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DIARY FOR JUNE.

18. Fri.....Battle of Waterloo, 1815.
19. Sat.....C. C. York term ends.
20. Sun. . *Trinity Sunday.* Accession of Queen Victoria, 1837.
22. Tue....Longest day. Slavery declared contrary to law of England, 1772.
24. Thur..John and Sebastian Cabot discover Canada.
27. Sun....*First Sunday after Trinity.*
28. Mon...Coronation of Queen Victoria, 1838.
30. Wed...Acquittal of the seven bishops, 1688.

TORONTO, JUNE 15, 1886.

WE have received a communication from a member of the profession, in which, after expressing regret at the sudden and radical changes which are being introduced into our law, and that important measures are hastened through our Legislature with so little care as to details, he goes on to advert to the new "Lands Title Act" of 1885, remarking that with its code of rules it is a measure with much of resemblance to the "Judicature Act" and likely to give fully as much trouble. He then quotes the passage with reference to dower and matrimony, referred to by us in our review of Mr. Jones' edition in a recent issue, and adds, "I need scarcely point out that this result could not have been contemplated by the framers of the Act. All the 'spooning' must henceforth be done by the ladies, and even then the wary fish will not often take. He is under the Torrens System, and feels himself, so to speak, estopped by law. At all events he knows that in endeavouring to steer clear of bachelorhood he will almost inevitably be swamped in the abyss of matrimony. Under our present law the only property which a man has in his wife is an imaginary property. I think the following amendment would not only obviate the ab.. difficulty, but would be the means of insuring the success and renown of the Act: 'A married woman shall, from the date of this Act, be deemed the *real* property of her husband.'" We consider this a very able suggestion. It would get rid of much embarrassment, and since, notwithstanding the best efforts of radical reformers, the great majority of faithful spouses would not object to the clause, why should it not be adopted by our enlightened Legislature? We think, however, that Mr. Jones and our correspondent somewhat exaggerate the effects of legislation on matrimony.

> How small a part of all that men endure
> The part that kings or laws can cause or cure.

We have not time to turn up the quotation, and are not sure that we have it correct, but Mr. Jones will appreciate its applicability. Disunionists may do their best or worst, but matrimony will continue in most cases to be a united kingdom, though woman may be queen.

SOME time since we expressed the hope that the grounds at Osgoode Hall might be made somewhat more attractive by the cultivation of flowers to a greater extent than has been previously attempted. We are glad to find that our suggestions have this year been adopted by the Benchers, that additional flower beds have been added, which bid fair to lend a newer charm to our already beautiful oasis on Queen Street. Still further we have to congratulate the juniors of the profession for having secured the permission of the Benchers to use the west lawn for tennis. This is a thing we also urged, and might very properly be allowed by the authorities, and we are glad to see that it has been.

THE Osgoode Hall Lawn Tennis Club has been formed. All barristers, solicitors, articled clerks, law students, and officials employed in the Courts at Osgoode Hall are, we understand, eligible as members. Mr. Christopher Robinson, Q.C., worthily fills the part of Honorary President, Mr. Beverly Jones discharging the more onerous position of the working President. The club have had four courts laid out, and on Saturday, the 12th June, the grounds were opened for play, and presented quite an animated appearance. If the members of the club do not permit their attendance at the four courts outside the hall to interfere with their duties before the Courts within, and are careful not to abuse in any other way the privilege which has been accorded them, we think it will be found that the Benchers have done wisely in permitting the grounds to be thus used; and the healthful amusement of a game of tennis when the day's work is over will often prove a welcome relaxation to men tired of the dull routine of taxing costs, arguing Chamber motions, filing papers, etc., etc.; and any little irregularities which have proved a source of irritation in the course of business may be pleasantly smoothed over in a friendly contest in which no more hurtful weapon is employed than a tennis racquet.

THE SORT OF JUDGE WE WOULD BE IF WE WERE A JUDGE.

Quis custodiet ipsos custodes.

1. WE would carefully abstain from giving judgment before we had heard the arguments.

2. We would pay the same patient attention to the argument of the youngest counsel as to that of the leader of the bar, or possibly more, as knowing that the former would necessarily be under certain disadvantages in giving expression to the points which he desired to make.

3. We would never forget that irritability and impatience on the bench are, of all things, most detrimental to the administration of justice.

4. We would likewise never forget that behind the counsel addressing the Court are clients who are the individuals really interested in the matters in question.

5. We would always remember that we were appointed to our high office because we were supposed to possess a special knowledge of the law as laid down in the books, and not because we were supposed to have a more acute moral sense than the rest of our fellowmen.

6. We would fully recognize the fact that every litigant has a positive right to have his case decided according to the rules of law, so far as they have been determined, and that we are bound by our oath of office to accord to him that right, and not to give way to our individual susceptibilities or the view we may personally take of the moral equities of the case before us—except, possibly, in the matter of costs.

7. We would, in fact, ever remember that we were a judicial officer, and not a lay-arbitrator.

8. We would carefully note all the points taken by counsel, and give them one by one a conscientious consideration.

That is the sort of a judge we would be, and we should, of course, expect an adequate salary.

SUMMARY PROCEEDINGS BEFORE JUSTICES.

WE have already referred to this very beneficial legislation, completed at this session of the Dominion Parliament, having reproduced some of the observations of the learned senator (Hon. Mr. Gowan)

who introduced the measure, at the time of the second reading of the bill. This bill has now become law, and it is fitting that it should again be referred to, as it makes some very important changes in the law, and is a carefully drawn and workmanlike enactment prepared by one who has had an immense experience in such matters.

The first section defines what is meant by the words "justice of the peace." The second provides that no conviction or order made by any justice of the peace, and no warrant for enforcing the same, shall, on being removed by *certiorari*, be held invalid for any irregularity, informality or insufficiency therein; Provided, that the Court or judge before which or whom the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence; and any statement which, under this Act or otherwise, would be sufficient if contained in a conviction shall also be sufficient if contained in an information, summons, order or warrant.

As explained by the learned author of the Act, the anomaly has hitherto existed that the Courts of Session—inferior Courts—have had larger powers of preventing a miscarriage of justice than have the judges of the Superior Courts. The section above quoted secures the punishment of offenders, notwithstanding a slip on the part of the justice, and enables the Court or judge to say that a technically correct description of the offence is not imperative.

Sections 3 and 4 may be said to be somewhat novel, in that they give illustrations or examples of difficulties, many of which have arisen and been discussed in cases and text-books, or which have come before the framer of the Act in the course of his judicial career. As to this form of enactment it might be said, if a precedent were required, that in every well-arranged digest or code the rule is first given and is then followed by illustrations, as witness the course followed by Sir Fitzjames Stephens in his digest of the law of evidence. In the clauses before us it seems the best way of making clear what is intended, and ensuring a full and liberal construction of the Act. Our readers, on referring to these sections, will see how well the light is thrown by them on the main intent of the statute.

Section 5 gives legislative power to do that which is now often indirectly done for the protection of justices from actions, etc., by limiting the use of an order to quash a conviction.

Section 6 provides that no motion to quash a conviction brought before a Court by *certiorari* shall be entertained until proper security be given by the defendant; and it states how the security is to be given. The object of this provision is to make the practice as to security uniform, and to render it more convenient. Justices of the Peace are not generally aware of the Imperial Act requiring them to take security before making a return to *certiorari*. This Act, 5 Geo. 2, cap. 19, sec. 2, is in force under the general adoption of the Laws of England (in the Provinces which adopted them). In Ontario, *R.* v. *Chuff*, 46 U.C.R. 565, and *R.* v. *Walker*, 20 C.L.J. 410, are in point. When a defendant is in custody and applies for a writ of Habeas Corpus, the Court or judge under 29 & 30 Vict., cap. 45, *directs* a *certiorari*; when a writ is issued under this section it is *for the assistance of the Court*, and a recognizance is not required (see *R.* v. *Nunn*, 20 C.L.J. 408; 10 Ont. P. R. 395, and *R.* v. *Whelan*, 45 U.C.R. 396).

Statutes, as we all know, are often put

in force by proclamation, or by order in Council. This often causes difficulty in proof, and the formal technical evidence is often not easily available. The result is that a defendant is sometimes unabled to take advantage of this difficulty, and so defeat the ends of justice. Section 9 provides a remedy by enacting that when a statute is in force by virtue of a proclamation or order in Council, and an objection is taken that such proclamation or order was not given, the Court or a judge shall allow evidence of the issue of such proclamation, or making of such order, to be supplied by affidavit.

The last three clauses of the Act (sections 11, 12 and 13) were inserted last year at the instance of the then Minister of Justice. They merely enlarge the time for appealing. In remote localities it is not always possible to take proper steps for appealing within the time heretofore limited, and these sections prevent a failure of justice and make the law in this respect uniform, as nearly as may be. There are several other provisions of minor importance on matters of detail, which complete the intent of the framer of the Act in reference to the matters of the Legislative Department, to which we cannot refer at length.

Some of our best known and most respected judges throughout the Dominion have expressed themselves as highly favourable to this legislation; agreeing with its provisions and with the desirability of the changes which have been made. The measure received the entire approval of the Minister of Justice, who is entitled to much credit for aiding in placing a very practical and valuable measure on the statute book.

SELECTIONS.

INJURY CAUSED BY STATUTORY WATER-PLUG IN HIGHWAY.

ALTHOUGH County Court decisions lack efficacy as binding authorities, they not infrequently eminently deserve the publicity derived from permanent reports. When well considered, the judgments delivered by highly capable and experienced professors of the law are not, indeed, wholly lacking in authoritative force, while, at all events, entitled to the allegiance of co-ordinate tribunals; but, moreover, what can better serve the purposes of practitioners than the painstaking collection of governing decisions, the acute discrimination of their points, and lucid discussion of principles that may be found in many County Court judgments, both in this country and in England, also, as evidenced in the pages not merely of this Journal but of the *Law Journal* and *Law Times*. Nay, even when not itself laying down a decisive opinion upon some abstract question incidentally arising, but unnecessary to determine with precision, a well-weighed judgment may serve at least to put the matter in a clearer light so as to guide subsequent enquirers. And in illustration of this, reference might be made to *M'Ginnity* v. *The Town Commissioners of Newry*, reported at the close of last year (19 Ir. L. T. Rep. 69). On the same general subject there discussed, however, we have now before us an adjudication of the English Court of Appeal, and to it alone, not to compare great things with small, attention will here be confined.

We refer to *Moore* v. *The Lambeth Waterworks Co.*, a good report of which will be found in the June issue of the *Law Journal*. The facts out of which the question arose were few and simple, but the question was both difficult and extensive in its bearings, involving in particular a critical consideration of the decision in *Kent* v. *The Worthing Local Board* (10 Q.

B. D. 118, 52 L. J. Q. B. 77), an important case which we believe to be rather better known than might be supposed from the fact that it appears to have escaped the notice of numerous text-writers whose works, dealing with such questions, we have incidentally examined. Moore brought his action for damages incurred by him through falling over a plug belonging to the defendants, the Lambeth Waterworks Co., which they had placed in a certain public footway. The plug projected three-eighths of an inch above the asphalt with which the footway was covered, by reason of the asphalt wearing away, and without any defect in the plug itself, which was correctly laid, and in perfect order. The defendants were a company incorporated by Act of Parliament, with power to put plugs in the highway, and with a liability to provide fire-plugs; and the plug in question was described in the evidence as both a fire plug and an end-plug, in which latter character it was used to flush the pipes. Day, J., gave judgment for the plaintiff; and the defendants, who were amerced in £600 damages, appealed. The facts, indeed, were very similar to those in *Kent* v. *The Worthing Local Board* (*ubi supra*), where it was held that under such circumstances the plaintiff had a good cause of action. But there, said Lord Esher, M.R., in the present case, "both the water-plug and the road were in the hands of the defendants, and if the plug was not out of order the road was. If the case cannot be upheld on the ground that there was only one authority, I do not see how it can be upheld. It may be that it can be upheld on that ground, but if not, it is not of any authority." And he added that, although it was not necessary to say absolutely that they disagreed with that case, yet, unless it could be supported on the ground of common ownership, he was not prepared to follow it. Lindley, L. J., distinguished that case on the same ground. But Lopes, L. J., boldly avowed that he could see nothing in the distinction; observing that the decision was not put on the ground of the union of liabilities, and that the cases there relied on were not authorities for the proposition asserted: and accordingly, maintaining that the decision in that case should be overruled. Merely adding that in the present case the distinction, if any, applied because the water company and the road authority were two distinct authorities, let us now proceed to examine the effect of the decision arrived at by the Court of Appeal independently of *Kent* v. *The Worthing Local Board*.

It was said for the plaintiff that when anyone puts anything in the highway and it becomes dangerous, he is liable for it. But that principle only applies when the thing is put there without authority, when something is left in the highway as a a nuisance or an obstruction, the person so acting doing wrong from the very first. Here, however, the company were authorized or obliged by their Act of Parliament to put the plug in the highway; and the Act only imposed on them the obligation of keeping the plug in repair. But it was in repair, and the company had done all they were bound to do. "I can find no duty cast on the defendants, and they have been guilty of no fault, either of omission or commission," said Lindley, L. J. "If either be wrong," said Lord Esher, "it is the road authority." Was it then merely a case in which the plaintiff, having a remedy, failed to obtain redress by reason of proceeding against the wrong party? Not so. "I do not think, indeed, that an action would lie against the road authority," avowed the Master of the Rolls. "This decision is rather hard on the plaintiff if *Gibson* v. *The Mayor of Preston* (L. R. 5 Q. B. 218) be right, and he cannot sue the road authority," said Lord Justice Lindley. That, indeed, was held too in *Kent* v. *The Worthing Local Board*, but the reason was that the parish could not be sued, although it might be indicted; but, in *Gibson* v. *The Mayor of Preston*, we find the rule applied even though the road authority was incorporated. So that unless indeed the principle does not apply when both plug and road are in the same hands, there must be very many equally hard cases. But, of course, the result would be otherwise, at all events, if the thing causing the injury were itself defective, like the valve in *Bathurst* v. *Macpherson* (L. R. 4 App. Cas. 256), the grating in *White* v. *The Hindley Board of Health* (L. R. 10 Q. B. 219), and the plug in *Blackmore* v. *Mile End Old Town* (9

Q. B. D. 451); and in such cases, at least, it is true enough that, as Crompton, J., observed in *Hartnell* v. *Ryde Commissioners* (1 B. & S. 361, 33 L. J. Q. B. 39) as quoted by the learned County Court judge in *M'Ginnity* v. *Town Commissioners of Newry* (19 Ir. L. T. Rep. 69), "there never has been Act of Parliament which has thrown the obligation to repair on two bodies, but the public has always had one body to look to." And see *Howitt* v. *The Nottingham Tramways Co.*, 12 Q. B. D. 16; *Steward* v. *The North Metropolitan Tramways Co.*, 16 *ib.* 556.—*Irish Law Times.*

JOINT BANKING ACCOUNT BY HUSBAND AND WIFE.

IN the excellent "Treatise on Banking Law," by Mr. J. Douglas Walker, the second edition of which has been published this year by Stevens & Sons, we read as follows:—"Where a drawing account is opened by a husband in the name of his wife, or the husband pays money into an account opened by his wife, the banker's obligation is to honour the cheque of either husband or wife during their joint lives (*Lloyd* v. *Pugh*, L. R. 8 C. A. 88; *Parker* v. *Lechmere*, 12 C. D. 256). If an account be opened by the husband in the joint names of himself and his wife, the balance standing to the credit of such account at his death becomes the absolute property of his widow, provided his intention in so opening the account was to make provision for her in that way (*Williams* v. *Davies*, 33 L. J. P. C. 127; but it does not become the property of the widow if the intention was only to provide a convenient mode of managing affairs (*Marshall* v. *Cruttwell*, L. R. 20 E. 328)." This doctrine has formed the subject of consideration in another case (*Re Young, Trye* v. *Sullivan*), reported in this month's number of the *Law Journal*, where, however, the only one of the authorities above cited that was mentioned was *Marshall* v. *Crutwell*. Nor could the important practical consequences flowing from the application of this doctrine be better illustrated than by the recent decision of Mr. Justice Pearson, to which we propose to direct attention accordingly.

Not every banking institution, indeed, is conducted with sufficient intelligence to accord its customers the advantages in question, and ignorant routine sometimes prevails to such an extent as to deprive those institutions themselves of an excess of custom sorely needed at the present time. Indeed, within the present week the present writer, associated with others, proposing to open two such accounts with the Bank of Ireland, was informed by the secretary that in that establishment they could not be received. And considering that it is with the money of depositors, rather than with the capital provided by the shareholders, that bank dividends are paid, it may well seem somewhat strange that any bank should be found so firmly fixed in its "old ways" as, in consequence, to refuse deposits, and not inconsiderable either—a matter worthy of some notice by those who may happen to be interested, and who will have to suffer the results of such management. What detriment it would be to a bank we are utterly at a loss to imagine; while to the depositors the doctrine of survivorship is of immense moment, besides the benefit of having individual power to draw against the joint fund—both points deriving an enhanced use and interest in connection with the now prevailing separate *status* of husband and wife.

Now, in *Trye* v. *Sullivan*, the circumstances under which the question arose were as follows:—By the marriage settlement of Colonel James Young and Annie Eliza Longworth, executed in June, 1846, certain personal estate was settled, in the events which happened, on trust, after the death of the survivor of the husband and wife, if the wife should be the survivor, for the wife, her executors, administrators, and assigns. After the marriage four different banking accounts were kept by Colonel and Mrs. Young: Colonel Young's separate account at Messrs. Roberts, Mrs. Young's separate account at the County of Gloucester Bank, a joint account at the latter bank, and (after some time had passed) a joint interest account at the same bank. Mrs. Young had a substantial income of her own, and it was from that source principally that moneys were carried to the joint account. The moneys standing to that account were employed by Colonel and Mrs. Young in paying

(with some assistance from Mrs. Young's separate account) the household expenses, in paying some of Colonel Young's separate expenses, and in providing for investments which were made in Colonel Young's name. In 1872 a sum of £1,500 Lancashire and Yorkshire Railway debenture stock, and a sum of £90 Midland Railway ordinary stock, were purchased out of moneys standing to the joint account (except as to half the price of the Midland stock, which was provided by Mrs. Young's separate account), and were placed in the joint names of Colonel and Mrs. Young. By her will dated the 31st of July, 1879, Mrs. Young bequeathed all her moneys, funds and property which she had power to dispose of by the settlement or otherwise to C. B. Trye, W. H. Lloyd, R. N. Trye, and H. Sullivan, upon trust to pay specific and pecuniary legacies, and subject thereto, to pay and transfer the residue to C. B. Trye and W. H. Lloyd equally. In 1882 both Colonel and Mrs. Young died, the latter surviving her husband for five days only, and not re-executing her will made during coverture. Various questions arose in the administration of Mrs. Young's estate, among which were the questions whether the two sums of railway stock which at the death of Mrs. Young were still standing in the joint names of her husband and herself, and the sums standing at the same date to the credit of the joint account, survived to Mrs. Young on her husband predeceasing her; and, if so, whether they passed by her will to her residuary legatees, or whether they were undisposed and passed to her next-of-kin. And thereupon a special case was stated for the opinion of the court on these and other questions, the plaintiff being C. B. Trye, and the defendants being W. H. Lloyd and the representatives of Colonel Young and the next-of-kin of Mrs. Young. It came before Mr. Justice Pearson when, on behalf of the two residuary legatees under Mrs. Young's will, it was contended that both the railway stock and the joint balances survived to her on her husband's death, and passed by her will, though made during coverture; it being argued, for Colonel Young's representatives, that the stock and balances were appropriated to him, that his wife had only to deal with them on his behalf during his life, and that they did not survive to her (citing *Marshall* v. *Cruttwell*, *ubi supra*); while the next-of-kin submitted that the stock and balances survived to Mrs. Young, but did not pass by her will, it not having been re-executed after her husband's death (citing *Mayd* v. *Field*, 8 C. D. 584).

Said Pearson, J.:—"Colonel and Mrs. Young seem to have lived for many years a married life such as married people ought to live, on terms of affection and mutual confidence; and I can well understand that the lady, with a delicacy that I hope is not uncommon, felt that it would be unpleasant for her husband to be reminded from day to day that he was living to a great extent upon, and drawing a large share of, the money required for household expenses from his wife, and for that reason this joint account, which was used to a great extent for household expenses, seems to me to have been opened. That being so, the inference I draw is, that it was simply intended that the account should be joint, and that the lady intended to sink all idea of separate character in order that her husband should be able to draw." He did do so, as we have seen; and, with the consent of his wife, in the learned judge's opinion, had invested in his own name from time to time, a large portion of the sums drawn; but there was no dispute as to such investments that they must be treated as his property. However, it had been argued, continued Mr. Justice Pearson, "that the proper inference from the investment in the joint names was that, though the lady was willing to dispose of, and to allow her husband to dispose of the joint funds in household expenses and his private investments, she drew a limit to that application, and that a certain portion of the money so paid in was to be invested in the husband's and wife's names; that it should be earmarked as the wife's separate property. I can arrive at no such conclusion. I think that, just in the same way as the joint account was in every sense joint, with power to each party to draw, and free from any idea of separate estate, so the joint investment was subject to the ordinary incidents of a joint investment. The whole circumstances of the case impress my mind, without any doubt

or uncertainty, with the conviction that it was intended that whichever survived was to have the benefit of the investment. I do not believe that the lady had the slightest intention or wish that if she died in the lifetime of her husband he should not have the investment; nor do I believe that there was any intention that if she survived the debenture stock should be earmarked so as to be so subject to the incidents of her separate property. To my mind, the moment you come to the conclusion that the joint account was kept in order to be used by either party (each party having perfect confidence in the other that it would be used with perfect propriety), without any distinction as to the sources from which it arose, it is very difficult to suppose that any purchase made from it was to have a different nature." For our part, we cannot help regarding this as a rather important decision, especially in its bearings in that of *Marshall* v. *Cruttwell* (*ubi supra*), and on the strength of it the writer has personally acted. But it will be found that, in practice, one of the advantages afforded by such joint accounts, the power to each party to draw, will not be allowed by some banks without an express direction from the depositors at the time.—*Irish Law Times.*

MUTUAL RIGHTS AND DUTIES OF THE BENCH AND BAR. *

FEW or none of us but remember the time when we looked upon courts of justice with a much greater feeling of respect than that with which we now regard them. I do not believe that this is due to the degeneracy of the courts in the matter of learning or integrity. It is due partly to the fact that familiarity has destroyed much of the sense of dignity with which they impressed us, and partly to the fact that many of our courts are not, in fact, as dignified in manner as they used to be. But to whichever cause we refer it, we perceive that this lessening respect is due directly or indirectly wholly to the failure or knowledge of the failure on the part of the bench and bar to observe and respect their mutual rights and duties. Judges are as learned and lawyers as able and eloquent now as they were years ago, or if they are not, even this may be traced to the cause to which we are now adverting.

Is it not time that we should pause and soberly consider the question as to whether we are not doing a grave injury to ourselves and the profession, whose interests are for the time being committed to our keeping, by suffering the want of dignity and courtesy which obtains in our courts at the present day? Far be it from me to advocate anything which will have a tendency to produce a race of dude practitioners. Let us have nothing which will substitute dandyism for force and knowledge of the law. Let us by no means be so courteous to any one as to sacrifice in any degree the interests of those whom we represent. We have not sworn that that we will at all times be Chesterfields in manner; but we *have* sworn to be faithful and true to our clients; and, besides, are bound by all considerations which weigh with honourable and upright men not to betray those who have confided their interests so fully and entirely to our keeping.

There is, however, a certain degree of manly courtesy which tends directly to the due and proper administration of justice and to the production and development of able and learned judges and lawyers.

The result in any given case depends upon the joint labours of the counsel engaged in it and the judge who sits upon the bench to try it. Do not the plainest dictates of common sense teach us that that result will be better when there is the proper degree of harmony amongst the agents than when there is unseemly discord? I say unseemly discord or contention. I do not mean to advocate a courtesy which will make a lawyer forget that he is working for his *own* and not his antagonist's client. I do not mean to exclude vigorous professional strife between opposing counsel. I do not even mean to exclude a reasonable amount of temper between them in a proper case. I refer more particularly to the harmonious working of the judge and the lawyers. I would

* An address recently delivered before the Allegheny County Bar Association, by one of its members.

exclude the assumption on the part of attorneys when a judge appears to differ with them, either that he is unfair towards them or that he is unwilling to be convinced that he is wrong.

It is true that we are apt when we have studied a given proposition and convinced ourselves that it is perfectly clear, to conclude that he who does not see it as we do must be wilfully blind, and are apt when our feelings are deeply enlisted, to display some heat; yet we can at all events cultivate a respect for the honesty and fairness of intent of those who, by reason of their very position, must needs disappoint one party or the other. I would further exclude the assumption by lawyers that they have no interest in maintaining the dignity of the court. They are a part of it. It is there that they must fight their battles and achieve their triumphs or suffer their defeats. Can we not learn that it is better for us to strive in a courteous and dignified manner than to wrangle in such way as to convince others that we are not worthy of their respect, by showing them that we do not respect ourselves?

It is, however, an indisputable fact that the great burthen of responsibility for maintaining the dignity of the court rests primarily upon the judge who presides. In the first place, by his method of conducting business he can encourage and promote proper conduct in those who practise before him. No observant man can fail to see the vast influence for good or ill which the bench has over the manners of the bar. No bar will *permit* its members to treat discourteously a courteous and fair judge. The influence and authority of his position aid him greatly. He certainly has, too, great inducements to treat courteously and hear patiently those who practise before him. Under such circumstances a judge really gets the benefit of the lawyers' aid in building up his own reputation. Not only because his reputation is necessarily a part of that of the court, but also because under such circumstances lawyers will work with a will to honestly give to a judge the benefit of their best labour in collecting all the learning bearing upon a particular point, and in aiding him to a correct conclusion in each particular case.

It seems to me that a judge must have a little tact if he cannot, even if he is elevated to the bench without possessing much learning, with the aid of a bar properly managed and encouraged, succeed in administering the duties of his high office in a learned and dignified manner, and acquiring an enviable reputation as a judge. Beyond this, the judge must so act as to secure the hearty and industrious co-operation of his bar, or the interests of justice suffer. No one who is fit to sit upon the bench will for a moment pretend that he knows so much that it is impossible for him to receive light from any lawyer who will study his case. It is impossible for any judge to decide his cases properly without the aid of the bar. I have no confidence in cases of any difficulty whatever, decided without full argument; nay, more, I have no confidence in cases decided without full *oral* argument. Those courts which are bringing into vogue the practice of dispensing with oral argument are, in my opinion, doing it at the expense of the destruction of a noble profession, and the ultimate irremediable injury of the science of the law. There is, there can be, no substitute for oral argument.

Says Judge Dillon: "As a means of enabling the court to understand the exact case brought thither for its judgment —as a means of eliciting the very truth of the matter, both of law and fact, there is no substitute for oral argument. None! I distrust the soundness of the decision of any case, either novel or complex, which has been submitted wholly upon briefs. Speaking, if I may be allowed, from my own experience, I always felt a reasonable assurance in my own judgment when I had patiently heard all that opposing counsel could say to aid me, and a very diminished faith in any judgment given in a cause not orally argued. Mistakes, errors, fallacies and flaws elude us in spite of ourselves unless the case is pounded and hammered at the bar. This mischievous substitute of printers' ink for face-to-face argument impoverishes our case law at its very source, since it tends to prevent the growth of able lawyers, who are developed only in the conflicts of the bar, and of great judges who can become great only by the aid of the bar that surrounds them."

But no lawyer will prepare himself for an oral argument unless he has reasonable assurance that he will be listened to patiently and courteously when he comes into court. Doubtless, lawyers will often talk uselessly, but better that than that they should not talk at all, and thereby the interests of justice should suffer. A court should be not only a place where cases are argued but a school where lawyers are trained to make arguments. Hence, arguments, within reason, when prepared, should be listened to, whether made by lawyers young or old. Young lawyers who are fresh from the study of foundation principles, and who have industriously studied a case, are by no means to be despised when heads are put together for the purpose of arriving at the true decision; and, besides, those who are now *young lawyers* are one day to do the important work of our courts. I would most respectfully submit to the judges before whom they practise, whether they are doing their duty if they fail to patiently hear their causes, not only for the sake of men and the causes themselves, but also for the sake of the training for future work which is thus afforded.

If the advantages of one course are great the disadvantages of an opposite one are no less marked. I need not describe to you the discomfort of a court where judges and lawyers have lost their tempers, and feel sore over treatment received. You have all seen such things. Such a state of things is unpleasant to every one, profits no one, and hurts many. It absolutely destroys the dignity of the of the court. Disrespectful and insulting remarks are often made by the judge to lawyers, and the judge who can treat his bar with disrespect and be himself treated with real respect has yet to be discovered. He may enforce the observance of a formal outward respect, but it is only outward. It presents the case of the lawyer who was threatened with a fine for expressing his want of respect for the court, and who defended himself by asserting that on the contrary he had carefully concealed that want of respect.

Is it not the duty of the judge, as well as the bar, to treat the court with respect, and are not the lawyers in attendance and transacting business a part of the court? The court is not the mere person of the judge. Lawyers understand that when they come into court to transact the business of their clients and carry themselves properly they have just as well ascertained a standing there as anyone else. The judge is for most purposes the special organ and representative of the court, and lawyers are bound to treat him with respect, but this does not involve any obligation upon their part to forget or lay aside their manhood. If we are to have lawyers who will bring honour and dignity, and not shame and disgrace upon a court, then we must have lawyers who, coming into court as *men*, respecting themselves and demanding respect as such, shall find their claims recognized and appreciated.

Let us remember, however, always, that in things human, perfection is seldom or never attained. Let us remember the annoyances which beset bench and bar in practice. Let us remember, too, that men honest, fair, generous and courteous at heart frequently have the misfortune to possess quick tempers; and that sometimes, with men striving earnestly to do their full duty, an unexpected annoyance suddenly destroys both dignity and courtesy. I err in saying "let us remember"—lawyers do remember these things. They are of all men the most generous in forgiving errors. All they ask of those with whom they deal is honest purpose and earnest endeavour to do right. With this, the seventy times seven occasions for forgiveness or forbearance exhaust not their patience.

THE PENALTY OF DEATH.

THE division on Sir Joseph Pease's proposal to abolish the penalty of death is satisfactory, as showing that in this particular, at all events, the new House of Commons is not disposed to try rash experiments. It cannot be said that Sir Joseph Pease offered the House any great inducement to embark on his doubtful venture. His statistics may have been indisputable, but certainly they were not undisputed. Or, rather, to put it quite accurately, they were met by other statistics which pointed to the opposite conclusion. If in Belgium and the Nether-

lands no increase of murders has followed upon the disuse of capital punishment, a very great increase has followed upon a similar step in Switzerland and Würtemberg. The former country, indeed, has returned upon itself, and capital punishment is once more lawful. Moreover, a part of Sir Joseph Pease's speech would have been more in place if it had been made in support of Mr. Howard Vincent's amendment. The blundering executions of which so much has lately been heard reflect great discredit on the present haphazard method of appointing executioners, but they have no bearing on the question whether a murderer ought to be hanged or imprisoned for life. The number of applications show that the dislike generally felt towards the office is very far from being universal; and wherever there is competition, it ought not to be impossible to find a competent man for the post. So, too, it is quite true that the existing definition of murder is too wide. Now that certain classes of murderers are never executed, what is the use of passing sentence of death on them? The end the legislator should keep before him in the allotment of punishment to crime will be attained in proportion to the certainty with which the one is seen to follow upon the other. The difficulty of drawing a line between murders and murders may be great, but we refuse to believe that it is insuperable. Judges and Crown Counsel vie with one another in imploring juries not to find a prisoner guilty of murder unless the evidence is irresistible; and if occasionally a verdict is open to question, the Home Secretary is certain to advise a reprieve. The impression that innocent men are hanged rests, we fancy, on the fact that men who have been sentenced to death and reprieved are sometimes proved to be innocent. There are two reasons for retaining capital punishment which have lost none of their force. It is a common and, on the whole, valid argument for limiting the penalty of death to murder, that if you inflict it for any other crime, however heinous, there will be a strong temptation to add murder to that other crime in order to get rid of a witness. The abolition of capital punishment would have precisely the same result. It would be directly to the interest of a burglar to put to death a man who tried to defend his property, because to do so would subject him to no greater penalty, while by making identification difficult it would make conviction improbable. There are many cases in which the commission of a crime would be rendered easier by killing some one; and to all appearance, what mainly deters the criminal from thus doubling his guilt is his knowledge that in doing so he will much more than double his punishment. Death is something different in kind from perpetual imprisonment, and though he is ready to risk the one, he is not ready to risk the other. The whole force of this motive would disappear if he could double his guilt and yet leave his punishment what it was. The second of these still valid reasons is that the abolition of capital punishment would be a virtual gift of impunity to prisoners already under sentence of imprisonment for life. Whatever they may do, nothing worse can befall them than has befallen them already. It would be absurd to allot a lighter punishment to a second murder than has already been allotted to a first—to put a man on bread and water for a week for killing a prison warder, when he has been sentenced to penal servitude for life for killing his worst enemy. Yet the law would forbid the infliction of the only greater punishment, and, from the nature of the case, the original punishment cannot be repeated. There is no way that we can see out of this dilemma; consequently, the one thing to be done is to retain capital punishment. At least, if we let it go, we shall have greatly to increase our prison staff, to instruct the men composing it to be on the watch for the first sign of disturbance, and then to shoot freely by way of prevention, since we must not hang by way of penalty. One of the speakers in the recent debate pleaded not for the life of a murderer, but for his less painful death. "There are other modes of taking life besides the barbarous way of hanging a man by the neck until he is dead." In this, no doubt, Mr. Cooke is right. The range of choice is no longer limited to the axe, the cord, the musket and the guillotine; a mask charged with prussic acid, a glass of pleasantly flavoured liquid, a hermetically sealed chamber, would deprive death, if not of its terrors,

at all events of its suffering. The murderer would be better off in this respect than the majority of his fellow-men. There is physical agony—at times very great physical agony—attending upon their deaths; there would be none at all attending upon his. We agree with Mr. Cooke that when the law is taking life, it ought not to take it with unnecessary pain; but we do not see that we are bound to call in the help of science to make the death of a murderer less painful than it would probably have been if he had never been guilty of murder. There is no reason, however, to believe that hanging is more painful than any of the more ordinary forms of death. It might be long before the relatives of a man who had been killed by poison felt as much disgraced as they would had he been hanged. Moreover, frequent repetition has made this form of death sufficiently familiar to take hold of the popular imagination. Men who are tempted to murder can call up before their mental vision all the circumstances of the gallows; and where the imagination is sluggish, this is in itself a considerable advantage. —*Spectator.*

LIFE INSURANCE — ACCIDENT POLICY—SUICIDE.

A CASE of much interest relating to the subjects of life insurance and insanity, was decided recently by the U. S. Circuit Court for the Eastern Division of Wisconsin.[1] The facts were that in May, 1884, Mr. Crandall took out an accident policy for $10,000, his wife, who was the plaintiff in the action, being the beneficiary. In the policy it was provided that the insurance should not extend to death or disability "which may have been caused wholly or in part by bodily infirmities or disease."

While the policy was in force the insured Edward M. Crandall took his life by hanging, and the jury to whom the case was submitted for a special verdict on the facts found that at the time of the act of self-destruction, he was insane. The court, after reciting the facts, adds:

"The question reserved for consideration by the court, and now to be determined, is whether the death was one covered by the policy. The question of liability, as it here arises upon an accident policy of insurance, seems to be one of first impression. Unaided by direct authority, the court is called on to determine, first, whether under such a policy as this, death from self-destruction occurring when the insured is insane, may be said to have been caused by bodily injuries effected through accidental means. This question, it will be understood, is here to be considered quite independently of the question whether disease or physical infirmity was a promoting cause of death."

The court then assumes upon the verdict and the facts that "when the deceased took his life, it was not his voluntary rational act,"[2] and proceeds to argue that, "if in consequence of his condition of irresponsibility, the violence while inflicted upon himself, was the same as if it had operated upon him from without, why was not the death an accident, within the definition of the term as given by Bouvier, namely, an event which, under the circumstances, is unusual and unexpected by the person to whom it happens. The happening of an event without the concurrence of the will of the person by whose agency it was caused."

The court in pursuing this subject cites a number of cases in which the fatal act was the act of the deceased, and yet held to be an accident within the meaning of an accident policy; that of a man in a dazed and unconscious condition who, in a railway car walked to the platform and fell to the ground;[3] that of a person killing himself while in a state of delirium, the court saying that such deaths and those resulting from taking poison by mistake are more properly deaths by accident than deaths by suicide.[4] In an English case, the court[5] in passing upon the question whether a policy of insurance upon life is rendered void by the suicide of the insured when insane, speaks of such

[1] Crandal v. Accident Insurance Company of North America, Chicago Legal News, April 10, 1886, p. 257.

[2] See Breasted v. Farmers', etc. Co., 4 Hill, 73, 75.

[3] Scheiderer v. Ins. Co., 58 Wis. 13.

[4] Pierce v. Travellers', etc., Co., 34 Wis. 395.

[5] How v. Life Ins. Co., 7 Jurist. (N.S.) 693.

a death as just as much an accident as if the insured had fallen from the top of the house.

Upon a review of these cases, the Court arrives at the conclusion that the death of a person who while insane takes his own life is not suicide, but a death by accident, and upon that point within the terms of the policy under consideration. There is, however, another question of much interest involved in this case, and that is what, under the provisions of a policy that covers accidents only, was the cause of death? On this subject Mr. Justice Miller says:[6] "One of the most valuable criteria furnished by the authorities is to ascertain whether any new cause has intervened between the fact accomplished and the alleged cause. If a new force or power has intervened, of itself sufficient to stand as a cause of the misfortune, the other must be considered too remote." In another case,[7] Mr. Justice Strong says:

"There is undoubtedly difficulty in many cases attending the application of the maxim, '*proxima causa non remota spectatur*,' but none when the causes succeed each other in order of time. In such cases the rule is plain. When one of several successive causes is sufficient to produce that effect, the law will not regard an antecedent cause of that cause, or the '*causa causans*.' In such a case there is no doubt which cause is the proximate one, within the meaning of the maxim. But when there is no order of succession in time, when there are two concurrent causes of a loss, the predominating efficient one must be regarded as a proximate, when the damage done by each can not be distinguished."

In support of this view the court cites a number of English cases, and one decided by the Supreme Court of the United States,[8] and it will be borne in mind that these are "accident" cases. In one of them the insured became suddenly insensible while bathing, and was found in a shallow pool, drowned.[9] The drowning was held to be the cause of the death, not the sudden attack which caused it. Another case was like it, the deceased was crossing a stream, was taken with an epileptic fit, fell into the water and was drowned. The cause of death was held to be the drowning, not the epileptic fit, and the drowning was therefore accidental and charged the company.[10] And so with the other cases cited. The opinion of the court on this point is sufficiently supported by authority, but in one point of view we could wish the ruling clearer. The policy expressly excepts death caused "wholly or in part by bodily infirmities or disease." Now, has this expression "in part," no significance whatever? And if any, what does it mean? Can it be that under that expression a remote cause can be admitted to be "in part" and concurrently with the proximate, the cause of the death? Cannot the insanity of the person who took his own life be regarded as "in part" the cause of his death? On this point we are not entirely satisfied. Admittting that, without that expression, the court could not in determining the cause of death, go behind the proximate cause to a remoter cause; with that expression and giving full significance to it, we should think the court might well find that such remoter cause was "in part" the cause of the death. In other words, when the rule of law is modified by the contract of the parties, admitting those words "in part" into the conditions of the policy, those words must be construed in their natural sense, and given the effect to which in ordinary discourse they are entitled. If an insane man kills himself, the instruments of death, or rather the use of them, constitute the proximate cause of death, but is not the fact that the man was insane, and deprived of the protection of reason and healthy instinct, also "in part" the cause of his death?—*Ex.*

[6] Ins. Co. v. Tweed, 7 Wall. 44.
[7] Ins. Co. v. Transportation Co., 12 Wall. 199.
[8] Reynolds v. Accidental Ins. Co., 22 Law Times Rep. (N.S.) 820; Winspear v. The Accident Ins. Co. (Limited), 6 L. Rep. (Q. B. Div.) 42; Lawrence v. The Accidental Ins. Co. (Limited), 7 L. Rep. (Q. B. Div.) 216; and Scheffer v. R. R. Co., 105 U. S. 249.

[9] Reynolds v. Accidental Ins. Co., *supra*.
[10] Winspeare v. Accident, etc., Co., *supra*.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

CHATHAM v. DOVER.

Municipality—Drainage in—Petition for—Extending into adjoining municipality—Report of engineer—Not defining proposed termini—Benefit to lands in adjoining municipality—Assessment on adjoining municipality.

Under the drainage clauses of the Municipal Act a by-law was passed by the township of Chatham, founded on the report, plans and specifications of a surveyor, made with a view to the drainage of certain lands in that township. The by-law, after setting out the fact of a petition for such work having been signed by a majority of the ratepayers of the township to be benefited by the work, recited the report of the surveyor, by which it appeared that in order to obtain a sufficient fall it was neces- to continue the drain into the adjoining township of Dover. The surveyor assessed certain lots and roads in Dover, and also the town line between Dover and Chatham, for part of the cost as for benefit to be derived by the said lots and roads therefor. The township of Dover appealed from this report, under sec. 582 of 46 Vict. cap. 18, on the grounds, *inter alia*, that a majority of the owners of property to be benefited by the proposed drainage works had not petitioned for the construction of such work as required by the statute—that no proper reports, plans, specifications, assessments and estimates of said proposed work had been made and served as required by law—that the council of Chatham, or the surveyor, had no power to assess or charge the lands in Dover for the purposes stated in the said report and by-law—that the report did not specify any facts to show that the council of Chatham, or their surveyor, had any authority to assess the lots or roads in Dover for any part of the cost of the proposed work—that the assessment upon lots and roads in Dover was much too high in proportion to any benefit to be derived from the proposed work, and that no assessment whatever should be made on the lands or roads in Dover as the work would, in fact, be an injury thereto—and that the report did not sufficiently specify the beginning and end of the work, not the manner in which Dover was to be benefited.

Three arbitrators were appointed under the provisions of the Act, and at their last meeting they all agreed that the township of Dover would be benefited by the work, but R. F., one of the arbitrators, thought $500 should be taken off the town line, and W. D., another of the arbitrators, held that, while the bulk sum assessed was not too great, the assessment on the respective lands and roads and parts thereof should be varied, but that this was a matter for the Court of Revision. A memorandum to this effect was signed by W. D. and A. E., the third arbitrator, at the foot of which R. F. signed a memorandum that he dissented and declined to be present at the adjourned meeting to sign the award "if in accordance with the above memoranda." Later, on the same day, W. D. and A. E. met and signed an award determining that the assessment on the lands and roads in Dover, and on the town line made by the surveyor should be sustained and confirmed, and that the appeal should be dismissed, and that the several grounds mentioned in the notice of appeal had not been sustained.

The Queen's Bench Division set aside this award on two grounds, namely: want of concurring minds in the arbitrators, and of defect in the surveyor's report in not showing specifically the beginning and end of the work, 5 O. R. 325. The judgment of Queen's Bench Division was sustained by the Court of Appeal, 11 Ont. App. R. 248.

On appeal to the Supreme Court of Canada,

Held (RITCHIE, C. J., dissenting), that the award should have been set aside upon the ground that it was not shown that a petition for the proposed work was signed by a majority of the owners of the property to be benefited thereby, so as to give to the corporation of Chatham jurisdiction to enter the township of Dover and to do any work therein.

That the arbitrators should have adjudicated, upon the merits of the appeal against the several assessments on the lots and roads assessed, as their award was, by secs. 400 and 403 of 46 Vict. cap. 18, made final, subject to appeal only to the High Court of Judicature, and it was not a matter for the Court of Revision to deal with at all, as held by one of the arbitrators. That the award should have been set aside because it did, in point of fact, as it stood, profess to be a final adjudication against the township of Dover upon all the grounds of appeal stated in the notice of appeal, and did, in point of fact, charge every one of the lots and roads so assessed with the precise amount assessed upon them respectively, although, by a minute of the proceedings of the arbitrators who signed the award, it appeared that they refused to render any award upon such point, and expressed their intention to be to submit that to the Court of Revision.

That the arbitrators should have allowed the appeal to them against the surveyor's assessment, and that their award should have been set aside on the merits, because the evidence not only failed to show any benefit which the lots or roads in Dover which were assessed would receive from the proposed work, but the evidence of the surveyor himself showed that he did not assess them for any benefit the work would confer upon them but for reasons of his own which were not sufficient under the statute, and did not warrant their being assessed.

Appeal dismissed with costs.

Pegler, for the appellants.

C. Robinson, Q.C., and *Wilson* for the respondents.

JOHNSON v. CROSSON.

Trespass to land—Conflicting titles—Description of locus in quo—Boundaries.

A suit was brought in the Chancery Division of the High Court of Justice for Ontario to restrain the defendant from trespassing on the lands claimed by the plaintiff, and for damages for trespass already committed. The lands in question were described in the statement of claim as being in concession "C" in the township of Etobicoke, and the defendant, in his statement of defence, denied the plaintiff's right to the possession of said lands, and claimed himself to be the owner in fee of the same; he also claimed that the lands in question were not in concession "C," but were part of certain lots in concession "B" in said township. On the hearing each party gave evidence of title in himself, the principal contention being as to the location of the land, and judgment was given for the plaintiff.

Held, reversing the judgment of the Court below, that the title was in the defendant, under the evidence produced at the hearing, and that he was therefore entitled to have judgment entered for him with costs of defence.

Held, also, that the said lands were in concession "B," and not in concession "C," as claimed by the plaintiff.

Appeal allowed with costs.

C. Robinson, Q.C., and *Reeve*, for appellant.

Osler, Q.C., for respondent.

KEARNEY (Plaintiff), Appellant and CREELMAN AND REID (Defendants), Respondents.

Will—Devise under—Mortgage by testator—Foreclosure of—Suit to sell real estate for payment of debts—Decree under—Conveyance by purchaser at sale under decree—Assignment of mortgage—Statute confirming title.

Appeal from the Supreme Court of Nova Scotia.

A. M. died in 1838, and by his will left certain real estate to his wife, M. M., for her life, and after her death to their children. At the time of his death there were two small mortgages on the said real estate which were subsequently foreclosed, but no sale was made under the decree in such suit.

In 1841 the mortgages and the interest of the mortgagee in the foreclosure suit were assigned to one J. B. U., who, in 1849, assigned and released the same to M. M.

In 1841 M. M., the administrator with the will annexed of the said A. M., filed a bill in Chancery for the purpose of having this real estate sold to pay the debts of the estate, she having previously applied to the Governor-in-Council, under a statute of the Province, for

leave to sell the same, which was refused, on the ground that such leave could not be granted for the sale of a particular part of the estate, and if the whole estate was sold, and there should be a surplus, there was no mode of apportioning such surplus among the devisees. A decree was made in this suit and the lands sold, the said M. M. becoming the purchaser. She afterwards conveyed said lands to the commissioners of the lunatic asylum, and the title therein passed, by various acts of the legislature of Nova Scotia, to the present defendants; a statute having been passed in 1874 confirming the title to the said lands in the Commissioner of Public Works and Mines.

M. K., devisee under the will of A. M., brought an action of ejectment against the Commissioner of Public Works and Mines and the resident physician of the lunatic asylum, which was built on said lands, and in the course of the trial contended that the sale under the decree in the Chancery suit was void, inasmuch as the only way in which land of a deceased person can be sold in Nova Scotia is by petition to the Governor-in-Council. The validity of the mortgages and of the proceeding in the foreclosure suit were also attacked. The action was tried before a judge without a jury, and a verdict was found for the defendants, which verdict the Supreme Court of Nova Scotia refused to disturb. On appeal to the Supreme Court of Canada,

Held, affirming the judgment of the Court below, that even if the sale under the decree in the Chancery suit was invalid, the title to the land would be outstanding in the mortgagee or those claiming under her, and the plaintiff therefore, could not recover in an action of ejectment.

Semble, that such sale was not invalid, but passed a good title; HENRY, J., *dubitante*.

Held, also, that the statute cap. 36, sec. 47 R. S., 4th series, vested the said land in the defendants if they had not a title to the same before. HENRY, J., *dubitante*.

Appeal dismissed with costs.

Wallace, for the appellants.

Maclennan, Q.C., and *Graham*, Q.C., for the respondents.

CHANCERY DIVISION.

Ferguson, J.] [April 16.

BUILDING AND LOAN ASSOCIATION v. PALMER ET AL.

Setting aside alleged fraudulent conveyance of personal property—Evidence of collusion or fraud—Judgment and execution creditors—48 Vict. c. 26, ss. 2 & 3.

In an action by a creditor for an amount due on a mortgage and to set aside a conveyance of personal property in which the judge who tried the case found that the transaction complained of was not made with intent to defeat the claims of creditors or to give a preference, and that no collusion or fraud was proved. It was

Held, that, as none of the creditors were judgment and execution creditors, in the absence of fraud, the plaintiffs could not set aside the transaction under the statute of Elizabeth, and

That although under 48 Vict. c. 26, s. 2 (O), it might possibly be that the transaction should be held to be void as against creditors as having the effect of defeating, delaying or prejudicing creditors, yet as the sale was not a sham or colourable one, but was a real transaction and *bona fide*, and a note was given as actual present consideration on which defendant, Ferguson, was liable, and which he afterwards paid, section 3 applied and protected defendants, and the plaintiffs failed on that branch of the case.

A. Cassels, for plaintiffs.

Guthrie, Q.C., for defendants, the Palmers.

Moss, Q.C., for defendant, Ferguson.

Boyd, C.] [May 13.

MURPHY v. KINGSTON AND PEMBROKE RY.

Railways and railway companies—Deviation—One mile limit.

Held, that under the proper construction of 42 Vict. ch. 9, sec. 8, sub-sec. 11, being the Consolidated Railway Act of 1879, the limits of deviation of a railway must not exceed one mile from the line of railway in case of lands,

as shewn on the plans and books of reference, or of alterations thereof; but even within one mile from the said line no deviation shall be permitted, except in such instances, as are provided for in the special Act, and where, as in this case, the special Acts relating to a railway make no provision for deviation, they have no right to expropriate lands not shewn on their said plans and books of reference, even though within one mile from their line, as shewn on the said plans and books of reference.

Black, for the plaintiff.

A. J. Cattanach, for the defendants.

Rose, J.] [May 14.

MACDONALD v. ELLIOT.

Mortgage—Action on covenant—Statute of limitations.

Action on covenant in a mortgage dated October 13th, 1866; writ issued February 17th, 1886. Plea that plaintiff's cause of action was barred by Statute of Limitations, no interest on the principal money secured having been paid at any time.

Held, that the plaintiff was entitled to judgment: *Allen* v. *McTavish*, 2 A. R. 278, followed in preference to *Sutton* v. *Sutton*, 22 Ch. D. 511, and *Fearnside* v. *Flint*, *ib.* 579.

The covenant provided for payment of interest at nine per cent. up to the end of the year from the date of the mortgage.

Held, there being no evidence why such rate of interest was provided for, and it being matter of common knowledge that nine per cent. was not considered excessive for advances in the year 1866, and some following years, the same rate of interest should be allowed for the years subsequent to the expiry of the first year.

J. B. Jackson, for the plaintiff.

T. B. Blackstock, and *M. Walsh*, for the defendant.

FLOTSAM AND JETSAM.

RULED OUT AT LAST.—General Nye had cross-examined a witness at great length before a presiding judge who was peevish and irritable as well as rather dull, and he had frequently put the same questions, which the judge had ruled against as improper. At last the patience of the judge was exhausted, and he petulantly asked: "General Nye, what do you think I am sitting here for?" Nye looked up at the bench, and, with grave countenance, answered: "You have got me this time, your honour."—*Washington Law Reporter.*

LICENSE OF THE BENCH.—THE great case of *Hawkins, J.*, v. *Cock*, which agitated the bar last week, has ended in a decision of the Divisional Court in favour of the defendant. "Mr. Cock," said Mr. Justice Grove, "was not to blame;" and Mr. Justice Stephen went further, and remarked that "Mr. Cock had done nothing to be ashamed of," and when he declined to go on with the case "only showed a proper regard for his own dignity." These are unpleasant remarks for Mr. Justice Hawkins, and the frank expression of judicial censure on a brother judge is probably unprecedented; but so also it may be hoped was the conduct which called it forth. When the judge, after his list had broken down at eleven o'clock in the morning, refused to wait a few minutes for counsel who was actually engaged in speaking in a neighbouring court, he showed most singular petulance, and he does not appear to have retrieved his dignity by the mode in which the trial was subsequently conducted. Good temper and patience are judicial attributes not too common in the present day, and Mr. Cock deserves the thanks of the profession for the lesson he has afforded, that there is a limit to the license of the bench.—*Solicitors' Journal.*

SATISFACTION, in which we largely share, is universally expressed at the honour of knighthood conferred upon the ex-Chief Justice of the Superior Court of Quebec. It is just five years since we ventured to suggest the fitness of such a distinction (4 Leg. News, 169). Three years later the General

Council of the Bar, in a formal resolution, made a similar recommendation (7 Leg. News, 129). Since that time Chief Justice Meredith, to the great regret of the profession, has thought proper to claim the relief from official duties to which his long service upon the bench so fully entitled him (7 Leg. News, 289).

Sir William Collis Meredith was born in Ireland, 23rd May, 1812. He studied law in Montreal, and was called to the bar in 1836. Created a Q. C. in 1844. For some years he was head of the firm of Meredith, Bethune & Dunkin, which enjoyed a very large and important practice in the city of Montreal. He declined office on various occasions in the administrations of the time, but in December, 1849, accepted a judgeship of the Superior Court. On the 12th March, 1859, he was appointed to the Court of Queen's Bench, a position which he filled with marked ability. In 1866 he succeeded the late Chief Justice Bowen as Chief Justice of the Superior Court of Lower Canada, and continued in office until about two years ago, when the Government with great regret acquiesced in his desire for retirement. The decisions of the ex-Chief Justice have done much to build up the jurisprudence in force in this Province, and none are cited with greater deference in our courts. Sir William Meredith has received the hearty congratulations of his late colleagues on the well merited distinction conferred upon him, and we express simply the general feeling when we hope he may long be spared to enjoy the honours so worthily conferred.

Law Society of Upper Canada.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—North America and Europe.
- Elements of Book-Keeping.

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

Students-at-Law.

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

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a Selected Poem:—
1884—Elegy in a Country Churchyard. The Traveller.
1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,
Translation from English into French prose.
1884—Souvestre, Un Philosophe sous le toits.
1885—Emile de Bonnechose, Lazare Hoche.

OF NATURAL PHILOSOPHY.

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

First Intermediate.

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

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

Second Intermediate.

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

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

For Certificate of Fitness.

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

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

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

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

5. The Law Society Terms are as follows:

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

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

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

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

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

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

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

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

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

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six

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

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

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

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

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

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

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

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

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

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

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical reading of a Selected Poem:—
1886—Coleridge, Ancient Mariner and Christabel.
1887—Thomson, The Seasons, Autumn and Winter.
1888—Cowper, the Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

A paper on Grammar.
Translation from English into French Prose.
1886, 1888, 1890 — Souvestre, Un Philosophe sous le toits.
1887, 1889 — Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

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

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

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