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THE Supreme Court of the United States has before it this term some very important cases for argument; among them are the jurisdiction of the United States in the Behring Sea outside the three-mile limit; the constitutionality of the recent anti-lottery legislation, and the right of a state to tax the gross receipts of express companies. While the results may not affect us, the reasons urged *pro* and *con* cannot fail to be of interest as touching matters very near home. We called attention, *ante* p. 322, to the heavy docket to be disposed of in our neighbors' Supreme Court, and we observe now that there are nearly four hundred cases on the list. The newly organized Courts of Appeal have not as yet lightened the labor of the highest tribunal.

As we go to press the news comes that the Supreme Court has declared the Manitoba Public Schools Act, 1890, *ultra vires*, reversing the decision of the Court of Queen's Bench, reported *ante* 120. It will be remembered that the question came up on a summons on behalf of one Barrett to quash certain municipal by-laws of the city of Winnipeg, the applicant contending that the Act was *ultra vires*. Killam, J., dismissed the summons, and an appeal was taken to the Court of Queen's Bench (Taylor, C.J., Dubuc, J., and Bain, J.). The appeal was dismissed, Dubuc, J., dissenting. An appeal was then taken to the Supreme Court, with the result above stated. The Dominion Government has already stood between the appellant and his costs, and will no doubt continue to do so, for the Manitoba Government will, of course, go to the Privy Council, where the fight will be continued.

IN England, as in Ontario, the clergy are exempt from jury service, and some interest naturally was caused by the appearance recently, according to the *Law Gazette*, of two of the cloth on the grand jury at Bodmin, Cornwall. The sight seemed to have been new to the Cornish bar, as well as to the laity of both professions. We are always glad to see clergy taking advantage of their rights as citizens and assuming the duties pertaining to citizenship, and we have in our own city ministers and churches who insist on paying taxes, to say nothing of those clergymen who invariably exercise their franchise when election time comes round; but we are not accustomed in this country to seeing them in the jury-box, and we are surprised almost that they should wish to be members of that antiquated relic of the middle ages, a grand jury.

WE are requested to announce that a large and representative Committee of Benchers has been appointed to consider and report upon the subject of uncertificated conveyancers; this committee met a short time since, and Messrs. H. H. Strathy, Q.C., Barrie, and G. H. Watson, Q.C., Toronto, were appointed Chairman and Vice-Chairman respectively.

It is the intention of the committee to report to Convocation this month, and any suggestions that may be made in the meantime by members of the profession will be gladly received and considered. It will be necessary that such suggestions be sent to the chairman or vice-chairman not later than the tenth day of November, so that the same may be brought before the committee when its report upon this subject is being prepared. A perusal of the pages of this journal for many years past will, we think, give almost all that can be said on the subject, but it will be of material assistance to the committee to have the considered views of many members of the profession on the subject, and such communications are particularly requested.

IN the recent case of *Re Davis, Evans* v. *Moore*, 65 L.T. N.S. 128, we find that the English Court of Appeal (Lindley, Fry, and Lopes, L.JJ.) have come to a different conclusion to that arrived at by the Ontario Court of Appeal in *Cameron* v. *Campbell*, 7 Ont. App. 361. In the latter case, which was a suit against executors to recover a legacy, it may be remembered that the executors pleaded the Statute of Limitations, but the Court of Appeal agreed with Blake, V.C., in holding that as the money had been set apart to answer the trusts of the will, it thereby became impressed with a trust in the hands of the executors, and therefore the statute afforded no defence. The English Court of Appeal, on the other hand, though also admitting in a similar state of facts that a trust arises in respect of a legacy, yet holds that it is not an express trust, and therefore the statute may be set up as a defence to its recovery. The reasoning of the court is summed up in these words, which we extract from the judgment of Lindley, L.J.: "The Statute of Limitations excepts one class of trusts and one only, viz., express trusts, and this order [*i.e.*, an order made in an administration action which declared the executor entitled to a certain fund as representative of the testatrix's estate] no more declares an express trust than does the will. An implied trust will not do, for a legacy does not cease to be a legacy because it is coupled with some implied trust. In one sense an executor is always a trustee. But the Statute of Limitations cannot be got rid of by calling the executor a trustee, or by proving him to be a trustee. The only way of getting out of the Statute of Limitations is by proving an express trust." The English Court of Appeal holds that neither the assent of the executor to a legacy, nor the fact that an implied trust has arisen in regard to it, will prevent an executor setting up the statute.

UNITED STATES LEGISLATION.

At the annual meeting of the American Bar Association held at Boston, the President delivered the usual interesting opening address, in which he referred to the more important changes in the statute law of the Union and its various constituent States. So onerous does he find the task of a comprehensive and faithful research into the various "statutory" flights of the different States that he is driven to remark that no president of the Association can regret that he is ineligible for a second term; for, he says, the task involves "a review of a large part, perhaps the best part, of the history of the world since last we met, for where is history more truly written than in the legislation of the times, and what new field of legislation is entered upon in this age, in any quarter of the globe, that is not soon known and travelled in every other?"

He contrasts the requirements of the various States and territories, of which there are now forty-four of the former and six of the latter, "fifty distinct and for most purposes independent governments, each with a legislature expected and desirous to add something of value to the institutions of its people." "Something" each legislature undoubtedly does add, but not always of lasting "value."

The association has, by continued pressure brought to bear upon Congress, succeeded in having the salaries of the federal judiciary increased to some extent. It seems to have found that only a cheap article can be had at a low price, and therefore it prefers to make it more worth the while of the leading men at the bar to accept judicial positions. Here in Ontario, if we have been in any degree fortunate in procuring capable men to sit on the bench, is it not because the appointees think rather of the honor of the judicial position than of the meagre sum given them as compensation for assiduous and laborious work?

By a recent Act of Congress, owners of vessels are forbidden to advertise the advantages of the United States in order to procure passengers. This Act is the same one that has been so much canvassed of late in regard to its provision preventing the landing of those who cannot show that they will not be a charge on the public; and if they do so become a charge within a year, they will be sent back at the expense of the line that brought them. Recognizing the objection to the ocean mail service being controlled by Britain, Congress has authorized the subsidizing of mail steamers built in America.

The free exercise of the electoral franchise is ever before the citizen of the United States; consequently we find that within a year fifteen additional States have adopted the so-called Australian ballot system, making twenty-nine in all where it is in vogue.

Municipal affairs are not overlooked. Should any ten freeholders of the city of Cleveland so desire, an inspection without notice may be had of the affairs of any municipal department or officer, by three citizens to be appointed by the probate judge, and the result of their investigation is laid before the council at its next meeting. What a *furore* would be created if this were done in some cities we know—one, indeed, not far from our editorial chair. Does not Cleveland set us an example of a desire for a municipal purity which does not seem to pervade our Canadian cities to any very great extent?

A limit to the height of buildings in cities has been set by Massachusetts at one hundred and twenty-five feet. The Emperor Augustus ordained that no Roman house beside a public road should exceed seventy feet in height; so that even the restricted height is nearly double that allowed by the old Romans in the time of that Emperor and of Nero. Chicago has been emulating the Tower of Babel on a small scale by erecting houses twenty-three storeys high, and a house of thirty storeys is in contemplation. They are beginning to realize, however, that the city is built on a solid crust of only fifteen feet in thickness, below which is miry clay, and into this latter the enormous weight of building may sink. We have not, however, heard whether, for this reason, the attics of these houses command better renting figures than the ground floors. We are told there are to be earthquakes over the world in the latter days. We are not aware that Chicago is so far the antithes is of Sodom that it can hope to escape.

One State at least, Arkansas, believes in insurance companies paying their losses promptly, and, to encourage them to do this, requires them to give a bond in $20,000 with two resident sureties. In suits on policies the sureties may be joined as defendants and judgment rendered against both company and sureties.

Wisconsin follows the lead set by other States in protecting the family of a too charitably inclined testator, believing that "charity begins at home," and limits the amount he may thus will away to half his net estate.

No longer will whites and blacks be found riding together on railways in the States of Louisiana, Tennessee, and Texas, separate compartments being now required for each. A curious commentary, this, on the boasted liberty and equality of the country over which the eagle soars. In Arkansas, every telegraph station must, on its bulletin board, have noted all passenger trains that are as much as ten minutes late, and when they may be expected to arrive. Here, too, "baggage smashing" is not encouraged, since for any damage to baggage by rough or careless handling, the company must pay to the owner, in addition to his actual loss, from $25 to $200, as an encouragement to long-suffering travellers to vindicate their rights by suit.

Illinois has lowered the legal rate of interest to five per cent. In South Dakota, a contract to pay a debt in gold is illegal. In case of a repeal of the silver laws, these Dakotans will be in a bad plight.

In New Mexico, any one hundred inhabitants of a district may associate as a corporation to furnish a public reservoir, for which work the county must furnish the tools, and, when the work is finished, pay a fair rent for the right of the public to use the water. Next to pure water seems to come pure butter. Minnesota has the former in Lake Superior, and, in order to obtain the latter, requires that oleomargarine shall be placed at the disadvantage of being colored pink. The English sparrow pest has reached the Mormon territory, which now offers a bounty of half a cent for each one killed within it. Returning to business, we find that every Saturday in New Jersey has practically been made a bank holiday by paper maturing on that day not being due till the following Monday.

The legislatures are becoming very careful of the education of minors. Some

have already, and other legislatures now follow their lead in making it a misdemeanor to give or sell them cigarettes. The "Blue Laws" of Connecticut were rather more strict. They enacted "that no person under the age of twenty-one years, nor any other that hath not already accustomed himself to the use thereof shall take any tobacko, untill hee hath brought a certificate under the hands of some who are approved for knowledge and skill in physik that it is useful for him, and also that hee hath received a lycense from the court for the same." Some legislatures make it a penal offence for one to allow a minor to play at cards in his house without the written consent of his parent or guardian. Minnesota follows the good example of North Dakota and excludes any one under seventeen years of age from the court-room during criminal trials, and Arizona forbids the marriage of girls under sixteen, the limit of Russia and Italy. Every teacher in the public schools of Maine is required to spend not less than ten minutes weekly in instruction in the principles of kindness to birds and animals.

Those engaging in the business of furnishing abstracts of title to the soil of Wyoming must first provide themselves with complete abstracts of all the territory they propose to cover, and also give a $10,000 bond with which to indemnify misled purchasers. Minnesota has its eye on the Torrens system with a view to its adoption.

A judge in Nevada must literally earn his salary each month; for before he can draw it he must make an affidavit that no cause in his court remains undecided, since the trial of which ninety days have elapsed. California provides for a law library in each county by imposing a tax of one dollar on every civil action in the Superior Court. This is the more remarkable in that that State is the head centre and stronghold of the now celebrated and notorious "Farmers' Alliance," whose candidates for judgeships are absolutely ignorant of any law, and, as they profess to "do justice apart from the legal aspect of the case," we should not have supposed that a law library would have had any attraction for them, or have found favor in their eyes. They know less law than "Necessity," and have become a laughing-stock throughout the country. One of its protegés indeed, to whom we referred *ante* p. 208, has defied the Supreme Court of Kansas by setting aside its order in a foreclosure suit. To enforce his own order, he caused the arrest and imprisonment of the receiver of the property for contempt of court in obeying the order of the highest tribunal, and caused the arrest of the sheriff for releasing the receiver upon the writ of *habeas corpus* granted by the Supreme Court.

It all depends whose ox is gored. We are reminded of this fact by the action of this same legislature, which is controlled by the "Alliance." This legislature has requested Congress to pass a law giving any farmer the right to borrow from the United States (not from the State of California, oh no!), on mortgage at *two* per cent., such sums as he may desire, not exceeding $5,000, or *sixty* per cent. of the value of his farm. We are again reminded, this time of "Brother Tham" in "Lord Dundreary," who told Dundreary that he had bought a farm and then asked his brother to pay for it.

The belief in the uselessness of the grand jury system has pervaded the far west. By the constitution of South Dakota, adopted two years ago, the legislature is authorized to modify or abolish it; the legislature has accordingly reduced the number of jurors to six, of which five may find a true bill. The constitutions of Wyoming and Kentucky cut the grand jury down to twelve, and the former permits its abolition. In civil cases both the latter State and Arizona make nine petit jurors competent to return a verdict in civil cases.

A desire to observe the letter rather than the spirit of their constitutions is to be observed in many States. Several of these have a constitutional provision that no act shall take effect until it has been published throughout the State, in order that the citizens may first become familiar with it; but the same provision also enacts that "in case of emergency," or if the "public welfare requires," it may take effect at once. In Indiana one hundred and fifty-five out of two hundred of the acts of last session declare that that particular act is a "case of emergency," and consequently it goes into effect forthwith. In Tennessee, two hundred and thirty out of two hundred and sixty-five acts are thus instantly made law, one of which is to amend a township charter by inserting after the word "lot," in one place, "thence west four chains to a stake, thence north four and one-half chains to an oak tree, thence west three chains to a stake, thence north two chains to the corporation line at the coal chute," after which follows "Sec. 2. Be it further enacted that this act take effect from and after its passage, the *public welfare requiring it.*" Out of one hundred and eighteen acts of the Texas Legislature, one hundred and thirteen contained the "emergency clause."

Notwithstanding many of the vagaries and peculiarities of our neighbors mentioned above, we can glean a great deal of good from their legislative enactments, and the time of our House of Commons would be very much better employed in applying to our own country the more useful of their statutes than in bringing in a stereotyped form of "majority" and "minority" reports, which in many instances might equally well, except as to details, have been written before the first meeting of the committee.

MUSIC IN COURT.

"In every age and in every clime there are varieties of musical idiom which are unsympathetic, if not unintelligible, to other generations than those among whom they are first current; and, still more, the very principles that govern it have been and are so variously developed in different times and places that music which is delightful at one period or to one people is repugnant at another epoch or to a different community." Thus saith the Encyclopedia Britannica (*sub nom.*, Music).

'Tis well in reading the law to remember that there is music and music; music of the stars and music of more mundane performers.

Those who have heard the musical performances of public school children can sympathize with Mr. Webber, of La Porte, Ind. The school authorities in

that Hoosier town resolved that each pupil in the high school should employ a certain time in the study and practise of music and should get a music-book to use. Mr. W. told the superintendent that he did not believe it was for the best interest of his son to participate in the musical studies and exercises of the high school, and did not wish him to do so. The youth himself, more fearful of domestic than of scholastic punishment, declined to modulate his voice in unison with his fellows, and was suspended. The father went to law; but, like many another, paid heavily for the pleasure of seeing his name in the reports. The Supreme Court of the State held that a boy could be expelled for refusing to get a music-book and study and practise the art. (*State* v. *Webber*, 108 Ind., 31 S.C., 58 Am. Rep. 30.)

On the other hand, sometimes the courts will restrain music. In the *Albany Law Journal* (vol. 43, p. 21) we find these words: "A wild and enthusiastic amateur insisted upon practising the violoncello in his flat every day for eight hours. On Sundays he usually took an extra whack at it, so as to keep his elbows limber for the coming week. He was sued by a west-end swell in an adjoining flat, who declared in court that the violoncello 'hurt his feelings, until he was near dead.' There was a long array of counsel on both sides, and the court expressed the opinion that three hours a day was long enough for a human being to play on the violoncello." If we had been present when judgment was delivered in that case we would have said, as *amicus curiæ*, that when the celebrated fiddler Geàrdini was asked how long it would take to learn the violin, that virtuoso replied, "Twelve hours a day for twenty years!" and if that time for a small instrument like the violin, how long for a giant like the 'cello? Mr. Justice Kekewich considered it quite the thing to object to a steam-organ which played—worked, we believe, he called it—from six to ten every evening except Saturday, when it went a little longer (23 Can. L.J. 277).

Judge Stephen on one occasion remarked that under the London Acts a householder of that metropolis who does not like the music of the barrel-organ can order a performer on that well-known and easily played instrument to go away out of his hearing. In the case in which he made that remark his lordship was considering concertina playing. A member of the Salvation Army had got into trouble for a breach of a by-law in Truro, England, enacting that every person sounding or playing upon any musical instrument, or singing, or making any noise whatever, in any street or near any house in that borough, after having been required by any householder resident in that street or house, or by any policeman, to desist, etc., shall be punished if he does not. The judge thought there was nothing unreasonable in the law. While he considered it an act that no one would visit with severity, on the other hand it was an extreme annoyance to have a man playing under your window with a concertina for a couple of hours, and having a number of people to listen to it and sing; it might be a great nuisance. His lordship dared to say that there were many places where the performer could play his little instrument without getting into trouble (30 Alb. L.J. 281).

An English county court had to consider the case of an unfortunate builder

and contractor. He was busy out of doors all day long, and was wont at night, at home, to write his letters, make up his estimates, take out his quantities, and make intricate calculations requiring close mental application. He had no trouble with his work until the days of General Booth's revival; then the Army came to a building near by and with their "melodious din" so disturbed him that he made a number of serious mistakes. So to do right he had to wait until they ceased, and as the valiant soldiers were at it vigorously from 6 p.m. to 10 p.m or 11 p.m., with cornet, flute, harp, sackbut, psaltery, dulcimer, and all kinds of music—no, no, we mean with their cornets, tambourines, fifes, accordeons, and drums, shouts of "Amen!" and hallelujah choruses and stamping—if he waited until they left he had to sit up into the wee sma' hours, and thus lost much of his natural rest. The outside rabble by their conduct and their language added to the babel, or bedlam, sounds. The court enjoined this sort of thing, with one shilling damages (28 Alb. L.J. 322). How can one expect musical experts in a country where there are such judges!

On this side of the Atlantic we do better. Bella Nunn (as valiant a leader of armies as was the most illustrious member of her family) was convicted for beating a drum on a public street in London, Ont., contrary to a by-law of that city; but she was discharged by Rose, J., on appeal. The judge held that under 47 Vict. (O.), c. 32, s. 13, s-s. 12, the by-law was *ultra vires* in seeking to prohibit the beating of drums simply without evidence of the noise being unusual, or calculated to disturb the inhabitants. The evidence was of playing a drum, and his lordship asked, anxiously, "Am I judicially to know that beating a drum and playing a drum are the same?" (*Reg.* v. *Nunn*, 10 Ont. P.R. 395.)

The Supreme Court of Michigan held that an ordinance of the city of Grand Rapids, which provided that "no person or persons, association or organization, shall march, parade, ride, or drive, in or upon or through the public streets of the city, with musical instruments, banners, flags, torches, flambeaux, or while singing or shouting, without having first obtained the consent of the mayor or common council of the city," was unreasonable and invalid; and members of the Salvation Army who were arrested for having paraded contrary to the ordinance were discharged. The learned judge made the following remarks: "It has been customary from time immemorial, in all free countries, and in most civilized countries, for people who are assembled for common purposes to parade together, by day or reasonable hours at night, with banners and other paraphernalia, and with music of various kinds . . . These processions are a natural product and exponent of common aims, and valuable factors in furthering them." (*Frazee's* case, 35 Alb. L.J. 6.) In cultivated Boston, however, the cornet player in a Salvation Army was held to be an "itinerant musician" and so bound to take out a license before he blew, although he claimed that his playing was done as a matter of religious worship only, using for man's sins "antidotes of medicated music." (*Com.* v. *Plaisted*, 39 Alb. L.J. 237.)

The North Carolinian judge in the great case of *The State* v. *Linkhaw* (69 N.C. 214) would not stop the well-intentioned but laughter-stirring efforts of a worthy church member to worship God in a service of song. The judges in that

State are still musical and will not countenance the undue stoppage of harmonic exercises. A female prisoner (who doubtless had heard of Paul and Silas) refused to stop singing, although her performance greatly annoyed the sick wife of the jailer. The jailer cruelly and severely beat her with many stripes and a horsewhip. He was fined therefor $100, and the court held the amount was not excessive. (*State* v. *Roseman*, 43 Alb. L.J. 366.)

In the old days in Scotland people of any pretensions had to provide themselves with Psalm-books, just as nowadays schoolboys in Indiana have to get music-books. The statute passed in the sixth year of James VI. says "that all gentil-men, housholders, and uthers worth 300 marks of yeirly rent or above, and all substantious yeomen or burgesses, likewise housholders, esteemed worth 50 poundes in lands or gudes, be holden to have an Bible and Psalme buik in vulgar language in their houses, for the better instruction of themselves and their families in the knowledge of God, within year and day after the date heirof, ilk persone under the paine of X poundes" (chap. 72). But the clergy in Scotland in those days had no real love for music. Buckle gives us the following extract from the Registers of the Presbytery of Glasgow: "Sept. 22nd, 1649. The quhilk day the Sessionne caused mak this act, that ther sould be no pypers at brydels, and whoever sould have a pyper playing at their brydell on their marriage day sall lose their consigned money, and be farder punished as the Sessionne thinks fitt." Singing on New Year's Eve was forbidden by the church authorities in Aberdeen; no one could "give any meatt or drink to the songsteries or let theme within their house," and the singers were to be "put in prisonn." (Buckle's Hist. of Civil Law, vol. 3, c. 4.)

Sometimes there is music in court of a truth. Not long since, Mr. Henry E. Dixey, the comedian, applied to the Supreme Court of New York for an injunction to restrain some other fellow from singing a song which, he alleged, was an infringement of his copyright in "It's English, you know." The defendant's counsel wanted Mr. D. to sing the song, but Mr. D. evidently did not want to sing (probably he was too much impressed with the dignity of the court), and the judge said the words would be more satisfactory to him. Afterwards the leader of the Boston Museum Orchestra was called and sworn. He took his violin and played the tune, to the great relaxation of the facial muscles of the court and spectators. The other song, "Quite English," was then played by the witness, and the resemblance to the first was so close that all recognized it. The performer then gave "When the Band Begins to Play," but he did not think that there was much resemblance between this and the others (32 Alb. L.J. 241). Judge Taney once upon a time allowed a professional singer to be sworn (how ran the oath?) and to sing "The Old Arm Chair," and another song, over which the parties were contending, to the jury, and as evidence (Tyler's Life of Judge Taney, pp. 312-13); and in our favorite case of *State* v. *Linkhaw* (*v. sup.*) one of the witnesses, being asked to describe Brother Linkhaw's peculiar style of singing, rendered a verse in his voice and manner with such success that, as the reporter says, "it produced a burst of long and irresistible laughter, convulsing alike the spectators, the bar, the jury, and the court," and

doubtless went far to win the verdict of guilty. The general introduction of such exhibitions and performances in court would certainly be edifying and have the effect of keeping the jurors awake.

To a mind saturated with poesy, the word "minstrelsy" brings up notions of the minstrel infirm and old, his withered cheek and tresses gray, one who had known a better day (like Noah before he went into the ark), the harp, and the orphan boy staggering thereunder. It and the phrase, "entertainment of the stage," were thoroughly discussed by the Court of Appeals in New York, some five years ago, in an action brought by the mayor and council of New York city against Eden Musee American Co. (102 N.Y. 593). The defendants maintain an exhibition of wax-works, "not funny, but calm and classical," and charmed the ears of all beholders with the entrancing strains produced by the band of instrumental musicians known as "Prince Lichstenstein's Hungarian Gypsy Band," which gave concerts in a room or alcove opening into but above a large hall. The mayor wanted the company to take out a license, without which it is unlawful "to exhibit to the public in any building, garden or grounds, concert-room or other room in New York city, any interlude, tragedy, comedy, opera, ballet, play, farce, minstrelsy, or any other entertainment on the stage, etc., etc.," alleging that the music furnished was "minstrelsy." The counsel engaged hurled an immense amount of learning, antiquarian, legal, poetic, and dictionaretic, on the subject of minstrels and minstrelsy, at the court; the judges dodged it and did not decide the question of main interest to us, "What is minstrelsy?" but, saying that the word has a much wider meaning now than in days of old, held that the performance in question was "an entertainment of the stage," and that a license must be obtained.

We readily pass from minstrelsy to bards. According to the old Welsh laws, "the bard of the household" was a man of considerable importance, no mere musician, but, as Herr Klesmer said, "he helped to rule the nation and make the age as much as any other public man; he counted himself on level benches with legislators"; although by statute his harp was only worth six score pence and his tuning key twenty-four pence. He was the eighth of the fourteen individuals entitled to sit upon chairs in the palace of the king. He had his land free, and his horse: his linen clothing had to be supplied by the queen, and his woollen garments by her royal consort. He sat next to the chief of the household at the three principal feasts, and that functionary had to hand him his harp. When singing was in order, the chaired bard had to begin, and the law prescribed that his first song should be one of praise to God, the second one of praise to the king who owned the palace where the high revels were being held; but if there were no such monarch, then any king might be glorified. After this performance, the bard of the household had to sing three songs on various subjects. If the queen desired melody the bard of the household had to sing to her without limitation, but (fortunately for the non-musical) in a low voice, so that the hall might not be disturbed by him (Ven. C., B.I., c. 14). When he entered upon his duties he had a harp from the king and a gold ring from the queen, and it was against the law for him to part with his harp (Dim. C., B.I., c. 18). The

Venedotian Code only called for the gift of a throw-board, made of the bone of a sea animal, from the king.

The three Welsh codes vary somewhat as to the bard's share of spoils. The Venedotian says, "He is to have a cow, or an ox, from the booty obtained by the household from a border country after a third has gone to the king; and he is, when they share the spoil, to sing 'The Monarchy of Britain' to them." The Dimetian Code says: "If the bard of the household recite poetry, in the taking spoil with the king's household, he is to have the best animal of the spoil; and if there be preparation for battle, let him recite the song called 'The Monarchy of Britain' before them"; while the Gwentian says he is "to have a steer and a man's share," and at the time of fighting he was to sing "The Sovereignty of Britain" at the head of the household (Ven. C., B.I., c. 14; Dim. C., B.I., c. 18; Gwen. C., B.I., c. 19). The Chief of Song was another dignified officer whose duties were prescribed by the laws of Howel. He had a fee of twenty-four pennies as a bridal present from every maiden led to the altar; widows who perpetrated matrimony had nothing to pay for the music (Dim. C., B.I., c. 24).

R.W.R.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for September comprise (1891) 2 Q.B., pp. 369-512; (1891) P., pp. 301-322; and (1891) 2 Ch., pp. 605-708.

INFANT—APPRENTICESHIP DEED, ACTION TO ENFORCE—COVENANT OF INFANT TO PAY PREMIUM.

Walker v. *Everard* (1891), 2 Q.B. 369, was an action brought to recover payment of the balance of a premium due under a covenant in an apprenticeship deed made while the defendant was an infant. The defendant set up his infancy at the time of the making of the covenant as a bar to the action. The jury found that the deed was a provident and proper arrangement for the infant, and necessary if he wished to learn the business, and that the premium was fair and reasonable, and that the plaintiff had given the required instruction. Grantham, J., gave judgment for the plaintiff, and the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) upheld it, holding that the providing an infant with necessary instruction in business stands on the same footing as ordinary necessaries, and that he was therefore liable on his contract to pay for them; but that a bond or covenant given by an infant to pay for such instruction is not conclusive as to the consideration, which may be inquired into as if there had been no deed. That whether education in a trade or business is a "necessary" is a question of fact to be determined by the circumstances of the infant.

LANDLORD AND TENANT—FORFEITURE OF LEASE ON BANKRUPTCY OF LESSEE.

Smith v. *Gronow* (1891), 2 Q.B. 394, is a decision upon the construction of a lease, which contained the usual covenant on the part of the lessee not to assign or sublet without the consent of the lessor, and also a proviso for re-entry if "the lessee, his executors, administrators, or assigns, should become bankrupt." The

lessee assigned the term with the consent of the lessor, and subsequently became bankrupt, and the short point was, Did the proviso for the re-entry take effect? It is almost needless to say that Wright, J., had no difficulty in coming to the conclusion that the proviso referred only to the bankruptcy of the person who, for the time being, was possessed of the term, and that consequently no forfeiture had been incurred. Another question was raised but not determined, and that was, whether, assuming the bankruptcy had worked a forfeiture, would the subsequent annulment of the bankruptcy undo the forfeiture? The learned judge was inclined to the opinion that it would not.

LOCOMOTIVE ON HIGHWAY - LESSOR AND LESSEE OF CHATTEL—NEGLIGENCE OF LESSEE—OWNER OF VEHICLE, LIABILITY OF—MASTER AND SERVANT.

In *Smith* v. *Bailey* (1891), 2 Q.B. 403, the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) took occasion to disapprove of *Stables* v. *Eley*, 1 C. & P. 614, in which case, according to the report, it was held that if a man allows a carriage to go out with his name upon it, he holds himself out as liable to any person injured through the negligence of any person driving it. The court admitted there might be *primâ facie* such a liability, but it was one which was not conclusive, but might be rebutted by showing that the person whose name appeared on the vehicle was not the owner, or was otherwise not responsible for the driver. In this case the defendant was the owner of a traction engine on which his name was affixed, as required by the Locomotives Act, 1875, and had let it for three months for hire. While in the possession and control of the lessee, and through his negligent management of the engine, the plaintiff was injured; and it was held that the defendant was not liable for the injury.

BAILMENT—BAILOR AND BAILEE—LIABILITY OF BAILEE FOR NEGLIGENCE OF HIS SERVANT—MASTER AND SERVANT.

The *Coupé Company* v. *Maddick* (1891), 2 Q.B. 413, is a case of a kindred character to the preceding. In this instance the action was between the bailor and bailee of a horse and carriage. The defendant had hired a horse and carriage from the plaintiffs, and the defendant's coachman, in place of taking them, as was his duty, to the stable, drove for his own purposes in another direction, and while so doing the horse and carriage were injured through his negligent driving. The action was tried by a County Court judge, who thought the defendant was not liable, on the authority of *Storey* v. *Ashton*, L.R. 4 Q.B. 476; but the Divisional Court (Cave and Charles, JJ.) reversed his decision, pointing out very clearly the difference which exists in the liability of the hirer of a vehicle for injury done to a stranger, and an injury done to the thing bailed; for while he is not responsible for injuries done by his servant to third persons when the servant is not acting in the course of his employment as servant, he is nevertheless, by virtue of his contract with his bailor, bound to return the thing bailed in good order, and is therefore responsible for any injury done to it until he returns it. It is curious that there was no direct authority upon the point.

MARRIED WOMAN, CONTRACT BY—MARRIED WOMAN'S PROPERTY ACT, 1882—(45 & 46 VICT., C. 75) S. 1, SS. 2, 4—(R.S.O., C. 132, S. 3, SS. 2, 3, 4)—RESTRAINT ON ANTICIPATION—LIABILITY AFTER DEATH OF HUSBAND.

Pelton v. *Harrison* (1891), 2 Q.B. 422, still further exhibits the apparent futility of all legislative attempts to make a married woman's property liable for her contracts. In this case, a married woman who had separate property subject to a restraint on anticipation incurred a pecuniary liability. After her husband's death she was sued and judgment recovered against her in the form settled in *Scott* v. *Morley*, 20 Q.B.D. 120, and the question for the court was whether the property which had ceased to be subject to the restraint on anticipation by reason of the husband's death was now liable to satisfy the judgment? The Court of Appeal (Kay and Lopes, L.JJ.) decided that it was not. The *rationale* of the decision is that a married woman can, by her contract, only bind her separate estate which she has at the time of the contract, or afterwards acquires, which is not subject to restraint on anticipation; the property sought to be affected was not capable of being bound at the time of the contract because of the restraint on anticipation, and it was not separate property afterwards acquired, and therefore it was not liable. The reasoning appears to be perfectly sound, though we cannot help thinking that the real intention of the legislation has been defeated.

MANDAMUS TO MAGISTRATE TO STATE A CASE—CRIMINAL CAUSE OR MATTER.

In *Ex parte Schofield* (1891), 2 Q.B. 428, an attempt was made to appeal from a decision of a Divisional Court refusing to grant an order *nisi* for a mandamus to magistrates to compel them to state a case for the opinion of the court under the provision of the Public Health Act, 1875. The appeal was rejected on the ground that the proceeding was "a criminal cause or matter," and therefore not appealable.

VENDOR AND PURCHASER—SALE OF LAND—VENDOR IN POSSESSION PENDING CONTRACT, LIABILITY OF, FOR DAMAGES TO LAND—CLAIM FOR COMPENSATION AFTER COMPLETION.

Clarke v. *Ramuz* (1891), 2 Q.B. 456, throws light on the duties and liabilities of a vendor of land who remains in possession pending the completion of the contract of sale. In this case, pending the contract of sale, a trespasser entered and without the knowledge of the vendor or purchaser removed a quantity of the surface soil; the vendor had taken no precaution to protect the property. After the sale had been completed and conveyance made to the purchaser, the damage was discovered, and the present action was brought by the purchaser against the vendor to recover damages for the injury thus done to the land; and two questions arose—first, was the vendor liable at all; and, second, if liable before conveyance, had the delivery of the conveyance put an end to his liability? The case was tried by Grantham, J., with a jury, and judgment was given in favor of the plaintiff; and this judgment was affirmed by the Court of Appeal (Lord Coleridge, C.J., and Bowen and Kay, L.JJ.), the latter court holding that under such circumstances a vendor is a trustee for the purchaser, and bound to exercise reasonable diligence; that though the conveyance puts an end to all contractual

obligations between vendor and purchaser which are intended to be satisfied by the execution of the conveyance, it does not necessarily discharge a liability of this kind unless the circumstances of the case indicate that such was the intention of the parties.

MORTGAGEE—SUBSEQUENT LEASE BY MORTGAGOR—NOTICE TO ATTORN TO MORTGAGEE—POSSESSION BY TENANT AFTER NOTICE.

In *Towerson* v. *Jackson* (1891), 2 Q.B. 484, the circumstances under which a tenant of a mortgagee under a demise subsequent to the mortgage will become tenant to the mortgagee are discussed. The plaintiff endeavored to maintain that his remaining in possession after receiving notice from the mortgagee to pay his rent to him was sufficient; but the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) were clear that the mere continuance in possession of the tenant after the receipt of the notice is not conclusive evidence of the creation of a new tenancy between him and the mortgagee, and the decisions in *Brown* v. *Storey*, 1 M. & G. 117, and *Underhay* v. *Read*, 20 Q.B.D. 209, to the contrary, were held to be erroneous. In the present case the plaintiff had tendered the rent to the mortgagee, but the latter had refused to accept it unless the plaintiff agreed to terms of tenancy, which he declined to do. The court therefore held that no new tenancy had been created.

CONTRACT—IMPLIED COVENANT—AGREEMENT FOR SALE OF PRODUCTS OF BUSINESS—VOLUNTARY SALE OF BUSINESS.

In *Hamlyn* v. *Wood* (1891), 2 Q.B. 488, the plaintiff had agreed to buy and the defendants had agreed to sell, at a certain specified rate, the grains from the defendants' brewery for ten years. Before the ten years had elapsed, the defendants sold their brewery; and the present action was brought for breach of an alleged implied covenant, that the defendants would not during the ten years by any act of their own put it out of their power to continue the sale of grains to the plaintiff. Mathew, J., who tried the case, gave effect to the plaintiff's contention; but the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) reversed his decision, being of the opinion that such an implied contract only arises when it is necessary in order to carry out the presumed intention of the parties, and to prevent a failure of consideration for instance, if in the present case the defendants had paid down a sum for the grains for ten years, an implied agreement on the part of the defendants not to do anything to prevent themselves from supplying the grains during the ten years might (though the court even in that case do not say positively that it would) have arisen; but as in this case the grains were to be paid for as delivered, there was no such necessary implication as to the intention of the parties, nor any such failure of consideration as to warrant the court in holding there was any such implied agreement as claimed by the plaintiff.

INTERPLEADER ISSUE, JUDGMENT ON—INTERLOCUTORY ORDER.

In *McNair* v. *Audenshaw Paint Co.* (1891), 2 Q.B. 502, the Court of Appeal reaffirmed the opinion expressed in *McAndrew* v. *Barker*, 7 Ch.D. 701, that the order

made on the trial of an interpleader issue is an interlocutory and not a final order.

STATUTE OF LIMITATIONS (21 JAC. I.; C. 16, S. 3).

In *Reeves* v. *Butcher* (1891), 2 Q.B. 509, the sole question was whether the plaintiff was barred by the Statute of Limitations, 21 Jac. I., c. 16, s. 3. The action was to recover money lent under a written agreement, which recited an agreement for a loan for five years "subject to the power to call in the same at an earlier period in the events hereinafter mentioned." The defendant agreed to pay interest quarterly, and the plaintiff agreed not to call in the money for five years if the interest were regularly paid; and it was provided that if defendant should make default in payment of the interest for twenty-one days, the plaintiff might call in the principal. No interest was ever paid. The action was commenced within six years from the end of the period of five years. Day and Laurance, JJ., held that the action was barred, that the statute began to run from the earliest period at which the plaintiff could have sued for the money, viz., twenty-one days after the first quarter's interest fell due; and the Court of Appeal (Lindley, Fry, and Lopes, L.JJ.) affirmed the decision.

None of the cases in the Probate Division require to be noticed here.

EXPROPRIATION OF LAND—LEASEHOLD—PURCHASE MONEY, PAYMENT OF—REVERSIONER UNKNOWN.

Gedye v. *Commissioners of H. M. Works, etc.* (1891), 2 Ch. 630, though a case turning to some extent on the construction of an English statute authorizing the expropriation of land for public buildings, yet furnishes a principle for the construction of other statutes of a similar character, and is therefore proper to be noticed here. Certain land, of which the plaintiff was at the time in possession as lessee for an unexpired term, was expropriated for part of the site of the Royal Courts of Justice. The lease under which the plaintiff held was originally for 300 years, and comprised other lands, and the rental was £5 a year. The expropriation was made in 1866, and the term would expire in 1878. The plaintiff and his predecessor in title had paid no rent for many years, and it was unknown who the reversioner was; the value of the leasehold interest was fixed at £500, and paid to him, and the sum of £705, the value of the reversion, was paid into court for the party entitled; no claim had been made to it by the reversioner, and the plaintiff, as having been in possession when the expropriation was made, now claimed that the money should be paid out to him; but North, J., held that the lease not having expired at the time of the expropriation the plaintiff had never been in possession of the reversion at all so as to acquire any title against the reversioner; and in the absence of evidence to show that no rent had been paid by the tenants of the other property included in the original demise, there was no evidence that the reversioner had been barred prior to the expiration of the demise; and this opinion was confirmed by the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.).

WILL—CONSTRUCTION—GIFT OF INCOME DURING LIFE OR WIDOWHOOD—GIFT OF LEGACIES OUT OF FUND ON DEATH OF WIFE.

In re Tredwell, Jeffray v. *Tredwell* (1891), 2 Ch. 640, is a decision of the Court

of Appeal (Lindley, Bowen, and Kay, L.JJ.) overruling a judgment of North, J., upon the construction of a will. The point involved was a simple one: The testator had directed his trustees to pay the income of a fund to his wife during her life, or until she should marry again; and from and after her marrying again he directed them to pay an annuity of £2,000 during her life; and after her death he directed the trustees to pay certain legacies, all of which, though payment was postponed until his wife's death, he directed to be taken as vested on his own death. And the testator also gave £5,000 among such charitable institutions as his wife should by will appoint; and gave his residuary estate to three persons equally. The testator's wife survived him and married again; and the question for the court was whether the payment of the legacies was thereby accelerated. North, J., held that it was; but the Court of Appeal considered that as there was no ambiguity in the words of the gift, and no doubt appearing on the will as to the testator's intention, the legacies payable at the death of the widow could not be paid before the happening of that event; and the principle of construction established by *Jones* v. *Westcomb*, 1 Eq. C. Ab. 245, was held not to be applicable.

POWER—RELEASE—TENANT FOR LIFE—RELEASE OF POWER BY TENANT FOR LIFE FOR HIS OWN BENEFIT—DECLARATION OF RIGHT BY COURT.

In re Radcliffe, *Radcliffe* v. *Bewes* (1891), 2. Ch. 662, was a summary application to the court to obtain a declaration of right and an order on trustees to transfer a fund to the applicant. The applicant was tenant for life under his marriage settlement, and had power to appoint the trust fund among the children of the marriage. In default of appointment the fund was to be held in trust for the children in equal shares, to be vested interests at twenty-one or marriage. The only issue of the marriage were three sons, one of whom died in infancy. The other two attained twenty-one, and one had died unmarried and intestate after the death of his mother. The applicant was administrator of this son's estate, and had executed a deed absolutely releasing his power of appointment, and had called on the trustee to transfer to him a moiety of the trust funds, which they refusing to do, the present application was made, praying a declaration that he was in the events which had happened entitled to half the fund, and for an order on the trustees to transfer it to him. North, J., though of opinion that the applicant was entitled to the fund as claimed by him, yet considered that the court could not actively assist him to obtain possession of it, and the application was accordingly refused.

WILL—GENERAL POWER OF APPOINTMENT—EXERCISE OF POWER BY GENERAL DEVISE—POWER OF REVOCATION AND NEW APPOINTMENT—WILLS ACT (1 VICT., C. 26), S. 27—(R.S.O., C. 109, S. 29).

In re Brace, *Welch* v. *Colt* (1891), 2 Ch. 671, a testator having a general power of appointment by deed or will had before making his will duly exercised the power by deed, in which, however, he reserved a power of revocation and new appointment. In his will he made a general devise of his real estate; and the

question for the decision of North, J., was whether this had the effect of revoking the previous appointment, so that under the Wills Act, s. 27 (R.S.O., c. 109, s. 29), the land in question would pass under the general devise as being a new appointment This question, North, J., determined in the negative. At page 675 he says, "Wherever there has been a complete appointment under a power, an appointment which entirely disposes of the property, you must get rid of that appointment in some way or other before any further appointment can be made"; and he held that the mere making of a general devise of the property in a subsequent will could not be construed as a revocation of an appointment previously made.

Notes on Exchanges and Legal Scrap Book.

ESTATE BY ENTIRETY—DIVORCE.—An estate by the entirety is converted by absolute divorce into a tenancy in common (*Stelz* v. *Shreck*, N.Y. Court of Appeals, October, 1891).

ACCIDENT INSURANCE—INJURY BY CARELESSNESS.—The deceased, while running towards an approaching train to get the mail bags, stumbled and fell against a moving engine. In an action to recover under a policy of insurance which contained a clause insuring against death or other injury resulting from "external violence and accidental means," it was held that the plaintiff could recover; that the efficient and proximate cause of the death was the accident, and that the injury was not caused by a voluntary exposure to unnecessary danger, which was one of the exceptions not covered by the policy. In this case the court said (*Equitable Accident Insurance Co.* v. *Osborne*, 9 *Southern Reporter* 869): "Exceptions of this kind are construed most strongly against the insurer, and liberally in favor of the insured. This is now the settled rule for construing all kinds of insurance policies, rendered necessary, especially in modern times, to circumvent the ingenuity of the insurance companies in so framing contracts of this kind as to make the exceptions unfairly devour the whole policy."

NOTICE REQUISITE IN WEEKLY TENANCIES.—Notice always has reference to the letting. Thus in a letting from week to week a clear week's notice, expiring on the day the rent becomes due, will be sufficient. That is the rule laid down in a popular text-book for every one. It does not seem, however, to have been followed in a recent case at Stockport, where a blacksmith was in the employment of a railway contractor who was constructing a railway, and occupied one of the huts provided for the convenience of the workmen. Plaintiff's tenancy began on a Thursday. The site of the hut being required for the erection of a station, notice was given on a Saturday to the plaintiff requiring him to give up

possession on or before the following Saturday. Believing he should have notice from Thursday to Thursday, plaintiff remained in the house over the Saturday, and on the Monday defendant proceeded to take off the roof, and, of course, plaintiff questioned his right of interference. His advocate sought to show that the notice must expire at the end of a week, dating from the commencement of the tenancy, although it might not be necessary to give a full week's notice. His honor, however, said he had very carefully considered the case of *Jones* v. *Mills*, which was the authority, and found that the judges did not entirely agree. One said a week's notice was necessary, but this was contested by two other judges, and the only thing definitely settled was that in a weekly tenancy there must be some reasonable notice. He held, therefore, that the notice in this case was a reasonable notice, and gave judgment for defendant.—*Irish Law Times.*

LAW SCHOOLS AND LEGAL EDUCATION.—President Elliot, of Harvard, says: "It is hard for you and me to realize what a prodigious change has taken place in this country in regard to a legal education since the days of Judge Story and his associates. It is only sixty-two years ago, and yet I think we may say that the methods of legal education in the United States have been revolutionized in that short period. The Harvard school really had been in existence for a dozen years, but chiefly as a school where a few young men came in contact with a teacher of law as a private pupil does with his teacher. It took Judge Story ten years to get as many as eighty-seven students in the law school, and it was by far the largest school in the United States, and, there were very few of them anywhere else, only two or three in the whole country; and as it is now, there are fifty law schools in the United States, all of them connected with universities; almost all of them really connected, but few nominally in connection with universities. But the old-fashioned mode of studying law has almost completely disappeared from the United States, just as the old-fashioned mode of studying medicine has completely disappeared. But in medicine this great change came earlier, nearly forty years earlier, and we have now practically abandoned the English method of preparing for the bar. There are 4,000 students now in the law schools of the United States. They are all university law schools, just as in France and Germany. This change has come about slowly, and perhaps is not wholly accomplished; and yet it is one of the greatest revolutions that has ever taken place in American institutions."

LIABILITY OF RESTAURANT KEEPER.—In the City of London Court, on Sept. 2nd, before Judge Kerr, in the case of *Baggs* v. *Hodgson*, an important question was raised affecting the liability of restaurant proprietors for the loss of their customers' property. The defendant was the owner of the Raglan Hotel, Aldersgate Street, and the plaintiff (according to his solicitor's statement) went there to take his lunch. While there the defendant's wife, who assisted him in the business, asked the plaintiff to let her move his coat from where he had placed

it behind the chair to some other place which would be more convenient, and make room for other customers who had come in. The plaintiff demurred to that being done, but the request was repeated, and then he allowed his coat to be moved. The defendant's wife hung the coat up, but afterwards it could not be found. It had been stolen, and the plaintiff therefore asked to be recompensed for the loss he had sustained. The question turned on the relationship existing between the plaintiff and the defendant, and whether they stood in the position of guest and innkeeper. The defendant's solicitor said the defendant's establishment was a restaurant. On the question of law the defendant could not possibly be held liable for the loss of the plaintiff's overcoat. His honor said the plaintiff did not go as guest to an innkeeper. He went for his lunch, and that was all the difference. The law gave the plaintiff no remedy for the loss he had suffered. There must be judgment for the defendant, with costs. The above decision is rather incomprehensible. It certainly could not be sustained under our law, and we may refer to the analogous case of *Bunnell* v. *Stern*, before the New York Court of Appeals, to show that in New York State a different conclusion was arrived at. In *Bunnell* v. *Stern* a customer took off her wrap in a shop in order to try on a cloak, and it was held that the shopkeeper was responsible for the wrap. The court remarked: "Under the circumstances, we think it became the defendants' duty to exercise some care for the plaintiff's cloak, because she had laid it aside upon their invitation, and with their knowledge, and without question or notice from them, had put it in the only place that she could (on the counter)." The above appears in the Montreal *Legal News* for August 29th. We feel that it is incumbent upon us to congratulate our contemporary on its enterprise in noting a decision of an English court three days before the case was even tried. As it is improbable that the report came by cable, the feat is all the more remarkable.

JUDICIAL NEPOTISM.—On the subject of judicial nepotism, a contributor writes to the *Law Times*: "In Ireland the late Sir Michael O'Loghlen, who held the office of Master of the Rolls, absolutely forced his son (afterwards Sir Colman O'Loghlen, Q.C., M.P.) to practise before him. Sir Michael O'Loghlen, when at the Irish Bar in the earlier decades of the present century, had some experience of the great scandal entailed by such a system in the administration of justice. When Mr. O'Grady, Chief Baron of the Irish Court of Exchequer, and afterwards Viscount Guillamore, was on the bench, his son specialised his father's court. A brief to move a motion of course in the Exchequer was sent to a Mr. Cooper, afterwards one of the Benchers of the Irish Bar. The motion was refused by the Chief Baron, whereupon Mr. Cooper returned brief and fee to the solicitor with the request that he should send them to Mr. O'Grady, who next morning moved the motion, which was immediately granted by his father, the Lord Chief Baron. 'Why, my Lord,' said Mr. Cooper, who was in court, 'your Lordship refused to grant this motion when I moved it yesterday morning?' 'But, Mr. Cooper,' said the Chief Baron unabashed, 'you must admit

that Mr. O'Grady put the case in a different light.' 'Oh,' said Mr. Cooper, *sotto voce*, 'I presume in the light of the sun (son).' When the late Incumbered Estates Court in Ireland was first established about forty years ago, the practice in the court of one of the commissioners was virtually monopolised by his son and his son-in-law, who were retained on opposite sides to balance the judge's favor. It is very questionable whether in the long run judges' sons themselves benefit by practising before their fathers. More than one instance could be cited in which a thoroughly competent barrister, whose practice was almost exclusively confined to his father's court, lost that practice on the retirement of the judge on whose favor he was supposed to have a lien. The men who gave him briefs, not from confidence in his learning and ability, but from the fact of his having a near relative on the bench, abandoned him on the retirement of his supposed patron—a clumsy and cruel method of atoning for their own loss of self-respect in having originally employed him."

LEGAL PROFESSION IN THE BRITISH COLONIES.—Lawyers in the colonies do not find matters so easy as is reasonable, considering that there are local laws. In Canada the professions of barrister and solicitor are generally combined, and legal firms usually consist of a partnership in which one of the members devotes himself to advocacy. In Ontario a barrister belonging to an English inn has no further examination to pass, but a solicitor must serve under contract for a year with a local solicitor. In Quebec all lawyers are called advocates, and no one can practise without having passed the local examination; and further, as the law is mostly French, its practice necessitates a knowledge of the French language. In Manitoba an examination has to be passed in local law, though there is a clause in the local Act which seems to repeal this necessity as to the local knowledge in the case of barristers. In the North-west Territories a British qualification is held to be sufficient, but in British Columbia a local examination and residence are essential, except in the case of such as hold the degree of B.C.L. or LL.B. In Prince Edward Island a lawyer must have at least a year's residence in the colony, and submit to examination in local law if the authorities think fit. In New Brunswick the solicitor must have served a local solicitor for a year. In Nova Scotia a barrister can practise with a British qualification only, but a solicitor must pass an examination after serving a clerkship of four years. In New South Wales a barrister of a British inn is admitted without examination on a motion made in court in that behalf, and a solicitor from the old country can practise without examination after a residence of three months. In Victoria the conditions are the same, and application must be made to the court in the same way. The call fee for barristers is fifty guineas; for solicitors the admission fee is forty guineas. In South Australia the fee in both cases is ten guineas, and a three months' residence is all that is necessary. In Queensland the fee is also ten guineas, and there is no distinction between barristers and solicitors, the only peculiar condition being that the applicant must have two householders as a reference and advertise his application in the newspapers. In

Western Australia a lawyer must reside for at least six months in the colony, and then give four months' notice of his intention to apply for permission to practise. The fee is £10. In Tasmania all that is necessary is for the candidate to pay twenty guineas. In New Zealand the candidate must pass an examination in law, including the law of New Zealand in so far as it differs from the law of England; but should he be fortunate enough to be an LL.B., his examination will consist only of matters concerning the local law. In the South African colonies no examinations are needful; in fact, nothing is required with a British qualification but fees."—*Law Journal.*

Reviews and Notices of Books.

The Liquor License Act of the Province of Ontario and Amending Acts, with an Appendix of Forms. By His Honor J. S. Sinclair, Judge of the County Court of the County of Wentworth, and Edwin Ernest Seager, Barrister-at-law. Hamilton: *Times* Printing Company, 1891.

The book before us is a valuable adjunct to works already published on these acts, and will be of much use to students desiring to know how far the Ontario Legislature has progressed in framing laws which, no doubt, have for their object the eradication of the vice of intemperance from our province.

In the framing of all the acts of our parliament, men of ripe experience give their patient aid to put down abuses and correct errors which have been overlooked in the passing of previous statutes. But very generally the opinions of those who are ripe in experience as to the remedies required have been sacrificed (as in the case of the Ontario License Act) to the opinions of those who have a grand theory, which, like the Keeley motor, will not work successfully.

The acts and the notes of the commentator are before us. The marginal notes show what care the commentator has taken and what labor he has bestowed upon his work, and how well he has endeavored to release from the ambiguities of this and preceding acts passed for the same purpose the conflicting enactments which are bristling on the face of every page. He traces back the different acts passed in the cause of putting down illegal traffic in liquor, and the different decisions which have been made by our courts. It will be a pleasure to the student to note how the old Crooks Act has been improved upon, and how from time to time the legislature has fought to carry out what should be the true principles of legislation in the cause of temperance.

The typography of the work reflects credit upon the publisher; and to those who make the work a study, we can say, with Sheridan, "you shall see a beautiful page, where a neat rivulet of text shall meander through a meadow of margin."

No work that has been published, treating of these acts, gives so much information as the one before us; and the reader, whether he be magis-

trate, judge, or practitioner, will derive much benefit from a careful study of the premises set out, for on them he can form a sensible conclusion, even should that conclusion be at variance with that of the learned commentator.

We regret to see that Judge Sinclair falls foul of another learned commentator —the late R. A. Harrison, C.J.Q.B., and alleges that that learned commentator has overlooked in his commentaries certain legal decisions. He has not spoken unkindly of the late Chief Justice, nor do we now speak unkindly of Judge Sinclair when we say that in dealing with the competency of witnesses under this and amending acts he has lost sight altogether of the Canada Temperance Act, R.S.C., c. 106, s. 114; the amending Act of 57 Vict., c. 34, s. 13, which have made the defendants in liquor cases, and their wives, competent but not compellable witnesses.

Regina v. *Roddy* and other cases in our own courts, and latterly a recent decision of Judge Rose, *Regina* v. *Hart*, have decided that liquor cases are *quasi* criminal, and that the Ontario Evidence Act does not apply. The Ontario Legislature having no power to deal with evidence in criminal cases, it was necessary that Dominion legislation should be invoked to give to the defendant and his wife the privilege of giving evidence. The first-named act made them *competent* and *compellable* witnesses, while the latter act struck out the words *and compellable*, and yet reserved their competency should they choose to give evidence.

Those who are prepared to draw conclusions for themselves without becoming *case* lawyers will find the work of great use, as it meets to a certain extent an *obiter dictum* of the late Sir William Buell Richards—it would take a lawyer all his time to watch the vagaries of the Ontario Legislature so that he could give an intelligent opinion, and such care should not be expected from a judge unless the special provisions of the statutes are clearly placed before him.

Correspondence.

APPOINTMENT OF COUNTY JUDGES.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—"Lex" enquires in your last issue if it would "not be better to appoint County Court judges outside of the local bar"—who can doubt that it would?

It has always seemed to the writer that appointments from the local bar were most objectionable, and that only the necessities of politics, which can justify almost anything, have upheld them. Every one will admit that those appointed to administer justice should bring to the position minds as far as possible unbiased by fear, favor, or affection—by interest, enmity, or prejudice. How can the local practitioner when appointed do this? In nine cases out of ten he is a politician who thus receives his reward. We all know the rancor of

local politics and its results. Then, if a practitioner of long standing has acted for litigants at deadly enmity, he necessarily has received and dealt hard blows, and has become imbued with the strong feelings, be they friendship or animosity, which these engender. Often, too, he has had a partner, and more often still the ties of consanguinity or relationship are present to unbalance his mind. With these disturbing influences to warp his judgment, it is not in human nature to resist them entirely, and do evenhanded justice; and so litigants benefit or suffer in consequence.

It is embalmed in the pages of Gibbon that the Romans secured as far as possible the impartial administration of justice by appointing to the office of judge strangers to those amongst whom they were to dispense justice. Our legislators cannot too soon inaugurate the same system. The evils of the present system are intensified and intolerable, because, practically, there is no redress. It is in the Division Court, where the County Court judge reigns practically supreme, that these evils are most apparent. If the litigant unfortunately fails to secure the "judge's lawyer" (for such monstrosities exist), or has been obnoxious to the judge in the past, or is opposed by a favorite or friend of his honor, why he gets justice (?); and in such cases a poor man suffers beyond hope of redress. The sooner a new departure is made, as regards the appointment of County Court judges, the better, is the unqualified opinion, based upon experience, of

A COUNTRY SOLICITOR.

October, 1891.

[We shall be glad to hear from others of our readers. Our correspondent puts his case well and strongly, and his views are shared by many others. —ED. L.J.]

DIARY FOR NOVEMBER.

1. Sun.....*23rd Sunday after Trinity.* All Saints' Day.
2. Mon.....O'Connor, J., Q.B., died 1887.
3. Tues.....1st Intermediate Examination.
5. Thur.....2nd Intermediate Examination. Sir John Colborne, Lieut.-Governor U.C., 1838.
7. Sat.....Battle of Pippecanoe, 1811.
8. Sun.....*24th Sunday after Trinity.*
9. Mon.....Prince of Wales born, 1841.
10. Tues.....Court of Appeal sits. Solicitors' Exam.
11. Wed.....Barristers' Examination. Annual Fees to Law Society. Battle of Chrysler's Farm, 1813.
12. Thur.....J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868.
13. Fri.....A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Sat.....Falconbridge, J., Q.B.D., 1887.
15. Sun.....*25th Sunday after Trinity.* M. C. Cameron, J., Q.B., 1878.
16. Mon.....Michaelmas Term begins. H.C.J., Q.B.D., and C.P.D. Sittings begin.
19. Thur.....J. D. Armour, 14th C.J. of Q.B., 1887. Thos. Galt, C.J., C.P.D., 1887
21. Sat.....J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
22. Sun.....*26th Sunday after Trinity.*
24. Tues.....Battle of Fort Duquesne, 1758.
25. Wed.....Marquis of Lorne, Governor-General, 1878.
27. Fri.....Frontenac died at Quebec, 1698.
29. Sun.....*1st Sunday in Advent.*
30. Mon.....St. Andrew's Day. Thos. Moss, C.J. of Appeal, 1877. Street, J., Q.B.D., and MacMahon, J., C.P.D., 1887.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[May 13, 1890.

HEWARD *v.* O'DONOHOE.

Limitations—Possession—Caretaker.

The defendant was placed in possession of certain property as caretaker by one tenant in common, who was managing the piece of property in question and other property for the benefit of himself and his co-tenants. In 1866 a decree was made declaring that this co-tenant was a trustee for himself and the other co-tenants in certain proportions, and he was ordered to convey to the other co-tenants their shares, to be ascertained by the Master. Various proceedings were taken under the decree and the shares of the different co-tenants were ascertained, the property in question being allotted to the plaintiffs, but no conveyances were executed. An order vesting the share of the plaintiffs in them was made in 1888.

Held [HAGARTY, C.J.O., dissenting], that the effect of the decree and the ascertainment of the shares was to sever the interests in the property, and that from that time the possession of the defendant became adverse to that of the plaintiffs, who could not, after that time, contend that he was in possession as their caretaker, and therefore that he had acquired a title by possession.

Judgment of ROSE, J., reversed.

J. Reeve for the appellant.

Osler, Q.C., and *A. MacMurchy*, for the respondents.

Reversed in the Supreme Court of Canada.

[May 13, 1890.

BRANTFORD, WATERLOO & LAKE ERIE RAILWAY *v.* HUFFMAN.

Bond—Condition—Breach—Damages.

The defendant, in response to an advertisement by the plaintiffs, sent in a tender for the construction by him of certain works. His tender was defective in that it was not executed by any sureties as directed by the advertisement and was not accompanied by a deposit. The tender was not accepted, but negotiations took place between the plaintiffs and the defendant in connection with it, and the defendant signed a bond conditioned to, within four days, furnish the sureties and make the deposit and execute all proper and necessary agreements for the doing of the work in question. The terms of the contract had not been settled between the parties. The defendant did not within four days furnish sureties or make a deposit or sign any agreement, and no agreements were within that time tendered to him for execution.

Held [BURTON, J.A., dissenting], that it was the duty of the plaintiffs to prepare the agreements and tender them to the defendant for execution, and that as they had not done this there was no default on the part of the defendant of which they could complain and no liability for damages.

Judgment of ARMOUR, C.J., affirmed.

[Sept. 15.

MCCAFFREY *v.* MCCAFFREY.

Voluntary conveyance—Undue influence—Confidential and fiduciary relationship—Husband and wife.

A voluntary conveyance by a husband to his wife, a woman of good business ability and

having great influence over him, of a large portion of his property, executed at a time when his physical and mental condition were greatly impaired, was set aside.

The doctrine of undue influence and fiduciary relationship discussed.

Judgment of ROSE, J., reversed, HAGARTY, C.J.O., dissenting.

McTavish, Q.C., for the appellant.

Hogg, Q.C., for the respondent.

[Sept. 15.

MARTIN *v.* MCMULLEN.

Principal and surety — Guarantee — Floating balance — Ultimate balance — Bankruptcy and insolvency — Dividends.

The plaintiff's testator gave a guarantee in the following form: "In consideration of the goods sold by you on credit to M., and of any further goods which you may sell to M. upon credit during the next twelve months from date, I hereby undertake to guarantee you against all loss in respect of such goods so sold or to be sold, provided I shall not be called on in any event to pay a greater amount than $2,500."

Held [OSLER, J.A., dissenting], that this was a guarantee to secure an ultimate balance and that, M. having made an assignment for the benefit of creditors, the plaintiff could not rank on his estate in respect of the $2,500 paid under the guarantee.

Judgment of the Queen's Bench Division, 20 O.R. 251, reversed, and that of STREET, J., at the trial, 19 O.R. 230, restored.

Gibbons, Q.C., for the appellants.

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

[Sept. 23.

IN RE LOCAL OPTION ACT.

Liquor License Act — Local option — Sale by wholesale — Sale by retail — 53 Vict., c. 56, s. 18 (O.) — 54 Vict., c. 46, s. 1 (O.).

Section 18 of 53 Vict., c. 56 (O.), allowing, under certain conditions, municipalities to pass by-laws for prohibiting the sale of spirituous liquors, is *intra vires* the Ontario Legislature, as is also s. 1 of 54 Vict., c. 46, which explains it, but the prohibition can only extend to sale by retail.

A by-law omitting to provide a penalty for its violation is not necessarily bad.

Irving, Q.C., and *J. J. Maclaren*, Q.C., for the Attorney-General for Ontario.

E. R. Cameron, *W. H. Blake*, and *E. E. A. Du Vernet*, *contra*.

HIGH COURT OF JUSTICE.

Chancery Division.

MACMAHON, J.] [Aug. 15.

DUNCAN *v.* CANADIAN PACIFIC RAILWAY.

Railways and railway companies — Horses killed — Property on adjoining premises — 53 Vict., c. 28, s. 2 (D.) — Words — By-law of municipality.

Three horses got upon the defendant's line of railway from adjoining premises, where they had no right to be, and were killed. In an action for damages for their loss,

Held, following *Davis v. Canadian Pacific Railway*, 12 A.R. 724, that the words "under the circumstances it might properly be" in 53 Vict., c. 28, s. 2 (D.), mean "it might lawfully be," and that as the horses were not on the adjoining premises with the consent of the owner or occupant they were not "lawfully" there.

Held, also, that although the owner did not object to their being there, still as there was no by-law of the municipality permitting them to run at large, they could not be held to have been properly there, and the action was dismissed with costs.

Delamere, Q.C., and *Boyce*, for plaintiff.

Watson, Q.C., and *A. MacMurchy*, for defendants.

BOYD, C.] [Oct. 3.

RE UNION FIRE INSURANCE CO.
MCCORD'S CASE

Winding-up Acts — Contributories — Transfer of shares, object of — Knowledge of by transferor — Transfer of liability.

McC., manager of a company, purchased certain shares from C. for the purpose of cancellation and paid for them with money supplied by the company, but took the transfer to himself as "manager in trust." The shares remained in that position until the company was put into liquidation under the Winding-up Acts, when the Master placed McC. upon the list of contributories as a shareholder.

Held, on an appeal, that knowledge on the part of C. that the transfer was being made to a nominee of the company would have vitiated the transfer, but as there was no evidence of any such knowledge, and as the transfer was made for a consideration paid to the "manager in trust" with no notice of the character in which he was to hold the shares, there was a valid transfer which would relieve the first holder and impose (as against creditors) liability on the transferee.

E. F. B. Johnston, Q.C., for the appeal.

Hilton, contra.

Practice.

Court of Appeal.] [Jan. 14, 1890.

IN RE O'DONOHOE, A SOLICITOR.

Solicitor and client—Præcipe order for taxation of bill and accounting—Jurisdiction of taxing officer under—Inquiry relating to bills not referred.

By an order obtained upon præcipe a certain bill of costs was referred to taxation, and the taxing officer was directed to take an account of all sums of money received by the solicitor of or on account of the applicants.

Under this the taxing officer taxed the bill and took an account of the moneys received by the solicitor, and in so doing inquired into and determined the validity of a disputed agreement in the nature of a compromise relating to some older bills of costs not referred to taxation, but which the solicitor claimed should be allowed at their face value against moneys received by him, and which the applicants claimed should be allowed only at the amount settled by the disputed agreement.

Held, *per* HAGARTY, C.J.O., and BURTON, J.A., that the officer had no jurisdiction under the order to determine the validity of the agreement.

Per OSLER and MACLENNAN, JJ.A., that he had jurisdiction.

The Court being divided, the decisions of ARMOUR, C.J., and the Common Pleas Divisional Court, 12 P.R. 612, were affirmed.

The solicitor, appellant in person.

W. M. Douglas, contra.

MACLENNAN, J.A.] [Sept. 25.

RE NORTH BRUCE DOMINION ELECTION PETITION.

MUIR *v.* MCNEILL.

Election petition—Time for filing—After office hours—Solar time.

Motion by the petitioner to disallow the preliminary objection to the petition filed by the respondent. The objection was that the petition was filed after office hours on the last day for filing it.

M. G. Cameron for the petitioner.

McCarthy, Q.C., for the respondent.

MACLENNAN, J.A. I am of opinion that the preliminary objection must be disallowed. I think the rule as to the keeping the offices of the court open from ten to three, or from ten to four, as the case may be, is merely directory and for the guidance of the officials, and does not forbid them to keep their offices open to a later hour, if they think fit, or if the business requires it. See *Rolker* v. *Fuller*, 10 U.C.Q.B. 477. This petition, therefore, was in time, the office being still open, and the petition having been received by the officer, although it was after three o'clock. . . . I am, moreover, of opinion that the petition was in time in any view of the Act and the rule. It was received by the officer as of that day, and Mr. Cameron, who filed it, swears that it was then not so much as a quarter past three by the public clocks. . . . The officer's act in receiving and filing the petition on that day and granting a certificate of the fact must be upheld, unless displaced by clear and satisfactory evidence. It is common knowledge that the time kept by the public clocks in Toronto is standard time, and that standard time is seventeen and one-half minutes faster than solar time. . . . That being so, the petition was in reality filed before three o'clock, and was in time according to the strictest construction of the rule. There can be no doubt that upon a question like this a party has the right to insist, in the absence of legislation or a rule of court, that solar time should govern ; *Curtis* v. *Marsh*, 3 H. and N. 866.

The objection will be disallowed with costs.

Notes of United States Cases.

VERMONT CIRCUIT COURT.

[July 9.

FIRST NATIONAL BANK OF PLATTSBURGH *v.* SOWLES ET AL.

Bank directors—Liability for representations.

Defendants, as directors, during a run on their bank, posted conspicuously in the bank a notice, signed by them, and addressed to the general public, representing the bank to be solvent. Plaintiff saw the notice, and, after consultation with the directors, loaned the bank money, which was lost.

Held, that the notice, not being addressed to the plaintiff, could not entitle him to recover from the directors, under R.L. Vt., s. 983, which provides that no action shall be brought to charge any person upon a representation concerning the credit of another, unless such representation is in writing, and signed by the party to be charged; and the fact that the notice was signed by defendants as directors would prevent a recovery from them individually, even if the notice were a sufficient representation in writing.

Such representation in writing cannot be aided by evidence of additional verbal representations.

Appointments to Office.

QUEEN'S BENCH JUDGES.

Province of Quebec.

Jean Blanchet, of the City of Quebec, in the Province of Quebec, Esquire, one of Her Majesty's Counsel learned in the law; to be a Puisné Judge of the Court of Queen's Bench in and for the Province of Quebec, *vice* the Honorable Ulric Joseph Tessier, resigned.

SUPERIOR COURT JUDGES.

Province of Quebec.

Charles J. Doherty, of the City of Montreal, in the Province of Quebec, Esquire, one of Her Majesty's Counsel learned in the Law; to be a Puisné Judge of the Superior Court in and for the Province of Quebec, *vice* the Honorable Marcus Doherty, resigned.

ADMIRALTY JUDGES.

District of New Brunswick.

The Honorable William Henry Tuck, one of the Justices of the Supreme Court of the Province of New Brunswick, to be a Local Judge in Admiralty of the Exchequer Court in and for the Admiralty District of New Brunswick.

COUNTY COURT JUDGES.

County of Essex.

Michael Andrew McHugh, of the Town of Windsor, in the Province of Ontario, Esquire, and of Osgoode Hall, Barrister-at-Law, to be a Junior Judge of the County Court of the County of Essex, in the Province of Ontario.

Michael Andrew McHugh, Esquire, Junior Judge of the County Court of the County of Essex, in the Province of Ontario; to be a Local Judge of the High Court of Justice for Ontario.

County of St. John, N.B.

Benjamin Lester Peters, of the City of St. John, in the Province of New Brunswick, Esquire, one of Her Majesty's Counsel learned in the law; to be the Judge of the County Court of the County of St. John, in the said Province of New Brunswick, *vice* His Honor Charles Watters, deceased.

REGISTRARS OF DEEDS.

County of Waterloo.

Isaac Master, of the Township of Wilmot, in the County of Waterloo, Esquire, to be Registrar of Deeds in and for the said county of Waterloo, in the room and stead of Dougall McDougall, Esquire, resigned.

County of Welland.

James E. Morin, of the Village of Ridgeway, in the County of Welland, Merchant, to be Registrar of Deeds in and for the said County of Welland, in the room and stead of Dexter D'Everardo, Esquire, deceased.

POLICE MAGISTRATES.

Village of Port Dalhousie.

Robert Patterson, of the Village of Port Dalhousie, in the County of Lincoln, Esquire, to be Police Magistrate in and for the said Village of Port Dalhousie, without salary.

Village of Waterford.

Nelson Green, of the Village of Waterford, in the County of Norfolk, Esquire, to be Police

Magistrate, without salary, in and for the said village of Waterford, in the room and stead of Eugene Hutchinson Long, Esquire, removed to Detroit.

COUNTY ATTORNEYS AND CLERKS OF THE PEACE.

County of Frontenac.

John Lanyon Whiting, of the City of Kingston, in the County of Frontenac, Esquire, Barrister-at-Law, to be County Crown Attorney and Clerk of the Peace, in and for the said county of Frontenac, in the room and stead of Byron Moffatt Britton, Esquire, appointed Referee under the Drainage Act.

County of Middlesex.

Angus Graham, of the Village of Dorchester, in the County of Middlesex, Esquire, M.D., to be an Associate Coroner in and for the said County of Middlesex.

CORONERS.

County of Ontario.

Richard Martin Bateman, of the Village of Pickering, in the County of Ontario, Esquire, M.D., C.M., to be an Associate Coroner in and for the said County of Ontario, in the room and stead of James Rea, Esquire, M.D., resigned.

County of Oxford.

William Ferguson Dickson, of the Town of Ingersoll, in the County of Oxford, Esquire, M.D., to be an Associate-Coroner within and for the said county of Oxford.

County of Simcoe.

John Alfred McGregor, of the Village of Thornton, in the County of Simcoe, Esquire, M.D., to be an Associate-Coroner within and for the said county of Simcoe.

DIVISION COURT CLERKS.

County of Lennox and Addington.

Joseph B. Allison, of the Township of Adolphustown, in the County of Lennox and Addington, Gentleman, to be Clerk of the Third Division Court of the said County of Lennox and Addington, in the room and stead of J. J. Watson, deceased.

DIVISION COURT BAILIFFS.

District of Nipissing.

Charles Lamarche, of the Village of Mattawa, in the District of Nipissing, to be Bailiff of the Third Division Court of the said District of Nipissing, in the room and stead of Wesley Colman, removed.

District of Parry Sound.

James Coff, of the Village of Byng Inlet, in the District of Parry Sound, to be a Bailiff of the First Division Court, at Byng Inlet, in the room and stead of Parpetus Boileau, resigned.

Counties of Stormont, Dundas, and Glengarry.

John Donald McDougald, of the Village of Alexandria, in the County of Glengarry, one of the United Counties of Stormont, Dundas, and Glengarry, to be Bailiff of the Second and Twelfth Division Courts of the said United Counties of Stormont, Dundas, and Glengarry, in the room and stead of Colin A. McLaurin, resigned.

County of Welland.

Charles E. Bradshaw, of the Township of Wainfleet, in the County of Welland, to be Bailiff of the Second Division Court of the said County of Welland, in the room and stead of Elston Priestman, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

County of Lancaster (England).

John Broadfield Parkinson, of the City of Manchester, in the County of Lancaster, England, Gentleman, Solicitor of the Supreme Court, to be a Commissioner for taking affidavits in the said City of Manchester, and in the said County of Lancaster, and not elsewhere, for use in the Courts of Ontario.

Law Students' Department.

EXAMINATION BEFORE TRINITY TERM: 1891.

CALL.

Criminal Law and Evidence.

Examiner: A. W. AYTOUN-FINLAY.

1. Distinguish between a civil injury and a crime.

2. How far is the mere attempt to commit a crime an offence cognisable in law?

3. What are the different degrees or classes of insanity recognised in law?

4. May a wife prosecute her husband, or give evidence against him, upon a prosecution for a personal libel upon herself?

State the reason of your answer.

5. A pickpocket *(a)* puts his hand into the pocket of A., and draws her purse almost out, but it falls back into her pocket; *(b)* he cuts

the loop by which A. is carrying her purse suspended from her hand, and, catching the purse as it falls, runs away with it; *(c)* the loop is cut as in the last case, but the purse falls to the ground and the pickpocket runs away without it.

Of what technical offence is he guilty in each case?

6. What are the circumstances under which the evidence of a person desirous of becoming an approver is receivable?

7. Where witnesses have been ordered out of court, and one of them has, notwithstanding, remained in court, how far is it within the discretion of the judge to permit him to be examined?

8. What are the different ways in which a person may become a competent witness as to the handwriting of another?

9. How far is a solicitor entitled to insist upon privilege regarding communications between himself and his client, the latter not insisting upon their privileged character?

10. To what extent is a protest of a bill of exchange or promissory note evidence of the allegation contained therein?

Equity.

Examiner: A. W. AYTOUN-FINLAY.

1. What is the nature of an action of foreclosure?

2. A., not the sole beneficial owner, pays the premium to keep up a policy of life assurance. In what cases is he entitled to a lien on the policy or its proceeds?

3. A settlor, by a perfect deed, assigns all his personal estate with a power of attorney.

Will this pass a promissory note which is not endorsed and therefore not current?

State reason of your answer.

4. An estate charged with the payment of certain sums of money to be raised by mortgage is devised to trustees.

The trustees find that they can, on much more advantageous terms, sell the estate or a portion of it.

(a) May they sell?

(b) Has the court jurisdiction to permit such sale?

5. A., resident of Ontario, is agent for B., resident in England, under a power of attorney, to collect certain moneys and hold them upon trust.

How far is A. a trustee?

Can he plead the Statute of Limitations in an action brought against him by B.?

Blackstone: Theobold on Wills, the Statute Law and Pleading and Practice.

Examiner: M. G. CAMERON.

1. A. makes a will on the first day of June, 1891, and makes another one on the second of June, 1891, and subsequently makes a codicil to his last will which he refers to in the codicil as having been made on the first day of June, 1891. What effect will the codicil have upon A.'s wills?

2. A testator bequeathes certain property to B. for life, with remainder for her children, C. and D., and by a codicil all gifts in favor of A. are revoked. In what respect, if at all, are the rights of B.'s children affected? Explain.

3. A. after making certain dispositions of his property gives the remainder thereof to B. and makes C. his residuary legatee. What interest will C. take under the will?

4. A. agrees with B. that if a gift be made to him and to C. he will apply it to certain trusts that are defined by them. C. knows nothing whatever of the agreement. B. does not make the gift to A. and C. on the faith of the promise made by A. In what way, if at all, is C. affected by the promise? Explain.

5. When must a defendant serve a notice of his appearance upon the plaintiff's solicitor?

6. A solicitor for the plaintiff enters the action for trial on the 10th of May. On the 11th he gives notice of a trial for the 22nd of May. Is that a good notice? Explain.

7. When may a writ of summons be served substitutionally?

8. Within what time must actions be entered for trial? If the action be not entered in time, what steps should be taken by the party desiring to enter?

9. A. executes an indenture of lease of certain property in favor of B. for five years. The lease is dated 1st April, 1886. The rent reserved thereunder, due the 1st April, 1887, is not paid on 1st May, 1887, and on that day A. commences proceedings to recover possession. What must be shown in order to succeed?

Dart on Vendors and Purchasers.

Examiner: M. G. CAMERON.

1. A., an infant, is the owner of a parcel of land, which he contracts to sell to B. A. rep-

resents to B. that he has attained his majority. B. knows that this is not true, although A. is not aware that he is possessed of this knowledge. Is B. entitled to enforce the contract? Explain.

2. A., the vendor, knowing that a nuisance existed which rendered his house unfit for a residence, employed B. as his agent to dispose of it for him without mentioning to him the nuisance. B. entered into negotiations with C. for the lease of the property, and upon being asked by C. if any objection to the house existed replied in the negative. C. discovered the existence of the nuisance and refused to take the house, whereupon A. brought an action against him for breach of the agreement. Can he succeed? Explain.

3. A., the owner of a parcel of land, offers it for sale by public auction; B., a stranger, attends the sale and, intending to deceive, represents to C., who becomes the purchaser at such sale, that the property is worth $5,000, although he is aware that it is only worth $5,000. Has C. any remedy against B.? If so, what must he prove in order to recover?

4. A. enters into an agreement with B. to sell to him a farm; he describes it as "all my farm of 200 acres," and the price is fixed on that supposition; but it afterwards turns out to be 250 acres. Can A. compel B. to reconvey the farm or pay the difference in the value? Give a reason for your answer.

5. A. purchases from B. a building lot, and enters into restrictive covenants with him; prior to the sale from B. to A., B. had sold to C., D., and E. certain lots, a portion of the same estate, and they had entered into restrictive covenants with B. and *inter se*, and B. had permitted, without interference, material breaches of the covenant to be committed by C. and D.; the same description of covenants were entered into by A.; A. commits a breach of these covenants. Can B. succeed in an action against A. to enforce such covenants? Explain.

Contracts—Common Law.

Examiner: F. J. JOSEPH.

1. A. holds B.'s overdue note for $1,000, bearing ten per cent. interest; A. undertakes to give B. six months longer time to pay it provided he (B.) pays it with the same rate of interest. Is this a binding agreement? Why?

2. Can a manager of an unincorporated society bring an action against a member of the society for overdue fees?

3. Is an agreement to furnish evidence respecting a matter in dispute between third parties on consideration of sharing in the property recovered a binding contract?

4. Is it lawful for a solicitor to undertake a suit upon the understanding that in the event of his being successful he is to have a percentage of the amount recovered; or that he is not to receive any costs if he is unsuccessful?

5. When is it necessary and when is it unnecessary to prove special damage in an action on slander?

6. What must be proved in order to sustain an indictment for robbery?

7. A. directs a constable to arrest B. for larceny. In an action by B. against A. for false imprisonment, what must A. prove to justify the arrest? If A. had caused the arrest to be made under a warrant, what would B. have to prove to obtain a verdict?

8. What are the requirements of an acceptance for honor supra protest?

9. Mention the cases where it is necessary to present a bill for acceptance in order to render liable any party to the bill; and when is such presentation excused?

10. What are the five powers incident to every corporation aggregate, and which of them are unnecessary to a corporation sole?

Common Law, etc.

(Honors)

Examiner: F. J. JOSEPH.

1. A. on behalf of an unknown principal sells goods to B. B. can easily find out whether A. was acting for himself or not. A.'s principal sues B. for the price of the goods. Can B. set-off an overdue note he has of A.'s against the principal's claim?

2. Can a deed be rectified on oral evidence?

3. In what cases does a representation (not fraudulent) which induces a contract, and is not true in fact, affect the validity or operation of a contract?

4. A. purchases 20,000 bushels of wheat from B., for which B. sends him a bill of lading. On delivery A. finds a shortage of 5000 bushels, and in fact 15,000 bushels was all that was shipped. In an action against the master of the vessel, to what extent would the production of the bill of lading be evidence against him?

5. What bills require to be protested? Is there any practical benefit to be derived from protesting bills that do not require to be protested?

6. An executor of an acceptor of a bill verbally promised to pay the holder out of his own estate provided he would forbear to sue for six months. On the faith of this promise the holder did not sue for six months; was the endorser discharged?

7. What is the effect of registering a mechanic's lien on a leasehold or on land mortgaged previous to the registration of the lien?

8. To what extent is a husband liable for the torts of his wife committed before and after marriage?

9. Discuss the following:—A, with a child in her arms, in alighting from a train, while it is in motion, falls, and the child's arm is broken. The parent of the child sues the company. The company pleads the contributory negligence of A.

10. In what respect do bills which affect the revenue differ from other parliamentary bills?

EXAMINATION QUESTIONS.

(Selected from those set for admission to the Illinois Bar.)

Corporation Law.

1. (*a*) What is a corporation and how is it created? (*b*) Name some of the features in which a business corporation differs from a co-partnership.

2. (*a*) What is an eleemosynary corporation? (*a*) What is a municipal corporation?

3. (*a*) When is an act of a corporation said to be *ultra vires?* (*b*) What is the rule of law as to the responsibility of a corporation for the acts of its agents?

4. (*a*) State whether or not the officers or directors of an ordinary business corporation have an implied authority to make a *bona fide* sale of the entire assets of the company and to wind up the company's business. (*b*) Can a majority of the stockholders do so against the protest of the minority?

5. (*a*) What are dividends? (*b*) Will a court of equity at the suit of a stockholder compel the directors of a corporation to declare dividends? If so, when?

6. (*a*) What is a common carrier; and how does it differ from a private carrier?

(*b*) Under which head does an express company belong?

7. In what ways may a corporation be dissolved?

Equity.

1. (*a*) Name three of the general maxims of equity. (*b*) Explain briefly what is meant by the maxim that "equity follows the law."

2. (*a*) Explain what is meant by equitable estoppel. (*b*) State generally the law of notice.

3. (*a*) How does an express trust differ from an implied one? (*b*) To what measure of diligence do courts of equity hold trustees in their care of trust property? (*c*) State briefly what you understand by the doctrine of equitable conversion. (*d*) What do you mean by precatory words in a will?

4. What is a guardian *ad litem?*

5. Can an infant or insane person be made defendant in an action?

Common Law.

1. (*a*) Explain the difference between actions *ex contractu* and actions *ex delicto.* (*b*) Give the different kinds of each.

2. In case of breach of contract by "The County Wood and Water Co.," a corporation in which the sole stockholders are John Hewer, James Drawer, and Charles Seller, in an action for such breach would you sue the corporation or the stockholders, or both?

3. (*a*) Give a definition of the term "evidence." (*b*) What is the difference between primary and secondary evidence? (*c*) Briefly state the difference between presumptions of law and presumptions of fact.

4. (*a*) Explain what you understand by burden of proof. (*b*) What class of communications are privileged from disclosure in evidence? (*c*) What is meant by *res gestæ?*

5. (*a*) State the difference between patent and latent ambiguities. (*b*) Is parol evidence admissible to explain either kind, and, if so, which?

Real Property—Wills.

1. Give a short statement of how land was held under the feudal system.

2. Define an estate in fee simple. What word was necessary to create such an estate at common law in conveying by deed?

3. What is an estate tail? In what ways were such estates barred? Do such estates exist here?

4. What is an estate for life? In what estates was the tenant liable for waste?

5. At common law, what interest did the husband acquire in the real property of his wife? Define estate by curtesy. What are the requisites of estate by curtesy? Does it exist here?

6. Define dower. How can same be barred during coverture? What was the widow's quarantine? How is the value of dower determined? Is dower barred by jointure? What is jointure?

7. Define an estate for years. What are the principal covenants in a lease? When is estate of lessee said to become merged?

8. Define joint tenancy, tenancy in common, tenancy in coparcenary, tenancy in entirety. Give incidents of each.

9. What is partition and how may it be made?

10. What is estate upon condition? Give an illustration of conditions precedent and subsequent in such an estate?

11. What is a mortgage, and how can same be foreclosed? What estate may be mortgaged?

12. What is equity of redemption? Who should be made parties in foreclosure proceedings?

13. What is a resulting use? Give example. What is an executory devise? Give illustration.

14. What are the requisites of a valid will? Make a short draft of a last will and testament, including attestation clause.

15. What is livery of seisin? Is it required now?

16. What are the essential parts of a deed?

COUNSEL FOR THE DEFENCE: "Of course the crime of arson should be severely punished; but I would ask the honorable judge and jury to bear in mind that my client knew in what a splendid state of perfection the fire department of the village was."—*Ex.*

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