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MR. JUSTICE STEPHEN, whose mental affliction has given rise to much unfavorable comment in the English newspapers, has resigned his position and retired from the Bench. The complications which his continued presence there would have created have thus happily been avoided. The learned judge's retirement was made the occasion of an affecting demonstration by both the bench and the bar, and he himself is said to have been reduced to tears. In the palmy days of his career he made a name in the profession which will be enduring, and he will be known to posterity, notwithstanding the circumstances which have led to his retirement, as a lawyer of profound learning and great mental grasp, and as one of the ablest among the many able men who have been his contemporaries.

A RECENT case *(Fonner* v. *Smith)* decided in the Supreme Court of Nebraska recognizes the right of a checkholder to sue the bank on which the check is drawn when payment is refused. *The Banking Law Journal*, in commenting on it, remarks: "What is the holder's right to the fund, for example, where the drawer has failed and the deposit passed into the hands of an assignee or receiver before presentment? Has he any preference in payment? Or, where the fund has been seized by an attaching creditor of the depositor? And again, has he any remedy against the bank if it refuses to pay the check, or must he look to the drawer or indorsers alone? These questions all involve an inquiry regarding the extent to which the check will be deemed an assignment of the fund called for.

"The United States Supreme Court, New York, and many other States, hold that a checkholder of an unaccepted check cannot sue the bank for refusal to pay, and various reasons are advanced in support. Among others, no privity of contract between bank and holder. On the other hand, the great commercial State of Illinois, as well as many other States, the latest Nebraska, announce that there is such a right of action. As stated by the Supreme Court of the latter State, the check is in effect an assignment of the amount to the holder, and the bank, by receiving the deposit, has impliedly promised to pay him on presentation. . . . One point only will be dwelt upon, regarding the drawer's right of revocation after issue of the check under the law of Nebraska as just announced. We are uninformed whether it has been customary heretofore for bankers in Nebraska to regard themselves, before certification of a check, as responsible to the drawer solely, and under no obligation nor liability to the holder concerning payment. Assuming that such has been the custom or understanding, at least

in some instances, the decision in the present case furnishes Nebraska bankers with a new rule of liability, namely, that if they are in funds, they must pay the drawer's check on presentation, and are directly liable to the holder for the amount on refusal. But this much being clear, how is it with regard to the drawer's right of revocation of the check? Undoubtedly the custom heretofore has been to obey his mandate to stop payment, unless certification had been previously accorded. Now the decision clearly deprives him of this right after the check has been presented. The important practical question is whether he can countermand before presentment. . . . . The view which generally prevails even, we believe, in the States which hold, as has the Nebraska court, that a check assigns the amount to the holder and renders the bank liable to him on presentment, is that before presentment the drawer may countermand. Until presentment, the bank is not chargeable with the assignment. The holder of a check subsequently drawn but first presented gets the money where not enough for both. And it is plain to be seen that the drawer practically retains control of the fund before the check is presented. It is within his power to draw it all out on his own check. So controlling the deposit by ability to draw it out, why should not his right extend to control it by countermand order before the bank has been charged with liability for the amount to the checkholder by presentation of the check? And if this is the generally prevailing view, why should it not be deemed the view of the Nebraska court? What raises a doubt on the point is this: An examination of the Nebraska decision discloses the fact that the court, in announcing the rule that the checkholder may sue the bank on refusal, heads its list of supporting authority with the decisions of the Illinois courts. Illinois, we believe, stands alone as the only State wherein it has been decided that the drawer cannot countermand his check *before* presentment, when in the hands of a *bonâ-fide* holder. The case in which it is so decided, *Union National Bank* v. *Oceana County Bank*, 80 Ill. 212, will be briefly noted. The action was by the holder of a check, which the bank had refused to pay, although in funds, because prior to presentation the drawer had ordered the bank not to pay. The court held the bank liable, saying: 'After the check has passed to the hands of a *bonâ-fide* holder, it is not in the power of the drawer to countermand the order of payment.' Now the Nebraska Supreme Court cites this decision, with numerous others, from the State of Illinois, in support of its own conclusion, and the inference is certainly suggested that the intention is to adopt the Illinois line of judicial thought, governing the relation of drawer, holder, and bank in its entirety. This, with the court's own language—'And after notice to the bank of the drawing the check, the funds thus appropriated cannot be withdrawn by the drawer'—is the only foundation we have for the view that the intention may have been to deprive the drawer of the right of countermand *before* presentment. 'After notice to the bank of the drawing.' Does the court mean 'after presentment by the holder?'—for this in general would be the only means of giving notice to the bank. The Illinois decision cited only denies the right of countermand where the holder is a *bonâ-fide* one. If the drawer could show to the contrary, the right to stop payment would, of course, still exist. But regarding the

right in general, after execution and delivery to a *bonâ-fide* holder, in view of the citation by the Nebraska court of the Illinois decisions—although, it is true, not on the special point of revocation—and its ambiguous language regarding *notice* to the bank of the drawing, as shutting off the drawer's right of control, it is a difficult matter to say that the court did not intend to follow the view of the Supreme Court of Illinois in *Union National Bank* v. *Oceana County Bank*, above cited."

WE have received from Sir J. S. Winter, Q.C., the leading counsel for the plaintiff in the case of *James Baird and another* v. *Sir Baldwin Walker, Bart.*, a copy of *The Evening Herald*, of St. John's, Newfoundland, for the 30th March last, containing the judgment of the Supreme Court of that island, delivered by Mr. Justice Sir Robert Pinsent, on the 18th of that month, in this important case, with an expression of his belief that we might consider it, as we certainly do, of sufficient interest to give it some notice in our journal. The report is too long for insertion in full, but we copy and insert the statement of the case, and the conclusion to which the Court came, that the jurisdiction of the municipal courts of the place where the cause of action arose was not excluded by the fact that the trespass complained of was committed under the authority of the *modus vivendi* alleged by the defendant, in effect—that an agreement between the British Government and that of a foreign country cannot be enforced against or affect the rights or property of a British subject, unless sanctioned by an Act of the British Parliament or of the legislature of the colony or place where such rights or property exist; in which opinion we humbly concur, as we do in the confidence the court expresses, that inquiry and compensation to those who have suffered loss will follow, and that further litigation in the case will be found unnecessary.

In his judgment Sir Robert Pinsent says: "The statement of claim in this action charges the defendant with having, in June last, wrongfully entered the plaintiffs' messuage and premises, situate at Fishel's River, in Bay St. George, and with taking and retaining possession of the plaintiff's lobster factory, and of a large quantity of gear, materials and implements appertaining to the same, and with having prevented the plaintiffs from carrying on the business of catching and preserving lobsters; and the plaintiffs claim $5,000 damages, and they pray for an injunction. The defendant, amongst other matters, pleads in effect that he was captain of one of Her Majesty's ships employed during the last season on the Newfoundland fisheries, and was senior officer on the station; that the Lords Commissioners of the Admiralty, by command of Her Majesty, committed to him 'the care and charge of putting in force and giving effect to an agreement embodied in a *modus vivendi* for the lobster fishery in Newfoundland during the said season, which as an act and matter of state and public policy had been by Her Majesty entered into with the Government of the Republic of France.' That the said agreement provided, amongst other things, 'that on the coast of Newfoundland, where the French enjoy rights of fishing, conferred by the treaties, no lobster factories which were not in operation on the first day of July, 1889, should be permitted unless by the joint consent of the commanders

of the British and French naval stations.' The plea then proceeds to allege that the said lobster factory of the plaintiffs was in operation in contravention of the terms of that agreement, and that after notice to the plaintiffs, which they disregarded, he (the defendant) 'in his public political capacity, and in the exercise of the powers and authorities, and in the performance of the duties of the care and charge so as aforesaid committed to him,' entered and took possession, etc., but that the alleged trespasses 'were acts and matters of state, done and performed under the provisions of the said *modus vivendi*.' And the defendant sets out that all he had done was with a full knowledge of the circumstances, approved and confirmed by Her Majesty, and he concludes his plea in these words—'and the defendant therefore submits that the matters set forth in his answer to the said statement of claim, and on which he rests his right to enter into and take possession of the said messuage and premises, and to take possession of the said gear, materials and implements, were acts and matters of state arising out of the political relations between Her Majesty the Queen and the Government of the Republic of France; that they involve the construction of treaties and of the said *modus vivendi* and other acts of state, and are matters which cannot be enquired into by this honorable court.' It is admitted that if this plea can be sustained as a matter of fact, and if it be good in law, there will be an end to this action. It is assumed that the plaintiffs are British subjects, and it is hardly necessary to add that for the purposes of the present discussion the right of property in the plaintiffs in the lands and chattels, the subject of the alleged trespasses, and the acts of trespass themselves must be taken as admitted. The reply of the plaintiffs to this plea or statement of defence, besides raising issues upon questions of fact, with which we have at present no concern, avers that 'the alleged contravention of said agreement or *modus vivendi* afforded no justification in law for the action of the defendant'; 'that the said action of the defendant was not an act of state and public policy'; 'that the alleged authority from Her Majesty, and subsequent confirmation by her, afford no justification for the action of the defendant,' and do not relieve the defendant from liability for his said acts."

The judge then repeats the admission that if the plea of the defendant is sustained in fact and good in law there is an end of the case; and he then examines the authorities, comments on them, and gives this reason for holding them irrelevant, and concludes as follows:

"To sum up in short terms, for general information, our conclusion upon the issue before us, the court holds: That in an action of this description, to which the parties are British subjects, for a trespass committed within British territory in time of peace, it is no sufficient answer to say, in exclusion of the jurisdiction of the municipal courts, that the trespass was an 'act of state' committed under the authority of an agreement or *modus vivendi* with a foreign power. That in such a case, as between the Queen's subjects, the questions of the validity, interpretation and effect of all instruments and evidence of title and authority rest in the first place with the courts of competent jurisdiction within which the cause of action arises. That, therefore, the decision upon the present issue, which is confined to these points, is found in favor of the

plaintiffs in this action, with leave to the defendant (should it be desired) to amend upon payment of costs. At the bar we had the voluntary statement of the Attorney-General, on the part of the defendant, to uphold the 'legal and constitutional rights of the Crown,' that with regard to those who had suffered loss, there could not be the the remotest doubt but that inquiry would be made and that compensation would follow. It is to be hoped, therefore, that it will be found unnecessary to prolong the litigation in the present case."

PRIORITIES UNDER REGISTRY ACT.

The writer of the observations on the cases of *Brown* v *McLean* and *Abell* v. *Morrison*, to which we referred *ante* p. 98, has discarded his *nom de plume*, and in the April number of the *Canadian Law Times* has again returned to the charge. It is perhaps not surprising to find that we have failed to convince him of the soundness of those decisions, when the reasons assigned by the Court failed to do so. Perhaps he will excuse us for saying that he also has equally failed to convince us that the position which we took is erroneous. He considers that the principle of resulting trust cannot be invoked to support the decisions (1) because the transaction was a loan, and for this he cites two passages from text-writers, and (2) because "resulting trusts arise, in such cases as the present, only by the intention of the parties." We may observe that the first reason assigned is somewhat inconsistent with the second, for while reason No. 1 broadly asserts that a resulting trust cannot arise at all in the case of a loan, reason No. 2 admits that it may arise in cases of loans, but depends on the intention of the parties.

As regards the first reason, and the passages from the text-books, we may observe that the latter do not really cover the ground for which they are cited. It has not been alleged that if A. lends B. money, and B., without any bargain or stipulation of any kind with A. as to the use he is to apply it to, lays it out in the purchase of land or payment of incumbrances, there is any resulting trust in favor of A. The proposition that is made is quite different from this. A. lends money to B. with the express stipulation that it is to be applied in payment of incumbrances, and on the clear understanding that the payment is to be for A.'s benefit and not for B.'s. We do not think the passages from the text-books can be construed to mean that in such a case as that no resulting trust can arise. To suppose that B. could receive the money and procure the mortgage estate to be reconveyed to him and hold the property discharged therefrom as against A., seems to us a proposition so contrary to natural justice that we confess that it is with some surprise that we learn that it is even considered open to argument. In *Brown* v. *McLean*, as we pointed out formerly, and established, we think, by reference to decisions, the rights of the execution creditor depended on the rights of his execution debtor; this position is but faintly attacked. The real question, we maintain, in that case therefore was: Could the execution debtor be heard to say that he was entitled to hold the property discharged from the mortgages? If he could not, as we think he manifestly could not, then it is idle to say that

his execution creditor had any right to do so. If he had, how does his right arise? What statute, or principle of law gives him any such right? It is assumed that the appearance of the title on the registry books is necessarily conclusive in favor of the execution creditor, but we do not find anything in the Registry Act or any other Act that makes it so, and the decisions we formerly referred to show that it is not. The execution creditor's rights are not regulated by what his debtor's rights appear to be, but by what they actually are. Of course, after the execution is placed in the sheriff's hands, we do not pretend to say that the debtor can part with the actual interest he then has to the prejudice of the execution creditor. In the case of lands, the writ binds whatever interest the debtor actually has at the time it is delivered to the sheriff, and a purchaser from the debtor after the delivery of the writ to the sheriff takes subject to the right of the execution creditor to sell under the writ: *Doe d. Macpherson* v. *Hunter*, 4 U.C.R. 449.

As regards the second reason, the intention which is supposed to be wanting in the cases of *Brown* v. *McLean* and *Abell* v. *Morrison* seems really to have been present. It is quite clear that the intention of the parties in paying off the incumbrances was that the payment should inure to the benefit of the parties advancing the money. The intention of the parties is in very few cases of a resulting trust an express intention that a resulting trust should arise. The resulting trust is called into being by equity, to give effect not to an express but a presumed intention that the person for whose benefit it is invoked was to have the benefit of the deed or conveyance in respect of which it is invoked. That, we apprehend, is the only kind of intention that is necessary, if any at all be necessary, in order to create a resulting trust. There would be very few cases of resulting trust if they only arose in those cases in which the parties expressly intended there should be a resulting trust. But the intention of the parties in *Brown* v. *McLean* and *Abell* v. *Morrison*, who advanced the money to pay off the incumbrances, was clearly that they were to have the benefit of the payment and not the mortgagor nor his creditors, nor *puisne* incumbrancers, and it seems to us that that is quite a sufficient intention to give rise to a resulting trust in their favor. *Standing* v. *Bowring*, 31 Ch. D. 282 (*ante* vol. 22, p. 115), which is referred to, seems to us quite beside the question; that was a case of a completed gift which the Court refused to set aside in favor of the donor. In the cases of *Brown* v. *McLean* or *Abell* v. *Morrison*, there is no contention that the advances to pay off the incumbrances were intended as gifts.

It is argued that the Court in those cases was asked to take away some rights which the execution creditor in *Brown* v. *McLean*, and the plaintiff in *Abell* v. *Morrison*, had actually acquired, but this is clearly an erroneous way of stating the question. The Court was not asked in either case to take away any rights, but to declare whether or not any had ever been acquired as against the parties paying off the incumbrances; and what the Court did was not to take away any rights, but to declare that none had ever been acquired.

Great reliance is placed on the fact that a certificate of discharge embraces a statement that the mortgagor has satisfied the mortgage money, and that the mortgage is therefore discharged. But these statements are not conclusive; not-

withstanding them, there is no estoppel in favor of an execution creditor or registered lienholder to prevent the truth of the matter being shown, unless in the latter case he is in a position to aver that he took his security relying on the truth of such statements. And it is also argued that by the condition of the mortgage, if the money were paid at maturity, the mortgage would have been "null and void," without any discharge or reconveyance. But this argument is somewhat in the nature of "a speaking demurrer," inasmuch as it imports into the discussion a fact which does not appear on the record; but even if it did, it would have no weight, it appears to us; for even if the payment had in law the legal effect of putting an end to the mortgage, and revesting the estate in the mortgagor, the fact still remains that the mortgagor has not himself paid the money, but a third party, on the express understanding that the payment was to be for his, and not for the mortgagor's, benefit. Under such circumstances the legal right of the mortgagor is controlled by the equitable rights of the third party, and execution creditors of the mortgagor or subsequent incumbrancers standing in the position of the plaintiff in *Abell* v. *Morrison* could no more claim the benefit of the payment, nor of the estate by this means vested in the mortgagor, than they could have done if the mortgagee had reconveyed the estate to the mortgagor upon an express trust for the third party advancing the money to pay him off.

The writer in our contemporary is apparently oppressed with a very needless apprehension that the difficulties in the way of searching titles are increased by the decisions which he endeavors to controvert. We fail to see any ground for this apprehension, and it appears to us to spring from a misconception of the policy of the Registry Act and the effect of the decisions he complains of. In our former article on the subject, we endeavored to show that the aim of the Registry Act is to protect all persons dealing *bonâ fide* for value on the faith of the registered instruments. While as against an execution creditor, as in *Brown* v. *McLean*, or as against an incumbrancer, such as the plaintiff in *Abell* v. *Morrison*, who had not acquired their rights on the faith of the mortgages in question being discharged, it would be open to show that such mortgages, though appearing to be discharged, were in equity still subsisting charges, it does not at all follow that that could be done as against a purchaser or mortgagee who had acquired his rights on the faith that the registered certificates of discharge were actual and effectual discharges of the mortgages. As regards such persons, they are "subsequent incumbrancers," and within the express words of sec. 76 of the Registry Act. This is not saying that subsequent incumbrancers "are protected by the Act, and prior registered rights are not," as is alleged. Prior registered rights are protected by the Act, as against all unregistered incumbrances prior in point of time; but they are not entitled to gain any priority over prior registered incumbrances by virtue of the Registry Act merely by the blundering registration of some instrument erroneously purporting to discharge them. When it comes to be a question whether any such prior incumbrance has been discharged or not, as against a subsequent purchaser or mortgagee who acquired his rights while it still appeared in the Registry books as a subsisting charge,

we fail to see anything in the Registry Act to prevent the truth being shown and the rights of the parties adjusted according to the true state of the facts, whatever they may be, no matter what they may appear to be on the Registry books.

The view we expressed as to the construction of section 81 of the Registry Act apparently approves itself to the writer of the article in our contemporary, but he seems to think that adopting that construction and assuming that "the same party" referred to in that section means the party creating the equitable lien, which would in the *Abell* case be the mortgagees, yet still in *Abell* v. *Morrison* the section was contravened, inasmuch as the equitable lien was there set up against the registered discharges. We confess that this does seem to us a fair objection; but we are disposed to think that the answer to it is, that the equitable lien was there set up not against, but by virtue of the registered discharges, for, as the editor of the *Canadian Law Times* points out in the same number, at p. 110, the effect of a registered discharge is not necessarily to revest the estate in the mortgagor, but in the person best entitled to it (see R.S.O., c. 114, s. 69). But obviously section 81 was intended to meet quite a different state of facts to that in *Abell* v. *Morrison*. The principle of that section is the same as the rest of the Act, viz., to protect persons dealing with the land on the faith of the title being in fact as it is shown on the Registry books. It is intended to prevent prior equitable unregistered liens, etc., from being set up as against a subsequent registered purchaser or mortgagee claiming under the person who had created the equitable lien. The occasion of the section being enacted was the case of *Harrison* v. *Armour*, 11 Gr., 303, which indirectly furnishes a clue to its proper construction. In that case it was held that an equitable mortgage by deposit did not require registration, and was entitled to priority over a subsequent registered mortgage by the same mortgagor. In *Abell* v. *Morrison* the contest was between the plaintiff, a *puisne* incumbrancer, and a person claiming to stand in the shoes of a prior registered incumbrancer; and the substantial question was whether that prior incumbrance was still, notwithstanding the registration of an instrument purporting to discharge it, a subsisting charge by reason of the facts under which the discharge was obtained and registered. Even if in terms section 81 covered such a case, there are cases in which the Courts have refused to give effect to the literal wording of a statute, where to do so would work injustice, and have restricted its meaning; and this is one of the cases in which we believe that rule would be properly applied.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for April comprise (1891) 1 Q.B., pp. 429-551; (1891) P., pp. 161-188; and (1891) 1 Ch , pp. 397-575.

APPRENTICE—APPRENTICESHIP DEED—DISHONESTY OF APPRENTICE—MASTER, EXONERATION OF—CONDITION PRECEDENT.

Learoyd v. *Brook* (1891), 1 Q.B. 431, involves a very simple question of law. The action was brought by the guardians of an apprentice to recover damages

for breach by the defendant, the master, of his covenants in an apprenticeship deed; or, in the alternative, to recover the whole or some part of the premium of £100. The apprentice had been detected in acts of dishonesty, and on the evidence the judge found he was an habitual thief; in consequence of his dishonesty, the defendant refused to continue him as his apprentice or keep, teach or maintain him as stipulated by the apprenticeship deed; and the simple question was whether the apprentice's dishonesty exonerated the defendant from liability under his covenant, and A. L. Smith, J., held that it did, and that the plaintiffs were therefore not entitled to either form of relief claimed by them.

CHEQUE—WORDS PROHIBITING TRANSFER—BILLS OF EXCHANGE ACT, 1882 (45 & 46 VICT., C. 61), SS. 8, 73, 76 (53 VICT., C. 33, SS. 8, 72, 75 (D.)).

National Bank v. *Silke* (1891), 1 Q.B. 435, is a case illustrating the law as to the effect of the system of crossing cheques, which has now been introduced into Canada under the Bills of Exchange Act (53 Vict., c. 33 (D.)). By section 8 of the Act it is provided that "when a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable." The instrument in question was a cheque payable to the order of one Moriarty, and was crossed by the drawer with the words, "Account of Moriarty at the National Bank." Moriarty received the cheque and indorsed it to the National Bank, who placed the amount of it to his credit, and the amount placed to his credit was drawn against by Moriarty and his cheques honored. On the National Bank presenting the cheque in question for payment it was refused, the drawers having stopped payment on the ground that it had been obtained by false representations. The National Bank then brought the present action against the drawer, who set up as a defence that the words written across the face of the cheque had the effect of rendering it not negotiable, and therefore that the plaintiffs could not sue on it. The first question was whether s. 8 applied to cheques. It was contended that it did, because by s. 73 (s. 72 of our Act) a cheque is defined to be "a bill of exchange payable on demand." The Court of Appeal assumed without deciding that this was so, but held that, even if it were so, the cheque, being payable to order, could not be made "not negotiable" except by words plainly prohibiting transfer. The words used here the Court considered ambiguous, and only amounting to a direction to the plaintiffs to carry the amount when received to Moriarty's account; and they held also that the plaintiffs were holders for value and not mere agents of Moriarty to collect the amount for him.

PRACTICE—MOTION FOR NEW TRIAL—JURISDICTION OF COURT OF APPEAL TO ENTER JUDGMENT, INSTEAD OF GRANTING NEW TRIAL—ORD. lviii. r. 4 (ONT. RULE 755).

In *Allcock* v. *Hall* (1891), 1 Q.B. 444, notwithstanding the dictum of Lord Halsbury, L.C., to the contrary in *Millar* v. *Toulmin*, 12 App. Cas. 747, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) held that on a motion for a new trial the Court might, if it should see fit, instead of granting a new trial direct judgment to be entered in favor of the party against whom the verdict at the trial

had been rendered. It was stated by Lindley, L.J., that this view was concurred in by the other branch of the Court. The wording of Ont. Rule 755 differs slightly from the English Rules 568 and 868, but appears even more explicitly in favor of the practice laid down by the present case.

PRACTICE—JOINT CONTRACTORS—JUDGMENT RECOVERED AGAINST ONE—SETTING ASIDE JUDGMENT AND ADDING CO-CONTRACTOR AS DEFENDANT—RES JUDICATA.

Hammond v. *Schofield* (1891), 1 Q.B. 453, brings to notice the important result which flows from taking a judgment against one of two joint contractors, namely —that although such judgment may have been signed in ignorance of the liability of the co-contractor, it cannot afterwards be set aside even by the consent of the defendant against whom it has been entered, in order to enable the plaintiff to join the other co-contractor. "The effect of the judgment was undoubtedly to destroy the right of action against a co-contractor with the defendant, *King* v. *Hoare*, 13 M.W. 494, even though the plaintiff did not know when he signed judgment that he had a remedy against him, *Kendall* v. *Hamilton*, 4 App. Cas. 504": per Wills, J. The Court (Wills and Vaughan Williams, JJ.) were of opinion that the judgment could not be set aside by consent to the prejudice of the co-contractor; and the order of Pollock, B., setting aside the judgment, was, therefore, on the appeal of the co-contractor, reversed.

STATUTE OF LIMITATIONS—21 JAC. I., C. 16—CONVERSION, DEMAND, AND REFUSAL—LEASE.

Miller v. *Dell* (1891), 1 Q.B. 468, was an action for detinue and conversion of an indenture of lease. The lease belonged to the plaintiff and was fraudulently taken from him by his son, and without the plaintiff's knowledge was deposited by the son with one Bates in 1881, as security for money lent by Bates to the son. Bates held the lease without knowledge of the fraud. He afterwards became bankrupt, and his trustee assigned the debt to the defendant and handed the lease over to him. The plaintiff subsequently and within six years before action demanded the lease from the defendant, and on his refusal to give it up brought the present action, to which the defendant pleaded the Statute of Limitations. This raised the interesting question whether the defendant was in a position to rely on the previous possession by Bates of the lease, as affording him any ground of defence under the statute. The Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.) were of opinion that the prior possession of Bates afforded no defence to the defendant, and that the statute only began to run in favor of the defendant from the time of the demand and refusal; they therefore reversed the decision of Charles, J., who had given judgment for the defendant.

DEFAMATION—SLANDER—PRIVILEGED OCCASION—MEETING OF POOR LAW GUARDIANS—PRESENCE OF REPORTERS AT MEETING.

In *Pittard* v. *Oliver* (1891), 1 Q.B. 474, the Court of Appeal (Lord Esher, M.R., Sir J. Hannen, and Fry, L.J.), affirming Mathew, J., decided that where defamatory words were spoken at a meeting of Poor Law Guardians, which

would be privileged if none but guardians were present, the occasion was none the less privileged because reporters for the press happened to be present at the meeting, it being the established practice of the board to admit the public to their meetings.

HUSBAND AND WIFE—SEPARATE ESTATE—DEATH OF WIFE—DEVOLUTION TO HUSBAND JURE MARITI—DEBTS OF WIFE—MARRIED WOMAN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), S.1, S-S. 3, S. 23—(R.S.O., C. 132, S. 3, S-S. 3, S. 22).

In *Surman* v. *Wharton* (1891), 1 Q.B. 491, a married woman being entitled to separate estate, consisting of leasehold property, after the commencement of the M.W.P. Act, 1882, borrowed money from the plaintiff. She died intestate, and her husband, without taking out administration, entered into possession of the leasehold property. This action was brought by the plaintiff against the husband to recover the money lent to the wife. It was contended on behalf of the defendant that the leasehold vested in the husband *jure mariti*, without administration, free from liability for her debts; and if it did not so vest, he was wrongly sued, as he was not the legal personal representative of the wife, within the meaning of s. 23 (see R.S.O., c. 132, s. 22). Pollock, B., and Charles, J., although agreeing that the Married Woman's Property Act, 1882, did not alter the course of devolution, and that on the wife's death intestate her separate property passed to her husband *jure mariti* without administration, were nevertheless of the opinion that the husband so taking was her "legal personal representative" within the meaning of s. 23, and therefore that he was liable for the debt sued on to the extent of the separate property of his wife come to his hands. We may observe that there is a very important difference created between the English and Ontario Act by s. 23 of the latter Act, which in effect provides that where a married woman dies intestate, leaving a husband and children, her separate property is not to devolve on her husband alone, but is to be distributed between the husband and children in the same proportions as the personal property of a husband dying intestate is distributed between his wife and children. Whenever, therefore, this provision takes effect, it would seem that the husband would not, on his wife's death, take her separate property *jure mariti*, but administration would be necessary; and this fact it is necessary to bear in mind when considering the application of this case in reference to the Ontario Act. When the wife leaves no children, the husband in Ontario would appear to be entitled *jure mariti*, as in England.

STATUTE OF LIMITATIONS—CAUSE OF ACTION, ACCRUAL OF—CONTINUOUS DAMAGE—SUBSIDENCE OF LAND.

In *Crumbie* v. *Wallsend Local Board* (1891), 1 Q.B. 503, the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) were called on to apply the rule established by the House of Lords in *Darley Main Colliery Co.* v. *Mitchell*, 11 App. Cas. 127, regarding the application of Statutes of Limitations to cases of damage arising from subsidence of land. In this case an excavation had been made under a street by the authority of the defendants, a municipal body, for the purpose of laying a sewer; the excavation had not been properly filled in, and in

consequence subsidence of the plaintiff's land and injury to his houses thereon took place; the injury began more than six months before action, and went on at intervals down to the commencement of the action. The action was required to be brought within six months after the accrual of the cause of action, and the Court held that the further subsidence, which took place within the six months of the bringing action, constituted a distinct cause of action, and therefore that the action was in time.

HUSBAND AND WIFE—MARRIED WOMAN—SEPARATE PROPERTY—ACTION FOR TORT TO WIFE—JOINDER OF HUSBAND AS CO-PLAINTIFF IN ACTION FOR TORT TO WIFE, EFFECT OF—MARRIED WOMAN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), S. 1, S-S. 2, S. 5 (R.S.O., C. 132, S. 3, S-S. 2, S. 7).

Beasley v. *Roney* (1891), 1 Q.B. 509, was an action brought to recover damages for personal injuries to a married woman, in which her husband was joined with her as a co-plaintiff. The jury awarded damages to the wife, and also a sum to the husband for expenses, and the whole amount recovered was paid to their solicitor. These moneys were then attached to answer a debt owing by the husband; the wife objected that the damages awarded to her were her separate property, and therefore not liable to answer her husband's debt; and the Court (Pollock, B., and Charles, J.) so held, overruling the Judge of a County Court, who had decided in favor of the attaching creditor.

MASTER AND SERVANT—FALSE IMPRISONMENT BY SERVANT—IMPLIED AUTHORITY OF SERVANT, EVIDENCE OF—PUBLIC HOUSE—MANAGER OF BAR.

Abrahams v. *Deakin* (1891), 1 Q.B. 516, was an action for false imprisonment, under the following circumstances: The plaintiff, with a friend, went into the defendant's public house, and the friend tendered in payment of some refreshment a German gold ten-mark piece by mistake for a half-sovereign, and asked the bartender for change. Before giving the change the latter noticed the coin tendered was a foreign one, and gave it back to the plaintiff's friend, who then gave him a half-sovereign instead, and thereupon the bartender gave the change. The plaintiff and his friend then left the house, when a person acting as defendant's manager followed them and gave the plaintiff into custody on a charge of attempting to pass bad money. The jury found a verdict of £50 for the plaintiff, but on appeal to the Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.), the verdict and judgment were set aside, the Court holding that the defendant was not liable for the act of his servant, and that the manager had no implied authority by reason of his position to arrest the plaintiff, inasmuch as his master's property was no longer in danger, and the arrest was made only for the purpose of vindicating the law by punishing the plaintiff for a criminal offence, which he was supposed to have already committed. From the reasoning of the Court we gather that the decision might have been otherwise had the supposed bad money been actually accepted by the bartender, and the arrest made for the purpose of recovering the good money given in change.

DEFAMATION—LIBEL, PUBLICATION OF—LETTER COPIED BY CLERK—LETTER ADDRESSED TO FIRM—PRIVILEGED OCCASION.

Pullman v. *Hill* (1891), 1 Q.B. 524, was an action for libel in which two questions are discussed: first, whether the defamatory matter was privileged, and

second, whether there had been a publication. The libel complained of was contained in a letter written on behalf of the defendants, a limited company, to a firm of which the plaintiffs were two of the partners. The writer of the letter did not know that there were any other partners in the firm. The letter was dictated by the managing director of the defendants to a clerk, who took it down in shorthand, and then wrote it in full by means of a type-writing machine. The letter thus written was copied by an office boy in a copying-press. When it reached its destination it was opened in the ordinary course of business by a clerk of the firm, and was read by two other clerks. The occasion of the letter being written was a dispute as to the rental of a hoarding, and the defendants in the letter in question stated, "The builders state distinctly that you had no right to this money whatever, consequently it has been obtained from us by false pretences." Day, J., at the trial, decided in favor of the plaintiff on both questions, but the Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.) overruled him on both points. They held that the matter, being clearly libellous, was published when it was communicated to the typewriter in the first place, and again on being so sent as to be opened by the plaintiff's clerks, and that neither of these occasions were privileged. As Lord Esher puts it, the necessities or the luxuries of business cannot alter the law, and if a man wants to write another a defamatory letter and keep a copy of it, he must do it himself.

CONTRACT—PRINCIPAL AND AGENT—CONTRACT TO EMPLOY FOR A CERTAIN TIME—IMPOSSIBILITY OF PERFORMANCE—IMPLIED CONDITION.

Turner v. *Goldsmith* (1891), 1 Q.B. 544, was an appeal from a decision of Grantham, J. The plaintiff had entered into an agreement with the defendant to act as his agent for the sale of shirts and other goods manufactured by the defendant, of which patterns should be furnished by the defendant to the plaintiff; the employment was to be for five years, and the plaintiff was to be remunerated by a commission on sales. During the five years the defendant's factory was burnt down, and the defendant in consequence ceased to furnish the plaintiff with samples. The plaintiff sued for breach of contract; the jury gave a verdict for the plaintiff of £125, but Grantham, J., holding that there had been no breach of the contract, dismissed the action. The Court of Appeal (Lindley, Lopes and Kay, L.JJ.), however, were of opinion that the destruction of the defendant's factory did not excuse his non-performance of his part of the agreement, and that the plaintiff was entitled to substantial damages; but considering the verdict excessive, the plaintiff, on being put to his election to take a new trial or consent to a reduction of the verdict, adopted the latter alternative, and the amount of the verdict was reduced to £50.

PROBATE—WILL—ATTESTATION—SIGNATURES OF WITNESSES ON THE MARGIN OF WILL.

In the goods of Streatley (1891), p. 172, Butt, J., following *Roberts* v. *Phillips*, 4 E. & B. 450, held that where witnesses had signed their names in the margin of a will opposite certain alterations, their attestation was sufficient on its being shown that they had so signed with the intention of attesting the testator's

signature, notwithstanding there was a full attestation clause at the end of the will, and the testator had signed his name opposite it, but the attesting witnesses had not signed there.

PROBATE—ADMINISTRATION PENDENTE LITE.

In *Askew* v. *Askew* (1891), p. 174, a grant of administration *pendente lite* was made to the executor named in the will, which was disputed, limited to the amount of two mortgage debts, forming part of the estate of the deceased.

ADMIRALTY—SALVAGE—INEQUITALLE AGREEMENT FOR SALVAGE.

The Rialto (1891), p. 175, was an action to enforce an agreement for salvage. The defendants resisted the action on the ground that the sum agreed to be paid was exorbitant and the agreement inequitable. Butt, J., in giving judgment, observes that the mere fact that the parties to such an agreement are on unequal ter s is not of itself sufficient to invalidate such agreements, because in such agreements the contracting parties are nearly always on unequal terms; but if it also appears that the sum contracted for is exorbitant, the Court will not uphold the agreement. In this case, both elements existing, the Court reduced the amount by one-half that agreed to be paid.

Notes on Exchanges and Legal Scrap Book.

INSURANCE APPLICATION.—Knowledge of the assured of a misrepresentation in the application, inserted by the soliciting agent with the assurance that it will make no difference, will not avoid the policy, there being no fraudulent purpose on the part of assured. *Reynolds* v. *Iowa and N. Ins. Co.* (Iowa), 46 N.W. 659

UNAUTHORIZED USE OF A PHOTOGRAPHIC NEGATIVE.—The Supreme Court of Minnesota has recently decided that there is an implied contract between a photographer and his customer that the negative for which the customer sits shall only be used for the printing of such photographic portraits as the customer may order or authorize. The conclusion was that if the photographer undertakes to make another use of the negative, as by multiplying copies for publication or sale, the customer may enjoin such use: *Moore* v. *Rugg*, 9 Law Rep. Ann. 58. See also *Pollard* v. *Photographic Co.*, 40 Ch. Div. 345.—*American Law Review.*

JERSEY LAW.—The island of Jersey, it would appear, has some laws which, fortunately for the world at large, prevail, we imagine, only within its own borders. An action for libel was recently instituted against the proprietor of a

newspaper. In such a case as this, in which a sum is claimed for damages, security for costs may be demanded from the defendant. In this particular case the defendant could not be found, and the plaintiff then called upon the defendant's wife, who was entirely unconnected with the newspaper, to find security, and she, being unable to do so, was taken from her home and children, and, without being brought before a magistrate or heard on her behalf, imprisoned, and this before the trial, and even previous to any evidence being given. But this is not all. Her counsel wrote a temperate letter to the Attorney-General of the island calling his attention to these facts, asking him to take steps to have her brought before the court, and published his letter and the reply thereto, and was forthwith summarily convicted of contempt of court. We are inclined, without prejudice, to think that it would have been wiser for the counsel to have concealed his contempt of such a court.

UNRESTRICTED RECIPROCITY AND CUSTOM HOUSES.—An old and much valued contributor earnestly desires to say something on this subject. His letter is on the borderland of politics, but he gives it a legal "smack," and so we stretch a point and give him a corner in our *Legal Scrap-Book*. He says: "Of course you have read Dr. Goldwin Smith's 'Canada and the Canadian Question,' and admired his splendid English, his idyllic description of La Nouvelle France and its inhabitants, and his lucid clearness in the expression of the opinions he maintains. The Canadian question is a political and not a legal one, and therefore beyond the scope of your journal, except perhaps as regards the legal interpretation the doctor gives of the term 'Unrestricted Reciprocity,' so largely used in stump speeches at the late elections. I am with him that 'commercial union' would remove the custom houses from the boundary line, but cannot agree with him that unrestricted reciprocity 'would legally affect such removal,' for it would only authorize the transport across the line, without payment of duty, of goods produced or manufactured in Canada, or in the United States; and the customs officers would have to be satisfied as to the origin of any goods before allowing them to pass."

GUARANTEE OF A MINOR'S CONTRACT.—We quote from the *London Law Times* a case in which it was held that one cannot guarantee a minor's contract. We think it will be of interest to our readers. The *Times* says:—"A recent decision of the Recorder of London in the Lord Mayor's Court seems to have occasioned considerable consternation among the numerous traders who lay themselves out for doing business with minors, and, indeed, before *Peach* v. *Makins*, the case in question, there appears to be no authoritative judicial determination reported of a legal crux which must have frequently occurred. The plaintiff sold a bicycle to an infant on what is known as the hire system; that is, under a contract that the minor should pay for the machine by certain periodical instalments, and that in default of the payment of any one of these instalments the whole of the

purchase money should become forthwith payable to the vendor. These payments by the minor were guaranteed by a person of full age, who undertook by a clause in the contract to discharge the liabilities of the minor in case the latter made default. The minor having made default, the action was brought by the vendor against the guarantor, as surety for the minor. In answer to the plaintiff's claim the defence was successfully set up that, inasmuch as no debt existed or could legally exist between the plaintiff and the minor, the defendant guaranteed nothing, and reliance was placed on the dicta of Lord Selborne in *Lakeman* v. *Mountstephen* (30 L.T. Rep. N.S. 437; L.R. 7 H. of L. p. 24): 'There can be no suretyship unless there be a principal debtor * * * and until there is a principal debtor there can be no suretyship. Nor can a man guarantee anybody else's debt unless there is a debt of some other person to be guaranteed.'" The Recorder, on the authority of these dicta, accordingly ordered a verdict to be entered for the defendant.

WILL, SIGNATURE OF TESTATOR.—Last month a decision was given by the New York Court of Appeals (*In re Conway's will*) bearing on the position of the testator's signature in a will (R.S.O., 1887, c. 109, s. 12). It appears that part of the proposed will was written on one side of a sheet of paper, and, at the end of such part, were the words, "Carried to the back of the will." The only signature of the testator was at the bottom of this first page. On the back of the sheet appeared the word "continued," followed by sundry testamentary provisions, at the end of which came the words "signature on face of the will." It was held (Bradley, Haight and Brown, JJ., dissenting) that the provision that a will shall be subscribed at the end thereof had not been sufficiently complied with, and that the instrument was void. Parker, J., in delivering the judgment of the Court referred to *Re O'Neil* (91 N.Y. 516), stating that such expressions as "carried to back of will," "continued," and "signature on face of will," were at variance with the words of the statute, that the signature must be at the 'end" of the will. He points out the opportunity for fraud offered in such a case, in that any number of disposing paragraphs might be added. He also says, "If by preceding the testimonium clause with the words, 'Carried to back of will' all that is written thereon may be made a part of the will, what is to prevent making another sheet a part of it also, by writing on the bottom of that page, 'continued on sheet one,' and so on, until any number of sheets of paper, with testamentary provisions thereon, be made a part of the instrument, which is signed on the first page? We have thus given some of the reasons which have led us to the conclusions: First, that the O'Neil case" (where the space before the testimonium clause was occupied by a subdivision of the will which is simply completed on the next page) "requires this Court to hold that this will was not signed at the end; second, that the attempted distinction may not be justified on the ground that it cannot be made to so operate as to permit frauds, which it was the design of the Legislature to prevent."

RESPONSIBILITY OF CRIMINALS.—It is commonly believed that a disturbance of the reasoning powers is an inseparable concomitant of insanity; but the evidence of facts has clearly and repeatedly proved that insanity may be moral as well as intellectual, and that, while unsoundness of intellect is invariably accompanied by derangements of the moral sense, an unimpaired intellectual condition is not incompatible with a diseased moral state; in other words, that it is possible for moral madness to exist alone. The statistics of crime show, moreover, that, in the great majority of cases, moral madness is a congenital disease, inherited from parents or ancestors who, if not criminals or inebriates, were mad, or epileptic, or hysterical. Whenever the public conscience is shocked by the discovery of some enormous crime, for which no adequate motive can be assigned, it would be glad to take refuge in this theory of moral madness, to believe that the perpetrator of the crime is a morally irresponsible being. There are several obstacles to the acceptance of this theory, namely, the difficulty of determining the degree to which the criminal is responsible or irresponsible; the desire of society to avenge his victim; and the instinct of self-preservation which prompts it to prevent him from repeating his crime. To escape from the dilemma in which society thus finds itself, it resorts to the legal fiction of pronouncing the criminal a person of sound mind, and punishes him as if he were morally responsible. The argument in favor of this procedure is, that it is the only method by which the society of our day can protect itself from moral lunatics, who are its most dangerous enemies; but the society of the future—it may be of the very distant future—will perhaps adopt a mode of self-defence more rational, more scientific, and more humane. The morally insane are unfortunate rather than culpable. They are in most cases the scapegoats who suffer under a law of hereditary degeneracy for the faults and vices of their ancestors. The duty of an enlightened society, with respect to these unfortunates, is not to punish them after they have been guilty of crimes, but rather to restrain them from becoming criminals, by confining them in anticipation in asylums provided for that special purpose. The duty may be not inappropriately described as one of moral sanitation. When any quarter of a city is badly lighted, ill-ventilated, and not provided with potable water, it is the duty of the whole body of citizens to introduce sanitary arrangements into that quarter, to prevent it from becoming an unhealthy centre, from which disease may spread in all directions. Similarly, when any section of society is in danger of becoming a centre of moral infection, it is the duty as well as the interest of society as a whole to purify that section, or at least to circumscribe it, and so to render it innocuous to its neighbors. In other words, the course to be pursued by society with regard to moral insanity is one of prevention rather than of cure, and one mode of prevention is to hinder the recruitment of the criminal—the morally insane—classes, by giving serious attention to the moral culture of the young.—*Revue Bleue.*

DRUNKENNESS AND ITS ANCIENT PUNISHMENT.—Amid the great variety of treatment to which drunkenness was subjected by the ancients, all lawgivers

seem to agree in treating it as a state of disgrace; and since it is brought on deliberately, it is still more odious and without excuse. Whatever individuals may think and say, no nation treats it as meritorious. Yet Darius is said to have ordered it to be stated in his epitaph that he could drink a great deal of wine and bear it well—a virtue which Demosthenes observed was only the virtue of a sponge. At the Greek festival of Dionysia it was a crime not to be drunk—this being a symptom of ingratitude to the god of wine—and prizes were awarded to those who became drunk most quickly. And the Roman bacchantes, decked with garlands of ivy, and amid deafening drums and cymbals, were equally applauded: but at length even the Bacchanalia were suppressed by a decree of the Senate, about 186 B.C.

Notwithstanding these exceptions, the offence of drunkenness was a source of great perplexity to the ancients, who tried nearly every possible way of dealing with it. If none succeeded, probably it was because they did not begin early enough, by intercepting some of the ways and means by which the insidious vice is incited and propagated.

Severe treatment was often tried to little effect. The Mosaic law seems to have imposed stoning to death, at least if the drunkenness was coupled with any disobedience of parents. The Locrians, under Zaleucus, made it a capital offence to drink wine, if it was not mixed with water; even an invalid was not exempted from punishment unless acting under a physician's order. Pittacus, of Mitylene, made a law that he who, when drunk, committed an offence, should suffer double the punishment which he would do if sober; and Plato, Aristotle, and Plutarch applauded this as the height of wisdom. The Roman censors could expel a senator for being drunk, and take away his horse. Mahomet ordered drunkards to be bastinadoed with eighty blows.

Other nations thought of limiting the quantity to be drunk at one time or at one sitting. The Egyptians put some limit, though what it was is not stated. The Spartans had some limit. The Arabians fixed the quantity at twelve glasses a man; but the size of the glass was not, unfortunately, defined by the historians. The Anglo-Saxons went no further than to order silver nails to be fixed on the side of drinking cups, so that each might know his proper measure; and it is said that this was done by King Edgar, after noticing the drunken habits of the Danes. Lycurgus, of Thrace, went to the root of the matter, by ordering the vines to be cut down; and his conduct was imitated, in 704, by Terbulus, of Bulgaria. The Suevi prohibited the importation of wine, and the Spartans tried to turn the vice into contempt by systematically making their slaves drunk once a year, to show their children how foolish and contemptible men looked in that state.

Drunkenness was deemed much more vicious in some classes of persons than in others. The ancient Indians held it lawful to kill a king when he was drunk. The Athenians made it a capital offence for a magistrate to be drunk, and Charlemagne caused a law to be enacted that judges on the bench and pleaders should do their business fasting. The Carthaginians prohibited magistrates, governors, soldiers, and servants from any drinking.—*Green Bag.*

Correspondence.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Would you allow me, by means of your journal, to draw the attention of the profession to the reports of the Court of Exchequer that have very lately appeared in print? They are extremely valuable, in that a large proportion of the decisions have reference to the law in regard to expropriation for public purposes, and also in reference to what may be termed the prerogatives of the Crown; subjects that so far have been very little discussed in the reports of this Province.

A perusal of the report of *Paradis* v. *The Queen*, in the 1st Volume, will be very valuable to any lawyer who is engaged in or is advising upon expropriation cases. I know of no case where the law is as clearly stated as in this, and it is particularly valuable in pointing out the wide distinction that exists between the damages that are allowable where lands have been in part expropriated and the remaining lands have suffered damage from such expropriation, and where lands have not been touched but are injuriously affected.

Somewhat strange to say—for few of us expect much from Ottawa except politics—the reporter has done his work well, and the judgments of the present Judge of the Court of Exchequer leave nothing to be desired in clearness and exactness of language, and at the same time the judgments themselves seem to be very accurate expositions of the law as treated in the cases reported. These reports are certainly very valuable, and no member of our profession should be without them. Why is it, too, that the type and paper are so very much superior to the type and paper of our own reports?

Yours, etc.,

M.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Why is it that the ordinary lawyer gravitates to politics like a duck to water, or the youth to love in the spring of the year? At the present moment probably one-third of the members of our House of Commons are lawyers, and quite likely the same proportion prevails in the different provincial legislatures. It cannot be that it aids them in acquiring a knowledge of their profession, for it is open knowledge to every person that very rarely is a political lawyer an exact lawyer, and in so far as a lawyer devotes himself to politics he simply becomes less and less an exact lawyer. It cannot be for the purpose of securing judgeships, for the article does not go around; and it can hardly be that the aspirants conceive that they will become the rulers of the country, for that article does not go even so far around; and it cannot be to benefit their private pockets, for nearly every lawyer politician becomes poor in the process. Still, the tendency exists, for if our lawyers cannot become members of the Dominion House, they will aim at the Local House, and if they cannot become members of the Local House, they will still aim at becoming members of the council of the village or town in which they reside.

Really, would it not conduce to the peace of mind of the members of our profession if, like persons of other professions, they practically excluded themselves from public life? It is true that every able politician must have some knowledge or ought to have some knowledge of political science and of theoretical law, but it is hardly possible for any lawyer politician, who devotes his life to politics, to have any knowledge practically of what may be termed exact law. It is stated that in the Eastern States, at all events, very few good lawyers at the present time dream for a moment of devoting themselves to public life until, at all events, they are enabled to retire from their profession.

Yours, etc.,

W.H.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Two cases of the handiwork of "unlicensed conveyancers" have lately been brought to my attention.

One case is where a gentleman who keeps a "real estate and bank office" and is a "J.P., Notary Public, and Commissioner," essays to enunciate the law of landlord and tenant to a "client." "Letter, advice, and postage, 50 cents." I do not wish the name published, as the "legal adviser" is a personal friend of mine, and I would not wish to act unprofessionally to a brother practitioner!

The other case I refer to arose in this way. I had occasion to ask a client of mine as to the title to certain land. He replied: "Oh, it is all right; Mr. —— attended to it at the time of Smith's death." It transpires, however, that Mr. —— has not quite "made it all right," at least not to my satisfaction, though I should of course bow to his superior knowledge. Mr. —— is a Division Court Clerk and ex-butcher, having passed through the stage of auctioneer by way of whetting his mental faculties.

We of the profession are particularly blest in this locality with these irresponsible barnacles. There is a man in this town who does more conveyancing than all the lawyers in the county combined, and almost as much Surrogate Court work. Can nothing be done to relieve the profession of these parasites?

Let us devoutly pray that the new Benchers may be imbued with the spirit of justice towards those of us who have to brush with the world in the battle of life, and that they will not give their undivided attention to the interests of those gentlemen of the profession who are lucky enough to be able to devote themselves to counsel work.

Yours, etc.,

COUNTY OF WELLAND.

DIARY FOR MAY.

1. Fri.....St. Philip and St. James.
2. Sat.....J. A. Boyd 4th Chancellor, 1881.
3. Sun.....*Rogation Sunday.* Mr. Justice Henry died, '88.
5. Tues....Supreme Court of Canada sits. First Intermediate Examination.
7. Thur....Ascension Day. Second Intermediate Exam.
8. Fri.....York evacuated by U. S. troops, 1813.
10. Sun.....*Sunday after Ascension.* Indian Mutiny, 1857.
12. Tues.....Court of Appeal sits. Gen. Sess. and County Ct. Sitgs. for trial in York. Solicitors' Ex.
13. Wed.....Barristors' Examination.
17. Sun.....*Whitsunday.*
18. Mon.....Easter Term commences. H.C.J., Q.B.D., and C. P. D. Sittings begin. Law School Examination, 3rd year (Honors), begins.
21. Thur....Confederation proclaimed, 1867.
22. Fri .....Earl Dufferin, Governor-General, 1872.
24. Sun.....*Trinity Sunday.* Queen Victoria born, 1819.
25. Mon.....Princess Helena born, 1846.
27. Wed.....Habeas Corpus Act passed, 1679. Battle of Fort George, 1813.
28. Thur....Law School Exam., 3rd year (Pass), begins.
29. Fri.....Battle of Sackett's Harbor, 1813.
31. Sun .....*1st Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 2.

DANCEY *v.* GRAND TRUNK RY. CO.

Railways and railway companies—Contract—Passenger ticket—"Via direct line"—Meaning of—Authority of ticket agent.

The defendant company, through an agent at G., sold the plaintiff a passenger ticket from G. to S. and return, on which was printed "via direct line." There were three lines owned by the company by which travellers might go from G. to S. and return, but there was no direct line. The shortest line was by way of L. Crossing and C. The plaintiff, on the return journey, if he had wished to take the shortest line, must have changed at L. Crossing. He did not do so, however, but remained in the train, meaning to reach G. by a longer route, and, on his refusing to leave the train or pay extra fare, he was ejected by the company's servants.

The agent of the defendant company gave the plaintiff and others to understand that tickets such as that sold to the plaintiff entitled the purchaser to travel by any one of the three lines, and the evidence showed that the right of such purchasers to so go and return had, both before and after this occurrence, always been recognized and assented to by the company.

Held, upon the evidence, that the shortest line was not intended by the company to come within the words "direct line" used in the contract, and the contract could not be so construed; that the words "via direct line" were inapplicable to the contract and meaningless, and must be stricken out of it.

2. That the provision "via direct line" was unintelligible to purchasers without some explanation, and that the company, when they entrusted their agent with the sale of tickets, clothed him with the apparent authority to explain the purport and effect of the provision.

Lount, Q.C., and *M. G. Cameron*, for the plaintiff.

Aylesworth, Q.C., for the defendants.

Div'l Court.] [March 6.

MARTHINSON *v.* PATTERSON.

Chattel mortgage—Foreign contract as to chattels in Ontario—R.S.O., c. 125—Chattel mortgages not complying with—Effect of taking possession—Full amount of consideration not advanced—Falsity of affidavits of bona fides—Priorities between mortgages—Subsequent mortgagee in good faith—Notice.

Held, following *River Stave Co.* v. *Sill*, 12 O.R. 557, that goods which were in Ontario at the time of the execution of a document of hypothecation of them were subject to the provisions of R.S.O., c. 125, although the parties thereto were at the time domiciled in a foreign country.

Held, also, that the plaintiff could not, under his prior chattel mortgage, by taking possession of the mortgaged chattels after the execution and filing of a subsequent chattel mortgage to the defendant, although before the time at which the defendant could have taken possession, hold the mortgaged goods against the defendant where the plaintiff's mortgage did not comply with the Act, if the defendant's mortgage had complied therewith.

Judgment of STREET, J., 20 O.R. 125, affirmed on these points.

But where the amount of the consideration for the defendant's mortgage was less than the amount expressed therein and sworn to by the

defendant in his affidavit of *bona fides* as the true amount,

Held, that the defendant's mortgage did not comply with the Act, and the plaintiff by reason of taking possession as before mentioned could hold the goods against the defendant.

Robinson v. *Paterson*, 18 U.C.R. 55, followed.

Hamilton v. *Harrison*, 46 U.C.R. 127, not followed.

Judgment of STREET, J., reversed on this point.

Held, also, that the "subsequent purchasers or mortgagees" referred to in s. 4 of R.S.O., c. 125, are those whose purchases or mortgages are accompanied by an immediate delivery and followed by an actual and continued change of possession or who have complied with the provisions of the Act; and as neither the plaintiff nor the defendant came within the words, the plaintiff being prior in point of time had priority; but if the defendant could be treated as a subsequent mortgagee, he was not a subsequent mortgagee in good faith, by reason of the falsity of his mortgage.

Held, lastly, doubting, but following *Moffatt* v. *Coulson*, 19 U.C.R. 341, that notice of the plaintiff's mortgage when he took his own was not a reason for depriving the defendant of the status of a subsequent mortgagee in good faith.

Shepley, Q.C., for the plaintiff.

Creasor, Q.C., for the defendant.

Div'l. Court.] [March 6.

DELANEY *v.* CANADIAN PACIFIC RAILWAY COMPANY.

Mortgagor and mortgagee—Vacant land—Constructive possession of mortgagee—Statute of Limitations—Presumption of payment—Arrears of interest—R.S.O., c. 111, s. 17—Redemption—Rate of interest post diem.

The plaintiff was mortgagee of certain land under two mortgages, dated respectively 30th June, 1873, and 8th September, 1874. The principal under both mortgages was payable on 30th June, 1875, and the interest under both was at the rate of twelve per cent. per annum. In the sum secured by the latter mortgage was included the interest overdue at its date in respect of the former. The mortgagor was living on the land when he made the mortgages, and continued to live on it till his death in 1874, and after his death his son continued to live on it till some time in 1877, when he abandoned possession and the land became and continued vacant till the defendants took possession in 1888. The plaintiff, however, shortly before the 30th June, 1885, made an actual entry and enclosed the land, and kept possession in that way till the defendants took possession. This action was brought by the plaintiff, claiming, as mortgagee in possession, to recover damages for the defendants' trespass and for an injunction and restitution of the possession. By arrangement a sum of money representing the value of the land was paid into Court, and the question was, how much, if anything, the plaintiff was entitled to under his mortgages.

Held, that as soon as the land became vacant the constructive possession was in the plaintiff, and the Statute of Limitations did not run against him so as to extinguish his title to the land. No presumption of payment of the mortgages arose, for the plaintiff had twenty years to bring his action upon the covenants for payment, and it was proved that the mortgage moneys had never been paid.

Held, also, that this was not an action to recover arrears of interest in respect of money charged upon land within the meaning of R.S.O., c. 111, s. 17; and the amount of arrears of interest which the plaintiff was entitled to recover was to be determined upon the same principles as if a bill had been filed by a mortgagor against a mortgagee in possession to redeem the mortgaged lands; and so the plaintiff was entitled to all arrears of interest upon his mortgages, though after maturity at the rate of six per cent. per annum only.

Arnoldi, Q.C., for the plaintiff.

Ritchie, Q.C., for the defendants.

Div'l Court.] [March 6.

ROBINSON *v.* HARRIS.

Contract—Exchange of lands—Specific performance—Speculative character of properties—Time—Notice to complete—Reasonable notice—Title not in plaintiff—Election to treat contract as binding—Parties—Matter of conveyance.

The plaintiff and defendant entered into a contract for the exchange of lands. The title to the land which the plaintiff contracted to

convey was not in him but in A., who had contracted to sell to B., and B. to the plaintiff. By the contract between the plaintiff and defendant a day was fixed for completion, but time was not made of the essence.

The trial Judge found that the parties were dealing, each to the knowledge of the other, with the properties as a matter of mere speculation. The parties continued to negotiate up to a period some months after the date fixed for completion, when the defendant gave the plaintiff notice that unless the exchange was carried out on the day after the notice, the contract would be treated as rescinded. In an action for specific performance,

Held, that, by reason of the speculative character of the property, the presumption was that time was to be of the essence of the contract; but the presumption was rebutted by the parties treating the contract as still subsisting after the day for completion had passed; and it was then competent for either of them to put an end to the delay by a notice to complete; but the notice given was not a reasonable one and it had no effect upon the rights of the plaintiff.

Held, also, that the defendant had ratified the contract by making requisitions regarding the title with knowledge that it was not in the plaintiff, and could not shift his position and take the ground that no contract ever existed; by treating the contract as a binding one he had made his election and was remitted to the rights of an ordinary purchaser.

Semble, also, that the plaintiff could have made A. a party to an action against B. to compel specific performance of B.'s contract, offering to carry out, on B.'s behalf, the whole contract between A. and B., and therefore the objection to the plaintiff's title was a mere matter of conveyance.

F. E. Hodgins for the plaintiff.

J. B. Clarke, Q.C., for the defendant.

Chancery Division.

Div'l Court.] [Feb. 20.

ZILLIAX *v.* DEANS ET AL.

Voluntary Settlement—Conveyance of land to wife—Attaching creditor—Claim under $40.

A creditor for an amount under $40 is not such a creditor as can attack and set aside a conveyance of land as voluntary, or fraudulent, and he cannot improve his position by bringing his action on behalf of other creditors.

Shepley, Q.C., for appeal.

Idington, Q.C., contra.

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.] [February 24.

IN RE SHAW.

Certiorari—Gaming house—By-law and provincial statute—Ultra vires.

Applicant was convicted of having unlawfully kept a gambling-house in Winnipeg contrary to the provisions of a civic by-law which is claimed to have been authorized by a provincial statute empowering the City Council to pass by-laws suppressing gambling-houses. Sec. 37 Vict., c. 7, s. 96-8, 1873; 45 Vict., c. 36, s. 101, 1882; 53 Vict., c. 51, 1890.

Held, that the provincial statute and the by-law were invalid, being *ultra vires*, on the ground that under B.N.A. Act, s. 91, s-s. 27, a gambling-house comes within the subject of "criminal law," and hence within the powers of parliament, and that such an offence must be punished by indictment or such other procedure as parliament may provide.

2. That, at common law, gambling was not in itself unlawful, though it was so to keep a common gaming-house.

3. That 38 Vict., c. 41 (C.), does not prevent the proof of the offence of keeping a common gaming-house by such evidence as would have been sufficient at common law and before any games were made unlawful.

Certiorari granted.

Hough for City of Winnipeg.

C. P. Wilson for prisoner.

BAIN, J.] [Feb. 26.

GILLESPIE *v.* LLOYD ET AL.

Demurrer—Wrong parties—Shareholders' rights in a corporate company.

Bill filed by a shareholder on behalf of himself and of all other the shareholders of the H. B. Ry. Co. against the holders of certain bonds which, he claims, were issued by the president without authority, and asking that they be de

clared not to be a charge on the property or land grant, and praying delivery up of same. His bill alleges that shortly after the company was incorporated and before the year 1886, the plaintiff became a shareholder thereof by being the owner of a portion of the capital stock thereof, and has ever since remained on the books of the company a shareholder thereof, and is recognized by the railway company as a shareholder. The bill also alleges that the plaintiff has repeatedly called upon and urged the directors and officers of the company to take legal proceedings to prevent the sale or other disposition of the bonds and to have same declared to be improperly issued, but that they neglected and refused.

Demurrer on two grounds :—1. That the allegation above given of the plaintiff's title is not a sufficient one, and that what is stated is merely a conclusion of law ; and (2), that even if the plaintiff is a shareholder the bill does not disclose such a state of circumstances as enables him to sue in his individual capacity.

The term "shareholder" is indefinite ; although apparently the allegation of title was not sufficient, yet it was not necessary to a decision and so not decided: *Willburn* v. *Negleby*, 1 M. & K. 51 ; *Hamilton* v. *Desjardins Canal Co.*, 1 Gr. 1 ; *Banks* v. *Porter*, 16 Si. 176.

Held, 1. that actions by one member of a class on behalf of himself and all others of that class are permissible when the object of the suit is to obtain relief to which the whole class is entitled, and when the members of the class are so numerous that they cannot all be made parties by name (that is, an action might be permissible on the ground of necessity or convenience); but when a company is incorporated and its officers and directors have done or are doing something that is illegal and which affects the whole company, then under ordinary circumstances it is the company that ought to sue in its corporate name.

2. That there might be an exception to the general rule arising from the necessities of the case, and in order that there might not be a failure of justice and in order to prevent oppressive litigation it should not be allowed to prevail in cases where there is no necessity for it, as in this case.

Demurrer allowed with costs.

Howell, Q.C., and *Tupper*, Q.C., for plaintiff.

Ewart, Q.C., and *Bradshaw*, for defendants.

KILLAM, J.] [March 4.

RITCHIE *v.* GRUNDY.

Mechanics' Lien Act—Agreement waiving lien.

This was a bill filed to enforce a Mechanics' Lien under the Act, for building an addition to the defendant's residence under a written contract, and for certain extras. The defendant denies completion, and disputes the principal portion of the claim for extras. The contract provided that the payment of $500 by the defendant, $100 in cash, $200 during the process of the work, and $200 by note six months after the completion of the work. The only evidence offered showed completion and an agreement as to certain extras, for which the plaintiff demanded the six months note for the balance due under the contract and was refused.

Held (1), that where, by the agreement of the parties, the price of the work is not payable until the time for enforcing the lien is past, no lien exists.

2. That it is a well-known principle with liens recognized at common law, that a lien does not exist where the contract between the parties or the circumstances are inconsistent with the notion that one was intended.

3. In view of the well-known principle that an action will not lie for a debt until the time for payment has expired, an agreement that there shall be no lien should be implied under a contract merely for payment at a date later than that at which the bill could be filed to enforce the lien.

4. That if the contract is for the giving, within the time for enforcing the lien, a promissory note or other security for the price, the agreement to waive the lien should be considered conditional upon the giving of the note or security.

"In view of certain variations in the contract, the plaintiff was to be entitled to a lien upon the lands described, if upon completion the defendant wrongfully refused to give the note and upon other terms and conditions suited to the peculiar nature of the case."

Amendment allowed upon terms.

Mulock, Q.C., for plaintiff.

Aikins, Q.C., and *Patterson*, for the defendants.

Full Court.] [March 7.

FONSECA *v.* SCHULTZ.

Lien—Tax sale—Redemption of portion of land.

Bill to establish lien on certain lots. The plaintiff and defendant owned three parcels of land which were sold for taxes, each lot being sold separately. The plaintiff, in seeking to redeem those parts of said parcels which she owned, was forced by the city treasurer to pay the whole amount of the arrears of taxes, interest thereon, and charges, for which the three parcels were sold. She then filed a bill to have a lien declared in her favor on the interest of the defendant in the said parcels.

The defendant demurred. Judgment by Bain, J., overruling demurrer. Defendant appealed.

Sec. 667 of Municipal Act, 1886, provides for redemption by "the owner . . . or his executors, etc., . . . or any other person on their or his behalf, but in his name only," of "the estate sold, by paying or tendering . . . for the use and benefit of the purchaser . . . the sum paid by him, etc." It contains no provision for the redemption of part of the land sold, and makes no mention of such redemption except in the concluding clause.

Held, that it was necessary for the plaintiff to pay the taxes upon the whole land in order to secure her own portion. Section 638 refers to payment of taxes before sale and does not apply to this case, distinguishing same from Con. Stat. U.C., c. 55, s. 113, and *Payne* v. *Goodyear*, 26 U.C.R. 448, decided thereon.

Appeal dismissed with costs.

Tupper, Q.C., and *Phippen*, for defendant.

Andrews and *Harvey* for plaintiff.

Full Court.] [March 7.

RE MATHERS.

Real Property Act—Taxation of half-breed land—Allotment.

Case stated by district registrar to Judge in Chambers under s. 120, R.P. Act, and by said Judge referred to Full Court. Certain lands were allotted some time prior to 1883 to one Ross, as the child of a half-breed head of a family, but the Crown patent therefor was not issued till January 28th, 1886. Ross attained eighteen years on February 4th, 1883. The land was sold on November 21st, 1887, for arrears of taxes for years 1882-4-5. The following question was submitted: "Was such sale for arrears of taxes for 1884-5, for which years the land was assessed to the allottee Ross, legal when the legal title remained in the Crown until January 28th, 1886?"

By s. 125, B.N.A. Act, "no lands belonging to Canada or any province shall be liable to taxation."

By s. 30, Manitoba Act, all ungranted lands in the Province shall be vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion.

Held (1), that after the allotment of the land in question to the half-breed Ross, he was precisely in the same position as he would have been had he agreed to purchase this land from the Crown, and had become entitled to the patent; while the legal estate remained vested in the Crown, the beneficial interest belonged to and was vested in Ross, and it was competent for the Provincial Legislature to make such interest liable to taxation if it saw fit to do so. *Railway Co.* v. *Prescott*, 83 U.S. Sup. Ct. 603, approved of.

By Municipal Act, 1883, s. 239 and s. 4, s-s. 5, real property, and "all rights thereto and interests therein," were made liable to taxation.

Held, the interest or property of Ross was "real estate" or "real property," which both Acts (1883-84) made liable to taxation, except such of it as was specially exempted, and the fact that this land is not specially referred to in these sections as one of the kinds of unpatented lands that may be taxed should not be held to override the intention expressed in other provisions of the Acts, that it was liable to be taxed.

Question answered in the affirmative.

C. P. Wilson for the district registrar.

Mathers for applicant.

Notes of United States Cases.

ALABAMA SUPREME COURT.

LOUISVILLE & N.R. CO. *v.* WEBB.

Railroads—Accidents at crossings—Contributory negligence.

Held, that a person familiar with a railway crossing is guilty of contributory negligence in attempting to cross without looking to the right or the left, and the facts that the engine by which he was struck was moving at an unlawful rate of speed, and that the company's watchman, at whom plaintiff was looking, failed to warn him, do not so neutralize the effect of plaintiff s contributory negligence as to make it a question for the jury.

NEW YORK SUPREME COURT.

FIRST NATIONAL BANK OF CARTHAGE *v.* YOST.

Payment of forged check—Bank's right of recovery—Endorsement for collection.

1. The rule that the drawee of a check or bill is presumed to know the signature of the drawer, and if he accepts or pays a bill in the hands of a *bonâ-fide* holder to which the drawer's name has been forged, he is bound by the act and can neither repudiate the acceptance nor recover the money paid—applied.

2. An indorsement by the holder for collection does not guarantee the signature of the drawer, or take the case out of the application of the above rule.

TEXAS COURT OF APPEALS.

FIRST NATIONAL BANK OF TEXARKANA *v.* WEVER.

Presentment of note—Proper place of protest—Damages.

At the maturity of a note the bank at which it was payable had ceased to do business, and its banking-house was closed and unoccupied. The maker did not reside in the city. The defendant was then the only bank there, and it caused the note to be presented for payment at its own counter, and had it protested.

Held, that the demand for payment was made at the proper place, and that the defendant was not liable in damages for an illegal protest of the note.

Appointments to Office.

MASTER OF THE ROLLS.

Prince Edward Island.

Edward Jarvis Hodgson, of the city of Charlottetown, in the Province of Prince Edward Island, Esquire, one of Her Majesty's Counsel learned in the Law, to be Master of the Rolls in Chancery and an Assistant Judge of the Supreme Court of Prince Edward Island, *vice* the Honorable Mr. Justice Peters, resigned.

COUNTY COURT JUDGE.

County of Grey.

John Creasor, of the town of Owen Sound, in the Province of Ontario, Esquire, one of Her Majesty's Counsel learned in the Law, to be Judge of the County Court of the county of Grey, in the said Province of Ontario.

His Honor John Creasor, Judge of the County Court of the county of Grey, to be a Local Judge of the High Court of Justice for Ontario.

SHERIFFS.

County of Brant.

William Watt the younger, of the city of Brantford, in the county of Brant, Esquire, to be Sheriff in and for the said county of Brant, in the room and stead of William John Scarfe, Esquire, deceased.

County of Oxford.

James Brady, of the town of Ingersoll, in the county of Oxford, Esquire, to be Sheriff in and for the said county of Oxford, in the room and stead of George Perry, Esquire, deceased.

REGISTRARS OF DEEDS.

County of Lambton.

Archibald MacLean, of the town of Sarnia, in the county of Lambton, Esquire, to be Registrar of Deeds in and for the said county of Lambton, in the room and stead of Edward Moore Proctor, Esquire, deceased.

County of Wentworth.

Lewis Springer, of the city of Hamilton, in the county of Wentworth, Esquire, to be Registrar of Deeds in and for the said county of Wentworth, in the room and stead of James Miller Williams, Esquire, deceased.

County of Frontenac.

James Duncan Thompson, of the city of Kingston, in the county of Frontenac, Esquire, to be Registrar of Deeds in and for the said county of Frontenac, in the room and stead of Roderick Macbain Rose, Esquire, deceased.

POLICE MAGISTRATE.

Town of Barrie.

Charles Hammond Ross, of the town of Barrie, in the county of Simcoe, Esquire, to be Police Magistrate in and for the said town of Barrie without salary.

DIVISION COURT CLERKS.

District of Algoma.

William J. Smith, of the village of Richard's Landing, St. Joseph's Island, in the District of Algoma, Gentleman, to be Clerk of the Sixth Division Court of the said District of Algoma, in the room and stead of Alexander T. Ross, removed from the district.

County of Hastings.

Francis Bell Prior, of the village of Wallbridge, in the county of Hastings, Gentleman, to be Clerk of the Second Division Court of the said county of Hastings, in the room and stead of D. R. Ketcheson, resigned.

Counties of Leeds and Grenville.

Isaac C. Alguire, of the village of Athens, in the county of Leeds, one of the united counties of Leeds and Grenville, Gentleman, to be Clerk of the Ninth Division Court of the said united counties of Leeds and Grenville, in the room and stead of Reid B. Alguire, deceased.

County of Wellington.

George Howard, of the city of Guelph, in the county of Wellington, Gentleman, to be Clerk of the First Division Court of the said county of Wellington, in the room and stead of Alfred A. Baker, deceased.

DIVISION COURT BAILIFFS.

County of Hastings.

Lewis Cruickshank, of the town of Trenton, in the county of Hastings, to be a Bailiff of the Ninth Division Court of the said county of Hastings.

County of Oxford.

Warren Henry Cody, of the village of Sweaburg, in the county of Oxford, to be Bailiff of the Fifth Division Court of the said county of Oxford, in the room and stead of James Brady, resigned.

District of Parry Sound.

Perpetus Bodeau, of the village of Byng Inlet, in the District of Parry Sound, to be a Bailiff of the First Division Court of the said District of Parry Sound, in the room and stead of James Coff, resigned.

County of Perth.

William Dent Weir, of the village of Milverton, in the county of Perth, to be Bailiff of the Fifth Division Court of the said county of Perth, in the room and stead of Alexander Munro, resigned.

COMMISSIONER FOR TAKING AFFIDAVITS.

City of Liverpool (England).

Frank John Leslie, solicitor, of 15 Union Court, Castle street, in the city of Liverpool, in that part of the United Kingdom of Great Britain and Ireland called England, to be a Commissioner for administering oaths in the Supreme Court and in the Exchequer Court of Canada.

Law Students' Department.

The dates of the Law School Examinations for Easter term are as follows :—3rd Year Pass, 18th to 20th of May. Results to be announced on the 27th. 3rd Year Honors—28th to 30th of May. Results to be announced on the 4th of June. 1st Year Pass—4th of June. 2nd Year Pass—5th and 6th of June. Results to be announced on the 16th. 1st Year Honors—17th of June. 2nd Year Honors—18th and 19th of June. Results to be announced on the 26th.

Examinations outside the Law School :—1st Intermediate—5th May. 2nd Intermediate—7th May. Solicitor—12th May. Barrister—13th May.

EXAMINATION PAPERS.

FROM EXAMINATION FOR CALL (ENGLAND), EASTER, 1891.

Real and Personal Property.

State and explain the mode of settlement of leasehold property or personal chattels so as to devolve with settled freehold land, and show how far such settlements can be effectually carried out.

Interpret and comment on the following expressions: "Innocent conveyance," "contingency with double aspect," "special occupant," "springing use," "shifting use."

In what different ways can a joint tenancy of real estate be severed?

Define a "perpetuity," and state the rules governing the limitations of estates in land in reference to the law of perpetuities.

Equity.

Distinguish cases of ademption from cases of satisfaction. Give instances of the doctrine of election arising in such cases.

State the doctrine of presumption against double portions, and its application to cases of ademption or satisfaction. How far is parol evidence admissible as to intention or otherwise as to such presumption?

What are the presumptions as to satisfaction in cases of a legacy to the creditor of a testator, or advancements by a parent to a child to whom he is a debtor?

State and illustrate the present law as to injunctions against cutting timber in cases between (*a*) mortgagee and mortgagor; (*b*) tenant for life and remainderman. Also as to injunctions in respect of permissive waste.

In what circumstances can a defendant resist an action for specific performance on the ground of the contract being entered into by him under circumstances of mistake or surprise? When is alleged mistake no defence?

Common Law.

What is meant by the phrase "privity of contract"? Explain what is meant when it is said that an action will not lie for "want of privity."

When is an "acceptance and actual receipt" of goods sufficient to satisfy section 17 of the Statute of Frauds? Discuss the case of *Morton* v. *Tibbitt*, *15 Q.B. 428.*

What is the measure of damages—(1) in an action for not delivering goods; (2) in an action for not accepting goods; (3) in an action for the wrongful conversion of goods by the defendant?

Illustrate by examples the distinction between a public nuisance and a private nuisance. What proceedings can be taken to remedy (1) a public nuisance; (2) a private nuisance?

What is meant by an "easement"? How can an easement be acquired? Can an easement be abandoned?

What is the meaning of the word "intention" in connection with criminal law? Illustrate your answer by examples.

Flotsam and Jetsam.

SEVEN of the supposed-to-be sharpest and wisest lawyers in the country have made wills, passed away, and the said wills have been broken all to flinders by heirs and other lawyers. An ignorant Missouri farmer wrote his will in four lines on a slate, and it stood three law suits and ten lawyers.—*Chicago Mail.*

SIR GEORGE ROSE had a friend who had been appointed to a judgeship in one of the colonies, and who, long afterwards, was describing the agonies he endured in the sea passage when he first went out. Sir George listened with great commiseration to the recital of these woes, and said, "It's a great mercy you did not throw up your appointment."—*Curiosities of the Law and Lawyers.*

A MILLER had his neighbor arrested upon the charge of stealing wheat from his mill, but being unable to substantiate the charge by proof, the court adjudged that the miller should make an apology to the accused. "Well," says he, "I have had you arrested for stealing my wheat I can't prove it, and am sorry for it."—*Ibid.*

THE lower branch of the Ohio Legislature has passed a law which gives an undertaker the right, if a coffin is not paid for within three

years, to dig it up, eject the tenant and reclaim the property—a sort of mechanic's lien on the houses of the dead. Also the stonecutter may remove the monument which records the virtues of the dead—wipe out, as it were the mortuary honors, and in its place chisel other records. There is, in the passage of such a bill, an unconscious measure of the character and ability of those who vote for its passage.—*Legal Advertiser.*

MAGISTRATE (to prosecutor)—"And where did you say you caught the prisoner with your pig?"

Prosecutor—"At the bridge, about two miles from my house. He was carrying it."

Magistrate (to prisoner)—"Well, what have you to say?"

Prisoner—"Oh, your Honor, it was only a joke."

Magistrate—"I'll give you six months—because you carried that joke to far."—*Fliegende Blaetter.*

AT a recent election at Atchison, Kansas, U.S., Mrs. Mary T. Burton, formerly editor of the *Kansan* and at present postmistress, was elected police judge at Jamestown. Mrs. Jessie McCormick was elected police judge at Burr Oak. Both are strong prohibitionists. Mrs. Burton is the widow of a prominent politician who died from the effects of strong drink.

LAW SOCIETY.

EASTER TERM, 1891: MEETINGS OF CONVOCATION.

Monday, May 18th, at 10 a.m.
Tuesday, May 19th, at 10 a.m.
Saturday, May 23rd, at 11 a.m.
Friday, May 29th, at 11 a.m.
Saturday, June 6th, at 11 a.m.
Half-Yearly Meeting, Tuesday, June 30th, at 11 a.m.

Law Society of Upper Canada.

THE LAW SCHOOL, 1891.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

C. ROBINSON, Q.C. Z. A. LASH, Q.C.
JOHN HOSKIN, Q.C. J. H. FERGUSON, Q.C
F. MACKELCAN, Q.C. N. KINGSMILL, Q.C.
W. R. MEREDITH, Q.C.

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

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

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

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

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

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

Lecturers: E. D. ARMOUR, Q.C.
A. H. MARSH, B.A., LL.B., Q.C.
R. E. KINGSFORD, M.A., LL.B.
P. H. DRAYTON.

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

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

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

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

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

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

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

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

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

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

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

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral

methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

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

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

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

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

Equity.

Snell's Principles of Equity.

Statute Law.

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

SECOND YEAR.

Criminal Law.

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

Real Property.

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

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

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

Practice and Procedure.

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

Statute Law.

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

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

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

Criminal Law.

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

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition

Evidence.

Best on Evidence.

Commercial Law.

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

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

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

Statute Law.

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

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

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

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

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

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

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

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

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

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

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

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

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

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

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