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THE rules and forms of proceedings of the Senate of Canada, touching bills of divorce and procedure thereon, prepared by the Special Committee appointed for the purpose, were adopted by the Senate on the 11th ult. A press of matter prevents our devoting space in this number to this important matter. We shall refer to it again, merely remarking at present that the country is much indebted to Senator Gowan for the intelligent labour he has given to the subject.

THE intelligence and care with which the lady who so ably discharges the duties of librarian of the County of York Law Association has, for some time past, annotated the cases in the reports under her custody with references to current decisions bearing upon them, must have attracted before now the attention of the profession. It does not require a prophet to foresee that this is daily adding so much to the value of this library, that unless the same thing is done in Osgoode Hall very soon, the profession generally will resort to the former, and not to the latter, in working up cases and opinions. The subject makes us think of a little sum in proportion: If one woman in one place can do what the lady we refer to is doing so ably and well, how many men would it be necessary to employ to secure the same being done in another place? Possibly, as Lord Dundreary would say, the answer must depend upon "how strong the other fellows are."

ARE law associations as a class more conservative in their views and actions than similar bodies composed of the members of other professions? One is tempted to suggest that, in the old world at all events, they are singularly non-progressive. Fifty law associations were applied to in January last to express their views on the problem which has for some time past given rise to so much controversy and the effusion of so much ink in England—the fusion of the legal professions. Twenty-seven sent no replies at all; fourteen thought any scheme impracticable, even if desirable; and, out of the whole number, nine only were in favour of the proposed measure. Fifty-four per cent. of the associations were either so indifferent or so contemptuous towards the scheme, as to express no opinion, favourable or adverse; twenty-eight per cent. were despondently, but contentedly, sceptical as to whether the legal world *could* move; a saving remnant of eighteen per cent. believed in fusion. If English clients are to see any great measure of law reform, tending to economy and expedition in litigation, they must obviously look elsewhere for it than to their professional advisers.

THE dilapidated condition of one of the most important abstract index books in the City Registry Office, viz., that to plan 108, has suggested to us the great propriety in our humble opinion of the Government having, at all events, the abstract index books in all the registry offices in the Province printed. It is obvious that this must be done sooner or later. As the city increases in size, and indeed already, there is a great inconvenience in only one person being able to have access to one abstract index book at a time. If they were printed there would, of course, be several copies of each abstract index book, and many people might have the same abstract index before them at the same time. Moreover, the abstract indexes to all the counties in the Province would be contained in all the registry offices in quite as little space as the present bulky volumes occupy, and people in Toronto could have before them the abstract titles of all lots of land up to, at any rate, a very late date all over the Province, and practitioners in the country would have the same advantage with regard to such properties in Toronto. Our ideas are even more extensive still, and extend to the printing of all the books in all the registry offices in the Province. The expense as a Government matter would be a trifle; the advantages would be enormous, by enabling searches into any title up to a very recent date to be made equally well in any office, excepting in respect to the occasional necessity of searching the original documents. At all events, we commend the consideration of this to the Attorney-General.

LIBEL AND SLANDER.

Hard words break no bones, though many a heart has been crushed thereby; still the law of Libel and Slander, which deals only with words, words, words, is one of the most amusing departments of jurisprudence. The appearance of Odgers on Libel and Slander in the text-book series of the Blackstone Publishing Company, has drawn our attention anew to the Queen's English, how it is used and how abused. It is wonderful to see on how many epithets the courts have passed judgment, weighing them in the scales of justice, punishing those who give currency to some, absolving those who trade in others. One may call another a scurvy, bad fellow, a rogue, a villain and a varlet, a renegade rogue, a common filcher, a cunning knave, a liar, a rogue and a swindler, a blackleg, and yet that other must bear without redress "these words of heat," unless, indeed, some special damage can be shown. One may describe an honourable member of the Law Society as a cheat, a rogue or a knave, but you must not say, "You cheat your clients." The judges allow one to call a justice of the peace a fool, ass, blockhead, a beetle-headed justice, a logger-headed, a slouch-headed, bursen-bellied hound, or a blood-sucker and one who sucketh blood; because such elegant expressions merely impute want of natural cleverness or ignorance of

law, are but general terms of abuse, and it cannot be intended what blood he sucketh.

You may say a member of Congress is weak of understanding. You may call a member of the Montreal Board of Health "a cypher," (35 A. L. J. 382). But woe betide you if you say of a bishop, "He is a wicked man," or of a parson, "He preacheth lies in the pulpit," "He is a common drunkard, a common swearer, a common liar, and hath preached false doctrines;" or of a barrister, "He is a dunce, and will get little by the law," (although Duns Scotus, the first of the great Dunce family, was "a great learned man"); or, "Thou art no lawyer; thou canst not make a lease; thou hast that degree without desert; they are fools that come to thee for law." Or even if you say any of these things, woe be to you. If you say of an attorney, "He has no more law than Master Cheyny's bull," "He has no more law than a goose," "He hath the falling sickness," "He is an ambidexter," or "a daffodowndilly" (if it is averred that the word means an ambidexter); or if you remark of a physician, "He is a quacksalver, an empiric, a mountebank." For all these words touch the person spoken of in his office, profession or trade. Distinctions are sometimes finely drawn. You must not say of a barrister, "He hath as much law as a jackanapes," yet you may say, "He has no more *wit* than a jackanapes," (wit not being essential to success at the bar). The court was not sure whether it was right to say of a solicitor, "He has no more law than the man in the moon," probably because there is some uncertainty about the amount of legal knowledge possessed by that most observant individual; and yet to say of an attorney, "He is no more a lawyer than the devil," is decidedly actionable, notwithstanding the well-known skill of the prince of liars.

You must not impute immorality or adultery to a beneficed clergyman, and yet you may to a physician or a staymaker; and if you call a woman by the vilest names, or impute to her the most immoral conduct, she has no redress unless she can prove that these words have directly caused her special damage; and discord between man and wife ending in a divorce, the husband refusing to live with his wife, her expulsion from religious societies, are not sufficient special damage. This state of the law has truly been called unsatisfactory, nay, barbarous.

In New York, it has been held libellous *per se*, to charge that a person is illegitimate (*Shilby* v. *Sun Publishing Co.*, 38 Hun. 474). In such sad cases the poor maligned woman, as she feels the sting of slander, can only comfort herself with the thought, "They are not the worst fruits on which the wasps alight."

One cannot be as free with his pen as with his tongue, for *litera scripta manet*. How it will be when the phonograph is in full swing, seizing and perpetuating all the words of a man's mouth, and allowing them to come forth again in the very tones of the first utterer at the will of any one who can turn a crank, it is for the judges on the bench to say. Meanwhile, any written words are defamatory which impute to the plaintiff that he has been guilty of any crime, fraud, dishonesty, immorality, vice or dishonourable conduct, or has been accused or suspected of any such misconduct; or which suggest that the plaintiff is suffering from any infectious disease; or which have a tendency to injure him in his office, profession, calling or trade. And so, too, are all words which hold one up to

contempt, hatred, scorn or ridicule, and which, by engendering an evil opinion of him in the minds of right-thinking men, tend to deprive him of friendly intercourse and society.

We wot of some good specimens of slanders that Mr. Odgers passeth by. Old Brownlow gives them: *Payn* against *Mo!ton* gave all the justices an opportunity of deciding that an action will not lie for calling one "a sorcerer and inchantor;" "for sorcerer and inchantor are those who deal with charms or turning of books, as Virgil saith, '*Carminibus Circes, socios mutavit Ulissis,*' which is intended Charms and inchantments, and conjuration is of *con et juro*, that is, to compell the devill to appeare, as it seems to them, against his will, but which is that to which the devill appeares voluntarily, and that is a more greater offence than sorcery or inchantment, which was adjudged that action doth not lie for calling a man a witch." In the witch case, the words used were, "He is a witch, and hath bewitched me," and the court said, "he might bewitch him by fair words or fair looks." Yet in another case, where the words were, "The devil appeareth to thee every night in the likeness of a black man riding on a black horse, and thou conferrest with him, and whatsoever thou dost ask he doth give it thee, and that is the reason thou has so much money, and this I will justify." The plaintiff recovered damages. "*Sympson* against *Waters* in an action upon the case for slander, that is, thou art drunk, and I never held up my hand at the bar as thou hast done; agreed that an action does not lie for these words, for peradventure he intended buttery barr."

But to return to our text-book In considering the question of slander or no slander, what meaning the speaker intended to convey is immaterial. In construing the words, their true meaning must be held to be what the hearers understood by them, always provided the hearers are persons of ordinary intelligence, and that to ordinary English words they give their ordinary English meaning. Some words are obviously defamatory, such as "Frozen snake," "Judasa," "An itchy old toad" and "Pettifogging shyster" (as applied to a lawyer); and judges and courts have no right to be ignorant of the meaning of current phrases which every one else understands. Some words are neutral, such as technical, provincial or foreign words; then an innuendo must be given to disclose their actionable meaning. "You are a bunter;" "Thou art a clipper, and thy neck shall pay for it;" "He is a lame duck," "He is a welcher," "A blackleg," "A black sheep." With the aid of innuendos, all these seemingly innocent expressions may be actionable. Apparently, a lone Choctaw Indian or a Fiji Islander might stand all day long in our public streets, and hurl the vilest epithets his lingo contains at our best and purest citizens, and yet there would be no slander, for the bystanders must understand.

It seems innocent enough to call one "A healer of felons," "A man Friday," or to say, "He hath eaten a spider," "Ware hawk there, mind what you are about," "An honest lawyer," or to remark, "I never set any premises on fire." Yet, with a proper averment as to what the meaning was, you may be held responsible in damages for these casual expressions.

In days long gone by it was *scandalum magnatum* to say, as Mr. Proby did,

"I value my Lord Marquis of Dorchester no more than I value the dog at my feet." Even a lunatic may be held liable to an action for a libel or slander, unless his insanity is well-known to all who hear or read his words.

Mr. Odgers thinks it well that there should be a criminal remedy for libel, because most libellers are penniless, and a civil action has no terrors for them.

Our author tells us that "an Irish court will take judicial notice of the nature of a post-card, and will presume that others beside the persons to whom it is addressed will read what is written thereon." Why hold up an Irish court in this way? Why suggest that in Ireland people will look at cards addressed to others?

When a marriageable damsel brings an action for libel or slander, and tries to prove special damages, it will not do to allege that in consequence thereof she "had lost several suitors;" that is too general, for the names of her admirers, if any such there were, could hardly escape the plaintiff's memory. So it is held by judges of the male sex; how it will be when the fair daughters of the law put on the ermine, will, perhaps, soon be decided out West. When in consequence of a slander, which he did not believe, a father in New York State refused to give his daughter a silk dress and a course of lessons on the piano, which he had promised her, it was held that this was not such special damage as would sustain an action.

It would appear that an infant between seven and fourteen might be found guilty of a criminal libel, if evidence was given of a disposition prematurely wicked. A man may stumble into libel as easily as some do into poetry; a compositor will be criminally liable for setting up the type of a libel, and so will the man whose business it is merely to clap down the press. On the other hand, the proprietor of a newspaper will be held liable for an accidental slip made by his printer's man in setting up the type.

The chapter on blasphemy and heresy might almost be read on Sunday, so much is there in it on theology. Mr. Odgers' book is, indeed, most interesting; the Byronic line on his title page, "Dead scandals form good subjects for dissection," is true; and we hope that it is equally true that "Dead scandals form good subjects" for reviewing.

R. VASHON ROGERS.

THE PROVINCIAL LEGISLATION OF 1888.

THE Supplement of the *Ontario Gazette* for the 31st March last, contains the principal Acts passed at the recent session of the Provincial Legislature.

The number of Acts of general interest is somewhat less than usual, and even these are of trifling importance. Chapter 6, is an attempt to clear up the shrievalty of York muddle. We have always thought, and still think, it was a great mistake to carve out of the York shrievalty that of the city of Toronto. The affairs of the county and city are so mixed up and intermingled, that the creation of two distinct offices is tolerably sure to lead to more or less confusion. If, as was generally admitted, the emoluments of the office had become too large, it would, if it were thought desirable to have two officers to do the work, have been feasible to have appointed two sheriffs of York, giving them joint authority and an equal share of the emoluments, and an equal liability for the due performance of the duties of the office, leaving them to arrange between themselves such a division of the duties as they pleased. Such an arrangement would have, at all events, saved a great deal of trouble as regards the public. But it would have been better still, and more in the interest of the public, to have refrained from making any division of the office, or appointing any additional sheriff, and to let there be but one sheriff as formerly, and simply provided that such portion of the fees as exceeded a given amount should be applied to some public use, in a similar way to that in which the surplus fees of the registry offices are disposed of. This Act can hardly be said to simplify matters very much. It defines certain duties to be discharged by the sheriffs of York and Toronto respectively. Section 8, which relates to executions, provides that if any further portion of the county of York is annexed to the city of Toronto, the Sheriff of York is to transmit to the Sheriff of Toronto a list of all executions in his hands, and also notice of the renewal of any such writ. And that the Sheriff of Toronto, if there are no writs against a given person in his hands, is to certify that there are no executions in his office against such person, notwithstanding the name of such person may appear on the list transmitted to him by the Sheriff of York. This section seems to us likely to cause difficulty and misunderstanding. A person may be buying a parcel of land in a tract recently added to the city, and a certificate from the Sheriff of Toronto may be produced, showing that there are no executions in his hands against the vendor, while all the time there may be executions in the hands of the Sheriff of York which will bind the property. Of course, people are always supposed to know the law and to be expert lawyers, but as a matter of fact, we know this is very far from being the case. In spite of the presumption to the contrary, people will be found who will conclude that a certificate from the sheriff in whose bailiwick the land is situate, is sufficient as in other cases, and will probably find out their mistake when it is too late. The tenth section provides that unsatisfied writs in the hands of the Sheriff of York at the time of the appointment of the Sheriff of Toronto, are not to bind lands in Toronto after one year from the passing of this Act, unless before the expira-

tion of the year a writ is also placed in the hands of the Sheriff of Toronto, indorsed with a notice that priority is claimed by virtue of the Act, in which case the writ is to retain the priority it had in the hands of the Sheriff of York, unless in the meantime (we presume within the year) it has been suffered to run out, or has otherwise lost its priority in the hands of the Sheriff of York.

Chapter 9 empowers Surrogate Courts to seal foreign British probates and letters of administration, so as to give such probates or letters force in this Province. The Act is not to go into operation, however, until a day to be named by proclamation of the Lieutenant-Governor, and is only to apply to the United Kingdom and other British possessions if they pass similar Acts. Nothing is said about fees, but we presume no additional fees are intended to be payable. No provision is made for notifying the Surrogate Clerk of the re-sealing of such foreign probates or letters of administration, which appears to us an oversight which should be corrected. Provision is made for the giving of further security in cases where the security given in the foreign court is insufficient to cover the assets in this province.

It would be too much to expect that the Revised Statutes should be allowed to pass a session without being tinkered. Accordingly we have two or three Acts amending them. The amendments made by chapter 10 to the Division Court Act, R. S. O. c. 51, seem to be such as might have been reasonably refused; the amendment to section 100 appears to us to be wholly immaterial,—the words, "either before or after the issue of the summons," are inserted after the word "absconded," in the eighth line, but seem to add nothing to the effect of the section. Section 148 is amended by extending the right of appeal in Division Court cases to parties to garnishee proceedings, and parties added by order of a judge. Formerly it was a cause for committal of a defaulting debtor to gaol, if it appeared that he had contracted the debt without any reasonable expectation of being able to pay it; now the wisdom of our legislators has determined that this is not a sufficient reason for gaoling a debtor, and this provision of section 240 is struck out.

The complicated provisions of the Creditors' Relief Act, R. S. O. c. 65, also comes in for a few amendments. Chapter 11 provides that section 4 is to apply to moneys received by a sheriff as the proceeds of a sale under an interpleader order, but when the money is ordered to be paid into court, the entry required to be made by the sheriff is not to be made until the money is paid out to him again. Section 2 provides that creditors having only *fi. fas.* goods are to share ratably with all other creditors in moneys realized under *fi. fas.* lands, and creditors having only *fi. fas.* lands are also to share ratably with all other creditors in moneys realized under *fi. fas.* goods. Section 4 provides that when a sheriff is unable to satisfy a Division Court judgment or execution filed with him, upon a return thereof by the sheriff, the creditor may file it in the office of the Clerk of the Division Court where the judgment was recovered, or in the place where the cause of action arose, or the debtor, or one of the debtors (if more than one) resided, and thereupon it shall become a judgment of the said court for the unpaid balance. One would have thought that it being already a

judgment of the court in which it was recovered, it could not be made any more a judgment by the process above referred to so far as that particular court is concerned, but as regards the other places where it is authorized to be filed, the case is different, and the provision may be of some use, though perhaps not very much.

The Land Titles Act, R. S. O. c. 116, s. 53, is by the same chapter also amended, so that copies of executions are no longer to be sent by the sheriff to the Master of Titles, except upon the written request of the execution creditor or his solicitor; and The Execution Act, R. S. O. c. 64, s. 7, is also amended in a trifling particular by enabling clerks of Division Courts to certify as to executions issued by them which are entitled to be enforced, as against goods exempted from execution by the Act of last session in cases where the debt for which the judgment was recovered was contracted before 1st October, 1887.

By chapter 13, the districts of Parry Sound and Muskoka are united as a provisional judicial district, to be called "The United Provisional Judicial District of Muskoka and Parry Sound." The title is certainly long enough. A District Court and a Surrogate Court for the district are established. Sittings of the High Court are to be held once a year, or oftener, if the judges think it requisite, at Parry Sound and Bracebridge, and at such other places as may be appointed by the Lieutenant-Governor in Council. But the judges may dispense with any sitting if, on inquiry, it is found to be unnecessary.

The Local Registrar of the High Court for the united district is to be located at Parry Sound, and this official is also to be the Clerk of the District Court and Surrogate Court. There is also to be a Deputy Clerk at Bracebridge, but the Act appears to confine the powers of the Deputy to proceedings in the District and Surrogate Courts, and he does not appear to have any jurisdiction in the High Court.

By chapter 14, a temporary judicial district is created by the setting apart of the great Manitoulin Island and adjacent islands as a separate district, but no separate courts are established for this new district, but provision is made for the appointment of a Deputy Clerk for Manitoulin of the District Court of Algoma.

Chapter 15 abolishes the right of a mortgagee to claim six months' notice, or six months' interest in lieu of notice, from a mortgagor coming to redeem after the day appointed for payment; but express contracts providing for such notice, or payment of interest in lieu thereof, are to be still valid and binding. And the Act is not to apply so as to enable a mortgagor to pay off the mortgage when the principal has become due, merely by reason of default in payment of interest or an instalment of principal, and it is not to apply to mortgages made prior to 1st July next. By this Act some further amendments are made to the Revised Statutes. The right of a mortgagee to sell under the statutory powers conferred by R. S. O. c. 102, upon default in payment of his mortgage, were limited to cases where principal or interest were six months in arrears; now the Act is amended so that these powers may be exercised when the principal is four months or the interest six months in arrear. These statutory powers may also be exercised where the short form mortgage is used subject to certain restrictions.

Section 5 deals with powers of sale exercised by assignees of mortgagees, and imposes a limitation for bringing actions brought to impeach such sales on the ground that the assignee was not authorized to exercise the power to a period of two years from the date of sale. This provision is no doubt introduced in consequence of the decision in *re Gilchrist and Island*, 11 O. R. 587.

Chapter 16 makes provision for payment to the Accountant of the Supreme Court of Judicature of unclaimed moneys remaining in the hands of real representatives in partition actions. Chapter 16 makes certain amendments to the Registry Act. Section 1 provides that powers of attorney to sell land in which the commission of the attorney is made a charge on the land are to be of no effect as against subsequent purchasers, or the creditors of the donor, after the lapse of one year from the date of the instrument, if made after the Act, or one year from the passing of the Act when it was made before. This period is, we think, too short, at least so far as farm lands are concerned. We shall expect an amendment to this next session. The second section requires that any instrument charging lands with the payment of the price of goods shall not be registered without an affidavit proving that it has been read over and explained to the person executing it, and that he appeared to understand it, and was informed that it might be registered as an incumbrance on his land. A form of certificate of discharge of such instruments is also provided. Letters of administration affecting lands may, by section 5, be registered as probates of wills are registered.

Chapter 20 refers to the marriage law, which we have not space to refer to at length.

By chapter 21 the married woman comes in for her annual share of attention. Provision is made for enabling a judge to dispense with a husband's execution of a conveyance of land in which he has curtesy, when he is a lunatic, idiot, or of unsound mind, or is, from any other cause, incapable of executing a deed; or if his residence is unknown, or he is in prison, or is living apart from his wife by consent, or under circumstances which entitle her to alimony, or if he has deserted her, or if, in the opinion of a judge, there is any other cause for so doing, so as to enable the wife alone to convey the land free from her husband's estate. The framers of this Act, as if to show that they are not themselves quite convinced of its necessity, conclude with a clause that nothing in the Act shall be taken or construed as meaning or implying that a married woman may not, without and irrespective of its provisions, validly make a conveyance of her real estate as if she were a *femme sole*.

By chapter 23 provision is made for wives deserted by their husbands obtaining summary orders against their husbands for their maintenance, to the extent of a sum not exceeding $5 per week.

Chapter 125 is passed to cure a defect we pointed out in an Act passed the previous session (see *ante*, vol. 23, p. 225), and is an instance of the want of care too often displayed in the drafting of our Provincial Acts.

The Legislature, by an Act to regulate the closing of shops and the hours of labor therein of children and young persons, has gone, perhaps, as far as was possible. Like many other well-intentioned Acts of the sort, however, we fear it will be, to some extent, a dead letter.

In commenting, in former years, on the course of legislation in this Province, we have ventured to suggest that we pay somewhat dearly for our annual Statute Books, and we are inclined to think this year's volume will not be considered by any unprejudiced person to be any more worth its cost than its predecessors. Which of our politicians will have the moral courage and the personal disinterestedness to propose biennial sessions for legislation in lieu of the present extravagant annual sessions?

Reviews and Notices of Books.

A Legal Hand-Book and Law List for the Dominion of Canada, and a Book of Parliamentary and General Information. By LOUIS H. TACHÉ, Advocate. Toronto: Carswell & Co. 1888.

The editor states that his aim has been to present, in a concise and useful form, a variety of legal, parliamentary, and general information, together with a complete law list for the Dominion, the whole being compiled from the latest official and other authoritative sources. The amount of useful general information, much of which is of legal or semi-legal character, contained within the limits of this volume, is so great as to make it a valuable addition to the list of books of reference which lawyers have come to look upon as indispensable. Its contents are so varied, that it is difficult to give a complete view of the ground covered. We may, however, notice a few of the topics treated of. We find a list of the parliaments of the United Kingdom, extending back to the beginning of the present century, the date when each assembled and was dissolved, also the administrations, in Britain during the century. There is a list of all the British, foreign, and colonial possessions, the area of each, its population and chief executive officers, and also a list of the British and foreign ambassadors. The portion of the book dealing with Dominion public matters comprises some 117 pages, and includes such various topics as the jurisdiction of the Supreme Court, its sittings, officers, fees, etc.; the Queen's counsel for the Dominion, revising officers, a list of the law reports of the different provinces, etc. Then each province of Canada is separately dealt with. The governors since confederation, the members of the Cabinet and Legislature, the officers of the Government, the Law Society, the courts and judges, local and County Court officers, registrars of deeds and their fees, registration divisions, barristers and solicitors and their residences, police magistrates, Division Court districts, clerks and bailiffs; the commissioners in other provinces for taking affidavits to be used in Ontario, and those in Ontario for taking affidavits in the other provinces, include most of the lists for Ontario. There is, besides, a synopsis of commercial law, the law of descent, etc. The other provinces of Canada are similarly dealt with. The indexes are full, being arranged both by topics and names. The book is an evidence of much patient industry, judiciously applied.

Notes on Exchanges and Legal Scrap Book.

THE CANADIAN CONSTITUTION.—The *Law Quarterly Review* for March gives nineteen pages to an article on this subject, by Mr. J. E. C. Munro, which is to be a portion of a forthcoming work on "The Canadian Constitution." After glancing at the area and population of each of the constituent units of the Dominion, and briefly tracing the history of confederation, the writer enumerates the sources from which the student must gather his information concerning the Canadian Constitution. In addition to the B. N. A. Act, there are (1) English Statute Law; (2) Canadian Statute Law; (3) Provincial Statutes; (4) Imperial Orders-in-Council, of which the most important are those admitting British Columbia, Prince Edward Island, and the North-West Territories into the Union; (5) Dominion and Provincial Orders-in-Council; (6) Orders and Rules of the Dominion Parliament and Provincial Legislatures; (7) Usage. The distribution of legislative power is treated somewhat fully, references being made to the B. N. A. Act, to the cases decided under it, and to various other authorities. An attempt is made at a classification of the various powers of the Dominion Parliament and the Provincial Legislatures, and they are grouped under seventeen heads. Each of these is then enlarged upon. The control of the Provinces by the Dominion, including the vexed question of the veto power, and Imperial control over Canada, are the concluding topics of the paper.

LIABILITY OF INN-KEEPERS.—The responsibility of the proprietor of the inn or tavern for injury inflicted on one guest by another guest, who has been allowed to remain on the premises in a state of intoxication, was at issue in *Rommel* v. *Schambocher*, lately before the Supreme Court of Pennsylvania. We condense the facts from the report in the *American Law Register*. The plaintiff, a minor, entered the tavern of the defendant, and there found one E. F. They both became intoxicated on liquor furnished them by the defendant. While the plaintiff was engaged in conversation with the defendant, E. F. pinned a piece of paper to the plaintiff's back, and set it on fire, whereby the plaintiff was severely injured. The appeal to the Supreme Court of the State was from a decision that the facts were not sufficient to sustain a claim for damages against the tavern-keeper. This decision was reversed by the Supreme Court. The defendant did see, or might easily have seen, all that was going on. When one enters a saloon or tavern, opened for the entertainment of the public, the proprietor is bound to see that he is properly protected from the insults or assaults, as well of those whom he employs, as of the drunken and vicious men whom he may choose to harbour. *The Pittsburg and Connellsville Railroad Company* v. *Pillow* was cited and followed. In that case a drunken row occurred in a railway car, a bottle was broken in a quarrel, and a piece of the glass struck a peaceful passenger in the eye, and put it out. The company were held responsible. Drunken

persons should not be allowed to come on board; or if permitted in the cars, they should be so guarded as to prevent their injuring other passengers. The court held that the position of the tavern-keeper, who furnishes the liquor to make men drunk and then harbours them about his premises, could not be any better than that of the railway company.

This is said to be the first decision in which the responsibility of an inn-keeper has been held to extend to the acts of violence of his guests, while on his premises and under the influence of his wares.

VOLENTI NON FIT INJURIA.—We learn from the English *Law Journal* that at the Marylebone County Court, before his Honor Judge Stonor, judgment was delivered in the case of *Down* v. *Holland & Son*, as follows: "The plaintiff is a workman, who, on Wednesday, September 28, came in the morning to work at the Portman Rooms, which were being decorated, at day work. He proceeded to work upon a square scaffolding, erected in the hall, on the cross-bars of which there were three projecting boards, two of fourteen feet and one of twelve, and to the latter another short board had been nailed to lengthen it. A loose board was then put across the projection of all three boards, and upon this cross-board the plaintiff stood to strip the paper from the wall. Whilst he was so doing the nails by which the short additional board had been fastened to the twelve-foot board were forced upwards by the plaintiff's weight on the cross-board, the additional board gave way, and the cross-board fell with the plaintiff to the ground. The plantiff suffered a severe injury to his ankle, which has incapacitated him from work ever since, and there seems no certainty of his ever being able to work as before. The plaintiff had complained to the foreman and also to his fellow-workmen of the unsafe condition of the scaffold, and the foreman had replied that 'he had no other boards' to remedy it. The defence to the action is *Volenti non fit injuria*. The first question is, whether this plea, if sustained by evidence, is a defence to an action under the Employers' Liability Act, like the present, where the plaintiff had given notice to the defendant, or his foreman, of the defect in question; and the second is, whether the plea is sustained by the evidence in the present action. In *Yarmouth* v. *France*, 19 Q. B. D. 647, a Divisional Court (*dissentiente* Lopes, L.J.) held that the plaintiff's consent to continue in a certain employment, with full knowledge of the risk to be thereby incurred, was not sufficient to entitle the defendant to the benefit of the rule *Volenti non fit injuria*, unless it was also proved that such risk was incurred voluntarily by the plaintiff; and the subsequent cases of *Membury* v. *The Great Western Railway Company* and *Thursell* v. *Handyside & Co.*, 4 Times L. Rep. pp. 265, 266, are decisions of two other Divisional Courts in accordance with the case of *Yarmouth* v. *France*. In all these cases the court appears to have held that the notice and complaint to an employer or his foreman, and to fellow-workmen, were in themselves sufficient evidence of the plaintiff's unwillingness to run the risk, notwithstanding his willingness to do the act, in question, and to have regarded the excuse of 'my poverty, and not my will, consents,' as suffi-

cient to free the plaintiff from responsibility for his act. Passages in the judgments of Baron Bramwell in *Britton* v. *The Great Western Cotton Company*, 41 Law J. Rep. Exch. 99, and of Lord Justice Mellish in *Woodley* v. *The Metropolitan Railway Company*, L. R. 2 Ex. D. 384, have also been cited in support of this view; but it must be observed that in both these cases the learned judges considered that there was not sufficient evidence that the plaintiff understood the "extent" or "nature" of the risk which he was running, as to which there was no doubt in any of the cases I have cited, nor is there in the present case. Upon the whole, I feel bound by the cases of *Yarmouth* v. *France*, *Membury* v. *The Great Western Railway Company*, and *Thursell* v. *Handyside* to decide the present case in favour of the plaintiff. I do not forget that the plaintiff had notice of discharge on the day in question, and that the direct pecuniary loss to him would only have been 8d. or 1s. 4d. at most, if he had then discharged himself rather than continue his work at the risk in question; but he might have offended his employers by so doing, and jeopardised his future employment, and the case appears to me exactly the same in principle as those I have cited, and nowise materially distinguishable therefrom in its details."

SLANDER AND THE MARRIED WOMEN'S PROPERTY ACT.—Two cases in which the presence of a married woman complicated the application of the law of defamation are recently noted. In *Lemon* v. *Simmons* an action was brought for slandering the plaintiff by accusing him of robbing his wife. No special damage was shown, and the question arose whether a husband can rob his wife in the sense that he may be indicted for it. Mr. Justice Day appears to have left the question whether a criminal charge was made to the jury, who gave £25 damages, but the Divisional Court entered judgment for the defendant, holding that the charge was made under such circumstances that it was incapable of meaning that the defendant had robbed his wife so as to constitute an indictable offence under the Married Women's Property Act. If this be sound law, it will be impossible for a husband to obtain redress for this kind of slander unless the defendant uses a copy of the Married Women's Property Act, and recites all the conditions under which a husband may rob his wife. In *Wennhak* v. *Morgan* the question was whether a husband can publish a libel by giving it to his wife, and the court held that they were one person in law, and the publication to the wife was no publication at all. If identity were the test, publication to the wife of a libel on her husband would not be a publication at all, and the contrary has been held (*Wenman* v. *Ash*, 22 Law J. Rep. C. P. 190). Mr. Justice Maule seems best to have disposed of this metaphysical test when he said that for a man to murder his wife is not suicide. The libel in question was written on a paper containing the record of character of the plaintiff. Mr. Justice Mathew gave the plaintiff only nominal damages in respect of this cause of action, and the Divisional Court appear to have created a new cause of action in sending the case back for the jury to say whether the defendants acted maliciously or *bona fide*, which looks very much as if, after deciding that husband and wife are one in law, they were held to be capable of conspiring together.—*Law Journal* (Eng.).

LEGAL EDUCATION IN THE UNITED STATES.—*The American Law Register* has given its views lately on the subject of legal education. As the topic is one of considerable interest to us at the present time, it may not be inopportune to look at the views expressed by contemporaries in regard to the lessons to be learned from the experience of our neighbours. The *Law Register* bewails the decadence of legal education, and asserts that the former days were better than these. The American demon of hurry has infected the legal profession, and every other calling too, and now the result is the admission to the bar of men scantily prepared for the work of their profession, and, in many cases, not even so sufficiently equipped as to be able to acquire that learning which is in many cases postponed until studentship is ended. The long apprenticeship of the Inns in England, the discipline of pleading under the bar before call, the preceptorship of a member of the bar of the old school, the thorough knowledge of the legal classics made necessary by the length of time required for the course, are in marked contrast to the superficiality engendered by a course of but two years in the study of law, with no sufficient training as a guarantee of proper mental power or equipment for the task.

The old American system, before the law school had practically the monopoly of legal education, in which the centre of instruction was the office of the practising attorney, is pictured in glowing colours. With us in Canada a similar system, or rather lack of system, means that the student is left to his own resources for instruction, for guidance in his reading, for help in his difficulties; he gropes in the dark along a labyrinthine path, where the help of a skilful guide would save many a needless step, and deliver him from many a pitfall.

Many of the evils which our contemporary deplores are traceable to the law schools, or, perhaps, more accurately, to defects in the law schools, which have rendered them quite as powerless to stem the flood of evils that haste and unrest have brought upon the standard of legal knowledge, as was the former system of blind groping. To remedy these defects is the duty of the hour. They are chiefly two. In the first place, no means are provided to insure that the student who attends the lectures given in the law schools is capable of comprehending them. He has no knowledge of legal principles, he is without even the foundation of a good academic or collegiate education. Next, the time given to study is so short; no one could possibly acquire a respectable knowledge of even the elements of law within the limits of the sixteen months of instruction, which is the full time of most of the courses of the law schools. The examinations are conducted by the professors, and follow the ruts in which the lecturers have travelled.

The remedy must come, in the opinion of the journal whose views we are examining, from two sources. These are the law schools and the courts. The courts, in whose hands the control of admission to practice rests, are urged to lengthen the time of study, whether in the law school or in the office, to at least three years. Then the character of the examinations, preliminary and final, must be changed in the direction of greater difficulty. So raise the standard of attainment requisite for admission, that none but thoroughly fit men shall be per-

mitted to practise law, and let it be such that to attain to it will be an assurance to the public of the competency, intellectually and morally, of the man who has reached it, to take charge of the interests of his clients.

The *Central Law Journal* dwells on the necessity of mental training apart from, and additional to, legal knowledge. In its view the liberality of the previous education is of first importance. Those mental gymnastics which develop perception, ratiocination and memory are a source of mental power. The student should have a sufficiently long previous experience of study to know how to study. His career as a lawyer will involve the constant acquisition of knowledge. His education should fit him for making those acquisitions.

Our western contemporary concludes, by giving utterance to its gratification that the legal education in law schools has so completely superseded the systemless reading of law in a lawyer's office, once so prevalent. It is one of the most notable of the miracles of the profession, in its opinion, that so many men who attained eminence at the bar and on the bench, began in such unfavourable circumstances.

Correspondence.

THE LAW SOCIETY AND ITS DUTIES.

TO THE EDITOR OF THE CANADA LAW JOURNAL:

Dear Sir,—During the last two weeks a number of articles and letters referring to the Law Society have appeared in one of the daily papers, which ought not to pass unchallenged. Without discussing the motives which have actuated the writer, and which may be read between the lines, in his unscrupulous attack, it may safely be said that these letters and articles are apparently intended to injure the Society, and place it in a false and unfavourable position before the public. The impression intended to be conveyed is that the Society is in receipt of large sums of public money for educational purposes, which it diverts to other uses, and that it expends a nominal sum only in educating students, for the purpose only of escaping taxation. I think it is only fair to correct the wrong impressions thus created, and to show that the Law Society, so far as the means at its command will allow, is doing good work.

In the first place, the Law Society is not in receipt of any public money whatever. The Society purchased its land, built the building occupied by itself, purchased its library, and maintains building, grounds and library, entirely with its own money, not receiving or expending one cent of public funds. It pays all its expenses, including examiners and lecturers, with its own money, publishes the Reports of all the Courts with its own money, and supplies not only

all the judges, both of the Supreme Courts and County Courts, with them, free of charge, but the whole of the profession who pay their fees also.

The writer of the letters and articles referred to, attempted to show that half the income of the Society was derived from the students. He strives to attain this end by including in this estimate, not only the preliminary entrance fees, the intermediate fees, and the notice fees, which are the only fees paid by students, but also the fees that are paid at the call to the bar of barristers, and at the admission to practice of solicitors, which are not collected by the Society until the period of studentship is over, and that of the full-fledged barrister and solicitor begins. Of the sum paid in 1887 by students, more than five-sevenths was expended directly in legal education, in paying examiners and lecturers, in medals and scholarships, stationery and printing. In addition to this, the students had the free use of the Law Society Library to the same extent that the barristers and solicitors had; they had the privilege of borrowing every book mentioned in the curriculum for two months, and taking these books to their homes, simply being required to deposit temporarily the sum of ten dollars as security for their due return, and they had the free use of the large examination hall of the building, as often as they required it, for their public and private debates—it being heated and lighted at the expense of the Law Society. By this it will appear that the law students have not been treated so badly as their self-appointed champion would desire should appear.

With regard to legal education, this Society has always been ready to do everything possible to encourge it. Lectures have been delivered, and scholarships given for at least twenty-five years past; among the lecturers have been numbered some of the most prominent men on the bench and at the bar of the Province. In 1861 or 1862, scholarships were established, and have been given ever since, sixteen hundred dollars a year being devoted to their payment. In 1882, gold, silver, and bronze medals, were offered for competitition at the call examinations, and have been taken in each year since that date by the best men. Prizes were also offered to be competed for wherever legal and literary societies were established. In 1873 a law school was established, the lecturers being prominent men at the bar; and to induce students to attend the lectures, reductions in the term of studentship and service were granted to those attending and passing examinations successfully, of six, twelve and eighteen months. The lectures were well attended, and many students obtained the reduction of time. A cry, however, was raised in the country, that undue advantage was gained by Toronto students, and the result was that the reductions of time had to be abandoned, and the attendance of students at lectures diminished as a consequence.

The question of the establishment of a law school is a difficult one to solve. If a school is established in Toronto, at the headquarters of the Law Courts and the legal profession, the Toronto students can attend it without incurring any expense; but this is not so with others. If branch schools are established, say in London, Hamilton, Kingston, and other large county towns, the expense would be very great and the attendance at them very small. If attendance was made compulsory at Toronto, a howl of indignation would arise from the whole

Province. In connection with this it has been suggested to get over the difficulty by appointing a peripatetic staff of examiners and lecturers to go on circuit, and deliver lectures at the county towns or certain centres; let the lecturers conduct examinations on the subject of their lectures; attach scholarships to the lectures, allotting, say, two hundred dollars as a scholarship at each place where lectures are delivered, in this way the student would have the greatest possible inducement to attend the lectures at the smallest possible expense to himself.

Another plan would be to direct that the lectures delivered in Toronto be printed and distributed free to all students; to make the attendance at the lectures compulsory to Toronto students only, and to allow all students to compete at the examinations on the lectures and win the scholarships if they can. So much for legal education.

The Society, all must admit, has done excellent work in collecting at Osgoode Hall, at great expense, the best law library in the Dominion, which is used to an enormous extent by the judges, barristers, solicitors, and last, but not least, by the students. It has established branch libraries in twelve of the county towns, including the Court House library at Toronto. It has also compiled, published and distributed to the judges, and profession generally, all the reports of all the superior courts of the Province. It compiles and publishes, every three years, a digest of all the reports, and publishes early notes of all the cases fortnightly in THE CANADA LAW JOURNAL and *Canadian Law Times*.

The best proof that the legal education of the students is not neglected is the fact that every judge on the bench obtained his preliminary training as a student of the Law Society; that many of the leading counsel in Ontario have distinguished themselves in the argument of most important cases before the Judicial Committee of the House of Lords, and in so doing have compared most favourably with the leading counsel of England; Canadian law students have distinguished themselves in the United States; notably so John D. Lawson, the author of several text-books of repute, on Presumptive Evidence, on Carriers, and other subjects, and that some of the leading members of the Ontario Bar hold the most important positions in the Government, not only of the Province, but of the Dominion. These facts speak for themselves, and prove that the practical training obtained by Ontario Law students produces men on the bench and at the bar who are an honour to the Province of Ontario and to the Law Society of Upper Canada.

FIAT JUSTITIA.

Toronto, April 24th, 1888.

Proceedings of Law Societies.

HAMILTON LAW ASSOCIATION.

Report of Special Meeting of Trustees, called to consider the establishment of the proposed Law Faculty, the creation of a permanent Circuit List, etc.

Present, all the Trustees. Mr. E. Martin, Q.C., in the chair.

The proposal to establish a Law Faculty was first taken up. After careful consideration it was

Resolved,—First, that, in the opinion of the Hamilton Law Association, the scheme for the establishment and maintenance of a Law Faculty, published by the Joint Committee of the Law Society and Senate of the University, cannot be carried out until the first and second sections of chapter 146 R. S. O. are repealed, and hence that it is premature to discuss in detail the merits of the scheme. At the same time the Association desire to express generally their disapproval of the scheme. Second, that this Association is of opinion that, with the view of improving the present standard of legal education, provision should be made by the Law Society for the delivery of a coure of lectures at Toronto and other centres throughout the Province, and the compulsory attendance of students thereat, and also that students for call to the bar should be required to serve under articles in the same manner as students for admission.

The creation of a permanent Circuit List and the circular of the Joint Committee of Law Associations, dated 21st March, 1888, were then considered, and it was

Resolved,—First, that this Association approve of the establishment of a permanent Circuit List for the trial of all actions in the High Court, and, so far as Hamilton is concerned, for the arrangement proposed in the circular of the Joint Committee of Law Associations dated 21st March, 1888, provided that a jury be summoned for the January sittings. Second, that this Association approve of the settlement definitely before a case is called for trial whether it is to be tried with or without a jury, as stated in the said circular.

These resolutions received the unanimous approval of all the Trustees.

DIARY FOR MAY.

1. Tues ...Supreme Court sittings. St. Philip and St. James.
2. Wed....Sup. Ct. of Can. sits. J. A. Boyd, 4th Chan., 1883.
6. Sun.....*5th Sunday after Easter.*
7. Mon....Lord Brougham died, 1868, æt 90.
8. Tues....Ct. of App. sits. Gen. Ses. and C. C. sit. for trials in York. 1st Inter. Exam.
10. Thur. ..and Inter. Exam. Ascension Day.
13. Sun.....*1st Sunday after Ascension.*
15. Tues ...Solicitors' Examination.
16. Wed....Barristers' Examination.
20. Sun.....*Whitsunday.*
21. Mon....L. S. Easter Term begins. H. C. J. sit. begin. Confederation proclaimed, 1867. Lord Lyndhurst born, 1772.
24. Thur. ..Queen Victoria born, 1819.
25. Fri. ....Princess Helena born, 1846.
27. Sun.....*Trinity Sunday.*
28. Mon....Battle of Fort George, 1813.
31. Thur. ..Parliament of U. C. first met at Toronto, 1797.

Reports.

DIVISION COURTS.

[Reported for the CANADA LAW JOURNAL.]

FIRST DIVISION COURT, COUNTY OF WENTWORTH.

FOSTER *v.* THOMAS AND C. J. MYLES.

Tariff of fees—Claim under $20—What fees clerk and bailiff entitled to.

[SINCLAIR, CO. J.—Hamilton, April 3.

Judgment was entered for the plaintiff for $6.00 and costs. A detailed bill of these costs, as set out below, was rendered by the clerk to the solicitors of the defendant, who thereupon applied to the judge for a review of the clerk's taxation, under s. 246 of the Division Courts Act. The following is the detailed statement of the costs:

1.	Receiving and entering claim	$0 15
2.	Summons	0 40
3.	Two copies summons	0 40
4.	Entering bailiff's return to summons served	0 15
5.	Affidavit of service	0 25
6.	Filing defence	0 25
7.	Notice to plaintiff, and postage 5c.	0 20
8.	Taxation of costs	0 25
9.	Adjournment from Jan'y 6th to Feb'y 15th	0 25
10.	Three notices, 45c.; and postages to plaintiff and defendants, 15c.	0 60
11.	Subpœna, 15c., and four copies, 20c., to plaintiff	0 35
12.	Entering bailiff's return of service of subpœna	$0 15
13.	Affidavit of service	0 25
14.	Adjournment by judge's order from Feb'y 15th to Feb'y 16th	0 25
15.	Adjournment from Feb'y 16th to Feb'y 24th	0 25
16.	Feb'y 24th, transmitting papers to Deputy Judge Nesbitt	0 25
17.	Postage	0 05
18.	Entering judgment	0 50
19.	Notices to plaintiff and defendant, 30c.; and postage, 10c.	0 40
20.	Filing affidavit of disbursements	0 25
21.	Affidavit	0 25
22.	Notice to defendant and postage, 5c. (of disbursements)	0 20

BAILIFF'S FEES.

23.	Service of summons (2) defendants	0 37
24.	Service of subpœna	1 23
25.	Calling parties at court (twice).	0 30
26.	Execution ordered by plaintiff and held by request of defendants	0 50
27.	March 28th, transmitting papers to judge, 25c.; postage, 5c.	0 30
		$9 25

The following is the judgment on the revision of the taxation by

SINCLAIR, CO. J.:—The 304th sec. of the Division Courts Act declares, that nothing in the Division Courts Act "Shall be held to authorize the taxation or allowance of costs *to any officer* of the court other than those to be found in the tariff of fees as authorized and allowed," etc.

I have, therefore, to take the tariff as the clerk's guide as to his proper fees, and if not there allowed or mentioned, any item, no matter how honestly work is done, or done in most perfect good faith, is not taxable against the unsuccessful party. The defendant is only compelled to pay that which the tariff allows, and no more.

The above bill is that rendered by the clerk to the defendant, showing in detail the costs taxed against him by the clerk.

The first item objected to is No. 10—"three notices, 45c., and postages, 15c., to plaintiff and defendants," in all 60c. The claim was entered against a firm as such, but, for some

reason unexplained, the names of the individual partners were inserted in the summons. In garnishment proceedings the firm could not be garnished in its partnership name: *Walker* v. *Rooke*, 6 Q. B. D. 631, but under s. 108, ss. 4, of the Division Courts Act, this action certainly could be brought against the firm. However, as no objection was made to the suit against the individual members of the firm, it cannot be made now. But a clerk is only allowed to tax costs for what he does, and the charge, therefore, must be allowed by the tariff. In this case the defence was put in by a well-known firm of solictors. Notice was admitted to have been given to them, and to the plaintiff or his solicitor. This was the proper way of giving notice of the adjournment (if necessary to give notice at all), and as only two notices were given, three notices cannot properly be taxed. The sum of 15c. must come off this item.

Item 11 is incorrect, and must not be charged against the defendant, for reasons which will hereafter be given as to the disallowance of some of the witness' fees—the plaintiff must bear these himself—35c. is struck off.

Item 12—"Entering bailiff's return of service of subpœna, 25c.," is admittedly wrong, and must be disallowed.

Item 13—"Affidavit of service" of subpœna, I suppose is correct, because that would apply and be necessary in the case of witness or witnesses properly allowed.

Item 14—Adjournment from Feb'y 15th to Feb'y 16th. The facts are that the business of the court was not through on the 15th, and *the court* was adjourned until next day. The charge for this cannot be made under the tariff. The only item in the clerk's tariff of fees under which it is contended the charge is right is the 17th, it says: "Every order of reference or order for adjournment made at hearing, and every order requiring the signature of the judge and entering the same, 25c." There was no adjournment of the cause; it only stood over until the next day, because it could not be tried on the first day of the sittings. In such cases there cannot be any charge made by the clerk. If *a cause* is adjourned from one sitting to another, the charge is proper, but not if the court is adjourned. This item 25c. taxed against the defendants must come off.

The next charge objected to, is an adjournment so-called from the day of hearing, the 16th of February, until the 24th of the same month. The fact is that the deputy judge took eight days to consider his judgment under s. 144 of the Division Courts Act. While the judge is taking time to consider a case and has reserved his decision, there cannot and is not an adjournment of the cause.

This item is not taxable, and must be deducted. It amounts to 25c.

It is objected that item 16 should not be allowed, for transmitting papers to the judge "on application to him." As a general thing in cases in town papers are left with the clerk when judgment is reserved, and by him handed to the judge afterwards. I do not think that item 23 of the tariff covers it. It is an obligement to the judge, but cannot be considered "Transmitting papers to judge on application to him." Should they be transmitted for the purpose of any pending application it would be allowable. As quarter is neither asked nor allowed in this case, I must decide that the 25c. must be disallowed.

Under any circumstances the tariff does not disallow necessary postage. The 17th item, 5c. postage, must therefore remain.

The next item objected to is the 19th on the annexed bill (the item preceding it is "Entering judgment, 50c.," which is not objected to), and this is "Notices to plaintiff and defendant, 30c., and postages, 10c.—40c. It may be a matter of kindness for the clerk to notify the unsuccessful party of the amount of his liability, but there is no item in the tariff for the allowance of anything for it. There is no law *requiring* it to be done. It is simply a *voluntary* act, which cannot create a legal liability.

It is contended by the clerk that the 21st item, "Filing affidavit of disbursements, 25c.," is allowable under item 7 of the tariff. That item is in these words, "Entering and noting every defence or notice of admission in procedure book, 25c." The meaning, if there were doubt, is to be found in the remaining part of that item; it is in these words, "To be paid in the first instance by the defendant or other person entering it, but it may be afterwards taxed against the plaintiff, should costs be given against him." It will thus be seen that it is quite clear the item does not refer to an affidavit of disbursements filed by the plaintiff, but to a "defence or notice of admission," which could only be filed by the defendant.

It also provides that although the defendant may have to pay it in the first instance, yet he gets reimbursed the sum in the event of his succeeding. This item, 25c., is clearly not allowable.

The next item, 21 in the bill, is more difficult to decide. The 9th item of the clerk's tariff, under which it is claimed, is in these words: "Every necessary affidavit, if *actually prepared* by the clerk, and administering oath to the defendant, 25c." The affidavit of disbursements was not actually prepared by the clerk of the court, but by one of the solicitors for the plaintiff. I do not see any reason why the charge is not allowable, no matter by whom prepared, but I cannot disregard the plain and imperative language of the tariff. I have already expressed my views on this item (Sinclair's D. C. Act, 1886, pp. 107 and 108), and I see no reason to change them. The affidavit purports to have been prepared by some other than the clerk, and it is for him to show that it was so prepared with his authority and for him: *Myles* v. *Thompson*, 23 U. C. R., at pp. 554-555. I will not strike this item off now, but will allow one week for a necessary affidavit of the fact to be filed, consistently with the views I have heretofore expressed, but if such is not done I see no ground upon which it can be allowed. The words "actually prepared by the clerk," must have been intended to limit the allowance of the item to the circumstances mentioned: *Jackson* v. *Kassel*, 26 U. C. R. 341; *Northcote* v. *Brunker*, 14 App. R. p. 378.

The next item, No. 22, is "Notice to defendant and postage, 5c. (of disbursements) 20c." There is no notice of taxation in the Division Court, nothing to give the unsuccessful party an opportunity of being heard in opposition to the taxation. If there had been I would (if the party had attended in pursuance of it), have gone a long way to try and find some means of allowing compensation for it. But nothing of the kind has been done here. The costs are taxed *ex parte*, and then the defendant is informed by letter or formal notice, if you will, of the amount of them. This may be courteous on the part of the clerk, but the tariff precludes any charge for it. The kindness may be requited in some other way, but not by any allowance under the tariff. The sum of 20c. must come off this item.

There are only two items remaining of the clerk's fees that are objected to. The first is No. 26, "Execution ordered by plaintiff and held by request of defendants, 50c.," and the other of 28th March (in pencil), in these words, "Transmitting papers to judge, 25c., postage 5c.—30c.

In regard to the first item it appears that the solicitors on both sides agreed for a stay of execution, as the defendants are well-known business men, and I suppose did not want execution issued against them, and the plaintiff well knew he would have no difficulty in making his money, when the amount of debt and costs was ascertained. But to make an arrangement or understanding of the parties a groundwork of this charge is to my mind entirely unwarranted by any authority I know of. If the clerk had received authority to issue execution it was countermanded by the plaintiff, and if he was not instructed to do so either expressly or otherwise he could not do so of his own mere motion. This would be converting the clerk of the court into the plaintiff in every suit entered in his court. On this point I refer to the words of GALT, J., in *Ross* v. *McLay*, 26 C. P. at p. 199, who says: "It is sufficient to say that he (the officer) has charged the plaintiff for services which he did not render, and therefore the charge must be disallowed."

As to the last item, I am of opinion that it cannot be allowed where the defendants have succeeded on their appeal. The clerk should bear it himself, and it must be struck off too.

Now as to the bailiff's costs.

I disallow the expenses of serving the subpœna on George Roach, John Roach, Captain Armstrong, and Captain Zealand. They must come off. They were subpœnaed to disprove a counter-claim, which was not part of the record. The plaintiff opposed the allowance of this counter-claim to be added, and succeeded in having its allowance rejected at the trial, and now asks for attendance of his witnesses brought to disprove the anticipated defence. The plaintiff cannot take this anomalous position. The amount of the bailiff's expenses for serving the four witnesses named, and $3.00 allowed for their witness fees, cannot be charged the defendants. The amounts must be struck off. This is not intended to exonerate the plaintiff from such costs as he has voluntarily incurred to the clerk, but are not chargeable to the defendants, according to my opinion.

I have gone into the questions here presented further than I otherwise would, were it not that I want to settle for the future, at least in this county, the charges discussed in this opinion, and render it unnecessary again to consider them. I trust there will be no necessity for it, in view of s. 278 of the Division Courts Act, and of what is right.

Should the clerk have any difficulty, or should there be any doubt in arriving at the proper sum, I will decide it according to this opinion. I have not such papers before me as enable me to decide this question at the present moment. I must impress upon clerks and bailiffs the necessity of seeking in the clerks' and bailiffs' tariffs only the authority for making charges for services under the Division Courts Act. There are many things which a clerk does, and which he is compelled to do, for which a fee should be, but is not, allowed. He is not alone in that respect. A judge of a County Court in Ontario can readily sympathize with him; but so long as a public position is occupied, the incumbent must bear the consequences of such, whatever they may be under the law.

No objection was taken to the affidavit of disbursements, which might have been as contrary to D. C. R. 133. The practice in that respect, established by the O. J. Act, does not apply to Division Courts, *Clarke* v. *Macdonald*, 4 O. R. 310; *Bank of Ottawa* v. *McLaughlin*, 8 App. R. 543.

The item of calling witnesses twice cannot be allowed the bailiff. He is only entitled on the facts here to calling once, and 15c. must be struck off.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[Mar. 15.

CLARK *v.* ODETTE, THE "MARION TELLER."

Salvage—Special contract—Action by agent of owners.

The "Marion Teller" was aground near the shore of Lake Erie, and was towed off by a tug. The plaintiffs, who managed the tug on commission, sued in their own names for remuneration for such salvage services, and the Maritime Court awarded them $1,110.00, finding that there was a special contract made by which the master of the rescued vessel agreed to pay $10.00 an hour for such services.

Held, reversing the judgment of the Maritime Court, that the plaintiffs being neither owners of, nor mariners, nor passengers on board of the tug, could not sue in their own names for such salvage.

Appeal allowed with costs.

R. Gregory Cox, for appellants.

[Mar. 15.

CANADA ATLANTIC RAILWAY CO. *v.* MOXLEY.

Railway company—Sparks from engine—Lapse of time before discovery of fire—Presumption as to cause of fire—Defective engine—Negligence.

A train of the Canada Atlantic Railway Co. passed the plaintiff's farm about 10.30 a.m., and another train passed about noon. Some time after the second train passed, it was discovered that the timber and wood on plaintiff's land was on fire, which fire spread rapidly after being discovered, and destroyed a quantity of the standing wood and timber on said land.

In an action against the company, it was shown that the engine which passed at 10.30 was in a defective state, and likely to throw dangerous sparks, while the other engine was in good repair and provided with all necessary appliances for protection against fire. The jury found, on questions submitted, that the fire came from the engine first passing, that it arose through negligence on the part of the company, and that such negligence consisted in running the engine when she was a bad fire thrower and dangerous.

Held, affirming the judgment of the Court of Appeal (14 Ont. App. Rep. 309), that there being sufficient evidence to justify the jury in finding that the engine which passed first was out of order, and it being admitted that the second engine was in good repair, the fair inference, in the absence of any evidence that the fire came from the latter, was that it came from the engine out of order, and the verdict should not be disturbed.

Appeal dismissed with costs.

Chrysler, for the appellants.

McCarthy, Q.C., and *Mahon*, for the respondents.

[Mar. 15.

SEYMOUR *v.* LYNCH.

Written instrument—Construction of—Lease or license—Authority to work mine.

In an indenture, describing the parties as lessor and lessees respectively, the granting part was as follows: "Doth give, grant, demise and lease unto the said (lessees) the exclusive right, liberty and privilege of entering at all times for and during the term of ten years from 1st January, 1879, in and upon (describing the land), and with agents, labourers, and teams, to search for, dig, excavate, mine and carry away the iron ores in, upon, or under said premises, and of making all necessary roads, etc.; also, the right, liberty and privilege to erect on the said premises, the buildings, machinery and dwelling houses required in the business of mining and shipping the said iron ores, and to deposit on said premises all refuse material taken out in running said ores." There was a covenant by the grantees not to do unnecessary damage, and a provision for taking away the erections made, and for the use of timber on the premises, and such use of the surface as might be needed.

The grantees agreed to pay twenty-five cents for every ton of ore mined, in quarterly payments on certain fixed days, and it was provided how the quantity should be ascertained. It was also agreed that the royalty should not be less than a certain sum in any year. The grantees also agreed to pay all taxes, and not to allow intoxicating drinks to be manufactured on the premises or carry on any business that might be deemed a nuisance. There were provisions for terminating the lease before the expiration of the term, and a covenant by the lessor for quiet enjoyment.

In an interpleader issue, where the lessor claimed a lien on the goods of the lessees for a year's rent, due under the said indenture, by virtue of 8 Anne, c. 14, s. 1,

Held, per RITCHIE, C.J., and HENRY and TASCHEREAU, JJ., that this instrument was not a lease, but a mere license to the grantees to mine and ship the iron ores, and the grantor had no lien for rent under the statute. STRONG, FOURNIER, and GWYNNE, JJ., contra.

The court being equally divided, the appeal was dismissed without costs.

Northrup, for the appellants.

Chute, for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

BEATTY *v.* SHAW *et al.*

Mortgage—Executor and trustee—Void discharge of mortgage—Payment for Improvements—Mistake of title.

H. by his will appointed F. and W. executors and trustees of his estate. F., for the purpose of securing a debt due by him to the estate, executed a mortgage to W. W. died intestate, and F., five years subsequently, having agreed to sell the mortgaged premises to M., executed a statutory discharge of the mortgage, which he expressed to do as sole surviving executor, and conveyed the estate to M.

Held, affirming the judgment of BOYD, C., 13 O. R. 21, that the act of F. in executing such discharge, had not the effect of releasing the land from the mortgage.

Held, also, in this reversing the judgment, that M., the purchaser from F. and his assigns, were not entitled to any lien for improvements on the lands during their occupancy thereof.

J. C. Hamilton and *Alan Cassels*, for the appellant.

Bain, Q.C., for the respondents.

LONDON AND CANADIAN LOAN COMPANY *v.* MORPHY *et al.*

Stock exchange—Sale under process of seat at—Sequestration.

The plaintiffs had recovered judgment against the defendants, M. & N., both of whom were members of the Toronto Stock Exchange, each owning a seat at the board thereof. The seats at that board it was considered could not be sold under *fi. fa.*, and an application was made to the Queen's Bench Division for an order to sell the seats which had been seized under a sequestration, which was refused by WILSON, C.J., whereupon the plaintiffs appealed; and on the argument it was made to appear that M. had paid off the judgment of the plaintiffs, and was carrying on the appeal for the purpose of obtaining the seat owned by N. This court, under the circumstances, and aside from the fact that the ultimate com-

pletion of title to a purchaser could only be effected by the contingent co-operation and assent of the Stock Exchange, as provided by its by-laws, affirmed the judgment appealed from without prejudice to any right M. might have to procure himself to be substituted for the plaintiffs.

Arnoldi, for the appellants.

C. Ritchie, Q.C., for the Toronto Stock Exchange.

Mortimer Clark, for respondent Niven.

MOORE *v.* THE CITIZENS' FIRE INSURANCE CO.

MOORE *v.* THE QUEBEC FIRE INSURANCE CO.

MOORE *v.* THE BRITISH AMERICA ASSURANCE CO.

AND

MOORE *v.* THE GORE DISTRICT MUTUAL FIRE INSURANCE CO.

Fire insurance—Over-value—First statutory condition—Several insurances—Change of one policy—Notice.

The plaintiff being owner of a quantity of railway ties and lumber, effected insurances thereon with three companies to the amount of $4,000, and subsequently, with the knowledge and through the agency of H., the person acting on behalf of the several companies, effected an additional insurance of $1,200 on the same property in "The Fire Insurance Association." H. acted as agent for that company also, and he made the necessary entries thereof on the first three policies. In consequence of "The Fire Association" having ceased to take risks on that kind of property, H. asked the plaintiff for the interim receipt of that company, which he gave up accordingly, and H. substituted one in the Gore District Company for it, he being agent for that company also; but omitted to give any notice or make any entry as to the substitution of the Gore insurance for that of "The Fire Association."

In an action to recover the amount of the insurances, after a destruction of the property by fire:

Held, affirming the judgment of the court below, that this was not such an omission on the part of the plaintiff as invalidated the policies, in this following *Parsons* v. *The Standard Ins. Co.*, 43 U. C. R. 603; 4 A. R. 326; 5 S. C. R. 233.

In effecting insurances in all to the amount of $5,200, the plaintiff represented the property as being of "the cash value of $5,339 on two occasions, and $5,500 on a third occasion. In an action on the policies, the jury found that the value was $4,000 when first insured, and $4,200 when the additional insurance was effected; that the plaintiff had misrepresented the value, but not intentionally or wilfully; that was not material that the true value should be made known to the company; and that the company intended that the goods should be insured to their full value, and rendered a verdict in favour of the plaintiff for $3,100, which the Divisional Court subsequently refused to set aside.

Held, in this reversing the judgment of he court below, that under the circumstances and in view of the nature of the goods insured, the over-value was such as under the first statutory condition in the policy, rendered the same void.

Osler and *Nesbitt*, for appellants.

Laidlaw and *Kapelle*, for plaintiff.

CARTER *v.* GRASETT.

Payment of mortgage does not give new estate—Derogation from grant of light—Obscure finding of jury—New trial—Grant of right—Registry laws.

The plaintiff was the owner of lot 8, and the defendant of the adjacent lot (9). At the time the plaintiff's lot was conveyed to him it had a house upon it, with windows looking over lot 9, which was then vacant, and was also the property of the plaintiff's grantors, subject to a mortgage. The equity of redemption in lot 9 was afterwards conveyed to one through whom the defendant acquired title; and G., the immediate predecessor in title of the defendant, satisfied the mortgage, and obtained and registered a discharge of it. Buildings were erected on lot 9 by the defendant and his predecessors, and the plaintiff complained of the interference by such erections with the access of light to his house on lot 8, insisting

there had been an express or implied grant of light over lot 9, and invoking the principle that a grantor cannot derogate from his grant.

Held, reversing the judgment of the Common Pleas Division, 11 O. R. 331, that by payment of the mortgage and registration of the discharge, G. did not acquire a new and independent estate, such as would have the effect of enabling him to derogate from the grant of light, if any, made to the plaintiff by their common grantors.

Booth v. *Alcock*, L. R. 8, c. 663, and *Lawlor* v. *Lawlor*, 10 S. C. R. 194, distinguished.

In answer to the question, Did the defendant's house interfere injuriously with the light of the plaintiff's house? the jury answered, Yes, but not injuriously.

Held, OSLER, J.A., dissenting, that there should be a new trial, in order to have a clear finding as to the light.

Per OSLER, J.A., that the finding of the jury plainly was that the defendant's house did not interfere injuriously with the light, and, looking at all the circumstances, the justice of the case would not warrant the granting of a new trial.

Held, also, *per* PATTERSON, J.A., and FERGUSON, J., that there was an express grant to the plaintiff by the conveyance to him of lot 8, which was under the Short Forms Act, of all light used and enjoyed with the house; but,

Per PATTERSON, J.A., that upon the evidence, the defendant's house intercepted no light to which the plaintiff was entitled.

Per BURTON and OSLER, JJ.A., that the grant of light was an implied one, the conveyance of the house carrying with it all these incidents necessary to its enjoyment, which it was in the power of the vendors to grant; and the general words in the conveyance did not enlarge or limit the grant.

Per BURTON, J.A., that by his conveyance the plaintiff became entitled to the enjoyment of the right to the light from the vacant land to the same extent as it was enjoyed by his grantors at the time of the conveyance.

Held, also, *per* PATTERSON, J.A., that the conveyance to the plaintiff was as regards lot 9 unregistered, and the defendant should be allowed to set up the registry laws as a defence at the new trial directed.

McCarthy, Q.C., and *Geo. Bell*, for appellant.
Robinson, Q.C., and *Symons*, for respondent.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.] [Mar. 9.

BERTRAM *v.* MASSEY MANUFACTURING CO.

Sale of goods—Contract—Delivery of part—Absence of brand—Quality of goods—Testing—Acceptance—Property in part not delivered.

The plaintiffs agreed to deliver to the defendants a quantity of Staffordshire Crown bar iron of the T. K. brand. A part of the iron was delivered to the defendants, of which a considerable quantity was unbranded; the defendants, however, did not treat the absence of the brand as creating a difficulty in the way of their accepting the iron, but proceeded to test it, and finding it unsatisfactory, declined to receive any more, or to pay for the whole or part. This action was then brought for the contract price of the whole. The jury found that the iron was merchantable, but not equal in quality to the standard T. K. Crown brand.

Held, that the duty of the plaintiffs under the contract would have been performed if they had supplied to defendants merchantable iron bearing on its face the genuine brand contracted for; but in the absence of that authentication, and having regard to the conduct of the defendants, the contract must be taken to be one for the sale of iron manufactured by the T. K. Co., of the quality usually indicated by the Crown brand, and so the defendants would have the right to test it, and, according to the findings of the jury, would have been justified in rejecting it all; and the fact that the portion which was branded was below the standard did not estop the defendants from showing that the portion which was unbranded was also below the standard. But

Held, that the defendants, having used in the manufacture of their machines, after the doubtful quality of the iron had been brought to their notice, and without the consent of the plaintiffs, a considerable quantity of what had been delivered to them as part of an entire contract, had precluded themselves from objecting to the remainder of that which came into their possession.

Held, also, that the property in the part of the iron which was not delivered to the defendants must be taken to remain in the plaintiffs; for the defendants had never exercised their right to test it, and had refused to receive it, and until tested the plaintiffs could not compel the defendants to accept it.

The action was treated as one for the price of iron which the defendants accepted, and for damages arising from their refusal to accept the remainder; and, in accordance with the findings of the jury, which in the opinion of the court were sustained by the evidence, judgment was entered for the plaintiffs for the actual value of the part of the iron delivered only (the damages having been negatived by the jury); and for the defendants upon their counter-claim for damages sustained from the breach of contract other than by reason of the inferior quality of the iron.

Robinson, Q.C., and *Lash*, Q.C., for the plaintiffs.

McCarthy, Q.C., *Watson*, and *J. M' Clark*, for the defendants.

Practice.

Boyd, C.] [April 9.

MILLS *v.* MILLS.

Foreign commission—Evidence of party—Alimony action—Criminal proceedings.

There is no hard and fast rule as to the granting or refusing of a foreign commission; it is a matter of discretion; but in case of the examination of a party being sought, the court will be more circumspect than in the case of an ordinary witness. In an action of alimony, where there were allegations of cruelty, and the plaintiff had also instituted criminal proceedings for bigamy against the defendant, who left the jurisdiction and applied to be examined abroad,

Held, that the defendant was a necessary witness, and that the reason given by him for not being able to attend the trial, viz., that he was afraid to return to the jurisdiction on account of the criminal proceedings, was sufficient, and a commission was ordered.

J. E. Hodgins, for the plaintiff.

Hoyles, for the defendant.

Boyd, C.] [April 16.

In re JACKSON-MASSEY *v.* CROOKSHANKS.

Infant—Defendant qua executor—Service on official guardian.

Held, that administration proceedings taken against an infant co-executor without observing the usual practice of serving the official guardian were invalid.

The provisions of the rules and general orders as to service in case of infancy apply, whether the infant be a sole or a joint defendant, and whether he be sued personally or in a representative capacity.

W. H. Blake, for the plaintiff.

J. Hoskin, Q.C., for the infant.

Boyd, C.] [April 18.

HACKET *v.* BIBLE.

Solicitor and client—Authority of solicitor to settle—Variation of interpleader order.

A solictor retained to collect a debt is not entitled to interplead without a further retainer for that purpose, but being so retained, he has the ordinary rights of solicitors as in other contested cases.

And where solicitors properly representing the claimant and the execution creditors in an interpleader, made an arrangement by which $441 of the claim made and provided for in the interpleader order was abandoned, and the sheriff, by the direction and consent of both solicitors, in good faith distributed $441 among the creditors entitled, and paid only the balance into court, instead of the whole proceeds of the sale, as directed by the interpleader order, which was not amended.

Held, that the solicitors had authority to make such a variation of the order, and the sheriff was justified in acting upon it; and it made no difference that the interpleader order was a consent order, for it was an interlocutory order, and the variation did not affect third parties.

Bain, Q.C., for the claimant.

H. J. Scott, Q.C., for the sheriff.

SUPREME COURT OF PRINCE EDWARD ISLAND.

Palmer, C. J.] [Hilary Term, 1888.

QUEEN *v.* HUGHES.

Canada Temperance Act—Third offence—Validity of lease of bar to son of owner—Attempt to evade the law.

The defendant owned a dwelling house with shop attached, and a bar at the rear of the shop. He had been previously convicted for a first and second offence under the Canada Temperance Act. After these convictions, he made a lease of his shop and groceries and the bar to his son, but continued to live on the premises. Liquor was sold on the premises with the knowledge of the defendant, who put in for defence the lease to his son. By s. 119 Canada Temperance Act, "No conviction of any offence against the second part of this Act shall be removed, by *certiorari* or otherwise, into any of Her Majesty's courts of record." The prosecutor and stipendiary magistrate consented to a rule being granted for a writ of *certiorari* to issue to facilitate the testing of the question raised in the case, *i.e.*: Was the lease a *bona fide* transaction between father and son? The lease contained no conditions of forfeiture in case the lessor engaged in the above illegal traffic, but contained a condition that it was not to be assigned without the consent of the lessor.

Held, (1) That whatever might in law be the effect of the lease, as between father and son it is void, is in fraud of the law, and against public policy, as being a contrivance the better to enable parties to carry on an illegal traffic in contravention of the Canada Temperance Act—a law which the highest court of justice, the Privy Council of Great Britain, has designated one for the promotion of public order, safety, and morals, and which subjects those who contravene it to criminal proceedings and punishment.

(2) That the assumed exclusive possession of the shop and the bar-room behind it by the son, was merely colourable, and there was no evidence to relieve the defendant, the lessor, of his liability for the illegal traffic still carried on in the bar, an apartment under his own roof and daily within his own observation.

Law Students' Department.

IN this issue we continue the papers set at the examination before Hilary Term, 1888.

LAW SOCIETY EXAMINATION QUESTIONS.

SECOND INTERMEDIATE.

REAL PROPERTY.

1. What is meant by the enactment that a feoffment shall not have a tortious operation?
2. Explain the difference in their effect upon an estate granted between a condition precedent and a condition subsequent.
3. What leases are required to be made by deed?
4. What is the difference between an estate in common and an estate in joint tenancy?
5. If a tenant in tail purchases the fee what is the effect? Why?
6. A dies intestate leaving a widow, a son, a daughter of a deceased son, and a brother. How is the land disposed of under the Statute of Victoria?
7. What power has a married woman of disposing by will of her property?

BROOM'S COMMON LAW—O'SULLIVAN'S GOVERNMENT IN CANADA.

1. Explain *general customs* and *particular customs;* and enumerate the principal qualities which are essential to binding customs.
2. Into what three classes does Broom divide the grounds on which actions for torts are maintainable? Give an example of each.
3. Explain the meaning of *independent* covenants, *dependent* covenants, and *concurrent* covenants.
4. Of what things could larceny not be committed at common law?
5. Mention the principal rules which should govern the construction (*a*) of a penal statute; (*b*) of a beneficial statute.
6. Give an example of homicide rendered excusable by *ignorantia facti.*
7. Mention the qualifications of a senator of the Dominion of Canada.

PERSONAL PROPERTY—JUDICATURE ACT—STATUTES.

1. What is meant by saying that there is no estate in personal property?

2. What rights over personal property has a married woman at common law? How varied by statute?

3. Explain the various modes by which a valid sale of personal property can be made.

4. What steps may an administrator take to compel a creditor against the estate to take action to assert his claim?

5. A is a merchant. Being in difficulties A asks B for a loan to enable him to carry on his business. B agrees to lend A $500 on the security of his stock. How can the transaction be arranged so that B can be secured?

6. What is a demurrer? What is the effect of a demurrer allowed (*a*) to the whole statement of claim, (*b*) to part of the statement of claim?

7. A writ of summons is endorsed for debt, and also detention of goods. Defendant fails to appear. What may plaintiff do?

EQUITY.

1. Distinguish between good consideration and valuable consideration. What must you show to uphold a voluntary conveyance under 27 Eliz. c. 4?

2. A buys a property and has the conveyance made to B his son. What effect has such a conveyance? Explain fully.

3. A brings an action against B for an account; B sets up in defence that the account is settled. Has A any remedy? If so, what?

4. A solicitor purchases a property from his client who seeks to have the contract set aside on the ground of the relationship between them. What will the solicitor prove in order to uphold the transaction?

5. A, who is lessor of B of a certain farm which B is occupying, enters into a verbal agreement with him for the sale of it to him; B pays part of the purchase money: A afterwards seeks to repudiate the contract, alleging that there was no binding agreement. Can B succeed in an action for specific performance?

6. In how far can a Court of Equity deal with an agreement concerning the sale of lands outside its jurisdiction.

7. Define Champerty and Maintenance, giving an example of each. A lends to B money on mortgage to provide him with funds for the purpose of carrying on a suit. Under which head would this fall?

Miscellaneous.

THE COUNTY OF YORK LAW ASSOCIATION LIBRARY.

New additions:

Cababe (Michael) Attachment of Debt and Receivers, 2nd ed., London, 1888.

Canadian Parliamentary Companion, Ottawa, 1888.

Cox (Homersham M. A.) The British Commonwealth, London, 1854.

Dart (J. H.) The Law and Practice Relating to Vendors and Purchasers, 6th ed., London, 1888.

Drewry's Reports, 4 vols., 1852-9.

Emden's Annual Digest for 1887.

Giffard's Reports, 5 vols., 1857-66.

Rawley (W. H.) Treatise on the Law of Covenants for Title, Boston, 1887.

Taché (L. H.) Legal Hand-Book and Legal Law List, Toronto, 1888.

Taschereau (H.) The Criminal Statute Law of Canada, Toronto, 1888.

Wilson (A.) The Judicature Acts, Rules, etc., London, 1878.

Winslow (R.) Law of Private Arrangements between Debtors and Creditors, London, 1885.

Supplement to the above, London, 1888.

BOOKS RECEIVED.

THE Criminal Statute Law of the Dominion of Canada, relating to indictable offences, with full text as revised in 1886, and put into force by Royal proclamation on the 1st day of March, 1887, and cases, notes, commentaries, forms, etc. by Henri Elzear Taschereau, one of the judges of the Supreme Court of Canada. Second edition, revised, re-arranged and enlarged. Toronto: Carswell & Co., Law Publishers, 1888.

A Legal Hand-Book and Law List for the Dominion of Canada, and a book of Parliamentary and General Information, prepared by Louis H. Taché, Advocate. Toronto: Carswell & Co., Law Publishers, 1888.

A Compendium of the Law of Torts. Specially adapted to the use of students. By Hugh Fraser, M.A., LL.M. London: Reeves & Turner.

LAW BOOKS.—We have received a catalogue of Law Works published by Stevens & Sons, 119 Chancery Lane, London, W. C. This is an old and well-known publishing house, having been established in 1810. It is also an enterprising and reliable one. The catalogue includes modern law works, English, Irish and Scotch reports, etc.

NEW LAW BOOKS.

We have received from the Blackstone Publishing Company of Philadelphia, the following books: Odgers on Libel and Slander, 1887; Shirley's Leading Cases, 3rd Eng. ed.; Lewin on Trusts, Vols. I. and II. (the third volume of this work will, we understand, be issued shortly).

These new and most valuable works are a great addition to what is fast becoming the law library of these enterprising publishers. Subscribers will soon receive Short on Informations. This work deals with the subject of criminal informations and *quo warranto* proceedings, also *mandamus* and prohibition. Other books recommended to be published during the present year by the editor are as follows: Lindley on Partnership, ed. of 1888; Smith's Leading Cases, ed. of 1887; Pollock on Contracts; Finch's Leading Cases on Contracts; Theobold on Wills; Snell's Principles of Equity; Archbold's Criminal Pleading and Evidence; Porter on Insurance; Eversley Law on Domestic Relations; Broom's Common Law; Broom on Constitutional Law; and A Chapter on Trusts for Accumulation, by W. C. Scott, of Philadelphia. It will be seen by the above how carefully this series is being prepared. All these books will be reprinted from English editions subsequent to 1885.

A LEGAL ORNAMENT—NO FAMILY SHOULD BE WITHOUT IT.—"My ma has put a coat of varnish on all our furniture," bragged a little boy to his comrade on the street. "Shucks! that's nuthin," retorted the other, in disdain, "My pa is going to put a chattel mortgage on all of ourn."—*Ex.*

LATEST LEGAL STYLES.—Mortgages are signed by two witnesses the same as last year, and are folded so as to fit the side coat pocket. The back taxes are combed forward and parted on the side nearest the mortgagee. In this climate, mortgages generally mature in the winter season.—*Duluth Paragrapher.*

Appointments to Office.

CORONERS.

Kent.

John C. Bell, M.D., Merlin.

DIVISION COURT CLERKS.

Halton.

James Robinson, of Nelson, Sixth Division Court, *vice* Gilbert C. Bastedo, deceased.

Parry Sound District.

David Patterson, of McKellar, Second Division Court, *vice* Henry Armstrong, resigned.

Peterborough.

Francis J. Bell, of Smith, First Division Court, *vice* Richard W. Errett, resigned.

Leeds and Grenville.

Cyrus A. Wood, of Kitley, Seventh Division Court, *vice* Hiram McRae, deceased.

BAILIFFS.

Victoria.

Gilbert T. Smith, of Woodville, First Division Court, *vice* Alex. B. McLean, resigned.

Perth.

Alex. Munro, of Mornington, Fifth Division Court, *vice* John J. Whaley, resigned.

Peterborough.

Joseph Griffin, of Peterborough, First Division Court, *vice* Charles Stapleton, resigned.

Law Society of Upper Canada.

HILARY TERM, 1888.

The following gentlemen were called to the Bar during Hilary Term, 1888, *viz.*:—*Feb. 6th*,—Francis Alexander Anglin, with honours, and awarded a silver medal: Francis Patrick Henry, William Howard Hurst, William Edward Sheridan Knowles, John Hood, George Ira Cochran, Edward Corrigan Emery, James Adam McLean, William Lyon Mackenzie Lindsey, John Williams Bennet, Jeffrey Ellery Hansford, Albert Edward Trow, John Henry Alfred Beattie, Thomas Hislop, Albert Edward Dixon, George William Ross, Clarence Russell Fitch, Colin Judson Atkinson. *Feb.* 7th.—Nicholas Ferrar Davidson, Arthur Edward Watts. *Feb. 11th*—Hugh Guthrie, Charles Edgar Weeks, George Smith. *Feb. 17th.*—George Nelson Weekes, Francis Ambridge Drake.

The following gentlemen were granted Certificates of Fitness as Solicitors, *viz.*:—

Nov. 22nd, 1887.—G. L. Lennox. *Feb. 6th*, 1888.—N. F. Davidson, F. A. Anglin, J. A. McLean, J. M. Mussen, A. Grant, A. E. Trow, W. W. Jones, W. L. M. Lindsey, F. A. Drake, H. Guthrie, H. A. Percival, C. R. Fitch, C. J. Atkinson, A. E. Dixon. *Feb. 7th.*—J. Hood, E. J. B. Duncan, W. J. Millican. *Feb. 11th.*—F. P. Henry, J. Carson, E. C. Emery, W. H. Wallbridge. *Feb. 17th.*—A. E. Watts, G. N. Weekes.

The following gentlemen passed the Second Intermediate Examination, *viz.*:—M. H. Ludwig, with honours and first scholarship; G. W. Littlejohn, with honours and second scholarship; W. S. McBrayne, with honours and third scholarship; and Messrs. S. H. Bradford and J. F. Gregory, with honours; E. O. Swartz, W. C. Mikel, E. E. A. Du Vernet, D. H. Chisholm, W. Pinkerton, H. B. Cronyn, O. Ritchie, E. P. McNeil, M. S. Mercer, F. B. Denton, A. E. Cole, F. Rohleder, G. D. Heyd, J. W. S. Corley, A. D. Scatcherd, A. E. Baker, A. S. Ellis, F. B. Geddes, D. A. Dunlap, C. D. Fripp, R. O. McCulloch, W. J. L. McKay.

The following gentlemen passed the First Intermediate Examination, *viz.*:—A. W. Anglin, with honours and first scholarship; J. B. Holden, with honours and second scholarship; R. E. Gemmill, with honours and third scholarship; and Messrs. J. Agnew, A. J. Armstrong, W. L. E. Marsh, D. W. Baxter, D. R. McLean, C. E. Lyons, A. F. Wilson, G. A. Cameron, W. Carnew, H. Macdonald, A. E. Slater, A. H. O'Brien, J. J. O'Meara, F. Harding, J. R. Layton, F. L. Webb, J. A. McIntosh, J. Porter, A. Crowe, F. W. Maclean, A. D. Crooks, A. Elliott, R. Barrie, W. H. Cawthra, W. Mackay, W. Yorke, J. F. Hare, D. Holmes H. Jamieson, W. Kennedy.

The following candidates were admitted as Students-at-law, *viz.*:—*Graduates*—M. Monaghan, E. G. Fitzgerald, C. J. Loewen. *Matriculants*—W. D. Earngey, J. E. O'Connor, J. C. Quinn. *Juniors*—J. Ballantyne, J. E. Varley, G. S. Morgan, J. R. Milne, D. B. Mulligan, L. Lafferty, A. J. Pepin, C. C. Fulford, P. F. Carscallen, W. H. Cairns.

CURRICULUM.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with Clause four of this curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the Subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be) on conforming with Clause four of this Curriculum, without any further examination by the Society.

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

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

5. The Law Society Terms are as follows:—

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

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

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

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

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday in June of the same year.

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

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

11. The Solicitors' Examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after the Primary Examination has been passed.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. When the time of an Articled Clerk expires between the third Saturday before Term, and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

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

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

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

22. No information can be given as to marks obtained at Examinations.

23. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES.

Notice Fee	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM, For 1888, 1889, and 1890.

Students-at-Law.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (1-33.)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33.)

1890. { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.
Cicero, Catilinam, II.
Virgil, Æneid, B. V.
Cæsar, Bellum Britannicum.

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

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:—
1888—Cowper, The Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1888 } Souvestre, Un Philosophe sous le toits.
1890 }
1889 Lamartine, Christophe Colomb.

or NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics, and Somerville's Physical Geography; *or*, Pecks' Ganot's Popular Physics, and Somerville's Physical Geography.

Articled Clerks.

In the years 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.

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

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

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

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

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

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

Trinity Term, 1887.