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FOLLOWING our time-honoured custom, we shall issue but one number in each of the months of July, August, and September. Our next issue will therefore appear on the first of August. The long vacation is so completely given up to pleasure-seeking and recuperation that legal literature of all kinds is laid on the shelf. The seaside, the lakes, the mountains and the country have charms for the legal mind and body which "Comments on English Decisions," or "Early Notes of Canadian Cases" have, in long vacation, no power to rival.

BY section 29 of the Land Titles Act, (R.S.O., c. 116) it is provided that there shall be implied on the part of the person being registered owner of the land at the time of the creation of the charge, a covenant to pay the mortgage money and interest, at the appointed time and rate, and all taxes, sale-charges, rents, statute labour, or other impositions theretofore or thereafter imposed or charged on the land, and that in case of default all payments made by the owner of the charge may be added to the principal sum and bear interest. This is undoubtedly a wise provision, but it is to be regretted, we think, that the covenants to be implied are not more numerous and extensive. The only other covenant implied in the mere registration of a charge is one made necessary by the decisions of the courts in respect to interest after the principal money secured by an ordinary mortgage is due, viz., a covenant to pay interest, after the principal is due, half-yearly, at the appointed rate on so much of the principal money as for the time being remains unpaid. The almost invariable custom of solicitors and conveyancers in drawing mortgages is to insert all the ordinary statutory covenants. But in the ordinary charge under the Land Titles Act these are not implied. True, provision is made for inserting the words contained in certain of the covenants in the first column of the Act Respecting Short Forms of Mortgages, and the corresponding words of the second column are then to apply. But would it not have been much better if these covenants had been implied whenever land is charged under the Act with the payment of money? It would have been very easy indeed to make the proviso already in the Act for preventing the application of the covenants for payment of principal and interest, and for payment of interest at the appointed rate after maturity, extend to [any] other covenant. It would be more convenient to have the

covenants which are almost invariably inserted in mortgages, implied, without the trouble of actually expressing them; and, if for any reason, in any instance some of them are to be omitted, then provision can easily be made for briefly excluding such covenants.

Many of the charges already entered in the Land Titles office make no reference to the Short Forms Act, and have no special covenants, consequently they contain no power of distress for arrears of interest, and no agreement that, on default of payment of interest, the principal shall become due, and the power of sale contained in them is such as would be given by the brief clause in the first column of the Short Forms Act if the corresponding words in the second column did not apply. This is certainly a very meagre power of sale.

The tendency at the present time amongst those who lend money on mortgage security is to make the terms of the mortgage far more stringent than those of the Short Forms Act. It is only in rare instances that a mortgage is made more easy in its terms. The preponderance of convenience is certainly in favour of making the charge imply all the usual covenants, and inserting a clause in the Act, providing for a brief mode of excluding any of these which it may, for any reason, be desired to omit.

RECENT LEGISLATION.

With reference to the remarks in our issue for June 1st of this year, under the above heading, on the several subjects hereinafter mentioned, respectively, we wish to call the attention of our readers to the following points:—

An Act respecting Bills of Lading:—The conclusive evidence of an instrument as to the shipment of the goods, against the party signing it, is subject to the exception of actual notice of non-shipment to the holder of the Bill, and to the provision, that the master or person so signing may exonerate himself with respect to misrepresentation as to the shipment, by showing that it was caused without default on his part, and wholly by the fault of the shipper or holder, or of some person under whom the holder claims.

An Act respecting the Extradition of Criminals:—This Act is not to come into force with respect to fugitive offenders from any foreign State until a day to be named in a proclamation of the Governor-General with respect to such State; and shall cease to have effect with respect to fugitive offenders from any such State, on a day to be named in like manner; and shall apply only to offences committed in such foreign State after such day.

The Supreme and Exchequer Courts Act:—There is an exception as to the Province of Quebec, as respects appeals from a Court of Probate; and in the list "No. 1 of Maritime Province Cases," and "No. 2, Ontario Cases," the court may direct in what order the cases from the different provinces shall be entered.

An Act (c. 41) for the Prevention and Suppression of Combinations for and in Restraint of Trade:—Our remark as to the extremely problematical success of this measure is founded as well on the great difficulty of framing any provisions

which would meet the case, as on the singular way in which the provisions made by the Act are worded. In the Bill as introduced in the Commons by Mr. Wallace, combinations, agreements, or arrangements, for the purposes objected to were described, and made misdemeanors punishable by penalty not exceeding a certain amount, or imprisonment not exceeding a certain period, or both; and incorporated companies contravening the Act were made liable to forfeiture of their corporate rights and franchises so far as they were conferred or existed by virtue of any law of Canada; and the Act was not to affect the Revised Statute respecting trades unions. But by the Act as amended and passed, no new offence is defined and made punishable, but parties *unlawfully* doing certain things to restrain or injure trade or commerce, or *unduly* to effect certain purposes, are declared guilty of misdemeanor, and liable on conviction to a penalty not exceeding $4,000, nor less than $200, or to imprisonment for any term not exceeding two years; or if a corporation, to a penalty not exceeding $10,000, nor less than $1,000. The act constituting the offence must be *unlawful* by the law now existing, and the forbidden purpose must be *unduly* effected. We do not say there is anything unjust in these provisions, but they will be hard to advise or adjudge upon. The 22nd section of the Trades Unions Act, is that which exempts the purposes of such unions from being *unlawful* because they are in restraint of trade; but section 1 of the Act in question makes such restraint a misdemeanor, and is to be construed as if the said section 22 had not been enacted. How may this affect such unions?

An Act respecting Corrupt Practices in Municipal Affairs:—We are glad to see that the bribee is made punishable as well as the briber. How far might similar provision be made as to parliamentary elections?

THE LAW SCHOOL.

We presume it may now be considered that Mr. Justice Strong is no longer in the field for the principalship of the new law school. If he could have been secured there is no doubt that an overwhelming majority of those both in and outside the profession who take any interest in the matter, would have cordially approved of the selection. In default of so powerful a candidate, however, it is now most important that great deliberation should be exercised before the appointment is offered to anybody else. To select a second-rate man would be a deplorable mistake. The salary offered is a good one, and a thoroughly good man should be procurable for it; and it behoves the Benchers to take a broad and liberal view of the requirements of the situation, and spare neither time nor patience in seeking out and securing the best available candidate. Let us have a first-rate Canadian for the post by all means if we can find him; if not, let us have a first-rate Englishman; or if even that is denied us, let us throw out our net to the four quarters of the Globe, for a first-rate man we must have. A second-rate man—no matter how Canadian he may be—will not make the scheme a success—will not justify that compulsory attendance on the lectures which we understand is contemplated—and will bring disrepute upon the whole movement.

There is nothing in common between a jealous and narrow nativism and a wise and liberal patriotism. In his great book on the American Commonwealth, Professor Bryce, despite what Mr. Frederic Harrison terms in the *Nineteenth Century* the "good-natured character of his criticisms," cannot but deplore, and does on most unanswerable grounds deplore the narrow spirit of localism which characterizes the people of the United States generally, in respect, especially, to their selection of candidates for Congress and State Legislatures. The broader spirit of British institutions has prevailed to make this tendency, so injurious in its wide-spread results, less prevalent in Canada. Nativism, however, in the sense of preferring an inferior Canadian to a good outsider, is nothing but localism, and it is difficult, in our view, to exaggerate its folly when applied to such appointments as the principalship of a law school or a professorship at a university. It is no answer to say that it is discouraging to Canadians to feel that they cannot secure such appointments. Those who are to be taught and their interests alone should be considered in such matters,—and in the long run assuredly Canadian talent will be more advanced by such positions being held by really able and accomplished men, than by their being given to men who, *ex hypothesi*, would never have received them on their own merits, but owe their selection to the prevalence of a spirit which it is one of the chiefest aims of intellectual cultivation to dissipate. It is scarcely probable that a thoroughly good local man can be found for the principalship of the law school. Those who study law at all in this country almost invariably enter as soon as possible upon the practical work, first of a solicitor, and afterwards of an advocate. Few, if any, attempt to spend much time on the study of abstract jurisprudence or the philosophy of law in any of its branches. The whole conditions of the situation are too obviously against such studies to need our dilating upon them. Our sister colony of Australia is no doubt situated very much as we are in this respect, and certainly if the people of the city of Melbourne had—as in fact they very recently had—to look to England for a professor of law at their university, it will be little surprise if we have to do the same thing. The condition of things in London in these matters is very much the reverse of what it is here. The Bar in England is crowded with men who have attended lengthy courses of lectures and, in some cases, taken the highest honours in the jurisprudence schools of one or other of two of the oldest, the wealthiest and the best equipped universities in the world; and who, in the dearth of practical work, have, after supplementing their university training by some years' attendance in Barrister's Chambers in the Inns of Court, recurred to those studies for which their academic training has given them a taste and an aptitude; and in all probability have exercised their pen in magazine articles and reviews. From the ever increasing body of such men in London, a professor for our law school might, with a little trouble, by enquiring in the proper quarters, be secured, especially if, in addition to the salary offered the privilege of Chamber practice was extended, as it very well might be. In a very short time such a man would make himself quite sufficiently acquainted with what may be termed the local side of our law, and we venture to say the Benchers would never regret having looked for their man to that portion of our empire,

which must, from the very nature of things, for a long time be the principal seat of the intellectual life of our race.

The rules of the Law Society of Upper Canada concerning the reorganization of the law school have, we understand, been finally adopted by the Benchers in convocation, and approved by the judges of the Supreme Court of Judicature for Ontario, the Visitors of the Society, as is required by statute. We now give our readers a synopsis of the rules, and indicate the more important changes that have been made. The details connected with the working of the school are yet to be arranged by the legal education committee, who have power to make regulations not inconsistent with the rules, with respect to all matters relating to the proper working of the law school, but these regulations are to be reported to convocation at its first meeting after they are made.

The staff of the law school is to consist of a Principal, who shall be a barrister of not less than ten years' standing, not less than two lecturers, and two examiners, and it is provided that no person is eligible to be appointed examiner while holding the office of lecturer. The Principal is to have the supervision and general direction of the school, and is also to engage in lecturing, but it is expressly provided that he shall engage in no professional work other than that of consulting counsel, and he is not to be a member of any firm of practising barristers or solicitors, and he must reside in or near Toronto. He is to have the arrangement of the subjects and books for lectures, the branches to be treated of by each lecturer, the days and hours of lectures, and discussions in the school, subject to the approval of the legal education committee. For these services he is to receive a salary of $4,000 per annum.

The lecturers are to deliver *viva voce* lectures, to superintend the classes, prepare questions for classes, and generally to perform such duties as may be assigned to them by the Principal.

The course in the school is to extend over three years, and is to consist of lectures, discussions and examinations. The school year is to begin on the fourth Monday in September, and close 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. The work of each year must be completed and the examination thereon passed before a student is allowed to enter on the work of the next higher year.

All students-at-law or articled clerks, during the last two years of their attendance in chambers or service under articles, must take the second and third years of the school course; but if they are resident in Toronto during the last three years of their attendance or service then they must take the whole three years of the course. To this rule there are certain exceptions given below.

Provision is also made for accepting attendance at the lectures of any university law faculty approved of by convocation in lieu of the school course.

The fee payable by students is $10 for each term of the course, in advance.

Provision has been made for exempting from attendance those students and clerks who are graduates, and who, at the time of the coming into force of these rules, have entered upon the second year of their course; but if they are graduates and have not entered upon the second year of their course and are resident in Toronto, they must attend, at least, one term in the last year of the course. Five-year men who have entered upon the fourth year of their course are also exempt, but five-year men, now in the third year of their course and under service in Toronto, must attend at least one term. Five-year men in Toronto, who are in the second year of their course, must attend two terms in the school. Students and clerks outside of Toronto, admitted prior to Hilary term, 1889. are exempt from attendance.

We understand that hereafter examinations are to be held semi-annually, in May and September. The Committee is empowered to arrange examinations for those now on the books of the Society, in order that they may proceed to call and admission as heretofore.

One other important change is made; hereafter attendance for five years, or, in the case of a graduate, for three years in the chambers of a practising barrister, is required of candidates for Call to the Bar who have not served under articles in the usual way.

It must be evident to our readers that these regulations very seriously affect students, and also those members of the profession who practice outside of Toronto.

The expense consequent on attendance at a course of lectures for three sessions in Toronto is considerable and the extra fees charged add to the already heavy expense. Members of the profession outside of Toronto will be deprived of the services of the senior students during the busiest portion of the years in which their service is, by reason of growing knowledge and experience, most valuable.

It is important that the organization and management of the school should be such as to insure most thorough efficiency in every department. If the school is not made thoroughly successful, so that students will receive ample value for their money, and the public and profession be benefited by the increased thoroughness of professional training, there will not be anything like adequate compensation for the expense and inconvenience referred to. Much depends upon the appointment of the right man as Principal. If a scholarly man of wide legal knowledge, fitted by training and habit to instruct others, is appointed to the position, and if a sufficiently numerous body of competent lecturers are secured, then those most directly concerned will have the satisfaction of knowing that they are receiving full value for their time and money.

The necessity of great deliberation and care in appointing a Principal, is manifest. We have already enlarged upon this matter, and in connection with those remarks submit that if a competent local man cannot be found with a sufficiently wide range of knowledge and suited by temperament and training to discharge the duties of the office (and no one has yet been named who can be said to combine in his own person the necessary requirements), it would be well for some of

the Benchers, during their summer voyage across the ocean to see what can be done towards finding an efficient Principal in Great Britain. If necessary, some one might be charged with the duty of going over there for the express purpose of seeing what can be done in that direction. We hope that the mistake will not be made of appointing any person not thoroughly qualified to discharge the duties of the office. To do so would be to ruin the school in advance and to waste the time and money of students and inconvenience many members of the profession, without attaining any good result. The appointment of the proper man as Principal of the school, is of vital moment to the profession outside of Toronto. Their interests must not be overlooked, nor heedlessly sacrificed for the sake of a little time and trouble on the part of those who are their trustees in this matter, and to whom they look for protection.

As we go to press we hear that the Benchers have appointed Mr. W. A. Reeve, Q.C., Principal of the law school. Of the applicants for the position he was the best man. We are satisfied Mr. Reeve will not be lacking in his efforts to promote the interests of the school, and we hope it may prove a success under his management. At the same time we are still of the opinion that a serious mistake has been made in not going further afield and taking more time to find a person who, having larger experience and more thorough training, would more fully meet the many requirements of this most important position.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for June comprise 22 Q.B.D., pp. 641-749; 14 P.D., pp. 61-72; and 41 Chy.D., pp. 1-214.

PRACTICE—PARTIES—ADDING DEFENDANTS—RIGHT OF THIRD PARTY TO OBJECT—ORD. 16, R. 11 (ONT. RULE 324.)

In *Byrne* v. *Browne*, 22 Q.B.D. 657, a referee to whom a cause had been referred for inquiry and report, upon the application of the defendant, added a person as defendant under the following circumstances. The action was by a landlord for breach of covenant to repair. The original lessee had agreed to assign the residue of the term to one Diplock, who undertook to indemnify the lessee against the covenants in the lease. Diplock took possession, but no deed of assignment to him was executed. The lessee died, and her executors for a nominal consideration assigned the residue of the term to her son, who thenceforth received the rent from Diplock and paid it to the lessors. At the expiration of the term this action was brought against the son, and he claimed indemnity from Diplock and brought him in as a third party. The action was referred to a referee, and he, on the application of the defendant, added the

executors of the original lessee, that they might also claim indemnity from Diplock, the third party. The plaintiff and the executors did not object to the order, but it was opposed by Diplock. The Divisional Court (Denman and Stephen, JJ.) reversed the order, but on appeal the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) held that the order was right. The case is a curious one, because it will be observed that the defendants added, were persons against whom neither the original plaintiff or defendant had any claim or cause of action; and they were made defendants simply because they had a claim to indemnity against the third party, arising out of matters in question in the cause.

GAMING—PRINCIPAL AND AGENT—EMPLOYMENT OF AGENT TO BE FOR PRINCIPAL—8 & 9 VICT., C. 109, S. 18.

Cohen v. *Kittell*, 22 Q.B.D. 680, was an action brought by the plaintiff against the defendant for breach of contract in not making bets for the plaintiff as his agent pursuant to agreement. The plaintiff claimed to recover the excess of gains over losses which the plaintiff would have made had the bets been made; but the Divisional Court (Huddleston, B., and Manisty, J.) held the action would not lie; because, under the 8 & 9 Vict., c. 109, s. 18, "all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to have been won upon a wager." The contract between the parties, therefore, was to enter into contracts which would have been void at law, and the performance of which could not have been enforced; and the breach of such a contract by the agent, it was held, can give no right of an action to the principal, because the principal suffers no real loss which can be recognized in a court of law. But in the absence of similar legislation in this province there appears to be no reason why such an action could not be maintained here.

CREDITOR'S DEED—EXECUTION OF DEED—ALTERATION OF DEED—ADDITIONAL PARTIES EXECUTING DEED, EFFECT OF.

In re Batten, 22 Q.B.D. 685, an assignment for the benefit of creditors was made whereby the debtor assigned his property to trustees for his creditors' benefit, and made parties thereto of the fourth part "the several persons, companies, and firms whose names and seals are hereto signed and affixed respectively being creditors of the debtors, and all other creditors of the debtor acceding hereto." The trust declared by the deed was to divide the balance of the proceeds of the estate after payment of expenses, etc., "rateably among the creditors parties thereto, including as such creditors, if the trustee and committee of inspection shall determine, but not otherwise, such persons being creditors of the debtor as may have refused or neglected to execute these presents." The deed was executed on the same day by the debtor, the trustee and one creditor, and within seven days was registered as required by an Act of Parliament which avoids such deeds unless registered in compliance with the Act. Subsequently to the regis-

tration six other creditors executed the deed. Subsequently a petition in bankruptcy was presented against the debtor, and he was adjudicated a bankrupt, and a receiving order made, against which the trustee of the creditor's deed appealed; but his appeal was dismissed by the Divisional Court on the ground that the deed was void in consequence of its execution subsequent to registration by the six creditors. The Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.), however, held, that having regard to the provisions of the deed, it was properly registered, and its subsequent execution by other creditors did not have the effect of altering it, but was simply carrying out what the deed as registered intended.

MUTUAL INSURANCE—MARINE INSURANCE—LIABILITY OF UNDISCLOSED CO-OWNERS OR CONTRIBUTIONS TO LOSSES.

The short point determined in *Great Britain* v. *Wyllie*, 22 Q.B.D. 710, by the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) affirming Day, J., was simply this, that where the managing owner of a ship, having power to insure the vessel in a mutual insurance company, so insures it in his own name, he has authority to bind his co-owners to contribute to losses on other ships just as if they were actual members of the mutual insurance association.

INSURANCE (MARINE)—"IMPROPER NAVIGATION"—"IMPROPER STOWAGE."

In *Canada Shipping Co.* v. *British Shipowners' Mutual Protecting Association*, 22 Q.B.D. 727, Charles, J., was called on to decide whether a cargo of wheat which was tainted in consequence of the ceiling and limber boards of the vessel being saturated with a composition which had leaked from the previous cargo, was damaged "by improper navigation," and he held that it was not, and was of opinion that it was caused rather "by improper stowage."

SERVICE OUT OF THE JURISDICTION—BANKRUPTCY PROCEEDINGS.

The question *In re Wendt*, 22 Q.B.D. 733, was whether there is any jurisdiction to direct that an order requiring a bankrupt to attend for examination be served on the bankrupt out of the jurisdiction. The Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) were of opinion that the Court had no power to make such an order, because there was no express legislative provision therefor. Lord Esher says, "When the legislature have enacted that a thing is to be done by the Queen's Courts, the meaning is only that the Court may do that thing within the Queen's dominions, unless the legislature have expressly said that it may be done outside those dominions, in which case the Court has only to obey." It is possible that even this is too broad a statement of the rule, and that instead of Queen's dominions he should have said "the territorial jurisdiction of the Court," which is, of course, not a co-extensive term.

NUISANCE—MASTER AND SERVANT—CRIMINAL LIABILITY OF MASTER FOR ACT OF SERVANT.

The principle laid down in *Chisholm* v. *Doulton*, 22 Q.B.D. 736, is that a master cannot be made criminally responsible for the negligent act of his servant. In this case the defendant was summoned for negligently using a furnace so as not to consume the smoke, as required by an Act of Parliament. There was no defect in the furnace, but the act complained of was due to the negligence of the defendant's servant, but for this, Field and Cave, JJ., held the defendant could not be made criminally liable. The only exception to the rule that no man can be made criminally liable for the act of another is where the legislature has expressly so provided.

MUNICIPAL LAW—DISQUALIFICATION—MEMBER OF MUNICIPALITY "CONCERNED IN CONTRACT"—(R.S.O., c. 184, s. 77.)

Nutton v. *Wilson*, 22 Q.B.D. 744, disposes of a point in municipal law. By an Act of Parliament a member of a local board who is in any manner concerned in any bargain or contract entered into by such board, shall cease to be a member, and a penalty is imposed on any member acting when so disqualified. The defendant, a member of such as a board, was employed a sub-contractor by persons having a contract with the board; and it was held by the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.), affirming A. L. Smith, J., that the defendant was disqualified and liable to the penalty, he having acted when so disqualified.

SHIP—DAMAGE—IMPLIED REPRESENTATION OF WHARFINGER.

The only case in the Probate Division which it is necessary to notice is *The Moorcock*, 12 P.D. 64, in which the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.), affirmed the decision of Butt, J., noted ante vol. 24, pp. 580, holding that where a wharfinger agrees for hire to allow a vessel to discharge at his wharf, where the vessel must necessarily ground at low water, there is an implied representation on his part that the bottom adjoining the wharf is in such a condition as not to cause injury to the vessel, and is liable for the injury occasioned to the vessel by reason of its not being in that condition.

COMPANY—DIVIDENDS—PAYMENT OF DIVIDEND OUT OF CAPITAL—WASTING PROPERTY.

Proceeding now to the cases in the Chancery Division, the first is *Lee* v. *Neuchatel Asphalt Co.*, 41 Chy.D. 1, which was an action by a shareholder on behalf of himself and all other shareholders of a joint stock company, except the defendants, against the Company and the directors, to restrain the payment of dividends. The Company was formed to purchase a lease of, and work, an asphalt mine. The working of the mine necessarily diminished its value, and the directors, notwithstanding, proposed to distribute all profits realized over and above the working expenses. This the plaintiff claimed would amount in effect to a diminution of the capital of the company and should therefore be restrained. But Stirling, J.,

and the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) were of opinion that although an improper payment of dividends out of capital might be prevented, yet that there was no law requiring a company to keep its capital intact, or which prevents its paying a dividend, notwithstanding its capital has been sunk or lost: and though a payment of dividends might be restrained if no profits had in fact been realized, yet there was nothing to prevent a company dividing the profits actually realized over and above its working expenses, notwithstanding that owing to the wasting character of the property of the Company, the value of its capital was being yearly diminished.

THIRD PARTY—JURISDICTION TO GRANT RELIEF AGAINST THIRD PARTY—LIABILITY OF THIRD PARTY WHO DEFENDS, TO COSTS.

Edison v. *Holland*, 41 Chy.D. 28, is a case which throws some light on the effect of the somewhat curious procedure introduced, perhaps we might more properly say revived, by the Judicature Act in regard to third parties. The action was for the infringement of a patent. The defendant claimed indemnity from a third party, who was duly notified and obtained leave to appear, and defend the action. But the third party was not made a defendant and filed no pleadings, but appeared at the trial. The Court gave judgment at the trial, partly in favour of the plaintiffs and partly in favour of the defendant, but made no special order as to the third party. The plaintiffs appealed, and after judgment allowing their appeal with costs against the defendant, applied for an injunction and costs against the third party, and if necessary, to amend by adding the third party as a defendant. The injunction was refused by the Court of Appeal (Cotton and Lindley, L.JJ.), Cotton, L.J., holding that there was no jurisdiction to give a judgment against the third party as if he was a defendant, and that it would be wrong, after judgment in appeal, to allow the third party to be added as a defendant by amendment, so as to enable the plaintiffs to ask relief against him, which was not asked at the trial, and Lindley, L.J., though of opinion that the Court had jurisdiction to grant the liberty to amend, agreed that it was not proper to grant it in the present case. But the Court was unanimous that the third party, as well as the defendant, should be ordered to pay both the costs of the appeal, and the costs below, as the third party had in reality fought the plaintiffs throughout and failed.

TRADE MARK—INJUNCTION—FRAUD.

Thompson v. *Montgomery*, 41 Chy.D. 35, was an action to restrain the use of a trade mark. The plaintiff and his predecessors had for one hundred years carried on a brewery at a place called Stone, and their ale had become known as "Stone Ale," and they had registered several trade-marks which contained the words "Stone Ale" alone. The defendant built a brewery at Stone, over which he placed the words, 'Stone Brewery,' and when that was objected to by the plaintiffs, he altered it to "Montgomery's Stone Brewery," with a device containing the words, "Stone Ale," and a monogram somewhat resembling the plaintiff's. The

defendant also put up a similar device . one of his public houses at Liverpool. The action was brought to restrain the judgment from selling or advertising under the name of 'Stone Ale' or 'Stone ales,' any ale or beer not made by the plaintiff, and from carrying on the business of a brewer under the title of "Stone Brewery," or "Montgomery's Stone Brewery," or any other title calculated to induce the belief that the business carried on by him was the plaintiff's business, and from infringing the plaintiff's trade mark. The Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.), though holding that the words "Stone Ale" could not be properly registered as a trade-mark, yet held that the plaintiff had acquired by user a right to use the words 'Stone Ale' within the principle of *Wootherspoon* v. *Currie*, 5 H.L., 508, and being of the opinion on the evidence that the defendant was endeavouring, by his use of the words, fraudulently to pass off his ales as the plaintiff's, affirmed the injunction granted by Chitty, J.

NUISANCE - LANDLORD AND TENANT—IMPLIED AGREEMENT FOR QUIET ENJOYMENT—DEROGATION FROM GRANT.

Robinson v. *Kilvert*, 41 Chy.D. 88, was an action in which the plaintiff, the tenant of part of a building, complained that the defendant, his landlord, was using another part of the building, which he retained in his own occupation, in a way that was prejudicial to the plaintiff, and he based his right to relief on the score of the defendant's use of his premises amounting to a nuisance, or at all events, as being in derogation of his grant, and a breach of an implied agreement for quiet enjoyment. The facts of the case were, that the defendant had let to the plaintiff a floor of the building to be used by him as a paper warehouse, but the defendant did not know at the time of letting that the plaintiff was going to store any particular kind of paper, liable to be deteriorated by an amount of heat which would not hurt paper generally. After the demise to the plaintiff, the defendant commenced a manufacture in the cellar which required the air to be hot and dry, and used a heating apparatus. This raised the temperature on the floor of the plaintiff's room to 80°, but the general air of the room was not nearly so high, and it did not appear that the plaintiff's work-people were inconvenienced. The defendant found the excessive heat injurious to his brown paper, and made it less valuable, and hence the present action. The Court of Appeal (Cotton, Lindley and Lopes, L.JJ.), however, affirmed the Vice-Chancellor of the County Palatine in dismissing the action, and held that the landlord was not liable either on the ground of nuisance, or of implied agreement for quiet enjoyment. Lindley, L.J., says at p. 97, "If the effect of what the defendants are doing had been to make the plaintiff's room unfit for storing paper, I should have been prepared to hold that there was a breach" (*i.e.*, of the implied agreement for quiet enjoyment). "But the evidence falls short of that—it does not show that the room is made unfit for a paper warehouse—but only that it was made unfit for storing a particular kind of paper. Now if the tenant wants extraordinary protection for a particular branch of trade he must bargain for it

in his lease." On the question of nuisance, Cotton, L.J., remarks at p. 94: "In my opinion it would be wrong to say that the doing something not in itself noxious, is a nuisance because it does harm to some particular trade in the adjoining property, although it would not prejudicially affect any ordinary trade carried on there, and does not interfere with the ordinary enjoyment of life."

PRACTICE—APPLICATION TO ADDUCE FIRST EVIDENCE ON APPEAL—ORD. 58, R. 4—(ONT. R., 585).

Ormison v. *Smith*, 41 Chy.D. 98, is another case in which the novel practice introduced by the Judicature Act is shown to be not always attended with the most benefical results to the suitor. In this case 52 plaintiffs, each having a separate and independent cause of action, joined together in one suit to enforce their rights. Of these, 40 appeared at the trial and gave evidence, and judgment was given in their favour. The other 12 did not appear; an adjournment was asked but refused, there being no evidence to show why they were not present. There being no evidence in favour of the absent 12, they were ordered to pay the costs occasioned the defendants by their being made co-plaintiffs. The 12 appealed, and nine of them on the appeal applied to be allowed to attend and give evidence at the hearing of the appeal, on the ground that at the trial six of them were too ill to attend, two had been travelling and had not received notice of the trial, and one had been called away to nurse a sick friend. But the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) were of opinion that none of these grounds were sufficient to warrant the Court in making the order, because the plaintiffs' solicitor was bound to keep up communication with his clients, so as to be able to produce them at the trial, or be able to produce such evidence of their inability to attend as would enable him to obtain an adjournment. Both Cotton and Lopes, L.JJ. indeed being of opinion that as the appellants had given no evidence at all at the trial, their application did not come within the spirit of Ord. 58, r. 4, (Ont., r. 585).

LESSOR AND LESSEE—MISDESCRIPTION OF LESSOR'S TITLE—COMPENSATION.

In *Clayton* v. *Leech*, 41 Chy.D. 103, the right of a lessee to compensation after conveyance of his lessor's title to which the covenants in the lease do not extend, there being no stipulation for compensation in the original contract, was considered. The facts were, that the landlord thinking he had an unexpired term of 32 years, whereas, in fact he had only one for 14 years, agreed with the plaintiff in writing, to grant him a lease for 21 years, nothing being said about compensation. The plaintiff accepted the lease for 21 years, and a year afterwards, on attempting to sell it, it was discovered that the defendant had only an unexpired term of 13 years. The plaintiff then claimed compensation; this the defendant declined to give, but offered to execute a new lease for the unexpired term, less three days. The action was then brought for rectification of the lease, and compensation; but the Court of Appeal (Cotton, Lindley, and Brown, L.JJ.) agreed with Kekewich, J., that as the compensation was claimed in respect of a defect in

title, which plaintiff might have discovered before he took his lease, and there was no contract as to compensation, he was not entitled to compensation after taking it. The Court points out that *Besley* v. *Besley*, 9 Ch.D. 103, is not overruled by *Palmer* v. *Johnson*, 13 Q.B.D. 351, because the latter case turned on an express agreement for compensation, which it was held might be enforced even after the acceptance of a conveyance.

MORTGAGE—MORTGAGEE—COMMISSION—BONUS—COLLATERAL ADVANTAGE—REDEMPTION—SUBSEQUENT MORTGAGEE.

Mainland v. *Upjohn*, 41 Chy.D. 126. is another decision of Kay, J., on the law relating to mortgages, which follows close on *Jones* v. *Kerr*, noted ante p. 271, and may be regarded as a sort of supplement thereto. This was a redemptive action by a second mortgagee, in which the plaintiff insisted that the first mortgagee was not entitled to recover certain sums which he had by agreement with the mortgagor deducted from the amount of the loan by way of commission, over and above the interest which was secured by the mortgage. But it was held by Kay, J., that as the transaction was one that was well understood by the parties, and there was nothing unfair about it, that the deduction of the commission from the amount of the loan with the consent of mortgagor, was equivalent to a payment which could not be recovered back, and that the first mortgagee was entitled to hold his security for the full amount of the loan without any deduction for the commission retained; but it was held that the first mortgagees could not recover commission which had been agreed to be paid in addition to interest, but which had not actually been paid. A puisne incumbrancer was held to have the same right to object to a prior mortgagee's account as the mortgagor himself, but no greater right.

COSTS—COMPANY—WINDING UP PETITION—WITHDRAWAL.

In re Criterion Gold Mining Co., 41 Chy.D. 146, is a decision of Kay, J., on a mere question of costs. A petition for winding up a company was withdrawn, and he held that there is no rule of practice entitling shareholders and creditors appearing on the petition, to a separate set of costs, but that the matter is one within the discretion of the Court, and to be determined according to the circumstances of each case. In the present case, the petitioners had been induced to withdraw in consequence of an arrangement between them and the Company, for securing payment of the petitioner's debt, the shareholders appearing to oppose the petitioner, were allowed only one set of costs.

PRACTICE—JURISDICTION—DISCOVERY IN AID OF FOREIGN ACTION.

In Dreyfus v. *Peruvian Guano Co.*, 41 Chy.D., Kay, J., held that an action for discovery in aid of a foreign action cannot be entertained.

COMPANY—WINDING UP—CONTRIBUTORY—PAYMENT OF SHARES IN CASH—SET OFF OF PRESENT DEBT AGAINST LIABILITY FOR FUTURE CALLS.

In re Jones, Lloyd & Co., 41 Chy.D. 159, North, J., held, that where a shareholder in a company agreed with the company to set off a present debt due and

payable to him by the company in cash, against his liability for future calls, that such agreement amounted to a payment of the calls in cash.

CHARITY—MORTMAIN—9 GEO. II., C. 36—BONDS OF HARBOUR TRUSTEES.

The question *In re David Buckley* v. *Royal National Life-Boat Institution*, 41 Chy.D. 168, for the consideration of North, J., was whether certain bonds issued by harbour trustees, constituted an interest on land within the meaning of 9 Geo. II., c. 36. The trustees in question were entitled to collect tolls, among other things, for the use of bridges, and by the bonds in question, which were issued in pursuance of a statute, they assigned to the obligee "such portion of the several rates, tolls, rents, and other moneys arising by virtue of the Act, as the said sum of £100" bore to the whole amount advanced, upon the credit of such rates, tolls, etc. This, North, J., held to amount to an assignment of the bridge tolls specifically, and that these tolls constituted an interest in lands, and that consequently the bonds in question were within 9 Geo. II., c. 36, and could not therefore be given by deed to charities not authorized to hold land.

PAYMENT OF MONEY OUT OF COURT—ERRONEOUS ORDER MADE DEALING WITH FUND IN COURT—SOLICITOR, LIABILITY OF.

In re Dangar's Trusts, 41 Chy.D. 178, is a case deserving the careful attention of solicitors. In drawing up an order relating to money in Court it was, through the negligence of the solicitor, erroneously made to apply to the whole of the fund in Court, instead of to a part of it only. In pursuance of the order the money was paid out to persons not entitled, and this was an application by the party injured, to compel the party to whom the money had been erroneously paid, and the solicitor, to make good the loss. Stirling, J., after a very elaborate and careful review of the case, held that the solicitor was liable to make good any part of the fund which could not be recovered from the estate of the person to whom it had been erroneously paid.

FAMILY SETTLEMENT—INFLUENCE OF FATHER—INDEPENDENT ADVICE—BENEFIT TO FATHER.

The only case remaining to be noticed is *Hoblyn* v. *Hoblyn*, 41 Chy.D. 200, which was an action to set aside a re-settlement of family estates, on the ground that the settlor was under the control of his father and had no independent advice, and that by the settlement a benefit was given to the father. But Kekewich, J., upheld the settlement, holding that for the validity of a re-settlement of family estates by a son, being tenant in tail in remainder, it is not essential that the son should have independent advice, and the Court will not inquire whether the influence of his father was exerted with more or less force. But when the father obtains a benefit, that fact necessarily arouses the jealousy of the Court, but such a provision is not necessarily unfair, nor, if unfair, is it fatal to the entire arrangement, and the objectionable provision may be expunged without affecting the validity of the rest of the deed; and in the present case such a provision was released by the father, and the rest of the settlement was held good.

Reviews and Notices of Books.

The Amendments and Additions to the Public Statutes of Ontario Subsequent to the Revised Statutes, 1887. Arranged in a form suitable for consolidation or reference, with an index. By F. J. JOSEPH, of Osgoode Hall, Barrister-at-Law. Toronto: Rowsell & Hutchison, 1889.

To the legal profession, when several years have passed since the last consolidation of the statutes, the arrival of a new revision and consolidation, embracing all public enactments since the last consolidation, is a welcome event. It seems but a very short time since the last revision of the Ontario Statutes was put into the hands of lawyers; yet, short as the time is, the legislative activity of the provincial law-makers during two sessions has made extensive inroads into the revised statutes, and has not only changed many of them, but has also made extensive additions thereto. It is troublesome to have so often to refer to these books to find what the legislature says on the topic of inquiry. Our author seeks to minimize that trouble, if not to wholly remove it.

The book before us contains all the amendments and additions of a public character made during the last two sessions. This book is printed on only one side of the paper, and in the margin, in bold-faced type, the chapter and section of the revised statutes after which the amendment could be most advantageously inserted, are indicated. The idea is that, if it be so desired, the book may be cut up into slips and pasted into the revised statutes at the proper places. In that way the nearest approach that can at present be made to a consolidation of the statutes up to the present time, is obtained. The idea is a capital one, and Mr. Joseph has carried it out with his usual care and ability. The table of contents of the revised statutes may be amended by means of the additional references prepared for that purpose, so that it will completely indicate not only the old enactments but also the changes and additions.

However, if one does not wish to cut up the book, he may use it as a separate volume, and for this purpose it has a very complete index. There is also a table showing where Acts and parts of Acts subsequent to the revised statutes have been placed. The book is admirably fitted to save time and trouble in the use of the statutes. We are pleased that it has been published.

Handy Book on the Dominion and Ontario Franchises, with Notes, etc. By THOMAS HODGINS, Q.C. 124 pp. Toronto: Carswell & Co., Law Publishers.

This is a very useful little work, containing as it does the Act of last session amending the Franchise Act with that Act itself; the Manhood Suffrage Act of last year, and an Act respecting oaths under the Manhood Suffrage Act.

Our readers are well acquainted with previous works of a similar character by Mr. Hodgins, and so we need only say that in this one he quite sustains his reputation as a careful and painstaking annotator.

One thing, however, he has not undertaken to do—knowing, perhaps, the impossibility of it—and that is to explain the apparently unworkable nature of some of the chief sections of the Franchise Amendment Act. It has some way leaked out that at the meeting here last month of the county judges and revising officers, they were very far from being unanimously of opinion as to how the provisions of this Act are to be worked out, and as far as we can gather each was left to decide upon his own course of action. We cannot learn, so far as our inquiries go, that any of the county judges saw the Act in question before it was passed, and one of them told us that he never had received any Bills introduced into the Commons, and he believed his brother judges were in the same position.

Now as many Acts are there passed affecting the duties of our County Court judges, would it not be prudent to give those who have the carrying out of them an opportunity to supervise them before they become law? They, of all men, ought to be able to anticipate any difficulties likely to arise in the working of them. We believe that a copy of every bill introduced in the Ontario Legislature is sent at once to the county judges, and we have no doubt that they are sometimes able to point out improvements that might be made.

We understand that one of the many difficulties that arise under the Act we speak of, is as to how, when a new subdivision is to be formed, the list of names therefor—as taken from other subdivisions—is to be prepared; whether to be written out by the revising officer, or to be sent to Ottawa to be printed. From a circular issued by the Queen's printer, and which has appeared in some of the newspapers, we see it is suggested that these names be inserted in every supplementary list of names to be added, the fact being overlooked that the Act directs that that list is to contain the names of those persons *not already* on the original list. A still greater difficulty appears to arise under the new section 21, which directs the revising officer, after the final "revision," to correct the original list, by inserting in their proper places the names of the persons in the supplementary list of names added. This it is impossible to carry out literally, as there are no spaces left in the original list for that purpose: and if the revising officer has to make out a fresh list of all names, in alphabetical order, we pity him, when the amount of the remuneration he is to receive for all his work is considered.

A cursory examination of the Franchise Act leads us to the belief that the cost of printing in connection with these lists is likely to make a serious demand upon the finances of the country, and we cannot help contrasting it with the simplicity and inexpensive character of the Ontario Voters Lists Act.

Notes on Exchanges and Legal Scrap Book.

UNSWORN TESTIMONY BY CHILDREN.– Can a child, too young to be sworn, give unsworn evidence under the new Oaths Act? The words of the Act are, that "every person upon objecting to be sworn, and stating as the ground of such objection either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation," etc. We think, on the whole, that a child refusing, from fright or otherwise, to be sworn, could not be said to "object" under the Act to do what by the hypothesis he would not understand; but in Mr. Justice Stephen's Digest of Evidence (Note XL. on Article 107), the opinion is expressed that the Evidence Amendment Act, 1869 (32 & 33 Vict., c. 68, s. 4), repealed by the Oaths Act, 1888, rendered a child unfit to be sworn a competent witness by affirmation, on the grounds that "if a person who deliberately and advisedly rejects all belief in God and a future state is a competent witness, *a fortiori* a child who has received no instruction on the subject must be competent also." There is much force in this argument, and we hope that the passing of the Oaths Act may lead to the question being judicially determined.—*Eng. Law Times.*

LAW COURT COSTUME.—It is stated that a Montreal Judge has severely reprimanded a lawyer who appeared in court wearing a gown over a tweed suit. The lawyer said he did not see what difference it made whether his suit was tweed or broadcloth so long as he behaved himself; and he doubted whether any judge had a right to peer under his gown to see what kind of clothes he wore. The judge, however, was inexorable, and declared that a tweed suit must not be worn with a gown.

However, as the summer advances it may become the turn of the Bar to rebuke the Bench for similar breaches, etc., of etiquette. And if a precedent be required, an old one, the newer on that account to many readers, may be found in *The Barrister*, published in the year 1792. Quoth our author:—"A late worthy Baron of the Exchequer, who cloathed an excellent head and honest heart rather too negligently, met with no ill-timed sarcasm from a learned Serjeant who had made the Court wait one morning on the circuit. On his taking his place, the Baron, who sat as judge, observed rather sharply:

"Baron.—Brother, you are late, the court has waited considerably.

"Serjeant.—I beg their pardon; I knew not that your Lordship intended sitting so early; the instant I heard your trumpets I dressed myself.

"Baron.—You was a long while about it.

"Serjeant.—I think, my lord, (looking at his watch) not twenty minutes.

"Baron.—Twenty minutes! I was ready in five after I left my bed.

"Serjeant.—In that respect, my dog Shock distances your Lordship hollow; he only shakes his coat and fancies himself sufficiently dressed for any company."
—*Irish Law Times.*

How to Become a Notary.—The reign of red tape is far from being ended in the old world if we may judge by the following account of the steps necessary to become a notary public in England. It is from the English *Law Journal*:—"The receipt for making a solicitor into a notary in the country, begins, like Mrs. Glasse's, with 'First catch your district.' This district must be proved to have an insufficient number of notaries for its due convenience and accommodation. It is not enough to find a district, however large and populous, without a notary, to satisfy this requirement, because the district may not require a notary at all, and probably does not if its centre is an inland town without any trade with foreigners. Testimonials, certificates or proofs as to character, integrity, ability and competency may be required, and application must be made to the Court of Faculties of the Archbishop of Canterbury in Knightrider Street. It will be heard by the master of that Court, who is now Lord Penzance, and who has power to make rules regulating applications. There is an appeal to the Lord Chancellor, who, if the application was refused without just and reasonable cause, will direct an injunction to the Master of the Faculties, who, if he disobey it, will incur heavy penalties, and the faculty may be granted by two prelates named by commission under the Great Seal. So dignified is the office of a notary public."

Common Carriers.—In *New York, L. E. & W. R. Co.* v. *Burns*, New Jersey Court of Errors and Appeals, May 17, 1889, it was held that a common carrier employing a servant to work at a terminal point, and contracting to transport him to and from work, cannot through its train officials lawfully require him to vacate a seat which he is occupying in the car to which he has been duly assigned. The court said: "Whether his relations to the company was that of servant or passenger, his right to transportation rested in contract, the difference being merely in the form of the agreement. In either case, in the absence of anything to the contrary, the right to transportation will he held to include the ordinary incidents of railroad carriage. The terms offered plaintiff by the defendant included passage each way to and from Jersey City. This he accepted, and the defendant cannot now import into the contract any radical departure from its ordinary significance. If something different from an ordinary right of passage was intended, some intimation should have been given plaintiff at the time the offer was made and accepted. If pursuant to some regulation of the company the right to occupy a seat during the transportation contemplated by the agreement was a conditional right only, then actual notice thereof should have been given plaintiff, in order that the parties might deal with each other with equal knowledge. Plaintiff was not employed to work on the train, hence notice of train regulations will not be imputed to him. His work was at a terminus, and the offer of carriage as part of his compensation did not disclose anything different from an ordinary passage. It is true he was an employee of the company, and hence was subject to obey reasonable instructions from the proper officials. Had he intruded into a car reserved for ladies, or unsuitable for his accommodation, he might have

been required to leave it for another one; but when his immediate boss had indicated the smoking-car as the proper place for him, and it came down to the question of his right to be seated, he was not bound to take from the train-hands orders which would in effect deprive him of an essential part of his contract, and perhaps expose him to dangers for which he had not stipulated. The arguments of counsel for defendant, based on the supposed analogy between private master and servant and the present case, are inapplicable, for the obvious reason that the contracts of a common carrier for carriage must always take color from the *quasi* public character of the chief contracting party. I may compel my servant to vacate the seat I have assigned him to in my carriage for the same reason that I may refuse to receive him in at all, notwithstanding he offer me money for his fare."—*Albany Law Journal.*

LEGAL NOISE.—Every good citizen is interested in knowing how much noise the law will compel him to endure at the hands of his neighbours without redress and many citizens who are not good will doubtless like to ascertain how much noise they can inflict upon their neighbours without fear of punishment. Several decisions bearing upon these points have lately been made by the courts. One broad principle well established in the law of noise, both in this country and England, curiously illustrates the serious bent of our Anglo-Saxon nature, and that is the sharp distinction drawn between money-making noises and those which are made in the pursuit of pleasure. The law is tender to a steam-engine or a boiler-maker, and will allow them to disturb a whole neighbourhood with impunity, but is severe on a brass band or a game of skittles. The good citizen must be wary about playing bowls or skittles in populous places. The Italians order this matter differently, and restrain blacksmiths, boiler-makers, etc., within somewhat close limits as to time and place, whereas they allow musical merry-makers to make night hideous or beautiful, as the case may be, without any restraint whatever.

The dog, in English and American jurisprudence, stands upon the border line, because he may be considered in either aspect—as kept for use, when a watch-dog, or for pleasure, when regarded merely as a companion or an ornament. Here, however, we run against another principle of the common law, according to which dogs are privileged persons. For instance, it is unlawful for a farmer to shoot another's dog, who has eaten his sheep, provided it be the animal's first offence of that kind: for the dog who is young in the sin of sheep-killing may repent and lead a respectable life thereafter; but if he has already been convicted of the crime, then it is lawful to shoot him. In other words, as Lord Mansfield once said, "the law allows every dog in England one bite at a sheep."

It has, however, been held that "the noise produced by a dog barking in the night is a nuisance, and that a man may shoot the dog and abate the nuisance when on his own premises"—that is, we presume, when the dog is on his own (the shooter's) premises; for it has never been lawful for a man to stand on his own

premises and shoot a dog in his neighbour's yard. A great judge, Lord Kenyon, held that a dog barking at night is not a nuisance; but it is doubtful if this would be considered good law at the present day. According to the definition given by one writer, a noise is a nuisance when it is "unusual, ill-timed, or deafening." This is plainly incorrect, for the noise of a nightingale in the streets of Boston would be "unusual," but hardly a nuisance. Some very "ill-timed" noises are also, in the eyes of the law, not nuisances. Thus it has been held, in the case of *Pool* v. *Higginson*, that it is not a nuisance for the parent of an infant suffering from colic to trundle a baby-carriage all night in a boarding-house, over the head of a nervous bachelor editor. The noise may not have been unusual, and perhaps was not deafening, but it would be an abuse of language to say that it was not "ill-timed." Probably what saved the parent in this case was the fact that the noise was useful, for the evidence tended to show that the baby was relieved by the trundling. On the other hand, useless noises, "such as a concert [we quote from a decision of the Supreme Court of Massachusetts], although they disturb but a single person, may constitute a nuisance." It has very properly been held that a "show having brass bands, when continued two weeks," is a nuisance. It is not likely that many people will quarrel with this decision.

A kindred subject is that of nuisance by vibration. If a man attempts to operate a steam-hammer next door to a dwelling house the law will restrain him. One authority states the rule as follows: "The vibration must produce such a condition of things as, in the judgment of reasonable men, is naturally productive of actual physical discomfort to persons of ordinary sensibilities and of ordinary *tastes* and *habits*." The words in italic seem to imply that some persons like more vibration than others, and are in the habit of "vibrating" themselves.

Residents in the Back Bay who are accustomed to pile-drivers in their close vicinity may be said to have acquired the habit of vibrating, but we doubt if they have any "taste" for it. However this may be, the sum of the matter is, that in the interest of trade or manufactures, you may vibrate or deafen your neighbour, with few restrictions, but that for purposes of pleasure your faculty of noise-making must severely be repressed.—*Boston Daily Advertiser.*

THE PLACE OF LAW IN CIVILIZATION.—We often hear the remark that as the world grows better there will be less and less need of lawyers; and the logical conclusion follows that when all men become perfectly upright and honest, lawyers will be wholly unnecessary.

Such views result from a superficial observation of the part that law plays in the progress of human society.

Even if the remark were true, the time is so long before such a state of human perfection can be expected, that it is idle to consider it. It does, however, furnish a text for a brief comment upon the part that law plays in the history of civilization. With the uncivilized man the word business is unknown. He kills with his rude implements of death whatever he needs for food, or what-

ever threatens his safety. He works only so far as self-preservation compels him to. Activities, industries, the clashing of competitive interests are to him unknown. The relations of one member of a savage tribe to the others of his race are few and unvaried. The occasions for disagreement are few in number and confined to a small class of interests. Death among them leaves no accumulations of property, the rights to which must be settled. Common carriers are unknown, and hence the liability and duty of that class of persons are also unknown. Manufacturing, shipping, the transportation of commerce, and partnership relations exist only in the rudest form, if at all, and consequently the rights and duties incident to all such relations never come into dispute. Their relations are so few in number that their laws are necessarily few and simple. If we pass from this rude people into the presence of the most highly civilized classes of American or European countries, we observe an endless variety of relationships. Division of labour produces diversity of interests: the endless variety of things possessed as property, gives rise to a correspondingly endless series of rights and duties. Manufactures, mining, commerce, trade in its endless diversity, transportation of every kind, personal liberty as conceived in the refinements of modern thought, our domestic relations endless in number and unequalled in importance, our complicated governmental machinery of towns, counties, villages, cities, states, encircled within a national authority, present a complicated and involved mass of rights and obligations of increasing importance, and of endless multiplication in number: concerning all of which there must be an understanding and agreement among men in the form of a rule of action, otherwise business must cease and civilization become impossible.

Hence from the simplicity of barbarian life to the complex conditions of the civilized world, we find the necessity of law increasing in proportion to the advancement of human society.

Civilization is not merely a multiplication of man's desires, it is also a multiplication and an interweaving of his interests,—a multiplication of his conditions increasingly important, and increasingly complex.

A common understanding, a uniform rule of adjustment in the endless collisions of interests, personal rights, business competitions, and of antagonistic industries must be agreed upon; and such rule of order, so agreed to, and duly enacted by proper authority, is the law governing those complicated and opposing rights.

Every step in civilization adds an appendix to our statutes, either increasing them by new laws or modifying them by necessary changes in the old. The higher the civilization of any State the more numerous its laws. Each advancing step in science and invention opens the way and reveals the necessity for new enactments. The telegraph, the telephone, the railroad, and the innumerable number of corporate existences that have sprung into being during the last decade have demanded constant legislative and judicial attention. Civilization is the progress from the simple to the complex. And as society, in its business, its division of labour, its social relations and political conditions become more intricate and involved, so will its jurisprudence become proportionately more comprehensive and refined.

There is a constant element in law, consisting of the fundamental principles of natural justice that runs through every system of jurisprudence the world has seen; but there is also a varying element—an element ever changing to meet the endless demands of social progress—and in the course of human advancement this element enlarges its scope, multiplies its refinements and attains a degree of complexity proportionate to the involved interests and conditions of mankind, and as social relations and political conditions become more intricate and involved, so will jurisprudence become proportionately more comprehensive and refined. This varying element, ever changing in its efforts to meet the endless demands of social progress, constitutes by far the most comprehensive and complicated part of any system, and it multiplies in its refinements, enlarges its scope, demands greater minds and profounder thought for its comprehension and mastery, as society itself progresses in the arts of peace. There is, therefore, and ever will be a growing demand for an accurate knowledge of the laws of men and for an increasing skill in their just and benevolent application.

No class of men has so much to do with the character of a country's laws as its lawyers. Other classes of citizens arise in spasmodic ire under the real or fancied hardship of some social condition and legislate rashly for a season, but lawyers and courts ultimately examine, test and pass judgment upon such enactments, and by their judicious management, and under their broad views of the just and expedient, the law is made an instrument of good, or prevented from becoming an instrument of evil.

There is a general feeling all over the country that there should be a more thorough preparation on the part of gentlemen entering the bar. A longer course of study and a more thorough drill in the fundamental principles and details of the profession are demanded.

There is no profession where a higher order of intellect, a greater degree of culture and a more exalted standard of morals are required than in the legal profession. The demand in the practice of law is for men of profound learning, for minds trained to accurate and logical thinking, and for men whose integrity is beyond suspicion. For such the demand grows, and will continue to grow, so long as men shall progress in the science of government and in the arts of peace. —*The Advocate.*

DIARY FOR JULY.

1. Mon.....Dominion Day. Long vacation begins.
3. Wed. ....Quebec founded 1608.
4. Tue .....Declaration of American Independence 1776.
6. Sat.....County Court Sittings for Motions, except in York, end.
7. Sun.....*Third Sunday after Trinity.*
10. Wed .....Christopher Columbus born 1447.
13. Sat.....Sir John Robinson, 7th C.J. of Q.B., 1829.
14. Sun.....*Fourth Sunday after Trinity.*
15. Mon.....St. Swithin.
19. Fri.... ...Quebec capitulated to the British, 1620.
21. Sun.....*Fifth Sunday after Trinity.*
22. Mon.....W. H. Draper, 9th C.J. of Q.B., 1863. W. B. Richards, 3rd C.J. of C.P., 1863. Act uniting Upper and Lower Canada assented to, 1840.
24. Wed.....Battle of Lundy's Lane, 1814.
25. Thu .....Canada discovered by Cartier 1534.
28. Sun.....*Sixth Sunday after Trinity.* Wm. Osgoode, 1st C.J. of Q.B., 1792.
30. Tue .....Relief of Derry.

Early Notes of Canadian Cases.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

FERGUSON, J.] [Dec. 7, '88, and Jan. 30, '89.

O'NEILL *v.* OWEN.

Will—Execution—Attestation—Revocation—Devise to infants—Conveyances by heirs-at-law—Registration—Priorities—R.S.O., 1877, c. 3, s. 75—"Inevitable difficulty"—Crops—Possession—Costs.

The plaintiffs were the devisees of the land n question in this action under the will of H. O'N.; the defendant A. O'N., the father of the plaintiffs, was one of the heirs-at-law, and had obtained conveyances of the land from the other heirs-at-law of H. O'N.; and the defendant O. was the assignee of all the estate of A. O'N.; and had besides a mortgage from A. O'N. over the land in question.

On the 17th April, 1877, H. O'N. signed a will in the presence of one witness; another witness was then called in, before whom the testator acknowledged his signature, and then both witnesses signed in the presence of the testator and of each other. On the 23rd April, 1877, the testator, desiring to have two changes made, caused two sheets of the will to be rewritten and read to him; the two sheets were then put into the place of the old ones, the document pinned together, and on the last sheet, which was not one of those rewritten, the date 17th was changed to 23rd. The same witnesses were then called in and the testator then acknowledged his signature to the will, and each of the two witnesses his. The two sheets taken out of the will were afterwards destroyed by one H. by the direction of the testator, but not in his presence. The testator died a few days after this without having made any other will. The will of the 23rd April was offered for probate, but was refused by a Surrogate Court.

Held, that the will of the 17th April was duly executed; but that the will of the 23rd April was not duly executed and probate of it was properly refused; and the will of the 17th April was not revoked by the destruction of the two sheets, out of the presence of the testator, nor by the defective execution of the will of the 23rd April, the intention of the testator not being to cancel the whole of the earlier will, but only to make two changes in it, and he being under the belief the later will was a valid one; and it was adjudged that the earlier will should be admitted to probate.

By this will the plaintiffs were to come into possession when they should become of the age of 21 years, not being less than 12 years from the date of the testator's death, and they were infants of tender years at the time when, after the death of H. O'N., the defendant A. O'N., their father and guardian, agreed with the other heirs-at-law for the purchase of their shares, on the assumption that H. O'N. had died intestate, and obtained conveyances from them. A. O'N. and the other heirs-at-law were at this time aware of the facts in regard to both the wills, and were also aware that, after probate of the will of 23rd April had been refused, it was the opinion of the solicitor for the estate that the will of the 17th April was properly executed, and that probate might be obtained.

Held, that the plaintiffs' rights were not defeated or prejudiced by the agreement and conveyances referred to; nor were the plaintiffs' rights defeated by the registration of the conveyances to A. O'N. and his assignment and mortgage to O.; for A. O'N. had actual notice and knowledge of the plaintiffs' rights; and the plaintiffs were prevented from registering the will by "inevitable difficulty" or "impediment" within the meaning of R.S.O., 1877, c. 3, s. 75.

The defendant O. by a counter-claim asked for damages, being the value of a crop in the ground and deprivation of possession of the land for a year or more, but a reference to assess these damages was refused. The plaintiffs and the defendant O. were allowed costs out of the estate, except that the defendant O. was ordered to pay the costs occasioned by charges made by him of fraud and collusion; no costs were allowed to or against the defendant A. O'N.

W. R. Meredith, Q.C., and *T. G. Meredith* for the plaintiffs.

M. D. Fraser and *R. M. Meredith* for the defendant Owen.

The defendant Albert O'Neill in person.

ROSE, J.] [June 8.

IN *re* CROFT AND TOWN OF PETERBOROUGH.

Municipal corporations—By-law—Submission to electors—Liquor License Act, R.S.O., c. 194, s. 42—"Electors," meaning of.

S. 42 of the Liquor License Act, R.S.O., c. 194 provides for the Council of any municipality passing a by-law requiring a larger duty to be paid for tavern or shop licenses than is imposed by s. 41, "but not in excess of $200 in the whole, unless the by-law has been approved by the electors in the manner provided by the Municipal Act with respect to by-laws which, before their final passing require the assent of the electors of the municipality."

A municipal council having submitted to the electors and passed a by-law providing for a larger duty than $200, a motion was made to quash it on the ground that certain leaseholders had not been allowed to vote upon it, it being assumed by the council that s. 309 of the Municipal Act, R.S.O., c. 184, governed as to the votes of leaseholders.

Held, that s. 309 did not apply; and that the word "electors" in s. 42 must be read as referring to the same class as "electors" in s-s. 14 of s. 11 of R.S.O., c. 194, viz.: those entitled to vote at an election for a member of the Legislative Assembly; and the reference to the Municipal Act in s. 42 must be confined to the manner of holding the election.

The by-law, not having been submitted to or approved by the electors according to this interpretation of the statute, was quashed with costs.

Poussette, Q.C., for the plaintiff.

E. B. Edwards for the town of Peterborough.

ROSE, J.] [May 17.

WYLIE *v.* FRAMPTON.

Married woman—Conveyance of real estate—Necessity for joining husband—Tenancy by the curtesy initiate—R.S.O., c. 132, s. 4, s.s. 2, 3—Order under 51 Vict., c. 21.

The question in this action was whether the husband of the plaintiff was entitled to a tenancy by the curtesy initiate in certain land of the plaintiff which she agreed to sell to the defendant, so as to require the joining of the husband in the conveyance.

The marriage took place in 1867, and issue had been born alive. The land was acquired by the plaintiff, one portion in 1879, and the remainder in 1882.

Held, that the case was governed by R.S.O., 1877, c. 125, s.s. 3 and 4, the same as s-s.s. 2 and 3 of s. 4 of R.S.O., 1887, c. 132, and the land could not be conveyed by the plaintiff alone, unless by virtue of an order under 51 Vict., c. 21, so as to give the purchaser a title free from the husband's claim; and under the circumstances of this case such an order was made.

Semble, the wife could convey her own estate in the land.

Re Konkle, 14 O.R. 183, and *Adams* v. *Loomis*, 24 Gr. 24, considered.

Schoff for plaintiff.

E. D. Armour for defendant.

STREET, J.] [June 17.

Re RICHARDSON AND CITY OF TORONTO.

Re HOSPITAL TRUST AND CITY OF TORONTO.

Municipal corporations—Expropriation of lands—Compensation to owners—Method of estimating—Benefit to lands not taken—Special Assessment—49 V., c. 66.

Under the authority of 49 Vict., c. 66, the City of Toronto expropriated the land of private persons near the River Don for the purposes of "the Don Improvement Scheme." By the Act the City Council were to make a survey and plan of the 400 feet on each side of a certain line called "the centre line," shewing the lands taken by them, and were to apportion to each lot shewn upon the plan a due share of the whole

cost of the land, works, and improvements; and by s. 4, s-s. 3, the lands not taken within the 400 feet were to be specially assessed in respect of such improvements, but no such special assessment was to exceed the actual value of the benefit derived from the improvement.

R. and the H. T. owned lands extending from the centre line to a distance exceeding 400 feet, and the city took from such lands a strip narrower than 400 feet.

Held, that in awarding compensation to R. and the H. T., under the Municipal Act, for the parts of their lands taken, the arbitrators should allow for any benefits to the parts not taken, but in estimating that benefit they should take into account as best they could the fact that the land-owners were liable to be charged by the city to the extent of the benefit they received by a rate as for a local improvement under s. 4, s-s. 3.

Bain, Q.C., and *H. D. Gamble* for the land-owners.

W. A. Reeve, Q.C., and *C. R. W. Biggar* for the City of Toronto.

Chancery Division.

FALCONBRIDGE, J.] [December 4, '88.

THE ELECTRIC DESPATCH COMPANY OF TORONTO *v.* THE BELL TELEPHONE COMPANY OF CANADA.

Telephone Company — Messenger business — Agreement as to transmission of orders for messengers — Other telephone subscribers rights—Construction of agreement.

The defendants were a company carrying on a general telephone business with a central office to connect subscribers' telephones, and in addition, carried on a messenger business for the purpose of delivering letters, messages, etc. By an agreement, the defendants assigned their messenger business to the plaintiffs, and covenanted that they would not transmit or give any messenger order to any person except the plaintiffs, and that they would cease to do such business.

The Great North-Western Telegraph Co. (one of the defendant's telephone subscribers) subsequently opened an office for a messenger business, and applied for a telephone in the usual way, which the defendants supplied them with, and by means of it the G. N. W. T. Co. received orders for messengers, etc.

Held, that the defendants did not transmit or give messenger orders when they placed a subscriber in communication (through the central office) with the G. N. W. T. Co., that they only afforded him a medium by which to transmit, or give, his own order, which was a case not provided for by the agreement, and the action for an injunction to restrain defendants was dismissed with costs.

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

Lash, Q.C., and *S. G. Wood*, for defendants.

BOYD, C.] [May 28.

Re CENTRAL BANK, MORTON AND BLOCK'S CLAIMS.

Banks and banking—Definite receipts—Negotiability — Estoppel — Bank Act — R. S. O., c. 120, secs. 43, 65, 83.

Morton and Block filed claims with the liquidators of the Central Bank as *bona fide* purchasers for value and indorsees of deposit receipts of the bank, originally issued to Cox & Co., in the following form:

CENTRAL BANK OF CANADA,
Toronto, Oct. 18th, 1887.

$6,000.

Received from Cox & Co. the sum of $6,000 which the bank will repay to the said Cox & Co. or order, with interest at 4 per cent. per annum, on receiving 15 days notice. No interest will be allowed unless the money remains with this bank six months. This receipt to be given up to the bank when payment of either principal or interest is required.

For the Central Bank of Canada,
A. A. ALLEN, *Cashier*.

Ent., A. B. ORD, *Acc't.*

Held, that even if such a receipt did not possess all the incidents of a promissory note yet it was meant to be transferred by endorsement, being made payable to the order of Cox & Co.; and it was therefore governed by a line of authorities, which showed that it was so far negotiable (whether possessing all the incidents of commercial paper or not) so as to pass a good title to a *bona fide* purchaser for value, who took without notice of any infirmity of title.

But *semble*, that these deposit receipts as drawn were negotiable instruments under which

the claimants were entitled to succeed as upon a promissory note made by the bank.

G. H. Watson for the claimants.

W. R. Meredith, Q.C., contra.

BOYD, C.] [JUNE 6.

BURKITT *v.* TOZER.

Will—Construction—Heirs and representatives.

A testator, by his will, made a bequest to "the heirs and representatives of Mr. Miles Burkitt." The question for decision was, who were entitled to take, under this expression, the executors or administrators of the deceased, or his next of kin, according to the Statute of Distributions?

Held, in looking at the context, that the next of kin, according to the statute, were the persons entitled.

The weight of authority tends to show that the word "representatives," when found standing alone, is construed as executors or administrators, but, that very slight expressions in the context have turned the meaning in the other direction, to that of next of kin.

F. E. Hodgins for the plaintiffs.

A. Cassels, *E. T. English*, and *J. A. Macdonald*, Q.C., for other parties.

FULL COURT.] [June 12.

REGINA *v.* ROMP.

Criminal law—Confession—Improper inducement—Evidence.

When it appeared that a police officer said to the prisoner who was arrested on a charge of obstructing a railway train, by placing blocks upon the line, "The truth will go better than a lie. If any one prompted you to it you had better tell about it." Whereupon the prisoner said that he did the act charged against him.

Held, that the admission was not receivable in evidence, and a conviction found on it was improper.

A. B. Aylesworth for the prisoner.

No one appeared for the Crown.

FULL COURT.] [June 13.

BARBER *v.* MCKAY.

Ejectment—Probate—Evidence—New trial—Pleading—R.S.O. 1887, c. 61, ss. 38, 44.

This was a motion by defendant to reverse the judgment delivered at the trial in an action of ejectment. The defendant claimed to hold the land in question under a deed from the executor of the will of one S

At the trial the only evidence of the will offered by the plaintiffs, was the copy of the probate which was on registry with the affidavit of verification.

The plaintiffs, however, endeavoured to support their case by reference to a certain statement in the defendant's pleading, in which she claimed to occupy, under a deed made by the executor, under the will of S.

Held that the copy of probate put in, was not proper evidence of the will, no notice having been given under R.S.O. 1887, c. 61, s. 38.

Held further, that the plaintiffs could not count upon one part of the statement of defence to eke out the insufficiency of their evidence, while they rejected the rest of it, but must prove the facts relied on in the proper way.

Shilton for the plaintiff.

Bain, Q.C., for the defendant.

FULL COURT.] [June 15.

CLARKSON *v.* SEVERS.

Assignment for creditors—Execution in Sheriff's hands—Completely executed by payment—Constitutionality—Bankruptcy—R.S.O. 1887, c. 124, ss. 4, 9.

This was an appeal from the judgment of Robertson, J., given at the trial, holding that certain moneys realized by the Sheriff on a sale made under a writ of execution in his hands, were the property of the execution creditors as against the assignee under an assignment made by the execution debtor, for the benefit of his creditors. The facts were as follows: An execution against the lands of one H., had ever since the year 1880 been standing in the sheriff's hands. Eventually, in 1887, the sheriff made a seizure and sale, and received the purchase money therefor. Before, however, he had paid over to the execution creditors the amount due them, H. made an assignment for the benefit of his creditors. The assignee immediately notified the sheriff of the assignment and claimed the moneys realized at said sale, and which were still in his hands, on the ground that the writ had not been completely executed by payment within the meaning of R.S.O., 1887, c. 124, s. 9, and that therefore the assignment took precedence of it.

Held, affirming the decision of Robertson, J., with costs, that the assignee was not entitled to the money.

Per BOYD, C.—R.S.O., 1887, c. 124, s. 9, applies to cases of execution where the Creditors' Relief Act applies, and did not apply to the writ in this case, which was in the sheriff's hands prior to that Act, and was executed by the sale of the lands and taking of the money, which money then became the property of the execution creditor.

Semble, that if R S.O., 1887, c. 124, s. 9, is to receive such a construction as would pass the money in this case to the assignee for creditors, thus giving to him a higher right than the execution debtor had, the Act would be *ultra vires* as a bankruptcy provision.

Per FERGUSON, J.—The authorities are clear to show that after receipt of the moneys by the sheriff, the execution was executed: *Semble*, therefore, that completely executed by payment in R S.O., 1887, c. 124, s. 9, means voluntary or involuntary payment to the sheriff."

Millar for the motion.

T. G. Galt contra.

Practice.

MR. DALTON.] [June 12.

CLARKE *v.* CREIGHTON.

Costs—Defendant a solicitor—Instructions to another solicitor.

The defendant was himself a solicitor, but retained another solicitor to conduct his defence, and was awarded costs against the plaintiff.

Held, that the defendant was entitled as against the plaintiff to the usual costs of a defendant.

S. R. Clarke, plaintiff in person.

C. Millar for defendant.

FERGUSON, J.] [June 15.

CAMERON *v.* PHILLIPS.

Administrator ad litem — Order appointing, form of—Rule 311.

In framing an order under Rule 311 appointing an administrator *ad litem* it is not sufficient to say, "it is ordered that A. be, and he is, hereby appointed administrator *ad litem* to the estate of B.;" the order is really a grant of administration, and should contain the particulars mentioned in Rule 48 of the Surrogate Rules; and, if such is the fact, should also, in view of R.S.O., c. 50, s. 50, state that the administration is of the real and personal estate.

J. B. O'Brien for plaintiff.

FERGUSON, J.] [June 24.

IN *re* DELANTY.

Infants—Sale of land—Dispensing with examination of imbecile infant.

Upon a petition under R.S.O., c. 137, s. 3, for the sale of lands belonging to three infants, the examination of the eldest, a girl of sixteen, was dispensed with, notwithstanding the provisions of s. 4 of the Act and of Rule 999, upon the ground that she was an imbecile.

Re Lane, 9 P. R. 251, and *re* Harding, 13 P. R. 112, followed.

Hoyles for the mother.

F. W. Harcourt for the infants.

Law Students' Department.

The following papers were set at the Law Society Examination before Easter Term, 1889:

CERTIFICATES OF FITNESS.

REAL PROPERTY AND WILLS.

1. A devisee, since the Devolution of Estates Act, registers the will by delivering a sworn copy to the Registrar. He then offers the land for sale. Can he make a good title on his own conveyance? Why?

2. A will is witnessed by three witnesses (two being sufficient), one of whom is a legatee. What is the effect upon the attestation, and upon his legacy?

3. What is the effect of altering the text of a will after execution? How should a necessary alteration be made so as to place its validity beyond dispute?

4. What are the chief general rules to be observed in construing wills?

5. When can you, and when can you not, have a certificate of *lis pendens* set aside on motion without a trial of the action? Explain fully.

6. When an open contract for the sale of land is made, and it is discovered that there is an incumbrance on the land, what are the purchaser's rights respecting the same? If the

incumbrancer is not bound to release, and will not do so, what course can be pursued to complete the contract?

7. A debtor has land in two counties upon which he has given one mortgage comprising all the land. Writs of *fieri facias* against his lands are issued and placed in the hands of both counties. Do they bind the lands so as to enable the sheriff to sell? Why?

8. What is meant by saying that an abstract should commence with a good root of title? Give examples of instruments which do not form a good root.

9. What leases are required to be registered so as to preserve priority?

10. What is a bare trustee?

SMITH ON CONTRACTS—BENJAMIN ON SALES.

1. A. sends by mail to B. an offer to sell him certain goods at a named price. B. mails a letter of acceptance. Before the mailing of the letter of acceptance, A. mails a letter of withdrawal, which B. does not receive until after his letter of acceptance is mailed. Is there any contract? Reasons.

2. Is a contract of sale complete if no price is agreed on?

3. Explain briefly the connection between the question whether the vendor of goods has lost *his lien* for the price, and the question whether there has been a sufficient *receipt* of the goods to satisfy the Statute of Frauds.

4. Are the following tenders good: (*a*) A debtor owing $90 hands his creditor 100 ten dollar bank bills, and tells him to take out of them what is due him; (*b*) the debtor hands the creditor 5 twenty dollar bank bills and demands the change?

5. Which is in general the *consideration* for a sale of goods; the payment of the price, or the purchaser's *obligation* to pay it?

6. A merchant orders 100 barrels of flour from a miller, who sends him 200 barrels. What different courses may the purchaser legally adopt?

7. When a contract made in the United States is sued on in Ontario, by what law are the *interpretation* of the contract, and the *remedy* upon it respectively governed?

8. If the amount written on the body of a note and the figures in the margin do not agree, will oral evidence be admitted to prove which is right? Why?

9. An agreement is made verbally between A., B., and C. for good and sufficient consideration, by which A. assumes and agrees to pay a debt owing by B. to C., and C. releases B. from the debt. Is such agreement valid? Why?

10. What, if any, effect will a written acknowledgment of the debt signed by the debtor, have upon the running of the Statute of Limitations, if the acknowledgment contains a promise to pay the debt upon a certain condition?

MERCANTILE LAW—STATUTES—PRACTICE.

1. A., B., and C. sign a promissory note, commencing "we promise to pay." What is their liability?

2. Explain the difference in result between the following cases:

(1) A. consigns goods to B. under a bill of lading, expressing that the goods are shipped by order, and on account of B.

(2) Goods are delivered by A. to C., to be carried under a bill of lading, whereby C. undertakes to carry for or on account of A., and to deliver to A. or the assignee of the bill of lading.

3. A. sells goods to B., and sends them to B.'s house on B.'s instructions so to do. When they reach B.'s house he refuses to take the goods because A.'s clerk says he has instructions from A. not to leave the goods without receiving the money for them. How far could A. succeed in making B. liable for the goods? Why?

4. How far can money be recovered from an agent to whom it has been paid for the use of his principal but such payment turns out to have been wrongfully made?

5. A. is security for B., who is C.'s clerk; B. commits a fraud upon C., which C. agrees to overlook, not wishing to injure B. Subsequently B. again commits a fraud upon C., who thereupon sues A. for C.'s default. What defence could A. raise? Why?

6. A. sues B. on an agreement to buy goods, and B. enters an appearance. Statement of claim is delivered, but no statement of defence. What steps can A. take to obtain judgment?

7. At what stage of an action can a plaintiff withdraw his case, or part of it, without an order?

8. In what cases may relief by way of interpleader be granted?

9. A. is a creditor of C., B., a friend of C., buys part of C.'s stock, and instead of paying the

money to C. pays it to A. to the prejudice of A.'s other creditors. What is the position of the transaction as between A. and the other creditors? Why?

10. A. verbally agrees with C. to work on his farm for two years at $1.00 per day and his keep. After the expiration of six months he gets tired of the job and leaves. C. sues A. for damages for breach of the contract of hiring. What defence has A.?

EQUITY.

1. What was the law as to the liability of a purchaser of land from a trustee under a will to seeing to the application of the purchase, and how, if any way, has the same been altered by statutory enactment?

2. An infant representing himself to be of full age, sells and conveys his property. He afterwards refuses to give up possession, and on an action for possession sets up his infancy and the invalidity of the conveyance. Can he succeed? Why?

3. A. client comes to you stating that he elieves himself entitled to an interest in certain property in the township of York. What steps would you advise him to take in order to test his claim, and protect his interest?

4. Distinguish between the effect on the contract of non-disclosure of facts in policies of insurance, and contracts of suretyship and guarantee respectively.

5. What are the provisions of 27 Eliz., c. 4, and what, if any, Provincial Legislation is there affecting the same?

6. A mortgagee issues a writ of foreclosure of the mortgaged lands. The mortgagor desires a sale instead. Can he procure it?

7. What was, and what is now the law with regard to the employment of puffers at auction sales?

8. What is meant by the doctrine of Illusory Appointments? Give an illustration.

9. What must you show in order to invalidate an award, (*a*) on account of mistake in law; (*b*) on account of mistake in fact?

10. A trustee is uncertain as to how he should proceed in the management of the trust property. How would you advise him? Give authority.

Miscellaneous.

AUTUMN CIRCUITS, 1889.

CHANCERY DIVISION.

THE HON. MR. JUSTICE PROUDFOOT.

TORONTO.....	*Monday*	28th October.

THE HON. THE CHANCELLOR.

OTTAWA.....	*Monday*	28th October.
KINGSTON.....	"	4th November.
BELLEVILLE.....	*Friday*	8th November.
COBOURG.....	*Thursday*	14th November.
CORNWALL.....	*Monday*	18th November.
BROCKVILLE.....	*Friday*	22nd November.

THE HON. MR. JUSTICE PROUDFOOT.

LINDSAY.....	*Monday*	23rd September.
BARRIE.....	*Friday*	27th September.
WOODSTOCK.....	*Thursday*	3rd October.
STRATFORD.....	"	10th October.
WHITBY.....	*Wednesday*	16th October.
PETERBOROUGH..	*Tuesday*	22nd October.

THE HON. MR. JUSTICE FERGUSON.

ST. CATHARINES..	*Tuesday*	17th September.
GUELPH.....	*Monday*	23rd September.
OWEN SOUND....	"	30th September.
BRANTFORD.....	"	7th October.
SIMCOE.....	"	21st October.
HAMILTON.....	*Wednesday*	30th October.

THE HON. MR. JUSTICE ROBERTSON.

GODERICH.....	*Thursday*	19th September.
WALKERTON.....	*Monday*	30th September.
LONDON.....	*Wednesday*	9th October.
CHATHAM.....	*Thursday*	24th October.
SANDWICH.....	"	31st October.
SARNIA.....	"	7th November.
ST. THOMAS.....	"	14th November.

AUTUMN CIRCUITS, 1889.

The Courts of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius in and for the several Counties of the Province of Ontario, will be held as follows:—

THE HON. MR. JUSTICE FALCONBRIDGE.

TORONTO (Civil Court),	*Tuesday*	10th September.
" (Criminal Court),	*Monday*	7th October.
ST. CATHARINES....	"	21st October.
ORANGEVILLE.....	"	28th October.
MILTON.....	"	4th November.
BRAMPTON.....	"	11th November.

THE HON. CHIEF JUSTICE ARMOUR.

L'ORIGINAL.....	*Monday*...	9th September.
OTTAWA.....	*Thursday*.	12th September.
PEMBROKE.....	*Tuesday*..	24th September.
PERTH	*Monday*...	30th September.
PETERBOROUGH..	*Tuesday*..	8th October.
LINDSAY.....	"	..15th October.
BARRIE.....	"	..22nd October.
OWEN SOUND....	"	.. 5th November.

THE HON. MR. JUSTICE ROSE.

LONDON.....	*Monday*..	9th September.
CHATHAM.....	"	..23rd September.
ST. THOMAS.....	"	..30th September.
SANDWICH.....	"	.. 7th October.
SARNIA.....	"	..14th October.
GODERICH	*Tuesday*..	22nd October.
WALKERTON.....	*Monday*..	28th October.
WOODSTOCK.....	"	.. 4th November.

THE HON. MR. JUSTICE MACMAHON.

WHITBY.....	*Monday*..	9th September.
PICTON	"	..16th September.
NAPANEE.....	*Thursday*.	19th September.
BELLEVILLE	*Monday*..	23rd September.
KINGSTON	"	.. 7th October.
CORNWALL.....	"	..14th October.
BROCKVILLE.....	"	..21st October.
COBOURG	"	..28th October.

THE HON. MR. JUSTICE STREET.

WELLAND.....	*Tuesday*..	10th September.
STRATFORD	*Monday*..	16th September.
SIMCOE.....	"	..23rd September.
HAMILTON	"	..30th September.
CAYUGA.....	*Tuesday*..	15th October.
BERLIN.....	*Monday*...	21st October.
GUELPH	"	.28th October.
BRANTFORD.....	"	.. 4th November.

N. B.—There shall be at every Nisi Prius Court a Jury List and a Non-Jury List. The former shall be first disposed of, and the latter not taken until after the dismissal of the Jury Panel, unless otherwise ordered.

A Judge will remain in Toronto to hold the Sittings of the Court each week, and for the transaction of the business in Chambers.

Of which all Sheriffs, Magistrates, Gaolers, and other Peace Officers are required to take notice.

A. GRANT,

Clerk of the Supreme Court of Ontario.

Dated 19th June, 1889.

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Latest additions :

Anderson's Law Dictionary, Chicago, 1889.

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HABEAS CORPUS.—In Perry county, Ohio, a horse was once restored to its rightful owner under a writ of *habeas corpus* issued by a justice of the peace. A.'s horse broke into B.'s pasture, whereupon B. put it into his stable, locked the door and refused to give it up. A. secured the services of the celebrated Shep. Tinker as his legal adviser. Shep. knew that his client could not give the necessary bail in an action by replevin, so he decided to bring a different sort of an action. With this intent he went before a justice of the peace in old Straitsville, and took out a writ of *habeas corpus* and literally brought the horse into court. Lawyer Saunders, a most brilliant practitioner at the Logan bar, and long the prosecuting attorney of Hocking county, was called on the other side. He didn't know the nature of the case until the constable made his return upon the writ. "Why," exclaimed Mr. Saunders, with a look of blank astonishment, "this court can't issue such a writ, and no court could issue one for a horse!" Shep. was more than equal to the emergency. "Your honor," he said, "a wise and just court can do anything that is laid down in the books. The writ of *habeas corpus* has been recognized as sacred for centuries. To say that this court can't issue it is to say that it is ignorant of Magna Charta." "But this court kin issue it," interposed the justice, "and it has issued it already." Mr. Saunders saw his mistake and apologized to the court for having doubted its ability to do anything it chose. It is needless to say that the horse was restored to its owner. *Cincinnati Enquirer.*

An American judge says: "Long ago recognizing that jurors should receive more courtesy than they sometimes do, it is my habit, in discharging them, always to thank them with pleasant words. So at the term just adjourned at Jackson, in discharging the grand jury, which had been unusually long in session and returned many indictments, I thanked them for their attendance, referred to the efficiency of their work, hoped they would carry to their homes pleasant memories of the court, and that their business had not suffered as much as they feared when they wished to be excused and were not, that we should have the pleasure of seeing them again, etc. To this the foreman usually bows, expresses his pleasure and that of his fellows for the courtesies received from the court and its officers, etc. This time the foreman, who was a very zealous Baptist, fresh from a revival, which he was more anxious to attend than serve on the grand jury, astonished and embarassed the court by replying about in this phrase: 'The grand jury, one and all, most cordially reciprocates your honor's sentiments,' etc., making quite a speech upon the kindness received from all the officials. 'And now, as an evidence of our good-will, *we propose to extend to your honor the right hand of fellowship.*' He was about to go through this performance, when the Court, mindful of its dignity and full of apprehensive mirth, politely declined the proffered hand-shaking. Imagine the condition of the Bar." *Albany Law Journal.*

Appointments to Office.

DIVISION COURTS CLERKS.

Oxford.

John C. Ross, of Tilsonburg, to be Clerk of the Sixth Division Court of the County of Oxford, *vice* John Hodgson, deceased.

Carlton.

John Kerr, of Kars, to be Clerk of the Fifth Division Court of the County of Carlton, *vice* C. G. Lindsay, resigned.

Bruce.

John Humberstone, of Ripley, to be Clerk of the Ninth Division Court of the County of Bruce, *vice* Paul D. McInnes, deceased.

BAILIFFS.

Leeds and Grenville.

John O'Leary, of Prescott, to be Bailiff of the Second Division Court of the United Counties of Leeds and Grenville, *vice* Jas. Jenkinson, resigned.

Manitoulin.

Daniel Anderson, of Gore Bay, to be Bailiff of the Fifth Division Court of the District of Manitoulin, *vice* J. C. Nelles, resigned.

Bruce.

Chas. A. Richards, of Tara, to be Bailiff of the Seventh Division Court of the County of Bruce, *vice* John D. White, resigned.

Lennox and Addington.

Thomas Neal, of Cloyne, to be a Bailiff of the Seventh Division Court of the County of Lennox and Addington.