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WE understand that Mr. Justice Robertson has appointed the 11th of December for the trial of the case of *Henderson v. Blain*, in which the late directors of the Central Bank are sought to be made liable for not watching with sufficient care the interest of the shareholders of that defunct institution, and it will probably consume several days.

IT needs not that Her Majesty should desire to honour him with knighthood to add anything to the esteem in which is held the eminent counsel who appeared on behalf of the Dominion of Canada on the Behring Sea arbitration. But it is gratifying to know that those highest in authority in the old land also appreciate his ability, though to us that is only one among the many reasons why he has gained the good will and respect of all classes, both legal and lay, in his native land. Mr. Robinson has, we understand, for private and personal reasons declined the proffered honour, but we trust that his decision in this respect is not irrevocable.

WHAT are the duties of the editor of our reports? is a question which naturally suggests itself when we read such passages as occur on p. 73 of the current number of the Ontario Reports. Of course the judges are supposed to express their opinions in their own language, and it is somewhat an invidious task to point out to a learned judge that his remarks are slightly lacking in point or continuity of thought; and yet disagreeable as it may be, this seems a necessary function of an editor. For

instance, the passage commencing at the words "As to the grounds taken by defendant's counsel" to the end of the judgment, except the last paragraph, seems, on a first reading, lacking in coherency and point, but a further examination would seem to show that proper punctuation would make the meaning clear; that is to say, a colon or dash after the word "pretence," instead of a period. Again, does the court mean to say that *Regina* v. *Rymal*, 17 O.R. 227, was wrongly decided? and, if not, what does it mean when it says: "Upon the point now being considered, the Queen's Bench Division in *Regina* v. *Rymal*, 17 O.R. 227, following *Rex* v. *Danger*, which is not law"? This slipshod paragraph has evidently escaped the notice of our usually careful editor and his reporter. We presume the word should be "followed" instead of "following." Accidents will, however, happen in the best regulated families.

NOTES ON SUPREME COURT DECISIONS.

PRACTICE IN ELECTION CASES.

The *Vaudreuil Election Case*, reported in the first number of Vol. 22 of the Supreme Court Reports, dealing with a question of practice under the Dominion Controverted Elections Act (R.S.C., c. 9), and incidentally with another question relating to the appellate jurisdiction of the court, can scarcely be passed over without criticism.

The decision depends on the construction placed on section 30 of the Act, which reads as follows:

"When, under this Act, more petitions than one are presented relating to the same election or return, all such petitions shall, in the election list, be bracketed together, and shall be dealt with, as far as may be, as one petition; but such petitions shall stand in the election list in the place where the last presented of them would have stood if it had been the only one presented as to such election or return, unless the court otherwise orders."

Two petitions were filed against the return of the appellant, and a judge's order was obtained fixing a date for the trial of one. The appellant moved in chambers for a postponement of the trial in order to have the two bracketed together, which motion was referred to the trial judges, who dismissed it, and ordered the

trial of the one petition to be proceeded with. The appeal to the Supreme Court was from the judgment on this trial avoiding the election, and the only question argued and decided was whether or not the one petition could be tried alone without a substantive order therefor.

The court held that the words "unless the court otherwise orders," at the end of section 30, made it a matter of judicial discretion whether the petitions should be ordered to be tried together or not, and that it must be assumed that the judges in this case thought fit, in their discretion, not to order them to be tried together.

It seems to have been taken for granted by their lordships that the qualifying clause at the end of the section applies to the provision as to bracketing and trying the petitions together, and Mr. Justice Patterson expressly says that it does so apply. It is not easy, however, to understand how this construction can be justified except by the arbitrary disregard of the grammatical arrangement of the section, and the rules by which the judicial interpretation of statutes is governed. The section contains two distinct provisions: first, that two or more petitions shall be bracketed together: and, secondly, that they shall be placed in a certain order of date for trial, if not otherwise provided for. The two are entirely independent of each other; and though the last would be unnecessary if the other did not exist, the first could certainly stand alone. The last provision might have appeared as a separate section, in which case the qualifying words could not possibly have been held to apply to the bracketing together of the petitions, and it is difficult to see how the actual arrangement calls for another construction.

However, the court has held, or assumed, that the qualifying words do so apply, and has then decided that a substantive order for a separate trial is not necessary. The Act says, according to the construction put upon it, that the two petitions "shall be bracketed together, and dealt with, as far as may be, as one petition, unless the court otherwise orders." The Supreme Court says that one of two or more such petitions may be tried alone without any order. In other words, that the act of the judges in proceeding with the separate trial is equivalent to an order.

Does this decision mean that the words "unless the court otherwise orders," whenever they appear in a statute, make

the act or proceeding they qualify a matter of judicial discretion in such manner that no order is required in any case? It cannot mean that. By one section of the Supreme Court Act, an election appeal does not operate as a stay of proceedings "unless the court otherwise orders." It is, of course, discretionary with the court to order a stay of proceedings or not, but the order must certainly be made, and it would probably have to be made in the majority of cases where this phrase is found in a statute. Then if it is not on account of the words themselves, upon what principle does the court hold that an order is not necessary? The reported judgments do not state any principle except that it is a matter of judicial discretion, and Mr. Justice Patterson goes so far as to say that it would also be a matter of judicial discretion without the qualifying words. Perhaps he is right; but as the provision for bracketing the petitions together has the word "shall," which the Interpretation Act says is to be construed as imperative, his opinion is not easy to follow. One could understand it being a matter of judicial discretion to make or refuse an order for severance, but it is difficult to go beyond that.

Then the majority of the court has held that the question we have been discussing did not arise on the trial of the petition, and was not, therefore, a matter which could be brought before them on appeal.

The only way in which the decision on this point could be questioned is that it was a question as to the jurisdiction of the trial court, and, being such, did not the judges virtually decide it on the trial? From this point of view, it must be taken to be the rule of the Supreme Court that in no case, even where the court appealed from was palpably void of jurisdiction, will an appeal lie in an election case on that ground unless the objection was formally taken at the trial and passed upon by the trial judges. This may not be of great importance, as it is not likely that many cases will arise in which the objection to jurisdiction will be taken for the first time on appeal, but it is not at all impossible, as this case shows.

This decision, then, is unsatisfactory upon several grounds, namely, that it is founded upon an assumed construction of section 30 which the grammatical arrangement of that section does not seem to warrant; that the *ratio decidendi* of the holding on the merits is not apparent; that the ruling as to jurisdiction of

the court to entertain the appeal is not specific enough as to the only ground upon which the right of appeal could be claimed; and, lastly, that as section 30 relates to procedure the case seems to go the length of deciding that there can be no such thing as an imperative direction as to procedure in a statute unless, perhaps, by adding to the direction a rider providing that the proceedings shall be void unless the direction is followed, which ought to be unnecessary. Mr. Justice Gwynne says that the proceeding objected to was a mere irregularity. If so, could it be more than an irregularity in any case if a judge or court fails to comply with a statutory direction as to procedure?

CURRENT ENGLISH CASES.

The Law Reports for October comprise (1893) 2 Q.B., pp. 285-322; (1893) P., pp. 253-268; and (1893) 3 Ch., pp. 1-78.

SOLICITOR—BILLS OF COSTS, SERIES OF—TAXATION—PAYMENT OF COSTS BY GIVING NEGOTIABLE SECURITY.

In re Romer, (1893) 2 Q.B. 286, is an important and interesting case to solicitors, and throws a good deal of light on a question which is of some moment to them. The application was made by a client for the taxation of his solicitors' bills, and was resisted by the solicitors on two grounds: first, that all of the bills except one had been delivered more than twelve months before the application; and, second, that all of the bills had been paid. It appeared that the business to which the bills related was an arbitration, and that bills had been rendered every six months, accompanied by a cash account; and the last bill was rendered when the proceedings of the arbitration had been completed. No demand had been made for payment of the previous bills as delivered, but on the last bill being delivered the clients had given the solicitors several acceptances for the balance appearing due, two of which had been met at maturity, but others were dishonoured, and some were not due when the application was made. Mathew, J., granted the application on the ground of there being overcharges in the bills. The Divisional Court (Cave and Lawrance, JJ.) set his order aside, being of opinion that each bill was a separate bill, and not a part of a continuous bill; and also that the giving of the bills of exchange was a payment of the

bills; but the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) came to a different conclusion on both points, and held that the several bills, all relating to the same business, were parts of one bill, and that the delivery of the bill was not complete until the last bill was delivered; and therefore that the client was entitled to a taxation of all the bills on applying within the proper time from the delivery of the last of the bills. They also agreed that the giving of a bill of exchange by a client to his solicitor for costs claimed to be due is not necessarily a payment which debars the client from a right to a taxation unless both the solicitor and client expressly so agree; but is, in the absence of such agreement, only a conditional payment.

MALICIOUS PROSECUTION—CRIMINAL PROCEEDING—PROCEEDING AGAINST PASSENGER FOR REFUSING TO PAY FARE.

Rayson v. *South London Tramways Co.*, (1893) 2 Q.B. 304, was an action against a company for malicious prosecution, and shows, in view of a recent verdict recovered in the Assize Court in Toronto, that a tramway company seeking redress against a passenger erroneously supposed not to have paid his fare is in a somewhat perilous position. In this case, the company, under a statute which provided a penalty of forty shillings against any person travelling on any tramway without paying his fare, commenced a prosecution against the plaintiff to recover the penalty, and failed; and it was held that the proceedings taken under the Act for the enforcement of the penalty were proceedings in respect of a criminal offence, so that an action for malicious prosecution would lie against the defendants for taking them. In the Toronto case, a verdict of $500 was given against a street railway company for ejecting a passenger on the erroneous supposition that he had not paid his fare.

COMPANY—ISSUE OF PAID-UP SHARES—WINDING UP—ALLOTTEES OF PAID-UP SHARES, LIABILITY OF, AS CONTRIBUTORIES.

In re Eddystone Marine Insurance Company, (1893) 3 Ch. 9, is an illustration of the liability which persons incur of becoming contributories in winding-up proceedings in respect of shares which they have accepted from a company as paid-up shares by way of gift or bonus. In this case the company had been carried on as a private company, all

the shares being in the hands of a limited number of shareholders. It was then decided to throw the company open to the public, but before doing so the company passed resolutions under which a certain number of shares were allotted to and accepted by the directors and original shareholders as paid-up shares, in consideration of their past services, and expenses incurred in forming the company, and establishing the business. The company having subsequently proved unsuccessful was ordered to be wound up, and the liquidator claimed to place on the list of contributories the allottees of the above-mentioned shares as unpaid shares; and Wright, J., held that he was entitled to do so, on the ground that it appeared on the evidence that no payment either in money or money's worth had been made for the shares, and that the allottees thereof were therefore liable for the full nominal value thereof. The suggestion that the shares were allotted in consideration of past services was regarded by the learned judge as a mere subterfuge, used to cover up the real transaction, which was an attempt to give the allottees compensation for promoting the company. This decision was affirmed by the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.). As Lindley, L.J., puts the question, it was simply this: "Can a limited company give its members fully-paid-up shares for nothing, so that when the company is wound up those shareholders are not liable to pay calls in respect of those shares?" And he was clearly of the opinion that they could not.

LIGHT—EASEMENT—PRESCRIPTION—CROWN WHEN NOT BOUND BY PRESCRIPTION—LESSEE OF SERVIENT TENEMENT—REVERSIONER—STATUTE OF LIMITATIONS (2 & 3 W. 4, c. 71), ss. 1, 2, 3, 8—(R.S.O., c. 111, ss. 34, 35, 36, 41).

Wheaton v. Maple, (1893) 3 Ch. 48, was an action brought to restrain defendants from interfering with the access of light to the plaintiffs' premises, the plaintiffs claiming to have acquired an easement in regard of the right of light over the defendants' premises by virtue of enjoyment thereof for upwards of forty years. There was no question that the plaintiffs' house had been built in 1852, and that ever since then the plaintiffs had enjoyed the access of light over the defendants' premises. It appeared, however, that at the time the plaintiffs' house was erected the defendants' land was held by the defendants under a lease from the Crown, which would have expired in 1914, and

that in 1891 this lease was surrendered, and a new lease granted on the terms that defendants would erect new buildings on the land. It was admitted that the new buildings would interfere with the plaintiffs' light. It was held by Kekewich, J., that easements of light do not come within 2 & 3 W. 4, c. 71, ss. 1, 2 (R.S.O., c. 111, ss. 34, 35), but were governed by s. 3. The corresponding section to this section was repealed in Ontario by 43 Vict., c. 14, s. 1 (R.S.O., c. 111, s. 36), which, however, in effect, preserves rights theretofore acquired thereunder. 2 & 3 W. 4, c. 71, s. 3, provided, in effect, that the uninterrupted enjoyment of light for twenty years shall give an absolute and indefeasible right thereto. This section, however, does not purport to bind the Crown, as do sections 1 and 2 (R.S.O., c. 111, ss. 34 and 35). Kekewich, J., therefore, held that the Crown would not be bound by that section, but he was of opinion that the Crown's lessees were, and that, notwithstanding the surrender of the original lease, the defendants' interest as the lessees under the new lease would be subject to the easement of the plaintiffs until 1914, when the original lease would expire. But the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) held that the plaintiffs, not being able to acquire an easement of light by prescription against the Crown under s. 3, neither could they do so against the Crown's lessees; and, as Smith, L.J., put it, they were agreed that, "when the enjoyment is of the character of an easement, and it cannot give a good title against all persons having estates in the *locus in quo*, the statute gives no right at all, even against a lessee, during the continuance of the term." . . . . "In other words, a person cannot obtain an absolute and indefeasible right within the meaning of the statute unless by the user he can get a right against all."

The Law Reports for November comprise (1893) 2 Q.B., pp. 321-350; (1893) P., pp. 269-281; (1893) 3 Ch., pp. 77-211; (1893) A.C., pp. 349-561.

SHERIFF—INTERPLEADER—MONEY PAID TO SHERIFF TO ABIDE ORDER OF COURT.

Discount Banking Company v. *Lambarde*, (1893) 2 Q.B. 329, is the only case in the Q.B. Division to which we think it necessary to refer, and it is a decision on a very simple point of pract ice

which one would hardly have thought it would be found necessary to carry to a Court of Appeal. The defendant, a sheriff, having seized goods in execution interpleaded, and an interpleader order was made, the interpleader proceedings being transferred to a County Court, and the claimants were permitted to pay a sum of money to the sheriff for the release of the goods "to abide the order of the County Court." The money was paid to the sheriff, but before the trial of the issue in the County Court the execution creditor abandoned his claim, and the claimants obtained judgment in the County Court, but did not obtain any order for payment of the money in the sheriff's hands. The claimants demanded the money from the sheriff, and on his refusal to pay they commenced the present action to recover it from him. The action was tried by Charles, J., who gave judgment for the plaintiffs, but it is almost needless to say that the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) reversed his decision, holding that the sheriff was entitled to retain the money until an order had been made by the County Court in respect of it.

[None of the cases in the Probate Division call for notice here.]

ESTATE TAIL—BARRING ENTAIL—ESTATES "IN DEFEASANCE OF" ESTATE TAIL—3 & 4 W. 4, c. 74, s. 15—(R.S.O., c. 103, s. 3).

In *Milbank* v. *Vane*, (1893) 3 Ch. 79, a question arose as to the effect of a disentailing deed. The lands in question were devised in trust for A. for life, with remainder to his first and other sons successively in tail male, with similar remainders over to B. and C., younger brothers of A., and their respective first and other sons successively in tail male; and the will contained a proviso that in a certain event the trusts in favour of B. and his issue male "should thenceforth be postponed to and take effect in remainder next immediately after" the trusts in favour of C. and his issue male. B. and his eldest son with the consent of A., the tenant for life, executed a disentailing deed. Subsequently, and during A.'s life, the event happened referred to in the above proviso, and upon A.'s death C.'s eldest son, unless barred by B.'s deed, would be the tenant in tail in possession. The question therefore turned on whether the proviso for postponing the estate tail of B. to that of C. constituted C.'s estate a prior estate to that of B., or whether it was merely an estate to

take effect "in defeasance" of B.'s estate within the meaning of 3 & 4 W. 4, c. 74, s. 15 (R.S.O., c. 103, s. 3). Kekewich, J., came to the conclusion that C.'s estate was one limited in defeasance of B.'s estate, and therefore was barred by his deed; and this decision was affirmed by the Court of Appeal (Lord Esher, M.R., and Lindley and Kay, L.JJ.).

COMPANY—WINDING UP—FRAUDULENT PREFERENCE—SET OFF.

In re Washington Diamond Mining Company, (1893) 3 Ch. 95, two directors of a company being indebted to the company, each for £70 for unpaid shares, paid the amount to the company within three months prior to an order being made for its winding up, and at the same time received back a cheque for the like amount signed by themselves as directors for fees due to them as directors. At the time this transaction took place the company was in embarrassed circumstances, and had a balance of only £2 0s. 11d. at its bankers. It was claimed by the liquidator that the payment was a fraudulent preference, and that the two sums of £70 should be refunded by the directors who had received them, and it was so ordered by the Court of Appeal (Lindley, Bowen, and Kay, L.JJ., overruling Williams, J.), on the ground that under the Winding-up Act no set off of demands is allowable.

PRACTICE—INQUIRY AS TO DAMAGES—DISCOVERY.

In *Maxim Nordenfeldt Company* v. *Nordenfeldt*, (1893) 3 Ch. 122, an inquiry had been ordered as to the damages the plaintiffs had sustained by reason of the defendant's breach of a covenant in restraint of trade. The plaintiffs, prior to putting in a statement of claim for damages, obtained an order for an affidavit of documents by defendant. The defendant applied to compel the plaintiffs to file this statement of claim for damages before filing his affidavit. North, J., granted the application; but the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) held that the plaintiffs were entitled to have the affidavit of documents filed before putting in their claim, and they therefore reversed the order of North, J., on the ground that the plaintiffs, from the nature of the case, were not in a position to put in their claim until they had obtained the discovery which they sought from the defendant.

PRINCIPAL AND AGENT—EXCESS OF AUTHORITY OF AGENT—LIABILITY OF PRINCIPAL—AUTHORITY TO PLEDGE DEED FOR A PARTICULAR SUM—FORGED DEED—REDEMPTION.

Brocklesby v. *Temperance Building Society*, (1893) 3 Ch. 130, was an action for redemption which turned upon the question as to how far the plaintiff was liable for the act of his agent, who had exceeded his authority. The agent in question was the plaintiff's son, who had been entrusted by the plaintiff with certain title deeds which he was authorized to pledge with a certain bank for the purpose of raising a loan of £2250. The son pledged the deeds with another bank than that named for a much larger sum than £2250. Part of the sum thus raised he applied for his father's use or paid to him, and the rest he kept for his own use. Subsequently he induced the defendants to advance a still larger sum, out of which he paid the bank the sum previously procured, and kept the rest for his own use. The son, to secure this advance by the defendants, deposited the title deeds with them, and also a conveyance of the property covered thereby, purporting to be made by the plaintiff, but which was, in fact, a forgery. The defendants had no notice of the fraud of the son, who subsequently absconded. The plaintiff claimed the right to redeem the title deeds on payment of £2250 which he had authorized to be borrowed; but the Court of Appeal (Lindley, Lopes, and Smith, L.JJ.) agreed with Wright, J., that the plaintiff, having placed the deeds in his son's hands, could not redeem them without paying the whole sum which the defendants had advanced upon the security of the deeds, notwithstanding that the son had exceeded his authority in raising more money than he was instructed to raise, and had effected his purpose by forgery. The principle upon which the Court of Appeal proceeded may be gathered from the following passage from the judgment of Lindley, L.J.: "A legal . . . of deeds who entrusts them, or the control of them, to an agent, in order that he may raise money on them, cannot, in equity, at all events, recover them from a person who has *bonâ fide* advanced money on them, without notice of anything wrong, except upon the terms of paying what that person has advanced on the security of the deeds handed over to him."

PRACTICE—PARTIES—PROCEEDING IN ABSENCE OF REPRESENTATIVE OF A DECEASED PERSON—ORD. XVI., R. 46 (ONT. RULES, 310, 311).

In re Richerson, Scales v. *Heyhoe*, (1893) 3 Ch. 146, shows that when the court pronounces judgment construing a will in the absence of the representative of a deceased person, who was a necessary party, without making any order expressly dispensing with the presence of such representative or appointing some one to represent him for the purpose of the action as provided by Ord. xvi., r. 46 (Ont. Rules 310, 311), the absent person is not bound by the judgment pronounced, and is at liberty to dispute the correctness of the construction thereby placed upon the will. The mere fact that the court has pronounced judgment in the absence of a person interested indicates no intention that the other parties shall represent such absentee so as to bind him.

BAILMENT—DEPOSIT OF MONEY—DEMAND AND REFUSAL—STATUTE OF LIMITATIONS (21 JAC. I., C. 16), S. 3.

In re Tidd, Tidd v. *Overell*, (1893) 3 Ch. 154, is a case in which it became necessary to decide from what time the Statute of Limitations (21 Jac. 1, c. 16) would begin to run in the case of a claim to recover money which had been deposited by the plaintiff's testator with the defendant for safe custody, though it was contemplated that the bailee might use the money in his business; and North, J., held that the law of England on this point was the same as the civil law as laid down by *Pothier*, viz., that as the right of action to recover money so deposited would not accrue until after a demand of and a refusal to refund, so the Statute of Limitations did not begin to run until there had been a demand and a refusal to refund, and therefore though the deposit had been made in 1875 the action was held to be in time.

COVENANT—"BUILDING"—BOARDING—BREACH OF COVENANT—INJUNCTION.

Foster v. *Fraser*, (1893) 3 Ch. 158, was an action to restrain the breach of a covenant which, among other things, provided that "any building" erected by the defendants on the property therein referred to should have "a stuccoed or cemented front and a slated roof." The defendant had erected on the land in question a boarding for advertisements, and it was claimed by the plaintiff that this was "a building" within the meaning of the covenant; but Kekewich, J., was of opinion that the boarding was not a building within the meaning of the covenant, and he dismissed the action.

Notes and Selections.

AGENCY—BROKERS—RELATIONS OF THEIR CUSTOMERS TO THEM.—A customer and a broker buying and selling stocks upon margins stand in the relation of pledgor and pledgee, and the fact that the broker has an implied right of repledging stocks does not change the relation. *Skipp et al.* v. *Stoddard*, 26 Atl. Rep. 874 (Conn.). This case shows the common doctrine. See *Markham* v. *Jaudon*, 41 N.Y. 235, which is perhaps the leading case on the subject; and also "Jones on Pledges," s. 495. The case of *Covell* v. *Loud*, 135 Mass. 41, is *contra*, the court treating the dealing between the parties as an executory agreement, with power in broker to sell without notice on default by customer.—*Harvard Law Review.*

CONSTITUTIONAL LAW—GEARY ACT—CHINESE EXCLUSION.—An Act of Congress, after continuing the laws then in force for the exclusion of Chinese from the United States, provides for the removal of Chinese not lawfully within this country, requiring that all Chinese labourers entitled to remain in the United States shall obtain certificates of residence from persons authorized by the Act to give them, under penalty of removal on failure to do so within one year. On an appeal from the Circuit Court which raised the question of the constitutionality of the Act, the court held that the Act was constitutional. That, inasmuch as Chinese labourers cannot, under the naturalization laws, become citizens, they remain subject to the power of Congress to order their expulsion. That the order of deportation is not a punishment, "but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation has determined that his continuing to reside here shall depend"; consequently that part of the constitution securing the right of trial by jury and prohibiting unreasonable searches and punishments has no application. *Fong Yue Ting* v. *United States*, 13 Sup. Ct. Rep. 1016. Fuller, C.J., and Field and Brewer, JJ., dissenting.—*Harvard Law Review.*

ENGLISH AND AMERICAN BAR IN CONTRAST. — Under the above caption, Mr. A. Oakley Hall recently wrote an article in the *Green Bag*, in which, as might have been expected, he represented the English Bar in a contemptible light, and glorified the American Bar to the seventh heaven of excellence. To us in this country who know something of the U.S. Bar, Mr. Hall's article will be regarded in the light of a huge joke; but so far as he is concerned, it is plain he really believes what he writes—a "jest in sober earnest" in fact. We have neither the space nor the inclination to reproduce this graceful contribution here, but have taken the liberty of throwing into contrast its conclusion, and an extract taken from the *Albany Law Journal*:

"No one who is familiar with the appearance, carriage, demeanour, and address of lawyers in the United States, and who has also been an attendant upon English courts, can fail to admit and recognize the superiority in those respects of the American advocate. The latter possesses an elasticity and general grace of movement, facial gesture, natural and earnest delivery, readiness and aptitude in questioning, cleverness in repartee, and unction of diction that are seldom met with at the English Bar. The average American lawyer attains eloquence which is seldom reached by the English barrister. The latter is a martyr to decorum. He seems oppressed with a ceremonial sense. He cannot run his fingers caressingly through his hair, and at times he talks as if he felt the weight of his wig upon his brain. Occasionally his gown seems to have the effect of a strait-jacket. A sense of etiquette appears often to act as a species of bearing or curb rein to his movements. * * * * All noted barristers and Q.C.'s seem in some particular to be sensible that they are actors bred in the same school; while in the United States scarcely two lawyers exhibit similar peculiarities. In fine, the schooling of the English Bench and Bar tends towards monotony and artificiality, while the schooling of the American Bar tends toward freedom and naturalness in thought and speech, and to a general behaviour that is fettered only by the innate dignity of a gentleman, and plainly impressed by a high sense of duty."

Here appears the *per contra*:

Lynchburg, Va., special to the *Washington Post*, August 11: "Yesterday afternoon, during the trial of Hugh J. Schott against the Norfolk and Western Railroad, the opposing counsel, J. C. Wysor and General James A. Walker, became involved in a difficulty by Walker accusing Wysor of appealing in his speech to the passion and the prejudice of the jury. Wysor gave Walker the lie. Walker asked for a knife, and Wysor drew his knife and handed it to him. Walker refused the proffer, and borrowed one from a bystander, and the fight commenced. Several blows were struck, and Wysor was stabbed in his shoulder, and his face was slit from his mouth to his ear. Wysor then borrowed a gun and tried to force Walker's room door to shoot him, when both were arrested and put under a bond of $5,000. Wysor is badly hurt. Both men are among the most prominent lawyers in southwestern Virginia."

Mr. Hall will thank us for endeavouring to give a practical illustration of the "elasticity and general grace of movement" of these "most prominent lawyers" of courtly Virginia, as one chopped the other with a knife and proceeded to enlarge the scope of his "facial gesture" by slitting his mouth from ear to ear, and the other, scorning that silly "monotony and artificiality" of the English Bar, and "fettered only by the innate dignity of a gentleman," tried to blow holes through his adversary with a gun. Yes, Mr. Hall, you have proved your point; we quite agree with you that your system "tends toward freedom and naturalness in thought and speech," and, permit us to add, action. We appreciate the good qualities of the Bar of our neighbours across the line, but Mr. Hall makes a very poor trumpeter: he blows too loud.—*Western Law Times.*

LIBEL—PRIVILEGED PUBLICATIONS—PUBLIC OFFICERS.—To print and publish of a person that he "is said to have been in the workhouse and to have had a criminal record" is libellous *per se*. While it is the right of the press, as it is of individuals, to freely criticize and comment upon the official action and conduct of a public officer, false and defamatory words, spoken or published of him as an individual, are not privileged on the ground that they related to a matter of public interest, and were spoken or published in good faith. The real ground on which the alleged privilege is claimed in arguments is that inasmuch as the investigation of the conduct of the police commissioners was a matter of public concern in the city of Cincinnati, and the character of their appointees on the police force was incidentally involved, the defendant, so long as it was not actuated by malice, had the right to publish as an item of news, and in the public interest, any criticism, comment, or statement concerning the personal character and standing of the plaintiff, as well as his official action and conduct as a policeman. It is said in support of this position that the press owes a duty to the public to keep it informed about its public servants, to the end that abuses may be corrected and the public welfare subserved; and that the press, in the performance of that duty, is privileged to speak as freely of the private character of the person holding the office as of his

official conduct and character; that the right to so speak of the latter incidentally includes the same liberty as to the former. It is not denied that the right goes to the extent of free and full comment and criticism on the official conduct of a public officer, and there are some cases which maintain the doctrine as broadly as claimed. These cases declare that one who offers his services to the public as an officer thereby surrenders his private character to the public, and is deemed to consent to any imputation, however false and defamatory, if made in good faith. We do not think the doctrine either sound or wholesome. In our opinion, a person who enters upon a public office, or becomes a candidate for one, no more surrenders to the public his private character than he does his private property. Remedy by due course of law, for injury to each, is secured by the same constitutional guaranty, and the one is no less inviolate than the other. To hold otherwise would, in our judgment, drive reputable men from public positions, and fill their places with others having no regard for their reputation; and thus defeat the purpose of the rule contended for, and overturn the reason upon which it is sought to sustain it. That rule has not been generally adopted in this country (*Hamilton* v. *Eno*, 81 N.Y. 116; *Lewis* v. *Few*, 5 Johns. 1; *Curtis* v. *Mussey*, 6 Gray, 261; *Barry* v. *Moore*, 87 Penn. St. 385; *Kimball* v. *Fernandez*, 41 Wis. 329; *Sweeney* v. *Baker*, 13 W. Va. 148; *Com.* v. *Wardwell*, 136 Mass. 164; *Negley* v. *Farrow*, 60 Md. 158; *State* v. *Schmitt*, 49 N.J. Law, 579; *Rearick* v. *Wilcox*, 81 Ill. 77), and the converse of it has hitherto obtained in this State. *Seeley* v. *Blair*, Wright (Ohio), 358, 683. Ohio Sup. Ct., Jan. 31st, 1893. *Post Pub. Co.* v. *Moloney*. Opinion by Williams, J.—*Albany Law Journal.*

DIARY FOR DECEMBER.

1. Friday .....Convocation meets. Princess of Wales born, 1844.
2. Saturday....Annual fees to Law Society due—last day.
3. Sunday.....*1st Sunday in Advent.*
5. Tuesday.....Gen. Sess. and Co. Ct. sittings for trial in York.
6. Wednesday..Rebellion broke out, 1837.
7. Thursday....Chy. Div. H.C.J. sits. Rebels defeated at Toronto, 1837.
8. Friday.....Convocation meets. Sir Wm. Campbell, 6th C.J. of Q.B., 1825.
9. Saturday.... Michaelmas Term ends.
10. Sunday.....*2nd Sunday in Advent.* Niagara destroyed by the U.S. troops, 1813.
12. Tuesday.....County Court sittings for trial, except in York.
13. Wednesday..S. H. Strong appt. C.J. of Supreme Court, 1892.
15. Friday.....J. B. Macaulay, 1st C.J. of C.P., 1849. Prince Albert died, 1861.
17. Sunday.....*3rd Sunday in Advent.* First Lower Canada Parliament, 1792.
18. Monday.....Slavery abolished in the United States, 1862.
19. Tuesday.....Fort Niagara captured, 1813.
24. Sunday.....*4th Sunday in Advent.* Christmas vacation begins.
25. Monday.....Christmas Day.
26. Tuesday.....Convocation meets. Upper Canada made a province, 1791.
27. Wednesday..J. G. Sprague, 3rd Chancellor, 1869.
29. Friday.....Sir Adam Wilson, C.J. of Q.B., died, 1891.
31. Sunday.....*1st Sunday after Christmas.* Montgomery repulsed at Quebec, 1775.

Reports.

ONTARIO.

WINDING-UP ACT.

(Reported for THE CANADA LAW JOURNAL)

RE REIMER PIANO CO

Joint stock company—Liquidation—Contributories—Fully-paid-up shares.

R., being in the piano business, took in as partners I. and S., who put in $4000 each in cash. It was at same time agreed to form a joint stock company, and it was verbally understood that R. should be allotted stock to the amount of his property and I. and S. stock to the amount of the cash advanced by them. Shortly after the company agreed to wind up, and it was sought to make the partners contributories.

Held, that, there being no allegation of fraud, what was done amounted to a payment or subscription of the sum due in respect of the shares subscribed for by these three partners.

(TORONTO, Nov. 24. MCDOUGALL, Co. J.

This was an application by the liquidator to settle the list of contributories, who are in number five, being the five corporators of the company. Their names appear in the letters patent, which are dated 21st June, 1892.

A brief history of the organization of the company is as follows: Reimer some time in 1891 started a piano business. He was shortly after joined as a

partner by Thomas Iredale, who put $4000 capital into the concern. In April, 1892, a new partner, Edward Smith, was taken in, who was to contribute $4000 in cash to the capital of the concern. Articles of partnership were drawn up between Reimer, Iredale, and Smith, wherein it was agreed that the business should be put into a joint stock company; and it was further agreed that the property put in by Reimer and the cash put in by Iredale and Smith should be treated as their interest in the joint stock company. The then business was, when the company was formed, to be carried on by the company, and all the assets of the firm to become the assets of the company. The capital stock of the company was to equal in amount the capital of the firm, and the partners, it was verbally understood, were to have allotted to them shares in the company to the amount of their capital in the partnership, and these shares were to be deemed fully-paid-up shares. No formal transfer in writing was ever made of the assets, and for some little time after the issue of the letters patent the partnership affairs appear to have been carried on in the firm name, but later in the name of the company. The partners' individual accounts were credited with the amount of stock in the company as fully paid up by the credit to each of them of their individual share in the former partnership business.

In December, 1892, stock was taken, and it was found that there was a small deficiency. A short time after it was decided to wind up the company.

W. D. McPherson for the liquidator.

J. E. Bird for Reimer.

Kapelle for Iredale.

H. L. Dunn for Smith.

Other counsel appeared for some of the creditors, but were not called on.

McDOUGALL, Co.J: There is no allegation of fraud in the transaction; the sole question is, does what was done amount to a payment or subscription of the sum due in respect of the shares subscribed for by these three gentlemen, Reimer, Iredale, and Edward Smith? In *Baglan & Hall Colliery Co.*, 5 Chan. 346, it was held that ten persons who owned a colliery, and who formed a joint stock company, taking shares in the company which were to be treated as fully paid up for their several interests in the colliery, was a valid transaction, and that the shares must be held to be effectually paid up.

It was argued in that case that mine-owners in agreeing with the company, which was really composed of themselves, was, in effect, agreeing with themselves, and therefore no contract; but Gifford, L.J., scouted this proposition, and said that every company is started by agreeing among themselves, and that it was idle to say that they have nobody to agree with. There was no fraud or concealment in the case, as here, and that being admitted the intention of the parties would be carried into effect, and the handing over of the property was a valid paying up of the shares.

And so in *Pells Case*, 5 Chan. 11, it was held that the court being satisfied that the property was handed over at an agreed upon value for fully-paid-up shares, and no evidence of fraud or deceit, the court would consider the agreement binding, and would not go behind the agreement or direct any enquiry as to the value of the property transferred. See also *Berkinshaw* v. *Nicholls*, 3 App. Co. 1015-16.

In this case it may be contended that the company was not really finally organized tlll January, 1893; but even if that be so, finding, as I must, on the evidence, that there was an agreement between Reimer, Iredale, and Smith that they should transfer their business to the company in exchange for fully-paid-up shares to the extent of Reimer's 160 shares, Iredale 160 shares, and Smith 158 shares, and that this agreement was carried out in fact, though not in writing, and the company got the existing assets of the concern, I must hold that these shares must be treated as fully-paid-up shares. We have no similar provision in our Act to the Companies Act of 1867, 31 Vict., c. 131, s. 25, which compels the registration of all agreements for the transfer of property to companies in exchange for paid-up shares; and therefore an agreement such as is set up in this case is valid if made in good faith, and if it be free from fraud.

As to the case of Joseph Smith and W. J. Smith, who are subscribers for one share each in the company, they were not parties to the original agreement, and transferred no property, or otherwise in any way paid for their shares. They must therefore be fixed on the list of contributories for the amounts placed against their names by the liquidator, viz., $25 each: *Re Heyford Iron Works Co.*; *Forbes* v. *Judd Case*, 5 Chan. 270.

The list of contributories as filed by the liquidator must be varied by removing the names of J. Reimer, Thomas Iredale, and Edward Smith.

I do not propose to consider or decide the question as to whether R.S.O., c. 183 (the Winding-up Act) is *ultra vires* of the Local Legislature. I hold for the purposes of this enquiry that the winding-up order was properly made.

I do not allow any costs to Reimer, Iredale, or Smith of this contestation, but I think the whole affair was so loosely managed that the liquidator was bound to place them on the list in the first place. Costs of liquidator out of estate.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

Q.B.D.] [Nov, 14.

ALLISON *v.* MCDONALD.

Partnership—Collateral security—Principal and surety.

When the creditor of a partnership who holds a mortgage on property of the firm amply sufficient to secure his claim discharges that mortgage at the request of one partner without the consent of or notice to the other, although he knows that the partnership has been dissolved and that the continuing partner has assumed the liabilities, he cannot afterwards recover as against the retiring partner.

Judgment of the Queen's Bench Division, 23 O.R. 583, reversed; MACLENNAN, J.A., dissenting.

J. A. Robinson and *W. J. Tremear* for the appellant.

Aylesworth, Q.C., for the respondent.

FALCONBRIDGE, J.] [Nov. 14.

OELRICHS *v.* TRENT VALLEY MANUFACTURING CO.

Sale of goods—Sample—Inspection.

In a sale by sample of goods to be "laid down" at a certain place inspection, if desired, must be made there; and if a proper opportunity of making inspection be afforded and the buyer refuse to inspect, and demand that the goods be shipped to another place for inspection, the seller is justified in treating this as a breach of contract.

Judgment of FALCONBRIDGE, J., reversed.

Osler, Q.C., for the appellants.

Clute, Q.C., and *Aylesworth*, Q.C., for the respondents.

C.P.D.] [Oct. 27.

MCLEAN *v.* CLARK.

Partnership—Estoppel.

A partnership by estoppel or by "holding out" will not hold good to create the legal liability of partner if the real position of affairs is known to the creditor.

Judgment of the Common Pleas Division reversed.

Moss, Q.C., for the appellant.

W. M Douglas for the respondents.

C.C. Perth.] [Oct. 27.

WETTLAUFER *v.* SCOTT.

Sale of goods—Conditional sale—Bills of sale and chattel mortgages—51 Vict., c. 19 (O.).

The lien of an unpaid vendor of a manufactured article is not invalidated if, without his direction or connivance, the purchaser points out or obliterates the name and address of the vendor that were properly marked on the article at time of the conditional sale.

Judgment of the Connty Court of Perth reversed.

J. P. Mabee for the appellant.

Idington, Q.C., for the respondent.

Q.B.D.] [Nov. 14.

HENDERSON *v.* BANK OF HAMILTON.

Jurisdiction—Redemption action—Foreign lands.

A judgment creditor resident in Ontario of a judgment debtor resident in Manitoba, and having by virtue of an Act of that Province a lien on his lands in that Province, cannot maintain in Ontario an action for the redemption of mortgages covering lands in Manitoba made by the judgment debtor in favour of an Ontario corporation.

Judgment of the Queen's Bench Division, 23 O.R. 327, reversed.

Aylesworth, Q.C., for the appellants.

J. P. Mabee and *R. T. Harding* for the respondents.

C.P.D.] [Nov. 14.

MASON *v.* TOWN OF PETERBOROUGH.

Revivor—Actio personalis — Damages — Negligence — Executors — R.S.O., c. 110, s. 9.

When the plaintiff in an action to recover damages for injuries sustained by him by reason of the negligence of the defendants dies from his injuries after a trial, at which there has been a disagreement of the jury, his executors may enter a suggestion of the death and obtain an order of revivor and proceed with the action. It is not necessary under R.S.O., c. 110, s. 9, to bring an entirely new action.

Judgment of the Common Pleas Division affirmed.

Moss, Q.C., and *Edwards* for the appellants.

D. W. Dumble for the respondents.

Q.B.D.] [Nov. 21.

YOUNG *v.* SAYLOR.

Contempt of court—Justice of the Peace.

This was an appeal by the defendant from the judgment of the Queen's Bench Division, reported 23 O.R. 513, and was argued before HAGARTY, C.J.O. BOYD, C., and OSLER and MACLENNAN, JJ.A., on the 21st of November, 1893.

At the conclusion of the argument the appeal was dismissed with costs, the court holding that a Justice of the Peace has not absolute immunity under the facts set up in this case, and that the action was properly sent back to be fully tried.

Clute, Q.C., for the appellant.

Ayelsworth, Q.C., for the respondent.

C.C. Simcoe.] [Nov. 17.

BREITHAUPT *v.* MARR.

Creditors' Relief Act—Assignment for the benefit of creditors—Executions—R.S.O., c. 65.

Creditors whose executions or certificates under the Creditors' Relief Act are placed in the sheriff's hands after the execution debtor has made a general assignment for the benefit of his creditors are not entitled to share under that Act in the proceeds of goods seized by the sheriff under prior executions before the assignment was made, the proceeds being insufficient to pay these prior executions.

Roach v. McLachlan, 19 A.R. 496, applied.

Judgment of the County Court of Simcoe reversed.

Moss, Q.C., and *Pepler*, Q.C., for the appellants.

W. N. Miller, Q.C., for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Full Court.] [Nov. 24.

REGINA *v.* SOMERS.

Justice of the Peace—Summary conviction—Lord's Day Act, R.S.O., c. 203—Cab-driver—Offence—Uncertainty—Costs.

A servant of a livery-stable keeper is not within any of the classes of persons enumerated in s. 1 of the Lord's Day Act, R.S.O., c. 203, and cannot be lawfully convicted thereunder for driving a cab on Sunday.

Conviction of the defendants under the Act for unlawfully exercising the worldly business of his ordinary calling as a cab-driver on the Lord's Day.

Held, bad for uncertainty.

The practice is not to give costs on quashing a conviction.

Regina v. *Johnston*, 38 U.C.R. 549, followed.

Tytler for the defendant.

Du Vernet for the informant.

Full Court.] [Nov. 27.

REGINA *v.* DICKOUT.

Marriage—Solemnization of—Minister—"Religious denomination"—R.S.O., c. 131, s. 1.

"The Reorganized Church of Jesus Christ of Latter Day Saints" is a religious denomination within the meaning of R.S.O., c. 131, s. 1; and a duly ordained priest thereof is a minister authorized to solemnize the ceremony of marriage.

Upon a case reserved, a conviction of such a priest for unlawfully solemnizing a marriage was quashed.

Semble, the words of the statute, "church and religious denomination," should not be construed so as to confine them to Christian bodies.

J. R. Cartwright, Q.C., and *Dymond* for the Crown.

W. M. German for the defendant.

Full Court.] [Nov. 27.

REGINA *v.* COULSON.

Justice of the Peace—Summary conviction—Certiorari—Evidence—Uncertainty—Amendment—Ontario Medical Act, R.S.O., c. 148, s. 45—Practising medicine—Quashing conviction—Costs.

Where a summary conviction, valid on its face, has been returned with the evidence upon which it was made, in obedience to a certiorari, the court is not to look at the evidence for the purpose of determining whether it establishes an offence, or even whether there is any evidence to sustain a conviction.

Regina v. Wallace, 4 O.R. 127, followed.

But where a conviction for an offence over which the magistrate had jurisdiction is bad on its face, the court is to look at the evidence to determine whether an offence has been committed, and, if so, it should amend the conviction.

A conviction under the Ontario Medical Act, R.S.O., c. 148, s. 45, for practising medicine for hire;

Held, bad for uncertainty in not specifying the particular act or acts which constituted the practising.

Re Donelly, 20 C.P. 165; *Regina* v. *Spain*, 18 O.R. 385; and *Regina* v. *Somers*, *ante*, followed.

And the court refused to amend, and quashed the conviction, where the practising consisted in telling a man which of several patent medicines sold by the defendant was suitable to the complaint which the man indicated, and selling him some of it.

Costs against the informant refused.

Regina v. *Somers*, *ante*, followed.

Aylesworth, Q.C., for the defendant.

H. S. Osler for the informant.

Chancery Division.

BOYD, C.] [Oct. 21.

IN RE ONTARIO EXPRESS AND TRANSPORTATION COMPANY.

Company—Increase of capital stock—Contributories—Winding up—Surrender of shares—54-55 Vict., c. 110 (D.).

The statute forming the charter of the above company permitted it to begin operations when the whole capital stock was subscribed, and twenty per cent. paid thereon. It further permitted the capital stock to be increased on certain conditions, one of which was that it should not be lawful so to do until the original capital stock had been paid in full. A by-law was passed by which it was declared that the holders of the original stock should be allowed a discount of eighty per cent. thereon, which was confirmed by the shareholders. This, with the twenty per cent. paid on the original stock, was treated as a payment in full, and thereupon a by-law was passed to increase the capital stock. By a subsequent statute, 54-55 Vict., c. 110 (D.), it was recited that whereas the company was duly organized, the whole of the capital stock thereof being subscribed, and twenty per cent. paid thereon, and whereas the said company carried on its business for several years before it ceased its operations, and whereas the said company has been "reorganized and desires to continue to carry on business" on the terms and conditions in the said Act specified, and it was declared that the company, "as now reorganized," was capable of doing business.

In the winding-up proceedings of the company the master had placed certain subscribers to the new stock issued under the above by-law upon the list of contributories, who now appealed from his decision.

Held, that though the issue of the increased capital stock was irregular and illegal, and apart from the statutes the appellants would, under the authority of *Page* v. *Austin*, 10 S.C.R. 176, not be liable as contributories in respect to it, yet inasmuch as the only fact in the history of the company which it was pertinent to speak of as a "reorganization" was the transaction in respect to the said issue of increased capital stock, the effect of the Act 54-55 Vict., c. 110, was to validate the new corporation—the subscribers for the new issue of increased capital stock—to make them constituents of the new concern as reorganized, and neither the company itself nor the shareholders holding the new increased capital stock who participated in the passing of the Act, or took the benefit of it by retaining their stock (when, as hereafter mentioned, they might have surrendered it), could be heard to impeach the curative provisions of the legislation.

By s. 4 of 54-55 Vict., c. 110, it was provided that any person then holding shares might surrender within a future period if disposed to withdraw from the new company. Some of the appellants being subscribers to the new stock took advantage of this and surrendered their shares. It appeared that they had never paid the ten per cent. on their shares due by the terms of their subscription at the time of subscribing. To this extent the master had charged them as contributories. The last-mentioned statute, however, provided that the effect of the surrender was to forfeit the shares so that liability thereon should cease.

Held, that these appellants were not bound to make good defaults antecedently to the surrender and forfeiture of their shares.

A. Hoskin, Q.C., and *J. M. Clarke* for the contributories.

N. W. Hoyles, Q.C., for the liquidators.

MEREDITH, J.] [Nov. 1.

KERFOOT *v.* VILLAGE OF WATFORD.

Municipal corporations—Injunction to restrain enforcing by-law—Submitting by-law to vote thrice in one year—Ordinary expenditure.

Action for injunction to restrain defendants from constructing a drain pursuant to a certain by-law.

The construction of the new drain was necessary from a sanitary point of view, as well as for the purpose of keeping in repair the highway under which a portion of it passed. The local health authorities urged its construction on the defendants, who resolved to construct it, if necessary, as part of the ordinary expenditure for the current year. In June, 1893, however, they submitted a by-law for its construction to the electors, but it was defeated. The defendants, however, nevertheless proceeded with its construction; but in August, 1893, they again submitted the by-law to the vote, when it was carried, and afterwards finally passed. It was clear that the defendants could have constructed the drain as part of the ordinary expenditure of the year without exceeding the statutable limit of taxation.

Held, that the first by-law having been defeated did not prevent the submission of the second in the same year, nor did the fact of the work having

been commenced as an item of ordinary expenditure for the year incapacitate the defendants from again submitting a by-law for its construction.

Action dismissed with costs.

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

Lister, Q.C., and *Cowan* for the defendants.

FERGUSON, J.] [Nov. 29.

RE LAIDLAW MANUFACTURING COMPANY (LIMITED) OF HAMILTON.

Company—winding up

Petition for on order to wind up the respondent company under the provisions of c. 129, R.S.C., and amending Acts.

James Parkes, for petitioning creditors, moved for a winding-up order, following *Re Hamilton Whip Company (Limited)*, 24 O.R., and 29 C.L.J. 668, and upon the grounds upon which the Chancellor decided same.

An assignment for the benefit of creditors was made on the same day on which the petition was served, and a large majority in number and value of the creditors desired that the company should be wound up under the assignment.

W. F. Burton, for the assignee and the company, opposed the motion.

J. J. Scott appeared on behalf of the creditors supporting the assignment.

Order refused.

Practice.

Q.B. Div'l Court.] [Nov. 29.

ARMSTRONG *v.* TORONTO AND RICHMOND HILL STREET RAILWAY CO.

Pleading—Delivery of statement of claim—Abridgment of time—Default—Dismissal—Rules 369, 485, 646.

Under Rule 485 the court or a judge may, in a proper case, order a plaintiff to deliver his statement of claim within a limited time shorter than that allowed by Rule 369; but an order dismissing the action for failure to deliver the statement within the time so limited is not, having regard to Rule 646, to be made until after default.

And an order directing that the action should be dismissed for want of prosecution if the statement of claim was not delivered within eight days was amended so as to make it direct only that the plaintiff should deliver the statement within eight days.

Fullerton, Q.C., for the plaintiff.

Laidlaw, Q.C., and *T. H. Bull* for the defendants.

FALCONBRIDGE, J.] [Nov 28.

TOWN OF TRENTON *v.* DYER.

Reference—Order of—Indorsement on record—Time for proceeding.

Where the judge at the trial pronounced, and indorsed upon the record, a direction that judgment should be entered for the plaintiffs on and after the

fifth day of the next sittings of the Divisional Court, for such amount as should be ascertained by an officer of the court;

Held: (1) That the officer should proceed to ascertain the amount before the time for entering the judgment arrived.

(2) That the officer should proceed upon the direction as indorsed, without any formal order or judgment being drawn up.

And an order setting aside an appointment to so proceed was reversed on appeal.

Marsh, Q.C., for the plaintiffs.

E. T. Malone for the defendant.

MANITOBA.

BAIN, J.] [Oct. 27.

BOYLE *v.* WILSON.

Mortgagor and mortgagee—Mortgage to secure performance of agreement—Bill of complaint—Failure to establish allegations in—Amendment.

This was a suit for the foreclosure of a mortgage made by the defendant to the plaintiffs. The bill was in the ordinary form, except that it set out in full the proviso in the mortgage. Under the proviso the mortgage was to be void on payment of the amount secured, with the interest, either to the plaintiffs or to the Canada Northwest Land Co., Ltd., on account of a balance due the company under an agreement of sale of certain lands made between the company and the mortgagor.

In his answer the defendant alleged that he had made an agreement with the plaintiffs to sell them the land mentioned in the proviso for a certain price; that there was due to the land company on the land the sum of $2,122, payable either in cash or in shares of the company, and that the mortgage was given to indemnify the plaintiffs against any loss they might be at by reason of this claim of the land company.

Aikins, Q.C., objected, before plaintiffs' case was opened, that these allegations were admitted by the plaintiffs in their replication; so it appeared on the face of the pleadings that the plaintiffs were seeking relief on a case or state of facts other than that set forth in their bill.

Monkman did not apply for leave to amend the bill, but proceeded with the hearing.

Held, the plaintiffs are not entitled to any relief. If they wish to amend, they may have leave to do so on payment of costs. If they do not wish to amend, the bill will be dismissed with costs, but without prejudice to their right to file another bill to enforce the mortgage.

BAIN, J.] [Oct. 28.

CARSCADEN *v.* ZIMMERMAN.

Examination—Judgment debtor—Scope of examination pending interpleader summons.

In a contest for priority among certain execution creditors of the defendant, Zimmerman, the sheriff obtained an interpleader summons. The plain-

tiffs, who were one of the execution creditors, claimed that certain of the other judgments against the defendant were fraudulent and collusive; and, while the interpleader summons was pending, they obtained an order for the examination of the defendant, the judgment debtor, under section 47 of the C.L.P. Act, 1854.

Upon the examination, plaintiffs' counsel sought to interrogate the witness as to the nature of his dealings with the other execution creditors, whose judgments plaintiffs claim were fraudulent, and as to the indebtedness on which these judgments were obtained; but on the advice of the counsel defendant refused to answer such questions, on the ground, as stated in the examination, that the examination was only upon an interlocutory motion, and it must be confined to that motion.

Ordered, that the judgment debtor must attend again for examination at his own expense. The plaintiffs to have the costs of the application.

Haggart for the plaintiffs.

Cameron for the defendant.

TAYLOR, C.J.] [Nov. 3.

REGINA *v.* LE BLANC.

Criminal law—Address of counsel to jury—Practice in case of defence calling no witnesses.

Autumn assizes for the Eastern Judicial District. The prisoner was indicted for murder. After the case for the Crown was closed

Bonnar, for the prisoner, called no witnesses.

Howell, Q.C., for the Crown, drew the attention of the court to s. 661 of the Criminal Code, s-s. 2.

Held, that in spite of the proviso the meaning of the section was that in such a case as the present counsel for the defence should address the jury last.

Mr. Howell accordingly addressed the jury, and was followed by Mr. Bonnar.

DUBUC, J.] [Nov. 25.

CLIFFORD *v.* LOGAN.

Interpleader—Chattel mortgage—Mortgage of crop to be grown—Effect of as against prior execution—Mortgage not under seal valid—Omission in affidavit of bona fides.

Autumn assizes, Portage la Prairie.

Interpleader issue. Defendant on August 8, 1892, placed a writ of execution *de bonis* in the hands of the sheriff against Elizabeth Huntley. On March 23rd, 1893, Huntley executed in favour of plaintiff a chattel mortgage of the entire crop of whatever description then sown or to be sown within the year 1893 on certain lands; this mortgage was duly filed and registered on March 31st, 1893. R.S.M., c. 20, s. 4, provides that "a mortgage of personal property made, executed, and filed in accordance with the provisions of this Act shall, if therein so expressed, bind, comprise, and apply to growing crops and crops

to be grown within one year from the date of such mortgage, and shall have the same effect in every respect as if such growing crop or crops to be grown were existing at the date of such mortgage.

The sheriff seized the crop under defendant's execution and the mortgagee claimed it.

D. A. Macdonald for the defendant: The mortgage is invalid because (1) it is not under seal; and (2) the word "her," which should have been written at the end of the affidavit of *bonâ fides*, is omitted.

James, for the plaintiff, in reply

Held: (1) The first objection must be overruled. "It is now firmly settled that there may be a mortgage of chattels without deed": *Patterson* v. *Maughan*, 39 U.C.R. 379; *Halpenny* v. *Pennock*, 33 U.C.R. 229; *Flory* v. *Denny*, 7 Ex. 581; and *Reeves* v. *Capper*, 5 Bing. N.C. 136.

(2) The second objection must also be overruled. In the copy of the mortgage kept by the plaintiff the word "her" was duly inserted, and "taking into consideration all the other circumstances of this case, as well as the fact that there is nothing to show the least suspicion of fraud or collusion between the parties, I cannot hold that a chattel mortgage given for a *bonâ fide* consideration and valid in every other respect should be declared void on account of such omissions": *Ontario Bank* v. *Miner*, Man. Rep. *temp.* Wood, 167, approved; *Davis* v. *Wickson*, 1 O.R. 369, and *Re Andrews*, 2 O. App. 24, not followed.

In regard to the mortgage itself, the points to determine were whether the crop, which did not exist when the writ of execution was placed in the sheriff's hands, became bound by that writ when it came into existence; or whether the crop, springing into existence after the chattel mortgage was executed and being aimed at and specially described in the mortgage, was primarily subject to the rights of the mortgagee.

Held: (1) There was no doubt that the crop, though not *in esse* at the time the writ was placed in the sheriff's hands, would in coming into existence have been bound by the writ unless some other right should intervene, as in the case of any after-acquired chattels.

(2) The execution debtor having given a chattel mortgage on the crop to be grown raised said crop subject to the chattel mortgage, and when the said crop came into existence the said Elizabeth Huntley had only the equity of redemption therein, the property being in the mortgagee; therefore such equity of redemption was the only thing which was seizable under the sheriff's execution. A different conclusion would, of course, be arrived at if the chattel mortgage were fraudulent and the mortgagee was collusively assisting the mortgagor in defeating an execution against him, but no such question has been raised here.

Verdict for the plaintiff.

Appointments to Office.

DIVISION COURT CLERKS.

District of Manitoulin.

Samuel Jackson, of the Village of Gore Bay, in the District of Manitoulin, Gentleman, to be Clerk of the First Division Court of the said District of Manitoulin, in the room and stead of P. J. Anderson, resigned.

DIVISION COURT BAILIFFS.

County of Middlesex.

James Poole, of the Village of Strathburn, in the County of Middlesex, to be Bailiff of the Fifth Division Court of the said County of Middlesex, in the room and stead of D. A. McAlpine, resigned.

County of Renfrew.

Thomas J. Gorman, of the Village of Shamrock, in the County of Renfrew, to be Bailiff of the Fifth Division Court of the said County of Renfrew, in the room and stead of Alexander Gorman, deceased.

County of Simcoe.

William Pratt, of the Town of Midland, in the County of Simcoe, to be Bailiff of the Ninth Division Court of the said County of Simcoe, in the room and stead of Alfred Sneath, resigned.

County of Wellington.

John W. Farries, of the Village of Rockwood, in the County of Wellington, to be Bailiff of the Third Division Court of the said County of Wellington, in the room and stead of William Hemstreet, resigned.

LOCAL REGISTRAR.

County of Prince Edward.

William Henry Richey Allison, of the Town of Picton, in the County of Prince Edward, Esquire, one of Her Majesty's Counsel learned in the law, to be Local Registrar of the High Court in and for the said County of Prince Edward, in the room and stead of John Twigg, Esquire, deceased.

Obituary.

MR. H. B. BEARD, Q.C., late Master of the High Court at Woodstock, died after a short illness on November 23rd ult. Mr. Beard was an Englishman by birth, and came to Woodstock with his parents when a boy, and in Woodstock the rest of his life was spent. He was educated at the Woodstock Grammar School, and commenced the study of the law about the year 1852, in the office of Mr. F. A. Ball, Q.C., the present County Attorney of Oxford. On being admitted to practise, he became a member of the firm of Ball & Carroll. Subsequently he and Mr. Carroll carried on business together as Carroll & Beard until 1864, when he entered into partnership with Mr. J. W. Nelles, and this

partnership of Beard & Nelles lasted until his death. Mr. Beard was appointed Master in Chancery thirty-three years ago, and was one of the ablest of that class of officials. He was universally respected, and was held in the highest esteem both by the profession and the public at large. Mr. Beard was unmarried, and was but little over sixty years at the time of his death.

Flotsam and Jetsam.

BARON DOWSE was on circuit when an accused man could understand only Irish, and so an interpreter was sworn. The prisoner said something to the interpreter, and the interpreter replied to him. "What does he say?" demanded the judge. "Nothing, my lord." "How dare you say that when we all heard it? Come, sir, what was it?" "My lord, it had nothing to do with the case." "If you don't answer, I shall commit you, sir. Now, what did he say?" "Well, my lord, you'll excuse me, but he said, 'Who is that old woman, with the red bed-curtain round her, sitting up there?'" "And what did you say?" asked Baron Dowse. "I said to him, 'Whist! That is the old boy that is going to hang yez!'"

IN the November number of *Night and Day*, which extends to twenty pages, Dr. Barnardo supplies a more than usually striking series of details concerning that great work of child-rescue with which his homes have been for twenty-eight years past associated.

The number opens with an interesting account of the editor's recent experiences in Canada. He reiterates emphatically that, out of the 6,571 boys and girls who have been, after training in the homes, sent out to the Dominion, less than two per cent. have failed, while it is added, on the official authority of Sir John Carling, Canadian Minister of Agriculture, that *only a fraction of one per cent.* have gone to form additions to the criminal or vicious population of Canada.

It appears that the recently issued Report for 1892-93, on Convict Prisons, shows that the number of *young* convicts in this country is considerably less than formerly, and that "younger persons are not coming forward to keep up the number of the convict population." Dr. Barnardo appears to have good grounds for his strenuous claim that to this result the preventive work of his own institutions has very largely contributed. Twenty-four thousand children have been, through their agency, lifted "right out of Slumdom" into conditions which, to the vast majority of them, render crime almost impossible.

It is regrettable to add that the funds of the homes are stated to be in an unprecedentedly low condition, and that a most urgent appeal is made for immediate and liberal assistance to "keep the doors open." As nearly five thousand children are in residence, requiring £150 per day to defray their food bill alone, it is easily understandable how severely a winter marked, like the present one, with such prevalent distress will tax the resources of a home which gives admission to every destitute applicant.