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DIARY FOR AUGUST.

1. Thurs.. Battle of the Nile, 1798.
5. Sun.... *Eleventh Sunday after Trinity.*
6. Mon.. Prince Alfred born, 1844.
7. Tue. .. Primary Examination.
9. Wed. .. Primary Examination.
12. Sun.... *Twelfth Sunday after Trinity.*
13. Mon.. Sir Peregrine Maitland, Lieut.-Gov. U. C. 1818.
14. Tue. .. First Intermediate Examination.
15. Wed. .. First Intermediate Examination.
16. Thurs.. Second Intermediate Examination.
17. Fri.... Second Intermediate Examination.
18. Sat.... Gen. Hunter, Lieut.-Gov. U. C., 1799.
19. Sun.... *Thirteenth Sunday after Trinity.*
21. Tue. .. Long vacation ends. Exam. for Certificates of Fitness.
22. Wed. .. Judicature Act came into operation, 1881. Exam. for Call.
25. Sat.... Francis Gore, Lieut.-Gov. U. C., 1806.
26. Sun.... *Fourteenth Sunday after Trinity.*
27. Mon.. Trinity Term (Law Society) begins.
30. Thurs.. Rehearing in Chy. begins.
31. Fri.... Long vacation in Ct. of Appeal and Sup. Ct. ends

TORONTO, AUGUST 1, 1883.

FEELING strongly that our readers will be happier for a respite from rich food during the "dog days," we omit, according to custom, a second number this month. As there may, however, unhappily be one voracious subscriber who would feel aggrieved, we give some extra pages in this issue. All the same, we counsel that vacation be kept as sacred and as free from law (even from our enticing pages) as possible.

WE have been asked to state that the General Committee, appointed at a meeting of the Bar held on the 7th July, to make arrangements for the dinner to the Lord Chief Justice of England, have directed the secretaries to send to each County town a form of guarantee similar to that which has been extensively signed in Toronto and Hamilton. The object of this is to ascertain as nearly as possible what number of tickets will be applied for. The secretaries have sent these guarantees as directed to some member of the Bar in each County, and they are anxious that any who have not had, by this means, an opportunity of putting down their names, will write direct to them. As there are nearly 150 subscribers at present and the hall will only seat some 240, the General Committee have decided to give a preference to those signing the guarantee over those desiring to come in later on. At the first meeting of the Committee on 28th July, it was decided that the County Judges should be placed on the same footing as the Bar as regards tickets. Lord Coleridge has communicated his acceptance of the invitation extended to him, and has fixed the date of the dinner on the 12th September next. The secretaries are W. T. Boyd, Esq., and Frank E. Hodgins, Esq., Toronto.

A subscriber sends us a letter handed to him by a client, received by the latter from a person whose name, we believe, appears on the roll of solicitors. It is addressed to a lady in reference to some legal proceedings which he understood were being taken against her. Being possibly desirous that she should be supplied with the best legal advice, or more probably being in want of a client to vary the monotony of his office life he thus writes:—"I have taken the liberty to ask that in case you wish to contest the case, to undertake your defence. In case you think of employing me I will do the best for your cause." The English is so shaky, and the whole production so feeble, as to suggest the thought that perhaps after all the mind of the writer may not have been able to grasp the idea that he was troubling either the ghost of Lindley Murray or the Discipline Committee of the Benchers—possibly he never heard of either. We have not the heart to be severe with him;

like many others in the profession he has simply mistaken his vocation. Perhaps he thought he was preparing himself for the office of Solicitor-General, not knowing that it was abolished years ago. But let him not despair, industrious peddlers of small wares gain a living in various lines of business.

COUNTY JUDGES ANNUAL MEETING.

The Tenth Annual Meeting of the County Court Judges was held in the Benchers' Convocation Room at Osgoode Hall, Toronto, on Wednesday and Thursday, the 27th and 28th days of June, 1883, pursuant to the usual notice convening the same, issued by the Secretary, His Honor Judge Boyd.

The attendance was fairly large. The following Judges were present:—His Honor Judge Gowan, *Chairman*, and Messrs. Burnham, McQueen, Jones, Kingsmill, Toms' Senkler, Macpherson, Price, Wilkinson, McMahon, Bell, Boyd, Benson, Dartnell, McDougall, and Sinclair, JJ.

Judge Boyd resigned his position as Secretary to the meeting, and Judge McDougall was elected Secretary.

A number of questions affecting practice were discussed at considerable length by the Judges present during their two days session—more particularly questions arising in consequence of the changes effected by the Judicature Act. The extent to which the Rules of Practice under that Act affect Division Court practice was also considered, and the opinion of a majority present seemed to be in accord with a recent decision of Judge McDougall on the subject, in a case reported in another place in this number. Upon the question of introducing some of the rules of the Judicature Act by exercising the discretion conferred by section 244 of the D. C. Act, for cases unprovided for by the D. C. Act, there was not the same unanimity of opinion. Some questions of practice and procedure under various criminal Acts, and under the School Acts, were discussed and opinions assimilated.

It is understood also that the Judges authorized their Chairman to confer with the Attorney-General upon the advisability of power being granted to the Board of County Judges to frame a tariff of costs for the County Court, and a tariff for costs of proceedings under various statutes, any such tariff to be approved of by the Superior Court Judges.

The meeting separated on Thursday the 28th June, to meet again on the 28th June, 1884.

THE JUDICATURE ACT AND DIVISION COURTS.

We publish two judgments in this number delivered by County Court Judges, dealing with the question of the applicability of the Rules in the Schedule to the Judicature Act to Division Court practice—*Building and Loan Association* v. *Heimrod*, a decision by Judge McDougall; and *Smith* v. *Lawler*, a decision by Judge Dartnell.

We believe both of these judgments, as well as the judgments of Judge Clark in *Burk* v. *Britain*, 19 C. L. J. 72, and of Judge Dean in *Cowan* v. *McQaude*, 19 C. L. J. 108, were discussed by the County Judges at their late conference at Osgoode Hall.

It is said a majority of the Judges approved of the views expressed in *Building and Loan Association* v. *Heimrod* and in *Cowan* v. *McQuade*. A few, however, were of the opinion that the practice under Rule 80 of the Judicature Act might be introduced into the Division Court by the exercise of the discretion conferred by section 244 of the D. C. Act. Judge Dartnell goes further in *Smith* v. *Lawler*, and relies upon the general language of sects. 77 and 80 of the Judicature Act, as expressly conferring the power to introduce a practice similar to the practice under Rule

80. We would incline rather to adopt the view of Judge McDougall as to the force and meaning of these sections of the Act, as expressed by him in his judgment in *Building and Loan Association* v. *Heimrod*, published in this number; the more so as his opinion seems to be supported by the latest English decision: *Pryor* v. *City Offices*, L. R. 10 Q. B. D. 504. This judgment of the Queen's Bench Division is upon the corresponding sections of the English Act, which are identical in language with sections 77 and 80 of our Act, and the full Court decides that these sections do not introduce the practice under the rules to the English Act into the inferior Courts, but that such Courts must afford "relief, redress, or remedy" by their own procedure and machinery.

It is to be hoped that the consideration which all of these decisions will unquestionably receive from the County Judges, will lead to their adopting a uniform practice upon these points, or, should there still be divergent opinions, that a decision will speedily be obtained from some one of the Superior Courts which will remove all doubts.

THE NEW SILKS.

The *Canada Gazette*, of the 14th ult., states that His Excellency has made the following barristers of Ontario "Her Majesty's Counsel learned in the law:"—Valentine Mackenzie, Brantford; Richard Bayley, London; Salter Jehoshaphat Vankoughnet, Toronto; James Tilt, Toronto; William Purvis Rochford Street, London; George Milnes Macdonnell, Kingston; John Bain, Toronto; Frederick Drew Barwick, Toronto; Hugh McKenzie Wilson, Brantford; Robert C. Smyth, Brantford; James Joseph Foy, Toronto; Walter Gibson P. Cassels, Toronto; Norman Fitzherbert Paterson, Port Perry; Thomas Horace McGuire, Kingston; Henry J. Scott, Toronto.

A barrister (not made "learned in the law" by the command of His Excellency) reading the *Gazette* in our sanctum, laid it down with the loyal ejaculation, "God save the Queen."

There was a time when to be made a Queen's Counsel was an honor which a hard working barrister might hope to attain after years of patient and honorable toil. That time has passed, and silk gowns are now flung about without the slightest reference to that high standing and ripe experience at the outer Bar which used to be requisite in this Province and which is still the rule in England, and even without that long and successful service in the other branch of the profession, the holding of some important public position, the authorship of legal text-books of value, or any one of those other claims to the distinction which have, in this country, been a sufficient excuse from departing from the old rule. We do not say that this is applicable to all the names on the recent list, but we do say that, with the exception of some four or five which the profession will readily recognize, the appointments are simply inexplicable. Whilst no one grudges the honor, so far as the recipients personally are concerned, we have not yet found one man in the profession who does not say that, with a few exceptions, the appointees are *not* entitled to the distinction, and that others not on the list *are* entitled. This opinion is so universal that various reasons for the appointments have been suggested. Of course some say that politics are the cause, but the remarkable feature of this is that politicians seem to be quite as bewildered and disgusted as the Bar. Like every one else, not excepting, we believe, some of the new silks themselves, we "give it up."

We do not desire to say one harsh word towards those on the list that the profession think ought not to be there, but their appointment is most unfair to those who have already won and obtained, as well as to those who are now striving to win, and hope in due time to obtain, a distinction which used to be reserved for the leaders of the Bar. The uninitiated may, for a short time, be misled by the

high-sounding and time-honoured letters Q. C. after a name, but that, which has already become valueless in the eyes of the profession, is rapidly becoming only a source of merriment to the public.

We deeply regret to be compelled to make these observations, but it is manifestly not our fault that the standing of professional men, who are, so far as we know, well thought of by their brethren and friends of our own, should thus be unpleasantly discussed by reason of the prominence unhappily given to them; but it is equally clear that a duty is laid upon us in the premises, which, if we failed to perform, we should be without excuse to those who look to us to state what is, beyond question, the voice of the profession on the subject.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

MITCHELL v. CAMERON.

Dominion controverted elections—Judicature Act 1881, (Ont.)—Preliminary objections to jurisdiction of Queen's Bench Division—Entitling of petition.

The petition in this case was entitled in the High Court of Justice (Queen's Bench Division), and was presented to and filed with Mr. A. Macdonell, acting for Mr. R. P. Stephens, Registrar of the said Queen's Bench Division of the High Court of Justice, at his office, at Osgoode Hall, in the City of Toronto. On the preliminary objection to the jurisdiction of the Court, filed by the respondent, Mr. JUSTICE CAMERON held that the petition, not having been presented to any of the Courts mentioned in the Dominion Controverted Elections Act, 1874, *eo nomine*, the same is not before any Court having jurisdiction in respect thereof.

On appeal to the Supreme Court it was *Held*, [HENRY and TASCHEREAU, JJ., dissenting,] that the Ontario Judicature Act, 1881, makes the High Court and its several Divisions a continuation of the existing Courts, and that the High Court of Justice (Queen's Bench Division) has, under a new name, the same jurisdiction in Dominion controverted election matters as had the old Court of Queen's Bench in virtue of the Dominion Controverted Elections Act of 1874, and therefore that the petition in this case had been properly presented.

D. McCarthy, Q.C., for appellants.

C. Robinson, Q.C., and *Lash*, Q.C., for respondents.

REED v. MOUSSEAU.

43-44 Vict. ch. 9, sect. 9, (P. Q.) ultra vires—Indirect tax—B. N. A. Act, 1867, sects. 91, 92, 65, 126 and 129.

The Legislature of the Province of Quebec passed an Act, 43-44 Vict. ch. 9, by the 9th section of which it is enacted, "And a duty of ten cents shall be imposed, levied and collected on each promissory note, receipt, bill of particulars and exhibit whatsoever produced and filed before the Superior Court, the Circuit Court, or the Magistrates Court, such duties payable in stamps." The Act is also declared to be an Amendment Act of 27-28 Vict. ch. 5, of the Province of Canada, "An Act for the collection, by means of stamps, of fees of office, dues and duties payable to the Crown upon law proceedings and registrations." And by sect. 3, sub-s. 2, the duties levied under the Act are to be "deemed to be payable to the Crown."

The respondent Reed wishing to test the legality of this tax obtained a rule *nisi* for contempt against the prothonotaries of the Superior Court of Montreal, for refusing to receive and file an exhibit unaccompanied by stamps to the amount of ten cents, as required by the statute.

After the return of this rule the Attorney-General, for the Province of Quebec, obtained leave to intervene, to sustain the legality

of the tax and contested the rule. On the question whether the tax imposed on the filing of exhibits by means of stamps by 43-44 Vict. ch. 9, was *intra vires* of the Legislature of the Province of Quebec.

Held, [reversing the judgment of the Court of Queen's Bench, P.Q., STRONG and TASCHEREAU, JJ., dissenting,] that the tax in question is *ultra vires* of the Legislature, being an *indirect* tax raised to form part of the consolidated revenue fund of the Province for general purposes.

Per STRONG and TASCHEREAU, JJ., dissenting, that although the duty imposed is an indirect tax, yet that under the authority of sects. 65, 126 and 129 of the B. N. A. Act, the Legislature of Quebec had power to impose the tax in question.

Maclaren, Q.C., for appellant.
Lacoste, Q.C., for respondent.

ANDERSON v. JELLETT.

Disturbance of ferry—Construction of license to ferry.

The Crown granted a license to the town of Belleville, giving the right to ferry "between the town of Belleville and the township of Ameliasburg."

Held, a sufficient grant of a right of ferriage "to and from" the places named.

Under the authority of this license the town of Belleville executed a lease to the plaintiff, granting the franchise "to ferry to and from the town of Belleville to Ameliasburg," a township having a water frontage of about ten or twelve miles directly opposite to Belleville, such lease providing for only one landing place on each side, and a ferry was established within the limits of the town of Belleville on the one side to a point across the Bay of Quinte in the township of Ameliasburg, within an extension of the east and west limits of Belleville.

The defendants established another ferry across another part of the Bay of Quinte, from Ameliasburg to Sidney, the termini being, on the Belleville side, two miles from the western limits of Belleville, and on the Ameliasburg shore about two miles west from the landing place of the plaintiff's ferry.

Held, [reversing the judgment appealed from, STRONG, J., dissenting,] that the establishment and user of the plaintiff's ferry within the limits aforesaid for so many years, had fixed the termini of the said ferry, and that as the termini of the defendant's ferry were over two miles west of the limits of the town of Belleville on the one shore, and over two miles from the landing place of the plaintiff's ferry on the Ameliasburg shore, there had been no infringement of plaintiff's rights.

Bethune, Q.C., for appellant.
C. Robinson, Q.C., for respondent.
Appeal allowed with costs.

MCDONALD v. FORRESTAL.

Consignment of goods subject to payment—Agreement that purchaser shall not sell—Passing property.

The plaintiff consigned crude oil to A., who was a refiner, on the express agreement that no property in the oil should pass until he made certain payments. Without making such payments, however, A. sold the oil to the defendants without the knowledge of the plaintiff.

Held, affirming the judgment of the Court of Appeal for Ontario, that although the defendants were purchasers for value from A. in the belief that he was the owner of and entitled to sell the oil in question, the plaintiff, under his agreement with A., having retained the property in the oil and not having done anything to estop him from maintaining his right of ownership, was entitled to recover from the purchasers the price of the oil.

Gibbons, for appellants.
Street, for respondent.
Appeal dismissed with costs.

McRAE v. WHITE.

Insolvent Act of 1875—Unjust preference—Fraudulent preference—Presumption of innocence.

This was an appeal from a judgment of the Court of Appeal for Ontario reversing the decree of the Court of Chancery, which declared a mortgage, executed by one Depew in favor of respondent White, void as being an unjust preference of White over the other creditors of Depew, and ordering White to pay over to appellant, as assignee in insolvency of Depew, the sum of $465.

Respondent White was a private banker who had, previously to the execution of the mortgage in question, had various dealings with Depew, and had discounted for him, at an exorbitant rate of interest, notes received by Depew in the course of his business. At the time of this transaction, Depew, being a man of a very sanguine temperament, had entered into a new line of business after obtaining goods on credit to the amount of $4,000 or $5,000, having represented to the parties supplying such goods that, although without any available capital, he had experience in business. About twelve days after he had commenced his new business, being threatened by a mortgagee with foreclosure proceedings, he applied to respondent, who advanced him $300, part of which was applied in paying the over-due interest on the mortgage, and the surplus in retiring a note of Depew's held by respondent.

Depew was granted a reduced rate of interest on his indebtedness to respondent, and was told he would have to work carefully to get through. Depew became insolvent about four months afterwards. In a suit impeaching the mortgage to the defendant, it was

Held, (affirming the judgment of the Court of Appeal for Ontario) that the plaintiff had not satisfied the onus which was cast upon him by the Insolvent Act, of shewing that the insolvent at the time contemplated that his embarrassments must of necessity terminate in insolvency, and that with a view to that end he had granted the mortgage in question.

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

Gibbons for the respondent.

Appeal dismissed with costs.

QUEEN'S BENCH DIVISION.

In Banco.] [June 30.

GIBSON v. MIDLAND RY. CO.

Railway—Overhead bridge—Death therefrom—Illegitimate son—44 Vict. ch. 22.

The plaintiff as administratrix of, sued the defendants, under 44 Vict. ch. 22, sect. 7 O., for the death of her illegitimate son, a brakesman on the defendants' railway, who was killed by being carried against a bridge not of the height required by that Act, while on one of their trains passing underneath it. The bridge belonged to another railway company, who had the right to cross the defendants' line in that way; and though the time allowed by the statute for raising the bridge had expired, they had not done so. The jury found that the defendants had been guilty of negligence in not raising, or procuring to be raised, the bridge.

Held, that the plaintiff was not entitled to recover, (i.) because section 7 of the Act applies only to bridges within the control of the company whose servant has been injured; and (ii.) the Act was intended to give no greater right to recover than Lord Campbell's Act, and therefore the plaintiff's relationship to the deceased prevented her recovering.

MOORE v. CENTRAL, ETC., R. CO.

Railway Co.—Notice requiring lands—Notice of desistment.

Held, that a railway company having desisted once from their notice to take land, given under R. S. O. ch. 165, sect. 20, could not again desist pending an arbitration proceeding under a second notice.

The company's arbitrator having withdrawn from such arbitration in deference to a notice of desistment given by the company, after the amount to be awarded had been agreed upon by the other two,

Held, that the company could not object to the award on the ground that he had not been asked to sign it.

LEE v. MCMAHON.

Sale of land—False representations—Laches—Counter-claim for purchase money.

The plaintiff induced the defendant to purchase land in Portage la Prairie by exhibiting to him a map representing the property to be in the business portion of the town, and by representing that this was true. The defendant applied to persons on the spot for information, and was told that the representations made were incorrect. But he swore that one of the plaintiffs told him that his informants were interested in depreciating the property, and that on this he purchased, paying $500 cash and giving a mortgage for the balance. He tried to sell and could have sold the property for more than he gave for it, but did not go to Portage la Prairie for six months after, when he found that the representations were untrue, and repudiated the bargain. This action was brought over the mortgage, and the defendant counter-claimed for the cash payment of purchase money.

Held, [affirming the decision of ARMOUR, J.,] that the defendant was induced to purchase by false representations, and, reversing the judgment, that he had not disentitled himself to relief by *laches*; that the mortgage should be delivered up to be cancelled, and that the counter-claim for the money paid without interest should be allowed, on his re-conveying the estate free from incumbrances done by him.

PYATT v. MCKEE.

Lease by dowress—Purchase by tenant from heirs-at-law—Landlord and tenant's disputes—Landlord's title.

P. being the owner in fee of the land in question, died intestate in September, 1853, leaving his wife (the present plaintiff) and two daughters, who resided on the land for a short time after his death. The widow made several leases of the land, and finally leased it to the defendant's ancestor, who, at the expiration of his lease, took a second lease, with covenant to deliver up at the end of the term. He purchased the interest of one of the daughters, and a new lease was therefore made to him by the plaintiff, the rent being reduced by one-third because, as it was said, it was considered that the widow and daughters were each entitled to a third of the rents. Pending this lease the tenant purchased the other daughter's interest, and at the expiration of the term, in 1873, he refused to give up possession.

Held, [affirming the judgment of CAMERON, J.] that the tenant and those claiming under him could not dispute the plaintiff's title without first giving up possession, and that he would not be allowed to say that he was barred, and that the plaintiff was therefore entitled to judgment for an undivided one-third for her life, and *mesne* profits for six years prior to action.

E. K. Cameron, for the plaintiff.

H. J. Scott, for the defendant.

WHIMSETT v. GIFFORD.

Distress for rent—Seizure—Chattel mortgage—Waiver by tenant of formalities.

The plaintiff was mortgagee of certain goods of one F. G., a tenant of his father, the defendant, C. G. The landlord, on the 17th February, 1883, went to the house of the tenant and declared that he seized everything for rent. He touched nothing and made no inventory. On 24th February he went again, and told the tenant's wife that the property had been seized for rent, and to let no one take anything away. On 5th March the plaintiff, holding that the goods were going to be sold for rent, took possession under his mortgage, and removed the goods. A bailiff went the next day for taxes in arrear, and the landlord gave him a distress warrant to take goods for rent; the bailiff then took the goods that had been removed, and on the tenant's waiving an inventory, (advertising so), sold them within two days to a nephew of the landlord, who gave a cheque which was never presented.

Held, that the landlord's two visits, of the 17th and 24th of February, did not amount to a seizure.

Quære, whether a tenant can waive all statutable formalities as to inventory, etc., as regards the property of a stranger distrained upon. The chattel mortgage contained no re-demise clause, but did contain a clause that the mort-

gagee might take the goods if the mortgagor attempted to sell, dispose of, or part with the possession of the goods.

Held, that the mortgagee had the right, under the circumstances, to take the goods, although default in payment had not been made.

J. W. Kerr, Q.C., for the plaintiff.
McPhillips, for the defendant.

WHITEMARSH v. VAN EGMOND.

Award—Fraud.

Disputes having arisen between the plaintiff and defendant upon a building contract, the plaintiff wished to have the value of his work for the defendant referred to arbitration. The defendant, who claimed that work was not finished according to contract, agreed only to refer the question whether or not the work had been finished according to the plans and specifications in the contract, and that any submission to be drawn was to be referred to his solicitor, and approved by him before he would execute it. The plaintiff procured a bond to be drawn and sent to the defendant's solicitor, who disapproved of it, as it left the whole matter open to arbitration, and referred it to the plaintiff's solicitors. The latter acting on the instructions of the plaintiff's agent, who was informed of the disapproval, engrossed the bond, and the plaintiff's agent took it to the defendant and procured his signature by leading him to believe that it had been approved. After an award was made thereunder the defendant discovered from his solicitor, for the first time, that he had never approved of the submission, and immediately repudiated it.

Held, [reversing the judgment of GALT, J.] that an action on the award would not lie.

Osler, Q.C., for the plaintiff.
Bethune, Q.C., for the defendant.

WILBY v. STANDARD INSURANCE CO.

Fire insurance—Encumbrances—Misrepresentation—Divisible condition.

A fire policy contained a condition, in addition to the statutable conditions, to the effect that if the property were alienated, or any transfer or change of title occurred, or if it were incumbered by mortgage without the consent of the company, or if the property should be levied upon under process of law, the policy should cease. In answer to the question whether the property was mortgaged, the assured answered, "$5,000 to F. L. & S. Co." There were at the time, in fact, two mortgages to that company. After the policy a mortgage was given to secure endorsements, and was discharged, and another was given by the plaintiff to his partners, who retired from the firm, but the company was not apprised of either. The jury found that the representations as to incumbrances were false, and a verdict was entered for the defendants.

Held, that the representations as to incumbrances was a violation of the condition, and that the verdict was right.

Per HAGARTY, C. J.—Though that part of the condition as to levying might be unreasonable, (5 App. R. 605), the remainder was not, and the condition is divisible.

REGINA EX REL BRINE v. BOOTH.

Municipal Act—Liquor license—Councillor—Partnership.

The defendant and his brother were carrying on business as Booth Bros., and had a license in the name of the firm to sell intoxicating liquors. Before the nomination of members of the Parkdale council the defendant, with the consent of the license commissioners, transferred his interest in the license to his brother in order to qualify as a councillor, but the business continued as before.

Held, [affirming the decision of the Master in Chambers,] that a license cannot lawfully be transferred except in the cases mentioned in R. S. O. cap. 181, sect. 28, none of which had occurred here. That the consent of the commissioners did not validate the transfer, and therefore that the defendant, who retained his interest in the license, was not qualified to be a councillor.

Per ARMOUR, J.—The Act disqualifying a licensee should be construed strictly, and its effects should not be extended to the partner of a person lawfully holding a license in his own name.

Shepley, for the appeal.
Aylesworth, contra.

COUNTY OF BRUCE V. MCLAY.

Registrar—Dismissal during year—Return to municipality—Liability for excess of fees.

The defendant was Registrar of the County of Bruce, and, during the year 1882, was discharged from office. The plaintiffs brought this action for the recovery of the proportion of the amount of fees received by him up to the time of his dismissal, in excess of the amount allowed to be retained by him pursuant to R. S. O. cap. 111, sect. 104.

Held, [affirming the judgment of GALT, J.] that the dismissal of the defendant during the year did not deprive the plaintiffs of their right to recover the excess, which right does not depend upon the return to be made in each year.

HARREN V. YEMEN.

Mortgage—Second mortgage—Power to second mortgagee to pay arrears on first mortgage and distrain—Purchase by second mortgagee under power in first mortgage—Distress.

The plaintiff mortgaged his land to the L. L. and S. Co. by a mortgage which contained a distress clause, and gave a second mortgage to the defendant, by which it was agreed between them that if default was made in payment of interest to the company the defendant should be at liberty to pay it, and should have the same remedies for its recovery from the mortgagor that the company had. Default was made, and the company exercised their power of sale, and the defendant became the purchaser. After signing a contract for the purchase he distrained the goods of the plaintiff for the interest that had fallen in arrear to the company. Shortly afterwards he obtained a formal conveyance of the land expressed to be under the power of sale in the company's mortgage.

Held, that the plaintiff's estate having paid the mortgage debt to the company in full, the defendant could not be said, by means of his purchase contract, to have paid the interest in arrear so as to entitle him to distrain therefor.

A. H. Lefroy, for plaintiff.

J. K. Kerr, Q.C., for defendant.

COUGHLIN V. CLARK.

Promissory note—Repeal of Stamp Act—Pleading—Amendment.

Action on a promissory note which, at its making, was not stamped, but had been double stamped before action, and after the repeal of the Stamp Act the defendant denied the making of the note. At the trial leave to plead the sufficient stamping was refused on account of the repeal of the Stamp Act, but the plaintiff was allowed to amend by adding allegations showing the consideration.

WILSON, C. J., gave judgment for the plaintiff.

Held, that the judgment was right.

Per HAGARTY, C. J.—The learned judge was not bound to allow a plea of insufficient stamping to be added by way of amendment under the circumstances.

Per ARMOUR and CAMERON, JJ.—The amendment should have been allowed. The note, even if unstamped or insufficiently stamped, was admissible in evidence of the debt to the plaintiff, the Stamp Act not prohibiting such use of it.

Per CAMERON, J.—It is necessary, under the Judicature Act, to plead specially want of stamps. The unstamped note was, in its inception, valid, but became invalid by neglect to stamp it. The repeal of the Stamp Act leaves the law where it was before those Acts were passed, and the note being originally a valid transaction is now valid.

REGINA V. BENNETT.

Temperance Act, 1878—Information—Waiver.

An information was laid against the defendant, on 28th December, 1883, *(sic)* for having, on 25th December, sold intoxicating liquor in violation of the Canada Temperance Act. Upon a search made intoxicating liquor was found on the premises on 1st January, 1883. On this evidence the information was amended so as to charge the keeping and not the selling. The defendant was present at the amendment and waived an adjournment, and entered upon his defence. The magistrate having found the defendant guilty, drew up a conviction for keeping intoxicating liquor, which was returned to the Clerk of the Peace and filed on 17th January, 1883. On the 27th January, 1883, he drew up a second conviction the same in all respects as the first with the exception that it was for keeping for sale intoxicating liquors. This was also returned and filed.

Held, that he had power to draw up and return the second conviction.

Held also, that there was no variance between the evidence and the information to warrant an amendment, but that the evidence disclosed a new offence, and the amended information became in fact a new one, and the defendant, by his presence and by entering on his defence, had waived the service of a summons upon him.

Held also, that it was no objection to the conviction that it was for keeping and selling, while the information charged the keeping only.

JOHNSON v. HEIRS.

Limitation of actions—Possession of dowress.

C. R. died intestate in 1864, seised in fee simple of the land in question, leaving him surviving, his widow and several heirs-at-law. The widow remained in possession from the time of the husband's death until her own decease in 1881, and cultivated the farm. There was some evidence that she kept possession, with the consent of the heirs, for them, but the Court was of a contrary opinion. There was no evidence of a written acknowledgment of their title. She devised the land to the plaintiff.

Held, that the possession of the widow was not a possession of a dowress, and that the title of the heirs-at-law had been thereby barred.

The Statute of Limitations begins to work against the heirs-at-law in favor of a dowress in possession at the expiration of her days of quarantine.

ONTARIO INDUSTRIAL L. & S. CO. v. LINDSEY.

Registry of instrument not authorized by Registry Act—Cloud on title—Damages—Parties—Notice of action to registrar.

S. believing that his father (still living but of unsound mind) was entitled to certain lands to which the plaintiff claimed title, took the advice of his solicitor C., who was advised by counsel, and following his advice instructed C. to prepare and register an instrument whereby he, S., stated that he claimed the lands, and would, upon the demise of his father, commence proceedings for their recovery. This being done the plaintiffs were obstructed in the sale of their lands, and brought an action against S. C. and the registrar to remove the instrument from the title as being a cloud thereon, and for damages.

PROUDFOOT, J., dismissed the action as against the registrar, but awarded judgment with a reference to assess damages against S. and C.

Held, that Registry Act did not contemplate the registration of such an instrument, and, CAMERON, J., dissenting, that an action would lie for its removal.

Per CAMERON, J.—The instrument being void on its face, as being wrongfully registered, resort to a court is unnecessary, and the action should be dismissed.

Per HAGARTY, C. J., and ARMOUR, J.—The act of registration was a wrongful one, and all parties combining in it are therefore responsible to the plaintiffs, and the registrar was therefore a proper party.

Per HAGARTY, C. J.—There being no *mala fides* the damages should be nominal.

Per CAMERON, J.—The registrar was not a proper party, having acted in good faith and within the scope of his duty; nor was C., the solicitor, a proper party, he having acted to the best of his judgment and ability in advising his client after consulting counsel.

Per ARMOUR, J.—No notice of action to the registrar was necessary.

COMMON PLEAS DIVISION.

IN BANCO.

CARTWRIGHT v. HINDES.

Ca. Sa.—Setting aside—Reviewal by Court—Misleading statement in affidavit—Residence.

Held, that the Divisional Court may review the action of a judge setting aside a writ of *capias ad satisfaciendum*, and the arrest thereunder, as also the action of the judge who made the order to arrest.

Held also, from the evidence set out in the case, on objection taken that the defendant was not a resident of Ontario, was not tenable, as it sufficiently appeared that he was such resident; also that a statement made in the affidavit on which the order to arrest issued, that the defendant had made "an assignment of all his property," without adding the words, for the general benefit of creditors, was a misleading statement as inducing a belief that the assignment had been made for a fraudulent purpose, and therefore, on such ground, the order could

not be supported, but that this was immaterial because the affidavit was to justify the order.

Aylesworth and *Machar*, (of Kingston,) for the plaintiff.

Maclennan, Q.C., for the defendant.

COCHRAN V. BOUCHER.

Chattel mortgage—Collateral security—Principal and surety—Premature sale—Damages.

Action for wrongfully seizing, and selling, and depriving plaintiff of her right to redeem certain goods. C. being pressed by executions against him procured one H. to undertake to pay same on C. giving him a promissory note made by himself and his wife, the wife being merely a surety for her husband, for the amount of the executions, and also a chattel mortgage similarly made as collateral security for the payment of such note. H. discounted the note with a bank, and with the proceeds paid the executions. Subsequently, and while the note was held by the bank and before its maturity, H. claiming that there had been a breach of the mortgage by the removal of some of the goods from the country, (which was disproved, the jury having found that the removal was by the plaintiff's son claiming the right to do so), and refusing to allow the mortgagors to redeem, insisted on selling the whole of the mortgagors' goods to pay off other claims in addition to the mortgage, and realized a sum more than twice as large as there would be any pretence for. There was sufficient goods of the husband to satisfy the claim, and of the goods actually seized under the mortgage, even after satisfying the mortgagee, there was a sum of $137.50 residue of the plaintiff's goods sold.

Held, the note being the principal security, and the mortgage merely an accessory to it, while the note was outstanding in the bank's hands they were entitled to the mortgage, and H. could not proceed under it, and failing that, the wife, being a surety, her goods should not, under the circumstances, have been sold; but even assuming that H. sold under the authority he had, the note being premature, the plaintiff would be entitled to recover the value of her interest in the goods, and that the finding of the jury, that $275 and the actual value of such interest, could not be complained of.

Lash, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

RADFORD V. MERCHANTS BANK.

Bank—Warranty on sale of machine—34 Vict. ch. 8, sec. 40, D.—Res judicata.

Action against the defendants, a bank, for damages for breach of warranty on the sale of a machine.

Held, under sect. 49 of the Banking Act, 34 Vict. ch. 8, D., which prohibits banks dealing in the buying and selling of goods and merchandize, an action for the alleged warranty was not maintainable.

Held also, that the matter was *res judicata*; the question having been tried in the Division Court in an action on certain notes given for the price of the machine, and decided against the now plaintiff.

E. H. Smythe, (of Kingston), for the plaintiff.

Britton, Q.C., for the defendant.

GARSON V. GARSON.

Specific performance—Agreement between father and son.

The plaintiff, who had been living with his father on the father's farm of 100 acres, having, in 1871, left to work for himself, the father wrote to him that if he would come home he would give the plaintiff 50 acres and a share of the cattle and sheep when the plaintiff got married, and by staying away he would not only sacrifice his own but the father's interests also. Upon the receipt of the letter the son returned home, and remained there ever since, working it with the father, except at certain seasons, generally at harvest time, when he went away and earned wages. It was proved that the father had indicated the 50 acres the plaintiff was to have, and that the plaintiff had erected a house thereon with the father's sanction and approval, and was occupying it with his wife and family, he having married in 1879.

Held, that the plaintiff was entitled to have the agreement specifically performed.

Falconbridge, for the plaintiff.

Shepley, for the defendant.

LEADER V. NORTHERN RY. CO.

Railway—Carriage of goods—Right to warehouse.

The plaintiff, who lived at Meaford, sold a quatity of barley by sample to one D., a brewer,

in Toronto, and shipped same by the defendants' railway, signing a consignment note, and receiving a shipping receipt from the company, the barley being consigned to W. D. at Brock Street Station, Toronto, subject to certain conditions. The barley was duly carried to Toronto and warehoused by the defendants in their elevator under, as they contended, the right conferred therefor by the conditions in that behalf, and then tendered grain of same grade as plaintiff's, which the consignees refused to accept.

Held, that the consignment note and shipping receipt, which constituted the contract between the parties, showed that a distinction was made between grain consigned to, and that not consigned to the defendants' elevator, and that the condition as to warehousing was only applicable o grain shipped to the elevator, and not to grain shipped as the grain in question was.

The plaintiff was therefore held entitled to the damages sustained by the non-delivery of the specific grain shipped by him.

Creasor, Q.C., for the plaintiff.
Boulton, Q.C., for the defendant.

HAMES v. JOHNSTON.

Division Courts Act—Notice of action—Personal service—Computation of time.

Sect. 31 of the Division Courts Act enacts that any action or prosecution against any person for anything done in pursuance of the Act shall be commenced within six months after the fact was committed, etc., and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action.

Held, (1) that personal service was not required, but that the service on the wife was sufficient. (2) That the section does not require the court in which the action is to be brought to be mentioned in the notice; and *semble*, even if such were required the statement contained in that notice in question, that the action would be brought in the High Court of Justice, without naming the particular division, was sufficient. (3) That in computing the time within which the action must be brought, the day on which the fact was committed must be excluded.

Dunbar, (of Guelph), for the plaintiff.
Osler, Q.C., contra.

KILLIKER v. MCGIBBON.

Vessel, sale of—Loss of—Liability.

The defendant purchased the interest of the plaintiff in a certain vessel, under an agreement which did not comply with the formalities of the Act respecting the transfer of vessels. After the agreement had been entered into, the captain, who had been appointed by the owners, deserted the vessel. Whereupon the defendant took possession, and appointed one Glass as captain, and while under his charge and through his negligence, the vessel was lost.

Held, that the plaintiff could not recover from the defendant the price of loss under the agreement, there having been no valid transfer, but that he was, however, entitled to recover the value of his interest, for that the defendant under the circumstances, was responsible for the captain's negligence, and therefore liable for the loss thereof.

McMichael, Q.C., for the plaintiff.
Osler, Q.C., for the defendant.

WALLACE v. HUTCHINSON.

Husband and wife—Dower—Separate estate.

In an action against a married woman, married in 1871, on a promissory note made by her, the only property which she was proved to possess was a right to dower in lands of a former husband. The learned judge, at the trial, having directed that the defendant's separate property, vested in her or in a trustee for her at the date of the note and at the present date, should be charged with the payment of the plaintiff's claim, a motion was made to the Divisional Court to set aside such direction, but the court refused to interfere.

J. E. Rose, Q.C., for the plaintiff.
Osler, Q.C., for the defendant.

REGINA v. FEE.

Deputy judge—Validity of appointment—Presumption—R. S. O ch. 42—Absence from county.

The defendant was convicted for perjury alleged to have been committed in a cause tried at a Division Court, held by one H., under a commission issued by the Governor General in Council, appointing him Deputy Judge of the

County Court of the County of Victoria, during pleasure and the absence of the County Judge under the leave of absence granted to him by an order in council.

Held, that it was not necessary for the Crown to prove the order in council granting the leave of absence, for its existence, and that the commission had not become effete by lapse of time, would be presumed in accordance with the general presumption of law that a person acting in a public capacity was properly appointed and duly authorized to act, and the *onus* of showing the contrary is on the defendant.

Held also, that the commission was valid under R. S. O. ch. 42, and that it was not essential that the County Judge should be absent from the county.

J. G. Scott, Q.C., for the Crown.

Osler, Q.C., for the prisoner.

BENNETT v. THE GRAND TRUNK RY. CO.

Railways—Accident—Crossing on railway premises—Liability—C. S. C. ch. 66, sects. 104, 145—Evidence—New trial.

A track crossing on the railway company's premises for the convenience of passengers and others in going to and from the station on railway business, is not a public crossing, highway, or place, within sect. 104 of C. S. C. ch. 66, so as to require the statutory signals to be given when crossing such road; but still due care must be taken to prevent damage being sustained by reason of such crossing.

Held also, that sect. 145 applies to the railway company's grounds in cities, towns, and villages, as well as to the limits outside such grounds.

On the merits the Court were of opinion that the verdict which was rendered for the plaintiff was contrary to the evidence, and a new trial was directed.

Fullerton and *Schoff*, for the plaintiff.

Bethune, Q.C., for the defendants.

THE QUEEN v. GOUGH.

Criminal law—Indictment—Omission to charge offence done "feloniously"—Quashing indictment.

An indictment professing to be under 32-33 Vict. ch. 22, sect. 45, charged that the defendants "did unlawfully and maliciously maim and wound, by shooting them, two horses, the property of," etc.

Held, the offence should have been charged to have been done feloniously, and that the indictment was therefore bad, and must be quashed.

E. H. Smythe, (of Kingston), for the prisoner.

J. G. Scott, Q.C., for the Crown.

LUCAS v. KNOX.

Dower—Quarantine—Necessary attendance and companionship.

Held, that the right of a dowress during quarantine is not merely a personal right, but she is entitled to have reasonable and proper attendance and companionship.

Frank Arnoldi and *Burdette*, (of Belleville), for the plaintiff.

Northrup, (of Belleville), for the defendant.

THE REAL ESTATE LOAN AND DEBENTURE CO. v. THE METROPOLITAN BUILDING SOCIETY.

Purchase of securities for bulk sum—Deficiency in statement as to value of single security—Right to recover—Fraud.

The plaintiffs and defendants entered into negotiations for the purchase by plaintiffs of certain securities, consisting of mortgages and other assets of the defendants, on the basis of an eight per cent. investment, and a schedule was prepared by defendants giving each security. Finally a purchase was agreed on at a lump sum of $40,000, but on the basis of the value of the securities contained in the schedule. Subsequently and after a deed of assignment of the securities had been executed, the plaintiffs discovered that one of the securities was $780 less in value than was stated, and the plaintiffs claimed to recover this amount from the defendants.

Held, that there could be no recovery, for that the evidence showed that the lump sum agreed on was to cover all deficiencies, and errors and mistakes in value, at all events, to a reasonable amount, which the sum stated was, and there was no fraud or misrepresentation proved.

J. K. Kerr, Q.C., and *A. C. Galt*, for the plaintiffs.

Robinson, Q.C., for the defendants.

Burton, J. A.]

THE VICTORIA MUTUAL FIRE INS. CO. v. DAVIDSON ET AL.

Principal and surety—Division Court clerk—Change in duties—Discharge of sureties—Entry in books—Evidence.

After defendants had become sureties for a Division Court clerk a special arrangement was made between the plaintiffs and the clerk, under which the clerk was to receive no costs, but disbursements only in all suits in which nothing should be realized, and the clerk guaranteed in all cases that the court had jurisdiction. This arrangement was subsequently altered by giving to the clerk fifty cents besides disbursements, and it was arranged that the clerk should make periodical statements. Statements were rendered from time to time, and a cheque, given for the balance, shown. It was afterwards discovered that these statements were not correct, and that moneys collected had not been paid over to the plaintiffs. In an action by plaintiffs against defendants on their bond,

Held, that the settlements were not conclusive.

Held also, that by the special agreement made the sureties were discharged.

The cases deciding that entries in the books of an officer are evidence in his lifetime as against his sureties, questioned.

Hagarty, C. J.]

STANTON V. CORPORATION OF ELGIN.

Board of Audit—County attorney's fees—Disallowance of items in, by Provincial Treasurer—Reduction by Board of Audit from subsequent account—Mandamus.

One C. was charged and committed for trial on twenty-five separate charges of larceny. On being brought before the County Judge he elected to be tried by jury, and at the ensuing assizes was tried and convicted on three of the charges, the others not being tried. Under an order in council the County Attorney is entitled, in cases of felony, to a fee of $4 on receiving and examining all information and other documents, etc., connected with criminal charges for the Court of Assize, etc., upon the Crown Counsel's certificate that such fees should be allowed. The County Attorney obtained the Crown Counsel's certificate, and in his account charged a fee of $4 on each of the twenty-five cases which was audited by the Board of Audit and passed; but on the Provincial Treasurer disallowing twenty-two cases, and his decision being communicated to the Board, they made an order deducting the amount disallowed from the County Attorney's subsequent account.

Held, that a *mandamus* would not lie requiring the Board of Audit to rescind their order, for the disallowance by the Provincial Treasurer was a good reason for their so deducting the amount, their doing so or not being a matter for their discretion.

A fee of fifty cents is allowed to the County Attorney for services in the County Judge's Criminal Court for attendance and service in Court, and making necessary entries for each prisoner not consenting to be tried without a jury. In C.'s case the twenty-five charges were especially read over to him, and his election taken, the County Attorney attending and making the necessary entries. The County Attorney charged fifty cents in each of the twenty-five cases, but only fees in three cases were allowed by the Board of Audit, the Board declaring that the additional must be claimed from the Government, and subsequently the Board disallowed absolutely this additional sum. The Provincial Treasurer having disallowed such amount.

Held, that a *mandamus* would not lie.

The County Attorney claimed to recover $100 for an affidavit verifying jurors' book, and $100 for certificate which he drew up for County Judge to sign.

Held, that these fees could not be allowed, and therefore a *mandamus* would not lie here either.

Read, Q.C., for the applicant.

Bain and *Raines*, (St. Thomas), for the Board of Audit.

J. G. Scott, Q.C., for the Attorney General.

CHANCERY DIVISION.

Wilson, C. J., C. P. D.] [June 6.

RYAN V. FISH.

Dower Act—Damages for detention—Damages for mesne profits—Tout temps prest—R. S. O. c. 55—O. J. A. s. 19, subs. 10.

Held, where the plaintiff in an action for dower has endorsed a claim for damages for detention of dower, then, though the tenant of the

freehold appear and admit he right to dower, she may, nevertheless, go on and recover damages for the detention.

The Dower Act, R. S. O. c. 55, has been construed too rigidly, and without giving due effect to the very proper enactment, sect. 45, that in cases not otherwise provided for by the Act, the pleadings and proceedings shall be regulated by the law as it was relative to suits and actions of dower before August 10, 1850. There is nothing in the general enactment of the Dower Act, and certainly not with the aid of the 45th section to prevent the plaintiff from recovering her damages if she has claimed them, and is entitled to recover them.

Held also, R. S. O. c. 55, has not taken away or diminished the right of the dowress to damages against all persons and in all cases where they were recoverable here before August 10, 1850; and such damages are general damages as well for what are called *mesne* profits as for detention; and such general damages are covered by and included in the words "damages for detention of dower" in R. S. O. c. 55, or such general damages are not taken away by that Act, but are saved by sect. 45, and may be recovered by the law as it was before August 10, 1850, as "a case not otherwise provided for" by the Revised Statutes.

Held further, although no one but an heir or devisee can plead *tout temps prest* in an action of dower, because the feoffee of the heir or anyone claiming in the *per* had not the freehold immediately on the death of the husband, and so could not at all times from her death have been ready to render the dower, yet damages for detention of dower against a tenant in the *per* are not in every case to be computed from the death of the husband. For since, under O. J. A. s. 19, subs. 10, equity is to prevail; and since, under R. S. O. c. 55, s. 3, the tenant of the freehold has it in his power to offer to make an assignment of dower, a tenant may, at all events now, be permitted to plead he has at all times since he became tenant of the freehold, been ready and willing to render the plaintiff her dower, and if the plaintiff desire to avoid that plea she should reply a demand and refusal; which reply, if duly proved,

Semble, damages would only be computed against the tenant from the date of the demand.

J. Bethune, Q.C., for the plaintiff.

Z. Lash, Q.C., and *King*, for the defendants.

Boyd, C.] [June 20.

DUNLAP v. DUNLAP.

Conveyancing—Habendum—Mistake.

When the evidence showed that A. and his son, B., desired to effect a settlement of a landed property, embodying an agreement substantially as follows:—That B. should remain with A. on the place, and, if he did so, the land should be his on A.'s death; that A. should be the proprietor and have authority over the place while he lived; that B. should work the land and provide suitable maintenance thereon for A., and besides pay him $45 a year for life, and also pay certain legacies six years after A.'s death. But the parties employed a quack conveyancer to draw the deed of settlement, who failed to provide for many of the essential provisions of the agreement, and as to the land, made A., in consideration of natural love and affection, grant the land to B., his heirs and assigns, *habendum*, "to have and hold the same after the decease of A. unto and to the only proper use and behoof of the said A. his heirs and assigns for ever;" and now brought this action for waste against A.

Held, the deed was not void, as passing only a freehold to commence *in futuro*, for the *habendum* is not essential to a deed, and the granting part of the deed was sufficient of itself to pass the immediate freehold to B. The consideration of blood-relationship expressed in the deed was sufficient to carry the use to B., and the deed, viewed as a covenant to stand seized, would vest the entire estate in B.; but *quære*, whether, according to the reasoning in *Goodlittle* v. *Carter*, 5 B. & Cr. 709, the express limitation of the use in the *habendum* after A.'s death would not rebut the implication of an immediate vesting of the use at the date of the deed in B., and the use of so much of the estate as was not expressly limited, (*i. e.*, here for the life of A.), result to and vest in A.

Held, further, however this might be, the deed did not express the true agreement of the parties and could not be allowed to stand; but B., having acted on the faith of the arrangement for some years, and being willing to carry out the original bargain, and execute proper instruments, the deed should not be set aside, but should be amended, and, if necessary, settled by the Master.

Danger of employing unlearned conveyancers commented on, and the expediency of throwing safeguards round the practice of conveyancing in some such way as is done in Manitoba pointed out.

PRACTICE CASES.

Armour, J.] [June. 5.

MACNEE V. ONTARIO BANK.

Division Courts—Rule 285 O. J. A.—Prohibition.

The County Judge of the County of York, acting as Judge of the First Division Court in that County, upon the application of the defendants, made an order, under Rule 285 O. J. A., for the examination of a witness *de bene esse*, and dismissed a subsequent motion by the plaintiff to set it aside.

The plaintiff then moved for an order for a writ of prohibition to prohibit the said Division Court proceeding, and admitting, at the trial, the evidence taken under the order on the ground that the County Judge had not any jurisdiction to make the order.

Held, that the County Judges may, in their discretion, apply the rules of the O. J. A. to the Division Courts, and that the County Judge had jurisdiction to make the order complained of.

G. Bell, for plaintiff.

W. Barwick, for defendant.

Boyd, C.] [June 18.

THOMPSON V. THOMPSON.

Interim alimony—Time.

Alimony only runs from the service of the writ where no delay has taken place. This does not mean that the plaintiff should take the full time allowed by the rules of Court, but should be diligent in the conduct of the suit and expedite it as much as possible.

H. Cassels, for the plaintiff.

Hoyles, contra.

Cameron, J.] [June 19.

BANK OF NOVA SCOTIA V. LA ROCHE.

Motion for judgment under Rule 80 O. J. A.—Stay of proceedings.

An action upon a promissory note, commenced by writ of summons. By the endorsement it appeared that the plaintiffs resided at Winnipeg.

After appearance and on the 1st of June, 1883, the plaintiffs obtained a summons from the local judge at Belleville, returnable on the 6th June, to show cause why final judgment should not be signed against the defendant under rule 80, O.J.A. On the 5th June the defendants obtained a *præcipe* order for security for costs. On the 6th June the plaintiffs obtained a summons to set aside the order for security for costs. On the 8th June the plaintiffs moved absolute their summons to set aside the order for security for costs, and for leave to sign judgment ; to which no cause was shown except that the proceedings were stayed by the order for security. The local judge set aside the order for security, and gave leave to the plaintiffs to sign final judgment in the action.

Upon appeal to CAMERON, J.—

Held, that the order for security was of as much binding force as if it had been made on an application to a judge or master, and the moment it was served it suspended all proceedings. That the defendants have no defence on the merits is not a ground upon which to move to set it aside.

Held also, that the application for security for costs was made at the proper time.

Order of the local judge rescinded, with costs to be costs in the cause to the defendants in any event.

Clement, for the defendants.

Aylesworth, for the plaintiffs.

Boyd, C.] [June 19.

NORTH OF SCOTLAND V. BEARD.

Præcipe judgment of foreclosure—Order for immediate payment.

W. Barwick, for the plaintiff, moyed for a direction to the Registrar of the Chy. Div. to insert in a *præcipe* judgment of foreclosure in a mortgage suit, an order for immediate payment of the amount due by the defendant under his covenant up to judgment. The registrar to take

the account where a reference to the Master as to subsequent incumbrances is also sought.

BOYD, C., *held*, that the usual course must be followed, and that the defendant should be ordered to pay the amount found due forthwith after the Master shall have made his report.

Distinguished. McCallum v. McCallum 11 PR. 179.

Proudfoot, J.] [June 25.

EXCHANGE BANK v. NEWELL ET AL.

Taxation—Solicitor and client—Appeal—Rule 407 O. J. A., G. O. Chy. 642.

An appeal by two of the defendants from the certificate of taxation of the Local Master at St. Thomas, upon a taxation, at their instance, of their solicitor's bill of costs.

Held, that two clear days notice of appeal, under Rule 407 O. J. A., is insufficient, as G. O. Chy. 642 requiring seven days notice to be given, applies to these cases. Appeal dismissed with costs.

Caswell, for the appeal.
Hoyles, contra.

Cameron, J.] [June 26.

CHRISTIE v. CONWAY.

Interpleader—Scale of costs—Appeal from Master in Chambers to a Judge in Chambers.

An interpleader matter. Execution issued for a very much larger amount than $400, but the subject of the issue was under $400 in value. The trial of the issue was directed to take place in the Superior Court.

Upon a motion to finally dispose of the costs of the issue the Master in Chambers awarded the claimant the costs, and ordered them to be upon the County Court scale.

Aylesworth, for the claimant, appealed from this order.

A. Cassels, for the execution creditor, contra, contended (1) that there is no appeal from the Master in Chambers upon the question of costs in an interpleader proceeding, except to the Divisional Court. (2) That the Master's order was right and in accordance with the decision of the Chancellor in *Beaty* v. *Bryce*, 9 P. R. 323, and, at all events that no appeal would lie without the leave of the Master.

Held, that there is an appeal to a judge in Chambers from the decision of the Master in interpleader. The rule which prevents the decision of the Master, in the exercise of his discretion, being reviewed, cannot be invoked in a case like this where the right of appeal is unrestricted.

Held, that the costs should be on the Superior Court scale.

Beaty v. *Bryce*, 9 P. R. 320, dissented from.

Proudfoot, J.] [June 27.

KEMPT v. MACAULAY.

Mortgage.

This case was re-argued on appeal before PROUDFOOT, J., who upheld the Master's order.

Cameron, J.] [July 3.

FLETCHER v. NOBLE.

Bond for security for costs—One surety—Sufficiency.

An action upon promissory notes brought in the C. P. Div. of the H. C. J.

An order was made by the Master in Chambers that the plaintiff do, within four weeks from the service of the order, give security on his behalf in the penal sum of $400 to answer the defendant's costs of action.

The Registrar of the C. P. D. disallowed the bond filed by the plaintiff in compliance with this order, on the ground that there was only one obligor therein. Upon appeal, on the 29th June, 1883:

CAMERON, J.—I think the practice of the Court clearly requires that such security should be by bond or instrument under seal, and that it must be to the satisfaction of the Master, but, though usual, the practice is not universal, that there must be two sureties and I see no valid reason why two sureties for so small a sum as $400 should be required. By Rule 429 O. J. A. the matter would seem to be one of discretion in the Court or Judge . . . I am of opinion therefore that the Registrar was quite justified in his refusal to allow the bond, but as he did so solely on the ground that there was only one surety, and not by reason of the security in other respects being insufficient, I think the matter must be sent back to him to determine whether the security is sufficient without reference to the practice requiring two sureties to join in the

bond, and, if sufficient, he should allow the same. Costs to be costs in the cause.

J. B. Hands, for plaintiff.

E. A. Forster, for defendants.

Cameron, J.] [July 3.

THORNTON v. CAPSTOCK.

Slander—Statement of claim.

R. M. Meredith, for the defendant, moved absolute a summons (refused by the Local Judge of the High Court at London) for further and better particulars than those already served, of the times and places where and circumstances under which the defamatory words in the third paragraph of the plaintiff's statement of claim set forth, are alleged to have been spoken and published, or that the second paragraph be struck out.

T. Macbeth, for the plaintiff, showed cause.

CAMERON, J.—I am of opinion that, in an action of slander, it is not sufficient now to allege, in the statement of claim, merely that the defendant falsely and maliciously spoke and published of the defendant the defamatory words complained of, but that the time or occasion when, place where, and persons to whom or in whose presence they were spoken, should be stated with reasonable certainty. It is essential that a statement of claim should disclose all facts necessary to show a legal cause of action. In slander the mere allegation that the defendant falsely spoke and published of the plaintiff certain defamatory words, setting them out does not show a cause of action.

The summons must be made absolute; costs to be costs in the cause.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

TENTH DIVISION COURT OF YORK.

BUILDING AND LOAN ASSOCIATION v. HEIMROD.

Division Courts—Practice under Judicature Act—Nonsuit.

The Division Courts, so far as they have machinery, should grant the substantial relief, redress, or remedy that the High Court could grant, but the practice of the High Court under the Rules, except Rule 489, does not apply *ex vi termini* to Division Courts.

The discretion conferred by sect. 244, D. C. Act, to introduce Superior Court practice, can only be exercised in cases unprovided for by the D. C. Act and Rules of Court thereunder.

Held, that as the Division Court Act provides for the granting a nonsuit, the meaning of which, at the time of passing the Act, was a default only, and did not prevent the plaintiff bringing a fresh action, Rule 330 of the Judicature Act, which makes a nonsuit a judgment on the merits, does not apply to the Division Court, nor is it a case for the exercise of the discretion allowed by sect. 244 of the D. C. Act.*

[Toronto, June 15.—MCDOUGALL, J.J.

Before the time appointed for payment of interest under a mortgage made pursuant to R. S. O. 104, by defendant to plaintiffs, an action upon the covenant to insure was brought to recover a premium of insurance paid by the mortgagees, the plaintiffs, on behalf, as it was alleged, of the defendant. The case was tried before J. E. Robertson, Esq., acting judge, and a nonsuit was ordered to be entered on the ground that such action could not be brought until after the time for the then next ensuing payment of interest on said mortgage: R. S. O. 104, 8 ch. B. sect. 12.

After that time a second action was brought for the said premiums under the same covenant. There had been no steps taken to set aside the nonsuit, and more than fourteen days had elapsed since the first trial.

T. P. Galt, for the defendant, objected that the nonsuit had the same effect as a judgment on the merits under Marginal Rule 330, O. J. A., and that the plaintiffs had no longer any right of action. The learned judge before whom the case was tried, reserved the point which was subsequently argued before him in Chambers.

T. P. Galt, for defendant.

Allan Cassels, for plaintiffs.

MACDOUGALL, Co. J.—This is an action brought to recover the premium for an insurance effected by the plaintiffs upon some property of the defendant, of which the plaintiffs are mortgagees. The mortgage is made in pursuance of the Short Forms of Mortgages Act, R. S. O. cap. 104, and contains the usual statutory covenants.

*(See *Pryor* v. *The City Offices Co.*, L. R. 102, B. D. 504, as confirming some of the views expressed in the following judgment, reported since it was delivered.—EDS. L. J.)

The first objection taken by the defendant to the plaintiffs right to recover is, that the plaintiffs had been nonsuited in a former action brought against him by the same plaintiffs, in this Court, for the same cause of action. The ground of nonsuit, it appears, was that the plaintiffs had been premature in beginning their first action, the statutory period mentioned in the extended form of covenant to insure, not having expired.

The defendant contends that under the present rules and practice of the Courts, introduced by the Judicature Act, such judgment of nonsuit is final, and is equivalent to a judgment upon the merits for the defendant, citing Marginal Rule 330 of the Judicature Act.

This contention involves the consideration of the very important question as to how far the rules and practice of the Superior Courts, as altered by the Judicature Act, affect the practice heretofore observed in the Division Court.

The only express provisions I find in the Judicature Act affecting Division Courts are sects. 77, 78 and 80 of the Act, and Marginal Rule 489 of the Rules of Court in the schedule attached to the Act. For the purpose of this enquiry, however, we must look also at certain other rules and sections affecting the County Courts with a view to discover the intention of the legislature, and so form a conclusion as to how much, if any, of the practice laid down in the Act and rules, can, by implication, be imported into the inferior Courts. Rule 490 extends the "pleadings, practice, and procedure of the High Court of Justice to the County Courts wherever the present pleadings, practice, and procedure of the County Courts correspond with those of the Superior Courts of law."

The Division Court is a Court created by statute, (4 & 5 Vict. cap. 53; 13 and 14 Vict. cap. 53; R. S. O. cap. 47; 43 Vict. cap. 8). It is not a Court of Record, (R. S. O. cap. 47, sect. 7), but its judgments have the same force and effect as the judgments of Courts of Record. The Court, therefore, is simply the creature of the statutes constituting it, and to these statutes and the rules subsequently enacted, under powers granted by sects. 237, 238, 239, 240 and 241 of the Revised Statutes, and to any other enactments passed from time to time by the legislature, expressly made applicable in whole or in part to Division Courts, we must look to ascertain the practice and procedure which shall govern. There is this qualification, however, to the foregoing statement; sect. 244 of the D. C. Act enacts that "in any case not expressly provided for by this Act, or by existing rules, or by rules made under this Act, the County Judges may, in their discretion, adopt and apply the general principles of practice in the Superior Courts of Common Law, to actions and proceedings in the Division Courts." What this discretion may mean exactly it is perhaps difficult to determine in any particular case, but where a County Judge attempted to exercise it, by making an order for the examination of a defendant under sect. 24 of the A. J. Act of 1873, Chief Justice Wilson (then Mr. Justice Wilson) granted a writ of prohibition on the ground that the provisions for the examination of parties were *above* the jurisdiction of Division Courts, and on the ground that such a practice would unreasonably increase costs. The learned judge further added, "that he would not sanction a practice being introduced into these Courts in which the judge decides according to equity and good conscience, so unsuited to their constitution and purpose *without direct legislative authority*:" *In re Willing* v. *Elliott*, 37 U. C. R. 320.

On the other hand it was held by Mr. Justice Cameron that it was a proper exercise of this discretion to make an order for security for costs in a Division Court case where the plaintiff resided out of the jurisdiction, on the express ground that it being a matter of practice (not a rule of law) within the principle of practice in the Superior Courts, it was competent for a Division Court Judge to resort, in his discretion, to the practice in those Courts: *Fletcher* v. *Noble*, 9 P. R. 256.

Section 77 of the Judicature Act enacts that "Every County and Division Court shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant, in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall, in every such proceeding, give such and like effect to every ground of defence or counter claim, equitable or legal, (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice."

This section, I think, refers only to the complete legal and equitable jurisdiction conferred upon all the divisions composing the High Court of Justice and Court of Appeal, and more particularly set out in section 16 of the Act. It does not purport to deal with the practice; but it enacts that for the purpose of administering complete relief, redress, or affording adequate remedy, the County Courts and Division Courts shall possess, within their several jurisdictions, the same legal and equitable powers as those possessed by the High Court of Justice. This was clearly a necessary provision in the case of the County Court, which had been deprived of its former equitable jurisdiction by the Law Reform Act, (32 Vict. Ont. cap. 6, sect. 4). It might not, perhaps, be so necessary to enact with reference to the Division Courts which were already Courts of Equity and good conscience, (R. S. O. cap. 47, sect. 54, sub-sect. 2), but doubtless for the purpose of removing all doubts the section was made to extend to all inferior Courts of civil jurisdiction. It does not add to the machinery of the Division Courts, and therefore there will be many cases where, in order to secure remedies or redress which the Division Courts, from lack of territorial jurisdiction or adequate machinery are unable to extend to a suitor, the cause will have to be removed by *certiorari* to the Superior Court. This is provided for by sect. 61 of D. C. Act, and sect. 78 of the Judicature Act will also meet the class of cases where the counter claim or cross relief sought by a defendant exceeds the powers or jurisdiction of the Division Courts.

Section 80 of the Judicature Act enacts that, "The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ontario, so far as the matters to which such rules relate shall be respectively cognizable by such Courts. This clearly, in my opinion, refers only to the rules of law laid down in section 17 of the Act. What then is the effect of the rules set out in the schedule to the Act? Section 53 defines very plainly their application "as to all matters to which they extend," they shall thenceforth regulate the proceedings *in the High Court of Justice.*

This direct and positive limitation, I think, confines their application to that Court alone, except where a rule in express terms is made applicable to either the County Court or Division Court. In support of this view see Rule 490, (already referred to), which extends the practice and procedure of the H. C. J., with certain limitations, to the County Court: Rule 264 which is directed in express terms to be construed as applying to County Courts: Rule 489, which confers jurisdiction upon County Court and Division Court judges to deal with the question of costs where the Court discovers that they have no original jurisdiction to deal with the subject matter of the suit: and Rule 456, abolishing County Court terms, notwithstanding the general language contained in section 18 of the Act, though it is true that such section is under the head "High Court," and to other rules under the head of "County Court" in the schedule.

The provisions of the D. C. Act, on the subject of nonsuit, are as follows:—Section 81, after stating the mode of procedure at the trial of an action, goes on to say, "and if satisfactory proof is not given to the judge entitling either party to judgment, he may nonsuit the plaintiff; and the plaintiff may, before verdict in jury cases and before judgment pronounced in other cases, insist on being nonsuited." Rule 122 supplements an apparent omission in the statutory clause by giving the judge power to nonsuit in jury cases, even where the plaintiff does not request it.

At law, before the Judicature Act, a nonsuit was regarded as a default only, and not a judgment upon the merits. It was not conclusive of the plaintiffs rights, and he had the opportunity of bringing his action on again, either in another shape or when better prepared with evidence, while if a verdict were once given, and judgment entered thereon, he was forever barred from suing the defendant upon the same ground of complaint: Archbold's Q. B. Practice, 12th ed. 444. The only penalty a nonsuit imposed upon him was the payment of the defendant's costs. It was not a rule of law, but a rule of practice.

This, then, was the meaning and effect of a nonsuit at the date of the passing of the D. C. Act. I do not think, in view of the sections of the Judicature Act to which I have called attention, that any of the Rules of Court in the schedule to the Judicature Act *ex vi termini* govern the practice in the Division Court except such rules as contain express language making them applicable to that Court, *e. g.*, Rule 489.

Nearly all the procedure regulated by the rules of Court is totally inapplicable to the Division Court; and many of them, if adopted, would effectually abrogate various sections of the D. C. Act, and many of the rules of that Court passed by virtue of the Act. I do not think that it should be held that various clauses of an important Act of Parliament, dealing as it does with the constitution and practice of an existing Court of law, should be considered repealed by anything short of express legislative language.

Having thus expressed my view of the non-application of the Rules of Court contained in the schedule to the Judicature Act, unless they contain express language to that effect, I must now consider whether the effect of a nonsuit, as it was understood before the passage of the Judicature Act, is a case provided for by the D. C. Act itself or its rules, so as to render it unnecessary to exercise the discretion allowed by section 244 of the D. C. Act.

The D. C. Act must be regarded as speaking from the date of its enactment, and the language of its various sections must be construed, so far as the meaning to be attached to particular words is concerned, by reference to the meaning those words had when the subject matter was being dealt with by the legislature. If the word *nonsuit* had a well known significance—namely, that of a *default* only—which did not prejudice the plaintiff from commencing another action, it must undoubtedly be held that it was employed in that sense and with that meaning (unless qualified by express language) wherever it appears in the Act or rules. It has heretofore had the effect attributed to it above, set out by all the judges who have presided over Division Courts, and has become a part of the existing practice of those Courts well known to both suitors and advocates. There has been no express legislative enactment varying that meaning except the language contained in Rule 330 of the Judicature Act, and in my view that rule is confined in its application to the High Court of Justice and the County Court. I do not therefore consider it a case unprovided for by the D. C. Act and rules.

But should my view in this particular e erroneous, I would still consider it the exercising of an unwise discretion to introduce Rule 330 into D. C. practice under the power contained in section 244 of the D. C. Act. I cannot do better than to quote, in support of this conclusion, the language of the learned judge of the County Court of the County of Victoria, in the case of *Cowan* v. *McQuade*, 19 L. J. N. S. 108, a decision in which I thoroughly concur. It was an application under Rule 80 of the Judicature Act, to strike out a defence in an action in the Division Court and for leave to sign judgment; and the right to follow this practice was urged as being practice that the judge should allow under the discretion conferred upon him by section 244, D. C. Act. "Nothing can be clearer than this," says the learned judge, "that where a judge advances beyond legislation, or in any way carries the law or practice beyond its former boundaries, he must see to it that his extension cannot work injustice; whatever there may be of inequity in the law as he finds it, is no concern of his, but it is his duty not to lay down any rule or make any precedent which he sees may, in cases which would be governed by such rule or precedent, work a wrong. And again, at the conclusion of his judgment, he says: "How far this principle might wisely be applied to the extended jurisdiction, with proper provisions as to costs, is only for the legislature to say; but until it chooses to make some change in the law I shall regard it as the exercise of a sound discretion to leave the matters as it has left them."

The Division Court is the "poor man's" court. In the rural portions of a county the parties are, in a great number of cases, their own lawyers. They enter their claims themselves for suit, without consulting an attorney, who, if employed at all, is generally not consulted until the hearing. As a consequence of this system, the suitor will frequently commence his action before his claim is ripe, or may fail to be prepared with sufficient evidence at the trial to establish his rights. To give a nonsuit the effect of a judgment upon the merits, would therefore, in my opinion, often work an injustice in a court of *equity and good conscience*, and would introduce a practice unsuited to a forum where the laity themselves, either as agents for others or in person, have the same footing by law as the trained and duly accredited barrister or attorney. The penalty of a nonsuit in the Division Court is the payment of the defendant's costs, and I see no reason why a plaintiff, in a Court where there are no pleadings and few technicalities, should not have the right to bring a fresh action where, either through his blundering or his ignorance

of the rules of law, he has failed to make out his case to the satisfaction of the judge, and has, in consequence thereof, been nonsuited.

In view of these conclusions I cannot give effect to the defendant's objection that the former nonsuit is a bar to this action.

IN THE FIRST DIVISION COURT, COUNTY OF ONTARIO.

SMITH v. LAWLER.

Division Court—Rule 80, O. J. A.

Rule 80 of the O, J. A. extends to the Division Courts, and the plaintiff is entitled to speedy judgment where it is shown to the satisfaction of the judge that there is no real defence. *Willing* v. *Elliott*, 37 U. C. R. 320; *Burk* v. *Britain*, 19 C. L. J. 74; and *Cowan* v. *McQuade*, 19 C. L. J. 108, commented upon.

[Whitby, April 14.—DARTNELL, J.J.

This was an application made to the Junior Judge of the County of Ontario, for an order under Rule 80 of the Judicature Act, to strike out the dispute note, and direct judgment to be entered forthwith for the plaintiff.

DARTNELL, J.J.—The facts, as disclosed by the affidavits filed, are quite sufficient to justify the granting of the order asked, provided Rule 80 of the O J. A. applies to the Division Courts. I have already ruled in several cases that it does, but, since such rulings, two of my brother County Court Judges have given well considered judgments in similar cases, in which, unfortunately, they have arrived at opposite conclusions. It is to be hoped that, at an early date, an appeal may be had in some like case, so that uniformity of practice may prevail throughout the Province upon so important a point.

My brother Clark, of Northumberland and Durham, in a case of *Burk* v. *Britain*, reported in 19 C. L. J. 74, conceived it his duty to order judgment for the plaintiff, without a trial. He points out "that the spirit of legislation has been for many years past in the direction of sweeping away dilatory defences;" that "the legislature has, from time to time, acknowledged the injustice of permitting debtors, by making a sham defence, to delay their creditors in recovering the amount due;" that "a formal defence ought not to be allowed to hinder a plaintiff if he could show, before the regular time of hearing, that there was no real defence;" and finally, that, in a certain class of cases, "the defendant has to convince the court that he ought to be allowed to defend, or judgment goes against him." The learned judge was of the opinion that the "presenting an untrue plea being, even temporarily, an obstacle to the recovery of a just debt, is an illustration of the principle." In this I thoroughly agree with him, and, acting under the discretion which is conferred by the 244th (or last) section of the Division Courts Act, I conceive he had authority to order the entry of judgment forthwith for the plaintiff, which he did.

My brother Dean, of Victoria, in the case of *Cowan* v. *McQuade*, 19 C. L. J. 108, has arrived at an opposite conclusion, deeming that it would not be "a wise or just exercise of the discretion allowed by sect. 244 to introduce this practice." His argument is based both on the ground of inconvenience, and because no provision is made for costs. As to the ground of inconvenience, it is not greater than in other applications necessarily made to the judge at the County town—such as motions for rehearings, orders for substitutional service, change of venue, and many others which will occur to the practitioner. As to the want of provision for costs, that can be easily remedied by a rule to be framed by our Board of County Judges. It seems to me that if it became generally known that a defence merely for time is unavailing, that these defences would rapidly diminish. It is beyond controversy that this is the case in the Superior and County Courts. I submit that it would be inequitable or unfair that a plaintiff, holding a note for say $199, to which there is no defence, should be in a worse position than one who has a similar right of action for a sum over $200. In the latter case he would have the right to judgment in a brief space of time; in the former the fact of filing a dispute note might preclude him from obtaining judgment perhaps for several months. I have known cases wherein a plaintiff, in order to obtain speedy judgment, has, at the risk of costs, brought his action in the County Court. For these reasons I think, on the question of discretion alone, that I should follow the *dictum* of my brother Clark rather than arrive at the conclusion of my brother Dean.

The case of *Willing* v. *Elliott*, 37 U. C. R. 320, is distinguishable from this class of cases,

because the point in question arose under the Administration of Justice Act, which was not extended to the Division Courts, whereas the Judicature Act is, in express terms, applied, as far as practicable, to the courts of inferior jurisdiction.

But I go further than either of the learned judges.

By section 77 of the O. J. A. it is enacted that every " . . . Division Court shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and *shall* grant in any proceeding before such Court, such *relief, redress, or remedy* . . . in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice." Section 80 extends to *all* courts the rules of law enacted and declared by the same Act. I think the preventing a defendant who has no real defence from using the process of the court to delay a plaintiff in obtaining speedy judgment, is a *relief* to which the latter is entitled, the striking out the dispute note is a *redress*, and the order to enter judgment for the plaintiff forthwith is a *remedy*, all within the spirit, if not the letter, of the Act.

Order accordingly.

SECOND DIVISION COURT, COUNTY OF WENTWORTH.

IN THE MATTER OF BROWN, (Appellant), AND BINKLEY, (Respondent).

Appeal under sect. 50 of the Division Court Act, 1880.

[Hamilton, May 16.

On the complaint before a Justice of the Peace, of the respondent (the master) against the appellant (the servant) for non-fulfillment of an agreement to work for the master for seven months at $14.00 per month. The servant refused to carry out his agreement, and the master was compelled to hire another man, paying him $16.00 per month. The Justice ordered the servant to pay the master $14.00 damages, or in default to be committed to gaol for 30 days at hard labour.

Wyld, for appellant.

WALKER, Deputy Judge.—After a perusal of the various statutes to which I was referred I can have no doubt as to the judgment which I should give on the appeal. I think the convicting magistrate has completely misinterpreted his powers in the matter of this complaint. On the complaint of a master for a breach of contract by the appellant for refusing to carry out an agreement to work, the Justice has, by his conviction, ordered the servant to pay to the complainant $14.00 and costs, and in default to be committed to gaol at hard labour. Assuming that the Con. Stat. U. C. chap. 75, had not been affected by subsequent legislation, the Justice had not power under its provisions to order a payment by the servant to the master, he could only inflict a fine, and the statute provides that the fine should be paid to a public officer and not to the complainant. But the power of the Justice even to inflict a fine has been taken away by the statute 40 Vict. Cap. 35, and on referring to the Revd. Stat. Ont. Cap. 133, we find the power of the Justice is limited to complaints made by the servant against the master, the master being left to his ordinary civil remedy against the servant. If the Justice intended to act under the latter statute (and I presume he did, as the matter was argued before me as if he had, without objection) then the conviction is bad in ordering, in default, the appellant to be committed at hard labour. It has been held that it is *ultra vires* of the Local Legislature to give this power to Justices of the Peace. In my opinion the Justice of the Peace, in making the conviction now before me, was acting entirely without jurisdiction. I allow the appeal of the appellant with costs, which I order and direct to be paid by the respondent to the appellant, and I also order that the said conviction be and and the same is hereby quashed.

LAW STUDENT'S' DEPARTMENT.

The Benchers in Convocation assembled have appointed the Trinity Term of the Law Society to begin on the third day of September next. The examinations will take place as usual during the three weeks preceding that date.

An embarrassed young lawyer with his first cause appeared before a Washington judge the other day, with his umbrella under his arm, and, in his agitation, kept his hat on. He began his remarks, when the judge kindly said, "Had'nt you better raise your umbrella?" As an exchange says, this would have been a considerate suggestion if mercy really "drop, like the gentle dew, from heaven."

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 1883.

The following gentlemen were called to the Bar during this term, namely:—

C. L. Mahony, with honors; P. D. Crerar, with honors. (Mr. Mahony was awarded a gold medal and Mr. Crerar a silver medal.) Messrs. R. W. Leeming, C. G. O'Brian, M. MacKenzie, C. W. Plaxton, Ed. Poole, M. A. McLean, G. F. Ruttan, A. Foy, G. T. Ware, A. J. Williams, R. W. Armstrong. J. D. Gansby, A. D. Kean, D. Lennox, L. C. Smith, A. E. W. Peterson, W. H. Brouse, F. E. Curtis, A. O. Beardmore, H. C. Hamilton, C. R. Irvine and J. F. Canniff.

The following gentlemen were admitted into the Society as Students-at-Law, namely:—

Graduates—R. F. Sutherland, A. M. Ferguson, W. Hunter, C. D. Hossack, E. A. Holman, E. J. Bristol.

Matriculants—S. W. Burns, R. A. Grant, F. H. Kilbourne, A. J. Forward and H. J. Snelgrove.

Junior Class—A. M. Grier, H. D. Cowan, G. H. Douglas, W E. Hastings, A. D. Scatcherd, M. H. Burtch, J. B. Davidson, R. H. Hall, W. Lawson, W. C. P. McGovern, F. E. Walker, C. Horgan, R. R. Ross, C. A. Ghent, H. N. Rose, J. R. Code, F. W. Carey, D. Sinclair, W. Stafford, J. Fraser, W. Geary, H. M. Cleland S. R. Wright, A. McNish, G. M. Brodie.

Mr. Donald Ross was allowed his examination as an Articled Clerk.

Trinity Term having been postponed until Monday, the 3rd September, the examinations will take place as follows:—

Primary—Junior Class, Tuesday, 14th August; Graduates and Matriculants, Thursday, 16th August.

First Intermediate—Tuesday, August 21st.

Second Intermediate—Thursday, August 23rd.

Solicitor—Tuesday, August 28th.

Call—Wednesday, August 29th.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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 upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

Articled Clerks.

From 1883 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1883, 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 year.

Students-at-Law.

CLASSICS.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

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. & III.

ENGLISH.

A paper on English Grammar.
Composition.
Critical Analysis of a selected Poem:—

1883—Marmion, with special reference to Cantos V. and VI.
1884—Elegy in a Country Churchyard.
The Traveller.