Canada Law Journal.

VOL. XXIII. FEBRUARY 15, 1887. No. 4.

DIARY FOR FEBRUARY.

15. Tues.....Sittings of Supreme Court Canada begin.
17. Thur.....Sittings of Chancery Divisional Court begin.
19. Sat .....Hilary sittings end.
20. Sun.....*Quinquagesima Sunday.*
23. Wed.....Ash Wednesday.
27. Sun.....*Quadragesima Sunday.*

TORONTO, FEBRUARY 15, 1887.

WE publish in another place the proceedings of the annual general meeting of the County of York Law Association. The report of the trustees is very full, and leaves little to be said. The affairs of the association have been carefully attended to, and it it be proper to single out any individual for thanks in this connection, we think none of his associates will object to the observation that Mr. Walter Barwick has done yeoman's service in the cause, sparing neither time nor energy in endeavouring to make the association a success. In this there has been no failure. One of the resolutions very properly refers to the valuable co-operation of His Honor, Judge Macdougall. The purposes and suggestions of the association are not limited to the welfare merely of the bar of its own county. It may prove a rallying-point for the profession of the Province, and the excellent report of the trustees will be almost of as much interest in the outer counties as in the metropolitan county of York.

THE delay of the Dominion Government in appointing a fourth Judge for the Chancery Division was at one time considered a grievance; but in the minds of many no great harm has, after all, been done. The necessity of a fourth Judge in that Division is not now so apparent as it was some years ago. The alternate issue of writs in the several Divisions of the High Court has had the effect intended, and the undue pressure which formerly existed in the Chancery Division has been sensibly relieved, and, we are inclined to think, has entirely disappeared. As to the division of work it may here be remarked that the Queen's Bench and Common Pleas Divisions already work together, on a principle of amalgamation, so that the weekly business of both these Divisions at Osgoode Hall is taken by the same Judge. The Chancery Division, on the other hand, still runs its course alone. Why should this be so?

If the business of all the Divisions were pooled, one judge could just as well dispose of the business of the three Divisions as of one or two, for a great many weeks in the course of the year. Sometimes, it is true, there is an extra amount of work, but for this special arrangements might be made. The advantage in having all the business for the week, in all the Divisions, transacted in one court would be a great boon to counsel. By this means each Judge would have to take his turn in court only once in twelve weeks. Then, again, the circuit business, as at present arranged, leads to a useless waste of strength and money, special sittings of the Chancery Division being held quite unnecessarily in many places in addition to the assizes. This very obvious waste would probably have been corrected before this, but for the fact that the Judges look to their circuit allowances as a material part of their salaries, which, naturally enough, they are unwilling to forego.

JUDICIAL SALARIES.

ONE of the leading dailies has recently referred to the subject of the smallness of the salaries of the Ontario judges. It stated, and that truly, that considering the nature and amount of the work which they perform, the occupants of the Bench in Ontario are more inadequately paid than any other class of public officials. A comparison of the amounts paid to the Canadian judges with the sums paid to the judiciary in other possessions of the Crown will show that the Ottawa Government has not been extravagant in that direction, wherever else it may have erred.

We extract our figures from "Whitaker's Almanac" for this present year of grace, remarking, by the way, that as that authority and mine of interesting statistics and information is correct as to Ontario, we will assume it is right with regard to the other countries. We give only the salaries of the Chief Justices and the Puisnes.

	Chief Justice.	Puisne.
England	£8,000	£5,000
Scotland	4,800	3,000
Ireland	5,000	4,000
N. W. Provinces India, per month	Rs. 5,000	Rs. 3,750
Bombay, per month	Rs. 5,000	Rs. 3,750
Ceylon	£2,250	£1,800
Straits Settlement	$12,000	$8,400
Hong-Kong	£2,500	£1,700
New South Wales	3,500	2,600
Victoria	3,500	3,000
South Australia	2,000	1,700
Queensland	2,500	2,000
West Australia	1,000	700
New Zealand	1,700	1,500
Tasmania	1,500	1,200
Fiji Islands	1,500	750
Cape Colony	2,000	1,750
Natal	1,500	1,000
Sierra Leone	1,500	....
Gold Coast	1,500	1,000
Mauritius	1,750	1,200
Malta	1,000	....
Gibraltar	1,250	....
Jamaica	2,500	....
Trinidad	1,800	1,200
Leeward Islands	1,500	1,200
Barbadoes	1,500	....
British Guiana	2,500	1,500
Canada Supreme Court	1,649	1,440
Ontario	1,400	1,200
Quebec	1,200	1,000
Nova Scotia	1,000	800
New Brunswick	1,250	....
Manitoba	1,000	800
British Columbia	1,160	960
Prince Edward Island	822	657
Newfoundland	1,041	833

Hong-Kong is about eleven miles long, with an average width of 3 or 4 miles, and contains 10,000 people. West Australia contains only 35,000 persons.

Our American cousins share, to some extent, with us the notion that a superior article of judges can be obtained for a small price. But with them ofttimes the Bench is but a stepping-place to something higher and better, and only intended as a temporary rest.

In Oregon the Chief Justices get $2,000; the Associate the same. Delaware, Nebraska, New Hampshire, North Carolina, Vermont and West Virginia give between $2,000 and $3,000; Arkansas, Florida, Georgia, Kansas and Maine give $3,000; Virginia, $3,200; Alabama, Mississippi, and Texas, $3,500; Indiana, Iowa, Kentucky, Michigan, Ohio, South Carolina, Tennessee, $4,000; Minnesota, $4,500; Colorado, Illinois, Louisiana, Wisconsin, $5,000; Missouri and Rhode Island, $5,500; California and Nevada, $6,000; Massachusetts, $6,500; New York, $7,500; while New Jersey and Pennsylvania reach $8,500. The Associate Justices either get the same, or within a couple of hundr d dollars. The New York City judges get $15,000 a year. The Bar Associations in the United States are agitating for an increase to these salaries, contending that those now paid do not decently meet the cost of living in large cities for men in high public positions. We may return to this subject again.

RECENT ENGLISH DECISIONS.

The January numbers of the *Law Reports* comprise 18 Q. B. D., pp. 1-161; 12 P. D., pp. 1-31, and 34 Chy. D., pp. 1-87.

ARBITRATION AND AWARD — VALUATION — APPLICATION TO SET ASIDE AWARD.

The first case we think deserving of attention is *In re Carus-Wilson and Greene*, 18 Q. B. D. 7, in which the difference between a mere valuation and an award is emphasized. On the sale of land one of the conditions of sale provided that the purchaser should pay for the timber on the land at a valuation, and that for the purpose of such valuation that each party should appoint a valuer, and that the valuers thus appointed should, before proceeding to act, appoint an umpire; and that the two valuers, or, if these disagreed, the umpire, should make the valuation. The two valuers failed to agree, and the umpire made the valuation. The agreement for sale having been made a rule of Court, the vendor, being dissatisfied with the valuation, applied to the Divisional Court to set it aside, which application was refused on the ground that it was a mere valuation, and not an award on an arbitration, and this decision is now affirmed by the Court of Appeal. The principle of law involved in the case is thus stated by Lord Esher, M.R., at p. 9:

> If it appears from the terms of the agreement by which a matter is submitted to a person's decision, that the intention of the parties was, that he should hold an inquiry in the nature of a judicial inquiry, and hear the respective cases of the parties, and decide upon evidence laid before him, then the case is one of an arbitration. The intention in such cases is that there shall be a judicial inquiry, worked out in a judicial manner. On the other hand, there are cases in which a person is appointed to ascertain some matter for the purpose of preventing differences from arising, not of settling them when they have arisen, and where the case is not one of arbitration but of mere valuation.

Applying this principle to the case before him, he says:

> My reason for holding that the umpire here was not an arbitrator is, that he was, in my opinion, merely substituted for the valuers, to do what they could not do, viz.: fix the price of the timber. He was not to settle a dispute which had arisen, but to ascertain a matter, in order to prevent disputes arising.

CHARTER PARTY—EXCEPTED PERILS—COLLISION—FREIGHT.

In *The Sailing Ship "Garston" Company* v. *Hickie*, 18 Q. B. D. 17, the Court of Appeal affirmed a decision of Grantham, J. A charter-party provided that the ship should load a cargo of coal, and deliver the same at the port of discharge, at a freight of so much per ton (the act of God, etc., and all and every other dangers and accidents of the seas, rivers, and navigation always excepted), the freight to be paid two-thirds in cash ten days after the vessel's sailing, and the remainder in cash on the right and true delivery of the cargo, agreeably to bills of lading, less cost of coal delivered short of bill of lading quantity. A collision took place, owing to the negligence of those in charge of the other vessel, whereby a part of the cargo was lost; and it was held that the collision was "a danger or accident of navigation" within the meaning of the charter-party, and, therefore, that the ship owners were not liable in respect of the non-delivery of the part of the cargo so lost, but that the charterers were entitled, nevertheless, under the charter-party, to set off the cost of the coal so undelivered against the balance of freight payable at the port of discharge.

CHATTEL MORTGAGE—FUTURE BOOK DEBTS.

In *Official Receiver* v. *Tailby*, 17 Q. B. D. 25, the question was whether a chattel mortgage which purported to assign to the mortgagee "all the book debts which might, during the continuance of the security, become due and owing to the mortgagor," was valid. The judge of the County Court of Birmingham held it to be invalid. This decision, however, was reversed by a Divisional Court of the Queen's Bench Division, but the latter decision was reversed by the Court of Appeal—that Court holding that the description of the debts was too vague. Lindley, L. J., says at p. 31: "I do not say that an assignment of future book debts must necessarily be too vague; but when there is no limitation of them with regard to any particular business, I think the assignment is too vague," and in this view all the judges in Appeal agreed.

TRIAL AT BAR—ACTION IN WHICH CROWN INTERESTED—VENUE.

In *Dixon* v. *Farrer*, 18 Q. B. D., 43, the Court of Appeal affirmed the decision of the

Divisional Court, 17 Q. B. D. 658 (noted *ante* vol. 22, p. 396), affirming the right of the Attorney-General to claim a trial at bar in actions in which the Crown is interested, and holding that the Court is bound, on the Attorney-General waiving that right, to change the venue to any county wherein he elects to have the action tried.

PRINCIPAL AND AGENT—DIRECTORS—LIABILITY TO MAKE GOOD REPRESENTATION—MEASURE OF DAMAGES.

The case of *Fairbanks* v. *Humphreys*, 18 Q. B. D. 54, is another decision of the Court of Appeal, in which it was held that where the directors of a company induced an engineer, who was a creditor of the company, to go on with his work and to accept, in payment of his claim, debenture stock to the amount of £18,400 in lieu of cash, and issued certificates to him for the agreed amount of the stock, which certificates turned out to be valueless, owing to the fact that the directors had previously issued all the debenture stock the company were entitled to issue—the directors were personally liable to the creditor for the value of the stock so agreed to be accepted by him, on their implied representation that, they had authority to issue debenture stock which would be a valid security; and that under the circumstances (valid stock being worth its par value, and the company having become insolvent, so that the plaintiff could not recover anything from the company), the measure of damages was the par value of such stock. The rule of law applicable to the case is thus stated by Lord Esher, M.R., at p. 60:

> Where a person, by asserting that he has the authority of the principal, induces another person to enter into any transaction which he would not have entered into but for that assertion, and the assertion turns out to be untrue, to the injury of the person to whom it is made, it must be taken that the person making it undertook that it was true, and he is liable personally for the damage that has occurred.

CERTIFICATE FOR COSTS—PROHIBITION.

In *The Queen* v. *The Judge of the City of London Court*, 18 Q. B. D. 10, a prohibition was granted under the following circumstances. A statute enabled the judge of an inferior court to award costs according to the higher scale, provided that he certified "that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons, or of general or public interest." The judge certified "question of character; costs on higher scale." It was held that this was not a compliance with the statute, and a prohibition was awarded against enforcing payment of the costs.

EXECUTOR AND ADMINISTRATOR—SERVICES RENDERED TO ESTATE WHILST NO PERSONAL REPRESENTATIVE—RATIFICATION BY ADMINISTRATOR.

In re Watson, 18 Q. B. D. 116, the question arose as to how far a deceased person's estate was liable for services rendered by a solicitor in reference to the estate prior to the appointment of a personal representative. A Divisional Court (composed of A. L. Smith and Wills, JJ.), laid down the rule to be "that a person cannot bind an estate to pay for services rendered to it by him, unless he shows that some contractual relation in respect of those services existed between himself and some person having authority to bind the estate, or who subsequently obtained that authority." Wills, J., at p. 119, says:

> The essential conditions are that there should be a contract with some person professing to act for the estate, that the contract should be for the benefit of the estate, and that the person in question should afterwards become administrator, and should, after being so appointed, have ratified the contract. Under these circumstances, the case comes within the principle of law, that a subsequent ratification of a contract by a person with authority to ratify it, relates back to, and supports the contract.

INDIAN OFFICER'S PENSION—EXECUTION—RECEIVER.

In *Lucas* v. *Harris*, 18 Q. B. D. 127, the Court of Appeal determined (overruling the Divisional Court), that the pension of an officer of her Majesty's forces, being by s. 141 of the Army Act 1881, made inalienable by the voluntary act of the person entitled to it, cannot be taken in execution, even though such pension be given solely in respect of past services, and the officer cannot again be called upon to serve; and therefore, an order appointing a receiver of such a pension was set aside.

TROVER—ESTOPPEL—WAREHOUSE RECEIPT.

The case of *Seton* v. *Laforce*, 18 Q. B. D. 139, turns upon the doctrine of estoppel by representation. Goods were in 1875 stored by brokers in a warehouse. The warehousemen issued a receipt stating on its face that it was "the only document issued by us as a legal symbol of these goods," and that after a named

date "this warrant will alone be sufficient to obtain delivery." The defendant subsequently took over the warehouse and business, and in 1885 his servants, by mistake, delivered the goods to the wrong person. The brokers had indorsed the warehouse receipt, and in 1886 it was in the possession of B. and E. The defendant believing that the plaintiffs, as successors in business of the brokers who stored the goods, were still in possession of the receipt, and in ignorance of the erroneous delivery of the goods, wrote to the plaintiffs, claiming rent for the goods, and notifying them that unless it were paid the goods would be sold. The plaintiffs did not immediately answer the letter, but set to work in consequence of its receipt, and purchased the receipt from B. and E., intending to make a profit out of the goods. On presenting the receipt to the defendant it was then discovered that the goods were not in his possession, and the present action of trover was brought. On the part of the defendant it was contended that he was not liable, because the goods were not in his possession when first demanded of him by the plaintiff, and also because he was not a party to the warehouse receipt. But Denman, J., held, that the plaintiffs having been induced to purchase the receipt in consequence of the defendant's representation that he still had the goods in his possession, the defendant was estopped, and was bound to make good that representation, and he gave judgment for the plaintiffs for the market value of the goods at the time the action was brought, as found by the jury, less the amount which would have been payable for rent if the goods had been forthcoming.

SHIP—BILL OF LADING—QUALITY MARKS—ESTOPPEL—REPRESENTATION.

In *Cox* v. *Bruce*, 18 Q. B. D. 147, an unsuccessful attempt was made to fasten a liability on a ship owner to make good an erroneous statement contained in a bill of lading as to the quality marks on the goods mentioned therein. The bill described the goods as marked in proportions specified with different quality marks, indicating different qualities of jute, which marks corresponded with those inserted in the shipping notes made out by the shippers. When the ship was discharged, however, it was found that there had in fact been shipped fewer bales marked with one of such quality marks, and more marked with another of such marks indicating an inferior quality. The Court of Appeal held that an indorsee of the bill of lading for value, without notice of the incorrectness of the description of the marks, had no right of action against the ship owners, either for breach of contract or upon the ground that they were estopped by the representation contained in the bill of lading.

SEAMAN'S WAGES—MARITIME LIEN—PRIORITY OF CLAIMS.

Turning now to the cases in the Probate Division, *The Adalina*, 12 P. D. 1, first challenges attention. In this case it is held that seamen have a maritime lien on freight due from sub-charterers to the charterers of a ship, and can arrest the cargo for the purpose of enforcing such lien; and that the lien of seamen for wages ranks before a claim in respect of payments for the towage of the ship from sea to an inland port, and the light dues and dock dues.

WILL—EXECUTION AT FOOT OR END—(R. S. O. c. 106, s. 12)—REVOCATION.

The case of *Margary* v. *Robinson*, 12 P. D. 8, illustrates in a remarkable way how the positive provisions of the statute relating to the execution of wills may sometimes defeat the positive intention of testators. In this case the testator, being in a paralyzed condition, made known to his attendants by signs that he desired to make a will, and a memorandum was accordingly drawn by one of his medical attendants on a card, by which the testator bequeathed £30,000 to Miss Robinson for life; the testator, instead of executing it at the foot or end, as prescribed by the statute (see R. S. O. c. 106, s. 12), unfortunately for the legatee, put his mark in the middle of the writing; and this was held a fatal objection to the validity of the document as a will. After its execution the witnesses, thinking the document did not amount to a will and was a mere memorandum, so informed the testator, to which he seemed to assent, and they then erased their attestation, but the testator retained the card in his possession, and afterwards showed it to the legatee and informed her it was for her; and after his death it was found in a handbag he kept near his bed. It was held that assuming the will to have been properly

executed, that these facts would not have amounted to a revocation.

PROBATE—CODICIL ONLY DULY EXECUTED PAPER FORTHCOMING—LOST WILL.

Gardiner v. *Courthope*, 12 P. D. 14, is another probate case, in which at the death of the testatrix the sole testamentary papers forthcoming were a duly executed codicil, and two drafts of wills, as to the execution or revocation of which there was no evidence. It was held that though the codicil by its language was dependent on the will to which it belonged and could not be construed without it, it ought nevertheless to be admitted to probate.

NULLITY OF MARRIAGE—DURESS.

The only remaining case to be noticed in the Probate Division is the somewhat notorious one of *Scott* v. *Sebright*, 12 P. D. 21, which was a suit for nullity of marriage, on the ground that the petitioner had been induced to go through the marriage ceremony in consequence of threats and coercion and undue influence exercised towards her by the respondent. The petitioner, who was a young woman of twenty-two years of age, entitled to £26,000 in possession, had become engaged to the respondent, and shortly after coming of age had been induced to accept bills for his accommodation to the amount of £3,325. The persons who discounted these bills issued writs against the petitioner and threatened to make her a bankrupt. The distress caused by these threats seriously affected her health, and reduced her to a state of bodily and mental prostration, in which she was incapable of resisting coercion and threats; and being assured by the respondent that the only way of evading bankruptcy proceedings and exposure was to marry him. She reluctantly went through a ceremony of marriage with him at a registrar's office, the petitioner threatening to shoot her if she showed that she was not acting of her free will. The marriage was never consummated, and the petitioner and respondent separated immediately after the ceremony. The marriage was declared to be null and void.

RESTRICTIVE COVENANT—REPRESENTATIONS—COLLATERAL AGREEMENT.

Turning now to the cases in the Chancery Division, we come to *Martin* v. *Spicer*, 34 Chy. D. 1, which appears to carry the doctrine whereby a representation is construed as a collateral agreement, to an extraordinary length. The defendant, S., was the owner of various houses in Cromwell Gardens. He let one of the houses to the plaintiff. S.'s solicitor sent to the plaintiff's solicitor a draft lease with a letter ending: "I may perhaps add that the draft is the form used for all the houses on S.'s estate." The draft contained a restrictive covenant to the same effect as one in the deed by which the property had been conveyed to S., to the effect that no trade or business should be carried on, but that the house should be kept as a private dwelling. Six years afterwards the plaintiff negotiated for a lease for eighty years of the same house, and a draft agreement was sent him by the lessor's solicitor which contained a provision that the lease should contain such covenants on the part of the lessee as were usually inserted by the lessor in the leases of his other houses in Cromwell Gardens. The plaintiff's solicitor then wrote for the form of lease used by S., and a copy of a lease containing the restrictive covenant was sent; and a lease was granted to the plaintiff containing a similar covenant. Afterwards S. entered into arrangements to sell to his co-defendants three of his other houses in Cromwell Gardens for the purpose of converting them into a hotel, and this action was brought to restrain the user of these latter houses otherwise than as private dwellings. And it was held by the Court of Appeal that the representations made by S. to the plaintiff as to the form of the lease, amounted not merely to a statement that that was the then form of lease, but to a collateral contract with the plaintiff that the neighbouring property of S. should continue to be managed on that footing; and (affirming the order of Bacon, V.-C.), that the plaintiff was entitled to an injunction restraining S. from authorizing any of his adjoining houses to be used for the purpose of trade. Cotton, L.J., said, however, that the injunction ought not to be extended so as to impose any liability on S. in case one of his tenants violated the covenant, and he did not bring an action against him.

NOTICE OF MOTION RETURNABLE ON A DAY THE COURT DOES NOT SIT.

In *Re Coulton, Hamburg* v. *Elliott*, 34 Chy. D. 22, a notice of motion was given, returnable "four days from the date of this notice, or so

soon after as counsel can be heard"; it was objected that the day on which it was returnable the court did not sit, and that the notice was therefore void; the Court of Appeal however overruled the objection.

COSTS—EFFECTS OF JUDICATURE ACT ON JURISDICTION TO AWARD COSTS.

The only point it is necessary to refer to *In re Mills' Estate*, 34 Chy. D. 24, is that regarding the effect of the Judicature Act on the jurisdiction to award costs. The application was one for the payment out of Court of the purchase money paid in under an Act authorizing expropriation of land, and the question was whether the commissioners authorized to make the expropriation could be ordered to pay the costs of the application. The Court of Appeal was clear that before the Judicature Act there was no jurisdiction to award cost against commissioners, and they were equally clear that the Judicature Act did not enable the Court to order costs as against persons, who up to the time of the passing of that Act, were not liable to be ordered to pay costs, following *Foster* v. *G. W. Ry. Co.*, 8 Q. B. D. 515, and overruling *Exparte Mercers' Company*, 10 Chy. D. 481. The order of Bacon, V.C., was therefore reversed.

COMPANY—DEBENTURES SEALED BUT NOT DELIVERED—DEBENTURES PAYABLE TO BEARER.

In *Mowatt* v. *Castle Steel and Iron Works Company*, 34 Chy. D. 58, the Court of Appeal affirmed a decision of Chitty, J., Debentures payable to bearer were prepared, sealed and stamped by the secretary of a company pursuant to instructions from the directors, for the payment of advances to the company. These were placed in a box, the key of which was kept by the secretary, and the box was deposited in the office of the company, which was also the office of T., one of the directors, who had made large advances to the company. Some of the debentures were given out by the secretary to an agent for him to issue to the public, which he did not succeed in doing. The company was ordered to be wound up, and after the commencement of the winding up the agent returned the debentures to T., who gave some of them to R. & Co., his own creditors, who took them, believing them to have been regularly issued to T., and that he had power to dispose of them. But it was held that the debentures had not been duly issued before the winding up, and that the other debenture holders of the company were entitled to dispute the validity of the debentures held by R. & Co.

WILL—POWER OF APPOINTMENT—GENERAL DEVISE AND BEQUEST—(R. S. O. c. 106, s. 29).

The case of *In re Jones, Greene* v. *Gordon*, 34 Chy. D. 65, turns upon the effect of the Wills Act, 1 Vic. c. 26, s. 27, from which R. S. O. c. 106, s. 29, is taken. A testator by his will, dated in 1884, after giving his residuary real and personal estate upon certain trusts for the benefit of his widow and his daughter, and the daughter's children, empowered his widow by will to appoint that any sum or sums of money, not exceeding £20,000, should be raised and applied as she should think fit. The widow by her will, dated in 1885, devised and bequeathed all her estate and effects, real and personal, which she might die possessed of or entitled to, unto her daughter absolutely; and the question was whether this general devise was under the statute to be construed as an appointment of the £20,000 in favour of the daughter; and Kay, J., determined that it was.

TRUSTEE—NEGLIGENCE—MORTGAGE OF HOUSES—VALUATION.

The well-worn subject as to the liability of trustees for investment of trust funds on insufficient security is again discussed by Kay, J., in *Re Olive, Olive* v. *Westerman*, 34 Chy. D. 70. In this case the trustees, having power to invest the trust funds on leaseholds, invested the money upon a mortgage of a leasehold property which consisted of cottages. The evidence showed that a proper valuation was not obtained by the trustees, and that the sum advanced was about two-thirds of the real value of the property, which subsequently became depreciated, and was subject to large outgoings for paving and sewering—under these circumstances Kay, J., held the trustees, though acting *bona fide*, had made an improper investment, and were liable for the loss.

SOLICITOR TRUSTEE—PROFIT COSTS.

In *Re Barber, Burgess* v. *Vinicome*, 34 Chy. D. 77, Chitty, J., had occasion to consider whether *Cradock* v. *Piper*, 1 Mc. & G. 664, is to be considered as overruled. In that case it may be remembered Lord Cottenham held that a solicitor trustee acting for himself and

co-trustee as defendants in an action, was entitled to recover profit costs. Some observations of Cranworth, L.C., and Lord Brougham in *Broughton* v. *Broughton*, 5 D. M. & G. 160, and *Manson* v. *Baillie*, 2 Macq. 80, were supposed to have thrown doubt upon Lord Cottenham's decision, but after examining the cases, Chitty, J., came to the conclusion that *Cradock* v. *Piper* stands unimpeached, and he, therefore, followed it. It further appears from this case that where a solicitor is witness to a will which appoints him trustee, and authorizes him to charge for professional services rendered the estate, that although such provision in his favour is nullified by the fact of his being an attesting witness; yet, notwithstanding, he is still entitled to charge profit costs in any case in which the law, irrespective of any such express provision in the will, would entitle him to charge them.

Will—Construction—Married woman—Restraint on anticipation.

The only remaining case to be noticed: *In re Grey Acason* v. *Greenwood*, 34 Chy. D. 85. In this case a testator appointed that a sum of £1,500 should be raised and paid to his daughter absolutely for her separate use, with restraint on anticipation, and after appointing another specific sum, appointed one-fourth of the residue upon trust for the same daughter, absolutely for her separate use, with restraint on anticipation. The daughter was married, and she claimed that the share of the residue should be paid over to her, but North, J., was of the opinion that the restraint against anticipation could not be disregarded, and that the trustees were bound to retain the fund in their hands during her coverture, and pay her only the income as it accrued for her separate use. No question was raised as to the £1,500.

LAW SOCIETY.

TRINITY TERM, 1886.

The following is a *résumé* of the proceedings of Convocation on the 17th September, and of Michaelmas Term, 1886:

Convocation met.

Present—The Treasurer and Messrs. Britton, Falconbridge, Hoskin, Irving, Lash, Maclennan, Mackelcan, Morris, Moss, Murray and Smith.

The minutes of last meeting were read and approved.

Mr. Maclennan, from the Reporting Committee, presented their report to the effect:

1. Respecting the probable expense of a quarterly current index of the reports, similar to that lately commenced by the Council of Law Reporting in England.

2. That Mr. Grant has made an arrangement with Mr. B. Edward Brown to assist him in his work on the terms stated, and the Committee recommend that this arrangement be approved of by Convocation.

The report was ordered for consideration.

The first paragraph was read.

Ordered, That it be referred back to the Committee for reconsideration as to the estimate of cost, and to report their opinion as to a scheme for the proposed digest.

The second paragraph was read and adopted.

Mr. Irving, from the Library Committee, reported, That Mr. G. Mercer Adam had made application to them to recommend a grant being made to him upon the completion by him of the New Catalogue.

That Mr. Adam has been paid his contract price of $250, and the Committee have already certified to Convocation their satisfaction with the work.

That Mr. Adam grounds his application upon the labour expended by him being much in excess of his expectations.

That, upon enquiry, the Committee have ascertained that Mr. Adam, at the suggestion of the Librarian, added very much to the value of the catalogue, by adopting certain references which had not been given in the former catalogue, and which

may be said to have been the specification on which Mr. Adam's contract was based.

That under these circumstances, and recognizing the value of the improvements suggested by the Librarian and incorporated in the work, the Committee recommend that Mr. Adam be paid a bonus of $100.

The report was ordered for immediate consideration and adopted.

Ordered, That a bonus of $100 be given to Mr. Adam.

The Committee on Legal Education reported the applications for the position of Examiner and Lecturer in place of Mr. Delamere. Nominations were then made, and Mr. Kingsford was elected, his appointment to take effect from 1st October.

The second reading of Mr. Britton's rule as to Supreme Court Reports was moved, and was declared lost.

Convocation adjourned.

J. K. KERR,
Chairman Committee on Journals.

MICHAELMAS TERM, 1886.

The following gentlemen were called to the Bar, viz.:—

November 15th.—Robert Stanly Hays, Wellington Bartley Willoughby, Frederick Stone, Trevussa Herbert Dyre, Franklin Montgomery Gray, Edward Arthur Lancaster, Lorenzo Clarke Raymond, Delos Rogest Davis, John Michael Macnamara, Henry Clay, Eudo Saunders, Archibald McAlpine Taylor, Alexander Fraser.

November 16th.—William James Tremeear, John Robertson Millar, David Alexander Givens, George Francis Burton, Henry Smith Osler, Walter Stephens Herrington, Duncan Ontario Cameron, Osric Leander Lewis, Francis McPhillips, Frederick George McIntosh, Archibald McKechnie, Edward Ellis Wade.

November 20th.—Donald Calvin Hossack.

December 4th.—Herbert Henry Bolton.

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

November 15th.—A. M. Denovan, A. M. Taylor, O. L. Lewis, W. B. Willoughby, F. Stone, W. S. Herrington, R. Vanstone, R. F. Sutherland, A. Fraser, S. McKeown, C. B. Jackson, D. H. Cole, R. H. Pringle, A. B. Cameron, E. W. Boyd, F. E. Titus.

November 16th.—A. W. Wilkin, F. M. Gray, G. F. Burton, W. J. Tremeear, D. B. S. Crothers, H. G. Tucker, J. J. Smith.

November 20th.—H. Morrison, H. W. Bucke, F. G. McIntosh, N. J. Clarke, J. R. Shaw.

December 4th.—H. J. Dawson.

The following gentlemen passed the First Intermediate Examination, viz.:—

M. H. Ludwig, with honors and first scholarship, J. M. Palmer, with honors and second scholarship, E. H. Britton, with honors and third scholarship, S. A. Henderson, with honors; and Messrs. J. H. Hunter, S. D. Lazier, R. G. Smyth, H. H. Johnston, J. T. McCullough, A. Collins, E. E. A. Du Vernet, H. Harvey, J. Irving Poole, G. C. Gunn, W. A. Keans, R. L. Elliott, R. M. Macdonald, W. Pinkerton, G. D. Heyd, O. Ritchie, W. L. B. Lister, M. C. Bigger, R. L. Gosnell, H. E. McKee, R. O. McCulloch, F. J. Travers, H. F. Errett, M. F. Muir.

The following gentlemen passed the Second Intermediate Examination, viz.:

F. A. Anglin, with honors and first scholarship, W. S. Hall, with honors and second scholarship, J. T. Kirkland, with honors and third scholarship, N. F. Davidson and A. Morphy with honors; and Messrs. T. Scullard, H. S. W. Livingston, F. P. Henry, R. R. Hall, A. Saunders, F. A. Drake, H. R. Welton, J. M. Quinn, J. Y. Murdoch, A. F. May, W. L. M. Lindsay, D. R. Anderson, T. Browne, R. J. Maclennan, H. B. Smith, W. S. Turnbull, R. K. Orr, T. A. Wardell, H. N. Roberts, A. E. Trow, A. C. Camp, H. M. Cleland, W. W. Jones.

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

Graduates.

Bidwell Nicholls Davis, Robert Elliott Fair, Lennox Irving, Ralph Johnston Duff, Donald Roderick McLean, James Wilson Morrice.

Matriculants.

Frederick Billings, George Davidson Grant, William Alexander Baird, Henry John Deacon Cooke, Christopher Lucy, Louis Vincent McBrady, John Fleming-

ton Tannahill, Robert Talbot Harding, Alexander Robertson Walker, William Henry Williams.

Junior Class.

C. P. Blair, C. F. Maxwell, W. F. Langworthy, J. A. Harvey, G. B. Wilkinson, J. McBride, H. C. McLean, F. R. Blewett, J. B. Pattullo.

Articled Clerks.

T. H. Lloyd, J. Lennon, H. W. Maw.

MONDAY, 15TH NOVEMBER, 1886.

Convocation met.

Present—The Treasurer, and Messrs. Cameron, Falconbridge, Ferguson, Foy, Fraser, Hoskin, Kerr, Morris, Moss, Pardee and Robertson.

The minutes of last meeting were read and approved.

Mr. Moss, from the Committee on Legal Education, reported on the cases of Messrs. A. B. Cameron, E. W. Boyd, F. E. Titus, that their papers are now regular, and recommending that they receive Certificates of Fitness.

Ordered, That Messrs. Cameron, Boyd and Titus do receive their Certificates of Fitness.

The representation of the Examiners on the subject of their remuneration was received and read.

Ordered to be considered to-morrow.

The letter of the Assistant Secretary of the Hamilton Law Association was received and read.

Ordered to be considered to-morrow.

The letter of Mr. Walter Read, enclosing that of the Hon. Wm. McDougall, was read.

Ordered to be referred to the Finance Committee for full report.

TUESDAY, 16TH NOVEMBER, 1886.

Convocation met.

Present—The Treasurer, and Messrs. Bell, Cameron, Ferguson, Foy, Fraser, Hardy, Hoskin, Hudspeth, Kerr, Lash, Martin, Mackelcan, McMichael, Morris, Moss, Murray, Osler, Robertson and Smith.

Mr. Moss, from the Committee on Legal Education, reported on the petition of H. J. Dawson, that his examination for call be allowed, and that he be permitted to present himself for call to the Bar during Easter Term next.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same committee, reported on the case of Mr. McLean, recommending that he be allowed to present himself for the Second Intermediate Examination in Easter Term next, and in case he then passes that examination he be allowed to present himself for Final Examination at the expiration of nine months from that time.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same committee reported on the case of Mr. W. H. Sibley, recommending that his application be not granted, pending the disposal of the charges against him now before the Discipline Committee.

Ordered for immediate consideration and adopted.

The petition of the Law Students as to the Lending Library was received and read.

Ordered to be referred to the Library Committee for report to Convocation.

Mr. Robertson, from the Discipline Committee, reported on the petition of L. U. C. Titus, recommending that the prayer of the petition be refused.

Ordered for immediate consideration and adopted.

The representation of the Examiners was received and read.

Resolved. That there does not appear to Convocation to be any ground for increasing the remuneration of the Examiners and Lecturers.

Mr. Hoskin, from the Discipline Committee, reported on the case of Mr. W. H. Sibley, finding that the charges made have been substantiated, and recommending that his name be erased from the Books of the Society.

On motion, the report was received, and

Ordered to be considered at the last meeting of Convocation this Term.

Mr. Hoskin, from the same committee, reported on the case of Mr. King's complaint against Mr. Ryerson, that in their opinion a *prima facie* case has been shown for investigation, and recommended accordingly.

The report was received.

Ordered to be considered on the last day of Convocation for this Term.

Mr. Hoskin, from the Discipline Committee, in the matter of the complaint against A. D. Kean, presented their report that they are of opinion that a *prima facie* case has been made for enquiry, and recommending an investigation.

Ordered for immediate consideration and adopted.

Ordered, That the petition be referred to the Committee for investigation in the usual way.

The letter of the Assistant Secretary of the Hamilton Law Association, ordered to be considered to-day, was read and considered.

Mr. Mackelcan gave notice that he would, at the next meeting of Convocation, move for leave to introduce a rule amending the rule as to the distribution of the law reports.

SATURDAY, 20TH NOVEMBER, 1886.

Convocation met.

Present—Messrs. S. H. Blake, Cameron, Falconbridge, Ferguson, Foy, Irving, Kerr, Lash, Mackelcan, Maclennan, Morris, Moss and Murray.

In the absence of the Treasurer, Mr. Irving was elected Chairman.

The minutes of last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, reported :

1. On the case of Thomas Urquhart, that they cannot recommend the allowance of the service in Manitoba of four months and twenty-two days, but recommend that after he has been re-articled and has served the four months and twenty-two days in Ontario, the matter be again brought up with the view that the allowance to him of the examination which he has passed should be favourably considered.

Mr. Mackelcan asked for leave in pursuance of notice given at the last meeting of Convocation, to introduce the following rule, viz. :—

That Rule No. 156, relating to the distribution of the Ontario Reports, be amended by adding to sub-section 9 of said Rule, the words following :—" And an additional copy to each of such County Libraries, where the County Law Association has fifty or more members who have paid their subscriptions, such additional copy to be supplied from and inclusive of the first volume of the present series of Appeal and Ontario Reports respectively."

Ordered, That the rule be read a first time.

The rule was read a first time, second reading ordered for 26th November inst.

Mr. Murray, from the Finance Committee, reported on the subject of the correspondence between the Solicitor and the Hon. Wm. McDougall, relating to his fees, and recommended that the ordinary fees be collected.

The Report was received, and ordered to be taken into consideration immediately.

The Report was adopted.

The Chairman read a letter from Mr. Richard Willcocks, addressed to the Secretary, dated 17th November, 1886.

The Secretary was directed to reply that the matters contained in the complaint of Mr. Richard Willcocks do not make out a case for action by the Law Society, The applicant's right to redress, if any, being by application or suit in the ordinary way to the courts.

Convocation adjourned.

FRIDAY, 26TH NOVEMBER, 1886.

Convocation met.

Present—Messrs. Britton, Cameron, Falconbridge, Hudspeth, Irving, Kerr, Mackelcan, McCarthy, Maclennan, Martin, Morris and Murray.

In the absence of the Treasurer, Mr. Irving was elected Chairman.

The minutes of last meeting were read and approved.

Mr. McCarthy gave notice that, at the next meeting of Convocation, he would move for the reconsideration of Mr Urquhart's case.

Mr. Maclennan presented the Report of the Reporting Committee :

1. They have great pleasure in stating that the work of reporting is well up, and it can hardly be said that there are any arrears which could be avoided by the reporters, and the Digests of completed volumes are all out.

2. Mr. Grant has brought up all arrears, and there are no Appeal Cases unreported but those which were delivered in the present month, with the exception of one delivered in September.

3. During vacation the committee was applied to by the County of York Library Association for another set of the Reports, it being found that one set was insufficient to meet the demands of the profession, and your committee took the steps of ordering the supply of another copy, including back numbers of current volumes, the Association taking the risk of the committee's action being approved and adopted by Convocation.

4. Your committee has made inquiry concerning the probable cost of preparing and supplying the profession with a quarterly index similar to that lately issued by the Council of Law Reporting in England, and your committee have ascertained that the probable cost, including printing and distribution, would be between $400 and $500 per annum.

5. A number of the Election Reports will be issued next month, and another in January.

The report was received and ordered for consideration.

The first paragraph was adopted.

Ordered, That the paragraph referring to the action taken by the committee in the matter of a second copy of the Ontario Reports for the County of York Law Association be considered, when Mr. Mackelcan's rule on a cognate subject comes up for a second reading.

Paragraph referring to the preparation of the Quarterly Index at a cost of $400 or $500 per annum was considered.

Mr. Martin gave notice that, on the last day of Hilary Term, 1887, he would move in the matter of publishing such an index as is described in the report.

Ordered, That Messrs. E. B. Brown and H. H. Macrae be paid the sum of $10 each for the trouble they have taken in supplying the Reporting Committee with information upon the subject of the proposed index to the Reports. Carried.

A statement, signed by A. F. Miller, as Secretary of the Trustees of the Toronto General Hospital, relating to the conduct of a solicitor respecting the will of the late Mr. R. B. Butland was read.

Mr. Cameron moved, seconded by Mr. Britton,

That as the whole of the facts and statements on which the Trustees base their suspicion of misconduct on the part of the solicitor have not been laid by the Trustees before Convocation, and as it is proper that Convocation should be satisfied whether the facts in evidence constitute merely professional misconduct cognizable by Convocation, or a more serious charge within the jurisdiction of the criminal courts, the Trustees be informed that Convocation deems it inadvisable to take action in the matter without a fuller statement of the facts. Carried.

Mr. Mackelcan moved the second reading of the following rule:

That Rule No. 156, relating to the distribution of the Ontario Reports, be amended by adding to sub-section 9 of said rule the following words:

"And an additional copy to each of such county libraries where the County Law Association has fifty or more members who have paid their subscriptions, such additional copy to be supplied from, and inclusive of, the first volume of the present series of Appeal, Ontario and Practice Reports respectively." Carried.

Mr. Mackelcan moved the third reading of above rule, which was carried.

The rule was read a third time and passed.

Mr. Martin moved, pursuant to notice, as follows:

That Rule 142 be hereby amended as follows: (*a*) "Clause 3, Sub-section E, is hereby amended by adding thereto immediately after the word 'library,' 'and in payment of the salary of a librarian or caretaker to such an amount as may be approved of by the County Libraries Aid Committee.'"

(*b*) "Sub-section 9 is hereby amended by striking out all the words after the word 'thereafter,' and substituting the following: 'And provided that the Association shall have taken due and proper care of the books, and shall have maintained and kept the library in the Court House, or other place approved of by Convocation, in a proper state of efficiency, and have in all other respects complied with the requirements of the rules adopted from time to time by Convocation in relation to county libraries, and in case of default the annual grant shall be suspended either in whole or in part during such default at the pleasure of Convocation; provided

that, if the default shall consist merely of delay in supplying the requisite reports and information, the annual grant may be paid within three months after the receipt thereof, if so ordered by the County Libraries and Finance Committees.'"

(*c*) The following clauses shall be added immediately after Clause 10:

11. Whenever any library association, which has been established for two years and has regularly made the required return, and complied with the requirements of the rules, shall make it appear to the satisfaction of Convocation that such association is unable to purchase such reports or text books as are necessary to make the library thoroughly efficient and useful, having regard to the locality in which the library is established and the number of practitioners who are members thereof, Convocation may, on the report of the County Libraries Aid Committee, make a special grant either of books or money to such association, or may advance, by way of a loan without interest, to such association any sum not exceeding the estimated amount of the next three years' annual grants, and such loan shall be repaid out of future annual grants in such manner as Convocation shall direct; provided that security shall be given to the satisfaction of Convocation for the due expenditure of any money grant or advance.

12. An Inspector of County Libraries shall be appointed by Convocation. The duty of the Inspector shall be to report to Convocation annually on the condition of the books in each library, the custody thereof, the fitness of the rooms used for the libraries, and the manner in which the library is maintained, and such other matters as he shall be required by the County Libraries Aid Committee or by Convocation.

The Inspector shall be paid $—— for each annual report on each library, and Convocation may authorize the payment of such proportion, not more than one-half of the salary of the librarian of any library association, which may be reported on satisfactorily by the Inspector.

13. Convocation may furnish to each library such number of books for the use of students as may be required, the books so furnished to be kept by the librarian of each association, and students allowed to use the same on similar conditions to those in force from time to time in regard to similar books at Osgoode Hall.

The rule was read a first time, and ordered for a second reading on Saturday, 4th December next.

Convocation adjourned.

SATURDAY, DECEMBER 4TH, 1886.

Convocation met.

Present — Messrs. Cameron, Falconbridge, Foy, Hoskin, Irving, Lash, Maclennan, Martin, McCarthy, Morris, Moss, Murray and Osler.

In the absence of the treasurer, Mr. Irving was appointed chairman.

The minutes of last meeting were read, approved and signed by the chairman.

In the matter of W. H. S., Mr. Hoskin presented the report of the Discipline Committee, ordered to be considered today, and moved its adoption.

A letter from W. H. S. was read.

Ordered, That the consideration of the report be deferred until the first day of Hilary Term next, and that the Secretary do transmit to Mr. S. a copy of the charge and complaint, and the report of the committee thereon, in order to enable him to give an explanation, as he requests by his letter received this morning.

Mr. Moss, from the Legal Education Committee, reported on the case of Mr. F. A. Munson, recommending that he be required to enter into new articles for two months, and that upon his service under these articles being completed and duly proved, the matter be again brought before Convocation with a view to the favourable consideration of his case, the fact of his having passed his examination satisfactorily having been considered.

The report was received and adopted.

Mr. Moss, from the same committee, presented the following report:

The Committee on Legal Education beg to report that they have had under consideration the report of the Finance Committee with reference to the fees for Primary Examinations payable by Students-at-Law and Articled Clerks, which was referred by Convocation to this Committee to report their views.

The Committee understand that the recommendation of the Finance Com-

mittee is that any one who has passed the Primary Examination for Articled Clerks should be permitted at any time within five years thereafter to present himself for the Primary Examination for Student-at-Law, upon payment of a fee of $10; and in the event of his passing such examination, it is to be allowed to him without requiring to forego the time heretofore served by him under articles.

The Committee are of opinion that it would be reasonable to adopt the above view.

The report was received and, together with the report of the Finance Committee on the same subject presented to Convocation on 29th June last, was ordered for consideration forthwith and adopted.

Mr. Hoskin, in the absence of Mr. McCarthy, seconded by Mr. Murray, moved for the reconsideration of Mr. Urquhart's case, pursuant to notice duly given, and that Mr. Urquhart be granted a Certificate of Fitness.

The motion was lost.

The letter of the Secretary of the Hospital Trustees of 2nd December, 1886, addressed to the Secretary of the Law Society, acknowledging the letter of the 30th ult., enclosing a copy of the resolution of Convocation of the 26th ult. relating to the conduct of a solicitor in the matter of the will of the late R. B. Butland.

Ordered, That the letter of complaint of 24th November, 1886, and the letter of the Secretary of the Trustees of the 2nd inst., be referred to the Discipline Committee to report whether a *prima facie* case had been made out. Carried.

Mr. Martin, seconded by Mr. Moss, moved the second reading of the rule to amend Rule 142. Carried.

The rule was read a second time.

Mr. Martin, seconded by Mr. Moss, moved the third reading of said rule.

The rule was read a third time and passed.

Mr. Martin read a report from the County Libraries Aid Committee, relating to the Guelph Library Association, which was received, ordered for immediate consideration, and adopted.

Ordered, That the sum of eight hundred dollars ($800) be paid to the Wellington Law Association as an initiatory grant on compliance with the conditions contained in the report.

Mr. Kerr, from the Committee on Journals and Printing, reported the printed draft of the consolidated Rules of the Society.

The draft was received, read, and ordered to be reprinted for consideration at the next meeting of Convocation.

Mr. Moss, from the Committee on Legal Education, reported with reference to the new revision of the Statutes of Ontario, that it is advisable to suggest to the Commission of Revisers of the Statutes that a system of nomination papers of candidates at the regular general election of Benchers should be approved in accordance with the system pursued for the election of members to the Senate of Toronto University.

The recommendation in the report was approved.

Convocation adjourned.

J. K. KERR,
Chairman of Committee on Journals.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

Q. B. D. [Feb. 1.

BOWEN V. CANADA SOUTHERN RY. CO.

Railways—Expropriation—Damages—Leave of municipality—Reference.

The lands in question were lots 3, 4 and 6 in Clifton Avenue, in the town of Niagara Falls. The defendants had taken for the purposes of their railway, a small part of lot 3, and the plaintiff claimed damages for the injury caused to that lot and lots 4 and 6, by lowering the street in front thereof to enable the railway to be carried over the highway, in such a manner as to obstruct the plaintiff's access to his land.

Held (affirming the judgment of the court below), (1) upon the evidence, that the sum paid to the plaintiff for the part of lot 3 actually taken, included damages to lot 3, but not to lots 4 and 6. (2) That the claim as

to lots 4 and 6 was for damages suffered by land having been taken in the exercise of the powers granted for the railways, within the meaning of the Consolidated Railway Act, 1879, s. 9, s.-ss. 10 and 12 (D.).

Held, also, that there was nothing to exonerate the defendants in the fact that they had the leave of the municipality for doing as they did.

Held, also, that the court had no power to compel a reference to an officer of the court to ascertain these damages, but only to compel an arbitration, to which the plaintiff was entitled under the Act.

Quære, per OSLER, J.A.—Whether the compensation clauses of Part . of the Consolidated Railway Act, 1879, apply to the defendant's railway; but held that they apply to the Welland Branch of the defendant's railway, on which the work in question was done?

Cattanach, for the appellants.

McClive, for the respondent.

Rose, J.] [Feb. 1.

PRESTON v. THE CORPORATION OF CAMDEN.

Drainage by-law—Damages—Lawful act done in negligent manner.

The defendants deepened and widened a drain through the plaintiff's land, and threw up the earth on either side, and left it there. The plaintiff sued for damages to his land, etc., by reason of such throwing up of the earth. It was admitted that the work was done under a by-law, passed under s. 576 of the Municipal Act, 1883, and it was not suggested that the by-law was defective in form or substance or for want of authority to pass it. The jury found that the defendants were not guilty of any negligence, but that the plaintiff had suffered damage by the execution of the work.

Held, reversing the decision of Rose, J., that upon these findings, judgment should have been entered for the defendants; that a cause of action could not accrue from the doing of a lawful act, unless in a negligent manner, and that the plaintiff's remedy, if any, was by arbitration to obtain compensation under the Municipal Act of 1883, s. 591.

Matthew Wilson, for the appellants.

Pegley, for respondent.

C. C. Kent.] Feb. 1.

STEINHOFF v. THE CORPORATION OF KENT.

Negligence.

The defendants were the owners of a bridge over a navigable stream, having in it a draw or swing to allow vessels to pass through. A horse of the plaintiff broke away from the person in charge of him, and ran from a distance of two miles to the bridge, reaching it in broad daylight just as the bridge was opened, rushed into the gap and was drowned.

Held (affirming the judgment of the court below), that the loss of the horse was owing to no negligence on the part of the defendant in failing to guard the approach to the bridge or to use signals, and the plaintiff could not recover.

J. S. Fraser, for appellant.

Pegley, for the respondents.

C. P. Div.] [Feb.

MCGIBBEN v. NORTHERN AND NORTH WESTERN RY. CO.

Negligence—Fire from railway engine.

The judgment of the court below, 11 O. R. 307, was reversed on appeal.

The action was for negligence whereby, as alleged, fire escaped from the defendants' engine, and destroyed the plaintiff's property.

There was evidence that the engine had passed just before the fire in a certain manure heap (which communicated it to the destroyed property) was perceived; that a strong wind blew across the track towards the manure heap; that there was no other known source from which the fire was at all likely to have come; that the wind was in the wrong direction to have carried sparks from a steam saw-mill close by, and that cinders were found in the straw by those who went to put out the fire.

Held, that from these facts the jury would clearly have been justified in finding that the mischief was caused by the engine.

The evidence further showed that the engine had run ninety miles without the ash-pan being emptied; that ignited substances were found upon the manure heap, which, being too large to pass through the net of the smoke-

stack, must have come from the ash-pan; that the ash-pan was perfectly good, and so constructed that it was very difficult for ashes to escape from it, and that the possibility of any escape would be prevented by emptying or partly emptying the pan.

Held, that the jury might have found as legitimate inferences of fact that the fire escaped because the pan was full, and that that result might, with reasonable care, have been avoided; there was, therefore, evidence of negligence to go to the jury, and the nonsuit was improperly entered.

Lash, Q.C., for the appellant.

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

QUEEN'S BENCH DIVISION.

Armour, J.]

REGINA v. HEATH.

Criminal law—Canada Temperance Act, 1878—*Buyer of liquor—Aider and abettor.*

Held, that under the Canada Temperance Act of 1878, a buyer of liquor cannot, in respect of a sale made to him by a seller, be regarded as an aider and abettor, counsellor or procurer, and a conviction as such cannot be supported.

Delamere and *Milligan*, in support of motion.

J. S. Fraser, of Wallaceburg, contra.

O'Connor, J.] [January 27.

REGINA v. DUNNING.

Conviction—Weights and Measures Act, 1879—*Certiorari—Appeal to sessions—33 Vict. c. 27, s. 2—49 Vict. c. 49, s. 1—Imprisonment—Criminal charge—Evidence of accused.*

Upon a motion for a *certiorari* to remove a conviction under the Weights and Measures Act, 1879, for obstructing an assistant-inspector of weights and measures on the discharge of his duty.

Held, that when an appeal from a conviction has been had and heard at the general sessions of the peace, a *certiorari* may be moved for within six months after the order of sessions confirming the conviction, but in this case the right to *certiorari* is taken away by 33 Vict. c. 27, s. 2, supplemented by 49 Vict. c. 49, s. 1, and

Held, also, that the latter act applies to convictions made before it was assented to, as well as after.

Held, also, that magistrates have power to impose imprisonment in default of sufficient distress upon conviction for an offence under this act.

Held, also, that the offence was in the nature of a crime, as it was interfering with a public officer in the discharge of his duty, and might have involved a breach of the peace, and therefore the magistrates were right in rejecting the evidence of the defendant.

F. M. Macdougall, for the motion.

W. H. P. Clement and *W. J. Code*, contra.

O'Connor, J.] [February 3.

REGINA v. CYR.

Conviction—Keeping bawdy-house—Uncertainty—Place where offence committed—Forfeiture of penalty—32 & 33 Vict. c. 31, s. 17—Costs.

Upon a motion, on the return of a *habeas corpus* to discharge the prisoner, who was convicted of keeping a house of ill-fame.

Held, that the conviction was bad on the face of it for uncertainty in not naming a place where the offence was committed.

Held, also, that the conviction was defective because it did not contain an adjudication of forfeiture of the amount of the fine imposed. The Act 32 & 33 Vict. c. 31, s. 17, provides that the magistrate may condemn the party accused to pay a fine not exceeding, with the costs in the case, $100.

Held, that the meaning of this is that the amount of the costs in the case shall be deducted from $100, and the balance or difference shall be the utmost limit of the fine; and that the conviction in this case, being to pay the sum of $100 without costs, was therefore bad.

G. F. B. Johnstone, for the Crown.

Aylesworth, for the prisoner.

COMMON PLEAS DIVISION.

Mr. Dalton, Q.C.] [December 23, 1886.
Galt, J.] [February 3, 1887.

MASSIE v. TORONTO PRINTING CO.

Landlord and tenant—Attachment of debts—Rent—R. S. O. ch. 136, secs. 2-6—Mortgagor and mortgagee.

R. S. O. ch. 136, secs. 2-6. does not contemplate any alteration of the law where the case remains strictly between landlord and tenant, but works a severance where any third interest intervenes.

And where a judgment creditor garnished rents accruing due from several tenants to the judgment debtors before the gale days had arrived,

Held, that he was entitled to payment over upon the gale days of the proportion of the rents which had accrued due on the day of service of the attaching order.

Quære, per GALT, J., Whether the rents could be garnished against a mortgagee of the landlord's?

F. J. Dunbar, for the plaintiff.
Ingles, for the defendants.

Cameron, C.J.]

RE HAMILTON AND MILTON ROAD CO. AND CORPORATION OF EAST FLAMBOROUGH.

Sale by one road company to another—Second company defectively organized—Minority of one of corporators—Sale abortive—By-law of municipality assuming road—Quashing same.

The H. and M. Road Co., the owners of a certain road and in possession thereof as a toll-road, levying and collecting tolls thereon, in 1879 assumed to sell the same to the H. and F. Road Co., who entered into possession thereof. Subsequently it was held by the Court of Appeal, on appeal from the judgment of WILSON, C.J., that the H. and F. Road Co. were not a duly incorporated company, because, while the Joint Stock Companies Act, R. S. O. ch. 152, required at least five corporators to enable a company to be incorporated, there were not five here—there being only four alleged corporators, and one of whom was a minor. The defendants thereupon passed the by-law in question, assuming possession of the road. On an application by the H. and M. Road Co. to quash said by-law,

Held, that the defendants' by-law was illegal and must be quashed; for that the effect of the judgment of the Court of Appeal was to restore to the applicants the franchises they held before the abortive sale took place—the road being kept alive as a toll-road, and repaired as such from time to time, and nothing transpired to justify the defendants in interfering with the road or assuming possession and control of it as the by-law authorized them to do.

Lash, Q.C., for the applicants.
Osler, Q.C., for the defendants.

Div'l Court.]

CITIZENS' INSURANCE CO. v. CLUXTON.

Principal and surety—Change in position of principal debtors — Release of surety—Renunciation clause—Joint contractors.

Action against defendants as sureties on a bond given to the plaintiffs to secure the faithful and diligent performance of B's (the principal) duties to the plaintiffs, including the paying over of moneys as to which there was alleged to be default. The bond, after reciting that B had been appointed agent for the defendant's company for the Province, and as such to discharge certain duties, and to receive certain moneys according to the definition of his duties contained in the instrument appointing him, dated 19th October, 1883, and as to which the parties thereby declared to have had due and sufficient communication. The condition was for the performance of such duties and payment over of moneys for which he should be responsible as such agent. The bond also contains the following clause: "And the said sureties in consideration of the premises hereby agree to waive any notice of any default the said B may at any time make in his duties as such agent, and to renounce to the benefits of division, discussion and all other benefits of sureties, consenting to be bound as fully in all respects as the said principal party." The agreement provided that B should be general agent for the Province, should have control over all local agents, except some six agencies, including Hamilton and Galt, and his compensation

should be a commission of 35 per cent. on all business obtained by himself, or the agents under his control, he to pay the agents thereout, and a salary of $75 a month, which was to include travelling expenses, and in renewals 30 per cent. The plaintiffs afterwards added Hamilton and Galt to his agencies. Subsequently the minor agencies were taken away from B, and his business was confined to Toronto, and he relinquished his commission on all outside agencies; and it was intimated to him that at the close of the year his salary would have to be rearranged.

Held, that the taking away of the sub-agencies was such a change in B's position as could not be said to be without enquiry evidently unsubstantial and not prejudicial to the sureties, and would of itself discharge them; but as to adding Hamilton and Galt it could be said on the evidence to have such effect.

Held, also, that the effect of the renunciation clause was to place the principal and sureties in the position of joint contractors; that the agreement confining B's business to Toronto amounted to a new contract, and that the sureties would only be liable for default up to the date of such new contract, but not thereafter.

Robinson, Q.C., for the plaintiff.

Moss, Q.C., and *Drayton*, for the defendants.

CHANCERY DIVISION.

Proudfoot, J.]

COATES ET AL. V. COATES.

Contract—Specific performance—Statute of Frauds—Part performance—Requisites to take out of the statute.

A brought an action against B for the rents and profits of certain lands which had belonged to the father of A and B, who died intestate, and which B had taken, and had possession of for several years. On the action being entered for trial a settlement was arrived at, by which the action was to be stayed upon the undertaking of B to obtain certain releases, etc. B's counsel appeared in court when the action was called for trial, and stated that it was settled, and an entry was made in the minute that the case was "settled out of court." Subsequently B required certain releases to be obtained by A, which A agreed to procure. B obtained such releases, and complied with all his conditions, and A refused to complete the agreement.

In an action by A to compel B to perform the agreement, in which B set up the Statute of Frauds,

Held, that the staying of the action was a sufficient part-performance to withdraw the contract from the operation of the statute as being (1) an act referring to a contract consistent with the alleged one. (2) It would lead to fraud to allow the defendant to escape from performance because the contract was not in writing. (3) The contract was such a one as would have been enforced had it been in writing; and (4) The contract was fully proved.

Aylesworth, for the plaintiff.

J. K. Kerr, Q.C., and *Cassels*, for the defendants.

Divisional Court.] [January 8.

THE TORONTO BREWING AND MALTING CO. V. HENRY.

Surety—Representation on which bond executed—Jury findings.

The defendant agreed to become security with McG. for McB. to the plaintiffs. Plaintiffs' solicitor sent two bonds to their agent for execution, one by defendant and the other by McG. The agent attended defendant to get his bond executed, and in answer to a remark of defendant's (made before he signed the bond) that McG. had promised to sign a bond too, told him that a bond had been sent up to be signed by McG. Defendant then signed the bond, but McG. subsequently refused to sign his.

The jury found that a statement was made, leading defendant to suppose that the bond executed was conditional upon the execution of the proposed bond from McG., and that its execution was obtained by a false, although unintentionally so, representation.

Held (affirming O'CONNOR, J.), that the plaintiffs could not recover.

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

R. Meredith, for defendant.

PRACTICE.

[Proudfoot, J.] [February 4.

HOGG v. CRABBE.

Costs—Taxation—Costs of the day—Counsel fee.

Under an order made at the assizes postponing the trial upon payment of "the costs of the day," the party receiving the costs is entitled to tax only one counsel fee of $10.

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

Middleton, for the defendants.

COUNTY OF YORK LAW ASSOCIATION.

The members of the Association met at the Convocation Hall of Osgoode Hall on the 7th inst., to hold their annual meeting. The annual report of the trustees for the year 1886 was read, and is as follows:—

Under the terms of the Memorandum of Association the Board of Trustees met on the fourth of January, 1886, and elected Mr. B. B. Osler, Q.C., President of the Association; Mr. J. K. Kerr, Q.C., Vice-President; Mr. Walter Barwick, Treasurer; Mr. E. D. Armour, Curator; and Mr. Alex. Monro Grier, Secretary; and these members of the Board have performed the duties of their respective offices during the past year.

At a subsequent meeting of the Board by-laws were passed for the due regulation of the affairs of the Association, and these by-laws are now submitted for your approval pursuant to the provisions of the Memorandum of Association.

The attempt to procure funds for the establishment of a library has been attended with very gratifying success. The sum of $642 was donated to the Association by various members, and the sum of $1,518 has been paid in upon account of stock subscriptions and annual fees. Application was made to the Law Society for an initiatory grant under the rules relating to the county libraries, but for the reason set forth in a report to the Law Society which is printed in the CANADA LAW JOURNAL for 1886, at page 340, the grant from the Law Society was limited to $1,500, and the committee decided to limit the annual grant to the Association for the present to a sum equal to the amount of the annual fees paid by members. Arrangements have been entered into for the purchase of books at advantageous rates, and several sets of Reports have been secured at very low prices. The library now comprises 1,128 volumes, and is valued at over $3,000.

The Trustees have been fortunate in securing the services of a most efficient librarian, whose labours during the past year are deserving of great commendation.

In entering upon arrangements for the purchase of books for the library the Board decided to limit their selection of books to those in common use at *Nisi Prius*, and the making such a selection seemed in the first instance to be an easy task, but the variety of legal business conducted at the Court House is so great that the Trustees have experienced much difficulty in choosing books which are most commonly required by members of the Association.

During the progress of trials the applications made by the judges and counsel for books not in the library were found to be so frequent that the librarian undertook the keeping a list of books which were not in the library, and the books most frequently applied for have been purchased. It is still evident that the stock of books must be largely increased before the Association can be deemed to possess a fair *Nisi Prius* library.

The librarian has for several months been engaged in correcting the text books by the addenda and corrigenda tables usually published in standard works, and in noting the reported cases followed, overruled and commented upon in later reported cases, and is about to establish an index to current legal periodicals. This is a plan which is pursued in the most elaborate manner in many of the principal law libraries of the United States, and if carefully followed in the Association's library will immensely increase its usefulness.

The work already done by the librarian in following this plan has brought about the constant use of the library for reference purposes, and so many demands are now made for books useful to members who devote their attention more particularly to solicitors' work, and which are not in the library, that the Trustees find that their original scheme for the purchase of books must be considerably extended.

The Trustees hope that successive Boards will continue and improve upon these schemes for rendering the library more useful for reference purposes.

The daily attendance in the library evidences the necessity for its establishment.

The purpose, however, of the Association is not only the formation of a library, but also to promote the general interests of the profession, and to this end the Association might well bend its energies. The Trustees suggest that an early endeavour be made to bring about a meeting at some central point of delegates from the various County Law Associations in the Province for the purpose of discussing matters of general interest to the profession.

They suggest also the appointment of a committee on legislation, composed of members in active practice, whose suggestions would have weight with the Attorney-General of Ontario, and with the judges of the Supreme Court of Judicature in the consideration of required legislation and proposed amendments to the rules relating to practice.

The Trustees further suggest the adoption of some method of gathering together and preserving materials and records relating to the history of the Bar of this county.

Some interesting portraits have been presented to the Association during the past year, and others have been promised. The publication of a series of articles in the *Magazine of Western History*, entitled "The Bench and Bar of Toronto," by Mr. D. B. Read, Q.C., a member of this Association, indicate the existence of much material which

if not preserved will, in the course of a few years, be irretrievably lost.

The Trustees suggest to the members the appointment of an historian to the Association.

The Trustees have to record the death of one member of the Association during the past year—Mr. Davidson Black—a rising member of the Bar, and one whose memory will last long with those who knew him intimately.

The Trustees submit for the consideration of their successors in office the establishment of an Insurance Fund, based in principle upon the fund lately established with success by the Toronto Board of Trade.

The Trustees are indebted for many valuable suggestions made to them during the past year by His Honour Judge Macdougall, who has taken constant interest in the purposes and welfare of the Association.

The Association now numbers 216 members. A list of those who became stock-holders during the year 1886 is submitted herewith. A catalogue of the books and periodicals contained in the library, and detailed statements of the assets and liabilities of the Association at the date of the Report, and of the receipts and disbursements on account of the Association during the year are submitted for your consideration.

The Treasurer's accounts have been duly audited and the Report of the Auditors will be submitted to you for approval.

The Trustees, in retiring from office, beg to congratulate the members upon the success which has attended the establishment of the Association.

No. 1.—*Statement of Receipts and Expenditure for the Year ending 31st December*, 1886.

Dr.

FOLIO.	PARTICULARS.	AMOUNT.
23	Reports and Statutes	$2,262 55
29	Text Books	684 77
33	Periodicals	99 50
37	Binding	53 91
41	Furniture	45 05
43	Expenses	486 07
52	Dominion Bank	666 56
	Cash on hand	53 50
		$4,351 91

Cr.

1	Stock Subscriptions	$1,085 00
5	Annual Fees	433 00
15	Donations	641 00
21	The Law Society (Initiatory grant)	1,500 00
105	Carswell & Co	691 91
		$4,351 91

No 2.—*Statement of Assets and Liabilities on 1st January*, 1887.

ASSETS.

Reports and Statutes	$2,316 46
Text Books	684 77
Periodicals	99 50
Furniture	45 05
Cash on hand and in Bank	720 06
	$3,865 84

LIABILITIES.

Stockholders	$1,085 00
Carswell & Co	691 91
Profit and Loss Account, 1886	2,088 93
	$3,865 84

No. 3.—*Profit and Loss Account*, 1886.

Dr.		Cr.	
Expenses	$486 07	Annual Fees	$433 00
Balance	2,088 93	Donations	642 00
		Law Society	1,500 00
	$2,575 00		$2,575 00
		Balance	2,088 93

Walter Barwick,
Toronto, December 31, 1886. *Treasurer.*

Moved by Mr. C. H. Ritchie, seconded by Mr. G. F. Shepley, and resolved, That a committee on legislation be appointed by this Association for the ensuing year, whose duty it shall be to consider from time to time what changes in or amendments of the laws, rules of court or practice, may, in their opinion, be desirable, and to submit their views thereon in the proper quarters, and to use their efforts to have same carried into effect; also to make such suggestions in regard to proposed legislation as they may deem advisable, and that such committee be composed of the following persons: Charles Moss, Q.C., John Hoskin, Q.C., J. H. Macdonald, Q.C., Z. A. Lash, Q.C., A. H. Marsh, E. Douglas Armour, and D. E. Thomson.

The following officers were elected for the ensuing year:—President, B. B. Osler; Vice-President, J. K. Kerr, Q.C.; Treasurer, Walter Barwick, Curator, E. D. Armour; Trustees, W. Lount, Q.C., C. H. Ritchie, Q.C., G. F. Shepley, G. T. Blackstock and A. H. Marsh; Secretary, A. H. Grier.

Moved by Mr Bigelow, and carried unanimously, that Mr. D. B. Read, Q.C., be appointed historian.

Moved by Mr. Ross, seconded by E. D. Armour, and resolved, That the Board take early measures to bring about a meeting of delegates from the various County Law Associations in the Province, for the purpose of discussing matters of general interest to the profession.

Moved by W. H. Cassels, seconded by Mr. N. W. Hoyles, and resolved, That this Association desires to place on record its appreciation of the earnest and close attention which has been given by the retiring Board of Trustees to the management of the affairs of the Association, and to congratulate the Trustees upon the great measure of success which has attended their efforts. The Association also desires to thank most warmly His Honour Judge Macdougall for his valuable co-operation with the Board of Trustees in their endeavour to promote the welfare of the Association.