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THE vacancy in the Supreme Court occasioned by the promotion of Mr. Justice Strong has been filled by the appointment of Mr. Robert Sedgewick, Q.C., Deputy Minister of Justice. His late chief was, we understand, strongly of the opinion that a man in the full vigor of comparative youth should take the place, and that was one reason, it is said, why Mr. Sedgewick, who is 45 years of age, was chosen. We are scarcely in a position to speak as to his qualifications in respect to his professional attainments in his own Province of Nova Scotia, but Sir John Thompson is of course thoroughly competent to form an opinion on that subject, and we doubt not has acted wisely in the choice he has made. We can say, however, that what is known of Mr. Sedgewick in his late capacity leads to the conclusion that his appointment will lend strength to the Supreme Court. Certainly his genial disposition, his sound common sense, and the fund of general knowledge he has acquired by the experience gained in his late position, will add largely to his usefulness. He was called to the Bar of Ontario in 1872, and made Deputy Minister of Justice in 1888, upon the appointment of his predecessor, Mr. Burbidge, to the position of judge of the Exchequer Court.

WE have, however, read the very satisfactory account given by the press of his standing and success at the Provincial Bar, and the ability he has displayed as Deputy Minister of Justice, the best testimony to which is his appointment at the instance of the head of that Department. But we have heard that many persons who know both men and are competent to form an opinion on the point, think it would have been better that Mr. Justice Burbidge, who has obtained experience and displayed great ability in the Exchequer Court, should have been appointed to the Supreme Court, and Mr. Sedgewick chosen to fill the vacancy thereby

occasioned; and we incline to this opinion. There may, however, have been reasons, with which we are unacquainted, for the preference in favour of Mr. Sedgewick, or Mr. Justice Burbidge may have chosen to remain in the position in which he has given so much satisfaction, notwithstanding the smaller emolument attached to it. As it is, Mr. Justice Sedgewick will have an opportunity of discussing with Mr. Justice Taschereau the objections of the latter to the new Criminal Code, in the preparation whereof he must have assisted; and such discussion would, doubtless, be to the advantage of the public in the interpretation and application of the law. Yet it seems hard that this advantage to the public should be gained at the expense of Mr. Justice Burbidge, who would seem, therefore, to be entitled to indemnity by an equalization of the salaries attached to the two judgeships.

LIEUT.-COLONEL HEWITT BERNARD, Q.C., C.M.G., who was the first Deputy Minister of Justice of the Dominion of Canada, has just passed away at the age of sixty-eight years. Whilst his many friends (for their name is legion, and enemies he had none) cannot but feel that his was a happy release from many years of great suffering, most bravely and patiently borne, we cannot record his death without a sense of loss and deep sorrow that we shall see his face no more. Nor is it unfitting that we at least should dwell somewhat upon his career, for he was one of the first editors of this JOURNAL, and for several years his great fund of legal lore, and especially his intimate acquaintance with municipal law (at that time not so well settled as it is now), combined with a liberal education and literary tastes, a facile pen and a polished diction, all his own, contributed largely to the success which attended the first effort to establish a legal journal upon a firm footing in this Province.

For a sketch of the life of our old friend we cannot do better than copy, as we do in another place, what has been said of him by one who knew him well, published recently in the *Ottawa Citizen*. We would merely add a few words to what is there stated.

Mr. Bernard was admitted to practice in 1856, and was called to the Bar in Trinity term, 1866. One of the students in the office of Patton & Bernard at that time was Mr. Featherston

Osler, now one of the judges of the Court of Appeal for Ontario. We think we can safely speak for him, as the writer of these lines, another of his students, can also for himself, of the pleasure and profit of being under the good influence of one who had such a high ideal of professional honour, and who was so capable, and at the same time so anxious, to impart instruction to the students under his care.

Colonel Bernard's interest in the volunteer force, which is more fully alluded to in the article already referred to, was first displayed in connection with a company which he organized about 1855, then known as the Barrie Rifles, now No. 1 Company of the "Simcoe Foresters" (35th Battalion). His "right-hand man," who writes this, and those of the company who still survive, can testify to the interest he took in it, and how much he won the hearts of the men.

In the official capacity he occupied for many years, he was known as a well-read and able constitutional lawyer, in whose opinion his chiefs, as well as others with whom he was brought in contact, had the fullest confidence. Wise, discreet, diligent, and courteous, he was the model head of a department. Personally, he was a man of high honour and unblemished reputation, and respected by all—a gentleman in every sense of the word, with the polished manners of the old school. Beloved by all those who had the pleasure of his friendship, an old, tried, and true friend, to whom we owe much, we mourn his loss.

We learn from the *Central Law Journal* that Chief Justice Paxson, of the Supreme Court of Pennsylvania, in the case of *Commonwealth* v. *Matthews*, has sustained a conviction for the offence of selling a newspaper on Sunday. The conviction was had under a law passed in 1794, which, while prohibiting the performance of any worldly employment on Sunday, excepts "works of necessity or charity." The learned chief justice thought it hardly likely that the framers of the law contemplated the possibility of Sunday newspapers, and that the latter, through the development of modern ideas, had become a part of the ordinary life of the people. But while the Sunday newspaper may be a convenience to a large majority of the people, it did not, in the opinion of the court, come within the

exceptions of the Act. The editor, whilst admitting that the judgment was technically correct, thinks the learned judge would not have gone far astray in declaring Sunday newspapers to be works of necessity. We entirely disagree with him, and that quite apart from the religious question involved. A Sunday newspaper is, we think, not only *not* a work of necessity, but a public nuisance. There is no more ingenious device for keeping men's minds on the stretch, and on the stretch too in the same groove they have been running all the week. Busy men need rest. It is no rest reading newspapers on Sunday when we are reading them all the week. Sunday newspapers are as responsible for nervous wrecks and suicides as any other one thing in these days. We are very thankful they have, so far, been kept out of this country.

A MINISTER of the Crown, and representing a French constituency at that, has had the hardihood to introduce in the Dominion Parliament a bill abolishing four of the holidays now in vogue in the Province of Quebec. The other Provinces have managed to do very well without these holidays, and if the introducer of the bill would increase its scope and abolish all saintly holidays the public would, we venture to think, be better pleased and the business of the country benefited.

UNITED STATES LEGISLATION.

At the annual meeting of the American Bar Association, held on August 24th last, the report of which has only now come to hand, the president, Mr. John F. Dillon, well known to the profession here as the author of the leading work upon municipal law, in his opening address, made the usual references to the more important changes which had taken place in statute law in the United States during the year immediately preceding. It has been stated in the newspapers that during the last session there were introduced into the House of Representatives and the Senate, at Washington, no less than 13,439 bills and joint resolutions. A marvellous waste of energy—and paper—this seems, when we find that two-thirds of these failed to pass both Houses, and never reached the President for signature.

The Chinese Restriction Act passed by these "barbarians" requires that celestials unlawfully within the United States be imprisoned at hard labour for one year and removed to their own country. By this Act an accused person must establish by affirmative proof his right to remain in the country. If this measure is actively enforced, it is feared that the Chinese in their own country will retaliate even to the extent of a general massacre of foreigners in inland China.

In referring to the Canadian Retaliation Act, which empowers the President to impose taxes on Canadian vessels using the Sault Ste. Marie canal "whenever he becomes satisfied that the practice of the Government of Canada in respect to American shipping is unfair and in violation of our treaty rights," Mr. Dillon is candid enough to admit that the measure is one of purely political expediency. But this difficulty is now at an end.

Many of the State Legislatures have, as has that of our own Province, recognized that game birds and animals and fish must be better protected, and the laws respecting these have been made more stringent, while, at the same time, further measures have been taken for the extermination of destructive birds, animals, and insects.

A biennial session only of the Legislature is desired in Rhode Island, as also in Georgia, where a popular vote is to be taken to ascertain the feeling of the citizens. The impression is gaining ground in many States that annual sessions are an unnecessary luxury. The Australian ballot system has, up to the present time, been adopted in thirty-six States; Mississippi, Colorado, and Iowa having joined the majority.

Hotel-keepers at seaside resorts in Georgia are compelled to maintain lifeboats. In New York city certain docks have been set apart for the health and recreation of the people. It may have been the cholera scare that has induced the States of New York and New Jersey to regulate that costly class of the community, plumbers. In the latter State municipalities are given power to "manage, regulate, and control plumbers." Judging from the experience of other localities, New Jersey municipal corporations will have their hands pretty nearly full. In the Act referred to, plumbers are associated with pawnbrokers, public exhibitions, nuisances, frame houses, tramps, beggars, and dogs—a motley collection of necessary and unnecessary evils.

Societies for the prevention of cruelty to children and animals are encouraged in Louisiana by giving the society a portion of all fines imposed. Ohio is now one of the few States in which barbers are prohibited from carrying on their trade on Sunday. Non-resident aliens in Texas may not hold land for more than ten years, but in Colorado a law preventing such persons from acquiring real estate has been repealed. Rhode Island and Colorado are at one with this Province (55 Vict., c. 52) in prohibiting the sale or gift of cigarettes to minors, who are also forbidden to smoke or chew tobacco in public places. It is said that twenty-four other States have enacted similar laws.

Nine jurors may now bring in a verdict in civil causes in Utah Territory. Georgia follows in the wake of Louisiana, Tennessee, and Texas in providing separate cars and equal accommodation for black and white passengers. Stoves in passenger cars in Maryland must be discontinued after February 1st, 1893. Railroads in Massachusetts which have been hitherto operated by steam have legislative authority to use electricity as a motive power; and the same State, as does also North Carolina, forbids railroads to give free passes to any State officer, or to sell any ticket at less than the ordinary price. Ohio prescribes penalties for overcharging passengers or freight.

A novel Act is that passed in Michigan which attempts to divide the tax upon mortgaged real estate by levying a proportionate part upon the owner, and the balance upon the mortgagee. Both parts are made liens upon the property, the mortgagee being declared to have an interest in the land. Either the owner or mortgagee may pay both parts of the tax, and, if paid by the owner, the portion paid on account of the mortgagee is to be credited on account of interest. If the mortgagee pay the owner's portion, in addition to his own, the amount may be added to the mortgage debt. The evident result of the statute will be that lenders of money will require by express contract that the owner pays their share of the tax, or else they will stipulate for a higher rate of interest.

Massachusetts has been accused of not being so enterprising as some others of the Eastern States, but no longer does such a charge attach to it, for we find an Act providing for the counting of ballots while the voting is still in progress. Defeated candidates will thus quickly know the worst.

"An Act for Prevention of Blindness" might lead the ignorant to suppose that the Legislature of Rhode Island had received extended powers; but a perusal shows that it refers only to the duties of the physician and midwife to report to the authorities when the eyes of infants are exceptionally weak, for the purpose of saving them from the possible misfortune of blindness.

A striking instance of the power and direct influence of public opinion is furnished in the city of New York, where, on March 17th, 1892, a by-law was passed authorizing the construction of a drive-way within the limits of Central Park. The by-law escaped public attention during its progress through both houses, and the next morning the park commissioners proceeded to stake out the new roadway. Popular indignation was immediately aroused against this invasion of a park dedicated to the enjoyment of all classes of the people, and a mass meeting was held, the result of which was that the Act was repealed twenty-eight days after it was originally passed.

Georgia has passed a law allowing a party to a civil action to put the opposite party in the witness box for the purpose of a "thorough and sifting examination, and with a further privilege of impeachment, just as though the witness had testified in his own behalf and was being cross-examined." The purpose of this Act appears to be to relieve one party from the necessity of making the opposite party his own witness, and prevents the disadvantages arising therefrom.

A will made in contemplation of a marriage is not revoked in Massachusetts by the subsequent marriage. Maryland has increased by one-fourth the salaries of all judges in that State, which causes Mr. Dillon to remark: "For this act of justice and this good example, many thanks"; and so say all of us.

These and many other statutory enactments are referred to by the President, who concludes a really good address with quotations from philosophers, historians, and statesmen, too numerous to mention. He refers to the very familiar remark of Lord Bacon, that "every man is a debtor to his profession," upon which the author of "Eunomus" comments: "How much more is every man a debtor to his country, which includes every blessing he enjoys, and for the sake only of which any profession is established"; and the author, in reviewing some of the blessings of Englishmen, adds: "Think of this, and bless

yourself; you are born neither a Russ nor a Turk." This is, no doubt, the origin of the line in "Pinafore"—"He might have been a Russian," etc.

The learned President concluded with observations replete with wisdom in reference to the nature of the constitution and institutions of the Republic to which he belongs. These remarks are to a certain extent applicable to us, with a constitution and institutions that we, at least, think much more desirable. We therefore quote them: "In my judgment, the great, paramount, overshadowing duty of the legal profession in this country, in our day, is to defend, protect, and preserve our legal institutions unimpaired and in their full efficiency. If there is any problem yet unsettled, it is whether the bench is able to bear the great burden of supporting, under all circumstances, the fundamental law against popular or supposed popular demands for enactments in conflict with it. It is the loftiest function and the most sacred duty of the judiciary—unique in the history of the world—to support and maintain and give full effect to the Constitution against every act of the Legislature or Executive in violation of it. This is the great jewel of our liberties. Let us not, 'like the base Judæan, throw a pearl away richer than all his tribe.' This is the only breakwater against the haste and the passions of the people—against the tumultuous ocean of democracy. It must, at all costs, be maintained."

CURRENT ENGLISH CASES.

The Law Reports for January comprise (1893) 1 Q.B., pp. 1-127; (1893) P., pp. 1-10; and (1893) 1 Ch., pp. 1-76.

STATUTE OF LIMITATIONS—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT., C. 57), S. 8—(R.S.O., C. 111, S. 73)—JUDGMENT.

Jay v. *Johnstone*, (1893) 1 Q.B. 25, is a decision of a Divisional Court (Lord Coleridge, C.J., and Wills, J.), following the case of *Hebblethwaite* v. *Peever*, (1892) 1 Q.B. 124 (noted *ante* vol. xxviii., p. 136). That case decided that a judgment, even though not a charge on land, could not be enforced after the lapse of twelve years from its recovery, when no proceedings had been the meantime taken upon it; the Real Property Limitation Act, 1874

(37 & 38 Vict., c. 57), s. 8, being held to apply to all judgments. That section, as we formerly pointed out, differs from R.S.O., c. 112, s. 20, which omits the word "judgment."

LANDLORD AND TENANT—COVENANT NOT TO ASSIGN OR SUBLET—BREACH OF COVENANT—MEASURE OF DAMAGES—DAMAGES.

In *Lepla* v. *Rogers*, (1893) 1 Q.B. 31, the principal question was as to the proper measure of damages for breach of a covenant to assign or sublet without license. The covenant in question provided that the lessee should not assign or sublet without the consent of the lessor, but such consent was not to be capriciously or unreasonably withheld to a responsible assignee or sub-tenant. The lessee, in breach of his covenant, let the premises to a person who intended, as he knew, to use them, and did in fact use them, as a turpentine distillery. While in the occupation of this tenant, the premises caught fire and were destroyed. The original lessor claimed the value of the buildings so destroyed, and Hawkins, J., held that that was the proper measure of damages, as the fire was the natural result of the breach of the covenant—the business of the sub-lessee being of an unusually hazardous and dangerous character.

DEFAMATION—LIBEL—PRIVILEGE—REPORT OF JUDICIAL PROCEEDINGS—EX-PARTE APPLICATION TO MAGISTRATE FOR SUMMONS.

Kimber v. *The Press Association*, (1893) 1 Q.B. 65, was an action brought by a solicitor for libel. The libel complained of consisted in the publication of the fact that an *ex-parte* application had been made to a magistrate for a summons against the plaintiff on a charge of perjury, and that the application had been granted. At the trial, Hawkins, J., ruled that the report, being a true and fair report of a judicial proceeding, was privileged, and he therefore withdrew the case from the jury and dismissed the action. The plaintiff appealed to the Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.), contending that the defendants were not entitled to be present at the hearing of an *ex-parte* application, and therefore were not justified in publishing what took place; and, further, that Hawkins, J., had erred in not leaving the question of the fairness of the report to the jury; but the Court of Appeal unanimously affirmed the judgment.

MEDICAL PRACTITIONER—PENALTY—PRACTISING WITHOUT CERTIFICATE—ATTENDANCE ON SEVERAL PATIENTS ON THE SAME DAY—"EVERY SUCH OFFENCE," MEANING OF—APOTHECARIES ACT (55 GEO. III., C. 194), S. 20—(R.S.O., C. 148, S. 45).

The Apothecaries Co. v. *Jones*, (1893) 1 Q.B. 89, was an appeal from a conviction under The Apothecaries Act (55 Geo. III., c. 194), s. 20 (see R.S.O., c. 148, s. 45), for practising as an apothecary without a certificate. That section provides that any person who "shall act or practise" as an apothecary without a certificate is liable to a penalty "for every such offence." The defendant had practised as an apothecary without a certificate, and gave medical advice and supplied medicine to three different persons at different times on the same day. The question was whether or not each of these attendances constituted a separate offence. The judge of the County Court held that they constituted but one offence, and a Divisional Court (Pollock, B., and Hawkins, J.) were of opinion that he was right in so holding. The *rationale* of the decision appears to be this: the statute is directed against persons who "act or practise" as an apothecary without a certificate. "Acting" is synonymous with "practising." An isolated act would not constitute a "practising" within the Act; it is the doing so on several occasions which constitutes the offence; therefore each particular act is not of itself an offence. The Divisional Court relied principally on *Crepps* v. *Durden*, 1 Sm.L.C. (9th Ed.) 692, where the court held that a baker sued for breach of the Lord's Day Act was not guilty of a separate offence in respect of each customer whom he served.

PARLIAMENTARY ELECTION—ELECTION PETITION—PARTICULARS—CLAIM OF SEAT—ELECTION RULES (1868), 6, 7—(DOM. ELECT. RULES (Q.B.), 6, 7; ONT. ELECT. RULES (C.A.), 6, 7).

In *Munro* v. *Balfour*, (1893) 1 Q.B. 113, a Divisional Court (Lord Coleridge, C.J., and Wills, J.) decides that upon an election petition in which the petitioner claims the seat for an unsuccessful candidate, alleging a majority of lawful votes, it is not competent for the court, under Election Rule 6 (see Dom. Elect. Rule 6, and Ont. Elect. Rule 6), to order the delivery of particulars of matters affecting the claim to the seat, as they are provided for, and must be delivered pursuant to Election Rule 7 (see Dom. Elect. Rule 7, and Ont. Elect. Rule 7), and must be delivered as therein prescribed, and the court had no jurisdiction to enlarge the time for their delivery.

PROBATE—WILL—REVOCATION—WILL EXECUTED UNDER MISAPPREHENSION OF ITS LEGAL EFFECT.

Collins v. *Elstone*, (1893) P. 1, reminds us of the well-known toast at Bar dinners: "To the testator who makes his own will," and suggests the propriety of an amendment so as to include the testator who employs an amateur conveyancer to draw it. In this case the testatrix left two wills, and a codicil to the first will. The second will, which only disposed of a small policy of insurance on the testatrix's life, was prepared on a printed form by one of her executors. It contained a clause revoking all former wills. The testatrix, not wishing to revoke her former will, objected to the presence of this clause; but being informed by the amateur scribe that as the second will only related to the life insurance policy the revocation clause would not apply to the former will, and that to make an erasure might invalidate the will, she relied upon the assurance, and executed the second will. It is almost needless to say that the President was compelled to hold that the revocation clause could not be struck out, thus adding one more to the many cases of persons being made intestate against their will.

PROBATE—WILL, EXECUTION OF—1 VICT., C. 26, S. 9—(R.S.O., C. 109, S. 12).

Wyatt v. *Berry*, (1893) P. 5, is a decision of Barnes, J., founded on *Hindmarsh* v. *Charlton*, 8 H.L.C. 160, refusing probate of a will on the ground of want of proof of its due execution. The facts proved were that the testator produced his will first to one witness only, told him that it was his will, and asked him to put his name as a witness, which he did. Later in the day he called in another witness, and in the presence of both he again acknowledged the will in their presence; the second witness then signed it in presence of the first witness, who did not sign his name again. It was held that this was not a sufficient attestation under the statute 1 Vict., c. 26, s. 9 (R.S.O., c. 109, s. 12), inasmuch as the first witness had failed to sign his name as a witness after the will had been acknowledged in the presence of the two witnesses.

ESTOPPEL—COVENANT RUNNING WITH THE LAND—LEGAL ESTATE—CONVEYANCE OBTAINED BY FRAUD.

Onward Building Society v. *Smithson*, (1893) 1 Ch. 1, is a case arising out of a fraud which would hardly be possible under our system of registration of deeds. The facts which gave rise to the

action were as follows: The trustees of a will conveyed a piece of land to a solicitor named Toward, who forthwith mortgaged it to the Bishop Auckland Building Society. Toward then went to the trustees and induced them to execute another conveyance to him of the same land, he representing that it was a conveyance of another piece not previously conveyed. This latter recited that the testator was seized in fee at his death, and recited his will, by which he devised his real estate to the grantors, giving them a power of sale; it also recited his death, and that the grantors in exercise of the power of sale had contracted to convey the same to Toward. This deed contained covenants by the grantors that they had done no act to incumber. Toward then, on the strength of holding this deed, mortgaged the land to the plaintiffs, who had no notice of the prior conveyance to, and mortgage by, Toward. The plaintiffs sought to make the trustees liable on their covenant for title. Kekewich, J., held that they were liable; but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) reversed his decision on the ground that, although the second deed inferentially stated that the grantors were seized in fee, it did not state so in terms, and therefore it did not estop them from denying that they were so seized; and that as the plaintiffs had in fact no legal estate by estoppel or otherwise, but only an equity of redemption, the covenants did not run with the land so as to entitle the plaintiffs to sue thereon. And even if they did, it was doubtful whether the covenants would bind the grantors, having been obtained by the fraud of the plaintiffs' assignor; and it was also held that the defendants were not liable on the ground of misrepresentation, because the representation was honestly made. We may note that each judge of the Court of Appeal expressed his thanks to Mr. Scott Fox, the learned counsel for the defendants, for his "very able argument."

CANAL—SUBJACENT MINES—RIGHT TO SUPPORT.

In *London and North-Western Ry.* v. *Evans*, (1893) 1 Ch. 16, the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) reversed the decision of Kekewich, J., (1892) 2 Ch. 432 (noted *ante* vol. 28, p. 520), being of opinion that the statutory powers given to the canal company impliedly gave them a right to the support of the canal, which could not be interfered with by the owners of the subjacent mines; and that the plaintiffs were therefore entitled

to an injunction restraining the working of such mines so as to interfere with the necessary support of the canal; that the Act provided means for the mine owners obtaining compensation, and that they must obtain it in the way pointed out; and that if it had not so provided, the inference would have been that the legislature did not intend to give them any right to compensation.

WILL—CONSTRUCTION—GIFT TO CHARITY OF SUCH PART OF RESIDUE "AS MAY BY LAW BE GIVEN TO CHARITABLE PURPOSES"—WILL MADE BEFORE MORTMAIN ACT, 1891 (54 & 55 VICT., c. 73), (55 VICT., c. 20 (O.))—DEATH OF TESTATOR AFTER PASSING OF ACT.

In re Bridger, Brompton Hospital v. *Lewis*, (1893) 1 Ch. 44, a testator by his will made before the passing of the Mortmain Act, 1891 (54 & 35 Vict., c. 73)—(see 55 Vict., c. 20 (O.))—bequeathed the residue of his estate subject to a life estate, subject to a trust to pay "such part of my residuary trust estate which may by law be given by charitable purposes" to a hospital. The testator died after the passing of the Act. It was held by North, J., that the Act applied to the will, and that there was nothing in the will to confine the gift to the hospital to property only which, at the date of the will, could have been by law given to charitable purposes; and that the hospital was therefore entitled to the entire residue of realty and personalty.

PRACTICE—COUNTERCLAIM—DISMISSAL OF ACTION—MOTION FOR JUDGMENT ON COUNTERCLAIM IN DEFAULT OF REPLY—ORD. XXIII., R. 4—ORD. XXVII., R. 11—(ONT. RULES 379, 727).

In *Roberts* v. *Booth*, (1893) 1 Ch. 52, the plaintiff claimed an account of a partnership. His action was dismissed for want of prosecution. The defendant had delivered a counterclaim for £66 4s. 10d. for money had and received. The plaintiff having made default in replying to the counterclaim, the defendant moved for judgment on the counterclaim. North, J., required an affidavit to be filed that the amount claimed by the counterclaim was due, and thereupon gave judgment for the amount claimed.

WILL—REMOTENESS—PERPETUITIES—INVALID POWER OF APPOINTMENT—LIMITATIONS IN DEFAULT OF APPOINTMENT.

In re Abbott, Peacock v. *Frigout*, (1893) 1 Ch. 54, Stirling, J., was called on to consider whether the rule that invalidates limitations

depending or expectant upon a prior limitation which is void for remoteness extends to limitations in default of appointment under a power which is void for remoteness. He held that it did not, and that such a limitation would be valid unless it was itself an invasion of the rule against perpetuities.

WILL—TRUSTEES—TENANT FOR LIFE—REMAINDERMAN—RENT—REPAIRS—FINES.

In re Baring, Jeune v. *Baring*, (1893) 1 Ch. 61, a testator had bequeathed a leasehold house, which was held under a lease renewable every fourteen years, and which contained covenants to pay the rent, repair and insure, to trustees, in trust for his widow for life, and after her death for his son for life, with remainders over, and he bequeathed the residue of his estate to the trustees in trust to pay all the costs, charges, and expenses of carrying into execution the trusts of his will, and subject thereto on trust for his children in settled shares. The object of the present litigation was to determine by whom the expenses of renewing the the lease, and the rent, repairs, and insurance, should be borne. The trustees claimed that they should all be borne by the tenants for life, and the tenants for life claimed that they should all be borne by the residuary estate. Kekewich, J., took a middle course, and held, following *In re Courtier*, 34 Ch.D. 136 (noted *ante* vol. 23, p. 84), that the tenant for life was not liable for the rent, repairs, or insurance, and that they should be borne by the residuary estate; but with regard to the expenses of the renewal he held that they must be borne by the beneficiaries (including the tenants for life), according to their respective interests, to be ascertained by actuarial valuation.

TRUSTEE, LIABILITY OF, WHEN REMUNERATED—LOSS OF TRUST PROPERTY BY LARCENY OF SERVANT.

In *Jobson* v. *Palmer*, (1893) 1 Ch. 71, Romer, J., decided that although a trustee is entitled to remuneration for his services, he is nevertheless not liable to his *cestui que trust* for loss occasioned to the trust estate by the felonious act of his servant to whom he has properly entrusted the custody of the trust property.

Notes and Selections.

MUNICIPAL CORPORATION — DEFECTIVE SIDEWALK — INJURY TO CHILD PLAYING ON STREET.—The Supreme Court of Wisconsin, in *Reed* v. *City of Madison*, 53 N.W. Rep. 547, hold that the right of action against a city for injuries caused by a defective sidewalk is purely statutory, and is available only when the person injured was at the time using the sidewalk or highway for purposes of travel. In this case the plaintiff was rolling her hoop and running slowly along the sidewalk on the way to play with other children a short distance off, when she tripped on a defective board and the hoop stick penetrated her eye. It was held that the fact that she was using the sidewalk for play as well as travel did not prevent recovery.—*Central Law Journal.*

HYPNOTISM.—We believe that the committee of the British Medical Association, which has for some time been investigating the therapeutic value and the medico-legal aspects of hypnotism, adhering to the *interim* report which it presented to the association at their last meeting, will this year again recommend the legislative restriction of hypnotic entertainments. The view of the committee is that the right to hypnotize should be confined by Act of Parliament to registered medical practitioners and other licensed persons. The *raison d'être* of the proposed extension of this privilege beyond the strict limits of the medical profession is, of course, to avoid debarring the eminent British and foreign scientists who have done so much for "the new mesmerism," but who have no medical qualification, from the practice of hypnotic suggestion. It is, we understand, almost certain that the forthcoming report of the Committee on Hypnosis will this year be adopted and approved by the British Medical Association. In addition to the question of its statutory regulation, the science of hypnotism gives rise to a number of difficult medico-legal problems. Can persons under the influence of hypnosis be induced to commit criminal acts; and, if so, what is the measure of their responsibility? Is it legitimate to hypnotize for the purpose of obtaining evidence; and what is the value of testimony so obtained? The whole subject is one of intense and immediate interest.—*Law Journal.*

COUNSEL IN CRIMINAL CASES.—Judges have frequently laid it down that counsel appearing in criminal trials are not entitled to express any personal opinion with regard to the innocence or guilt of the prisoner. This view was strongly urged by Lord Herschell in the address he delivered some few years ago before the Juridical Society of Glasgow on "The Duties of an Advocate," and now Sir Forrest Fulton has had occasion to emphasize the same professional doctrine. It appears that the Common Serjeant, in summing up a case at the Old Bailey, commented upon the earnest manner in which the prisoner's counsel had fought his client's cause. After the jury had found the prisoner guilty, and when, therefore, the declaration could do no particular harm, the advocate in question declared that he had taken so much trouble in the case because he was convinced the prisoner was innocent. "You have no right to make such a remark," said the Common Serjeant, addressing the barrister in tones that have been described as angry. And we agree with him. If an advocate has any right to declare his personal belief in the innocence of his client, he is equally entitled to express any conviction he may have as to his guilt, and no one would ever think of admitting the justice of the latter course.—*Law Journal.*

LIABILITIES OF SPIRITUALISTS.—Spiritualism is so much on the increase that it may be well to direct attention to the fact that a spiritualist may be convicted as a rogue and a vagabond, and, upon a second conviction, may be whipped. Such seems to be the effect of *Monk* v. *Hilton*, 26 L.J. Rep. M.C. 163, in which the High Court affirmed the conviction of the appellant as a rogue and a vagabond for using a subtle craft, means, or device by palmistry and otherwise to deceive and impose on some of Her Majesty's subjects. The offence was committed by "falsely pretending to have the supernatural faculty of obtaining from invisible agents and the spirits of the dead, answers, messages, and manifestations of power—namely, noises, raps, and the winding up of a musical-box," and, although those allowed to be present at the *séance* were charged £2 apiece, this does not seem to have affected the court in giving their decision. As to the whipping, it is expressly provided by s. 5 of the Vagrant Act that any person convicted a second time of an offence subjecting him to be

dealt with as a rogue and vagabond is to be deemed an incorrigible rogue, and may be committed to the house of correction, there to remain until the next Quarter Sessions. Section 10 of the same Act empowers justices at Quarter Sessions to examine into the circumstances of the case and to order the further imprisonment of the offender, and also "that such offender (not being a female) be punished by whipping at such time and place as according to the nature of the offence they in their discretion shall deem expedient."—*Law Journal.*

POWER OF LEGISLATURE TO DISPOSE OF PUBLIC PROPERTY.—What is known as the Chicago Lake Front Case, recently decided by the Supreme Court of the United States, is perhaps the most important lawsuit, in point of substantial results involved, which has ever come before that tribunal. The opinion extends the doctrine laid down in previous decisions of that court, that there are certain rights of the people that legislatures are bound to respect. In the earlier cases it was held that these agencies of government cannot barter away the public health and the public morals. It now declares in the present case that there is a point beyond which the people cannot, by their servants, be dispossessed of their title to public property. The Legislature of Illinois granted certain rights to the Illinois Central Railroad Company on certain conditions. The company maintained that the fulfilment of those conditions vested those rights in the company in perpetuity, under the law of contracts. The legal position of the company under this claim has seemed almost impregnable. The sanctity of contracts is rigidly upheld by the law, and the federal constitution provides that their obligation shall not be impaired. But the court rules that the rights conveyed belonged to the people and could not be conveyed in perpetuity to a private party. These words are used: "The State can no more abdicate its trust over property in which the whole people are interested . . . so as to leave them entirely under the use and control of private parties . . . than it can abdicate its police powers." The principle thus extended is one of great importance. It not only places a limit to the attainment of private right in public property, but measures the extent of injury a State can suffer at the hands of indiscreet or venal legislatures.—*Central Law Journal.*

ELECTRIC ROADS AND TELEPHONES.—Decisions on points connected with the use of electricity are of much interest in these days. The *Albany Law Journal*, in a recent number, gives a report of the case of *Hudson River Telegraph Co.* v. *Waterlict Turnpike & R. Co.*, the headnote of which is as follows: By the laws of 1862 the debt was authorized to operate a street railroad in the streets of Albany, and to use "the power of horses, animals, or any mechanical or other power, or the combination of them . . . except steam." Held, that defendant might use electricity as a motive power on obtaining the consent of the common council, which by ordinance is given power to impose such reasonable conditions on the enjoyment by defendant of its franchise as the public interests may require. The franchise of plaintiff telephone company was granted on the express condition that the maintenance of its lines should not interfere with the enjoyment by defendant street railway company of its franchises. Held, that though the transmission of a strong current of electricity by defendant along its trolley wires creates an additional current in plaintiff's wires by induction, making the operation of the telephones difficult, and at times impracticable, and though the electricity discharged by defendant from the rails into the earth spreads by conduction to plaintiff's grounded wires, which form the return circuit, part of which wires are on private property, thereby also causing plaintiff serious loss, the operation of the railway will not be enjoined. In an action to perpetually enjoin defendant street railway company from operating its railroad by electricity, where there is evidence as to the value to defendant of its right to run its cars by the method sought to be enjoined, and also to the value of that system over any other, there is a basis on which could be estimated an extra allowance, under the Code of Civil Procedure, section 3253, providing that in a difficult or extraordinary case the court may award as additional costs a sum not exceeding five per cent. on the sum recovered or claimed, or the value of the subject-matter involved.

JUDICIAL APPOINTMENTS IN ENGLAND.—The appointment of men like French, Q.C., and Austin to the County Courts makes the promotion of third and fourth-rate lawyers to the High Court Bench impossible for the future. I remember the time when a

County Court was generally considered as a refuge for the destitute, an asylum for the failures of the profession. Even a highly conscientious and religious Chancellor like Hatherley did not hesitate—or, if he did hesitate, did not scruple—to appoint as a judge of County Courts a man whom the Lord Chief Justice of England (Cockburn) had previously deprived of his revisorship on the ground of unfitness for judicial office. The fact that "Beales, M.A.," made a very passable County Court judge, on the whole, did not wipe out the stain left on Hatherley's reputation by so gross an example of throwing a sop to Cerberus. Lord Cairns, though, like Hatherley, *vir pietate gravis*, was too big a man to stoop to a dirty political job like the conversion of a half-starved demagogue into a judge. Yet he, too, regarded a County Court as if it had been invented with a view to the relief of Lord Chancellors embarrassed with a superfluity of private secretaries in want of place. And so it has come to pass that a good many men have in days gone by procured a judicial position and fifteen hundred a year who on their merits would never have earned a third of that income at the Bar. Of late years, however, "we have changed all that." Numerically, the County Court Bench is far stronger than the Queen's Bench Division. If the Lord Chancellor continues to appoint men like Holl, Q.C., Lumley Smith, Q.C., French, Q.C., to County Courts, the time will shortly arrive when the standard of the High Court Bench will have to be raised several degrees, or the serious anomaly will be found to exist of an appellate tribunal no stronger, if, indeed, it is not weaker, than the tribunal of first resort. A County Court is an inferior court, of course; and equally, of course, a Queen's Bench Court is a superior court. But even now I would undertake to form a Divisional Court constituted of judges of inferior courts quite equal to a Divisional Court constituted of the same number of judges of superior courts. The inferior court judges are styled "Your Honour," receive fifteen hundred a year, and have no retiring pension; while their more fortunate, but not necessarily more deserving, brethren are styled "My Lord," or "Your Lordship," receive five thousand a year, and retire—or *may* retire, if they like—after fifteen years' service, on a handsome annuity of three thousand five hundred.—*Law Gazette.*

MERCANTILE ARBITRATION. — We learn without surprise — and, indeed, with some measure of satisfaction—that the Cause List of the London Chamber of Arbitration is still singularly free from the state of glut which is one of the standing reproaches of the ordinary legal tribunals. The real source of the impulse which led to the establishment of the Chamber of Arbitration was not any desire on the part of the mercantile community to substitute a jurisdiction of their own creation for that of the regular courts of law, but the profound distrust with which men of business habits, to whom time and money are supremely valuable, could not fail to regard the slow and costly motions of English legal procedure. We are convinced th , with the adoption and the efficient working of the less controversial reforms recommended by the Council of Judges—the restriction of interlocutory applications and appeals, the establishment of a strong commercial court, in fact, if not in name, and the introduction of the wholesome principle of taxation that an unsuccessful litigant must pay every item of costs which his adversary has reasonably and properly incurred—"the nascent English Tribunal of Commerce," as it has been euphemistically described, will soon find its occupation gone. The settlement of disputes by arbitration is open to many serious objections. The minutely-specialized knowledge which is popularly supposed to be a permanent characteristic of private arbitrators is hardly ever to be obtained, and where its presence is undeniable its value is usually diminished by the narrow range of intellectual vision, the idiosyncrasies, and the aversion to open-minded and dispassionate discussion which it engenders. Moreover, no chamber of arbitration can ever command the confidence with which the courts of law, in spite of their manifold shortcomings, are regarded by the public. A judge is absolutely independent of the parties who come before him; he can view with perfect mental detachment the issue he has to try; and long training and practice have formed in him the habit of grasping facts rapidly, of appreciating their relative significance, and of drawing correct inferences from them with logical precision. These merits are not to be found in combination in the private arbitrator. He may be, and doubtless in most cases is, personally blameless, but he is not above suspicion, and the litigant against whom his award is given is rarely at a loss for some specious but uncomplimentary explanation of the

decision that has been pronounced. Nor does the average arbitrator possess either the dispassionate judgment or the logical training of a legal expert. These considerations, in our opinion, render the ultimate success, and even the continued vitality, of the London Chamber of Arbitration exceedingly problematical. The mercantile community is fully alive to the advantages that a regular judicial system confers upon it; if it were not so, there would have been little outcry against the law's delays; and we entertain no serious apprehension that the supremacy and the popularity of the law courts will be endangered, much less destroyed, by the London Chamber of Arbitration, if the legal profession responds heartily and promptly to the instant demand of the public for "speedy justice." The stability even of the French Tribunaux de Commerce is at the present moment threatened by the very inherent defects to which we have already referred, and the infant organization for which the City Corporation and the Chamber of Commerce have recently provided a local habitation and a name will scarcely survive the removal of the ephemeral grievances that called it into being.—*Law Journal.*

Obituary.

LIEUT.-COLONEL BERNARD, Q.C., C.M.G.

A once-important figure in the social, official, and military life of the Capital has passed away in the person of Lieut.-Colonel Hewitt Bernard, Q.C., C.M.G., for many years Deputy Minister of Justice of Canada, who expired in Montreal on Feb. 24th. The late Colonel Bernard was a son of the late Hon. Thomas James Bernard, a member of Her Majesty's Privy Council of the Island of Jamaica. Coming to Upper Canada, after the death of the father, the Bernard family settled at Barrie, where both the deceased and his brother Richard embraced the profession of law, Hewitt eventually becoming a business partner of the late Hon. James Patton, Q.C., and being also associated with that estimable gentleman in the editorship of *The Upper Canada Law Journal*, a publication established in the interests of the legal profession and of the municipalities, whose well-merited eminence among similar publications on the continent it still maintains. The talents and capabilities of the young practitioner having been brought to the notice of Hon. John A. Macdonald, then for the first time at the head of public affairs, led to the appointment of Mr. Bernard as Private Secretary to the Prime Minister—thus opening an official connection of the pleasantest kind, which was to be preserved and strengthened in after years by a matrimonial union between the great Conservative leader and the Private Secretary's singularly gifted sister, the present Baroness Macdonald of

Earnscliffe. In the following year, on the retirement of Chief Justice Harrison from the Civil Service to practise his profession, Mr. Bernard succeeded him as Chief Clerk of the Crown Law Department, a position he retained until Confederation, when he became Deputy Minister of Justice, having, under his old chief and relative, the superintendence of all matters connected with the administration of justice throughout the Dominion not specially entrusted to the several provinces. This office he resigned in October, 1876, on his leaving the public service, owing to continued ill-health. He was subsequently employed in 1878-9, as Assistant Commissioner with Sir Alexander Galt, in negotiations with the courts of France and Spain for commercial relations with Canada.

In addition to his regular work, Colonel Bernard was called upon to undertake various other duties, more especially in connection with the visit of the Prince of Wales and in respect to the subject of the Confederation of British America. He was the secretary to the conference of delegates which met at Quebec in the autumn of 1864, and also to the London conference of 1866-7, which determined the final terms of union; and in acknowledgment of his public usefulness on these occasions received from Her Majesty the decoration of a C.M.G. At a later period he was appointed by the King of Spain a Knight Commander of the Order of Isabel la Catolica. A man of fine education and having received a thorough legal training, Colonel Bernard was for many years entrusted with the preparations of many of the more important of the public measures submitted by successive administrations to Parliament, a duty he discharged with all his accustomed care and ability. He was *ex-officio* solicitor to the Superintendent-General of Indian affairs, and likewise solicitor to the St. Lawrence and Ottawa Railway and other corporations; and in 1872, along with other eminent legal gentlemen, was created a Q.C., an honour bestowed upon him by the Ontario as well as the Dominion Government. While at Quebec, during the excitement of the "Trent" affair, he became captain of the old Civil Service Rifle Company, and upon the removal to Ottawa of the seat of government he took a leading part in organizing the splendid volunteer battalion bearing the same name which existed here for several years under the veteran command of the late Colonel Wily, and in which he himself held a majority.

During Colonel Bernard's extended career he was ever distinguished by activity, courtesy, unwearied industry, attention to the interests of the government, and a fairness and candour of mind which won for him the esteem and confidence of men in both political parties—a fact which was well evidenced on his official retirement, on which occasion the then Prime Minister, Mr. Mackenzie, paid him the unwonted compliment of proposing his health at a dinner given at the Rideau Club by a high legal personage, who has also passed from the scene, and, in doing so, expressed not only his own regret, but that of the government as a whole, over the withdrawal from official life of one to whom they were personally so much indebted, and who had shown himself in every relation to be so capable and worthy. Although for many years retired from the active duties of life, Colonel Bernard's death will be none the less sincerely deplored; not only by those to whom he was endeared by ties of kindred, but by surviving friends throughout the country.—*Ottawa Citizen.*

DIARY FOR MARCH.

5. Sunday.....*3rd Sunday in Lent.* York changed to Toronto, 1834.
6. Monday.....Toronto Civil Assizes begin.
7. Tuesday.....Court of Appeal sits. Gen. Sess. and Co. Sitts. for trial in York. Kingston Chancery sittings.
9. Thursday....Belleville Assizes.
12. Sunday.....*4th Sunday in Lent.*
13. Monday.....Lord Mansfield born, 1704.
16. Thursday....Ottawa Assizes.
18. Saturday....Arch. McLean, 8th C.J. of Q.B. Sir John Robinson, C.J. of Appeal, 1862.
19. Sunday.....*5th Sunday in Lent.* P. M. S. Vankoughnet, 2nd Chancellor of U.C., 1862.
23. Thursday...Sir George Arthur, Lieut.-Gov. of U.C., 1838.
26. Sunday.....*Palm Sunday. 6th Sunday in Lent.*
27. Monday.....St. Thomas Assizes
28. Tuesday.....Canada ceded to France, 1632.
30. Thursday....Hamilton Chy. sittings. B.N.A. Act assented to, 1867. Lord Metcalf, Gov.-Gen., 1843.
31. Friday.....Good Friday.

Reports.

ONTARIO.

ASSESSMENT ACT.

RE CONFEDERATION LIFE ASSURANCE CO. AND NORTH AMERICAN LIFE ASSURANCE CO.

Assessment of Income.

Held, that under s. 34 and s. 2, ss. 10, of the Assessment Act, life insurance companies are liable to pay taxes on their assessable income, which is to be considered as the excess of gains over losses for the year, excluding from computation the profits or surplus gained by participating policy-hold[illegible]d "income" will include interest on investments.

[TORONTO, December 27, 1892.

The Assessment Commissioner of the City of Toronto assessed the Confederation Life Assurance Company $50,000 upon income, and the North American Life Assurance Company $50,000, for the year 1892. The assessments were confirmed by the Court of Revision, and both companies appealed to the county judge. The appeals came on for argument before the judge of the County Court of the County of York.

James Beaty, Q.C., for the Confederation Life.

J. K. Kerr, Q.C., and *Wm. Macdonald*, for the North American Life, contended that as a large part of the incomes of the companies was required to be invested for the policy-holders, and their companies were not stock companies, but either mutual insurance companies, or practically mutual insurance companies, the profits over the expenses were payable to the policy-holders; and following they were not assessable, or at any rate were only assessable to

the extent of the dividends paid by the company to the stockholders or grantors, they referred to *New York Life Insurance Co.* v. *Styles*, L.R. 14 App. Cas. 381; *Commonwealth* v. *Berkshire Life Insurance Co.*, 98 Mass. Rep. 25; *London Mutual Insurance Co.* v. *City of London*, 15 A.R. 629; *The Gresham Life Assurance Co.* v. *Styles*, L.R. (1892) App. Cas., p. 309; *Tennett* v. *Smith*, L.R. App. Cas. (1892), p. 150.

Thomas Caswell, for the city, contended that under s. 34 of the Assessment Act companies were to be assessed as partnerships, that under s-s. 10 of s. 2 of the same Act personal property included income, that income meant the balance of gains over losses in the fiscal year or other period of computation: *City of Kingston* v. *Canada Life*, 19 O.R. 453; *Lawless* v. *Sullivan*, L.R. 6 App. Cas. 373, c. 124, s. 19, and schedule form A., p. 1682. He also contended that profits were the income of the concern after deducting the expenses of earning them: *Mersey Docks* v. *Lucas*, L.R. 8 App. Cas., pp. 891, 903. He also contended that *Last* v. *London Assurance Co.*, L.R. 10 App. Cas., p. 438, was more applicable to these assessments than *New York Life* v. *Styles*. In the New York Life case the company was purely mutual, and had no stockholders whatever. He especially referred to the words of Lord Bramwell on p. 445, and of Lord Fitzgerald on p. 451, and to the argument in *New York Life* v. *Styles* at p. 387.

Judgment was reserved, and subsequently the following judgment was given by

McDOUGALL, Co. J.: In this case the Confederation Life Assurance Company admit a liability to pay taxes upon the amount of the dividends paid their stockholders, but contend that they are liable to taxation on no further or other sum.

The Assessment Commissioner contends that the company are liable to pay upon their income, which, he also contends, will be the amount of the gains over losses for the year, and before any distribution of this income or profits is made amongst the members of the company. *Lawless* v. *Sullivan*, 6 App. Cas. 373, determines that income is the "gain (if any) resulting from the balance of the profits and losses of the business in that year"; that this is the correct definition as applied to the word "income" under our Assessment Act in Ontario has been held in *Kingston* v. *Canada Life*, 19 O.R. 453.

The Confederation Life does a mixed business in insurance and issues two classes of policies, one to policy-holders who do not participate in profits, and one to policy-holders who do participate in profits.

New York Life v. *Styles*, 14 App. Cas. 381, a decision under the Income Tax Acts, determines that where a company issues policies to holders who are to participate in the profits earned by policies in their class, and where the holding of the policy by the terms of the company's charter or act constitutes such policy-holder a member of the company, then the profits or surplus arising from the operations of the company, so far as they arise in respect to that class of policy, are not income and are not taxable as such.

In the same case, although it was not the subject of decision, it was conceded by counsel in the argument, and referred to in several of the judgments, that under the English Income Tax Acts the company was liable to be assessed for profits earned under the following heads:

(1) Profits made on annuities granted.

(2) Profits made on premiums paid under non-participating policies.

(3) On all income derived by or from investments of all premiums, or other money paid to them in the United Kingdom or abroad, and as to the latter when such income is received in the United Kingdom.

(4) All profits (if any) derived in any mode other than the annual premium contribution of the participating policy-holders.

The question as to how far these conclusions apply to companies doing business in this Province and under the provisions of our Assessment Act has not yet been authoritatively determined. I am therefore compelled to give my own deductions, and formulate a decision without the aid of any express Canadian authority.

Our Assessment Act, s. 34, s-s. 1, declares that an incorporated company other than companies coming within s-s. 2 of the same section shall be assessed as if such company was an unincorporated company or a partnership. The only exemption to a merchant's liability to be assessed for income is that he is not liable to be assessed for the income derived from capital liable to assessment, s. 7, s-s. 15. By s. 31 income is defined to be the excess of earnings and income over and above the statutory exemption, and is declared to be personal property.

The business, then, of this company being treated as the business of the partnership, income will be the excess of gains over losses for the past year, excluding from our computation the profits or surplus gained by the participating policy-holders pursuant to the doctrine laid down in the case of *New York Life* v. *Styles*.

(1) Net profit derived from the year's premiums received from non-participating policy-holders.

(2) Net profits derived from annuities.

(3) Interest for the year on investments.

(4) Such proportion of the profits earned from the premiums received from participating policy-holders as under the company's act of incorporation is allowed to be appropriated, and is in fact appropriated, by the company to their own uses, as distinguished from the portion of such profits distributed amongst the policy-holders of that class.

(5) All profits (if any) derived from any other source not enumerated.

From the figures furnished by Mr. Macdonald, Actuary of the Confederation Life, I make the following :

Non-participating policy-holders' profit	$ 3,549
Share of participating branch profits by company	3,350
Interest on investments	161,278
Total	$168,168

The company will therefore be assessable upon this amount, as being their assessable income.

The same principles apply to the case of the North American Life Assurance Company, but a proper reduction must be made from the profits of this company to make up a sum which will represent reasonable interest upon their

guarantee stock, which is not share capital, but borrowed money, and which guarantee stock the policy-holders have the right to pay off at any time under certain provision of the act and amending acts of incorporation.

Under the returns made by this company, I find the gross amount of interest received from investments is $57,864, from which is to be deducted the $6,000 paid to the guarantee stockholders, leaving the net sum of $51,864.

This latter sum will be increased a few dollars by the share of non-participating policies, which will bring their assessable income up to, say, the sum of $52,000, upon which they are liable to assessment.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [Dec. 13.

ATTORNEY-GENERAL OF ONTARIO *v.* VAUGHAN ROAD CO.

Statute—Application of—R.S.O. (1887), c. 159—53 Vict., c. 42—Application to company incorporated by special charter—Collection of tolls—Maintenance of road—Injunction.

The provisions of the general Road Companies Act of Ontario (R.S.O. (1887), c. 159, as amended by 53 Vict., c. 42, relating to tolls and repair of roads, apply to a company incorporated by special Acts; and on the report of an engineer, as provided by the general Act, that the road of such company is out of repair, it may be restrained from collecting tolls until such repairs have been made.

Judgment of the Court of Appeal on motion of interim injunction (19 A.R. 234) overruled, and that of the Divisional Court (21 O.R. 507) approved.

S. H. Blake, Q.C., and *Lawrence* for the appellants.

Bain, Q.C., and *Kappele* for the respondents.

WATEROUS ENGINE WORKS CO. *v.* TOWN OF PALMERSTON.

Municipal corporation—Contract under seal—By-law—Executory contract—Enforcement.

In pursuance of s. 480 of the Ontario Municipal Act (R.S.O. (1887), c. 184), empowering any municipal council to purchase fire apparatus, the council of the town of Palmerston by resolution authorized the Fire and Water Committee to ascertain the price of a fire engine, and on the committee's report recommending the purchase a contract was entered into under the corporate seal of the council for the construction of an engine by the Waterous Co. No by-law of the corporation was passed authorizing or sanctioning such contract. The engine was built and placed in the town hall, and a committee of the council was appointed to engage experts to test it. The test was made and the

experts reported favourably upon it; but the council afterwards passed a resolution that all negotiations in reference to the purchase be dropped, and that the company be notified to remove the engine from the town hall. An action was brought against the municipal corporation for the contract price of the engine and hose, on the trial of which the presiding judge found as a fact that the engine had answered the test and fulfilled the requirements of the contract, but held that the contract could not be enforced for want of a by-law. This judgment was affirmed by the Divisional Court (20 O.R. 411) and by the Court of Appeal (19 A.R. 47).

Held, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that the engine not having been accepted by the corporation the contract was not executed; that s. 282 of the Municipal Act requires all powers of the corporation to be exercised by by-law, unless otherwise expressly authorized or provided; that the authority to purchase fire apparatus is expressly given to municipal corporations by the Act, and is a power to be exercised by by-law under said section, and the contract being executory the want of a by-law was a bar to the action. *Benardin* v. *North Dufferin* (19 S.C.R. 581) distinguished.

Held, per GWYNNE, J.: That the powers to be exercised by by-law are only legislative powers, and a contract such as that in question in this case could be enforced without a by-law.

Appeal dismissed with costs.

Wilkes, Q.C., for appellants.

A. M. Clarke for respondents.

DRAPER *v.* RADENHURST.

Title to land—Purchase at tax sale—Cloud upon title—Agreement for quit-claim deed—Payment for deed—Right to monies paid.

J. R. died, leaving all his estate to his widow, and, in the event of her death without having made a disposition thereof, to his surviving children. The estate having become involved, an absolute deed of all the real estate was executed in favour of one of the testator's children by the widow and other children, the grantee undertaking to pay off the liabilities and improve the estate, and on being repaid all amounts advanced for that purpose she was to reconvey the lands to all the heirs in equal proportions. The grantee managed the estate for several years, but was finally obliged to surrender it to trustees for the benefit of creditors, it then owing her some $18,000.

A portion of the estate conveyed by the said deed was sold for taxes, and the purchaser wished to obtain quit-claim deeds from the heirs of J. R., the original testator, to perfect his title, and also to obtain title to one hundred acres of timber land belonging to the estate of J. R. which was not included in the assignment for the benefit of creditors. Similar quit-claim deeds had previously been given for portions of the lands, and the monies paid for the same were distributed in equal proportions among the surviving children and grandchildren of the testator, and in this case the deeds were prepared and executed by the heirs in favour of the purchaser at the tax sale. Before the money agreed to

be paid for the same was received, however, the above-mentioned deed executed by the widow and children of the testator, which had been mislaid for several years, the grantee under it having died, was discovered, and the children of the grantee claimed the whole of the said money, and an action was brought by the other heirs for their respective shares of the same. On the trial judgment was given in favour of the plaintiffs, the trial judge holding that an agreement was proved between the parties that the money should be equally divided. This decision was affirmed by the Divisional Court, but reversed by the Court of Appeal.

Held, affirming the decision of the Court of Appeal, that the purchaser at the tax sale paid the money at the tax sale in order to obtain a perfect title; and as the defendants were the only persons who could give such title, the legal estate being in them, the plaintiffs could not claim any part of the money, no agreement with the defendants to apportion it being proved, and any agreement made by the plaintiffs with the purchasers not being binding on the defendants.

Appeal dismissed with costs.

Marsh, Q.C., for the appellants.

Donovan for the respondent.

BOOTH *v.* RATTE.

Practice—Master's office—Reference to assess damages—Severance of damages—Reasons for report—Judgment of court—Equal division—Withholding judgment.

R. brought an action against several mill owners on the Ottawa River for damage to his business, as an owner and letter of boats, caused by sawdust and mill refuse being thrown into the river and accumulating so as to obstruct navigation; and he claimed that he was not only prevented from sailing his boats on the river, but his customers who hired boats left him on account of the sawdust and refuse accumulating in front of his boat house. On the trial judgment was given for the defendants, but was reversed by the Court of Appeal and by the Privy Council, and a reference to a Master was ordered to assess the damages. Before the Master defendants claimed that other mill owners not proceeded against in the action had contributed to the alleged nuisance, and that the report should show the amount of damage caused by each defendant, also the amount of damage to R. under each head of injury claimed. The defendant's offered evidence to show that the loss of custom to R. in letting boats arose from the change in public taste, customers preferring the canal to the river; and plaintiff gave evidence in rebuttal, some of which defendants alleged to be irrelevant. The Master having reported generally awarding R. $1000 damages against each of the defendants, an appeal was taken against the report, resulting in its being affirmed by the Chancellor; and in the Court of Appeal two of the four judges were in favour of confirming the report, and the other two gave no judgment. On appeal by defendants to the Supreme Court, in addition to the objections to the report, it was argued that the Court of Appeal gave no judgment.

Held, that the Master properly treated defendants as joint tort-feasors, and was not obliged to give reasons for his report, provided he sufficiently followed the directions in the decree; and that he was not obliged to sever the damages, either to show the liability to each defendant or the amount due plaintiff under each head of damage claimed.

Held, further, that the Master was the final judge as to the credibility of the witnesses, and his report should not be sent back because some irrelevant evidence may have been admitted of a character not likely to have affected his judgment, especially as no appeal was taken from his ruling on the evidence.

Held, also, that this court should not go behind the formal judgment of the court appealed from, which stated that the appeal was dismissed. Moreover, the position was the same as if the judges of the Court of Appeal had been equally divided in opinion, in which case the appeal would have been properly dismissed.

Appeal dismissed with costs.

Gormully, Q.C., for appellants.

O'Gara, Q.C., for respondent.

Nova Scotia.]

NOVA SCOTIA R.W. CO. *v.* HALIFAX BANKING CO.

Mortgage—Railway bonds—Security for advances—Second mortgagee—Purchase by—Trust.

W. having agreed to advance money to a railway company for completion of its road, an agreement was executed by which, after a recital that W. had so agreed and that a bank had undertaken to discount W.'s notes (endorsed by E. to enable W. to procure the money to be advanced), the railway company appointed said bank its attorney irrevocable, in case the company should fail to repay the advances as agreed, to receive the bonds of the company (on which W. held security) from a trust company, with which they were deposited, and sell the same to the best advantage, applying the proceeds as set out in the agreement.

The railway company did not repay W. as agreed and the bank obtained the bonds from the trust company, and having threatened to sell the same the company, by its manager, wrote to E. and W. a letter requesting that the sale be not carried out, but that the bank should substitute E. and W. as the attorney irrevocable of the company for such sale, under a provision in the aforesaid agreement, and if that were done the company agreed that E. and W. should have the sole and absolute right to sell the bonds for the price, and in the manner they should deem best in the interest of all concerned, and apply the proceeds in a specified manner, and also agreed to do certain other things to further secure the payment of monies advanced. E. and W. agreed to this, and extended the time for payment of their claims and made further advances, and, as the last-mentioned agreement authorized, they re-hypothecated the bonds to the bank on certain terms.

At the expiration of the extended time the railway company again made default in payment, and notice was given them by the bank that the bonds would be sold unless the debt was paid on a certain day named; the company then brought an action to have such sale restrained.

Held, affirming the decision of the court below, that the bank and E. and W. were respectively first and second incumbrancers of the bonds, being to all intents and purposes mortgagees and not trustees of the company in respect thereof, and there was no rule of equity forbidding the bank to sell, or E. and W. to purchase under that sale.

Held, further, that if E. and W. should purchase at such sale they would become absolute holders of the bonds, and not liable to be redeemed by the company.

Held, also, that the dealing by the bank with the bonds was authorized by by the Banking Act.

Henry, Q.C., and *Newcombe* for the appellants.

Borden, Q.C., and *Russell*, Q.C., for the respondents.

Manitoba.]

THE MANITOBA FREE PRESS *v.* MARTIN.

Libel—Personal attack on Attorney-General—Pleading—Rejection of evidence—Fair comment—General verdict—New trial.

In an action for libel contained in a newspaper article respecting certain legislation, the innuendo alleged by the plaintiff, the Attorney-General of the Province, when such legislation was enacted, was that the article charged him with personal dishonesty. Defendants pleaded "not guilty," and that the article was a fair comment on a public matter. On the trial the defendants put in evidence, plaintiff's counsel objecting, to prove the charge of personal dishonesty, and evidence in rebuttal was tendered by plaintiff and rejected. Certain questions were put to the jury requiring them to find whether or not the words bore the construction claimed by the innuendo, or were fair comment on the subject-matter of the article. The jury found generally for the defendants, and in answer to the trial judge, who asked if they found that the publication bore the meaning ascribed to it by the plaintiff, the foreman said: "We did not consider that at all." On appeal for an order for a new trial,

Held, that defendants not having pleaded the truth of the charge in justification the evidence given to establish it should not have been received, but, it having been received, evidence in rebuttal was improperly rejected; the general finding for the defendants was not sufficient, in view of the fact that the jury stated that they had not considered the material question, namely, the charge of personal dishonesty. For these reasons a new trial was properly granted.

Haegel, Q.C., for the appellant.

Ewart, Q.C., for the respondent.

British Columbia.]

WEBSTER *v.* FOLEY.

Master and servant—Defective system of using machinery—Injury to workman—Liability to master—Notice to master.

F. was employed in a sawmill at Vancouver, B.C., as a chainer, and worked on a rollway, which is the portion of the machinery of the mill along which the logs are brought to the saw carriage. One of his duties was to put a chain under the log and roll it on to the carriage, and while doing so on one occasion a log rolled down the rollway and against one bel[illegible]d him and crushed him against the carriage, causing severe injuries, for whi[illegible] he brought an action against W. and E., the owners of the mill.

On the trial it was shown that chock blocks were used to check the log in its course down the rollway, which had a slope of from five to seven inches in its length of twelve feet, and that the blocks were only sufficient to hold one log. The jury found that the accident was due to the slope of the rollway and defective chock blocks; that F. could not have avoided the injury by exercise of proper care and skill in discharging his duties; that he had complained of the chock blocks to the proper persons, who promised to make them good; that W. and E., the owners, were not aware of the defects, but that W., the manager and defective foreman, should have taken cognizance of the matter and did not appear to have exercised due care; and they assessed damages to F. at $5,000. The trial judge reserved judgment, and a motion was afterwards made on behalf of F. for judgment and a cross-motion by defendants to set aside the findings, and for a nonsuit. Eventually judgment was entered against W. and E. for the damages assessed, which was sustained by the court *in banc*.

Held, affirming the decision of the Supreme Court of British Columbia, that the employers were no less responsible for the injuries occasioned to F by the defective system of using their machinery than they would have been for a defect in the machinery itself.

Held, further, that there being no Employers' Liability Act in force in British Columbia when the injury happened, F. was not precluded from obtaining compensation by failure to give notice to his employers of the defect in the chock blocks.

Appeal dismissed with costs.

Cassidy for appellants.

Ewart, Q.C., for respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

MEREDITH, J.] [Jan. 10.

JOHNSTON *v.* BURNS.

Assignment for creditors—Set-off—Barring claim—Sale of book debts.

Where the purchaser from an assignee for creditors of the book debts of an insolvent debtor sued one of the insolvent debtors and said debtor claimed a set-off of moneys alleged to be due to him from the insolvent, and it appeared that the claim of the debtor had become barred under s-s. 5 of s. 20 of R.S.O., 124,

Held, that, notwithstanding, this debt did not prevent the defendant from setting up his said claim by way of set-off to the plaintiff's claim in this action.

Clark for the plaintiff.

Denton for the defendant.

FALCONBRIDGE, J.] [Jan. 28.

METCALF *v.* ROBERTS ET AL.

Husband and wife—Taking away wife—Harbouring her—Taking by intimidation—Undue influence—Trespass—Damages.

In an action by a husband against the mother and father of his wife for enticing away from him his wife, and harbouring her, it was shown that although the father had gone to the husband's house with two men and taken the wife (who was willing to go) away, no force, duress, or undue influence was used to keep her in her father's house. It was

Held, that the action must fail against both defendants as far as the harbouring was concerned; but

Held, also, that the going of the father and the two men to the husband's house to take away the wife by force or intimidation was a gross wrong, and not a merely technical trespass calling for the infliction of nominal damages, and substantial damages were granted.

McCarthy, Q.C., for the plaintiff.

C. C. Robinson for the defendants.

ROBERTSON, J.]

MORSE *v.* LAMBE.

Registry laws—Charges of registrar—Subdivision of township lots subsequent to mortgage—Certified abstract.

Appeal under s. 95 of Registry Act, as amended by 53 Vict., c. 30 (O.), from the decision of the Inspector of Registry Offices as to the proper fees chargeable by a registrar of deeds in the circumstances of this case.

The plaintiff took a mortgage upon two township lots. Afterwards he commenced foreclosure proceedings, and when the action was in the Master's office applied to the registrar for the necessary abstract to show subsequent incumbrances. Since he took his mortgage, however, the property had been subdivided by various plans duly registered into a great number of lots.

Held, that in preparing the abstract required the registrar was entitled only to charge, first, for the general search, $2 on each lot mentioned in the mortgage; second, for the abstract, 25c. for the first hundred words, and 15c. for each additional hundred words, as provided for in subsections 2 and 4 of s. 95 of the Registry Act, R.S.O., c. 114; and that he was not entitled to charge, as he proposed to do, firstly, $2 for each general search on the two lots in the mortgage, and also 25c. per lot for each of the lots or subdivisions upon the various plans, besides 25c. for writing the first folio and 15c. for each subsequent folio of writing in the abstract. R.S.O., c. 114, s. 95, s-s. 2, does not authorize such a system of charge in such cases as this.

Laidlaw, Q.C., for the plaintiff.

Wood for the registrar.

BOYD, C.] [Feb. 3.

RE LESLIE.

Redemption decree—Delay in proceeding—Laches—Quieting title.

In an application under the Quieting Titles Act by a purchaser from a mortgagee who, with the petitioner, had been in possession of the mortgaged premises for over thirty years, it was shown that a decree for redemption had been granted at the suit of the mortgagor in September, 1871, but that no further proceedings had ever been taken thereunder.

Held, that after such delay it was too late to take any proceedings thereunder, and that such decree should be no obstacle to the petitioner obtaining a certificate, and a certificate was granted.

H. H. Robertson for the petitioner.

MEREDITH, J.] [Feb. 9.

ARCHER *v.* URQUHART ET AL.

Conveyance by deed—Habendum—Estate—Fee tail—Tenant by the curtesy.

A father conveyed lands to his daughter by deed with *habendum*: "To have and to hold the same unto . . and the heirs of her body lawfully begotten, to and for their sole and only use for ever . . to and for the sole and separate use and benefit of (grantee), for and during the term of her natural life, and after her death then to the heirs of her body lawfully begotten for ever. Provided always, however, that it shall and may be lawful for (grantee) to direct and appoint, either by deed or her last will and testament, which or in what manner her said heirs shall have the lands and premises hereby granted, should circumstances at any time render it necessary, of which circumstances she shall and may be sole judge."

Held, that the daughters took an estate in fee tail general, and that her husband was tenant by the curtesy.

M. D. Fraser for the plaintiff.

W. M. Davidson for the infant defendants.

N. W. Rowell for the adult defendants.

Practice.

ARMOUR, C.J.] [Feb. 11.

MUNRO *v.* PIKE.

Summary judgment—Writ of summons—Special indorsement—Action on covenant in mortgage—Interest—Affidavit—Rule 739.

In an action to recover the amount due under a mortgage, the plaintiff indorsed upon his writ of summons particulars of his claim showing the date of the mortgage, the parties, the amount of principal and interest claimed, and the date when the interest fell due; also a statement that by the terms of the mortgage, in default in payment of interest, the principal became due, and that default in payment of interest had been made. Interest on overdue interest was also claimed, but no contract therefor was alleged.

Held, that the indorsement was not a sufficient special indorsement to support a summary judgment under Rule 739, in that it omitted the dates from which interest was claimed, and did not state a contract to pay interest upon interest; and that the affidavit in support of the motion could not be read with the indorsement so as to make it good.

Gold Ores Reduction Co. v. *Parr*, (1892) 2 Q.B. 14, followed.

Masten for the plaintiff.

R. B. Beaumont for the defendant.

COUNTY COURT OF THE COUNTY OF SIMCOE.

PRATT *v.* GRAND TRUNK R.W. CO.

CITY OF LONDON FIRE INS. CO. *v.* GRAND TRUNK R.W. CO.

Subrogation—Splitting of demand—Jurisdiction.

The plaintiff Pratt had a barn destroyed by fire, caused, as alleged, by sparks from a locomotive of the defendants. The property was insured in the City of London Insurance Co. for $125, which amount they paid to the said Pratt, first having demanded and received from him an assignment or subrogation of his right of action against the defendants to that extent, who, they contended, being wrongdoers, should be held responsible for the loss.

The actions were brought to trial at the same time. Pratt, in his statement of claim, set forth the total loss and damages caused by the fire as amounting to $335, recited the assignment or subrogation as aforesaid, and the payment to him of the $125, and concluded in these words: "The plaintiff

claims to recover the balance of his loss, $200 damages." In the second action the insurance company claimed $125 damages, the amount paid by them. The defendant pleaded "not guilty by statute" in both actions, and also, in the second, a special plea that the insurance company were not entitled to sue the defendants, either in their own name or in the name of Pratt. At the trial, the defendants objected that the plaintiff had split his cause of action, and should have sued in the High Court for the full amount, $335. The trial, however, was proceeded with, and it was agreed that the evidence taken in the first action should apply to both. The defendants moved for a nonsuit, contending that there was no evidence of negligence and no jurisdiction. The plaintiff relied on the *bonâ fides* and effectiveness of the assignment; that the record in neither case showed a claim beyond the jurisdiction of the court; and referred to Rule 417; *Doan* v. *Michigan Central*, 26 C.L.J. 154; and to Rule 20, s-s. 7, and others as to non-joinder of parties; also to Addison on "Contracts," American series, vol. ii., p. 196; Porter on "Insurance," last edition, p. 229.

BOYS, J.J., held that there was evidence of negligence to go to the jury, but that the insured, Pratt, could not assign any portion of his cause of action to the insurers; that he had split his demand or cause of action, and that the court had therefore no jurisdiction to try either action, but the whole amount should have been sued for in the High Court, and ordered a nonsuit in each case.

Plaxton for the plaintiffs.

H. S. Osler and *Foster* (Belleville) for the defendants.

Appointments to Office.

SUPREME COURT JUDGES.

Robert Sedgewick, Esquire, of Osgoode Hall, and of the Bar of Nova Scotia, Barrister-at-Law, Q.C., heretofore the Deputy of the Minister of Justice of Canada, to be a Puisne Judge of the Supreme Court of Canada.

NOVA SCOTIA SUPREME COURT JUDGES.

Hugh McDonald Henry, of the City of Halifax, in the Province of Nova Scotia, to be a Puisne Judge of the Supreme Court of Nova Scotia, *vice* the Honourable Hugh McDonald, resigned.

COUNTY COURT JUDGES.

District of Algoma.

Edward O'Connor, of the City of Guelph, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-Law, to be Junior Judge of the District Court of the Provisional Judicial District of Algoma, in the said Province of Ontario.

Edward O'Connor, Esquire, Junior Judge of the District Court of the Provisional Judicial District of Algoma, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.

County of Haldimand.

Duncan Macmillan, of the City of London, in the Province of Ontario, Esquire, and of Osgoode Hall, Toronto, one of Her Majesty's Counsel learned in the Law, to be Judge of the County Court of the County of Haldimand, in the said Province of Ontario, *vice* His Honour Martin Campbell Upper, resigned.

Duncan Macmillan, Esquire, Judge of the County Court of the County of Haldimand, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.

County of Halton.

Colin George Snider, of the Town of Cayuga, in the Province of Ontario, Esquire, and of Osgoode Hall, Toronto, one of Her Majesty's Counsel learned in the Law, to be Judge of the County Court of the County of Halton, in the said Province of Ontario, *vice* His Honour Thomas Miller, deceased.

Colin George Snider, Judge of the County Court of the County of Halton, in the Province of Ontario, to be a Local Judge of the High Court of Justice for Ontario.

CORONERS

District of Algoma.

Frederick Hershey Sherk, of the Town of Sault Sainte Marie, in the District of Algoma, Esquire, M.D., to be an Associate-Coroner within and for the said District of Algoma, in the room and stead of George McCullough, Esquire, M.D., deceased.

COUNTY ATTORNEYS.

County of Middlesex.

James Magee, of the City of London, in the County of Middlesex, Esquire, one of Her Majesty's Counsel learned in the Law, to be County Crown Attorney and Clerk of the Peace in and for the said County of Middlesex, in the room and stead of Charles Hutchinson, Esquire, deceased.

COUNTY COURT CLERKS.

County of Wellington.

William Carroll, of the City of Guelph, in the County of Wellington, Esquire, to be Clerk of the County Court of the said County of Wellington, in the room and stead of James Hough, Esquire, resigned.

DIVISION COURT CLERKS.

County of Oxford.

Charles K. Currey, of the Village of Drumbo, in the County of Oxford, Gentleman, to be Clerk of the Second Division Court of the said County of Oxford, in the room and stead of M. F. Ainslie, resigned.

County of Peterborough.

James McNeil, of the Township of Otonabee, in the County of Peterborough, Gentleman, to be Clerk of the Third Division Court of the said County of Peterborough, in the room and stead of T. Campbell, deceased.

DIVISION COURT BAILIFFS.

District of Algoma.

William Irving, of the Village of Webbwood, in the District of Algoma, to be Bailiff, *pro tempore*, of the Fourth Division Court of the said District of Algoma, in the room and stead of W. J. Kirk, resigned.

County of Hastings.

Jones Phillips, of the Village of Foxboro, in the County of Hastings, to be Bailiff of the Eighth Division Court of the said County of Hastings, in the room and stead of D. Phillips, resigned.

District of Manitoulin.

Frank S. Jennings, of the Village of Gore Bay, in the Temporary Judicial District of Manitoulin, to be Bailiff of the First Division Court of the said District of Manitoulin, in the room and stead of P. J. Anderson, resigned.

Neil McLean, the Younger, of the Village of Gore Bay, in the Temporary Judicial District of Manitoulin, to be Bailiff of the First Division Court of the said Temporary Judicial District of Manitoulin, in the room and stead of Frank S. Jennings, resigned

County of Peterborough.

Thomas Nicolls, of the Village of Lakefield, in the County of Peterborough, to be Bailiff of the Fourth Division Court of the said County of Peterborough, in the room and stead of R. Chapin, resigned.

County of Simcoe.

Andrew Paton, of the Village of New Lowell, in the County of Simcoe, to be Bailiff of the Seventh Division Court of the said County of Simcoe, in the room and stead of John Orr, resigned.

County of Wentworth.

William Harvey, of the Village of Waterdown, in the County of Wentworth, to be Bailiff of the Third Division Court of the said County of Wentworth, in the room and stead of R. W. Job, resigned.

J. C. Moore, of the Village of Stony Creek, in the County of Wentworth, to be Bailiff of the Fifth Division Court of the said County of Wentworth, in the room and stead of Horace A. Coombs, resigned.

REGISTRARS OF DEEDS.

County of Peel.

Kenneth Chisholm, of the Town of Brampton, in the County of Peel, Esquire, to be Registrar of Deeds in and for the said County of Peel, in the room and stead of James Fleming, Esquire, resigned.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Insolvent partner—Distribution of assets between individual and partnership creditors. *Central Law Journal*, Nov. 25, 1892.

Public Corporation bonds—Recitals thereon and their legal effect. *Ib.*, Dec. 29, 1892.

Telegraph Companies—Delay in delivery of message—Damages for pain and suffering. *Ib.*, Dec. 9, 1892.

Re-marriage of wife a ground for the reduction of alimony. *Ib.*, Dec. 16, 1892.

Highway--Obstruction by railway train. *Ib.*, Jan. 13, 1893.

Payment of shares in property or labour. *Ib.*, Feb. 3.

Gift of bank deposit. *Ib.*, Feb. 10.

Injunction against breach of confidence. *Law Notes*, Dec., 1892.

Practical tests in evidence. *Green Bag*, Nov.-Dec., 1892.

Liability of corporations for transferring shares on forged powers of attorney. *American Law Review*, Nov.-Dec., 1892.

Antiquities of the law of evidence—The competency of witnesses. *Ib.*

Arbitration and the wage contract. *Ib.*

Selling new shares at less than par. *Ib.*

The conclusiveness of judgments against corporations in suits against the stockholders. *Columbia Law Times*, Dec., 1892.

Revocation of cheque by death of drawer. *Banking Law Journal*, Dec. 15, '92.

Waiver of tort. *Harvard Law Review*, Dec., 1892.

The borderland of larceny. *Ib.*

Liability of bank receiving money on deposit without notice of lien thereon. *Albany Law Journal*, Dec. 31, 1892.

Note and security given under threat of criminal prosecution for embezzlement. *Ib.*

Infants ratifying obligations. *Justice of the Peace*, Jan. 7, 1893.

Enforcing illegal contracts. *Ib.*, Jan. 14.

Right of owners of property abutting on street to erect bridge over the same. *Ib*, Jan. 21.

Threats against infringers of patents. *Ib.*, Jan. 28.

Joint contractors and joint tort feasors. *Ib.*

Agent's knowledge binding his principal. *Ib.*, Feb. 4.

Several offences on one day—Series of, or isolated acts. *Ib.*, Feb 11.

A Surety's liability. *Ib.*

Flotsam and Jetsam.

THE MASTER'S TREES.

A REJOINDER.—(See *ante* p. 123.)

To hint that Judges use old *saws*,
When they proceed to expound the laws ;—
A "modern instance," this, of pun so vile,
That men of Osgoode Hall do read, and smile ;
And then remark :—
"This fellow must be one of cheeky sort,"
For clear it is that thus to write
Is flat contempt of Court.

LAWYERS must be superior to other men, for they are generally seen at their best when going through the greatest trials of their lives.—*Ex.*

"WELL, if that ain't mean !" exclaimed the prisoner. "Every durned one o' the stories in this here paper they've gimme to read is continued ! An' me to be hung next week !"—*Ex.*

A JUDGE, in pronouncing the death sentence, tenderly observed : "If guilty, you deserve the fate that awaits you ; if innocent, it will be a gratification for you to feel that you were hanged without such crime on your conscience ; in either case, you will be delivered from a world of care."

Justice Flynn—"What's the charge, officer ?" *P.C. O'Rourke*—"Breakin' the Sunday law, yer Anner." *Justice*—"How's that ?"

O'Rourke—"Sure, he wuz tryin' to get into Cassidy's saloon by de front dure instead of the family entrance."—*Puck.*

AN ingenious advertising scheme is in operation in Boston. The United States Protective Trust Company issues an accident policy for $100, having on the reverse side the advertisement of the firm distributing them. These policies are sold to the advertisers at $10 per thousand, and are good for seven days. The insurance contract is made with the Ætna, the Protective Trust Company simply acting as agents in distributing and selling the policies.

THE unruly member has got another person into trouble. The offender in this instance sang "Ta-ra-ra-boom-de-ay" continually, to the great annoyance of his neighbours. Complaint being made, it was ascertained that he was crazy, and he was forthwith consigned to an asylum. Courts ought to take judicial notice that any person who sings or whistles this infernal monotony is presumably a lunatic. There is only one alleviating fact in the mania. The practise of it prevents the perpetrator meantime from chewing gum.—*Albany Law Journal.*

Law Society of Upper Canada.

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THE LAW SCHOOL.

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

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ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School, in some cases during two, and in others during three terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the school is a three years' course. The term or session commences on the fourth Monday in September, and ends on the first Monday in May, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk before being allowed to enter the School must present to the Principal a certificate of the Secretary of Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practise in Ontario, are allowed, upon payment of usual fee, to attend the lectures without admission to the Law Society.

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

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

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

Provision is made by Rules 164 *(g)* and 164 *(h)* for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above.

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of

attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. See new Rule 156 (*a*).

Under new Rules 156 (*b*) to 156 (*h*) inclusive, students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and their attendance upon the third year's lectures between the fourth and fifth years of their attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lectures. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceding year has been duly passed, and a student or clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year.

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

On Fridays two moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or a Lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court.

At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, a special report is made upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. On Friday there is one lecture in the first year, and in the second and third years the moot courts take the place of the ordinary lectures. Printed schedules showing the days and hours of all the lectures are distributed among the students at the commencement of the term.

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

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of theschool course respectively.

Any student or clerk who under the Rules is exempt from attending the lectures of the School in the second or third year of the course is at liberty to pass his second intermediate or final examination or both, as the case may be, under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during whhic it is deemed proper to continue the holding of such examinations under the said Law Society Curriculum. The first intermediate examination under that curriculum has been already discontinued, and that examination must now be passed under the Law School Curriculum at the Law School Examinations by all students and clerks, whether required to attend the lectures of the first year or not. It will be the same in regard to the second intermediate examination after May, 1893, after which time that examination under the Law Society Curriculum will be discontinued. Due notice will be hereafter published of the discontinuance of the final examinations under that curriculum.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

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

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

On the subject of examinations reference may be made to Rules 168 o 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive

HONORS, SCHOLARSHIPS, AND MEDALS.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for

competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following:

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following:

Of the persons called with Honors the first three shall be entitled to medals on the following conditions:

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.—Smith on Contracts. Anson on Contracts.

Real Property.—Williams on Real Property, Leith's edition. Deane's Principles of Conveyancing.

Common Law.—Broom's Common Law. Kerr's Student's Blackstone, Bks. 1 & 3.

Equity.—Snell's Principles of Equity.

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

SECOND YEAR.

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

Real Property.—Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone.

Personal Property.—Williams on Personal Property.

Contracts.—Leake on Contracts.

Torts.—Bigelow on Torts—English Edition.

Equity.—H. A. Smith's Principles of Equity.

Evidence.—Powell on Evidence.
Canadian Constitutional History and Law.—Bourinot's Manual of the Constitutional History of Canada O'Sullivan's Government in Canada.
Practice and Procedure.—Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.
Statute Law.—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.—Leake on Contracts.
Real Property.—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles.
Criminal Law.—Harris's Principles of Criminal Law. Criminal Statutes of Canada.
Equity.—Underhill on Trusts. Kelleher on Specific Performance. De Colyar on Guarantees.
Torts.—Pollock on Torts. Smith on Negligence, 2nd ed.
Evidence.—Best on Evidence.
Commercial Law.—Benjamin on Sales. Smith's Mercantile Law. Chalmers on Bills.
Private International Law.—Westlake's Private International Law.
Construction and Operation of Statutes.—Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.—British North America Act and cases thereunder.
Practice and Procedure.—Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

THE LAW SOCIETY CURRICULUM.

Examiners: A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON; FRANK J. JOSEPH, LL.B.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

SECOND INTERMEDIATE.*

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44; the Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

FOR CERTIFICATE OF FITNESS.

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, and Statute Law, and Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

*The Second Intermediate Examination under this Curriculum will be discontinued after May, 1893.