Canada Law Journal.

VOL. XXI. MAY 15, 1885. NO. 10.

DIARY FOR MAY.

17. Sun.....*1st Sunday after Ascension.* Cameron, C.J., C. P., 1884. D. A. Macdonald, Lieut.-Gov. Ont., 1875.
18. Mon.....Easter Sitting of Common Law Divisions, H.C. J. begin.
21. Thur.....Confederation proclaimed, 1867.
22. Fri.....Lord Dufferin, Gov.-Gen. 1872.
24. Sun.....*2nd Sunday after Ascension,* Queen Victoria born, 1819. Ferguson, V.-C., 1881.
25. Mon.....Princess Helena born, 1846.
30. Sat.....Proudfoot, V.-C., 1874.
31. Sun.....*Trinity Sunday.* Parliament first met at Toronto, 1797.

TORONTO, MAY 15, 1885.

SOME interesting statistics were unearthed in the Senate of the Dominion during a recent debate on the subject of legislation in the Senate. The following is an extract from the speech of an honourable member who was urging the desirability of initiating, as far as possible, private bills in the upper chamber:—

Since Confederation the Dominion Parliament has passed more than 1,400 Acts, of which 650 have been for private purposes, such as the incorporation of railway, banking, loan, insurance and other companies. The Legislatures of the different Provinces, since Confederation, up to 1884, have passed the following number of Acts:—Ontario, 1,358; Quebec, 1,105; Nova Scotia, 1,414; New Brunswick, 1,302; Prince Edward Island, since 1873, since it came into the Union, 313; Manitoba, 477; British Columbia, 324; and of those Acts 31 have been disallowed. In all 6,293 Acts have been passed, and but 31 have been disallowed by the Dominion Government, namely:—Ontario, 5; Quebec, 2; Nova Scotia 5; New Brunswick, none; Prince Edward Island, none; Manitoba, 7; and British Columbia, 12. It shows, therefore, I think most conclusively that the working of the system under which we are confederated has been upon the whole greatly harmonious, and that there has been no friction in the machinery which is worthy of notice. I think it is an important item in considering the effect of the important clauses by which special subjects of legislation are assigned to the Provinces, where one might suppose that there sometimes would be a straining of the relations between the Provinces and the Dominion, and where it has been asserted in some quarters that there has been a straining of such relations. It is most remarkable to notice how few Acts have been passed in any Province that have been objected to by the Dominion Government; and when we consider that the terms of Confederation giving to the Provinces special subjects of legislation, reserved not only specified legislative powers for the Dominion, but gave it powers over all subjects which were not specially given to the Provinces, it is marvellous that the Provinces in their legislation have kept so closely within constitutional limits, and so closely confined themselves to the exercise of the powers which were given them by the constitution as only to have exceeded them in this vast amount of legislation—in the opinion of those who are charged with the revision of their Acts—to the extent which I have stated here. I think it is a matter for congratulation with every one who wishes the confederation of these Provinces well, and who has a desire to perpetuate it, that so far there has been so little friction in the movements of the machinery.

OUR ENGLISH LETTER.

THE assizes are now in full swing; or, as the organs of popular opinion have it, the circuit nuisance has set in with its usual severity. In the matter of gaol deliveries the system of grouped assizes is, I think, exceptionally unfair to prisoners, in a manner which may best be shown by concrete example. Two or three days ago your correspondent heard a boy tried for burglary, of which the net results were five shillings in copper, a bottle of rum and nine months' imprisonment. The evidence consisted in the possession of about five shillings in copper, and in intoxication. The prisoner asserted that the vast wealth had been

the result, and the drunken condition an incident of an all night sitting at the card table with three militiamen. The first jury disagreed. Field, J., tried the prisoner a second time, and having obtained a verdict, rated him soundly as a liar. Now the lad named the very men with whom he had been playing, but they were forty miles off, and there was no opportunity of investigating his story, and it seemed doubtful to your correspondent as an impartial spectator, whether, after all said and done, he might not have been absolutely innocent; and at any rate his story had not been investigated. Yet his offence, although technically described as burglary, was of the most trivial nature, apart from the breaking and entering, and presented no feature which could not have been easily dealt with by a stipendiary magistrate. This brings me to the second count against gaol deliveries, which is their expense. I have just been through a whole circuit at which not more than three serious cases have been tried, the remainder being purely sessions cases. In fact, a gaol delivery is neither fish, flesh, fowl nor good red herring; it does not serve the needs of provincial towns, and it is, by dint of causing a judicial famine, an endless nuisance to metropolitan suitors.

The current sittings did not open in an exciting manner. It was hardly possible that they should, seeing that not more than three common law judges can sit simultaneously, and that Mrs. Weldon is undergoing luxurious discipline in Holloway gaol as a first-class misdemeanant. In passing it may be observed that this good lady has met with severe treatment, and that the general opinion is that her sentence would have been a good deal shorter if her character as a litigant had not been as well known as it was. However, now that she is away there is some chance of progress, the more so as there is but one sensational case in the legal programme at present. That is *Adams* v. *Coleridge*, for the second time of asking, and I am happy to be able to state that Mr. Adams, having employed counsel, is likely to conduct his case in a more creditable manner than heretofore. It is rumoured, however, that Lord Coleridge is filled with melancholy forebodings, and that he has been heard to describe himself as a poor broken-down old man.

The retrospect is a painful one for lawyers. In Lord O'Hagan the profession lost a man universally popular and of brilliant ability. In Lord Cairns Lincoln's Inn mourns the most logical of her sons, and the Conservative party deplores a competent and convincing leader. Both were brilliant examples of the best types of the Irish legal mind, the former a brilliant and impassioned orator, the latter a past-master of rhetoric and logic. Nor, passing away from personal regrets, are the prospects of the profession good. Work, indeed, is slightly more abundant than it has been for the last year or two, but professional morality shows signs of deterioration. Men have always been known to be prepared to work for nothing, but the secret is rather more open than it used to be. Further, a good many barristers find themselves unexpectedly and quite involuntarily in the position of having done their work for nothing. The course of things is simple. A client comes once, twice, or even three times; at last the advocate asks for his fees; the result is that he loses a client and does not recover his money. It may be said that barristers in this position ought to report the matter to the Incorporated Law Society, and this is sometimes done by men of established position, but very little advantage ever accrues, and one cannot help thinking that when fraudulent solicitors are brought before the Court they are treated with exceptional lenity.

This mention of fraudulent solicitors brings me to one of the leading popular topics of the day. Probably no body of men in the world with equal opportunities is as honest as the great class of solicitors. Their probity is so notorious that they are trusted with implicit confidence. It follows, therefore, that when they yield to temptation they are able to work endless havoc, and having worked it to escape scatheless. They fly to Spain or to the States and enjoy themselves, while their victims pass in melancholy procession before Mr. Justice Cave. Now, we have extradition treaties with both these nations. The one with the States is practically useless, for it covers four offences only, to wit, murder, arson, piracy and robbery. The one with Spain is a dead letter. Lord E. Fitzmaurice says that it dates from the year 1878, and that it is in force now. Nominally it may be; practically it is useless, for Mr. Ben Davis, the latest disgrace to the legal profession, is at this moment known to be luxuriating in Spain. Surely it is time that there was an end of these things? For my own part I confess to an exceedingly strong view upon the subject which would include the extradition of political offenders. There are infinite disadvantages in being the Athens of the world. England has filled that position for many centuries, and gained the practical benefit of harbouring the Spitalfields weavers, and the honour and glory of protecting the heroic Kossuth. But political conspirators are not all Kossuths; on the contrary, they are exceedingly apt to be vulgar persons full of murderous designs; and we feel this when justice fails to lay her hands upon the men who direct the efforts of the dynamitards.

The Infants Bill, which is now undergoing critical discussion in the House of Lords, is strongly symbolical of the tendencies of the age. Nothing is more foreign to the spirit of the times than the *patria potestas* of the Romans, and in our fear of its injustice we show an inclination to the other extreme. Briefly stated, one of the effects of the Infants Bill, if it were not modified, would be that a widower, in his desire to direct the education of his children, might be thwarted by the wishes of his deceased wife. Precisely the same principle is inherent in the Married Women's Property Act which, in taking away women from the possibilities of injustice, inflicts undue hardship upon men.

The cry for more judges continues to increase in bitterness, and there is no sufficient reason for the obstinate silence with which it is received. One cause of the silence is to be found in the apathy which lawyers in Parliament invariably display whenever legal questions come to the fore; an apathy which, discreditable as it is, will never be removed until we obtain some form of class representation. Why should we not have a member for the Bar and for solicitors, as well as representatives of the Universities? Are barristers and solicitors less intelligent than the country parsons? I trow not; but outside the House of Lords there is not a statesman who cares a particle for the interests of the profession.

SELECTIONS.

THE TEMPLE OF JUSTICE IN ENGLAND.

FEW persons appear to recognize the exquisitely allegorical character of our New Law Courts. On arriving at the principal entrance, the would-be litigant immediately experiences a sensation of being "stranded" (this immodest quip is inevitable) upon a bleak, stony, and inhospitable shore. In front and on either hand of him there stretches the most irregular, heterogeneous, complex, monstrous and irreconcilable aggregation of ins and outs conceivable by the mind of man. Yet is the complexity of the exterior "a light affliction" compared to the windings, passages, labyrinths and mazes of the still more wonderful interior.

Porta adversa ingens, solidoque adamante columnæ. The main portal is wide—wide is the gate and broad is the way that leadeth unto litigation. It is, moreover, cavernous, and thrust backward and inward after the manner of the mouth of the octopus. It suggests the abandonment of hope, and umbrellas upon the very threshold.

Cardine sacræ panduntur portæ. The great gate of this great Temple leads directly to the Great Hall. Here again all is full of allegory. How symbolic of our whole legal system are the extreme narrowness and interminable length of this stately chamber! It is full of detail, it is costly, it is of the smallest possible use. Most persons on gaining access to the hall expect to find an easy approach to the courts by turning to the right or left. Such expectations are vain. If the unwary one ventures through the arches on either hand, he plunges straightway into total darkness, falls up the hardest of stone stairs, and wanders disconsolate in the very corridors of time.

Inextricabilis error! No, the way to approach the actual courts themselves is through catacombs at the further end of the hall, the which catacombs are dim, mysterious, and full of unexpected ramifications. It is alleged that handsome young barristers are wont to bring their pretty cousins down into these gloomy vaults for reasons which older heads do not readily understand, there being little to see and great difficulties in the way of being seen. Perhaps their impressions of the mysteries of the law would not be complete without this adventurous initiation.

The question now is—*superas evadere ad auras.* Hereabout is a choice of doors, which lead upwards to the Court floor above. Let us choose the one at the foot of a spiral stone staircase possessing the peculiarity of enfolding another and smaller staircase within its corkscrew turnings—*sinu labens circumvenit atro;* a detail again highly symbolic, signifying the delight of the legal mind in twistings within twistings, and darkness over all. Now, as touching the Courts proper, to which we have emerged on the upper floor, they all possess certain features in common. First and foremost they are not in the least like what Courts ought to be. They rather resemble the chapels which border the larger cathedrals. They are small, they are dark, they are draughty, they are incomprehensibly inconvenient. The winds of heaven compete briskly for possession of them, and perfumes of all sorts, excepting those of Araby the blest, delight to linger within the jurisdiction. We anticipate, however, that Baron Huddleston will one day commit them, if they unwarily let him catch them. On ordinary days it is possible to wriggle into them at the trifling sacrifice of the integrity of one's hat, coat-tails, or such like little outlying appurtenances, together with a proportionate sweetening of temper; but on Motion days he who aspires to present himself before Her Majesty's Judges must be content to carry life itself in his hand. It is a crush as if the Arab spearmen were upon us, and we were in momentary expectation of being crumpled up.

Before leaving the Court corridors let us take note of some of the parties to the contests going on, their witnesses and friends. Behold the plaintiff, who has won when he ought to have lost, and is half exultant, half frightened, being somewhat uncertain as to the Judge's direction in the matter of costs. Observe the hopeless astonishment of the defendant in the

same case. Observe again the oldest inhabitant in the boundary case mumbling the corner of a slab of seed-cake, and recounting how he "guv them 'ere lawyers as good as they sent." Watch the groom in the running-down action flirting with the highly confidential maid in the divorce suit. See the good-natured young man in the "light and air" proceedings, exhibiting his model to an apoplectic baby under pretence of its being a kind of glorified doll's house, and confess that here is the making of many books.

Of the gigantic honey-combs of offices set apart for chief clerks, registrars, masters and others, we have now no space to speak. They consist of almost countless rooms and corridors of appalling length, some of which are yet unexplored. There is, moreover, a sense of mystery about them, heightened by dreadful rumours to the effect that adventurous messengers, wandering down these dismal alleys and blazing the walls as they go, have come upon the bleaching skeletons of solicitors, who, losing all clue to the bright and cheerful outer world, have perished miserably of cold and hunger, starved to death in their own anthill.

Sed jam age, carpe viam et eusceptum prefice munus. Acceleremus. Gentle reader, come ye out into the light; for, though it be a little trying to the eyes at first, it will never do for us to stop here and learn to love darkness rather than light. *Discite iustitiam moniti.*

Some who are superstitious above all things have asked us what is the best day on which to go to law? We answer unhesitatingly, the first fine Monday in every alternate month which happens to fall on a Saint's day, and contemporaneously with a full moon, provided always that no sittings are going on, or vacations, or holidays and that such Monday does not fall on a day on which the British Museum, or National Gallery, or Sir John Soane's Museum is closed.—*Verb. sap.*—*Pump Court.*

SHAKESPEARE AS A LAWYER.

SOME years ago an article appeared in one of our leading magazines, the main purport of which was to prove that Shakespeare had gained his knowledge of law by serving as an attorney's clerk. However improbable and unacceptable such a conclusion may appear, the writer's argument looks comparatively sensible, when set side by side with the egregious fallacies propounded by certain doctors of divinity to prove that Shakespeare was a believer in this or that particular form of faith or grace.

Shakespeare, like his old friend Jack Falstaff, knew so many wonderful things "by instinct:" he worked so much away from himself, and in a world of so much mental activity, that it is idle and futile to endeavour to learn or deduce anything of his own life and personality from his works, which reflect only the lives and personalities of others. Still, his acquaintance with and knowledge of old English law and the legal life of his time are oftentimes so minute and so accurate that, if he were not Shakespeare, one might safely conclude that he must have had a wider experience of the ins and outs of court than an ordinary man would be likely to acquire in the ordinary run of life.

The gravedigger's scene in Hamlet affords a notable instance of Shakespeare's wonderful felicity in adapting to his work whatever came to his hand. The discussion which the clowns hold on the right of Ophelia to be "buried in Christian burial" is really a burlesque of an actual trial which took place just half a century before Hamlet was written.

On the accession of Mary Tudor, Sir James Hales, a puisne Judge of the Common Pleas, was indicted for having taken part in the plot to exclude Mary from the crown by placing Lady Jane Grey on the throne. However, he was shortly afterwards pardoned and released, but not before he had been frightened sufficiently to drive him out of his mind. After his release he attempted suicide by stabbing himself with a penknife; but this proving unsuccessful, he took the more effectual course of walking into a river. At the "crowner's" inquest a verdict of *felo de se* was returned, and, according to the custom of the time, his body was to be buried

at a cross-road, with a stake thrust through it, and all his goods and chattels were to be confiscated to the crown.

At this time Sir James Hales was holding a long lease of a large estate in Kent, which, at his death, was seized by the crown and handed over to Cyriac Petit. Upon Cyriac Petit taking possession, Lady Margaret, the widow of Sir James, brought an action to recover the estate; and then arose the odd question whether Sir James could be said to have committed suicide while he was alive. For if the confiscation did not take place in his lifetime, the widow was entitled to the estate.

The plaintiff's counsel argued that suicide was the killing of oneself, and, being the *killing*, it could not possibly be completed in one's lifetime; for while a man was alive he was not *killed*, and the moment he was dead the estate vested in his widow. "The felony of the husband shall not take away her title by survivorship, for in this manner of felony two things are to be considered—first, the cause of the death; secondly, the death ensuing the cause; and these two make the felony, and without both of them the felony is not consummate. And the cause of the death is the act done in the party's lifetime, which makes the death to follow. And the act which brought on the death was the throwing himself voluntary into the water, for this was the cause of his death. And if a man kills himself by a wound which he gives himself with a knife, or if he hangs himself, as the wound or the hanging, which is the act done in the party's life-time which is the cause of his death, so is the throwing himself into the water here. Forasmuch as he cannot be attainted of his own death, because he is dead before there is any time to attaint him, the finding of his death by the coroner is by necessity of law equivalent to an attainder in fact coming after his death. He cannot be *felo de se* till the death is fully consummate, and the death precedes the felony and the forfeiture."

The counsel on the other hand argued that the felony was inherent in the act which caused the death.

"*The act consists of three parts:* the first is the imagination, which is a reflection or meditation of a man's mind, whether or not it is convenient for him to destroy himself, and which way it can best be done; the second is the resolution, which is a determination of the mind to destroy himself; the third is the perfection, which is the execution of what the mind has resolved to do. And of all the parts, the *doing of the act* is the greatest in the judgment of our law, and it is in effect the whole. Then here the act done by Sir James Hales, which is evil, and the cause of his death, is the throwing himself into the water, and the death is but a sequel thereof."

Finally the court gave judgment for Cyriac Petit, the defendant. It held that although Sir James Hales could not have killed himself in his lifetime, yet "the forfeiture shall have relation to *the act done* by Sir James Hales in his lifetime which was the cause of his death, viz., the throwing himself into the water." "Sir James Hales was dead, and how came he to his death?—by drowning; and who drowned him?—Sir James Hales; and when did he drown him?—in his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die, and the act of the living man was the death of the dead man. He therefore committed felony, although there was no possibility of the forfeiture being found in his lifetime, for until his death there was no cause of forfeiture."

Richer comedy than this can hardly be imagined, even in a law court; and it will thus be seen that, in this instance, Shakespeare has merely adapted this trial to the case of Ophelia, and its learned discussion to the intelligence of his gravediggers. Such a statement may perhaps pluck a growing feather from Shakespeare's wing; but in other cases we shall have to trace his legal lore beyond the trials of his day, and even deeper than the records of Plowden.—*Pump Court.*

REPORTS.

ONTARIO.

MASTER'S OFFICE.

BANK OF TORONTO V. COBOURG, PETERBOROUGH AND MARMORA RAILWAY CO.

Directors acquiring debentures at a discount—Fiduciary relation.

A railway company was authorized to issue debentures for such sums and at such interest as the directors might deem expedient.

Held, that under such a power the directors could issue and sell debentures at a discount.

Certain directors of a railway company who were creditors of the company obtained, at a discount of twenty-five per cent., debentures for the amount owing to them. In an action by other debenture holders a judgment was made directing an enquiry and an account of what was due to all the debenture holders of the company. The above-named directors with others came into the Master's Office to prove their claims, and thereupon the plaintiffs contended that the directors being trustees for the company could only be allowed the moneys actually advanced by them to the company.

Held, (1) That the relationship of the various debenture holders *inter se* was that of creditors; and that whatever might be the rights of the company against the directors, there was no fiduciary or trust relation between the plaintiffs and these directors which would entitle the plaintiffs to complain of the purchase of these debentures by the directors, or to invoke against them the equitable rule which prevents a trustee making a profit at the expense of his *cestui que trust*.

(2) That the plaintiffs as creditors of the *cestui que trust* (the company) could not enforce any claim such *cestui que trust* might have against the trustees.

(3) That the debenture holders were entitled to be paid *pari passu*; and that they were all placed on an equality as to payment, rate of interest, and remedy.

(4) That the proceeding under the judgment was to enforce the rights of all the debenture holders as creditors, and could not be made a proceeding to make the directors account as trustees.

[Mr. Hodgins, Q.C.—Jan. 8.

This was an action by the plaintiffs on behalf of themselves, and of all other debenture holders of the company, for a sale of the railway, and payment of the amounts of their debentures. The case is reported in 7 Ont. R. 1.

THE MASTER IN ORDINARY.—The judgment directs an enquiry as to who, other than the plaintiffs, are the holders of the bonds of the same class of the defendant company, and an account of what is due to such bondholders.

These bonds or debentures to the amount of $300,000 were issued under 38 Vict. c. 47, O., and are declared to be a first charge upon the property of the company. The debentures were intended to be issued at a discount, and several of them were so issued, but others were taken by some of the present holders at par.

Debentures to the extent of $156,000 were issued by the Managing Director to John H. Shoenberger, G. J. Shoenberger and Mrs. Butts (to the latter for one Isaac Butts), at a discount of twenty-five per cent., for moneys obtained by the defendant company on the discount of notes made or endorsed by these parties for the benefit of the company.

At the time the proceeds of this discount were received by the company, the Shoenbergers and Butts were directors of the defendant company. In 1875 Butts died, and his place at the Board was taken by his son, and in that year these debentures issued as follows: fifty-two to John H. Shoenberger, fifty-two to G. J. Shoenberger, and fifty-two to Mrs. Butts, widow of Isaac Butts.

The plaintiffs contend that these parties, the Shoenbergers, as being directors, and Mrs. Butts, as claiming under the will of Isaac Butts, can only be allowed the amount actually advanced by them to the defendant company; that they could not as such directors sell these debentures to themselves, nor could they claim to hold them at a profit beyond what the company owed them on the notes discounted for its benefit.

The Act authorizes the directors to issue debentures for such sums and at such rate of interest not exceeding eight per cent. per annum, "as they may deem expedient." Under this power I think the directors may lawfully issue and sell debentures at a discount. The Act also makes these debentures a first charge on the property and franchises of the company without preferment or priority of any one debenture so to be issued over any other debenture so to be issued. It further gives the debenture holders the right to foreclose; and it provides that "in case of a foreclosure each debenture holder shall be the owner of one share for each one hundred dollars of principal money due to him in respect of the debentures" of the class foreclosing; and that "the capital stock of the new company shall in case of a foreclosure be the amount of the principal money due in respect of the debentures of the said last mentioned class."

The judgment before me provides for a sale instead of a foreclosure; but that cannot alter the statutory rights expressly given to these debenture holders by the Act.

The plaintiffs, as debenture holders, are creditors of this company of the same class as the parties named. There is no fiduciary or trust relation between the plaintiffs and these directors which would entitle the plaintiffs to invoke the equitable

jurisdiction of the Court. These directors obtained their title to these debentures before the plaintiffs became debenture holders. The plaintiffs, therefore, had no beneficial interest or claim in any of these debentures when these directors obtained theirs. All debenture holders stand on the same footing *inter se* as creditors of the company. Each debenture holder knows that he holds part of an issue of debentures for $300,000 *pari passu* with other holders; that they are all alike as to payment, rate of interest and remedy; that there is no priority among them, and that they are in every way placed on an equality as to right and remedy as between themselves.

The parties whose property is chargeable with, or may be foreclosed or sold to pay these debentures—the company or its shareholders—are the proper parties to complain of the purchase of these debentures by these directors, but they do not complain. They, as the *cestuis que trustents* of these directors, are alone entitled to any profit—if profit there be—acquired by them as their trustees.

No case has been cited to show that any such claim of a *cestui que trust* vests in, or can of right be enforced by, the creditors of such *cestui que trust*, as these plaintiffs are; and it is well settled that a trustee's claim against a trust estate cannot be enforced by the creditors of such trustee: *Warroll* v. *Halford*, 8 Ves. 4. Any such claim would import a mischievous principle, giving strangers to a trust the right to sue for an administration of the trust estate: *Herriott's Hospital* v. *Ross*, 12 Cl. & Fin. 507; Lewin on Trusts, 108.

The point came up, and was decided adversely to the contention now made, in *Campbell's Case*, 4 Ch. D. 470, where it was held that a director taking debentures issued by his company at a discount the same as others could obtain them at was not liable to the company for such discount. BACON, V. C., said that the case did not fall within the principle upon which the application was based, viz.: "the principle which Courts of Equity have always adhered to, not to permit an agent or director, or any person in a fiduciary character, and having power and influence in the concern, to make a profit by his dealings with the concern."

A similar rule prevails in the jurisprudence of the United States.

The purchase by a trustee of property of his *cestui que trust* is voidable at the option of the latter. But he may affirm the sale or not impeach it; and if regular in other respects it cannot be questioned by third parties on the ground of its being a purchase by a trustee. It is the fiduciary relation to the beneficiaries of an estate which prevents a trustee from purchasing the estate. But a violation of his duty in this respect may or may not be questioned at the option of the beneficiaries, but not by persons who have not that relationship to the trust estate: *Baldwin* v. *Allison*, 4 Minn. 25.

So where the administratrix of an estate foreclosed or sold under process of a Court certain lands which had been mortgaged to the intestate and purchased the lands for herself, it was held that although the sale might be set aside by the heirs, its validity could not be questioned by the creditors of the estate: *Kern* v. *Chalfant*, 7 Minn. 487.

Nor is the assignee of a beneficiary or *cestui que trust* entitled to an account against trustees for a breach of trust, or to avoid transactions between such *cestui que trust* and his trustee on the ground of a fiduciary relationship between them: *Hill* v. *Boyle*, L. R. 4 Eq. 260; *Rice* v. *Cleghorn*, 21 Ind. 80. In the latter case the judge said: "The purchase of trust property by a trustee is not void, but may be avoided by the *cestui que trust* within a reasonable time in a direct proceeding for that purpose, but such a result cannot be effected at the suit of a third person."

Nor can one who claims possession of the trust estate under the *cestui que trust* invoke the fiduciary or trust relation to impeach a wrongful purchase made by the trustee of such trust estate. *Jackson* v. *Van Dalfsen*, 5 Johns, N.Y., 43, was a case where one M. was employed by one Ten Eyck as his agent to sell certain lots. He sold the same on the 26th July to one V., who, on the 30th July, conveyed them to himself. It was proved that the conveyances were made to V., and by V. to M. for the purpose of transferring the title in the lots to M. Ejectment was then brought against the tenant holding under Ten Eyck; the defendant contended that the sale to M. was a breach of trust and was void, but the Court held that the defendant was a stranger to the transactions between the trustee and *cestui que trust*, and could not avail himself of the objection that M. had been guilty of a breach of trust in acquiring the title.

Besides, these directors are here as creditors enforcing their rights as such. Rightly or wrongly as between themselves and the company, they have possession of these debentures as creditors, and this proceeding is not a proceeding to make them account as trustees: *Re United English and Scottish Assurance Company*, L. R. 3 Ch. 787.

In no sense, therefore, can these directors be held to be trustees or agents for the plaintiffs or the other debenture holders of the company, or bound by any fiduciary or trust relation to account to them for their acquirement of these debentures.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

WEST NORTHUMBERLAND ELECTION CASE.

Appeal—Wager by agent with voter—Bribery—Corrupt practices.

The charge upon which this appeal was decided was known as the Pringle-Parker case. Pringle, the President of the Conservative Association, made a bet of $5 with one Parker, a Liberal, that he would vote against the Conservative party, and deposited with a stakeholder the $5, which after the election was paid over to Parker.

At the trial Pringle denied that he was actuated by any intention to influence the conduct of the voter, and Parker said he had formed the resolution not to vote before he made his bet; but the evidence showed that he did not think lightly of the sum which he was to receive in the event of his not voting, his answer to one question put to him being: "Oh! I don't know that $5 would be an insult to any person not to vote."

Held (reversing the judgment of the Court below), that the bet in question was colorable bribery within the enactments of sub-sec. 1 of sec. 92 of the Dominion Elections Act, 1874, and a corrupt practice which voided the election.

Appeal allowed with costs.

Kerr, Q.C., and *MacLaren*, for appellants.

D. McCarthy, Q.C., for respondent.

MERCHANTS' BANK v. GILLESPIE ET AL.

45 Vict. cap. 23—Not applicable to companies incorporated under "The Companies Act, 1862," —Imperial—Foreign insolvent trading companies.

The Steel Company of Canada (Limited), incorporated in England under the Imperial Joint Stock Companies Acts, 1812–1867, and carrying on business in Nova Scotia, and having its principal place of business at Londonderry, N.S., was by order of a judge on the application of the respondents, and with the consent of the company, ordered to be wound up under 45 Vict. ch. 23. The appellants, creditors of the Steel Company, intervened and objected to the granting of the winding up order on the ground that 45 Vict. ch. 23, was not applicable to the company.

Held (reversing the judgment of the Supreme Court of Nova Scotia, FOURNIER, J., dissenting), that 45 Vict. ch. 23, is not applicable to said company,

Per STRONG, J.—This being a company having its domicile in England, and being subject to an express statutory provision for its winding up in the appropriate forum for such a purpose, *i.e.*, the forum of its domicile, a colonial statute providing for the winding up of the same company would be *ultra vires* and void, not merely upon the interpretation of the clauses as to the general powers of the Dominion Parliament in the British North America Act, but by the express provision of a paramount law, 28 and 29 Vict. ch. 63, Imp.

Appeal allowed with costs.

Henry, Q.C., for appellants.

Laflamme, Q.C., and *Sedgwick*, Q.C., for respondents.

O'SULLIVAN v. HARTY.

Practice—Time for appealing under Supreme Court Act, sec. 25—Security under sec. 31, as amended by sec. 14 of the Supreme Court Amendment Act, 1879.

Judgment was pronounced in the Court of Appeal of Ontario on the 30th June, 1884. Vacation begins in that Court on the 1st July and ends on the 30th August. On the 13th September the respondent (the appeal having been allowed) deposited $500 as security for the costs of an appeal to the Supreme Court of Canada, and applied for leave to appeal. The Court of Appeal was of opinion that the security, not having been deposited within thirty days of the pronouncing of the judgment, was given too late, as the vacation did not interrupt the running of the time allowed by the statute (Sup. & Ex. Ct. Act, sec. 25,) for appealing.

The judgment of the Court of Appeal was not entered until November 14, 1884, the delay

having been occasioned by a substantial question affecting the rights of the parties having arisen on the settlement of the minutes. Such question was discussed before one of the judges and subsequently before the full Court before being finally determined.

On November 27th, 1884, the respondent in the Court of Appeal applied to a judge of the Supreme Court of Canada, in Chambers, for leave to give security under sec. 31 of the Supreme Court Act, as amended by sec. 14 of the Supreme Court Amendment Act of 1879. This application was referred to the full Court, which

Held, that the time for bringing the appeal in this case under sec. 25 of the Supreme Court Act began to run from the 14th November, 1884, the date of *entry* of the judgment of the Court of Appeal.

That where any substantial matter remains to be determined before the judgment can be entered, the time for appealing runs from the *entry* of the judgment. Where nothing remains to be settled, as, for instance, in the case of the simple dismissal of a bill, or where no judgment requires to be entered, the time for appealing runs from the pronouncing of the judgment.

In appeals coming from the Province of Quebec, the time for appealing runs in every case from the pronouncing of the judgment, owing to the peculiar form of procedure in that Province.

Application allowed.

O'Sullivan, for appellant.

Whiting, for respondent.

CITY OF MONTREAL v. HALL.

Action for malicious prosecution—Damages—Arts. 2262, 2267, C. C. not applicable.

On the 7th of July, 1868, the council of the city of Montreal passed a resolution authorizing and directing proceedings to be instituted for the purpose of staying all proceedings of certain commissioners appointed under 27 and 28 Vict. ch 66 (by which proceedings they had determined the price or compensation to be allowed to one W. for expropriating certain property in the city of Montreal), and of having the said commissioners (plaintiff being one of said commissioners) removed as persons who had forfeited their obligations as such commissioners. A petition was then presented to one of the judges of the Superior Court of the Province of Quebec by the corporation of the city of Montreal, wherein certain charges of venality and corruption were made against the plaintiff, and they prayed for the removal from the office of said commissioner the said plaintiff. By a judgment of the Superior Court, dated 17th September, 1870, the plaintiff was acquitted of the calumnious charges; but he was removed from the office for another cause which on appeal was pronounced by the Court of Appeal, and subsequently by the Privy Council to have been insufficient and unfounded.

Plaintiff in May, 1871, instituted an action against the corporation setting forth the above facts, and alleging that the proceedings in the Courts had been instituted maliciously and without probable cause, and alleging that the effect of so falsely and maliciously prosecuting such proceedings was to deprive the plaintiff almost wholly of the benefit of his profession by branding him as venal and corrupt, and unworthy of all trust and confidence, and claimed $20,000 damages.

To this action the appellants pleaded *inter alia*, that the action was for libel and barred by Arts. 2262 and 2267 C. C., and that no action lies against them under the circumstances appearing in the case.

Held (affirming the judgment of the Court below, FOURNIER, J., dissenting), that the declaration disclosed an action for malicious prosecution in that legal proceedings of a civil nature had been instituted maliciously and without probable cause, and as the proceedings were only terminated upon the delivery of the judgment of the Superior Court on the 17th September, 1870, whereby the plaintiff was acquitted of the calumnious charges made, the prescription did not begin to run before the date of said judgment, and the action was not barred by Arts. 2262 and 2267 C. C.

That there was sufficient evidence of malice and want of probable cause to justify the damages awarded to respondent by the Court below.

Appeal dismissed with costs.

Roy, Q.C., for appellants.

Barnard, Q.C., for respondents.

CHANCERY DIVISION.

Full Court.] [March 21.

CAMERON v. CARTER.

Purchase by instalments—Outstanding mortgage—Rights of purchaser.

Cain agreed to sell certain lands to Carter for $1,400, payable in yearly instalments of $100 each, with interest, and he covenanted that on payment of the said sum of money he would convey the said lands to Carter by a good and sufficient deed in fee simple.

There was at the time of this agreement a mortgage on the property still in force, but of which the principal money would be payable off long before the last instalment of the purchase money would be due under the agreement.

Some of the instalments being unpaid, Cameron & Campbell, to whom Cain had assigned the agreement, sued Carter for the amount. Carter defended on the ground that he was entitled either to have the mortgage paid off or to be secured against it, before he could be forced to pay the instalments of purchase money.

Held, that the plaintiffs were bound to ensure the defendant in making the intermediate payments that he, the defendant, would have a good title, clear of incumbrances, when the period of completion of the contract had arrived. They were not justified in seeking to enforce payment of all the instalments, leaving a merely personal remedy for the defendant in case the plaintiffs should not be in a position so to convey. When the price is payable by instalments the purchaser has a right to have a reference as to title, and to have title manifested before he makes a single payment.

Gamble v. *Gumnerston*, 9 Gr. 199, approved of.

H. J. Scott, Q.C., for the defendant (appellant).

A. H. F. Lefroy, for the plaintiffs.

Ferguson, J.] [March 29.

LESLIE v. CALVIN ET AL.

Patent—Action against executors for infringement—Profits to estate—Actio personalis cum persone movetur.

The plaintiff sued the executors of D. D. C., claiming an account from them of all benefit accrued to the estate of D. D. C., by reason of certain alleged infringements by him of a certain patent of the plaintiff, being a patent for a Withe Crushing Machine, which patented machine D. D. C. was alleged to have caused to be made for his own use, and to have used. The defendants demurred to the claim so far as it sought for damages suffered prior to the death of D. D. C.

It appeared clearly from the statement of claim that the real meaning of it was that the benefit which accrued to D. D. C. from his alleged infringement was simply the saving of expense to him by the use of the machine in question, and the demurrer was argued in this view.

Held, that, this being so, *Philips* v. *Humfrey*, 24 Ch. D. 439, was a binding authority in favour of the demurrer, which must therefore be allowed.

Semble, that if the statement of claim could be read to mean that by reason of the wrongful act, property of a tangible character passed from the plaintiff's estate to that of the deceased—that the deceased, by the wrongful act, put into his estate some value or property other than and different from the saving of expense by the use of the machine, the conclusion might be quite different.

Marsh, for the plaintiff.

Clement, for the defendants.

Ferguson, J.] [March —.

GRANT ET AL. v. LA BANQUE NATIONALE.

Banks and banking—Pledge of timber limits to bank—Additional security—Quebec regulations as to timber on Crown Lands—34 Vict. c. 5, D., secs. 40, 41.

Held, that sec. 28 of the revised regulations respecting the sale and management of the timber on Crown Lands in the Province of Quebec, which provides that lien holders "in

order to enable them to obtain advances necessary for their operations" shall have a right to pledge their limits as security without a bonus becoming payable, is not to be restricted in meaning to pledges for future advances.

In 1877 F. obtained, for the purposes of his lumbering business, certain advances from the N. Bank, giving as security certain promissory notes, and as collateral security a written pledge of certain timber limits, whereby he purported to pledge the same to the bank, using merely the words, "I hereby pledge my rights to Licenses Nos. 470 and 471 to the N. Bank." During the next three years the bank made advances to F. In 1882 while F. was still indebted in a large sum and the pledge in force, the N. Bank got the Crown Lands Department to issue licenses of the timber limits to them, as the regulations enabled it to do.

Held, that the pledge fell within the prohibition contained in 34 Vict. c. 5, D., s. 40. The bank did not contract to advance any specified sum. They did not become bound to make any advance at all. It was not the case of a present advance on the security of the pledge, which was to be additional security, that is additional to such securities as F. might give upon contemplated transactions between him and the bank in his lumbering business, as well as for advances that had theretofore been made. It could not be said that the advances were not made upon this security, although they were to be thereafter made in the course of a business between the bank and its customers, when no doubt other securities would be taken at the time of making the advances. Hence the transaction could not be said to be one in which the lien was taken by the bank as additional security for debts "contracted" to the bank in the course of its business, so as to bring it within 34 Vict. c. 5, D., s. 41.

Held, however, that under the regulations of the Province of Quebec as to timber on Crown Lands, the transfer of the licenses to the defendants in 1882 gave the latter a complete ownership of them, and they having in this action volunteered to say that they claimed only a lien upon them for the indebtedness of F., they were entitled to a right "at least as great as a lien" against the lands for such indebtedness.

T. S. Plumb, for the plaintiffs.

Marsh, for the defendants.

Boyd, C.] [April 22.

DAVIS v. HEWITT.

Horse-racing—Illegal contract—Imp. 13 *Geo. II. c.* 19.

D. and H. agreed to match a colt owned by D. against a colt owned by S. Under the agreement the stakes were deposited with P.

Held, that the race was an illegal one under 13 Geo. II. c. 19, one of the participants not being the owner of the horse he bet upon; and P was bound to pay over the deposit made by D. on demand made by him before disposal of it.

Moss, Q.C., and *Wilson*, Q.C., for plaintiff.

A. J. Wilkes, for the defendants.

Proudfoot, J.] [April 22.

RE OAKVILLE AND CHISHOLM.

Registered plan—Amendment—Assignee of person registering—Prohibition.

Land was granted to Col. Chisholm in 1831, and in 1832 was mortgaged by him to F. et al., to whom, on 7th March, 1836, he released his equity of redemption. On 1st August, 1836, a survey plan was made apparently at the instance of Col. Chisholm, covering the land, a portion of which was shown as Water Street. The plan was registered by Col. Chisholm's executors on 12th January, 1850. In May, 1852, F. et al., conveyed to R. K. C. and T. S., and in 1857 T. S. released to R. K. C. The latter made an application to the county judge to amend the plan by closing up a portion of Water Street.

Held, that R. K. C., claiming under F. et al., whose title was paramount to the plan, was not an assign within the meaning of the Registry Act, R. S. O. cap. 111, sec. 84, and that the county judge had no jurisdiction on his application to amend the plan, and prohibition was granted.

J. K. Kerr, Q.C., for the motion.

Tizard, contra.

Boyd, C.] [April 22.

TRAVIS v. TRAVIS.

Donatio mortis causa—Gift inter vivos.

The defendant's mother, not expecting to live, gave the key of a cabinet where a mortgage made by the defendant was kept, to her son J., telling him that she wanted him to give the mortgage to the defendant in case she had not the privilege of seeing him again. The defendant was then sent for and came to the house. He saw his mother alone, and deposed that she said "Robert, your mortgage is there in that drawer, when you go home you can take it with you." He went away without getting the mortgage, and she died intestate. He subsequently got possession of the mortgage.

Held, that the mandate to J. was revoked when the intestate subsequently saw the defendant, and as there was no delivery after that there was no gift of the mortgage to him.

At the time that the intestate gave the key to J. she told him to endorse a receipt on the mortgage for interest which he did; and she also gave the defendant a signed receipt for interest.

Held, a valid gift of the interest.

Muir and *Crerar*, for the plaintiff.

McClive, for the defendant.

Proudfoot, J.] [April 22.

IN RE LAKE SUPERIOR NATIVE COPPER CO.

RE PLUMMER.

Company—Creditor delaying at company's request—Winding up—Restraining action by creditor—Setting aside order made by Court—Co-ordinate jurisdiction.

A petition by a creditor to rescind a winding up order made by FERGUSON, J., under 45 Vict. cap. 23 and 47 Vict. cap. 39, on the ground that the company was incorporated in the United Kingdom, was refused (without an expression of opinion as to the power of the Parliament of Canada to provide for winding up foreign companies) on the ground that the application should have been made to a Court of appellate jurisdiction and not to a Court of co-ordinate jurisdiction.

P., a creditor of the company on a bill of exchange, accepted by the company for the balance of an account stated, was requested by the manager and secretary at various times not to take proceedings. A winding up order having been made, P., a few days afterwards, commenced an action in the State of Michigan against the company. An *ex parte* was granted restraining him from prosecuting his action. On a motion to continue this injunction,

Held, that P. having delayed at the request of the company was entitled to be preferred, and the motion was refused.

Semble, that in the absence of the request for delay P. would have been allowed to proceed with his action on an understanding to abide by any order the Court might make, there being creditors in Michigan who might have gained priority.

H. J. Scott, Q.C., for petitioner, the interim liquidator.

G. M. Rae, for the English liquidator.

G. F. Shepley, for Plummer.

Boyd, C.] [April 22.

SMITH v. SMITH.

Will—Construction of—"Heir or heirs" equivalent to "child or children."

A testator made the following demise:—"I will to my son J. S., for the term of his natural life, the farm, etc.; but if my said son J. S. should have a lawful heir or heirs, then said lands shall be equally divided among them at the death of their father. But if my said son J. S. shall die without having lawful heirs, then in that case I direct that said lands to be sold, and the proceeds divided equally among my remaining children or their heirs."

Held, that the words "heir or heirs" in the first clause, and "heirs" in the second clause, meant "child or children," and "children," respectively.

J. S. had a living son child at the time of the action, and it being sufficient for the purpose of the action to declare that J. S. was once the tenant in fee simple, nor tenant in fee tail in possession, while the child lived it was so declared,

Carscallen, for the plaintiffs.

Bruce, for the infant.

Ferguson, J.] [April 30.

RE COULTER ET AL. AND SMITH.

Vendors and Purchasers Act, R. S. O. c. 109—Absent husband—Wife's conveyance.

J. H. by his will, dated April 14, 1874, devised certain property to his daughter, M. A. J., for life with remainder to her children, and died soon after making the will. M. A. J. died about 1870 leaving five children, the youngest of whom came of age in 1884. Before the death of J. H., one of the children, M. J. J. married one C. and C. in 1870 deserted his wife and had not been heard of afterwards.

Held, that M. J. J. could convey all her interest in the property without the concurrence of her husband.

C. L. Ferguson, for the vendors.

W. Middleton Hall, for the purchaser.

Ferguson, J.] [May 1.

RE COOKE AND DRIFFEL.

Will—Devise—Estate—R. S. O. c. 109—Title.

R. C. by his will devised all his personal estate to his wife, M. S. C., to be held for the interest of his son, A. S. C., when he shall have arrived at the age of twenty-four years; and an annuity to his wife, M. S. C., for life; appointed her guardian to the son to take charge of all remaining money that should accrue from all sources; such money to be used for the necessary expenses of education, etc., for the son. He desired that the wife should have control of all money coming to the son till he was of the age of twenty-four years, and at that time all rents and other property should come into his possession except the annuity; that at the death of the wife all rents and all interests and all property should pass into the possession of the son to be owned by him, his heirs and assigns forever. In the case of the death of the wife before the son attained twenty-four another guardian with similar powers was appointed. In case of the death of the son before his mother then all the property and rents, etc., were to be hers during her natural life, and after her death one half to go to the testator's relations and the balance to the relations of the wife, she making this disposition before her death; but if the son at the time of his death should leave a wife or children then all property should be subject to such disposition as he should make at the time of his death. In an application under the Vendors and Purchasers Act, R. S. O. 109, for the opinion of the Court, it was

Held, following *Gairdner* v. *Gairdner*, 1 O. R. 184, that when a legatee or devisee is to have the absolute control of property at a specified time a subsequent gift-over will be limited to take effect before the time, and the son here having attained the age of twenty-four years and come into possession and control, the subsequent gift-over cannot affect his estate, or interest which has become absolute.

If the lands passed by the will the son and the widow joining as grantors can convey such title as the testator had at the time of his death.

If the lands did not pass by the will the son as heir at law and the widow as to dower can convey title as above.

Thos. J. Robertson, for the vendors.

Masten, for the purchaser.

BANK OF HAMILTON v. NOYE MANUFACTURING COMPANY.

Warehouse receipts—Validity of—Negotiation of note—Commingling of property—Tracing property covered by receipts—Affidavit evidence.

T., a miller, gave warehouse receipts for wheat to the plaintiffs attached to notes payable to their order to take up notes maturing which were secured by like receipts. The receipts were in the following form:—"Received in store in my warehouse or mill from farmers 2,000 bushels of wheat to be delivered to the order of myself to be endorsed hereon. This is to be regarded as a receipt under the provisions of statute 43 Vict. cap 22. The said wheat is separate from and will be kept separate and distinguished from other grain." The receipts were endorsed in blank.

Held, that the notes and receipts attached might be read together; that the endorsement of the receipts in blank was under the circumstances unobjectionable, and that they were valid in the hands of the bank.

Held, also that the mode of acquiring them, viz., by delivering up the maturing notes with receipts was unobjectionable, the transaction being in fact a negotiation of the notes; or at any rate there was a mere substitution or continuation of securities.

T. did not keep the wheat covered by the receipts distinct, but ground some of it and allowed the remainder to be mixed with wheat subsequently brought in. Before assigning in trust for creditors he pointed out one carload of flour made from the wheat covered by the receipts, and pointed out wheat in his mill which he admitted was covered by the receipts, and the next day the bank took possession. He subsequently assigned and the defendants afterwards recovered a judgment against him on an interpleader issue.

Held, that the plaintiffs were entitled to the wheat taken possession of by them.

Leave given to supplement the evidence given on the trial by affidavit evidence of documents under Rules 271 and 182.

Guthrie, Q.C., for the plaintiffs.

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

ADJALA V. MCELROY.

Principal and surety—Municipal Treasurer—Annual re-appointment—Misconduct—Condoning misconduct—Release of sureties.

A treasurer was appointed by the plaintiffs under R. S. O. cap. 174, by sec. 274 of which all officers appointed by a council shall hold office until removed by the council. He furnished a bond dated 1st November, 1880. He was re-appointed annually for several years.

Held, the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer, and that the sureties were not in consequence thereof discharged.

The treasurer having failed to account for large sums, the council of the plaintiffs caused a letter to be written to him on 27th February, 1882, requiring him to settle all claims by a certain day, otherwise a special meeting would be called to consider his case. He failed to settle and the council did not carry out their threat. In 1883 the council, again becoming dissatisfied with the treasurer, passed a resolution that no further payment should be made to him, but that all moneys should be paid into a certain bank. In 1884 the council for that year rescinded this resolution and permitted the treasurer to receive the accumulated funds. No notice was given to the sureties.

Held, that the plaintiffs had failed to perform their duties by retaining the treasurer in office after they became aware of his defalcations, and that the sureties were released from all liability after 27th February, 1882. A reference was granted at the plaintiff's election to take an account of the amount due under the bond to that date.

Lount, Q.C., and *Strathy*, for the plaintiffs.

Lennox and *Hearn*, for Patrick McElroy.

J. A. McCarthy, for the Can. P. L. & S. Co.

Pepler, for the other defendants.

CORE V. ONTARIO LOAN CO.

Registered title—Equitable charge—Priority.

W. and his son, W. W., in consideration of $4,000, made a mortgage of separate parcels of land owned in severalty to the defendant company, containing a proviso for releasing W. W.'s land on payment of $500. The covenant for payment was joint. W. W. sold his land to J. W. W. then mortgaged his land to the plaintiff by an instrument which declared it subject to the company's mortgage. The various conveyances were registered. It was proved that W. W. was merely a surety for his father in the mortgage transaction with the company, but there was no notice of this to the plaintiff by registration or otherwise.

Held (reversing the judgment of PROUDFOOT, J.), that the plaintiff's registered title prevailed over the equity of W. W. to charge his father's lands with the $500 for which he had made his land liable; and that the plaintiff was therefore entitled to recover his mortgage out of the father's land before W. W. could charge it with the $500.

Gray v. *Ball*, 23 Gr. 390, approved and followed.

Maclennan, Q.C., for the plaintiff.

Moss, Q.C., for the defendants, the Wilsons.

Hoyles, for the company.

PRACTICE.

Mr. Dalton, Q.C.] [April 30.

DEMOREST v. MIDLAND RY. CO. ET AL.

Tender of money—Striking out defence—Judgment under Rule 322, O. J. A.

An action to recover money as compensation for land expropriated by defendants, and for other relief.

The defendants in their defence denied the cause of action, and also alleged *inter alia* that they had tendered the plaintiff the sum of $400 and interest, but that the plaintiff had refused to accept it, and they expressed their readiness to pay the said sum, but they did not bring it or any sum into Court with their defence.

The plaintiff in his reply admitted the tender, but alleged that the sum tendered was wholly inadequate.

Upon a motion by the plaintiff to strike out "such portion of the defence as alleges a tender," or for judgment for the plaintiff for the amount which the defendants expressed their readiness to pay.

Held, that since the Ont. Jud. Act, a defence of tender without a payment into Court is good.

Upon the pleadings an order might be made under Rule 322 O. J. A., for judgment for the plaintiff for $400 and interest, but only as a final decision of the action, and not with leave to proceed for a further amount.

Holman, for the plaintiff.

Hoyles, for the defendants.

CORRESPONDENCE.

OSGOODE HALL AND ITS MEMORIES.

SIR,—As a matter of historical interest it is to be hoped that the Law Society will be able to carry out the suggestion of His Honour the Lieutenant-Governor, and speedily complete the series of portraits of the Chief Justices of Upper Canada.

I think it is also worthy of consideration whether it would not be a wise application of some portion of the society's funds, if steps were also taken to form a collection of busts and statues of some of the great English lawyers. A beginning might readily be made by obtaintng copies of those to be found in the Normal School gallery; and I have little doubt the English Inns of Court would readily grant facilities for taking copies of any in their possession. Such a collection, if judiciously made, would add materially to the interest of a visit to Osgoode Hall.

The large blank spaces in the walls of the Courts of Q. B., C. P., and Chancery Divisions might also at some future time be appropriately utilized for several paintings of memorable scenes in the history of the law, *e.g.*, the signing of Magna Charta, the Committal of Prince Henry by Gascoigne, the Trial of the Seven Bishops, etc., etc. Let us hope we may soon have Canadian artists equal to the task, and a society able and willing to patronize them. H.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Casual connection in joint crimes.—*Central L. J.*, Jan. 2.

Summary remedies in cases of railway discrimination.—*Ib.*, Jan. 9.

Necessity for proof of manual delivery of deeds when dispensed with.—*Ib.*, Jan. 16.

Precatory trusts.—*Ib.*, Jan. 23.

Who are fellow-servants in relation to the liability of master for acts of?—*Ib.*, Jan. 9, 30.

Rights of street car platform passengers.—*Ib.*, Feb. 6.

Liability of municipal corporations for objects in streets which frighten horses,—*Ib.*

Powers of bank cashiers.—*Ib.*, Feb. 13.

Verdicts—Their nature, characteristics and amendments of.—*Ib.*, Feb. 20.

Want of knowledge as a defence in actions for negligence.—*Ib.*, Feb. 27.

Discharge of sureties by extension to principals.—*Ib.*, March 6.

A wife's liability as surety for her husband.—*Ib.*, March 13.

Right to recover taxes paid under mistake.—*Ib.*, March 20.

What constitutes a sufficient tender?—*Ib.*, March 27.

Rules as to the privileges of witnesses.—*Albany L. J.*, March 7, 28.

Common words and phrases (Household effects—Supplying heat—Body of water—Express business—Book—Approach to a bridge—Water course).—*Ib.*, March 14.

Jurisdiction of courts of equity over wills.—*Ib.*, March 21.

The responsibility of the Pullman Palace Car Company for thefts from passengers.—*American Law Review*, Vol. 19, p. 204.

The disposition of the body after death.—*Ib.*

A synopsis of the more important Imperial Acts, etc., relating to Manitoba and the North-West Territories (Continued).—*Manitoba L. J.* March.

Constitutional regulations of legislative proceedings.—*American Law Register*, March.

Loss of passengers' luggage by railway company—What articles may be carried as baggage—Liability as warehousemen (This article takes as its text the judgment of Mr. Justice Taylor, of Queen's Bench, Manitoba, in *McCaffrey* v. C. P. R.).—*Ib.*

Allowing ferocious animal to be kept on premises. —*Ib.*

Liability of solicitor on certificate of title—No liability to assignee of a mortgage for error in certificate given to mortgagee.—*Ib.*

RESOLUTIONS OF CONDOLENCE.

At a meeting of the Bar of Kingston, held on 4th May at the office of Dr. Henderson, Q.C., President of the Frontenac Law Association, the following resolutions of condolence were unanimously adopted:

Moved by Mr. Britton, Q.C., seconded by Mr. McMahon, That we, the members of the Kingston Bar, desire to express our deep and heartfelt regret at the lamented death of the late James Stafford Kirkpatrick, Esquire, cut off in the prime of life, who, by his invariably obliging and courteous conduct in his intercourse with us, had earned our fullest respect and esteem, and who has left behind him no more honourable or upright member of his profession.,

Moved by Mr. Agnew, seconded by Mr. Whiting, That we desire to convey to his widow, and to the members of his family, our sincere sympathy in their loss, which is also ours.

Moved by Mr. Walkem, Q.C., seconded by Mr. Mudie, That as a mark of respect to our deceased friend we attend his funeral and wear mourning for one month.

Moved by Mr. Macdonnell, Q.C., seconded by Mr. McIntyre, Q.C., That the Secretary send a copy of these resolutions, signed by the President, to Mr. Kirkpatrick's widow, and to the Hon. Geo. A. Kirkpatrick, his brother.

FLOTSAM AND JETSAM.

SOME little while after the war, a citizen of Georgia was indicted for hog-stealing. The following was the verdict of the jury: "Owing to the demoralization of the times, and the scarcity of provisions, we, the jury, find the defendant not guilty."—*Ex.*

"How did you come to get in jail?" asked a gentleman of a negro he saw behind the bars. "Dey put me in heah for borrin' money from a friend." "Why, they can't do that. It's no crime to borrow money." "Yes, boss, but yer see I had to knock him down wid a club several times before he would loan it ter me, an' den I had to take it outen his pocket myself."—*Ex.*

MR. JUSTICE KAY refuses to believe, in the absence of any detailed record, that a solicitor can have forty-three different interviews referring to one case in a single day. This judicial incredulity, and the consequent upholding of the Taxing Master's decisions, has reduced Mr. Cosedge's bill of costs against Miss Sone of £1,319 1s. 3d. by no less an amount than £702 19s. 2d. The salary of a competent book-keeper in Mr. Cosedge's office would therefore, probably be a judicious expenditure.

THE New York Law Institute have entered on the records of their society an elaborate minute in commemoration of Mr. Charles O'Conor, who had been a member of the institute for nearly sixty years, and its president from 1869 to 1878, and who bequeathed to it twenty thousand dollars and various valuable articles besides, including "the long array of his printed briefs." The very high respect in which Mr. O'Conor was held, both personally and professionally, is warmly testified in the minute; and it appears to be the intention of the institute to commemorate his connection with the society in some more tangible and public form. Mr. O'Conor is admitted to have been unexcelled at Nisi Prius, and "in the Court in Banc he originated the practice of prefixing to the points of argument a separate statement of the facts." In the more public references to his death "just emphasis has been placed on the moral elevation of his character, his lofty disdain of artifice and expediency, his stern devotion to the truth as it was held by him according to his own deliberate convictions."

Law Society of Upper Canada.

OSGOODE HALL.

During Michaelmas Term the following gentlemen were called to the Bar, namely:—John Alexander MacKintosh, Adam Carruthers, Arthur Burwash, Henry Herbert Collier, James D. S. C. Robertson, John Douglas, James Alexander Hutcheson, Joseph Alphonse Valin, James Cæsar Grace, David Thorburn Symons, Dyce Willcocks Saunders, William Torrance Allan, Edmund Weld, Thomas Bulmer Bunting, William Travis Sorley, Isaac Norton Marshall, Frank Russell Waddell, Thomas James Decatur, Alexander George Frederick Lawrence, George Weir, William James Nelson, William David Jones, William Acheson Proudfoot, David F. McArdle; and the following gentlemen were admitted to the Society as Students-at-Law, namely:—Graduates: Frank Ambridge Drake, George Watson Holmes, Arthur Stevenson, Herbert Langell Dunn, John Frederick Dumble, Nicholas Ferrar Davidson, Clement Rowland Hanning, Edward Holton Britton. Matriculants: Alexander Clarke, Henry Augustus Wardell, Herbert Ferdinand Bonzé, Duncan Henry Chisholm, Fergus James Travers, John Thomas Hewitt, Richard Vercoe Clement, James Alexander Haight Campbell, Robert Lazier Elliott, Robert Gordon Smyth. Juniors: George Carnegie Gunn, Herbert William Lawlor, James Arthurs, William Pinkerton, George Davey Heyd, Forbes Begue Geddes, Robert Elliott Lazier, Frederick Forsyth Pardee, William Locklin Billings Lister, Reginald Murray Macdonald, Ernest Edward Arthur Duvernet, Frank Stewart Mearns, Arthur Trollope Wilgress, Stephen Dunbar Lazier, Robert Segsworth, James Henry McGhie.

During Hilary Term, 1885, the following gentlemen were called to the Bar, namely:—Frank Hedley Phippen, Francis R. Powell, Henry John Wickham, John Workman Berryman, Richard Henry Hubbs, Henry Lawrence Ingles, William Albert Matheson, John Bell Jackson, Norman N. A. McMurchy, Frederick Luther Rogers, John Lawrence Murphy, Thomas Irwin Forbes Hilliard, Hume Blake Elliott, Richard M. C. Toothe, Alexander Campbell Shaw, Joshua Denovan, E. A. Miller, Frederick W. Hill, Duncan Charles Murchison, Thomas Moffat, Manly German, George McLaurin, and the following gentlemen were admitted as Students and Articled Clerks, namely: Graduates, John Henry Cosgrove, Alexander Henderson, Jr.; John Arthur Tanner, Francis Alexander Anglin. Matriculants: Alfred E. Cole, Dioscore J. Hurteau, William Charles Mikel. Juniors: William Henry Moore, George Washington Littlejohn, Arthur St. George Ellis, George Smith McCarter, William Albert Smith, Ernest Napier Ridout Burns, Edmund Sheppard Brown, John Patrick O'Gara and William Walton, passed the Articled Clerk's examination.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- 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.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

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.
1884—Souvestre, Un Philosophe sous le toits.
1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

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.

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; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

Taylor 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. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jusisprudence; Theobald on Wills; Harris' 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 examinations are subject to re-examination on the subjects of Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

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 Socity 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, six 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 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.

9. 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.

10. 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.

11. 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.

12. Articles and assignments must be filed with either 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.

13. 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.

14. Service under articles is effectual only after the Primary examination has been passed.

15. 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 six

months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. 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.

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

18. 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.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	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

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890

Students-at-law.

CLASSICS.

1886.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Cæsar, Bellum Britannicum.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. VI.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (vv. 133.)
- 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. (vv. 1-33)

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

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.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical reading of a Selected Poem:—
1886—Coleridge, Ancient Mariner and Christabel.
1887—Thomson, The Seasons, Autumn and Winter.
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.

1886, 1888, 1890 — Souvestre, Un Philosophe sous le toits.

1887, 1889 — Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886: and in the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, 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.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.