, certain members of a Cigar Manufacturers' Association, after reciting that it had been agreed that they "should become severally bound to one Schrader in the sum of $500 as liquidated and ascertained damages in case any of them shall at any time during the continuance of this agreement, either directly or indirectly, buy or sell any cigars marked or branded with the labels of the Cigarmakers' Union, or shall use or allow to be used in connection with the manufacture of cigars by him, any Cigarmakers' Union labels, or any label sanctioned by the Cigarmakers' Union, or any label in any way indicating that his cigars have been manufactured by union men, or shall permit or allow any Cigarmakers' Union, or any union, or any set of men, to compel him to hire or employ union men only, or to dismiss any employé," went on to covenant, each for himself, that "he will, in case he shall at any time hereafter violate any of the foregoing stipulations by buying or selling cigars marked or branded with the labels of the Cigarmakers' Union, etc. (as in above recital); he shall immediately pay to the said Schrader the sum of $500, the intention being that in case of a violation of all or any of the stipulations, provisoes or conditions aforesaid by any of them, he, the said party so offending shall immediately forfeit and pay to the said Schrader the full sum of $500 because of his so offending, as liquidated and ascertained damages (and not as a penalty); the intention also being that the entire sum of $500 shall be the amount of the ascertained and liquidated damages of any violation or breach whatever of any of the stipulations, provisoes or conditions aforesaid on the part of any one of the said" (covenanting parties).

Held (1), that the mutual obligations imposed by the contract constituted a sufficient consideration.

(2) That the agreement was not invalid as in restraint of trade and contrary to public policy.

(3) That the plaintiff was entitled to recover the sum named in the agreement as liquidated damages.

Divisional Court.] [December 3, 1885.

IN RE CLEATOR.

Will, devise—Estate in fee tail or fee simple—Vendor and purchaser—R. S. O. c. 109.

M. C. by her will devised as follows: "First I give and devise to my grandson, J. C., the farm . . . to have and to hold the same, and every part thereof, for and during his natural life and, after his death, to the heirs of his body, should he leave any such heirs surviving, and in the event of his leaving no such heirs, then the same and every part thereof is to be divided as fairly and equally as may be amongst . . . to have, and to hold the same to them, their heirs and assigns forever; but my will

and desire is that my said grandson J. C. shall not have or go into the possession . . until he shall have attained the age of twenty-five years, or five years after my death. Secondly I give and bequeath to my son J. C., $100 annually, during his natural life, the same to be paid to him quarterly . . and to be a charge on the farm or homestead above devised to his said son John."

Held (reversing the decision of Proudfoot, J.,) That the effect of the limitations was to give J. C. an estate tail which he had barred as the result of his dealings with the land by way of conveyance. *Greenwood* v. *Verdon*, 1 K. & J. 74, distinguished. *Per* PROUDFOOT, J. "Heirs of the body" means heirs of the body living at the death of J. C. J. C. took only a life estate, and his heirs of his body would take as purchasers a fee simple. If at J. C.'s death there were no heirs of his body the estate would go to his then living brothers and sisters, in fee simple. *Eden* v. *Wilson*, 4 H. L. C. 257, distinguished.

Beck, for the vendor.

Beverley Jones, for the purchaser.

Ferguson, J.] [Dec. 3, 1885.

KEAYS v. EMARD.

Mortgage — Subsequent parol agreement varying same—Short form deed—Covenant for quiet possession.

Action on a mortgage given to secure a balance of the purchase money for the land from the plaintiff, the first instalment of which was overdue and unpaid.

The defendant set up that he only accepted the deed from the plaintiff, or executed the mortgage sued on, upon her promising to give him possession at a named date, because he relied on representations of the plaintiff, that no one else was in possession, or had any claim to the land, and that she could give him possession at any time, whereas in fact, as the plaintiff knew, one L. was in possession and claimed a right to be so, and the plaintiff was unable to give up possession at the time named, and when after accepting the deed, and giving the mortgage, the defendant threatened the plaintiff with proceedings to recover possession and damages for breach of the agreement, and for the false representations aforesaid, the plaintiff agreed that in consideration of the defendant forbearing to take such proceedings for a reasonable time, no instalment should be due under the mortgage, until such time after the time named therein, as equalled the time beyond the time originally fixed for delivery of possession when possession should be actually delivered to the defendant, and that she should pay defendant such damages as he should sustain from non-delivery of possession at the proper date. The defendant further set up that he forbore proceedings accordingly, and that possession was not really delivered till such a date that, by virtue of above transactions, nothing would be due under the mortgage till January 1st, 1886.

The defendant having proved the truth of these allegations,

Held, that as to the parol agreement to deliver possession by a named date, this being a collateral agreement, and made in consideration that the defendant would enter into the transaction as he did, would, according to the statement of the law by MELLISH, L.J., in *Erskine* v. *Adeane*, L. R. 8 Ch., at p. 766, have been a binding agreement, notwithstanding the execution of the deed and mortgage, were it not that the conveyance to the defendant containing the ordinary short form covenant for quiet possession, the parol agreement was contradictory to the meaning of this, as shown by the column in the statute containing the extended form of the covenant, or if not contradictory, added another term to the deed, and this was fatal to giving effect to the parol agreement.

Held, however, that the forbearance to sue, since the defendant *bonâ fide* believed he had a good cause of action for the false representations and the breach of the agreement, formed a good consideration for the parol agreement to postpone payments under the mortgage, and the plaintiff was bound by it, and nothing, therefore, being due to the plaintiff, the action must be dismissed.

O'Gara, Q.C., for the plaintiff.

J. J. Gormully, and *F. MacDougall*, for the defendant.

Ferguson, J.] [Dec. 14, 1885.

BOGART v. TOWNSHIP OF SEYMOUR.

Medical practitioner—Compensation for services—By-law appointing—Absence of fixed salary—Local Board of Health.

Action for compensation for medical services, rendered on order of Local Board of Health of defendant township, and of the defendants, the corpora-

tion. It appeared that plaintiff was by by-law of December, 1884, appointed medical health officer of the township, under 47 Vict. c. 38, s. 20, but the by-law fixed no salary, as might have been done under that section.

Held, that the law would fix the salary at a reasonable sum, regard being had to the services to be performed and performed by the plaintiff, and the plaintiff was entitled to a reference to the Master to fix the amount.

The local Board of Health had been appointed under by-law of January 19th, 1885, which named three individuals as the Board. It did not, however, state that they were ratepayers, as required by 47 Vict. c. 38, s. 12 ss. 2, nor did it mention the officers which the said sub-section makes *ex officio* members of the Board.

Held, that at all events where the question arose, not on a motion to quash the by-law, but incidentally as here, the by-law should not be held invalid for these reasons.

W. Cassels, Q.C., and *Lynch*, for the plaintiff.

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

Ferguson, J.] [December 15, 1885.

DEMOREST v. THE GRAND JUNCTION R. W. CO. ET AL.

Arbitration—Compensation for land taken for R. W. Co.—Issue pleadings.

D. brought an action to compel a R. W. Co. to arbitrate, to ascertain the value of certain land taken for the purposes of the R. W. Co., and after the service of the writ, the Co. served a notice to arbitrate, and after arbitration an award was made by two of the arbitrators, but was subsequently set aside by the Court, as invalid. D. then proceeded with his action, and the R. W. Co. pleaded that the arbitrators fixed a time for the making of the award, but did not make any within the time limited, and did not enlarge the time, and that, therefore, the sum of $400 offered by the R. W. Co. before proceedings taken was the correct amount of the compensation.

The learned judge found on the evidence that no time had been fixed, and that this was a different case from one in which the time had been fixed, but no award had been made within the fixed time, and

Held, that as the partners by these pleadings placed themselves upon an issue, as to whether the arbitrators had fixed a time or not, and as that issue was found in favour of the plaintiff, the sum of $400 offered had not become the compensation to be paid and a reference back was ordered.

Cassels, Q.C., and *Skinner*, for plaintiff.

Bell, Q.C., and *Biggar*, for defendants.

Boyd, C.] [Dec. 8, 1885.

ELIZABETHTOWN v. BROCKVILLE.

Public Health Act, 1882—*Small-pox hospital—Adjoining municipalities—45 Vict. c. 29.*

Held, on motion for interim injunction, that under 45 Vict. c. 29 s. 12 no hospital can be placed by one municipality within the limits of another municipality, without first obtaining the consent of the latter to that step, and an injunction must go restraining the defendants from using a certain building rented by them within the plaintiffs' municipality as a small-pox hospital.

H. J. Scott, Q.C., for the plaintiffs.

C. Moss, Q.C., and *Reynolds*, for the defendants.

PRACTICE.

Rose, J.] [July 8, 1885.
Q. B. Div.] [December 2.

COCHRANE MANUFACTURING CO. v. LAMON.

Capias — Judgment — Special bail — Appearance — Statement of claim.

The plaintiffs issued a writ of capias irregular and contradictory in its provisions. It purported to be issued in a pending action in which judgment had been recovered, and claimed the amount of the judgment and further costs. It required the defendant to put in special bail, which by its recognizance meant an undertaking by sureties to pay the condemnation money in which the defendant "shall be condemned in this action." The claim endorsed upon the writ and the requirement as to special bail were alone applicable to a pending action on the judgment. The bail to the sheriff undertook that special bail would be put in, and special bail was put in.

Held, that the defendant and his sureties had, by putting in special bail, treated the writ as one

issued in an action on the judgment, and had placed the defendant in the same position as if he had appeared in such action, and a statement of claim delivered after appearance was therefore regular.

Semble, sec. 34 of the C. L. P. Act has not been repealed by Rule 5, O. J. A.

Aylesworth, for the plaintiffs.

Shepley, for the defendant.

Mr. Dalton, Q.C.] [Nov. 17, 21, 1885.
Boyd, C.] [Dec. 2.
Rose, J.] [Dec. 5.

CONMEE ET AL. v. CANADIAN PACIFIC R. W. CO.

CANADIAN PACIFIC R. W. CO. v. CONMEE ET AL.

Jury notice—Cause of action—Cancellation of Certificates — Injunction — Reference — Complicated questions—Burden of proof—Vexatious action—Cross action—Counter-claim—Staying proceedings.

C. and M. were contractors for building the Canadian Pacific Railway, and sued the company for $200,000, the balance alleged to be due upon their contract, the writ in their action having issued on the 5th October, 1885, in the Queen's Bench Division. On the 31st October, 1885, the Railway Company began an action in the Chancery Division against C. and M. to recover $600,000, alleged to have been overpaid them, setting up that the measurements and progress certificates on which the payments were made had been obtained by fraud, and seeking the cancellation of these certificates, and an injunction to restrain the contractors from receiving a final certificate. The company did not counter-claim in the action brought by C. and M.

Held, that the action of the company was one which would have been begun as of course by a bill filed in Chancery, when that was a distinct Court, although it might have been possible to recover in a common law forum, if the action had been otherwise framed; it was also a case in which it was to be expected that a reference to take the accounts would be directed at some stage, and that difficult and complicated questions of law and fact would arise at the trial, which could be much better dealt with by a Judge than a jury; and the jury notice given by C. and M. was therefore struck out.

Held, also, that, as there was a large burden of proof upon the company, and no vexation or impropriety in their seeking to unravel the alleged fraudulent transactions, and as they were not advancing a counter-claim in the action brought by C. and M., the company's action should not be stayed till the final determination of the other action; but that the trial of the company's action was the proper preliminary step in endeavouring to adjust the rights of the parties, and should take place first.

Taylor v. *Bradford*, 9 P. R. 350, distinguished.

McCarthy, Q.C., *Osler*, Q.C., and *Wallace Nesbitt* for C. and M.

Robinson, Q.C., *Moss*, Q.C., and *R. M. Wells*, for the company.

An appeal to the Court of Appeal is pending.

C. P. Div.] [January 2.

CONMEE ET AL. v. CANADIAN PACIFIC RY. CO. (No. 2).

Causes of action—Separation—Consolidation.

The plaintiffs in their first action claimed from the defendants a sum of $200,000 as the balance due upon a construction contract, and in this action, begun more than a month after the first, they claimed from the same defendants a sum of $3,000, the amount of a store account for goods sold and delivered. The cause of action arose before the commencement of the previous action.

Held, that the two claims should have been made in the one action, and that it was a proper exercise of discretion to consolidate this with the former action, so that the two might be tried together, and the same defences be made available in both.

Osler, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

Queen's Bench Division.] [November 24.

DUNCAN V. TEES.

Interpleader—Jus tertii—Execution creditor as plaintiff.

Held (varying the order of Rose, J., 11 P. R. 66), that the execution creditor was entitled to set up against the claimants the right of the assignee, and an issue was directed, the execution creditors to be plaintiffs.

Aylesworth, for the sheriff.
Akers, for the execution creditors.
Shepley, for the claimants.

Proudfoot, J.] [Dec. 1, 1885.

McELHERAN v. LONDON MASONIC MUTUAL BENEFIT ASSOCIATION.

Adverse claims—Right to interplead—Summary application—Chancery practice—Sec. 17, sub-sec. 6, and Rule 2, O. J. A.—Payment into Court—Costs—Indemnity—Staying action.

The plaintiff and J. P. both claimed from the defendants payment of the moneys due under a certain certificate of membership issued by the defendants to T. P., deceased, the plaintiff claiming as administrator of T. P., and J. P. claiming that the certificate had been endorsed to her by the deceased. It appeared that a duplicate certificate had issued to T. P. upon his alleging that he had lost the one originally issued. The defendants were always willing to pay to any one who might be entitled, and upon this action being brought applied for an interpleader order in respect of the adverse claims. J. P. did not appear in answer to the application, and her claim was barred.

Held, that there was a right to interpleader upon a summary application either under sec. 17, sub-sec. 6, O. J. A., or under the former practice of the Court of Chancery. Rule 2, O. J. A., does not extinguish any right to interplead that formerly existed; it regulates the practice only, and enables a defendant to obtain relief upon summary application, where formerly it would have been necessary to file a bill.

Held, also, that the defendants were entitled to their costs of the action and application, and to retain them out of the funds in their hands, and that the balance should be paid to the plaintiff instead of into Court, as the other claimant had withdrawn upon the plaintiff indemnifying the defendants against the production of the original certificate, and that the action should be stayed.

Shepley, for the plaintiff.
A. H. Marsh, for the defendants.

Chan. Div.] [Dec. 3, 1885.

SMITH ET AL. v. GREEY ET AL.

Patent suit—Particulars—35 Vict. ch. 26 sec. 24 (D.).

In an action for an infringement of a patent the defendants denied (4) the novelty of the invention, and (6) that the plaintiff was the first and true inventor.

PROUDFOOT, J., ordered the defendants to deliver particulars under these defences, stating in what respects the defendants deny that the plaintiff's patent was for any new machine, etc., and the dates and occasions when, and the places where, the prior user of the said invention, or any material part thereof, took place, and the names of the persons by whom the prior user was had.

On appeal from this order the Divisional Court (BOYD, C., FERGUSON, J.) was divided in opinion, and the order was therefore affirmed.

Per BOYD, C.—In the absence of any legislation or rules of Court upon the subject, the judge has no power or right to prescribe so minutely what shall be disclosed in the particulars. There has been no change in the practice at law since *Mills* v. *Scott*, 5 U. C. R. 360, and there is no settled practice in equity, where it is quite a recent innovation to apply for particulars. The statute, 35 Vict. ch. 26 s. 24 (D), goes no further than to justify such general order for particulars as is usual in other cases.

Per FERGUSON, J.—The decision in *Mills* v. *Scott* was while 7 Geo. IV. ch. 5 was in force, which did not contain any provisions regarding particulars, and the orders in that case were made under the general practice of the Court; but 35 Vict. ch. 26 sec. 24 (D.) gives general power to make such order as may seem fit respecting the proceedings in the action; the delivery of particulars is a proceeding, and there was therefore jurisdiction to make the order. The order was a reasonable one, and not too comprehensive in its terms, and should therefore be affirmed.

F. R. Powell, for the appeal.
Mervyn MacKenzie, contra.

O'Connor, J.] [Dec. 18, 1885.

McLEAN v. HAMILTON STREET R. W. Co.

Excluding counter-claim—Causes of action—Trial—Negligence—Libel.

Held, that it would be extremely inconvenient and inexpedient to try in one suit two causes of action in tort, each of which depends on nice distinctions of law and fact, and in one of which the Judge controls the law and the jury the facts, while in the other the jury are judges of both the law and the fact; and a counter-claim for libel in an action for negligence was therefore excluded.

Aylesworth, for the plaintiff.

E. E. Kiltson, for the defendants.

C. P. Div.] [Dec. 19, 1885.

CANADIAN PACIFIC R. W. Co. v. GRANT.

Claim and counter-claim—Cross judgments—Set-off—Solicitors' lien.

The plaintiffs sued for freight for the carriage of timber, and the defendant pleaded a counter-claim for neglect and delay in the carriage of the timber.

The judgment at the trial was as follows:—"The verdict will be for the plaintiffs for $2,122, and for the defendants upon their counter-claim for $1,420; and each party will be entitled to costs against the other, as if the statement of claim and counter-claim were separate actions; and I direct that judgment be entered accordingly."

Held (reversing the decision of the Master in Chambers), that the judgments recovered by the plaintiff and defendant must be treated as judgments in separate actions; and therefore that, in setting off the judgments, the lien of the defendant's solicitors upon the judgment against the plaintiffs for costs should be protected.

Watson, for the plaintiffs.

Wallace Nesbitt, for the defendant.

Boyd, C.] [Dec. 21, 1885.

PEEL v. PEEL.

Scale of costs—Surrogate Court—Case transferred to High Court.

In the case of an action transferred from a Surrogate Court to the High Court of Justice, the costs of the proceedings in the Surrogate Court previous to the transfer should be taxed on the scale provided by the Rules of 1858, *i.e.*, as nearly as possible on the County Court scale.

Re Harris, 24 Gr. 459, and *Re Osler*, 24 Gr. 529, explained and followed.

Hoyles, for the plaintiff.

R. M. Meredith, for the defendant.

Rose, J.] [Dec. 22, 1885.

McNABB v. OPPENHEIMER.

Rescinding order for ca. sa.—Jurisdiction of Judge who made the order—Discharging defendant.

A Judge in Chambers has no power to rescind his own order for a writ of *ca. sa.*, or to discharge the defendant from custody, after the order has been acted upon.

Masten, for plaintiff.

T. C. Milligan, for defendant.

Boyd, C.] [Dec. 23, 1885.

RE ENGLISH.

Settled Estates Act—Separate examination of married women—M. W. P. Act, 1884 (*O.*)

In a petition under the Settled Estates Act the separate examination required by the Act of a married woman living out of the jurisdiction was dispensed with in order to avoid delay and save expense; but the examination of married women within the jurisdiction was not dispensed with, where no special circumstances existed.

The Married Women's Property Act, 1884 (O), does not apply to cases under the Settled Estates Act, where the woman had acquired the property before that Act (the M. W. P. A.)

William Roaf, for the petitioner.

Boyd, C.] [Dec. 23, 1885.

BOULTON v. BLAKE.

Extraordinary discovery—Rule 285, O. J. A.—Discretion of Court—Information for purpose of pleading.

The right of extraordinary discovery must be jealously guarded lest it be abused, and it should, under Rule 285, O. J. A., be conceded only when it is clearly proved to be necessary for the furtherance of justice. An application to examine under Rule 285 is in the discretion of the Court, and that discretion could not be said to have been wrongly exercised in allowing the defendant to examine the plaintiff and three witnesses before delivering the defence, in order to obtain for the purpose of pleading a knowledge of material facts, which the defendant could not otherwise get.

Walter Barwick, for the plaintiff.

Small, for the defendant.

Boyd, C.] [Dec. 23, 1885.

SCHRAGG v. SCHRAGG.

Solicitor—Costs—Payment—Retaining moneys—Stipulation—Delivery of bill.

Solicitors retained out of moneys in their hands belonging to their client sufficient to pay their costs of the action, and handed the client a cheque for the balance. The client accepted the cheque, but did not cash it till she had written to the solicitors, stipulating that the cashing should be without prejudice to her right to recover a larger sum if she could shew that a larger sum was due. After the lapse of a year from this transaction the client applied for an order for the delivery of a bill of costs,

Held, that the circumstances did not constitute payment of the costs, and the order for delivery was made.

Re Sutton, 11 Q. B. D. 377, distinguished.

Holman, for the solicitors.

Aylesworth, for the client.

Boyd, C.] [Dec. 23, 1885.

STANDARD INSURANCE CO. v. HUGHES.

Interpleader—Claimants—Attaching creditors—Appeal.

Held, following *Leech* v. *Williamson*, 10 P. R. 226, that attaching creditors are such claimants as are embraced within the provisions of the Interpleader Act, and a sheriff is entitled to apply under the Act for relief in respect of a claim made by such creditors upon moneys in his hands, the proceeds of a sale under execution.

Although *Macfie* v. *Pearson*, 8 O. R. 745, in effect decides that the execution creditor who has seized before process against the defendant as an absconding debtor has issued is to be paid in priority, yet that decision, having been rendered by consent in a summary way, is not binding upon the claimants, who may choose to litigate upon issues which can be carried to appeal.

Holman, for the sheriff.

Aylesworth and *Seton Gordon*, for the attaching creditors.

Masten, for the execution creditors.

W. H. P. Clement, for certificated creditors.

Mr. Dalton.] [Dec. 28, 1885.
Boyd, C.] [Jan. 13, 1886.

SMITH ET AL v. GREEY ET AL.

Foreign commission—Evidence—Restricting—Solicitors' use of knowledge.

Held, that the Court in allowing a foreign commission to be opened before the trial could not impose upon the parties restrictions as to the use to be made of the knowledge of the evidence which would then be acquired by the solicitors.

Arnoldi, for the plaintiffs.

H. D. Gamble, for the defendants.

C. P. Div.] [January 2.

THE SARNIA AGRICULTURAL, ETC., CO. v. PERDUE.

Changing venue—Judge in Chambers—Judge at assizes—Divisional Court—Convenience—Costs.

Mr. Winchester, sitting for the Master in Chambers, refused an application by the defendant to change the place of trial from Sarnia to Stratford, but gave leave to bring on an appeal from his order, or a substantive motion to change the place of trial before ARMOUR, J., at the Sarnia Assizes.

ARMOUR, J., entertained the motion, which was made according to the leave given, and made the order changing the venue to Stratford. The order was drawn up as made by a judge at the assizes, and was signed by the local Registrar at Sarnia.

Held, that, having regard to Rule 254 O. J. A., and to the leave given and the character of the motion, the order of ARMOUR, J., was to be regarded as that of a judge, and not of the High Court, and could therefore be reviewed by the Divisional Court.

There is nothing to prevent a judge sitting at the assizes hearing a Chambers' motion, if he is disposed for the purpose to treat the Court room as his Chambers.

This is not such an application, however, as should be made at the trial, on account of the inconvenience and detriment to the public interest arising from the delay of other business appropriate to the assizes, and on account of the injustice to parties to the cause who have prepared for trial, and it is too late when the assizes have begun to consider the question of the balance of convenience; and therefore, while the Court did not see fit, under the circumstances, to restore the venue to Sarnia, they ordered that the costs of the day at Sarnia and of the several motions to change the venue, as well as of the present appeal, should be costs to the plaintiff in the cause in any event

W. H. P. Clement, for the appeal.

Aylesworth, contra.

Boyd, C.] [January 7.

DAWSON v. MOFFATT.

Stop orders — Execution creditors — Priorities — "Creditors Relief Act, 1880"—Ratable distribution of fund in Court.

In the case of judgment or execution creditors, priority of payment out of a fund in Court, arrested by stop orders, was formerly determined by the chronological sequence, in which the orders were obtained, and that mode of determining priorities is to be accounted for in this Province, on the ground that such was the order of payment of executions at law; and equity aiding the law conformed to the legal order of administering the fund. But, as this principle of priority of and among execution creditors has been abolished by the "Creditors Relief Act of 1880," it is no longer reasonable or seemly to preserve the analogous system of priorities in awarding equitable execution, as the outcome of stop orders; and therefore, execution creditors who had lodged stop orders between the date when the "Creditors Relief Act, 1880," came into force, and the date of the order for payment out, were held entitled to share ratably in the fund.

J. H. Ferguson, *Shepley*, *T. P. Galt*, *G. F. Ruttan* and *Howland*, *Arnoldi* and *Ryerson*, for the different creditors.

Boyd, C.] [January 7.

CRANE v. CRAIG.

Infants—Allowance—Past maintenance—Encroaching on principal.

Where an allowance for past maintenance of infants is sought out of the infants' estate, it is a rule that the principal is not to be encroached upon, unless for unavoidable reasons falling little short of necessity; and the Court will not sanction a higher allowance for past expenditure than would have been awarded for maintenance if a prior application had been made therefor. Where the amount of five infants' estate was $11,250 the master allowed their mother $9,504 for the five years' past maintenance, but BOYD, C. on appeal, reduced the amount to $6,600.

J. Hoskin, Q.C., for the appeal.

George Morphy, contra.

Boyd, C. | [January 11.

STARK v. FISHER.

Taxation of costs—Local officer—Appeal—Rule 427, O. J. A.

Appeals from taxations by local officers should, by analogy to appeals from orders, be governed by Rule 427, O. J. A., and an appeal which was not brought on within eight days from the certificate of the local officer was struck out with costs.

Holman, for the appeal.

Hughes, contra.

RE DRURY.

Ferguson, J.]

Larceny Act, s. 81—Sanctioning criminal proceedings against trustee.

Motion *ex parte* for sanction to criminal proceedings against an executor under sec. 81 of the Larceny Act, administration proceedings being pending,

Held, that inasmuch as the Court had no opportunity of forming an opinion whether at the time the moneys were diverted, as complained of, the diversion was with intent to defraud, the sanction could not be given.

Radenhurst, for the motion.

CORRESPONDENCE.

To the Editor of the LAW JOURNAL:

SIR,—In looking over some of the Law Society accounts, as published last spring, one item struck me as singular—"Knife-cleaner and carpet-sweeper, $21." My landlady tells me that a sweeper costs about $3. This leaves $18 for a knife-cleaner. If the Benchers keep a boarding-house, I should like to know it, and take up my quarters where there is such clear evidence of abundant grub. I should have supposed that for an occasional lunch to our overworked Benchers, a piece of board and a chunk of bath-brick, dear at 18 cents, would have sufficed to clean all the knives that could be used. Possibly, however, it may be that the knife-cleaner is rather something whereon to hone penknives, wherewith to sharpen the lead pencils of practitioners, or possibly to whittle the library tables, or more probably it is connected with some new process of "filing bills," not yet made public.

Yours, STUDENT.

FLOTSAM AND JETSAM.

THE decision of Mr. Commissioner Kerr that when a creditor asks his debtor to pay him by postal order, and the order is sent but goes astray in the post, there has been a good payment, seems in accordance with the cases. In *Warwick* v. *Noakes*, Peake, 67, it was held that if a debtor is directed by his creditor to remit money by the post, and it is lost, the creditor must bear the loss. To ask a debtor to send a postal order is, of course, to ask him to send the postal order by post. There must, on the other hand, be no negligence in the debtor carrying out the request. The letter must be plainly directed and to the right address.—*Law Journal* (London).