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DIARY FOR OCTOBER.

13. Mon.....County Court and Surrogate Term, York. Battle of Queenston, 1812.
18. Sat.....County Court and Surrogate Terms (York) end.
19. Sun..... *19th Sunday after Trinity.*
21. Tues.....Battle of Trafalgar, 1805.
23. Thur.....Lord Monk, Governor-General, 1861.
24. Fri.....Sir J. H. Craig, Governor-General, 1807.
25. Sat. .....Battle of Balaclava, 1854,
26. Sun.....*20th Sunday after Trinity.*
28. Tues.....Sittings of Supreme Court of Canada, Primary Examinations.
31. Fri.....All Hallow Eve.

TORONTO, OCTOBER 15, 1884.

THE new wing on the west side of Osgoode Hall is rapidly approaching completion. The accountant's department has already been transferred to the new building, and commodious offices assigned to it on the ground floor; and the Surrogate Clerk in Chancery has also taken possession of his new quarters. Between these offices two new rooms are allotted to the Clerk of the Process. In the upper story the new court room for the Chancery Division and the private rooms for the judges of that Division are being got into order. We believe, however, that it will be Christmas before the court room is ready for use, as the work of fitting it up with bench, seats, etc., yet remains to be done.

Osgoode Hall has always been somewhat of a puzzle to outsiders, and with this recent addition to its labarynthine windings it will prove to be still more of a maze. The yawning chasm which heretofore separated Equity from Law, notwithstanding the Judicature Act, has happily been bridged over; and now that free access can be had between the judges of all the Divisions of the Supreme Court, the result will no doubt be seen in the increased facility which the learned judges will display in blending and harmonizing those formerly discordant elements.

A MOVEMENT is on foot in Victoria for the amalgamation of the two branches of the legal profession in that colony. The bar of Victoria seem disposed to resist the attempt, and have organized for the purpose of defending the exclusive privileges of their order. A committee has been appointed to inquire into the relations of the bar with solicitors, and the public. This committee has recommended that the etiquette of the bar should be reduced, as far as practicable, to a written code, and an organization adopted with the duty of watching over and enforcing the observance of the code, and it has also advised, and the bar has accepted the advice, and have resolved, as a sort of "sop to Cerberus," that a barrister may henceforth see his client personally, "advise him and earn a fee" without the intervention of a solicitor, provided no litigation has commenced. But that he may not write letters on the client's behalf, issue process, or effect the engrossing of deeds or other documents, or do any similar business. If our Australian cousins would be content to accept the advice of their professional brethren in this Province, we think that advice would be unanimous in favour of the modified form of amalgamation which has existed in this Province, almost from the very commencement of its legal history. The fact that a higher order of qualification is required of men who would aspire to the degree of barrister-at-law, than of those who merely wish to practise as solicitors is not lost sight of; and more stringent examinations are required for the former, than the latter class of practitioners. At the same time any one who wishes, and

is able, may if he choose, pass both examinations and practise both branches of the profession. From an amalgamation, effected on this footing, we do not think the bar of Victoria would have anything to fear in the way of loss of emoluments. In this Province we have men who are both solicitors and barristers, and yet practise exclusively one or other branch of the profession. Usually the one who practises advocacy only, has associated with him partners who confine themselves to solicitor's work; and an eminent counsel is able indirectly to reap great benefit not only from his earnings as a counsel, but also from the solicitor's business which his prestige as a counsel naturally attracts to his firm.

RECENT ENGLISH DECISIONS.

ATTACHMENT OF DEBTS — ASSIGNMENT BY JUDGMENT DEBTOR.

The first case which we find in the August number of the Queen's Bench Division is that of *Vyse* v. *Brown*, 13 Q. B. D. 199. This was an unsuccessful attempt to reach a debt alleged to have been fraudulently assigned by the debtor, by means of the attachment of the debt. The debt in question was a legacy due from the garnishee as executor, which had been assigned by the debtor to the garnishee in trust for the benefit of the debtor's wife for life, and afterwards upon other trusts. The judgment creditor contended that the assignment was void. But Williams, J., remarked that even assuming the settlement to be impeachable, there was nothing in the nature of a debt, either legal or equitable, due or accruing due from the garnishee to the judgment debtor; as between these two, the settlement stands good and there was not the least ground for saying that the settlor could revoke the settlement, or call upon the garnishee to pay the money over to him. "It was argued that the settlement must be treated as void and of no effect, and that consequently Brown (the garnishee), stood in the position of an executor, holding in hand a legacy due to the judgment debtor. There is, however, a fallacy in this argument; for, even supposing that the plaintiff had taken the proper steps to set aside the settlement as void, and had succeeded in doing so, even then Brown could never have been placed in the position of being obliged to pay over the money to Wise (the judgment debtor); the settlement would still be valid and subsisting between the parties; and although in such a suit Brown might be directed to pay over the whole, or a sufficient part of the settled fund to the creditor, that could never be by reason of his becoming indebted to the judgment debtor; the forms of decrees in such cases invariably exclude the settlor from all interest, and direct that any surplus of the fund shall follow the trusts of the settlement."

COVENANT TO PAY RATES—WATER RATES PAYABLE TO WATER COMPANY.

The next case we come to is *The Direct Spanish Telegraph Co.* v. *Shepherd*, 13 Q. B. D. 202, a decision of a Divisional Court. In a lease of a shop and basement and of three rooms on the third floor of the same house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises," and the question was, whether the charges for water supplied by a water company to the shop and basement, and paid for by the tenant, were within the term "rates," and it was held that they were, and that, therefore, the lessor was liable to repay the tenant the moneys so paid by him. Hawkins, J., "I am of opinion that it is such a rate, and was in the contemplation of the parties to the contract. The General Water Works Clauses Act was passed in the year 1847, and this lease was made long after—in the year 1883. The interpretation clause of

the Act uses the expression, "water rate," which, it is declared, shall include any rent, or reward, or payment to be paid to the undertakers for the supply of water. In the 68th section we find that water rates are to be paid by, and be recoverable from the person receiving the supply of water, and shall be payable according to the annual value of the tenement supplied with water. These payments are thus brought within the terms of the covenant."

SALE OF INTOXICATING LIQUOR TO DRUNKEN PERSON.

The next case to be noticed is one of some interest to temperance advocates, viz., *Cundy* v. *Le Cocq*, 13 Q. B. D. 207. The Licensing Act, 1872, Imp. 35 & 36 Vict. c. 94 sec. 13, makes it an offence for any licensed person to sell any intoxicating liquor to any drunken person. A publican sold intoxicating liquor to a drunken person, who had given no indication of intoxication, and without being aware that the person so served was drunk. And it was held by Stephen and Mathew, JJ., that the prohibition was absolute, and that knowledge of the condition of the person served with the liquor was not necessary to constitute the offence, "the existence of a *bona fide* mistake as to the condition of the person served, is not an answer to the charge, but is matter only for the mitigation of the penalties that may be imposed."

WILL, CONSTRUCTION OF—BEQUEST OF INCOME OF ESTATE TO WIDOW—DEBT DUE BY CHILD ENTITLED IN REMAINDER—INTEREST ON SUCH DEBT PAYABLE TO WIDOW.

Passing over the next five cases, which are not of any special interest in this Province, we come to the case of *Limpus* v. *Arnold*, 13 Q. B. D. 246, a special case submitted for the construction of a will.

The testator had bequeathed the income of his estate to his widow for life and, thereafter, he devised and bequeathed all his property equally among his children. The will contained a proviso, that any advances made to any child, with interest on such advances as charged against such child in his private memorandum book in his own handwriting, should be taken in full, or part, satisfaction of such child's share—one of the children had been advanced by way of loan £2,000 on which interest had been paid to the testator during his lifetime, and which was charged in the testator's memorandum book, which contained the following entry:—"This is the memorandum book named in my will as containing the advances made by me to my children, and their husbands, to be taken in satisfaction of their respective shares in my estate." The question submitted for the opinion of the Court (Stephen and Mathew, JJ.) was, Whether the widow was entitled to the interest on the debt of £2,000, or whether the interest ceased to be payable on the testator's death.

Stephen, J., said:—"To my mind the crucial question in this case is, Whether the clause relating to advances was meant to take effect at the death of the testator, or the death of the widow. Looking at the will as a whole, and considering the apparent intention that the widow should during her life take the income of the whole of the testator's property as he enjoyed it in his lifetime, and that there should be perfect equality between the children, it seems to me that the intention was that the interest on the sum due from the defendant should continue payable during the widow's life." Mathew, J. concurred.

NEGLIGENCE—MASTER AND SERVANT—UNSAFE PREMISES—KNOWLEDGE OF MASTER—IGNORANCE OF SERVANT.

The case to be next considered is a decision of the Court of Appeal affirming a judgment of the Queen's Bench Division, viz.: *Griffiths* v. *London and St. Katharines Docks Co.*, 13 Q. B. D. 259; in which the Court held that in an action by a servant against his master to recover damages for personal injuries resulting from the unsafe state of the premises on which the servant was employed—the

statement of claim must allege not only that the master knew, but also that the servant was ignorant of the danger. "For the plaintiff it was contended that his knowledge was a mere matter of defence, and that it should so appear as a matter of pleading, but that is not true for the old form of declaration must have shown ignorance on the part of the servant."—Per Bowen, L.J.

EASEMENT—STATUTE OF LIMITATIONS—WAY—USER AT LONG INTERVALS.

Passing over *Jones* v. *Curling* and *Grant* v. *Easton*, notes of which have appeared in our columns under the head of "Recent English Practice Cases," at p. 326, and also two other cases of no general interest, we come to *Hollins* v. *Verney*, 13 Q. B. D. 304. This was an action in which a right of way was claimed under the statute, in respect of twenty years user as of right. It appeared that the way had only been used by the party claiming it—the defendant—for the removal of wood from an adjoining close. The wood was cut upon this close at intervals of several years; the last cutting had been in the year before the action was commenced, the one previous, twelve years before, and the next at another interval of twelve years. Between these intervals the road was occasionally stopped up, but the defendant used it as often as he wished while the wood was being cut. The Court of Appeal now affirmed the decision of the Queen's Bench Divisional Court, holding that there had not been an uninterrupted enjoyment of the way for twenty years within the Prescription Act, which did not apply to so discontinuous an easement as that claimed. Lindley, L. J., who delivered the judgment of the Court, said: No user can be sufficient, which does not raise a reasonable inference of continuous enjoyment as of right, for the full period of twenty years before action. "Moreover, as the enjoyment which is pointed out by the statute is an enjoyment which is open, as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term, (whether acts of user be proved in each year or not), the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement, the fact that a continuous right to enjoyment is being asserted, and ought to be resisted, if such right is not recognized, and if resistance to it is intended. Can an user which is confined to the rare occasions on which the alleged right is supposed in this instance to have been exercised, satisfy even this test? It seems to us it cannot: that it is not, and could not reasonably be treated as the assertion of a continuous right to enjoy; and where there is no assertion by conduct of a continuous right to enjoy, it appears to us there cannot be an actual enjoyment within the meaning of the statute."

INCORPORATION OF TERMS OF CHARTER PARTY IN BILL OF LADING.

Gullischen v. *Stewart Brothers*, 13 Q. B. D. 317, was an appeal from the judgment of the Queen's Bench Division, 11 Q. B. D. 186. The question in dispute was the proper construction of a charter party and bill of lading. The charter party contained stipulations in the usual form for the payment of freight and demurrage, and also a stipulation that, "as this charter party is entered into by the charterers on account of another party, *their liability ceases* as soon as the cargo is on board, the vessel holding a lien upon the cargo for freight and demurrage." The charterers placed the cargo on board, and received a bill of lading, whereby the goods were made deliverable to themselves, "they paying freight and all other conditions as per charter party." The action was brought against them as consignees of the cargo, for demurrage in respect of delay at the port of discharge.

The Queen's Bench Division held the plaintiffs entitled to succeed, and the Court of Appeal affirmed the decision.

RAILWAY COMPANY—PROPERTY PROTECTED FROM EXECUTION.

In the *Great Northern Railway Co.* v. *Tahourdin*, 13 Q. B. D. 320, the Court of Appeal held that the protection against seizure in execution afforded by the Imperial Railway Companies' Act, 1867, ss. 3, 4, applies to railway plant of every company constituted by statute for the purpose of constructing or working a railway, even although the railway is merely a subordinate and ancillary part of the undertaking authorized by the statute.

BURNING DEAD BODY, TO PREVENT INQUEST.

The Crown case of *Queen* v. *Stephenson*, 13 Q. B. D. 331, is deserving of notice. One of the prisoners had given birth to a child, which subsequently died under circumstances giving rise to suspicion, justifying the holding of an inquest, of the intention to hold which, the prisoners were notified; and they thereafter surreptitiously removed the body and burnt it. The prisoners were found guilty of a misdemeanor, and the Court now affirmed the conviction.

WILL OF ALIEN—MODE OF EXECUTION.

The only case in the August number of the Probate Division which seems worth referring to is that of *Bloxam* v. *Favre*, 9 P. D. 130, in which the validity of a will made by an alien came in question. By the Imperial Naturalization Act, 1870, s. 2., it is provided that:—"Real and personal property of every description may be taken, acquired, held and *disposed of* by an alien *in the same manner in all respects* as by a natural born British subject." By Imperial Act, 24 & 25 Vict. c. 114:—"Every will made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death,) shall as regards personal estate be held to be well executed for the purpose of being admitted in England to probate, if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin."

The will in question was made abroad by an alien, and executed according to the forms required by English law, but not in the manner required by the law of the country of the testatrix's domicile. Her domicile of origin was English.

Cotton, L.J., said:—"The object of the Act of 1870 was to remove disabilities of aliens with regard to real property. According to the common law they could acquire property in England by purchase, but could not hold it against the Crown. The present Act enables them to hold it against the Crown, and to dispose of it. The words "in the same manner in all respects as by a natural born British subject" occasion some difficulty, but looking at the object of the Act, I think we ought not to construe them as intended to confer upon aliens particular privileges given by a former statute to British subjects." The judgment of Hannen, P.P.D., was affirmed.

The September numbers of the *Law Reports* comprise 26 Ch. D. pp. 605–692; 13 Q. B. D. pp. 337–504, and 9 P. D. pp. 149–181.

INTERPLEADER—SHERIFF'S FEES—POSSESSION MONEY.

The first case we propose to notice is that of *Smith* v. *Darlow*, 26 Ch. D. 605 C. A., in which two points of practice were decided by the Court of Appeal. The order appealed from was made upon an interpleader application by a sheriff. It barred the claimant, directed the pro-

ceeds of the execution (which had been brought into Court and which were insufficient to satisfy the amount endorsed on the writ) to be paid the plaintiff, and ordered the claimant to pay the plaintiff's and sheriff's costs including the latter's possession money. From this order the sheriff appealed on the ground that his costs and possession money should have been ordered to be paid out of the fund in Court and that relief over should have been given to the execution creditor against the claimant for the amount so paid. The Court of Appeal gave effect to this contention holding that the C. L. P. Act, 1860 (Imp. St. 23 & 24 Vict. c. 126), s. 17, which enacts that "The judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them," did not render the order conclusive as against the sheriff, upon this point, however, Fry, L.J., dissented, and Bowen, L.J., doubted: but the Court was unanimous that the sheriff was entitled to be paid out of the fund, in priority to the execution creditor, his costs and possession money; and that the execution creditor should have relief over against the claimant, for the amount so paid the sheriff.

Cotton, L.J., thus stated the practice:—"We have consulted the other judges, and some of the officers of the Queen's Bench Division, and we find that they consider the rule to be, and we think it is a reasonable rule, that the sheriff is entitled to be made safe, that he has a right to say to the person who put him in motion:—"pay the amount of my proper charges." The strict form of order, therefore, would be when a claim by a third party fails that the charges should be paid in the first instance by the execution creditor to the sheriff, and that the creditor should have them over against the third party."

ADVANCES TO COMPANY TO CREATE A FICTITIOUS CREDIT —FRAUDULENT AGREEMENT.

The next case to be here noticed is that of *In re Great Berlin Steamboat Company*, 26 Ch. D. 616, C. A., in which the Court of Appeal laid down the salutary rule that when a man places money in the hands of a company merely for the purpose of giving the company a fictitious credit in the eyes of third persons, as against the creditors of the company, he cannot, after a winding up order has been granted, claim the money as his own. The company in question appears to have been a "paper" company without any paid up capital, and the directors applied to the appellant Bowden to advance £1,000 to be placed to the credit of the company "for the purpose of having a creditable balance in case of inquiries from Berlin bankers, but not for the general purposes of the company; such money to be returned intact at the expiration of a month;" on these terms the money was advanced. Subsequently the appellant consented to payment out of the greater portion of the money for the purposes of the company, and only a balance of £99 15*s.* 0*d.* remained at the company's credit when an order to wind up the company was granted. Bowden claimed the £99 15*s.* 0*d.*, but the Court of Appeal, affirming Bacon, V.C., held that he was not entitled thereto. Lindley, L.J., said:—"I am not satisfied that this was not a case of loan as distinguished from trust, and if that is the true view it is fatal to the appellant's case. But if it was a case of trust, the appellant must show what the trust was. He does so, and shews an illegal trust, since the purpose of the advance was to give a fictitious credit to the company." Baggallay and Lindley, LL.J., were of opinion that when the purpose for which the money was advanced failed the appellant might

at once have reclaimed the money, but Cotton, L.J., expressed no opinion on the point, but the Court was unanimous that after the winding up order all right of reclaiming the money was gone.

COPYRIGHT—INFRINGEMENT—COPIES OF MATERIAL PORTIONS FOR PRIVATE DISTRIBUTION.

In the case of *Ager* v. *Peninsular and Oriental Steam Navigation Co.* (26 Ch. D. 637), we have an important decision of Kay, J., on copyright law. The plaintiff published a collection of words suitable for being used in transmitting telegraphic messages in cypher, and for which he had a copyright. The defendants purchased a copy, and from it compiled for their own use, with its aid, a new and independent work, as alleged, which was their own private telegraph code; but instead of printing their code of signals, so far as it was original, separately as an adjunct to the plaintiff's book, they printed in their own book the bulk of the words from the plaintiff's book, appending to them numbers and meanings of their own, and distributed copies in their book among their agents at home and abroad, but had not printed their book for sale or exportation.

KAY, J. was clearly of opinion that what had been done by the defendants was an infringement of the plaintiff's rights. "To multiply copies of a material portion of a work which is entitled to copyright is as much a breach of the law, though differing in degree, as to multiply copies of the whole work, and it has long been settled that multiplying copies for private distribution among a limited class of persons is just as illegal as if it were done for the purposes of sale."

ATTACHMENT FOR CONTEMPT OF COURT—RIGHT OF SHERIFF TO BREAK OPEN OUTER DOOR TO EXECUTE WRIT.

In the case of *Harvey* v. *Harvey*, 26 Ch. D. 644, Chitty, J., was called upon to determine whether, upon an attachment issued for contempt of court in not delivering deeds pursuant to the order of the court, a sheriff is bound to break open the outer door of the contemnor's residence, if necessary, for the purpose of executing the writ. The recalcitrant party in this case was a clergyman who had barred himself in his house and refused to allow any one to enter it. He had, moreover, written to a newspaper a letter in which he pretended to mistake the sheriff's officers for thieves or tramps, and with the object of deterring the officers from entering the house, he intimated that he was armed with a revolver. Under these circumstances the sheriff had failed to arrest the defendant, alleging that he was not entitled to break into the house for the purpose of his arrest. After an elaborate review of the authorities the learned judge arrived at the conclusion that although in the execution of merely civil process at the suit of a subject (such as a writ of *fieri facias*) the sheriff cannot break open outer doors, he can do so on a writ of attachment for a contempt of court of such a nature as the defendant had committed.

This case appears to create a doubt as to the right of a sheriff in this Province to break open an outer door in the execution of a writ of *habere facias possessionem* in the form given in the rules appended to the Judicature Act. (See Form No. 178.) The English form (See Imp. Rules, 1883, app. H. No. 8) has the words, "Therefore we command you that [you omit not by reason of any liberty of your country but that you] enter the same." It will be seen that the words in brackets are omitted from the form in use in this Province, and yet it would appear from *Harvey* v. *Harvey* that it is by virtue only of the *non omittas* clause in brackets that a sheriff is entitled to break open outer doors in the execution of such writs.

WILL EXPRESSED IN TERMS OF FOREIGN LAW—CONSTRUCTION.

The case of *Bradford* v. *Young*, 26 Ch. D. 656, calls only for a brief notice. The will of (as the learned judge found) a domiciled Scotchman had been admitted to probate in England, and the question was whether it was to be construed according to English or Scotch law, and it was held by Pearson, J. that it must be construed according to Scotch law; and further, that the admission of the will to probate in England, was not conclusive that the testator was domiciled in England.

TENANT FOR LIFE AND REMAINDERMAN—SETTLEMENT BY WILL OF SHARE OF BUSINESS—LOSSES, HOW BORNE.

The next case we have to notice is that of *Gow* v. *Forster*, 26 Ch. D. 672, in which it was unsuccessfully argued that the principle laid down in *Upton* v. *Brown*, 26 Ch. D. 588 (noted *ante* p. 321) applied. The case arose under a will whereby the testator had devised all his real and personal estate, including his share in a business in which he was a partner, on trust as to one moiety thereof to pay the annual proceeds (including the net proceeds of the business) to his daughter for life, and after her death to her children, or remote issue. The will contained no provision as to how any loss in the business was to be borne, as between the persons interested in the testator's estate. It had, however, been the practice of the firm, during the testator's lifetime in prosperous years to divide the whole profit among the partners, and in years in which there was a loss to write off each partner's proportion of the loss from his share of the capital. After the testator's death the business was carried on for one year at a profit, and half the testator's share of that profit was paid to the daughter. For the following year there was a loss and the testator's share of the loss was written off from his share of the capital. For the next year there was a profit, and the question was: Whether the half of these latter profits was to be paid to the daughter, or whether it must be first applied to make good the loss of capital of the previous year?

Pearson, J., was of opinion that the will indicated an intention on the part of the testator that the business should be carried on, after his death, in the same manner it had been carried on in his lifetime, and that therefore the profits in question were not to be applied to make good the losses of capital of the previous year, but that the daughter was entitled to be paid the full amount thereof.

MORTGAGE—PRIORITY—FUND IN COURT—STOP ORDER, FORECLOSURE—TIME FOR REDEMPTION.

The last case in the Chancery Division is that of *Mutual Life Assurance Society* v. *Langley*, 26 Ch. D. 686, in which a contest for priority arose between two incumbrancers under the following circumstances: L. being *cestui que trust* of a fund part of which was in Court and part in the hands of the trustees, assigned his interest by way of mortgage to C. L., who gave notice to the trustees, but did not obtain a stop order. L. executed a subsequent charge of his interest in favour of P. and M. (without notice of the mortgage to C. L.) P. and M. assigned to the plaintiffs, who obtained a stop-order—and it was held by Pearson, J., that C. L.'s notice to the trustees was ineffectual to bind the fund in Court, and that the plaintiffs who had obtained a stop order were entitled to priority.

In this Province the rule has been, we believe, almost invariable to give subsequent incumbrancers in foreclosure suits successive periods of redemption, but in some of the later English cases this practice has been departed from, and in the present case Pearson, J., remarked:—"My opinion is in favour of fixing, as a general rule, one period for redemption; the practice of giving successive periods has been found very inconvenient."

CONTRACT—VENDOR AND PURCHASER—COMPENSATION FOR MISDESCRIPTION IN ADVERTISEMENT—TAKING CONVEYANCE NO BAR TO RECOVERY.

The first case we have to consider in the Queen's Bench Division Reports for September is that of *Palmer* v. *Johnson*, 13 Q. B. D. 351, in which the Court of Appeal affirmed the principle, that where, in a contract of sale, there is an express condition for the allowance of compensation to the purchaser in case any error, mis-statement, or omission, be discovered in the particulars, the purchaser is entitled to enforce that condition, even after accepting a conveyance without covenants. This principle was laid down in *Cann* v. *Cann*, 3 Sim. 447, in 1830, and was followed about eighteen years ago by the Court of Exchequer in *Bos* v. *Helsham*, 2 Ex. 72; but Malins, V.-C., in the case *Manson* v. *Thacker*, 7 Ch. D. 620, came to a different conclusion, refusing to follow *Bos* v. *Helsham*, and held that after conveyance a claim for compensation for misdescription could not be enforced. But the Court of Appeal now declared that *Manson* v. *Thacker* was not law. Brett, M. R. put the judgment of the Court on this ground, viz., that "the contract is one which is daily contained in conditions of sale by auction, and when there is with respect to it the decision of such a case as *Bos* v. *Helsham*, which, having been on demurrer, could easily have been brought by appeal to the Exchequer Chamber, and ultimately to the House of Lords, and yet one finds it unchallenged until now, after a lapse of eighteen years, and when also one finds that it was preceded in 1830 by the case of *Cann* v. *Cann*, in which a deliberate statement of the law was made on which the case of *Bos* v. *Helsham* was founded, one cannot but say, that this Court, according to what has been a universal practice, even of a Court of Error, would decide now in the same way, even though it would not have come originally to the same conclusion." Referring to the contrary judgments of Malins, V.-C., he observed, "A court of law is not justified, according to the comity of our courts, in over-ruling the decisions of another court of co-ordinate jurisdiction, and therefore the Vice-chancellor ought not to have differed from those former decisions." Speaking of the recent case of *Joliffe* v. *Baker*, 11 Q. B. D. 255, he said, "as to the elaborate judgment of Williams, J., in *Joliffe* v. *Baker*, if it conflicts with those two cases, viz., *Cann* v. *Cann* and *Bos* v. *Helsham*, I think, to the extent it so conflicts, it cannot be upheld."

The argument that the contract for compensation was merged in the conveyance was thus dealt with by Fry, L. J., in *Leggott* v. *Barrett*, 15 Ch. D. 309, 311: "Lord Justice James and the present Master of the Rolls laid down what is indubitably the law, that when a preliminary contract is afterwards reduced into a deed, and there is any difference between them, the mere contract is entirely governed by the deed, but that has no application here, for this contract for compensation was never reduced into a deed by the deed of conveyance. There was no merger, for the deed in this case was intended to cover only a portion of the ground covered by the contract of purchase."

This case therefore seems to proceed on the ground that the purchaser had a separate and independent contract for compensation which he was at liberty to enforce, because it was not merged in his deed of conveyance. But in the cases of *Besley* v. *Besley*, 9 Ch. D. 103, and *Allen* v. *Richardson*, 13 Ch. D. 524, which, equally with *Manson* v. *Thacker*, came under the condemnation of the Court of Appeal, there seems to have been no express contract for compensation, and it may be possible that on that ground those two cases may yet be maintained as good

law in spite of the adverse comments passed on them in *Palmer* v. *Johnson*.

Bill of exchange — Acceptance by directors of a company—Personal liability.

We have now to consider the case of *West London Commercial Bank* v. *Kitson*, 13 Q. B. D. 360, which involved the question as to whether certain directors of a joint stock company which had no power to accept bills, were personally liable on a bill of exchange payable to order and addressed to the company, and which had been accepted by the directors "for and on behalf of the company," and in which it was held by the Court of Appeal affirming the Divisional Court of the Queen's Bench Division (Day and Smith, JJ.) that this was a representation on the part of the directors: that the company had power to accept the bill, and as the company had not in fact such power, the directors who had, by their acceptance, made the representation, were personally liable. Fry, L.J., said:—"The defendants, by accepting this bill for and on behalf of the company, made a representation that the company had power to accept it. I think that was a representation of a matter of fact and not of law, because whether there was power or not depended on private Acts of Parliament. That representation was acted upon, as it was intended by the defendants it should be acted on. It was a false representation, and I have come to the conclusion that by reason of its having been made, and made falsely, the plaintiffs have sustained damages."

Infant—Necessaries.

Passing over some intervening cases which have no special interest in this Province we come to the case of *Barnes & Co.* v. *Toye*, 13 Q. B. D. 410 in which the liability of an infant for necessaries came up for consideration before a Divisional Court composed of Field, Manisty and Lopes, JJ., and the Court held, that although the goods in question came under the class of necessaries, yet it was open to the infant to show that he was already supplied with sufficient articles of the same class: in which case he would not be liable to the plaintiffs, no matter whether they were, or were not, ignorant of the fact when they furnished the goods. The decision of the Court of Exchequer in *Ryder* v. *Wombwell*, L. R. 3 Ex. 90, to the contrary, was therefore overruled.

The remaining cases reported in the Queen's Bench Division for September are of no special interest in this Province, being decisions for the most part under the English Bankruptcy Act.

Will—Evidence of due execution—Attesting witnesses.

The only remaining case to be noticed here is that of *Wright* v. *Sanderson*, 9 P. D. 149, which is a decision of the Court of Appeal on a point of evidence. The testator in that case, in 1878, wrote a holograph codicil upon the same paper as a will which he had made and duly executed in 1868, and wrote at the end of it an attestation clause adapting that at the end of the will to the case of a codicil. He called the nurse into the schoolroom and asked her and the nursery governess to "sign this paper." There was evidence that he took his own pen into the room. Both witnesses signed. At the trial, which took place between four and five years after, the codicil was produced bearing the testator's signature, and both the attesting witnesses were examined. The governess deposed that she had designedly abstained from looking at any of the writing on the paper, and the nurse it appeared had been very nervous. Neither of them could say as to what writing was on the paper, nor as to whether the testator's signature was there when they signed, and both said that they did not see him sign. But, notwithstanding this evidence,

it was held affirming the judgment of the very learned President of the Probate Division that the codicil was entitled to probate. Fry, L.J., succinctly states the grounds of the decision as follows:—"The codicil propounded is *ex facie* perfectly regular as regards all the formalities of signature and attestation. The presumption *omnia rite esse acta*, therefore applies to the codicil. But the conduct of the testator both in the preparation of the codicil and in the calling together of his witnesses, shews an anxious and intelligent desire to do everything regularly. That fact strengthens the presumption. That presumption is not, in my opinion, rebutted by the evidence of the two witnesses who think that the testator did not sign in their presence, for these witnesses were somewhat nervous and flurried on the occasion, and were accordingly confused and forgetful in the witness-box. They were witnesses about whose honesty the learned President of the Probate Division entertained no doubt, but on whom he, who saw and heard them, felt that he could not rely to rebut the presumption which arises from the admitted facts of the case."

Cotton, L.J., though thinking that he would himself have come to a different conclusion on the evidence, yet having regard to the principles on which the Court acts on appeals as to questions of fact, he did not feel able to overrule the decision of the judge of first instance who had seen the witnesses.

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

MASTER'S OFFICE.

HUGHES V. REES.

Res judicata—Pleading—Estoppel—Allowance to trustee under a void instrument—Husband and wife—Agency—Maintenance of children.

Where a party does not plead a prior judgment in bar by way of an estoppel before a judgment directing a reference to the Master, he leaves the whole matter open, to be enquired into on the evidence.

The Master has no jurisdiction to amend pleadings after judgment; nor could he give effect to a statement filed in his office raising a defence which ought to have been set out in the pleadings.

A trustee who has been induced by a settlor to accept a trust under a deed void by the law of the settlor's domicile is entitled to be re-imbursed all his charges and expenses incurred in the execution of the trust.

A clause indemnifying the trustee is infused into every trust deed; and the statute R. S. O. c. 107 s. 3, does little more than what Courts of Equity do without any statutory direction.

Where a husband turns his wife out of his house he sends her forth as his agent to pledge his credit for the necessaries of life suitable to her position.

When a father could have obtained possession of his children by *habeas corpus*, but does not do so, he consents to be liable to the person in whose case the children are, for their support and maintenance.

[Mr. Hodgins, Q.C.—June 7.

This was a reference under a judgment reported in 5 Ont. R. 654. The material facts appear in the judgment.

S. H. Blake, Q.C., and *Morphy*, for plaintiff.

Maclennan, Q.C., and *Kingsford*, for defendant.

THE MASTER IN ORDINARY.—The judgment directs an enquiry whether the plaintiff has any valid claim against the defendant for the maintenance and support of the defendant's wife and children; and also, whether the plaintiff has been put to any other expenses or charges in respect of the support of the supposed trust deed—which, by the judgment, had been declared invalid.

Against the claim made by the plaintiff, the defendant contends:—1st. That the question of the personal liability of the defendant to the plaintiff for the support of the defendant's wife is *res judicata* by virtue of a judgment against the plaintiff in an action brought by the plaintiff against the defendant for the same claim in the Superior Court of Quebec: *Hughes* v. *Rees*, 5 Quebec Leg. News 70. 2nd. That the trust deed being void,

the plaintiff is not entitled to any claim for his expenses themselves.

As to the final point, the rule of law has been thus stated:—The judgment of a Court of competent jurisdiction directly on the point is, *as a plea*, a bar; and *as evidence*, is conclusive between the same parties upon the same matter directly in question in another Court: 20 How. St. Trls. 538.

A reference to the cases will show whether the two things, pleading and evidence, are as inseparable of consideration as that the subject matter and the parties should be the same.

A judgment at law is classed as an estoppel by record. And in each species of action such judgment is final in its nature, and according to its class and degree in the order of actions, and for its own proper purpose and object, and upon its own subject matter and no further.

The distinction as to the effect of a judgment when pleaded and when given in evidence was early asserted. In *Trevivan* v. *Lawrance*, 1 Salk. 276, it was said:—"Not only the parties and all claiming under them, but the Court and jury, were bound by an estoppel, and the jury could not find against the estoppel. But the Court (in that case) took this difference, that when the plaintiff's title is by estoppel, and the defendant pleads the general issue, the jury are bound by the estoppel, for there is a good title in the plaintiff, that is a good title at law, if the matter had been disclosed and relied on in pleading. But, if the defendant pleads the special matter, and the plaintiff will not rely on the estoppel when he may, but takes issue on the fact, the jury shall not be bound by the estoppel."

And in *Outram* v. *Morewood*, 3 East 346, Lord Ellenborough, C.J., says:—"A former verdict could only be conclusive upon the right, if it could have been used, and were actually used, in pleading by way of estoppel—which could not be in this case: 1. Because no issue was taken in the first action upon the precise point which is necessary to constitute an estoppel thereupon in the second action. 2. Because it was not even pleaded by way of estoppel in the second action, but only offered in evidence on the general issue, and in order to be an estoppel it must have been pleaded as such by apt averments."

So in *Vooght* v. *Winch*, 2 B. & Ald. 668, Abbot, C.J., stated:—"I am of opinion that the verdict and judgment obtained for the defendant on the former action was not conclusive evidence against the plaintiff on the plea of not guilty. It would indeed have been conclusive if pleaded in bar to an action by way of estoppel." And further, "It appears to me that a party by not pleading the former judgment in bar consents that the whole matter shall go to a jury, and leaves it open to them to inquire into the same upon evidence, and they are to give their verdict on the whole evidence then submitted to the jury."

In *Wood* v. *Jackson*, 8 Wend. 37, the learned judge, in commenting on the above case, says: "The distinction is a sound one, and the reasoning is satisfactory, because the general rule *nemo debit bis vexari*, is still preserved; the party to be affected may insist upon its protection by pleading; or he may waive it by leaving the matter at large upon the pleadings. If he will waive when he might insist upon it, he cannot afterwards assert it."

These observations apply to this case. The defendant had an opportunity of pleading the judgment of the Quebec Court when, on the 7th March, 1883, the plaintiff obtained leave to amend his bill of complaint generally on or before the 10th September, but he did not apply for such leave, nor did he plead as I think he might have pleaded, without leave, the estoppel of this Quebec judgment. During the argument an application was made to me for leave to plead it or to file a statement raising it in the Master's office; but I know of no authority for such amendment after judgment; and the Court has not given the Master the jurisdiction usually vested in an arbitrator "to make all necessary amendments to the pleadings as a judge at *Nisi Prius*." And as to filing a statement in the Master's office I would be introducing a novel evasion of an established practice, for the cases show that to be effectual, such a defence must appear on the pleadings and not in the papers filed in the Master's office.

I must, therefore, hold that the defendant, by not pleading the Quebec judgment, has in effect consented to the whole evidence being considered on the merits, and that he cannot now rely upon the judgment of the Quebec Court as an estoppel against the plaintiff's claim.

The second ground of defence also fails. *Smith* v. *Dresser*, L. R. 1 Eq. 651, is no authority in favour of the defendant, for in that case the learned judge pointed out that the trustees were, or ought to have been aware that the trusts of the deed were all invalid before they began to act upon them. But this case is the other way. The defendant is a resident of Quebec, while the plaintiff is a resident of Ontario. The defendant must be presumed to know the law of his domicile, and, by that law, this trust deed is void. Yet, having that presumptive knowledge, he induced the plaintiff to act as one of the trustees under this void trust deed. And now after it appears that the plaintiff has paid moneys for the support of his (the defendant's)

wife, on the faith of this trust deed, this defendant invokes the law of his domicile and succeeds in setting aside the deed, and now comes before me and contends that all the payments so made by the plaintiff should be disallowed.

It might be sufficient in this case to apply the rule that where a party by his representations induces another to make advances, or to alter his position, he shall make good his representations, and ndemnify such other party for his advances: *Freeman* v. *Cooke*, 2 Ex. 654. But the rule of all Courts of Equity affecting such trusts as the present is that where parties place others in the position of trustees, they are in equity personally bound to indemnify them against the consequences resulting from that position: *Ex parte Chippendale*, 4 DeG. M. & G. at p. 54.

It is, says Lord Eldon, in the nature of the office of a trustee, whether expressed in the instrument or not, that the trust property shall reimburse him all his charges and expenses incurred in the execution of the trust: *Worrall* v. *Harford*, 8 Ves. 8. And the Court infuses such a clause into every trust deed: *Dawson* v. *Clarke*, 18 Ves. 254. The statute does little more than what a Court of Equity would have done without statutory direction: R. S. O. c. 107, s. 3.

This indemnity may be enforced even when the trust deed is void, unless the expenditures are made with the knowledge of the invalidity of the trust deed: *Smith* v. *Dresser*, L. R. 1 Eq. 651. Thus a trustee acting *bona fide*, and with the concurrence of the heir-at-law, under a will which was supposed to be valid as to real estate, but which turned out to be invalid, was held entitled to be indemnified out of the estate: *Edgecumbe* v. *Carpenter*, 1 Beav. 171. And where trustees under a void deed had acted *bona fide*, they were allowed the moneys they had paid, and the value of the material they had supplied, according to the terms of the trust deed: *Wood* v. *Axton*, 1 W. Notes 207. So when the Court finds a trust deed or a will and a fund, it avails itself of the fund to relieve the difficulties created by the instrument: *Mohun* v. *Mohun*, 1 Swans 201. And trustees under a void settlement will be allowed their costs against the settlor who has occasioned them by his own voluntary act: *Daking* v. *Whimper*, 26 Beav. 568. See also *Morison* v. *Morison*, 3 Sm. & Giff. 564; 7 DeG. M. & G. 214; 1 Jur. N. S. 339, 1,100. *Attorney-General* v. *Norwich*, 2 M. & C. 406 1 Keen 700 1 Jur. 398; *Nelson* v. *Duncombe*, 9 Beav. 211, 10 Jur. 399.

There is a conflict of evidence as to what took place between the defendant and the plaintiff's agent respecting the removal of the defendant's wife from the Longue Pointe Asylum, in March, 1877. The defendant while giving his evidence, betrayed a very strong bias, and appeared to give his evidence in a reckless manner. One witness was called to sustain him, but his evidence if material only proved that after the removal of the defendant's wife from the Asylum, the defendant stated he would not be liable for her maintenance. Yet after this he gives to the plaintiff's agent two cheques for $150 and $144.50 towards the payment of the wife's expenses—without limiting by word or writing his further liability. And in a week or so afterwards when replying to the plaintiff's letter respecting a proposed pilgrimage, and his wife's health, he never refers to the alleged removal of his wife from the Asylum without his consent or against his wishes—nor intimates to the plaintiff any repudiation of liability for the future support of his wife, His reply to that letter refers to his non-liability on a promissory note; and in it he commissions his wife and her relations to decide upon her movements in these words: "When Father Dowd called as to the pilgrimage, I wrote that he had better consult with Anne's relations; and I can only say that they and she must decide as to her going or not." The defendant's evidence is also inconsistent with his acts and writings at the time. On the whole evidence, I must find that although he opposed his wife's return to his own house, he did not oppose, but in fact assented to her removal from the Asylum, and to her going to Toronto, and that he admitted a liability to the plaintiff for her support by paying to him in advance the two cheques already referred to.

This conclusion is further borne out by the subsequent conduct of the defendant when his wife returned to his house in October, 1878. Whatever may have been his intention respecting his wife's support prior to that time, his conduct then clearly establishes his liability. He had then the opportunity—if she was, as he now contends, suffering from mania—of taking that charge and care of her which by virtue of his relationship, and his duty to her and to the law, he was bound to do, and, if lawful for him so to do, of placing her again in the Asylum. But his own statement on oath shows that he turned her out of his house, and so sent her into the world as his delegated agent to pledge his credit for the necessaries of life suitable to her position: *Gartland* v. *Birchell*, 3 Q. B. D., 432.

The plaintiff was present when the defendant put his wife out of his house, and again took charge of and supported the defendant's wife, and for his reasonable expenses for such support and maintenance, he has a valid claim against this

defendant. The claim will be allowed up to the date of the judgment allowing alimony to the wife in the Quebec Superior Court.

The plaintiff also claims to be allowed what he has expended for the support of the defendant's children subsequently to the 10th February, 1879. The reasons which induced these children to leave the defendant's house and place themselves under the plaintiff's care are set out in the letter of the defendant's daughter which was put in evidence at the request of the defendant's solicitor. That letter and the frequent references in the evidence to the home life of the defendant which he never denied, warranted the children in seeking a purer home. The defendant as their father, could, if the *inuendo* was untrue, have obtained possession of their persons by *habeas corpus*. But he did not do so, and therefore he must be held to have consented to be liable to the plaintiff for such sums as were reasonable to be expended for their clothing and maintenance: *Griffith* v. *Paterson*, 20 Gr. 615.

COUNTY COURT OF LANARK.

BELL v. GRAND TRUNK RAILWAY CO.

Foreign Corporation—Jurisdiction—Division Courts —Where cause for action arose—O.J.A., Rule 80.

[Brockville, June 30.

This was a motion by plaintiff for judgment under Rule 80, O. J. A.

Hall, for plaintiff.

Mr. Stewart (John Bell, Q.C.) for defendant.

W. S. SENKLER, Co. J.—The amount of the plaintiff's claim having been paid after statement of defence filed and delivered, it is only necessary to examine the plaintiff's cause of action to enable a proper disposition of the costs to be made.

The plaintiff's cause of action was that he engaged the defendants to carry a car load of stock, etc., from Brockville, in Ontario, to Brandon, in Manitoba, prepaying therefor $219.50; the goods were carried by defendants and connecting lines to Brandon; plaintiff was obliged to pay the C. P. R., the last of these connecting lines, $27.70 to procure the release of his goods, which sum he seeks to recover from the defendants, with interest and costs. The contract was made in Brockville, and the breach took place at Brandon, consequently the whole cause of action did not arise within the boundaries of any of the Division courts in Ontario.

The defendants being a corporation, having its head office at Montreal, in the Province of Quebec, the residence of the defendants is to be taken to be at Montreal: *Ahrens* v. *McGilligat*, 23 C. P. 171.

Whether Division Courts in Ontario have jurisdiction over corporations, situated as the defendants are, even where the cause of action arose within the boundaries of any of the Divisions for Division Court purposes in Ontario, and whether the objection was tenable in the absence of a notice under section 14 of Act of 1880, were discussed. In my opinion, the Division Courts in Ontario have no jurisdiction over a corporation whose residence is to be deemed as out of the Province of Ontario. In *Ladouceur* v. *Salter*, 6 P. R. 305, service on a man out of the jurisdiction, who legally resided in the jurisdiction of the proper Court, was held good. Residence further becomes material under section 71, to settle within what time the writ should be returnable. I think that section is to be read as residing within some county in Ontario other than the county in which the action is brought or adjoining county (see also *Ont. Glass Co.* v. *Swartz* 9 P. R. 252). I think it clear that section 14 only applies to cases of the competence of the Division Court but entered in the wrong Court: *Mead* v. *Creary*, 32 C. P. 1.

It was contended that the plaintiff should have sued in a Division Court in Montreal, but no evidence was offered as to the existence of such a Court: even if there is such a Court, I know of no authority compelling a plaintiff to resort to a foreign Court when substantial justice can be secured in his own country. A strong reason why a plaintiff should be allowed to sue in his own country is, he thereby avoids what might be a serious difficulty in another Province, viz., giving security for costs.

The defendants now claim that the debt having been admitted, and Division Court costs offered, no more should now be allowed. The plaintiff, when first asked for evidence of payment to the C.P.R., took the very proper course of drawing on the defendants, attaching the C.P.R. receipt to the draft, but the latter was dishonoured. The defendants never offered any payment until the statement of defence was due, and the payment was not made until after statement of defence was filed. The latter was a denial of the claim. I think the plaintiff gave the defendants full opportunity to settle before suit. I therefore think that, both on the law, the plaintiff is entitled to an order for judgment for full costs of suit, and also that in the exercise of the discretionary powers vested in me over the costs, it would be harsh to deprive the plaintiff of his full costs.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

COOPER v. DIXON.

Trust deed for benefit of creditors.

A trader, who was in embarrassed circumstances, made an assignment for the benefit of creditors, of all his estate, real and personal, to the plaintiff, who held a mortgage on a part of the realty as security against his endorsement for the assignor, on notes then current. No creditor joined in the conveyance, nor was the consent to or knowledge of it by any creditor shown.

Held, affirming the judgment of the County Court, that the property was liable to seizure under execution; for under the mortgage the trustee was not a creditor, but

Semble—per PATTERSON, J. A., that had the trustee been beneficially interested in the proceeds of the property, his assent would have rendered the deed irrevocable.

VOGEL v. GRAND TRUNK RAILWAY CO.

This court being equally divided the judgment of the court below, 2 O. R. 197, that the Railway Act, 1879, s. 25, s.-s. 4, does apply to the G. T. R. Co. was affirmed.

IN RE CHARLES.

Held (BURTON, J. A., dissenting) reversing the decision of the court below, 1 O. R. 362, on the facts there stated, that the children of the testator who survived the widow, and attained 21 years of age, took vested interests, and that the grandchildren took nothing.

GAGE v. CANADA PUBLISHING CO.

The judgment of FERGUSON, J., reported 6 O. R. 68, was affirmed.

CORBETT v. JOHNSON.

Practice—Damages for non-completion of contract.

Plaintiff agreed to complete a steam engine by a certain day, to be delivered to the defendant who had previously been using water power in his mill. The engine was not completed and delivered for some time afterwards. The Master, in estimating the damages of the defendant, allowed him, in addition to rental of the mill and interest on the value of the machinery and of logs waiting to be sawed, loss of profit, $118. On appeal from his report PROUDFOOT, J., made an order which contained a declaration, "That the true measure of damages the defendant is entitled to claim is the amount which would have been earned by the mill in the ordinary course of employment," and referred it back to the Master to review his report. An appeal to this Court was allowed, the Court being of opinion that the Master could not, on the direction given him, find otherwise than he had done.

Bethune, Q.C., and *Creasor*, for appeal.

Lane, contra.

KELLY v. IMPERIAL L. & S. CO.

Foreclosure—Redemption—Conveyance for value.

The defendants assumed to foreclose a term mortgaged to them by the plaintiff. They subsequently sold and assigned the term by a conveyance which did not recite or otherwise indicate the title under which they claimed. The plaintiff brought an action to redeem the premises on the ground that the foreclosure was void.

Held, that the conveyance being for value might be supported as an exercise of the power of sale contained in the mortgage.

Moss, Q.C., and *Cassels*, Q.C., for appeal.

Plumb and *Nesbitt*, contra.

CHANCERY DIVISION.

Ferguson, J.] [September 4.

HALLIWELL v. THE SYNOD OF ONTARIO.

Revocation of license by Bishop without trial—Diocesan Court.

The Rev. J. H., being the incumbent of a parish in the Diocese of Ontario, which was endowed, and having acted in such capacity and performed the duties thereof for several years, discontinued the services in two other

churches which were attached to his parish. A commission was issued by the Bishop, under the provisions of Canon No. 8, of the Synod of the said diocese, "To enquire into the causes which led to the closing of the said churches, and to report whether there was 'lawful excuse' for the said Rev. J. H.'s discontinuance of the exercise of his ministerial offices in said churches, and to report whether there was sufficient *prima facie* ground for instituting further proceedings against the said Rev. J. H., as provided by said canon."

The Commissioners reported that the churches had been closed "because the members of the church refused to attend, and provide for the ministrations of the Rev. J. H. in these churches;" that an estrangement existed between the said Rev. J. H. and his parishioners, and that they decline his ministrations. But that in their opinion (the Commissioner's) the proofs adduced were not of such a nature as could be relied on to procure a conviction in an Ecclesiastical Court; and they declined to recommend the prosecution of further legal action, although they believed that there was no hope of a restoration of his ministerial usefulness there, and that there was a sufficient *prima facie* ground for instituting further proceedings against him as provided by Canon 8; but they were of opinion that without the production of other and much stronger evidence than that adduced, the institution of further proceedings would not result in a charge of breach of discipline under the said canon being sustained. After the making of this report, and upon the said Rev. J. H. refusing to resign his said incumbency, the Bishop, by an instrument, under seal, revoked, or purported to revoke, his license, and appointed the Rev. A. F. E. as his successor, and the Synod declined to pay him (the Rev. J. H.) the annual proceeds of the endowment. Upon an action being brought by the said Rev. J. H. to compel the Synod to pay him such annual proceeds, it was

Held, that the offence (if any) came within the second section of the canon; that any one charged with such an offence has the right to be tried, under section one, by the Diocesan Court, and has the right of appeal to the Metropolitan, under section thirteen, and that the Bishop had not the power to cancel and annul the license of the plaintiff, either without or for cause, without a trial by the Diocesan Court, and that the plaintiff must succeed.

S. H. Blake, Q. C., for the plaintiff.

Walkem, Q. C., for the defendants the Synod.

Boyd, C.] (September 5.

GRASETT v. CARTER.

Motion to commit—Revivor of the case in Appeal—Service of certificate of Supreme Court—Specific acts of disobedience of an injunction—Mandatory injunction.

On a motion to commit a defendant for non-compliance with a decree which contained this clause: "And this court doth further order and decree that an injunction be awarded to the plaintiff, perpetually restraining the defendant, his servants, workmen, and agents, from trespassing upon the lands of the plaintiff in the pleadings mentioned." The trespass complained of being two walls built by the defendant on four inches of the plaintiff's land, it was objected. (1) That the suit was revived while pending in the Court of Appeal, by an order issued from the Division of the High Court of Justice, appealed from. (2) That the certificate of the Supreme Court (which had in substance affirmed the decree) had not been served; and (3) that the notice of motion did not specify the acts of disobedience. It was

Held, that the suit was properly revived. That it was not necessary to serve the certificate of the Supreme Court, when the decree was not materially altered, and when the defendant well knew that the decree would be enforced, and that where (as in this case) a correspondence had shown the defendant what acts were complained of, it was not necessary to repeat them in the notice of motion, and the objections were overruled.

Held, also under the form of the decree the plaintiff was entitled to have the walls removed, and if the defendant did not remove them within a month, the order must go.

Maclennan, Q. C., and *E. D. Armour*, for the plaintiff.

George Bell, for the defendant.

Proudfoot, J.] [October 9.

MORROW v. JENKINS.

Will—Devise of interest—Right to principal.

The will of a testator contained the following clause: "To my daughters Ellenor and Mary Mariah, I give devise and bequeath the interest of three thousand dollars each per annum to be paid to each of them half-yearly."

Held, that the devisees took an absolute interest in the $3,000 given to each of them.

Elton v. *Sheppard*, 1 Bro. C. C. 532 cited, referred to and followed.

Garrow, for the plaintiffs.

Moss, Q.C., for the defendants.

PRACTICE.

Dalton, Q. C.] [Oct. 2.

TILSONBURG MANUFACTURING CO. v. GOODRICH.

Examination of parties.

In an action in the Q. B. Division, the defendant issued an appointment and subpœna for the examination of an officer of the plaintiff's company before issue joined, but after the delivery of the statement of defence no affidavit was filed with the officer who issued the appointment.

Held, that the Chancery practice of examining the parties before issue joined, is now in force in all divisions, but

Held, also that in an action in a Common Law Division, an appointment to examine should not be issued by an officer of the court unless an affidavit is filed with him, as directed by sec. 159 of the C. L. P. Act.

Appointment set aside.

Aylesworth, for the plaintiffs.

Meek, for the defendant.

LAW STUDENTS' DEPARTMENT.

LAW SOCIETY.

EXAMINATION QUESTIONS.

TRINITY TERM:

FIRST INTERMEDIATE.

Equity—Honors.

1. A. by deed purports to convey certain lands to his brother, which lands in fact belong to his son, and he subsequently by will devises certain of his own lands to his said son, who, after A.'s death, claims to hold all the aforesaid lands as his own, while the brother of the testator claims to have acquired an interest therein under the aforesaid instruments. What are the rights of the parties? Give reasons.

2. Give an example illustrating the rule that equity will sometimes relieve one of two persons in respect of an illegal transaction in which both are concerned, upon the ground that they are not *in pari delecto*.

3. State a case in which a tenant is entitled to seek equitable relief by way of interpleader with respect to his rent.

4. Give a general statement of the rules of equity with regard to the right of custody of children, showing (*a*) the cases in which the parents will be deprived of such custody, (*b*) the relative rights of father and mother to such custody.

5. A man by his marriage settlement covenants to pay to trustees for his wife $500 per annum as pin money. During the first two years of their married life she in each year spends and receives from her husband but half of her allowance; the trustees, on the wife's behalf, bring action against the husband to recover the arrears. Can the husband successfully resist their claim or any part thereof? Give reasons.

6. A married man desires his wife to join with him in a conveyance, for the purpose of barring her right to dower which she has in certain of his lands, and in order to induce her to do so he procures his solicitor to exhibit to her a legal text-book, in which it is stated that a wife is not entitled to dower in the lands of her husband. The text-book is in fact one relating to the laws of a foreign country. The wife, relying upon the statement of law contained in the book, joins in the conveyance, and afterwards brings an action to set the same aside. The husband defends the action, relying upon the maxim, *ignorantia legis non excusat*. Discuss the relative rights of the husband and wife upon this state of facts.

7. State a case in which equity will avoid a contract on the ground of duress.

SECOND INTERMEDIATE.

Williams on Personal Property—Judicature Act.

1. State briefly the right of a tenant as against his landlord to remove fixtures put in the demised premises by the tenant.

2. "*The requisites for the sale of goods partly depend on their value.*" State fully the reason of the above assertion, and mention briefly the *requisites* referred to.

3. Write short notes on the statement, "*But a contract is not rendered void by having for its object the restraint of a person from trading in a particular place.*"

4. State what is meant by a *Wager Policy* of insurance, and mention cases in which an insurance effected by one person on the life of another is valid.

5. If money be settled in trust for A. for his life, and after his decease in trust for his executors, administrators and assigns, what interest will A. take?

6. Where a defendant sets up by amendment in his statement of defence a ground of defence which has risen after the action commenced, what courses are open to the plaintiff under the Judicature Act?

7. State briefly the ordinary method under the Judicature Act of compelling production and discovery of documents before the close of the pleadings.

Honors.

1. Under what circumstances can the bailor and bailee respectively maintain trover for property bailed?

2. State briefly the effect on actions *ex delicto* of the death of either party at common law and under statutes now in force.

3. How can debts due to a judgment debtor be reached by a judgment creditor?

4. What is the effect of a grant by deed to A. for his life of a chattel real or personal? What is the effect of a bequest of a term of years to A. for life, and after his death to B.? Give reasons for your answers.

5. Point out any differences in regard to the rules relating to attempted restraint on marriage as applicable (*a*) to the laws of real property, and (*b*) to the laws of personal property.

6. Mention cases formerly of the competence of Common Law Courts the procedure in which does not come within the Judicature Act.

7. The pleadings are closed in an action with a statement of claim and statement of defence only. How would you decide on whom was the burden of proof at trial? Answer fully, giving reasons.

Real Property.

1. What is an estate upon condition? Give examples of the different kinds of such estates.

2. Explain what was meant by subinfeudation, and state what legislative change was made with regard to it.

3. What may, and what may not, be entailed? What is the effect of an attempted entail of that which cannot be entailed?

4. It is said that to an assignment of a mortgage the mortgagor should, if possible, be a party. Why is this?

5. A grant is made to A., a bastard, and his heirs general. What estate does he take? Why?

6. *Falsa demonstratio non nocet.* Explain.

7. What persons are incapable of making a will by the law of Ontario?

Honors.

1. A. agrees in writing "to sell all that certain piece of land called Whiteacre to B." What estate or interest has B. in the land by virtue of his contract, and what estate can he demand to have conveyed to him? Why?

2. What is the difference between a base fee at Common Law and a base fee under the Act respecting entails?

3. A. and B. enter into partnership for the purpose of buying and selling lands. To what extent are their wives interested in the lands which they buy for sale?

4. A mortgage is made to A. in fee simple. A. dies intestate. The mortgagor desires to pay off the mortgage and obtain a discharge. To whom should he pay the money, and who should execute the discharge? Why?

5. What is a strict settlement?

6. What was, and what is now, the law as to title by occupancy?

7. What is meant by an innocent conveyance? Explain fully.

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 47 VICT., 1884.

During this term the following gentlemen were entered on the books of the Society as Students-at-Law:—

Graduates—C. I. T. Gould, S. C. Warner, W. T. Kerr, Ernest Heaton, F. M. Field, John A. Davidson, H. H. Langton.

Matriculants—A. A. McMurchy, J. F. Edgar, A. L. Baird, J. A. Macdonald.

Juniors—A. McDonell, J. G. Gauld, C. D. Scott, H. Scott, H. F. Errett, J. G. Kerr, T. Graham, W. J. McKay, H. Millar, W. B. Scane, D. T. K. McEwan, C. Pierson, E. M. Lake, R. M. Thompson.

The following gentlemen were called to the bar, namely:—

David K. I. McKinnon, honor man and gold medalist; Alexander Mills, honor man and bronze medalist; Alexander W. Ambrose, Alfred Craddock, Edmund Sweet, William J. Code, William A. Dowler, Andrew C. Muir, Edwin R. Reynolds, Thomas B. Shoebotham, Arthur W. Morphy, Charles H. Cline, John W. Russell, James W. Hanna, Robert N. Ball, Gerald Bolster, Robert Christie, William Cook, Robert A. Pringle, Jos. Walker.

BOOKS AND SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—North America and Europe.
- Elements of Book-Keeping.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose.

MATHEMATICS.

Arithmetic; Algebra, to end of Quadratic Equations: Euclid, Bb, I., II. and III.

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

English History from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography, Greece, Italy and Asia Minor. Modern Geography, North America and Europe.

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somervilles Physical Geography.

First Intermediate.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and cap. 117, Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate.

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 Gov-

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

Taylor 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. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jusisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, six weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8 The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.