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WE notice in the *Irish Times* of November 6th an event which must have been as gratifying to the gentleman principally concerned as it is interesting to his many friends in this country. The *Times* thus refers to the incident :—"Yesterday, at the sitting of the Court of Chancery, an unusual and interesting ceremony took place in the special honorary call to the Bar, by the Lord Chancellor, of a distinguished Irishman, who has been staying for an interval amongst us, from the Canadian Dominion. The Benchers will be commended by every member of the profession, and the public will cordially endorse their action for conferring such an honour upon the Hon. Senator Gowan. As we have said, Judge Gowan is a native of Ireland, and ranks high amongst the numerous body of able men who have risen to eminence in the Colonies." After referring to Mr. Gowan's services, the article proceeds :—"We have no doubt that Senator Gowan very highly appreciates the honour done to him in associating him in fellowship with the Bar of his native country, and he will return to his high duties in Canada with, we should hope, a pleasing recollection of the hospitality shown to him, and the gratified consciousness that his abilities and character are known and appreciated alike by the legal profession in Ireland, and by his countrymen generally." The learned Senator's connection with this JOURNAL in years past makes it a pleasant task to us to call attention to this compliment to one who has been so useful to his country in his day and generation.

PRIORITIES UNDER THE REGISTRY ACT.

The decision of the Court of Appeal in the case of *Maclennan* v. *Gray*, 16 App. R. 244, in which the Court was unanimous in overruling the judgment of the learned Chancellor, is one deserving the attention of the profession. The facts of the case were a little peculiar, and it was admitted that no precedent could be found on either side; the adjudication, therefore, confessedly proceeds by reference to the general principles of law bearing on the subject, a process, we may observe, by which so much of our law has been developed.

A testator died entitled to a parcel of land which, subject to an annuity to his widow, he devised to his sons Richard and John, the widow being also entitled to dower therein.

In March, 1879, Richard and John mortgaged the land to Coughlin, to secure $700. The widow knew of the making of this mortgage, but refused to join in it.

In November, 1879, Richard and John mortgaged to Maclennan for $4,000, and in this mortgage the widow joined as surety for her sons, receiving no benefit from the money raised.

Maclennan registered his mortgage prior to Coughlin's, and without notice of it, and thereby gained priority over it.

Subsequently, under proceedings had under the Maclennan mortgage, the lands were sold, and realized $7,500. After payment of Maclennan's claim, $1,612 remained in court, and the question for the Court was, whether Coughlin or the widow were entitled to it. The Chancellor decided in favour of the widow, but the Court of Appeal have awarded Coughlin priority. First of all they say that the priority gained by Maclennan under the Registry Act did not enure to the benefit of the widow, as she was not a purchaser or mortgagee for value; nor was she entitled to that priority by virtue of her being surety for the mortgagor, because the doctrine of subrogation could not be invoked, to defeat the honest claims, and superior equities of third persons.

When we come to consider the legal effect of Coughlin's mortgage, it is clear that it was effective merely to convey the estate of the two mortgagors, John and Richard. It did not affect the widow's dower. All the estate, therefore, he acquired in the land was an estate subject to dower.

Maclennan, on the other hand, acquired an interest as mortgagee which included the estates of John and Richard and also that of the widow. By prior registration he acquired priority over Coughlin's mortgage as regards the estates of John and Richard, but as regards the estate of the widow, he was entitled to priority as regards that, entirely apart from any question of registration.

The land being sold produces $7,500, and the master finds that the value of the widow's dower in the property is equal to $1,162, which is the amount which remains over and above what is sufficient to satisfy Maclennan's claim.

Now it must be borne in mind that what has been sold is not merely John and Richard's interest which was the subject of the mortgage to Coughlin, but the widow's dower also, to which Coughlin had no claim, and at first sight it might appear that, the mortgage having been satisfied out of the principal's estate, what remained must necessarily be attributable to the amount realized from the widow's dower, more especially as the amount of the value of the dower and the amount of the surplus coincided. But more careful consideration will, we think, lead to the conclusion (as the Court of Appeal have, in fact, determined) that Coughlin had a superior equity to the money, to the extent of his claim. Because, when the widow joined in the mortgage to Maclennan she knew that the principals had previously mortgaged their estate, and had the transaction been carried out as she contemplated, or may reasonably be supposed to have contemplated, when she joined in the Maclennan mortgage, it is quite clear that the estate of her principals would have had to make good the Coughlin mortgage, before it could have been applicable to pay the Maclennan mortgage. The decision of the Court of Appeal virtually places

the widow in the position in which she contracted to stand, and of which she cannot reasonably complain.

The question of priority involved in this case was a nice one, and, as we have already said, ungoverned by any decided case, and we think the Court of Appeal has, by a sound application of principles, successfully solved the difficulty.

BREACH OF PROMISE OF MARRIAGE.

Is the use by the woman of coarse, obscene, and profane language and her indulgence in profane swearing, a justification of the refusal to marry? This question would be answered by most persons in the affirmative. The contract is for companionship for the life of the contracting parties, and one might reasonably suppose that conduct which would render the woman undesirable as a companion and unfit for the duties of wife and mother, would *ex necessitate* justify a refusal to marry. If promises to marry are to give a right of action one would think that the contract should be treated, so far as conduct is concerned, as one requiring the utmost good faith; and that non-disclosure and subsequent discovery of infirmities of temper and disposition, and impurity and coarseness of language would be a good defence to an action for breach of the engagement. The Court of Appeal, as will appear, has put a limited construction on chastity, or the lack of chastity, as a defence, and restricts it to want of bodily purity. Profane cursing and swearing is evidence of a depraved taste as well as of a disregard for moral propriety, and even if chastity be restricted to mean bodily impurity, evidence of the habitual use of profanity and obscene language surely ought to be admitted as a bar to the action as well as in mitigation of damages. It is a matter of common knowledge that looseness of language usually accompanies looseness of morals.

In *Grant* v. *Cornock*, *infra* page 603, the Court of Appeal, following the English decisions on the point, and affirming the judgment of the Queen's Bench Division, 16 O.R. 406, answered the above question in the negative. In this case it was alleged as a defence to the action that the defendant was justified in terminating the engagement and in refusing to marry the plaintiff by reason of the conduct of the plaintiff, who on several occasions fell into violent fits of rage with the defendant and used coarse, obscene, and profane language to others and in public places, and sang obscene songs, and that the plaintiff became and was addicted to the habit of profane swearing, and indulged in such language on the public streets. The judge at the trial refused to admit evidence on this ground of defence, and his ruling was upheld by the Queen's Bench Divisional Court. Armour, C.J., in his judgment said, "I am of opinion that these paragraphs do not set up any justification in law for the breach by the defendant of his promise to marry the plaintiff, and that therefore evidence tendered in support of them was rightly rejected. The discussion and decisions in *Hall* v. *Wright*, E.B. & E. 746, *Beachey* v. *Brown*, E.B.& E., 796, and *Baker* v *Cartwright*, 10 C.B.N.S. 124, show that the misconduct in the woman which will alone justify the breach of

his promise by the man must amount to want of chastity, and such want of chastity is not set up in these paragraphs."

Street, J., concurred with the Chief Justice on this point. "The next ground is that the defendant was justified in refusing to carry out his contract to marry the plaintiff. This ground shortly raises the question of law as to what misconduct on the part of the woman will justify the man in breaking off a contract to marry her. I have looked carefully into the authorities cited to us, and many others, both English and American, and it appears to me to be the plain result of them that the only conduct on the part of the woman occurring after the engagement which will justify the man in refusing to carry it out is a breach of the implied condition that she will preserve her bodily chastity. The evidence set up under which the defendant justifies his refusal to marry the plaintiff, falls short of alleging any breach of this condition, and the evidence certainly did not go beyond the statement of defence. No proof was given or attempted to be given of any improper intimacy with any one, and I am of opinion, therefore, that the justification attempted to be set up was insufficient, even had it been fully proved, to entitle the defendant to refuse to carry out his promise. See *Beachy* v. *Brown*, *supra*, *Hall* v. *Wright*, *supra*, *Baker* v. *Cartwright*, *supra*, *Berry* v. *Bakeman*, 44 Maine 164, *Kniffen* v. *McConnell*, 30 N.Y. 285."

Falconbridge, J., dissented from the other members of the court on this point, and remarks at page 417: "I desire to guard myself against being understood to concur in the opinion that the 4th and 5th paragraphs of the statements of defence are bad in law. I do not find it unequivocally laid down in the English cases that want of sexual purity is the only cause which will justify a breach of promise of marriage. I do not regard the discussions in *Hall* v. *Wright* and *Beachey* v. *Brown* as amounting to that, although I am free to admit that Erle, C. J., in *Baker* v. *Cartwright*, 106 B.N.S., at page 125 seems to assume that they do. I prefer to think that the 'chastity' referred to is not merely freedom from unlawful sexual commerce, but freedom from obscenity or impurity in language or conversation."

The English authorities cited in support of the decision of the court certainly do not amount to more than a mere discussion (to use the language of Falconbridge, J.) of what is implied in the contract to marry. The point in *Hall* v. *Wright* may be briefly stated to be "Is the continuance of health, that is, of such a state of health as makes it impossible to marry, an implied condition of the contract to marry?" The Court of Exchequer Chamber decided by four to three that it is not, the Court of Queen's Bench having been equally divided. The decision itself is so much against the tendency of the later cases that it is now of little importance beyond the point actually decided, which for the obvious reasons indicated in some of the judgments is not at all likely to recur (*vide* Pollock on Contract, Bl. Ed. 376). In *Beachey* v. *Brown* it was held that the non-disclosure of a prior subsisting engagement to marry another was no defence to an action for breach of promise to marry; and in *Baker* v. *Cartwright* that it is no answer that the plaintiff had, before the making of the promise, been of unsound mind, and had been confined in a lunatic asylum, provided she was sane at the time of

the promise. In the last case Erle, C.J., held, following *Beachey* v. *Brown*, that the want of chastity is the only exception implied in the contract to marry. But after an attentive perusal of *Beachey* v. *Brown* it cannot safely be stated that any absolute rule was laid down therein on the point in question. The point, however, is settled, for the present, for this province, by the decision in *Grant* v. *Cornock*, in which it is held by the Appellate Court that want of bodily chastity is the only justification for the breach of promise to marry, and that the use by the woman of coarse, obscene, and profane language, and her indulgence in profane swearing, would not justify the refusal to marry. It would be more in accord with justice and common sense if the decision had been to the contrary.

PRESUMPTION OF DEATH.

A good example of how judges, in administering the law and fitting it to the ever-changing combination of facts that come before them, must legislate incidentally and in a subsidiary way is shown in the origin of the rule as to presumption of death of a person who has been absent for seven years and not heard of by those who would naturally have heard if he had been alive. In our own courts the leading case on the subject is *Doe d. Hagerman* v. *Strong et al.*, 4 U.C.R. 510, affirmed in 8 U.C.R. 291. In that case it was proved at the trial in 1847 that A. was last seen in the province in December, 1827, and was never afterwards heard of. A *fi. fa.* against A.'s land was placed in the sheriff's hands on the 13th of July, 1833, tested the 29th of June, 1833. The heir of A. brought ejectment against the purchaser at the sheriff's sale, under an execution against A., and attempted to recover upon the ground that, after 22 years had elapsed since A. was last heard of, the presumption that he did not die till the expiration of the seventh year was at an end; that defendant must show that he did not die till after the seventh year; and that the jury should be directed to find whether he did or did not die within the seven years. It was, however, held that the proper direction was that at the end of seven years the fact of death was to be presumed, and not sooner, unless there was some evidence affecting the probability of life continuing so long, and also that the plaintiff, not the defendant, must show when A. died. On the same point the following cases may be referred to: *Doe d. Arnold* v. *Auldjo*, 5 U.C.R. 171, and *Giles* v. *Morrow*, 1 O.R. 527. We cite the following remarks on the origin of the rule from an able article in the November number of the *Harvard Law Review*, on Presumptions and the Law of Evidence:—The rule of presumption is that a person shall, in the absence of evidence to the contrary, be taken to be dead, when he has been absent for seven years and not heard from by those who would naturally have heard, if he had been alive. This is a modern rule. It is not at all modern to infer death from a long absence; the recent thing is the fixing of a time of seven years, and putting this into a rule. The faint beginning of it as a common-law rule, and one of general application in all questions of life and death, is found, so far as our recorded cases show, in *Doe d. George* v. *Jesson* *

* 6 East, 80.

(January, 1805). Long before this time, in 1604, the "Bigamy Act" of James I.* had exempted from the sc ,e of its provisions, and so from the situation and punishment of a felon, (1) those persons who had married a second time when the first spouse had been beyond the seas for seven years, and (2) those whose spouse had been absent for seven years, although not beyond the seas—"the one of them not knowing the other to be living within that time." This statute did not treat matters altogether as if the absent party were dead; it did not validate the second marriage in either case. It simply exempted a party from the statutory penalty. Again, in 1667, the statute of 19 Car. II., c. 6, "for Redresse of Inconveniences by want of Proofe of the Deceases of Persons beyond the Seas or absenting themselves, upon whose Life Estates doe depend," had provided, in the case of estates and leases depending upon the life of a person who should go beyond the seas, or otherwise absent himself within the kingdom for seven years that where the lessor or reversioner should bring an action to recover the estate, the person thus absenting himself should "be accounted as naturally dead," if there should be no "sufficient and evident proof of the life," and that the judge should "direct the jury to give their verdict as if the person . . . . were dead." But if the absent party should not really have died, provision was made for a subsequent recovery by him. The effect of this statute, then, was to end, in a specific class of cases, all inquiring into evidence, by a certain assumption; or, as it is called, by a presumption. The rule fixes, for the purpose of a particular inquiry, the effect of specified facts; absence for seven years, unheard of, is, as regards this particular inquiry, to be accounted as being the same thing as death; it is its legal equivalent. Now, subsequently, similar cases may have been brought within "the equity" of the statute, as Chief Justice Holt, in 1692,† is reported to have "held that a remainder-man was within the equity of that law;" but we hear of no suggestion of a general seven-year rule such as we have now, before 1805.‡ In the case of *Doe d. George* v. *Jesson*,‖ the Court of King's Bench —on a rule for a new trial, in an action of ejectment, which turned on the question whether the plaintiff's lessor had entered within the time allowed by the Statute of Limitations, which again turned on the time of the death of the lessor's brother, who had gone to sea and had not been heard of for many years —sustained a ruling that the jury must find the time of death as well as they could . . . . that at any time beyond the first seven years they might fairly presume him dead; but the not hearing of him within that period was hardly sufficient to afford that presumption. Lord Ellenborough said: "As to the period when the brother might be supposed to have died, according to the statute, 10 Car. II., c. 6, with respect to leases dependent upon lives, and also according to the statute of bigamy (1 Jac. I., c. 2), the presumption of the duration of life, with respect to persons of whom no account can be given, ends at the expiration of seven years from the time when they were last known to be

*St. 1 Jac. I., C. 11.

†*Holman* v. *Eston*, Carth, 246.

‡See, for instance, *Rowe* v. *Hasland*, 1 Wm. Bl. 404 (1762); *Dixon* v. *D.*, 3 Bro.C.C., 510 (1792); *Lee* v. *Willcock*, 6 Ves., 605 (1802).

‖6 East, 80.

living. Therefore, in the absence of all other evidence to show that he was living at a later period, there was fair ground for the jury to presume that he was dead at the end of seven years from the time when he went to sea on his second voyage, which seems to be the last account of him." This was supporting what the jury had done. All that this case lays down is that the jury were justified, on the analogy of the two statutes, in finding death by the end of the seven years; and, moreover, looking at Mr. Justice Rooke's ruling, which was not questioned upon this point, that they would not be justified in finding it earlier. It was not laid down that they ought to find death at the end of seven years, or that they must; nor was any rule of presumption put forward; nor, as I say, was this the point on which the ruling below was questioned in the full bench. In 1809, at *nisi prius*,* in an action against a woman on a promissory note, she pleaded coverture, and proved her marriage; but the husband had gone to Jamaica twelve years ago, and the question was as to the way of proving that he was now living. The defendant insisted that he must be presumed to be alive; but Lord Ellenborough ruled that "evidence" must be given of his being alive within seven years. This was given, and the defendant had a verdict. In the other case the aim was to prove death; here, life; and here the ruling was that a court cannot assume life now, when all that it knows is that the party had been absent and unheard from for more than seven years. Upon the basis of these cases, there soon appeared in the text-books on evidence, for the first time, in 1815, a general proposition that "where the issue is upon the life or death . . where no account can be given of the person, this presumption (viz., that a living person 'continues alive until the contrary be proved') ceases at the end of seven years from the time when he was last known to be living—a period which has been fixed from analogy to the statute of bigamy and the statute concerning leases determinable upon lives."† In this form the matter was again put by Starkie, ten years later, in the first edition of his book; and by Greenleaf, and so by Taylor. But the judges as well as text-writers got to expressing what had been put as a cessation of a presumption of life in the form of an affirmative presumption of death; and this was put as a rule of general application wherever life and death were in question. And so Stephen puts it:‡ "A person shown not to have been heard of for seven years by those (if any) who if he had been alive would naturally have heard of him, is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death." This rule is set down by Stephen among the few presumptions which he thinks should find a place in the law of evidence; his definition of the term "presumption" being, as it will be remembered,‖ "a rule of law that courts and judges shall draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved." Stephen published his Digest in 1876. Here then, in seventy years, we find the rule about a seven years' absence (1) coming into existence in the form of a judicial declaration about what may or may not fairly be inferred by a jury in

* *Hopewell* v. *De*., Pinna 2, Camp. 113.
† Phil. Ev. i., 152 (2nd ed.)
‡ Dig. Ev. art. 99.
§ Dig. Ev. art. 1.

the exercise of their logical faculty, the particular period being fixed by reference to two legislative determinations in specific cases of a like question; (2) passing into the form of an affirmative "rule of law" requiring that death be assumed under the given circumstances. This is a process of judicial legislation, advancing from a mere recognition of a step in legal reasoning to a declaration of the legal effect of certain facts.

COMMENTS ON CURRENT ENGLISH DECISIONS.

We continue the Law Reports for October comprised in 23 Q.B.D., pp. 373-413; 14 P.D., pp. 131-150; and 42 Chy.D., pp. 93-208.

TRADE NAME—INJUNCTION—DEFENDANT USING HIS OWN NAME—COSTS.

Turton v. *Turton*, 42 Chy.D. 128. It is not very surprising to find that an attempt made by the plaintiffs to restrain the defendants from using their own name for the purpose of their trade was not successful. The plaintiffs had carried on for many years business as steel manufacturers under the name of "Thomas Turton & Sons." The defendant, John Turton, had carried on a similar business for many years in the same town, at first as "John Turton," and then as "John Turton & Co.," and latterly, in 1888, he took his sons into partnership and carried on the same business as "John Turton & Sons." There was no evidence of any attempt on the defendants' part to imitate the plaintiffs' trade marks or labels. North, J., thought the plaintiffs entitled to succeed, but the Court of Appeal (Lord Esher, M.R., and Cotton and Fry, L.JJ.), though conceding that there was a probability that the public would be occasionally misled by the similarity of the names of the two firms, yet held that the defendants were lawfully using their own names, and could not be restrained by injunction from so doing. The plaintiffs were ordered to pay costs according to the higher scale.

VENDOR AND PURCHASER—RESTRICTIVE COVENANT—COVENANT RUNNING WITH THE LAND—OMISSION OF WORDS OF LIMITATION—MISDESCRIPTION—COMPENSATION—RESCISSION OF CONTRACT.

Re Fawcett & Holmes, 42 Chy.D., 150, was an appeal from an order of North, J., overruling objections to title. Fawcett, the vendor, had bought the property in question, which formed one lot of an estate laid out for building, and covenanted with the vendors that "he, his heirs, executors, administrators, and assigns," would make certain payments and do certain acts in respect of the property purchased, and the covenant proceeded, "and the said Fawcett on erecting any building on the said land shall only erect" buildings of a certain description. On the sale of the property by Fawcett to Holmes, the existence of the covenant was not disclosed; but it was held by North, J., and the Court of Appeal (Lord Esher, M.R., and Cotton and Fry, L.JJ.) that its non-disclosure formed no objection to the title, because the covenant in terms only related to buildings erected by Fawcett himself, and did not extend to his assigns, and was therefore merely a personal covenant, which did not run with the land. The property

was put up for sale as "a messuage, situate in T. Street, with the builder's yard, stables, and premises, as lately in the occupation of Fawcett, and containing 1,372 square yards." There was a condition that errors of description should not annul the sale, but if pointed out before the completion, compensation should be allowed. The property had originally contained 1,372 yards, but Fawcett, the owner, had sold off in 1870, 339 square yards, so that the property contained only 1,033 square yards, which was separated by a wall from the 339 yards, and were fenced round and well defined. On this point too the Court of Appeal agreed with North, J., that the purchaser had got substantially what he contracted for, and though the deficiency in quantity was considerable, yet that it did not take the case out of the condition, and that the purchaser was bound to complete with compensation. The following rule laid down by Tindal, C.J., in *Flight* v. *Booth*, 1 Bing. N.C. 370, 377, was approved: "That when the misdescription, although not proceeding from fraud, is in a material and substantial point, so far affecting the subject-matter of the contract that it may reasonably be supposed that, but for such misdescription, the purchaser might never have entered into the contract at all, in such cases the contract is avoided altogether and the purchaser is not bound to resort to the clause of compensation."

COMPANY—IRREGULAR MEETING OF DIRECTORS—INVALID ALLOTMENT OF STOCK.

In re Portuguese Consolidated Copper Mines, 42 Chy.D. 160, was an application by one Steele, an allottee of shares of a company, to cancel the allotment and remove his name from the list of shareholders. The company had a Board of four directors. A meeting of the Board was called without due notice to all four directors, and only two in fact attended, who voted themselves a quorum, and proceeded to allot 100 shares to Steele, who had applied for them, and gave him notice of the allotment the same day, and they then adjourned the meeting to the next day. The next day the meeting was further adjourned to the following day; in the meantime Steele gave notice that he withdrew his application. The next day three directors were present at the adjourned meeting, and the fourth in writing approved of the previous resolution as to a quorum, and the meeting confirmed the allotments made at the prior meeting. But it was held by the Court of Appeal (Lord Esher, M.R., and Cotton and Fry, L.JJ.) that the first meeting of the directors was irregular for want of due notice to all the directors, and that the allotment of stock made at it was invalid, and could not be confirmed at the subsequent meeting, after the allottee had withdrawn his application.

SOLICITOR—LIEN—PROPERTY RECOVERED—COMPROMISE OF ACTION—PAYMENT TO CLIENT AFTER NOTICE OF LIEN.

Ross v. *Buxton*, 42 Chy.D. 190, is an instructive case on the subject of the nature and extent of a solicitor's lien on the proceeds of an action. In this case the defendant paid into court £50 in satisfaction of the plaintiff's claim for damages. Before trial an agreement was entered into between the defendant and his solicitors on the one side, and the plaintiff without his solicitor on the other;

the action was compromised upon the terms that the plaintiff should accept the £50 paid into court in full of all claims, and that defendant should do everything necessary to enable the plaintiff to get the money out of court. The plaintiff's solicitor then gave the defendant's solicitors notice not to pay any money to the plaintiff until his costs were satisfied. After the receipt of this notice the defendant's solicitors obtained payment to themselves of the £50 and paid it to the plaintiff. Under these circumstances Stirling, J., held that the £50 must be treated as the fruit of the action, and was liable to the plaintiff's solicitor's lien, and that the defendant's solicitors, having paid the money over to the plaintiff after notice of the lien, were personally liable to satisfy the lien, but that the defendant having neither received notice, nor authorized the payment, was not liable.

DEFAULTING TRUSTEE OF WILL—INTEREST UNDER WILL ACQUIRED BY TRUSTEE—ASSIGNEE FROM TRUSTEE—MAKING GOOD DEFAULT.

In *Doering* v. *Doering*, 42 Chy.D. 203, Stirling, J., decided, in accordance with *Jacobs* v. *Rylance*, 17 Eq. 341, that the rule that a defaulting trustee cannot claim as against his *cestui que trust* any beneficial interest in the trust estate until he has made good his default, and that his assignee is in no better position, even though the default may be committed after the assignment, applies not only to shares taken by the trustee under the instrument creating the trust, but also to shares which he acquires from any other *cestui que trust*. In this case Mrs. Doering, an executor and trustee, entitled under a will to a life interest in a trust fund, purchased from two beneficiaries their reversionary interests in the fund, which she assigned by way of mortgage. She was subsequently found a defaulter and died insolvent, and it was held that her mortgagee took subject to the equities existing against his mortgagor, and that the beneficiaries under the will were entitled to have her default made good out of the reversionary interests acquired by her, in priority to the claims of her mortgagee. The principle being, as Sir Geo. Jessel, M.R., expressed it, that the defaulting trustee is presumed to have paid himself all that he can claim out of the trust estate, out of the moneys which he has received, and for which he has not accounted.

The Law Reports for November comprise 23 Q.B.D., pp. 413-491; 14 P.D., pp. 151-174; 42 Chy.D., pp. 209-320.

INSURANCE AGAINST ACCIDENT—EXCEPTION OF ACCIDENT CAUSED BY EXPOSURE OF THE INSURED TO OBVIOUS RISK.

The first case which we deem it necessary to call attention to is *Cornish* v. *The Accident Insurance Co.*, 23 Q.B.D., 453. This was an action on an accident policy, which, by its terms, excepted from the risks insured against, accidents happening "by exposure of the insured to obvious risk of injury." The insured had come to his death by attempting to cross a railway track in broad daylight in front of an approaching train, there being no obstruction to prevent a person about to cross from seeing an approaching train. Lord Coleridge, C.J., before whom the action was tried, instructed the jury that the case fell within the

exception, and they returned a verdict in accordance with his ruling, which was sustained by the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.)

MORTGAGE OF LAND AND CHATTELS—NON-REGISTRATION OF MORTGAGE AS TO CHATTELS.

It may be useful to refer to *Climpson* v. *Coles*, 23 Q.B.D., 465, as it deals with an important question under the Bills of Sales Acts. The plaintiff sued for a wrongful seizure of his goods; the defendants justified the seizure under a mortgage made by the plaintiff, whereby the plaintiff mortgaged certain lands to the defendants, and by the same mortgage agreed that all building material brought upon the mortgaged premises should be deemed immediately attached to the freehold, and no part should be removed from the premises, but with the concurrence of the mortgagees. The mortgage contained a power, in case of default, for the mortgagees to enter and take possession, and to sell the lands, and all or any part of the building material. The Divisional Court (Denman and Stephen, JJ.) held that the existence of the power to sell the chattels apart from the land, rendered the mortgage a mortgage of chattels, notwithstanding the stipulation that the chattels should be deemed to be attached to the freehold, and therefore the mortgage as to them was void for non-registration. In this Province the objection of non-registration can only be taken by subsequent purchasers, and mortgagees, and creditors of the mortgagor; see R.S.O., c. 125, s. 4, and it is, of course, only as between such persons and a mortgagee that this case would be an authority.

SOLICITOR—STRIKING OFF ROLL FOR ALLOWING AN UNQUALIFIED PERSON TO PRACTICE IN HIS NAME—6 & 7 VICT., C. 73, S. 32—(22 GEO. II., C. 46; R.S.O., C. 147, S. 24)—RESTORING SOLICITOR TO ROLL.

In re Lamb, 22 Q.B.D., 477. was an application to restore a solicitor to the roll, who had been struck off for permitting an unqualified person to practice in his name. The Court of Appeal (Cotton, Fry, and Lopes, L.JJ.) affirmed the order of the Divisional Court, refusing the application, on the ground that although under the Attorneys and Solicitors' Act (6 & 7 Vict., c. 73, s. 26) the Court had a discretionary power, upon an application to strike a solicitor off the rolls for an offence under s. 32 of the Act, to inflict a punishment short of striking him off the rolls; yet if the Court does make an order striking him off, it has no power afterwards to reinstate him, as that statute provides that if he is struck off he is to be forever disabled from practising as a solicitor. R.S.O., c. 147, s. 24 is not as stringent in its terms, and merely provides that the solicitor may, in the discretion of the Court, be struck off the roll and disabled from practising as such solicitor. The 22 Geo. II., c. 46, however, was held to be in force in Ontario in *Dunne* v. *O'Reilly*, 11 C.P., 248, and section 11 of that Act provides that any attorney or solicitor allowing (as in the present case) an unqualified person to practice in his name, shall be struck off the roll and forever after disabled from practising as an attorney or solicitor; and should a similar question ever arise here, it may be found that the decision arrived at *In re Lamb* applies

with equal force, if not greater (owing to the unrepealed statute we have referred to) in Ontario.

COSTS—CERTIORARI—MEMBERS OF MUNICIPAL CORPORATION, PERSONAL LIABILITY OF, FOR COSTS.

In the *Queen* v. *Vaile*, 23 Q.B.D., 483, a rule having been made absolute to quash certain orders made by a town council for illegal payments out of the corporation funds, the present application was thereupon made to compel the individual members of the corporation who had voted for the illegal orders, personally to pay the costs of the proceedings to quash them. The Court (Lord Coleridge, C.J., and Field, J.), granted the application. This is an important decision, and one which should make members of municipal corporations very careful before sanctioning by their votes proceedings of doubtful validity.

ADMINISTRATION—LEGITIMACY OF PERSON CLAIMING TO BE NEXT OF KIN DISPUTED—"SPECIAL CIRCUMSTANCES"—20 & 21 VICT., C. 77, S. 73—(R.S.O., C. 50, S.56.)

In re Minshull, 14 P.D., 151, an application for administration was granted under the following circumstances: The legitimacy of the person claiming to be next of kin was disputed, but all persons interested in the estate of the intestate agreed that such claimant should apply for a grant of administration, and that the estate should afterwards be divided between them and the claimant. This, the Court was of opinion, constituted "special circumstances," warranting the grant of administration to the applicant under 20 & 21 Vict., c. 77, s. 73 (see R.S.O., c. 50, s. 56).

ADMINISTRATION—GRANT PENDENTE LITE—20 & 21 VICT., C. 77, S. 70—(R.S.O., C. 50, S. 53).

In re Fawcett, 14 P.D., 152, an executrix had died leaving a will, the validity of which was disputed; pending the litigation as to the validity of her will, a grant of administration, *de bonis non*, with the will annexed, was made to the estate of her testator under 20 & 21 Vict., c. 77, s. 70 (see R.S.O., c. 50, s. 53.)

COMPANY—DIRECTORS, POWERS OF—SHARES—TRANSFER—DISCRETION TO REFUSE TO REGISTER TRANSFER OF SHARES—CALLS—DATE OF CALLS—ORDER OF BUSINESS AT BOARD MEETINGS.

Several points of interest are discussed and determined *In re Cawley*, 42 Chy. D., 209. First of all, the extent of the discretion which directors have to refuse to register a transfer of shares is considered. The articles of association of a company gave the directors power to refuse to register transfers of shares by a shareholder if he was indebted to the company; and the Court of Appeal held, that the time for ascertaining whether the transferor is indebted, is the time when the transfer is sent in for registration, and not when it subsequently comes before a board meeting to determine whether the registration shall be made. Thus, one Hallett being a shareholder, and also a director, executed a transfer of his shares for value, and thereupon the transferee sent the transfer to the secretary of the company for registration, as required by the articles of association, and shortly afterwards, on its being submitted to a board meeting, the board declined to register it, and at the same meeting passed a resolution for a

call. The call thus made after the transfer, the Court of Appeal (Lord Esher, M.R., Cotton and Fry, L.JJ.)—reversing Chitty, J.—held not to be an indebtedness in respect of calls by the transferor, for which the directors could rightly refuse to register the transfer, even though the transferor was a director and aware that a call was imminent. Another point discussed is the time from which a call is validly made. In order that there may be a valid call, the Court of Appeal—reversing Chitty, J.—held that the resolution authorizing it to be made, must state, not only the amount of the call, but also the time at which it is to be paid. And where, as in this case, a resolution was passed for a call, which fixed the sum per share to be called up, but left the date at which it was to be paid in blank, which date was subsequently filled in by the secretary on his own responsibility; and at a meeting held three days afterwards the minutes of the former meeting, with the addition of the dates thus introduced by the secretary, were confirmed; and at a subsequent meeting on the 17th of January following, a resolution was passed settling and adopting the form of circular or notice of call; it was held that there had been no valid call made until the date and place of payment was fixed by the resolution of the 17th January, and that that resolution did not relate back to the 18th December. A third question arose as to the right of directors to alter the order of business on their *agenda* paper. This question arose in this way: the *agenda* paper at the directors' meeting contained as the first order of business the consideration of the transfer of shares sent to the secretary for registration; and then as the next business, the consideration of the question of making a call. The directors passed over the first order of business, and took up the question of making a call, and Chitty, J., held that they had a perfect right to do so, and to pass a resolution for a call as their first business, so as to prevent intending transferors from evading their liability by prior registration; but as the Court of Appeal came to a different opinion from Chitty, J., on the main questions, it was not necessary for them to consider this point of the case.

MORTGAGEE IN POSSESSION—ACCOUNT BY MORTGAGEE—PROVISO LIMITING SUM TO BE RECOVERED ON MORTGAGE.

In *White* v. *City of London Brewery Co.*, 42 Chy.D., 237, the decision of North, J., 39 Chy.D., 559, noted *ante* p. 83, was affirmed by the Court of Appeal. The defendants were mortgagees, and went into possession of the mortgaged property, which consisted of a public house, which they let to a tenant with a restriction that the tenant should take his supply of beer entirely from them; and it was held by Lord Esher, M.R., and Cotton and Fry, L.JJ., that the defendants must account for such additional rent as they would have received if the premises had been let without restriction, but that they were not liable to account for the profit they had made by the sale of beer to the tenant. Another point in the case was as to the effect of a proviso in the mortgage, whereby it was provided that "the total amount to be recovered by the mortgagee under these presents shall not exceed £900." The property was sold for £2,650, and at the time of the completion of the sale there was due to the mortgagees for principal

£1,415, and for interest £615, and they were chargeable with £396 for rents and profits. The £1,415 included £700 lent, and £88 for goods supplied pursuant to the terms of the mortgage, and for which it was intended as security; the rest of the £1,415 was made up of payments of rent, and fire insurance, and it was held by the Court of Appeal that the proviso did not apply either to interest, or to outgoings incident to the possession of the premises by the mortgagees, and that as the sum due for monies lent and goods supplied did not exceed the limit, the mortgagees were entitled to retain out of the proceeds of the sale the whole of the balance due to them.

EXPROPRIATION OF LAND BY RAILWAY CO.—LIABILITY OF RAILWAY CO. FOR COSTS OF GETTING MONEY OUT OF COURT—COSTS.

In re Brooshooft, 42 Chy.D., 250, a Railway Company expropriated a parcel of land comprised in a settlement, for the purposes of their railway, and paid the purchase money into court; and after payment, a testamentary appointment was made by a tenant for life, under the power contained in the settlement; and on her death a petition was presented by her appointees, for payment of the money out of Court. In consequence of the terms of the appointment, it became necessary to serve the petition on the trustees of the marriage settlements of two of the appointees, and additional costs were thus occasioned; and the question was whether the Railway Company was liable to pay them. Kay, J., held that the company must pay the costs (not being costs of adverse litigation) of all parties.

EQUITABLE MORTGAGEE—CONFLICTING EQUITIES—PRIORITY—NEGLIGENCE—CUSTODY OF TITLE DEEDS—TRUSTEE APPEARING TO BE ABSOLUTELY ENTITLED.

Carritt v. *Real and Personal Advance Co.*, 42 Chy.D., 263, is one of those cases in which the question arises, which of two innocent parties should suffer for the fraud of a third. Owing to our system of registration of deeds it is a case which would not be likely to arise in Ontario, at the same time it is instructive as an illustration of the extreme limit to which the maxim *qui prior est in tempore potior est in jure*, may sometimes be carried. The plaintiff purchased an equity of redemption in leaseholds, and for his own convenience took the conveyance in the name of one Chuck, his confidential clerk, no notice of the trust being disclosed in the assignment. Chuck fraudulently possessed himself of the assignment, and deposited it with the defendants, and executed a charge by demise of the equity of redemption in favour of the defendants, from whom he borrowed money and to whom he represented himself as the beneficial owner of the equity of redemption. The plaintiff brought the present action for a declaration that the defendants had no interest in the leaseholds, and for delivery up of the assignments; and Chitty, J., made a decree in his favour, holding that the plaintiff's allowing Chuck to have the control of the assignment was not, under the circumstances, sufficient negligence on his part to defeat his prior equitable title; and that the ordinary recitals and forms commonly used in conveyances and assignments to trustees, with a view to keeping all notices of the trust off the title, were not mis-

representations on the face of the document which could displace the equitable title of the *cestui que trust*, even though they may have been fraudulently made use of by the trustee to show that he was in fact the absolute owner. We must confess, however, that after a perusal of this case it seems to us that the demands of natural justice would have been better satisfied if the decision had been the other way. If Chuck had conveyed to the defendants a legal title instead of a mere equitable one, then, we presume, following the maxim, *in æquali jure melior est conditio possidentis*, the defendants would have been held to have acquired a good title as against the plaintiff; and that being so, it is perhaps open to some doubt whether this distinction between legal and equitable titles rests on any solid basis of reason.

LEGITIMACY—PATERNITY OF CHILD BORN IN WEDLOCK—EVIDENCE TO BASTARDIZE CHILD—POWER OF APPOINTMENT—IN VALID APPOINTMENT.

Burnaby v. *Baillie*, 42 Chy.D., 282, may be referred to as showing the character of evidence which is admissible, to establish that a child born in wedlock is in fact a bastard. Evidence of verbal statements by the wife's paramour at the time of the birth of the child, was held to be admissible as evidence of conduct, tending to show that he was the father of the child. So also a copy of a public record in a foreign country which could not be removed, sworn to by a witness who had examined the copy with the original entry, was held to be admissible. Notwithstanding 32 & 33 Vict., c. 68, s. 3, which provides that the evidence of a husband and wife is admissible in a "proceeding instituted in consequence of adultery," it was held that the evidence of a husband is not admissible after the dissolution of the marriage on the ground of the wife's adultery, to prove the illegitimacy of a child born in wedlock. By a marriage settlement a power of appointment and revocation was reserved to the husband and wife; after a divorce the husband and divorced wife, in assumed exercise of the power, made an appointment reserving to the husband alone a power of revocation; and it was held that the reservation of the power of revocation to him alone was invalid.

TRUSTEE—EXECUTOR—LEGACY, WHEN IT BECOMES A TRUST FUND.

In re Smith, Henderson-Roe v. *Hitchins*, 42 Chy.D., 302, is deserving of notice as illustrating the rule that where a pecuniary legacy is given by a will, and the executor assents to it, or sets apart a fund to meet the legacy, it ceases to be a legacy and becomes a trust fund in his hands.

WILL—CONSTRUCTION—BEQUEST TO HUSBAND AND WIFE, AND THIRD PARTY.

In re Dixon Byram v. *Tull*, 42 Chy.D., 306, North, J., sheds some new light on the question discussed *In re March*, 27 Chy.D., 166, and *In re Jupp*, 39 Chy. D., 148, viz., the effect of a bequest to husband and wife, and others. Kay, J., *In re Jupp*, considered the rule of law to be settled that the husband and wife take but one share between them, and that The Married Woman's Property Act, 1882, has made no alteration in the law in this respect. North, J., on the

authority of *Warrington* v. *Warrington*, 2 Hare, 54, holds that the rule is by no means inflexible, and a very little indication to the contrary is sufficient to lead to an opposite construction. Thus the position in which the parties are named in the gift, and the position of the conjunction "and" have influenced the construction; and under similar words to those used *In re Jupp*, North, J., held that the husband and wife took two shares of the bequest, instead of one, between them. In this case the bequest was to A., and B., his wife; C., the wife of X.; D. the wife of Y.; E.; F., and G., his wife; and A. and B., and F. and G., were each held entitled to one seventh. In *Warrington* v. *Warrington* the testator left his residue "equally between my brother, Thornhill Warrington; my sister, Anne Von Cortlandt, widow; my nephew, William Henry Warrington, and Emma, his wife," and each were held entitled to a fourth share.

CHARITY—DEED VOID—TITLE BY POSSESSION—TRUSTEE.

In *Churcher* v. *Martin*, 42 Chy.D., 312, Kekewich, J., decided that although a deed to trustees, upon charitable trusts, was absolutely void under 9 Geo. II., c. 36, s. 3, yet that the trustees named in the deed, having entered into possession, and applied the rents and profits according to the trusts of the deed for more than twelve years before the commencement of the action, had acquired a good legal title as against the plaintiffs, who claimed under the grantor; and that although one of the trustees was the general devisee, and legatee of the grantor, the trustees could not be held to have been in possession as mere licensees of the devisee and legatee, and that the accident of his being one of the trustees did not operate to defeat their title.

Notes on Exchanges and Legal Scrap Book.

COMPLIMENT TO A CANADIAN JURIST.—Yesterday, upon the sitting of the Court of Chancery, the Lord Chancellor (Lord Ashbourne) called to the Bar of Ireland a gentleman who for some time past has been sojourning in this city, the Hon. Judge Gowan, Senator of Canada. Addressing Mr. Gowan, the Lord Chancellor said that in view of his past distinguished career he had great pleasure in calling him to the Irish Bar as a member of a profession in this his native country, which he ornamented in that of his adoption. The compliment was enhanced by the circumstance that the "call" was a special one. Incidents of the kind are rare in the history of the Irish Bar, but in Canada as in Ireland this event will be recognized as a tribute of respect to the legal learning of the Dominion, which thus in the person of one of its most prominent and respected representatives is peculiarly acknowledged.—*Irish Times.*

A COMMON-SENSE JUDGE.—"Although not over anxious to pay compliments to the judiciary, which, if the truth must be told, are not always deserved, we can not help referring to the favorable opinions everywhere expressed of

the learned judge who presided for the first time at the assizes last week. Mr. Justice Street is not a shirker of work, and from the outset showed a desire to try the causes before him, and not, as some judges do, to dispose of them. He opened court at 9.30 a.m., adjourned for an hour at midday, and usually rose from the bench at 7. p.m. This was a fair day's work and gave universal satisfaction. If the practice were more generally followed the legislature would not be called upon, as we understand it will be, to limit the working hours of our Courts of Assizes. The killing custom of one or two judges of sitting from early morning to all hours at night, with scarce an adjournment, is a positive injury to the administration of justice. Mr. Street is one of the latest acquisitions to the Bench and is, we believe, regarded by the legal profession as a well-read lawyer and one of the best of our judges. Those who observed his judicial demeanor and his conduct of public business will readily acquiesce in this estimate by the Bar of his fitness for his responsible position. To the general public not versed in legal lore he gave the impression of being a mild but firm and eminently fair dispenser of justice, patient, courteous and painstaking to the last degree and desirous in small matters as in great of doing his whole duty with the utmost consideration for counsel, witnesses and jurymen. These are indispensable qualities in an occupant of the Bench, however able and experienced, and when accompanied by learning and ability they never fail to win the confidence, respect, and personal regard of the public as well as of the profession."—*Berlin Telegraph.*

TRIALS IN CAMERA.—At the present Chancery Sittings at Toronto, Mr. Justice Ferguson in the case of *Smart* v. *Smart*, excluded the reporters and general public from the court-room, and tried the case with closed doors. A similar proceeding by Mr. Justice Denman in *Malan* v. *Young*, which was an action for damages for alleged libel by the master of Sherbourne School upon an assistant, raises the question whether the Judge at the trial has the power to order the public to be excluded from the court-room. We cite the following on the point from the *Law Journal* for Nov. 16: "On November 11, before Mr. Justice Denman and a special jury, the action of *Malan* v. *Young* was called on for trial, to recover damages for alleged libels and slanders by the head-master of Sherbourne School against an assistant-master. The jury having been sworn, Sir C. Russell, Q.C., said that with the consent of Mr. Lockwood, Q.C., in the interest of third parties, he would ask his Lordship to try the case *in camera*. The Divorce Court had no special power to try cases in that way, and with the consent of both parties, he would ask that that course should be adopted. Mr. Justice Denman: 'Wilson's Judicature Acts' seems to doubt the power to examine any case *in camera*, except in cases affecting lunatics and wards of Court, or where the old ecclesiastical procedure continues, or where a public trial would defeat the object of the action. *Nagle-Gillman* v. *Christopher*, 46 Law J. Rep. Chanc. 60; L. R. 4 Chanc. Div. 173, and *Andrew*

v. *Raeburn*, L. R. 9 Chanc. App. 522, where the Court were of opinion they had power, the consent of both parties being immaterial, also *Mellor* v. *Thompson*, 55 Law J. Rep. Chanc. 942; L. R. 31 Chanc. Div. 55, and *Badische Anilin und Sodafabrik* v. *Levinstein*, 52 Law J. Rep. Chy. 704; L. R. 24 Chy. Div. 156, where the Court, being of opinion that a certain patent was valid, gave the defendant leave to state his secret process *in camera*, the shorthand-writer's notes being impounded, were cited, whereupon the learned judge said: I will consult some of the other judges before I decide this matter.—Shortly afterwards the learned judge returned into Court, and said he would try the case *in camera*, without a jury, by consent. He had come to the conclusion that he could have ordered such a trial with a jury if it had been desirable. The Court was then ordered to be cleared. Mr. Charles Gould, barrister-at-law, objected to leave the Court. Mr. Justice Denman: On what grounds? Mr. Gould: As a member of the public and the father of sons at school. Mr. Justice Denman: Have you anything to do with this case? Mr. Gould: No. Mr. Justice Denman: Then I must order you to leave the Court, Mr. Gould. Mr. Gould: I protest, my lord. Mr. Justice Denman: I hear your protest, and order you to leave the Court, or I must get the ushers to remove you. Mr. Gould then retired, and the hearing of the case proceeded *in camera*. The reasons which induced the learned judge to this course are hardly to be found in the precedents cited to him. The words he cited from 'Wilson's Judicature Acts,' as the expression of a doubt whether there is such a jurisdiction, were not the expression of a doubt, but the very decided opinion, somewhat watered down by the writer, of the late Master of the Rolls, expressed in the case of *Nagle-Gillman* v. *Christopher*, 46 Law J. Rep. Chy. 60, upon the suggestion made in the opening speech of the plaintiff's counsel that the plaintiff's wife should be examined in private. Sir George Jessel said that he was of opinion that the Court had no power to try any cases in private, even with the consent of the parties, except cases which related to lunatics or wards of Court and cases in which the whole object would be defeated by a trial in public, as was suggested in *Andrew* v. *Raeburn*, L. R. 9 Chy. Div. 522, and cases in which the practice of the Ecclesiastical Courts was preserved under the jurisdiction of the Divorce Act (20 & 21 Vict. c. 85)—namely, suits for nullity of marriage or judicial separation. *Andrew* v. *Raeburn* contained a dictum of Lord Cairns to the same effect, and *Mellor* v. *Thompson*, 55 Law J. Rep. Chy. 942, was a decision of Lord Halsbury and Lords Justices Bowen and Fry, that if a public hearing of a case would defeat the object of the appeal and render its success useless to the plaintiff, the Court has jurisdiction to hear the case in private without the consent of the defendant. In *Badische Anilin und Sodafabrik* v. *Levinstein*, 52 Law J. Rep. Chy. 704; L. R. 24 Chy. Div. 156, the defendant had leave to state a secret process of manufacture in private. No other cases or statutes were cited in Court. The Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 22, destroys Sir Charles Russell's argument that the Divorce Court has no special power to try *in camera*. It provides that, in all suits and proceedings other than proceedings to dissolve a marriage, the Court shall proceed and

act and give relief on principles and rules on which the Ecclesiastical Courts have heretofore acted and given relief. That the rules of the Ecclesiastical Courts differed from those of the common law is common knowledge. These considerations appear to exhaust the cases and arguments addressed to the Court, but there are other authorities which should have been brought to the attention of Mr. Justice Denman. In *Barnett* v. *Barnett*, 29 Law J. Rep. P. & M. 28, Sir Cresswell Cresswell, the founder of the practice in the Divorce Court, of which he was the first judge, explains in measured words, in view of Lord Chancellor Campbell having, when presiding over the full Court, heard two cases in private, that he had proposed a clause in the Divorce bill providing that the Court when for the sake of public decency it should so think, might hold its sitting with closed doors, which clause was rejected by Parliament. He added that he should, as was frequently done by other Courts, order women and children to leave the Court. A few days afterwards the judge ordinary sat in *H.* v. *C.*, 29 Law J. Rep. P. & M. 29, with Mr. Justice Williams and Baron Bramwell and adhered to the same views. His colleagues concurred in the view that the Court was to be considered to have all the incidents of an ordinary Court of justice, one of which is that its proceedings must take place in public, and Baron Bramwell said that the only doubt was that on two occasions the Court had sat in private with the consent of both parties and without discussion. In 1869, when Sir James Wilde, now Lord Penzance, was judge ordinary, in *C.* v. *C.*, 38 Law J. Rep. P. & M. 29, he declined to allow a suit for a dissolution of marriage to be tried with the consent of the parties *in camera*, on the ground that he had no jurisdiction, and added that, by the practice of the Ecclesiastical Courts, suits for nullity alone were heard *in camera*. In 1875, in *A.* v. *A.*, 44 Law J. Rep. P. & M. 14, Sir James Hannen expressed the view of Sir Cresswell Cresswell in *H.* v. *C.* as being, 'My own impression is that we have no power to hear any case otherwise than in open court.' This passage does not occur in the *Law Journal* report of *H.* v. *C.* and Sir Cresswell Cresswell is reported to have said merely that he adhered to the opinion he had given in *Barnett* v. *Barnett*. The words cited by Sir James Hannen, as the judge ordinary's are very like those given in the report in *Law Journal* reports to Mr. Justice Williams—namely, 'I am of opinion that we have no power to hear the case except in open Court.' These discrepancies seem to throw some doubt on the exactness of the views expressed by Sir James Hannen, that any impression first entertained was afterwards abandoned or removed from the mind of Sir Cresswell Cresswell himself. No doubt Sir James, in *A.* v. *A.*, decided that there might be a sitting *in camera* in cases not for dissolution of marriage other than suits for nullity, which is the position of Sir Cresswell Cresswell, Mr. Justice Williams, and Baron Bramwell. The point involves an investigation into the old ecclesiastical practice in the matter, and Sir James says that he did not believe that it appears that the old Courts ever did, in fact, hear a case *in camera* merely because it involved the investigation of a charge of unnatural practices. It may be a step from Sir Cresswell Cresswell to Sir James Hannen,

but it is a long step indeed from Sir James to the step now taken by Mr. Justice Denman."

MARRIED WOMAN'S APPAREL AS SEPARATE PROPERTY.—In *Leake* v. *Duffield*, reported in the *Times* of the 9th inst, the curious and rather important question, whether a married woman's clothes are her separate property, within the meaning of the Married Woman's Property Act, 1882, was raised before Mathew and Wills, JJ. It appears that the plaintiffs were drapers and milliners, and had obtained judgment in a County Court action against the defendant, who was then a divorced woman, in respect of a debt for goods sold and delivered to her previous to the divorce. The defendant was married on May 12, 1867, being then aged 17. Previous to her marriage a settlement was executed under which she was entitled to the income of about £2,800 in Consols for her separate use without power of anticipation; a reversionary interest in personalty on the death of her mother was also covenanted to be assigned on certain trusts. This had not yet fallen into possession. When she came of age she executed a deed of confirmation of the settlement. After the marriage the husband and wife lived at Huntingtonhall, near York, and had several children, some of whom are still under age. About 1882 they moved to a smaller house called the Hut. Pecuniary difficulties arose, and in November, 1884, at an interview between the husband, wife, and their solicitor, it was arranged that the defendant, who had up to that time paid for her own clothes out of her separate income, should also pay for the clothes of all the children, except the eldest, out of it. The defendant had dealt with the plaintiff for years, and with the exception of 1s. they were paid for everything up to March 1, 1884. From that day till May 24, 1886, the defend nt purchased goods to the amount of £21 19s. 10d. at the plaintiffs' shop. The goods were mostly clothing, but some, such as mats and cocoa-matting, must have been for the house. The goods, with one unimportant exception in the case of the daughter, were entered to the account of the defendant. Previous to this bill being incurred the defendant's solicitors in May, 1882, paid the plaintiffs, at the defendant's request, £5 on her account out of her separate income. No payment on account of the present bill had ever been made. On July 9, 1885, in answer to a request, the defendant wrote this note:—"Mrs. Duffield will call and pay Messrs. Leake and Thorpe their account as soon as she returns from London." The plaintiffs enter goods to married ladies and send in accounts monthly to them. No application was made to the husband. He was living at the Hut all this time with the defendant. After the last of the goods sued for were got the marriage was dissolved by a decree absolute of May 29, 1888; from which time it is that, in such case, the statute is held to operate: *Norman* v. *Villars*, 2 Ex. D. 359. Now, section 1, sub-s. 1 of the statute (45 & 46 Vic. c. 75) enacts that "a married woman shall be capable of acquiring, holding, and disposing by will or otherwise of any real

or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee;" sub-s. 3 providing that "every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown;" while, according to sub-s. 4, "every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire." The learned County Court Judge held that, while the defendant had spent her income up to the time when the first of the goods were ordered, she had spent it in clothes, and that some of these clothes still existed, and they were therefore her separate property; and he gave judgment for the plaintiffs for £21 19s. 10d., such sum to be payable out of her separate property, and execution was ordered to be limited to the separate property belonging to the defendant on May 29, 1888 (the date of the decree absolute), and which was not on that day subject to any restriction against anticipation. An appeal was now taken from this decision; the contention being, on behalf of the appellant, that, as when she was sued the defendant was a divorced woman, the restraint on anticipation was gone, and any and every part of her property became liable to execution if the contention of the plaintiffs were right; but it was not right—she could not be said to have any free separate property at the time when the goods were ordered, as her income was all spent and she had only the clothes she had bought and which were not separate property. On the other hand, on behalf of the plaintiffs, it was contended, that if the defendant had any separate property whatever of her own, whether clothes, money, or even if it were only a wedding ring, at the time when she gave the orders, that property and any after-acquired separate property was liable for the debt. But, against this it was urged that no such consequence followed under the statute, and that, at all events, the liability was only where there was a reasonable ground for presuming that the contract was, or might have been made with reference to the separate property. The terms of section 1, sub-s. 3, however, unquestionably create a suitable presumption now, that a married woman's contract binds her separate property; and the result of the legislation was thus put in Griffith's work on the Acts,—"The married woman's separate property will now, it is submitted, be liable, for her contracts, express or implied, just as if she were unmarried; whether the contract is made while she is living with, or while she is living apart from, her husband; unless she can show that she did not contract in reference to that separate property, but merely as the agent of her husband; and such contracts will be as valid as if she had entered into them while unmarried." Here, at the time of the contract the defendant had, as separate property (1st), property under her marriage settlement restrained from anticipation; but such property is inalienable (*Harrison* v. *Harrison*, 13 P. D. 180), and it would not be reasonable to presume that the contract was entered into "with respect to, or to bind" that. But (2nd), she had her clothes, and those of her children. And though it was argued that the plaintiffs had not to

prove the existence of any property liable, the onus of doing so lay upon them, according to *Palliser* v. *Gurney* (19 Q. B. D. 519); and beyond the property thus proved they had not shown the existence of any separate property, The County Court Judge had found as a matter of fact, and based his judgment on it, that the only separate property in the defendant's possession consisted of her clothes. But said Mr. Justice Mathew, "the fact that all the property the defendant had was clothes precluded the suggestion that the contract was entered into in respect of that property," his opinion being that it was unreasonable to presume that she meant to bind such property as that. "Was it possible," said Mr. Justice Wills, "that either she or any one dealing with her had in respect of her or her children's clothes any intention that those clothes should be security for a debt? Such a question answered itself. The result was as if there was no separate property at all. This gave a reasonable construction to the Act and avoided the consequences that would accrue if Mr. Scott Fox's argument were accepted. That would have deprived married women of any protection by restraint on anticipation. The Legislature could not have meant that. Such a change would have been put in the clearest language possible. Under the circumstances a judge could not think there was any reasonable inference that the defendant's apparel or that of her children was intended to be pledged." And judgment (reversing the decision of the County Court Judge) was entered for the defendant accordingly.—*Irish Law Times.*

LEGAL HUMOUR.—*The Green Bag* has a very entertaining column entitled, "Facetiæ," in which the editor records the "jokes" and "humours of the law." Some of them are ancient and of long standing, but worth retelling. We extract the following from the November number:—

Judge Kent, the well-known jurist, presided in a case in which a man was indicted for burglary; and the evidence at the trial showed that the burglary consisted in his cutting a hole through a tent in which several persons were sleeping, and then projecting his head and arm through the hole and abstracting various articles of value. It was claimed by his counsel that inasmuch as he never entered into the tent with his whole body, he had not committed the offence charged, and must therefore be set at liberty. In reply to this plea, the judge told the jury that if they were not satisfied that the whole man was involved in the crime, they might bring in a verdict of guilty against so much of him as was involved. The jury, after a brief consultation, found the right arm, the right shoulder, and the head of the prisoner guilty of the offence of burglary. The judge accordingly sentenced the right arm, the right shoulder, and the head to imprisonment with hard labour in the state-prison for two years, remarking that *as to the rest of the man's body, he might do with it as he pleased.*

DIARY FOR DECEMBER.

1. Sun.....*1st Sunday in Advent.*
3. Tues...General Session and County Court Sittings for Trial in York.
5. Thu....Chancery Division High Court of Justice sits.
7. Sat.....Michaelmas Term and High Court of Justice Sittings end. Last day for call notices for Hilary Term. Sir W. P. Campbell, 6th C.J. of Q.B., 1825.
8. Sun.....*2nd Sunday in Advent.*
10. Tues...General Sessions and County Court Sittings for Trial, except in York.
14. Sat.....Prince Albert died, 1861.
15. Sun.....*3rd Sunday in Advent.*
17. Tues...First Lower Canadian Parliament met, 1792.
18. Wed....Slavery abolished in the United States, 1865.
21. Sat.....Shortest day.
22. Sun ....*4th Sunday in Advent.*
24. Tues...Christmas Vacation begins.
25. Wed...Christmas day. Sir M. Hale died, 1676, æt 67.
27. Fri.....J. G. Spragge, 3rd Chan., 1869.
29. Sun.....*1st Sunday after Christmas.*
30. Mon....Holt, C.J., born 1642.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From Surr. Ct. Co. Peel.] [Nov. 12.

LINFOOT *v.* LINFOOT.

Before the certificate of judgment in this case noted *ante* p. 543, was issued, the Court further considered the question of costs and ordered the respondent to pay the appellant his costs of the appeal and of the application in the Court below.

From Q.B.D.] [Nov. 12.

GRANT *v.* CORNOCK.

Husband and wife—Breach of Promise of marriage—Justification of breach—Statute of Limitations.

Want of bodily chastity is the only justification for breach of a promise to marry.

The use by the woman of coarse, obscene, and profane language and her indulgence in profane swearing would not justify the refusal to marry.

Quære—Whether evidence of such matters can be admitted in mitigation of damages?

Mere lapse of the time fixed for the marriage is not necessarily a breach of the promise. There must be a refusal or something equivalent to a refusal after the time fixed for performance before the Statute of Limitations begins to run.

Judgment of the Queen's Bench Division, 16 O.R., 406, affirmed.

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

W. Nesbitt and *Aylesworth-Finlay* for the respondent.

From ROBERTSON, J.] [Nov. 12.

SANFORD *v.* PORTER.

Trustee—Assignee for the benefit of creditors—Duty as to keeping and furnishing accounts—Misconduct disentitling to costs—Solicitor and client—Taxation by cestui que trust of bill of solicitor employed by trustee.

It is the duty of the trustee or other accounting party to at all times have his accounts ready, to afford all reasonable facilities for their inspection and examination, and to give full information whenever required. As a general rule he is not obliged to prepare copies of his accounts for the parties interested, though if, for example, the *cestui que* trust or principal lives at a distance from where the trust affairs are being carried on, or in a foreign country, it would be the duty of a trustee to give all reasonable information and explanation by letter, and even, if requested, but at the expense of the *cestui que* trust, to prepare and transmit accounts and statements.

Any one *cestui que* trust may, in the discretion of the Court, obtain an order under the third party clauses of the Solicitors' Act for the taxation of a bill of costs for business connected with the trust estate of a solicitor employed by the trustee.

Where a creditor brought an action for an account against the assignee for the benefit of creditors of his debtor, after demanding copies of the assignee's accounts but without expressing any desire or making any attempt to inspect the accounts, and without waiting a reasonable time for preparation of copies, the assignee was allowed his costs as between solicitor and client out of the balance of the estate in his hands, and in case of deficiency the plaintiff was ordered personally to pay it.

The mere fact that a trustee in rendering an account to his *cestui que* trust claims that he has in his hands a smaller sum than is found to be due by him when his accounts are taken in Court, does not disentitle him to the costs of an action against him for an account when the

cestui que trust who brings the action has not before action taken objection to the items that are afterwards disallowed.

Judgment of ROBERTSON, J., affirmed.

C. J. Holman and *Washington* for the appellants.

M. G. Cameron and *W. M. Douglas* for the respondent.

From BOYD, C.]

BLACKLEY *v.* KENNEY.

Voluntary conveyance — Creditor with whose knowledge and assent it is made cannot complain—Mortgage to secure past and future advances—Mortgagee after notice of voluntary conveyance cannot charge land with further advances.

Where a debtor, at the express instance and under the advice and with the assent of a creditor who holds, to secure past and future advances, a mortgage upon certain of the debtor's land, makes a voluntary conveyance of his equity of redemption in that land to his wife, that creditor cannot afterwards contend that the conveyance is voluntary, and void as against him.

Nor can the creditor charge against the land under his mortgage any advances made after notice of the voluntary conveyance.

Order of BOYD, C., reversed.

A. C. Galt for the appellants.

Walter Macdonald for the respondent the plaintiff.

Geo. Kerr, Jr., for the trustee for creditors.

From BOYD, C.] [NOV. 12.

IN RE THE ZOOLOGICAL AND ACCLIMATIZATION SOCIETY. COX'S CASE.

Company—Subscriber—Shareholder—Contributory—R.S.O., c. 157.

C., after the incorporation of a Company under the Ontario Joint Stock Companies Letters Patent Act, signed a share subscription book with the following heading:

"We the undersigned do hereby severally on behalf of ourselves our and each of our several and respective executors and administrators, acknowledge ourselves to be subscribers to the Capital Stock of the Zoological and Acclimatization Society of Ontario for the number of shares and to the amount set opposite our several and respective names and seals hereunder, and we do hereby covenant, promise and agree each with the other of us, and with S., to pay the amount of our said several subscriptions and all calls thereon when and as the same may be called up and made under the provisions of the Ontario Joint Stock Companies Letters Patent Act, or under any by-laws which may be passed by the said Company, and we request the number of shares for which we subscribe hereunder to be allotted to us."

No shares were allotted to C., he was not entered in the books of the company as a shareholder, and never made any payments. Four years after this document was signed by C. the company was wound up, and he was held liable as a contributory.

Held, that this document did not, in the absence of any recognition by the company of C.'s position as a shareholder, alone and *ex proprio vigore* create the liability contended for.

Order of BOYD, C., 17 O.R., 331, reversed.

A. C. Galt for the appellant.

W. F. W. Creelman for the respondent.

From BOYD, C.]

ROSS *v.* DUNN.

Assignments and preferences—Chattel mortgage—Present advance—Following proceeds where mortgaged goods sold—Security taken by partner in his own name to secure partnership debt—Debt represented by paper under discount—Affidavit of indebtedness.

J. D. being indebted to W. D. & Co. in the sum of $2,260 for which W. D. & Co. held his unmatured notes under discount in a bank, applied to them for an advance to enable him to carry on business. They in good faith agreed to advance $1,000, and D. made a chattel mortgage in favour of W. D., the senior partner of the firm, purporting to secure an indebtedness of $3,260. A cheque for $1,000 was given to J. D., and held by him for some six months and then returned to W. D. & Co., he in the meantime, in pursuance of an arrangement made when the cheque was given, drawing on W. D. & Co. from time to time as he required money until he had drawn in all more than $1,000. W. D. made the affidavit in the usual form that J. D. was indebted to him in the sum of $3,260. The goods covered by the

chattel mortgage were sold under it while the plaintiff's execution was in the sheriff's hands.

Held, that W. D. could properly take the mortgage in his own name and make the affidavit of indebtedness, though the debt was due to the partnership and partly represented by unmatured paper; that the mortgage was one to secure a present actual advance; and therefore that it could not be impeached under the Chattel Mortgage Act.

Held, also, that it could not be impeached under the Assignments and Preferences Act, because the advance was made in the *bona fide* that J. D. would thereby be enabled to continue his business and pay his debts in full.

Held, also, per BURTON and OSLER, JJ.A., that the goods having been sold, an action against the mortgagee to make him account for the proceeds could not be maintained by the execution creditor even if the mortgage were invalid; his remedy, if any, would be to follow the goods.

Judgment of BOYD, C., affirmed.

Lash, Q.C., and *D. L. McLean* for the appellants.

Moss, Q.C., for the respondents.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Div'l Ct.] [Nov. 13.

IN RE MARTER AND THE COURT OF REVISION OF THE TOWN OF GRAVENHURST.

Mandamus—Compelling Court of Revision to hear voters' lists appeals—Specific remedy by appeal to county judge—51 Vict., c. 4, s. 13, s.s. (1)—R.S.O., c. 193, s.s. 61, 68.

By section 13, sub-section (1) of the Manhood Suffrage Act, 51 Vict., c. 4, it is provided that complaints of persons not having been entered on the roll as qualified to be voters who should have been so entered, may by any person entitled to be a voter or to be entered on the voters' list, be made to the Court of Revision as in the case of assessments, or the complaints may be made to the County Judge under the Voters' Lists Act.

By s. 61 of the Assessment Act, R.S.O., c. 193, it is provided that the Court of Revision of each municipality shall meet and try all complaints in regard to persons wrongfully omitted from the roll, and by sec. 68, s.s. (1), that an appeal to the County Judge shall lie not only against a decision of the Court of Revision on an appeal to that court, but also against the omission, neglect, or refusal to said Court to hear or decide an appeal. The Court of Revision of a municipality refused to hear or adjudicate upon a complaint made by M. under sec. 13 of the Manhood Suffrage Act, that the names of certain persons had been wrongfully omitted from the assessment roll.

Held, that it was the duty of the Court of Revision under sec. 61 to try the complaint made by M.; and that if no other complete, appropriate, and convenient remedy had existed M. would have been entitled to a mandamus to compel the court to perform its duty; but as the Legislature by sec. 68 had given a specific remedy for this very breach of duty, by appeal to the County Judge, M. was not entitled to a mandamus.

The right which M. was seeking to enforce was to have the names of certain persons placed on the assessment roll; not, as was contended, to have his complaint disposed of by the Court of Revision; the complaint to the Court of Revision was a means of enforcing his right, not the right itself.

McCarthy, Q.C., and *Fepler* for Marter.

Moss, Q.C., for members of Court of Revision.

Chancery Division.

Div'l Ct.] [Oct. 8.

THE CORPORATION OF THE TOWNSHIP OF BARTON *v.* THE CORPORATION OF THE CITY OF HAMILTON.

Municipal Corporations—Drainage through adjacent municipality—Arbitration—"Territory"—R.S.O. c. 184, sec. 492, s.s. 2.

Municipality cannot construct a sewer through an adjacent municipality against the will of the latter, without first settling the terms by arbitration, even although a purchase was made from the private owners of the land through which the sewer was to be constructed.

"Territory" in sec. 492, s.s. 2, R.S.O. c. 184, is not used to signify land belonging to the

corporation as owners, but land within their territorial ambit over which they have municipal jurisdiction.

S. H. Blake, Q.C., and *Wm. Bell* for the plaintiffs.

Moss, Q.C., and *J. M. Gibson* for the defendants.

Div'l Ct.] [Oct. 19.

SCOTT *v.* STUART.

For sale—Patented lands advertised and sold as unpatented.

Certain lands were sold for taxes, and were described by the Treasurer in the advertisement and in the tax deed as unpatented, although as a matter of fact they were patented. It was shown in evidence that the effect of such a description was that lands would sell for a merely nominal price.

Held, affirming BOYD, C., that the sale was bad and the deed must be set aside.

J. C. Hamilton and *Thos. Dixon* for the plaintiffs.

Creasor, Q.C., for the defendants.

STREET, J.] [Oct. 19.

ALBRECHT *v.* BURKHOLDER.

Slander—Words applicable to class of two—Law of Slander Amendment Act, 1889—Right of action.

Action for slander under Law of Slander Amendment Act, 1889, for saying that he (the defendant) had heard one Brayley "had got one of the Albrecht girls (meaning the plaintiff) in trouble."

The plaintiff was one of four daughters of Ferdinand Albrecht, two of whom were mere children; and though the evidence showed that there were circumstances which might lead persons to think that the words referred to the plaintiff, yet it also showed that the person to whom they were actually spoken was not aware of these circumstances, and had no reason, therefore, to understand them as referring to the plaintiff.

Held, however, that either the plaintiff or her sister, being the only two of Albrecht's daughters to whom the words could apply, was entitled to maintain the action; but it was necessary for her to prove that the words were untrue of her sister, the other member of the class to which the hearer might have applied them, and having failed to do this here, the action must be dismissed.

Mackelcan, Q.C., for the plaintiff.

Osler, Q.C., for the defendant.

BOYD, C.] [Oct. 23.

DISHER *v.* CANADA PERMANENT L. & S. CO.

Hirereceipt—Lien for engine—Mortgage—Surplus—Part of dower—Second mortgagee.

Certain lands were subject to a first mortgage, a lien registered by the Waterous Engine Co. in respect to an engine supplied by them, and a second mortgage registered subsequently to the lien; and the lands having been sold, a contest arose in this action in respect to the surplus left after satisfaction of the first mortgage.

The Engine Company had sold the engine, and now claimed the balance of the price under the lien.

Held, that they were entitled to make that claim, but that having sold the engine without notice to the second mortgagee, the latter was entitled to impeach that sale by shewing that a greater sum could have been realized, if it had been properly sold after proper notice. But

Held, that the second mortgagee was alone entitled to the value of the interest of the wife of the owner of the equity of redemption in the land as inchoate doweress; inasmuch as she had barred her dower in his favour, whereas she had not signed the agreement with the Waterous Co. In the absence of arrangement the value of this interest must be ascertained and retained in court, to be paid out to the second mortgagee if the right of dower attached by the wife surviving her husband, and to the Waterous Company if it did not attach.

H. T. Beck for the plaintiff.

Hoyles for the Waterous Company.

Macdonell for the defendants.

Practice.

Court of Appeal.] [Nov. 12.

NIAGARA GRAPE CO. *v.* NELLIS.

Consolidation of actions—Staying actions—Identity of issues—Leave to appeal.

An order to consolidate, strictly so called, is a matter of discretion, and is made as a favour to and for the benefit of the defendants, the

object being that a single trial may decide that which is in fact only a single question, and thus save costs and expense. No such order ought to be made unless the questions in each case are substantially the same, and the evidence would be substantially the same if they were all tried.

Leave to appeal from the order of the Queen's Bench Divisional Court, 13 P.R. 179; *ante* p. 412 was refused.

McCarthy, Q.C., for the defendants.

C. J. Holman for the plaintiffs.

STREET, J.] [Nov. 20.

RE COLENUTT AND TOWNSHIP OF COLCHESTER NORTH.

By-law—Procedure on motion to quash—Notice of motion—Order nisi—Rule 526.

The authority to proceed by rule or order *nisi* in quashing a by-law conferred by R.S.O., c. 184, sec. 332, is inconsistent with Con. Rule 526, and must therefore be taken to be repealed; for by 51 Vict., c. 2, sec. 4 (O.), it is declared that all enactments in the Revised Statutes inconsistent with the Rules are repealed.

It is therefore not now proper to proceed by order *nisi*.

In re Peck and Ameliasburg, 12 P.R. 664, followed.

Hewison v. *Pembroke*, 6 O.R. 170, distinguished.

Langton for applicant.

W. H. Blake for Township.

Appointments to Office.

CORONER.

Oxford.

N. Hotson, of Innerkip, in the County of Oxford, M.D., to be an Associate-Coroner within and for the said County of Oxford, *vice* J. P. Rankin, M.D., removed from the County.

DIVISION COURT CLERKS.

Elgin.

A. McBride, of St. Thomas, to be Clerk of the Second and Third Division Courts of the County of Elgin, on and from the 1st day of January, A.D. 1890, *vice* C. Askew, resigned.

BAILIFFS.

Elgin.

D. McGregor, of Aldborough, to be Bailiff of the Fourth Division Court of the County of Elgin, *vice* J. McCallum, resigned.

Victoria.

I. Thornton, of Omemee, to be Bailiff of the Fourth Division Court of the County of Victoria, *vice* G. A. Balfour, resigned.

Bruce.

J. McRitchie, of Ripley, to be Bailiff of the Ninth Division Court of the County of Bruce, *vice* D. McDonald, resigned.

Law Students' Department.

EXAMINATION BEFORE MICHAELMAS TERM, 1889.

FIRST INTERMEDIATE.

Anson on Contracts—Statutes.

Examiner—R. E. KINGSFORD.

1. An offer not made to an ascertained person but accepted by an ascertained person. Illustrate by example, and explain the rule whereby a contract is held to have arisen.

2. A. makes a promissory note to B., dated 31st October, 1889, payable "one month after date." When is it due? Why?

3. A. enters into a contract under seal with B.: at the time of the execution of the agreement there is no consideration therefor: when A. is sued by B. on the contract he pleads no consideration. How far can the defence avail? Why?

4. "A man cannot assign his liabilities under a contract." How far is this statement true?

5. How far can a simple contract be waived before breach without consideration?

6. In the case of an executed contract of sale, what remedy has the buyer if the article prove worthless or unmarketable?

7. How far is a person liable for debts contracted by him during infancy, but disputed after he comes of age? Why?

Smith's Common Law.

Examiner—R. E. KINGSFORD.

1. What is meant by *Recaption?* Explain fully.

2. When will a marriage be *void* and when *voidable* by reason of the age of the parties?

3. Explain what is meant by an executor's right of *retainer*.

4. Explain and distinguish the actions for *false imprisonment* and *malicious prosecution*.

5. Name the six principal kinds of *injury to real estate*, and explain the nature of each.

6. Explain the meaning of *privileged communications* in cases of slander.

7. What are the rules as to the owner's liability for *trespass by animals?*

Equity.

Examiner—P. H. DRAYTON.

1. Explain and illustrate the maxim that equality is equity.

2. A. and B., residents of Toronto, enter into a binding agreement whereby B. agrees to purchase from B. a farm of his in British Columbia. B. afterwards refuses to carry out the contract. Has A. any remedy? Explain fully.

3. A., the trustee under will of B., deposits and keeps deposited with his own account, at a bank in good standing, the trust funds of the estate. The bank afterwards fails, and depositors only obtain fifty per cent. of their deposits. State the relative rights of A. and the *cestui que* trust. Reasons.

4. What is a *donatio mortis causa?* In what respect does it differ from a legacy?

5. A. by will bequeaths a sum of money for charitable purposes to "my executor hereinafter named." He names none. What becomes of the bequest? Explain.

6. Under what circumstances, if any, will the Court interfere in the non-execution of a power?

7. What is meant by cy-pres doctrine? Illustrate.

Real Property.

Examiner—P. H. DRAYTON.

1. Distinguish between a reversion and a remainder.

2. Explain the Doctrine of Merger.

3. What was the origin of Uses? Why was the Statute of Uses enacted?

4. What was the object and effect of the Statute *Quia Emptores?*

5. Distinguish between an estate by joint tenancy and an estate by tenancy in common.

6. What is meant by a term of years?

7. What is meant by a resulting use?

SECOND INTERMEDIATE.

Broom's Common Law.

Examiner—R. E. KINGSFORD.

1. What is the law as to a master's liability for a *wilful* tort committed by his servant? Give examples.

2. In what cases is an infant liable for his torts?

3. What is essential to the validity of a *custom?*

4. Explain the difference between the actions of *slander* and *malicious prosecution*, in regard to the question of malice.

5. What is the difference between the remedies for a *public nuisance* and a *private nuisance*, and what is the reason of the difference?

6. What distinction in the remedy is there against a magistrate who acts erroneously within his jurisdiction from that against a magistrate who acts without jurisdiction?

7. What is the law as to the liability of a government officer for an injury caused by him to another in carrying out the orders of the government?

Personal Property.—Judicature Act.

Examiner—R. E. KINGSFORD.

1. What were the rights of a husband over his wife's personal property, and what are they now?

2. A gift of personal property to A. for life, and after his decease to B. What estate do A. and B. take respectively?

3. In what cases can only the bailee of goods maintain an action against a person who has taken the goods and converted them to his own use? Why?

4. In what cases must there be a trial by jury unless the parties waive same?

5. How far can a plaintiff amend his statement of claim without leave?

6. Where a judgment is against partners, how may execution issue?

7. What statutory requisites in case of a chattel mortgage executed to secure against endorsement of a promissory note and renewals?

Equity.

Examiner—P. H. DRAYTON.

1. A. verbally agrees with B. to sell him the farm of which B. is tenant: afterwards he

refuses to carry out the verbal agreement. Under what, if any, circumstances would B. be able to successfully bring an action of specific performance?

2. State the general principles which govern in determining whether a legacy to a creditor is a satisfaction, or part satisfaction of a debt due him.

3. Define and distinguish between the equitable doctrines of satisfaction and performance.

4. A. contracts with B. to lecture for him on a certain subject during a specified period, and for no one else. He afterwards commences lecturing on the subject agreed upon for C. Can B. compel specific performance of the contract to lecture for him alone? if not, has he any remedy?

5. Distinguish briefly the rights of solicitor and trustee to deal with clients, and *cestui que trust*, respectively.

6. Define constructive fraud, and illustrate by an example.

7. Explain the maxim "Equity acts *in personam*," and illustrate by an example.

Real Property.

Examiner—P. H. DRAYTON.

1. By what tenure are lands held in Ontario? Why?

2. Distinguish between a tenant at suffrance and a tenant at will.

3. State the rules given by which you can determine whether or no an express covenant in a conveyance runs with the land.

4. A lease to "A." for life, remainders to B. for life. What estate does B. take? Reasons for your answer.

5. Explain what is meant by a base or qualified fee.

6. Why is it necessary that there should be a consideration in a deed of bargain and sale?

7. Distinguish between a *condition* in *deed* and a *limitation*.

CERTIFICATE OF FITNESS.

Benjamin on Sales and Smith on Contracts.

Examiner—R. E. KINGSFORD.

1. How far is parol evidence admissible, (*a*) to shew that a written contract has omitted a material term of the bargain: (*b*) to shew that an additional term was verbally agreed to after the contract was made. Why?

2. Explain the difference as regards the passing of the title between the sale of a specific chattel and of unascertained goods.

3. What warranty and what condition does the law imply on a sale of goods by sample?

4. How far does delivery of goods to a carrier constitute an *acceptance* and *receipt* to satisfy the Statute of Frauds?

5. Explain the difference between a *Condition Precedent* and a *Warranty*.

6. What are the general grounds of *illegality* in contracts at common law?

7. In what ways may a sale on trial become an absolute sale?

9. When the vendor sends a larger quantity of goods than the purchaser ordered, what are the rights of the latter?

9. Goods which have been sold remain in possession of the vendor. The vendee having made default in payment of the price the vendor re-sells the goods. Is he liable to an action by the vendee? If so, in what way, and for what amount?

10. How far is a verbal acceptance of a written offer of goods worth $1,000 binding on vendor and vendee respectively?

Law Society of Upper Canada.

TRINITY TERM, 1889.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained

from the Secretary of the Society, or from the Principal of the Law School, Osgoode Hall, Toronto.

Those Students-at-Law and Articled Clerks, who under the Rules are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be the most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

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

Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.

Examiners, R. E. KINGSFORD, LL.B. P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the Rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be. At the first Law School Examination to be held in May, 1860, fourteen Scholarships in all will be offered for competition, seven of those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students.

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School:

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hiliary Term, 1889.

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

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

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has

been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

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

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

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3

Equity.

Snell's Principles of Equity.

Statute Law.

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

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

SECOND YEAR.

Criminal Law.

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

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

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

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition.

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

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

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectures on Real Property, and Practice and Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.