The Canada Law Journal.

VOL. XXVIII. NOVEMBER 1, 1892. No. 17.

ELECTRICITY ON HIGHWAYS.

The law of electric wires in connection with streets and highways is becoming of very great importance, and opens up what is practically a new field of law. We are glad, therefore, to see that this subject has been dealt with by a member of the New Jersey Bar in a book recently published.

In this, as well as in other countries, the subject is a growing one, the uses of electricity during the past few years having greatly multiplied, and this wonderful force applied to attain ends in a manner formerly unknown. The application of this new motive power and medium of communication is, from its nature, fruitful of many changes in the existing order of things, and produces curious, and often dangerous complications, thereby raising numerous questions difficult of settlement. The result has been much litigation, especially in the United States. A large crop of the same may also be expected here.

The author of the book referred to opens up the subject by speaking of the legal relation of lines of electric wires to the streets and highways, where they have been placed, by saying that this relation depends to a great extent upon the question whether the use of the streets and highways serves the purposes for which they were opened, and also the question of whether they interfere with the uses to which these roads have commonly been put, the discussion necessarily involving the consideration of what are the proper uses of streets, and how far these uses are subservient to the various uses of electric wires, and also what are the public or private rights in respect to the streets, and the use of them for the above purpose. In considering the questions which naturally arise in view of these relations, it is of course necessary, in the first place, to ascertain by what authority streets may be used for electric wires, thus bringing up the questions of municipal control, consent of local authorities, police regulations, and special legislation. These are necessarily different in different countries, and some of the author's observations do not apply here; but there is much useful information given of a general character, and the work is a very intelligent consideration of the subject in reference to the points which have arisen, and of many that are likely to arise from time to time.

The questions of most interest to the public are the rights of the owners of abutting lands in respect to the use of the streets for electric wires. These questions first came up in reference to telegraph wires and their attendant poles; then telephone wires and more poles began to invade the streets of our cities; these were followed by the heavier wires of the electric light companies, and now we are confronted with the more deadly and unsightly wires and paraphernalia

of overhead wires for motors of electric cars. So that, in addition to the rights of abutting owners, we have controversies continually arising respecting the variance in interest of the companies which supply electricity for the various purposes above referred to. In some cities further questions arise in reference to cable railways, and, in some places, the use of steam motors adds another discordant element.

The conclusion arrived at with reference to the question of interference with the use of the street in any of the ways above mentioned is, in the opinion of Mr. Keasbey, the author of the work before us, a question of fact to be determined in each case; the real question being, as he states, not whether poles and wires trespass upon what may be technically called the land of the abutting owner, but whether the use of them and of electric cars does in fact interfere with the free and convenient use of the street in connection with the land, or diminish the value of the land by changing its relation to the street, the landowner having no absolute veto upon the planting of the poles by reason of his technical ownership of the soil, but his right to compensation depending upon whether the poles are so constructed or so placed as to affect his free access to his property, and, in the case of electric cars, whether they are so run as to be inconsistent with the free and safe use of the street from and to his land for other street uses.

The nature of electricity is at present but little known, and controversies are constantly arising between those employing this agency in different ways and for different purposes, as developed by new combinations of circumstances and properties in the current not hitherto known to science. Some of the most common of these have arisen by the interference with telephones by electric wires for the use of electric cars. As we are told, the wires do not touch one another, but electricity operates at a distance, and currents are carried through the earth as well as along the wires, so that when new wires are strung along the streets, parallel with telephone wires, carrying the stronger currents necessary for light and motive power, they affect the business of the telephone companies very seriously, and there have been, from time to time, fierce fights in many American cities between those using electricity for telephones and those others using it for lighting purposes or for the purposes of motive power.

The legal position, as between themselves, of companies supplying electricity for various purposes has not yet been definitely settled by the courts. As the author suggests, difficulties are more likely to be settled through the ingenuity of inventors than by the efforts of lawyers and judges. But, he says, "it is quite certain that public convenience will demand that the streets shall be used for all the electric currents that may be required, and that some way will be found by which this can be done. In the meantime, it is the duty of the courts to protect existing property from unnecessary injury without needlessly obstructing the application of such a valuable force as electricity for new uses for the public benefit. It is certainly true, as the courts generally have held, that no one mode of public service has the right to monopoly of the earth or the air in the line of the streets for the use of electricity, and the power of injunction will only be

exercised so as to avoid present injury to existing property until practical men have found a way for all to work together in harmony."

The profession, as well as the public, are much indebted to Mr. Keasbey for his exceedingly intelligent and lucid treatise on this most important subject. The time is not long distant when there will doubtless be a large addition to the legal literature on electricity; but a good beginning has been made.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for August—*Continued.*)

MARRIED WOMEN'S PROPERTY ACT, 1882—RIGHT OF HUSBAND TO CURTESY IN WIFE'S SEPARATE PROPERTY.

In *Hope* v. *Hope* (1892), 2 Ch. 336, Stirling, J., has decided that under the Married Women's Property Act, 1882, a husband is entitled to curtesy in his wife's separate property, as to which she has died intestate, and which property was acquired under the Act. This accords with the decision of the Court of Appeal in *Furness* v. *Mitchell*, 3 A.R. 510. The Ontario Act is now quite explicit on the subject (see R.S.O., c. 132, s. 4, s-s. 3; and see R.S.O., c. 108, s. 4, s-s. 3).

SOLICITOR AND CLIENT—TAXATION AFTER PAYMENT—RETENTION OF COSTS BEFORE DELIVERY OF BILL.

In *Hitchcock* v. *Stretton* (1892), 2 Ch. 343, was an action by a client against his solicitors for an account and for delivery of a bill of costs. After the issue of the writ the solicitors delivered a bill of costs. At the trial the plaintiff abandoned his claim to an account, but insisted on his right to a taxation of the bill. This was resisted on the ground that the bill had been paid. It appeared that the solicitors kept a running account with their client, in which they credited him with moneys received and debited him with disbursements; and they also, from time to time, debited him with sums in respect of costs of business transacted by them as his solicitors. No bills were delivered, but their accounts were periodically balanced and signed by the client, "settled and approved." The last account so signed was in May, 1886. In 1890 the action was commenced. Stirling, J., under the circumstances, refused to order a taxation, holding that the payments which had been made on account were referable to the bill subsequently delivered, and that there were no special circumstances to warrant a taxation. He distinguishes the case from *In re Stogdon*, 56 L.J. Ch. 420, where no bill had been delivered.

COMPANY—DEBENTURE-HOLDER—WINDING UP.

In re Portsmouth Tramways Co. (1892), 2 Ch. 362, the short point decided by Stirling, J., is that a debenture-holder of a company who has commenced an action to enforce his security and obtained the appointment of a receiver is not thereby precluded from subsequently applying for an order to wind up the company.

SOLICITOR—LIEN FOR COSTS—SUCCESSIVE SOLICITORS, PRIORITY AS BETWEEN.

In re Knight, Knight v. *Gardner* (1892), 2 Ch. 368, Kekewich, J., reaffirms the well-established principle that where several solicitors are successively employed to carry on proceedings, they are entitled in inverse order (beginning with the one last employed) to priority in respect of their liens for costs.

The Law Reports for September comprise (1892) 2 Q.B., pp. 337-514; (1892) P., pp. 261-323; and (1892), 2 Ch., pp. 373-461.

EXECUTION—CONCURRENT WRITS OF FI. FA.

In *Lee* v. *Dangar* (1892), 2 Q.B. 337, strange to say, the question was raised whether an execution creditor is now entitled to issue concurrent writs of execution to different counties. The Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) held that concurrent *fi. fas.* may issue now as formerly. The defendant's goods having been seized under both writs, and the money made under one of them, the sheriff holding the other writ had refused to withdraw from possession until paid his fees for mileage and levy, and he also claimed poundage, but he did not insist on payment of it, and eventually withdrew on payment of his fees. The action was to recover a penalty for overcharging, and in this way the validity of the concurrent writ came into question. The Court of Appeal upheld it, and though of opinion that the sheriff was not entitled either to his fees for mileage or levy, nor to poundage, yet, there being no evidence of malice, held the sheriff was not liable to the penalty, but only to nominal damages for not having sooner withdrawn than he did.

PENALTY—WRONGFUL ACT OF AGENT—PRINCIPAL, LIABILITY OF, FOR PENALTY.

Bagge v. *Whithead* (1892), 2 Q.B. 355, is another action against a sheriff to recover a penalty under the same statute as was in question in the preceding case. This statute provides: "If any person, being either sheriff, under-sheriff, bailiff, or officer of a sheriff, . . . is guilty of any offence . . . against this Act, he . . . shall be liable . . . to forfeit £200." The action was brought against the sheriff on the ground that his bailiff had, contrary to the Act, seized property which was exempt from seizure. The Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) affirmed the judgment of Wills, J., in favour of the defendant, on the ground that the action would not lie against the sheriff for the penalty, but only against the officer who had actually committed the wrong.

JURISDICTION—TRESPASS TO LAND IN FOREIGN COUNTRY—DECLARATION OF TITLE TO LAND IN FOREIGN COUNTRY—PLEA TO JURISDICTION.

Companhia de Mocambique v. *British South Africa Co.* (1892), 2 Q.B. 358, is an important case. It was an action brought by the plaintiffs to recover damages for trespasses upon the plaintiffs' goods and lands and assaults upon their servants, also for a declaration of the plaintiffs' title to the lands upon which the

alleged trespasses had been committed, and an injunction to restrain further trespasses. The defendants, who were a company within the jurisdiction, by their defence pleaded that the lands in question were in South Africa and out of the jurisdiction of the court, and the principal question argued was whether the English court had jurisdiction to entertain an action for trespass to land situate in a foreign country, or an action to declare the title to land, or to enjoin the interference with the possession of land situate in a foreign country. A very learned and elaborate judgment of the Divisional Court (Lawrance and Wright, JJ.) was delivered by Wright, J., holding that the court had no jurisdiction to entertain an action against a defendant within the jurisdiction for trespass to land in a foreign country, and also that the court had no jurisdiction to entertain an action for a declaration of title to such land, nor for an injunction restraining interference with the possession of such land. On appeal to the Court of Appeal the plaintiffs abandoned the claim to a declaration of title and an injunction, and as to those branches of the relief claimed the judgment was affirmed; but Fry and Lopes, L.JJ., were of opinion that the court could entertain actions for damages for trespass to land in a foreign country against a defendant who was within the jurisdiction of the court, and as to that branch of the case the judgment of the Divisional Court was reversed, Lord Esher, M.R., dissenting. The case is an interesting one from the elaborate review of the authorities which is to be found in the opinions of the judges; but, as an authority, the case can hardly be regarded as very decisive, inasmuch as the Court of Appeal was not unanimous, and the majority of the judges who passed upon the question were opposed to the conclusion ultimately arrived at. On the point of pleading, whether a plea to the jurisdiction should have alleged the existence of some competent court abroad, the Divisional Court determined that no such allegation was necessary, the plea being based on a general want of jurisdiction of any English court over the subject-matter of the action.

SOLICITOR—SUMMARY JURISDICTION—FAILURE TO PAY MONEY—JUDGMENT RECOVERED BY CLIENT NO BAR TO SUMMARY PROCEEDINGS.

In re Grey (1892), 2 Q.B. 440, was an appeal from a Divisional Court (Grantham and Charles, JJ.) refusing an order against a solicitor for payment of a sum of money within four days, with a view to proceedings to strike him off the rolls in case of default, on the ground that the client had recovered judgment and execution for the amount, which the Divisional Court considered was a bar to summary proceedings. The Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.), although of opinion that the fact that judgment had been recovered was a matter to be taken into serious consideration in exercising the summary jurisdiction of the court over a solicitor, in order to protect him from anything like oppression, yet were unanimously of opinion that it was no bar to the exercise of that jurisdiction. Practitioners will do well to make a note of this case in the margin of *Re Fletcher*, 28 Gr. 413, where Blake, V.C., came to the same conclusion as the Divisional Court.

CONTRACT—WARRANTY—CONTRACT BY WAY OF WAGERING—8 & 9 VICT., C. 109—INSURANCE CONTRACT, 14 GEO. III., C. 48, S. 2.

In *Carlill* v. *The Carbolic Smoke Ball Co.* (1892), 2 Q.B. 484, the plaintiff sought to recover £100 which the defendants had advertised they would pay to any person contracting influenza after using their carbolic smoke balls for two weeks according to the directions supplied therewith. The plaintiff used one of the smoke balls as directed for two weeks, but afterwards contracted influenza. The defendants resisted payment on various grounds: First, that there was no contract between the parties; secondly, if there was a contract it was void, as being a wagering contract within the meaning of 8 & 9 Vict., c. 109; and, thirdly, if there was a contract and it was not a wagering contract, it was an insurance contract, and void under 14 Geo. III., c. 48, s. 2, for not containing the name of the person for whose benefit it was made. Hawkins, J., before whom the action was tried, delivered a considered judgment, holding that there was a valid contract, and that the daily use of the ball was a sufficient consideration to support the promise, and that it was not within the provisions of either of the Acts above referred to, and he therefore directed judgment to be entered for the plaintiff for the full amount claimed with costs. The learned judge considered that one essential element of a wagering contract was absent because in no event could the plaintiff lose anything.

PRINCIPAL AND SURETY—ALTERATION OF SURETY'S POSITION—RELEASE OF SURETY—FRAUD OF PRINCIPAL AS AFFECTING RIGHTS OF SURETY.

Mayor of Kingston v. *Harding* (1892), 2 Q.B. 494, was an action brought against the defendants as sureties for certain contractors for the construction of sewers for the plaintiffs. The defendants contracted that the contractors for the works would "well and truly" execute their contract. By the terms of the contract with the principals, the plaintiffs were entitled to superintend the work through their engineer, and it was also provided that the plaintiffs were to be at liberty to retain a certain percentage of the contract price until the engineer should have given his final certificate, and that the principals and the sureties should not be released from liability until this final certificate had been given. The contractors did a portion of their work in a defective manner, and fraudulently concealed the defective work so as to prevent its being discovered. The engineer, in ignorance of the defect, gave his final certificate, on which the percentage retained was paid over to the contractors. The jury found that the engineer's certificate had been obtained by fraud, but also that the plaintiffs had neglected properly to superintend the work. On this state of facts the court gave judgment for the plaintiffs, from which the defendants appealed to the Court of Appeal (Lord Esher, M.R., and Bowen and Smith, L.JJ.), contending that the payment over of the moneys authorized to be retained had prejudiced them and that they were therefore released. But the Court of Appeal upheld the judgment for the plaintiffs, on the ground that the payment having been induced by the fraud of the principals, against which the sureties had guaranteed the plaintiffs, the sureties were not released thereby, and that the mere failure of the

plaintiffs to exercise their right to superintend the work did not discharge the defendants from liability as sureties, and that the giving of the certificate by the engineer could not release the sureties because, having been obtained by fraud, it did not release the principals. The principle on which the decision is based is thus stated by Bowen, L.J.: "A surety cannot claim to be discharged on the ground that his position has been altered by the conduct of the person with whom he has contracted where that conduct has been caused by a fraudulent act or omission against which the surety, by the contract of suretyship, has guaranteed the employer." As Smith, L.J., points out, the fraudulent acts of the contractors which were complained of were not frauds outside the contract, but frauds in the execution of the work which the sureties had contracted should be "well and truly" performed.

JOINT TORTFEASORS—DISCHARGE OF ONE, WHETHER IT RELEASES THE OTHER—RESERVATION OF CLAIM AGAINST A JOINT TORTFEASOR—RELEASE—COVENANT NOT TO SUE.

Duck v. *Mayeu* (1892), 2 Q.B. 511, was an action to recover damages, or a penalty for the infringement of the plaintiff's copyright. Another person had been concerned with the defendant in the wrongful act complained of, and this person had paid, and the plaintiff had accepted, £2 in discharge of his personal liability, the plaintiff, however, expressly reserving his right against the defendant. The defendant contended that this was a release of a joint tortfeasor, and therefore it had the effect of releasing both of them. But the Court of Appeal (Lord Esher, M.R., and Bowen and Smith, L.JJ.) agreed with Day, J., that the reservation of the right against the defendant prevented the receipt of the £2 from operating as a release, and that it only amounted to an agreement not to sue, and that such an agreement did not have the effect of a release, and therefore that the defendant remained liable.

None of the cases in the Probate Division seem to call for any remark.

SOLICITOR—LONDON AGENT—"CLIENT."

Reid v. *Burrows* (1892), 2 Ch. 413, was an action by a firm of London solicitors against the defendant to restrain him from acting in breach of a covenant not to transact business with persons who were clients of the plaintiffs' firm during a period of five years when the defendant was under articles to one of the plaintiffs, or within ten years after the expiration of such period of five years. The sole question in issue was whether the country principals of the plaintiffs were "clients" within the meaning of the covenant, and North, J., held that they were.

INSURANCE—REINSURANCE—CONTRACT "TO PAY AS MAY BE PAID" ON ORIGINAL POLICY—RIGHT OF REINSURED TO RECOVER BEFORE PAYMENT OF ORIGINAL ASSURANCE—REINSURER, LIABILITY OF.

In re Eddystone Insurance Co. (1892), 2 Ch. 423, a question arose between two companies which were in course of being wound up. One of the companies had reinsured the other against loss on part of a risk for which they were liable. The reinsurance policy provided that it was to be subject to the same terms and conditions as the original policy, "and to pay as may be paid thereon." A

loss having taken place under the original policy, the reinsured company claimed to be paid the amount of the reinsurance before having paid the loss on the original policy. This claim was resisted on the ground that the true meaning of the reinsurance policy was that the reinsurers were only to pay what should be paid on the original policy; but Stirling, J., held that the reinsurers were entitled to recover without having first discharged their own liability under the original policy, and that the words "to pay as may be paid" did not create any condition precedent.

EQUITABLE EXECUTION—RECEIVER—REVERSIONARY INTEREST.

In *Flegg* v. *Prentis* (1892), 2 Ch. 428, the plaintiff had recovered judgment against the defendant for a sum of money, and by way of equitable execution thereon he had procured the appointment of a receiver of the judgment debtor's reversionary interest in certain personal property. The present action was brought praying that by virtue of those proceedings the plaintiff was entitled to a charge on the property in question and for a sale thereof. Stirling, J., held that there was no jurisdiction to grant the relief claimed, and he dismissed the action with costs to be set off against the debt due by the defendant to the plaintiff.

CANAL—RIGHT OF SUPPORT—MINES—EASEMENT—STATUTE, CONSTRUCTION OF.

London & North-Western Railway Co. v. *Evans* (1892), 2 Ch. 432, was an action by the plaintiffs to restrain the defendant from working a mine beneath a canal owned by the plaintiffs. By an Act of Geo. II. the plaintiffs' predecessors in title were authorized to convert an existing brook into a navigable stream, and to maintain such navigation, and to make new cuts and canals as might be requisite for the purpose, paying compensation by an annual rent, or payment in gross, to any landowner for user or damage to his land. There was no express power given to purchase lands, but persons under disability were empowered to sell lands required for the "intended navigation," and the Act contained no provision respecting mines or minerals. The brook was converted into a canal, but no conveyances of surface lands were ever executed to the undertakers, who, under the Act, made annual payment to the owners for the use of their lands for the canal. The defendants were owners of coal under the canal, and in the course of working it caused a subsidence of part of the canal, which was the injury sought to be restrained. Kekewich, J., held that the plaintiffs had no common law right to support for the canal, and that the statute had not conferred any such right as against the owners of the coal. The action was therefore dismissed.

PRINCIPAL AND AGENT—COMPANY—DIRECTOR—MISREPRESENTATION, LIABILITY OF DIRECTOR FOR.

In *Elkington* v. *Hürter* (1892), 2 Ch. 452, the plaintiffs sought to compel the defendant, a director of a joint stock company, to make good representations by means of which he had been induced to enter into a contract with the company, which he would not otherwise have done. The alleged representations took place under the following circumstances: The plaintiffs contracted to supply

goods to the company, to be paid for as to £600 in first mortgage debentures of the company, and, as to the balance, by the company's acceptances. The contract was made at a board meeting whereat the defendant presided, and which was attended by the plaintiffs' agent. At the time the contract was made, the defendant knew that the whole of the first mortgage debentures of the company had been issued except £4950, which were deposited with the company's bankers as security for the company's overdraft (which was also guaranteed by the directors) under an arrangement under which the company could at any time withdraw any of the debentures on paying the nominal amount thereof in cash. The plaintiffs pressed for the debentures, but were put off from time to time and never got them, and ultimately the company was ordered to be wound up. The plaintiffs claimed that the defendant's acts amounted to a representation that he had authority to say that the company could issue the debentures at a time when he knew there were no debentures available, and therefore he was liable to make good the loss the plaintiffs had sustained by not getting them as had been agreed. But Romer, J., held that as it was not an action of deceit and admittedly not a case of fraud, and was not a case of estoppel, or of breach of duty, the defendant was not liable, and he dismissed the action without costs.

Notes and Selections.

AEROLITE, OWNERSHIP OF.—While it is pretty well understood that an aerolite or meteoric stone belongs to the owner of the land upon which it falls, there has not been, we think, hitherto any reported case upon the subject in a court of last resort. In 16 Albany L.J. 76, and 13 Irish L.T. 381, there is an editorial note upon a case of *Maas* v. *Amana Society*, which was decided in Illinois, where it was held that such stones belong to the owner of the fee, but no report of the case is to be found. In France, an aerolite falling upon the highway is held to be the property of the finder (see 20 Albany L.J. 299); but in the case of *Goodard* v. *Winchell*, now reported in 52 N.W. Rep. 1124, it is settled, in the United States at any rate, that an aerolite falling to, and imbedding itself in the earth becomes the property of the owner of the land on which it falls, and not of the first person who finds it, although the latter digs it up and takes possession of it.

CARRIERS—END OF RESPONSIBILITY.—In *Canada Shipping Co.* v. *Davison*, in which judgment was given by the Court of Appeal at Montreal on June 8th, the appellant, a steamship company, entered into a contract at Liverpool to carry the respondent's baggage to Montreal, to use due care in its safe-keeping, and to deliver it to the respondent on the steamship's arrival at its destination. On arrival at Montreal the respondent's baggage was taken from the vessel and placed in the company's shed on the wharf, whence the respondent could not remove it until examined and passed by the customs officers. Before the baggage

was examined, and while still in the custody of the company, a part of the baggage disappeared. The loss was discovered within twenty-four hours of the arrival of the steamship. The majority of the court (Lacoste, C.J., Hall and Wurtell, JJ.), affirming the judgment of Pagnuelo, J. (M.L.R., 6 S.C. 388), held that passengers are entitled to a reasonable delay after a vessel arrives in port before they can be required to remove their baggage, and until this time has expired that the carrier is responsible for its safe-keeping under the contract of carriage, and not as a gratuitous bailee only. It was also held that twenty-four hours is a reasonable delay. In another case in the same court, *Canadian Pacific R.W.Co.* v. *Pellant*, an appeal from the same judge (M.L.R., 7 S.C. 131), where a passenger travelling by rail did not remove her baggage on arriving at her destination, but waited until the following day to do so, it was held that such a delay upon her part was reasonable, and that she was entitled to recover the value of articles lost during that period.

INSANITY AS AFFECTING CONTRACTS.—The case of the *Imperial Loan Company* v. *Stone*, 61 Law J. Rep. Q.B. 449, involved questions of the greatest importance as to the effect upon a contract of the insanity of one of the contracting parties. The action was brought by the plaintiffs, as payees of a joint and several promissory note made by the defendant, to recover a balance due upon the note, which had been signed by the defendant as surety. The defendant, defended by his committee and by his defence, alleged that at the time he made the note he was of unsound mind and incapable of understanding the same, as the plaintiffs well knew. At the trial the jury found that at the time of making the note the defendant was insane and incapable of understanding what he was doing, but they were unable to agree as to whether the plaintiffs at the time knew of the defendant's insanity. Upon these findings, Mr. Justice Denman entered judgment for the defendant. The plaintiffs having appealed, it was contended that unsoundness of mind was no defence to an action upon a contract unless at the time the contract was made the other contracting party knew of the unsoundness of mind; and, further, that the burden of proving both the insanity and the knowledge lay upon the party seeking to avoid the contract. In support of the first contention, the case of *Molton* v. *Camroux* (4 Ex. Rep. 17; 18 Law J. Rep. Ex. 356) was relied upon. In that case a lunatic had purchased certain life annuities of a society which at the time had no knowledge of his unsoundness of mind, the transaction being in the ordinary course, and fair and *bonâ fide* on the part of the society. The Court of Exchequer Chamber held that, after the death of the lunatic, his personal representatives could not recover back the premiums paid for the annuities. Mr. Justice Patteson, who delivered the judgment of the court, pointed out that modern cases had qualified the old doctrine that a man could not set up his own lunacy, and had enabled a party to a contract or his representatives to show that he was so insane as not to know what he was about when he entered into it; but the learned judge added that the authorities showed that, when that state of mind was unknown to the other contracting party, and no advantage was taken of the lunatic, the defence could

not prevail, especially where the contract was not merely executory, but executed in the whole or in part, and the parties could not be restored altogether to their original position. In the case we are now considering the Court of Appeal acted upon and extended this principle, holding that it lay upon the defendant to prove not only his insanity, but also that the plaintiffs knew of it at the time the contract was entered into. The Master of the Rolls (Lord Esher), in giving judgment, said: "I take the law of England to be that when a person enters into a contract, and afterwards alleges and proves that he was so insane at the time that he did not and could not know what he was doing, the contract, whether it be executed or executory, is as binding upon him and to the same extent as if he had been perfectly sane at the time unless he can prove that the party who is endeavouring to enforce the contract knew at the time the contract was made that he was insane, and so insane as not to know what he was about." He then referred to the form of the plea of insanity in use for many years before the passing of the Judicature Acts, which averred knowledge on the part of the plaintiff, and added: "The law is proved by the form of the plea. . . If that be so, it lies on the defendant here to prove not only his insanity, but that the plaintiff knew of it at the time of the contract. It follows, therefore, that the issue upon which the jury in the present case disagreed was a material issue which the defendant was bound to prove, and, consequently, the judgment ought not to have been entered for the defendant." Lord Justice Fry expressed himself in very similar terms: "There has been engrafted upon the whole rule," he observed, "this single exception, that where a defendant can show that at the time he entered into a contract he was *non compos mentis*, and that this was known to the other contracting party, there, and there only, is he allowed to set the contract aside." It must, therefore, be taken to be established that, in order to avoid a contract upon the ground of the insanity of the defendant at the time he entered into it, it is necessary for him to show that his insanity was at the time known to the plaintiff. The burden of proving both the insanity and the plaintiff's knowledge of it lies entirely upon the defendant, and there is no distinction in this respect between executed and executory contracts.—*Law Journal.*

REVOCATION OF WILLS.—A singular point arose a short time ago on an application to Mr. Justice a'Beckett; see *In the Will of John Murphy*, 4 A.L.T. 11. The testator had executed his will in the presence of Mr. Considine, a Catholic clergyman, and Ann Murphy, a beneficiary under it. Shortly afterwards Mr. Croker, the doctor, entered, and saw that one of the attesting witnesses was interested in the will. At his suggestion the testator acknowledged his signature, and thereupon Mr. Croker, in the testator's presence, erased Ann Murphy's name, leaving nothing more of it than a few illegible marks, and then signed his own name in the presence of the testator and Mr. Considine. The latter, however, did not re-sign, and consequently there was no valid re-execution. The will, accordingly, as attested by Ann Murphy, was admitted to probate, the court deciding that the erasure of the attesting witness' name was not

done *animo revocandi*, though, had it been otherwise, the will would have been revoked. The learned judge cited three cases as deciding that the erasure or cutting off of the signature of an attesting witness would effectually revoke a will, if done with that intention. It is worth while consulting the authorities to see whether, as regards erasure, this really is the law at the present day.

The 6th section of the Statute of Frauds enacted "that no devise in writing of any lands, tenements, or hereditaments, nor any clause thereof, shall be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence and by his directions and consent." Under this section an obliteration of one part of a will was decided to be a revocation *pro tanto* only, and the unobliterated portion remained in force, whereas a very slight act of tearing *animo revocandi* operated to revoke totally, *Bibb* v. *Thomas*, 2 W.Bl. 1043; and even the obliteration of words governing the entire instrument, as the signature of the testator or an attesting witness, were held to revoke the will *in toto;* this will would have governed the case before Mr. Justice a'Beckett had the Statute of Frauds remained in force, but in 1837 the Imperial legislature deliberately altered the law.

By 1 Vict., c. 26, s. 20 (identical with s. 18 of the Victorian Wills Act), "no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid (*i.e.*, by marriage), or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same," and by s. 21 (s. 19 of our Act) "no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will . . ."

Cancellation and obliteration are therefore taken out of the catalogue of revocatory acts, and the only question to investigate is whether such an obliteration as also involves a slight physical diminution of the document is governed by s. 20 or s. 21 of the Imperial Act. It may be said that the 21st section applies only to alterations made with the intention of modifying a will, but it is submitted that, reading the two sections together, Parliament has intended that revocations under s. 20 can only be effected by actions designedly effecting a physical violence to the document, and that an Act which seeks to qualify or nullify its legal effect by changing or obscuring any portion of its language, although by the use of a penknife there may be what the late Sir Charles Butt called a "lateral cutting," is merely void under s. 21.

In every case, however, there must be an *animus revocandi*, and it may be permissible to look at the nature of the words cut out in order to learn whether the "destruction" was done with the intention of modifying or revoking the instrument, or altogether accidentally. Mr. Justice a'Beckett laid stress upon what

he considered the essential character of the signature of an attesting witness, but the tearing of any, the most immaterial part, of a will, if done *animo revocandi*, would clearly amount to a revocation, while an erasure without further "destruction" of the most essential portion would have no effect in revoking, although done with that intention.

In *Hobbs* v. *Knight*, 1 Curt. 780; *Birkhead* v. *Bowdoin*, 2 N.C. 66, and *Evans* v. *Dallow*, 31 L.J. (P.M. & A.) 128, the signatures had been either torn or cut off; "tearing" in the Act must include "cutting," and in any case there was a destruction. Sir H. Jenner, indeed, said, if any such case should occur, he thought "that if the names of the attesting witnesses were erased by the testator *animo revocandi*, it would be a sufficient revocation," but this was quite unnecessary for the decision; see 1 Curt. at p. 781. So *In the will of Barrett*, 2 V.L.R. (I.P. & M.) 98, Molesworth, J., held that passing a pen through the signature of the testator and the attesting witness was not a sufficient destruction of the will, because they were not obliterated; it was unnecessary to decide what the effect would have been if they had been. The point was directly raised in England in 1887; a will was found with all the three signatures scratched out as with a penknife; counsel in moving for administration as upon an intestacy admitted there was no case in point, but the judge held that the will was revoked, observing that there had been a "lateral cutting out," *In the goods of Morton*, 12 P.D. 141. The word "cutting," however, is not used in the Wills Act, and notwithstanding this decision it is submitted that the question is still open.—*Australian Law Times*.

Reviews and Notices of Books.

The Law of Electric Wires in Streets and Highways. By Edward Quinton Keasbey, of the New Jersey Bar. Chicago: Callaghan & Co., 1892.

This valuable and timely addition to legal literature is referred to at length *ante* p. 513. The typographical part of the work is well done, and reflects much credit upon the publishers.

A Manual of Medical Jurisprudence and Toxicology. By Henry C. Chapman, M.D., Professor of Institutes of Medicine and Medical Jurisprudence in the Jefferson Medical College of Philadelphia, etc. With thirty-six illustrations. Philadelphia: W. B. Saunders, 1892.

The standing of the author of this manual is a sufficient guarantee of the merits of the work, which is well written and to the point. The abbreviated form of the work adds to rather than detracts from its merits as a book of ready reference. The chapters upon insanity and toxicology are especially worthy of mention, and the whole work is one of practical utility to the lawyer.

An Introduction to the History of the Law of Real Property. With original authorities. By Kenelm Edward Digby, M.A., Judge of County Courts; late Vinerian Reader in English Law, etc. Fourth edition. Oxford: Clarendon Press, 1892.

In the preface to the first edition, the author stated that his purpose in writing this book was to supply the need in the universities of a work upon the history of this branch of English law, and in supplying this need he gives a somewhat cursory review of the law of the present day. In the present edition, Mr. Digby translates the extracts from Glanvill and Bracton, and joins issue with Mr. Seebohm and M. de Coulanges as to the source of the law and custom which developed into the manorial system. A student who desires to obtain a thorough familiarity with the early history of the English law of real property will find this work one of very great interest.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

(Continued from page 501.)

EASTER TERM, 1892.

Mr. Moss, from the Committee on Legal Education, reported in the matter of Mr. T. B. P. Stewart's will as follows:

The Legal Education Committee beg to report as follows:

RE STEWART.

(1) It having come to the knowledge of members of the committee that Mr. T. B. P. Stewart, a member of this Society, died in the month of January last, leaving a will whereby he bequeathed the bulk of his estate to this Society upon certain trusts, a copy of the will was procured and is annexed hereto.

(2) The terms of the will having raised doubts as to the capacity of the testator to make, and the society to receive, the bequest, so far, at least, as the estate was composed of realty, the committee obtained a statement showing the extent and nature of the testator's property, which is annexed hereto.

(3) From this statement it would appear that the net value of the estate amounts to about $21,000, of which about $14,500 is realty, or personalty savouring of realty.

(4) The committee suggest that steps be taken towards giving early effect to the testator's most clearly expressed desire that his money should be devoted to the interests of the students of the Law School.

All of which is most respectfully submitted.

CHARLES MOSS, *Chairman.*

(COPY OF WILL.)

TORONTO, June 6th, 1891.

This is the last will and testament of me, T. B. P. Stewart, of the city of Toronto, in the County of York, student-at-law.

I revoke all former wills made heretofore by me.

I devise and bequeath to the Law Society of Upper Canada all my real and personal estate, the annual income of which I desire a committee of Benchers to invest in the purchase of law books for the Law School. If the aforesaid Society have not license of mortmain to take any of the aforesaid property, I bequeath the income of all the aforesaid property which the said Society cannot take to the University of Toronto for two years from the date of my death. If the said Law Society of Upper Canada (supposing the Society cannot take) become empowered by law to take the aforesaid property within the aforesaid two years, then all the aforesaid property is to go to the said Society at the expiration of the aforesaid two years, for the aforesaid purpose. If the said Society be not empowered to take by law at the expiration of the said years, all the aforesaid property is to go to the trustees of the Sick Children's Hospital, corner of College avenue and Elizabeth street, in the city of Toronto, for the purposes of that charity.

All my funeral and testamentary expenses must first be paid, and I desire to be buried at Grahamsville, in the Philips' plot, without any ceremony whatever.

I give my diamond ring to Albert Cummins, of Winnipeg; my other rings, and watch and jewelry, to T. G. Phillips, M.D., of Winnipeg. I leave my books, and all other personal belongings, at 112 College avenue, to the family of James McGee, to be divided among them as they choose. My papers and securities are in a box at Willoughby, McPhillips & Cameron's.

In witness whereof I have hereto set my hand to this my will, this 6th day of June, 1891.

Signed and delivered by the said T. B. P. Stewart, as and for his last will and testament, in the presence of us present at the same time, who, in his presence and at his request, and in the presence of each other, have hereto subscribed our names as witnesses. } T. B. P. STEWART.

Witnesses { D. O. CAMERON, F. MCPHILLIPS.

CODICIL TO THE ABOVE WILL, JUNE 8th, 1891.

Failing the above bequests, I desire any residue undisposed of to be equally divided between Albert C. Cummins, of Winnipeg, and T. G. Phillips, M.D., of Winnipeg.

N.J.S., D.O.C., T.B.P.S.

Signed and delivered by the said T. B. P. Stewart, as and for his last will and testament, in the presence of us present at the same time, who, in his presence and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses. } T. B. P. STEWART.

Witnesses { NEIL J. SMITH, D. O. CAMERON.

ESTATE OF T. B. P. STEWART.

Personalty.

Money secured by mortgage—		
James Nixon, balance due		$ 1,056 70
Sanderson, assignment of mortgage		2,000 00
Graham & Duggan (Jansen mortgage)		3,700 00
E. H. Crandall, mortgage		900 00
Bridget Scott, mortgage		1,124 00
A. Cannington, mortgage		1,000 00
Henry Leader, mortgage, balance due		400 00
J. E. Dennis, mortgage		800 00
Munns, second mortgage		1,000 00
J. McMillan, mortgage		2,500 00
		$14,480 70
Cash in bank	$4,153 06	
Cash in bank	1,640 00	
Cash on hand	672 00	$6,465 06
Bills receivable—		
Dr. Hamilton	$ 100 00	
Cameron & O'Connell	50 00	150 00
		$21,095 76

Realty, vacant lot in Winnipeg; vacant lot in Bolton village. Impossible to fix any value on above at present. Taxes unpaid.

Cash Accounts.

1892.		
Feb. 2nd,	To cash on hand	$672 00

Contra.

1892.		
Feb. 3rd,	By Paid J. E. Ellis & Co.	2 75
	Toronto Rubber Co.	4 84
	Dr. Atherton	6 00
	Dr. Grassett	25 00
	Postage, telegrams, etc.	5 00
Feb. 15th,	Agnes Kay, nurse	122 00
" 16th,	John Yonge, undertaker	163 10
" 18th,	Andrew Jeffrey, drugs	32 20
	Frankle Armand	1 00
March 1st,	Dr. Cameron	25 00
	Balance on hand	284 41
		$672 00

Report adopted.

Ordered, that it be referred to the Legal Education Committee to take such steps as they think advisable to carry out the Report.

Mr. Moss, from the Committee on Legal Education, reported in reference to arrangements with the University of Toronto as follows:

The Legal Education Committee beg to report as follows:

(1) Convocation having on the 19th of May, 1891, received the following letter:

UNIVERSITY OF TORONTO,
Registrar's Office, May 1st, 1891.

J. H. ESTEN, Esq., Secretary Law Society of Upper Canada.

DEAR SIR,—I beg to inform you that a committee of the Senate of the University of Toronto has been appointed for the purpose of conferring with the Benchers of the Law Society of Upper Canada with a view to securing to graduates in the Faculty of Law the benefits of the provisions in the Rules of the Law Society with reference to the exemption of such graduates from one year's attendance at the lectures in the Law School. I am directed to request that the Benchers will appoint a day for receiving the above committee for the purpose of such conference.

Yours truly, H. H. LANGTON, *Registrar.*

And having thereupon made the following order:

"Ordered, that the letter be referred to the Legal Education Committee, and that this committee be appointed to meet the committee of the Senate of the University of Toronto, as requested in the letter of the Registrar of that university, and to report the result of such conference." The committee arranged an appointment with the committee of the Senate, and in pursuance thereof a meeting took place on the 5th of January, 1892.

(2) There were present on behalf of the university: Prof. Ashley, chairman of the committee; W. Mulock, vice-chancellor of the university; Chancellor Boyd, Mr. Justice Falconbridge, and Mr. Justice Proudfoot. The members of this committee present were: The chairman, Mr. Robinson, Mr. Hoskin, and Mr. Barwick. The principal of the Law School was also present on the invitation of the committee.

(3) The curriculum or law course of the University of Toronto was examined and discussed with a view to ascertaining to what extent the work of the first year of the Law School course was covered by the university course so as to make it proper for the Society to dispense with the attendance upon the lectures of the first year in the Law School of graduates of the university who had taken the law course there, and who would be residing in Toronto during their term of attendance in chambers or service under articles.

(4) Your committee were of the view that, with the exception of the instruction and reading afforded and required on the subject of contracts, the university curriculum sufficiently covered the Law School subjects of the first year.

(5) The committee of the Senate agreed to make further provision with regard to contracts. Subsequently the annexed letter from Prof. Ashley was received and considered at a meeting of the committee, and the chairman was directed to reply that the arrangements mentioned in the letter were considered satisfactory, but that the matter must be referred to Convocation.

All of which was respectfully submitted.

March 1st, 1892. CHARLES MOSS, *Chairman.*

To CHARLES MOSS, Esq., Chairman of the Legal Education Committee of the Law Society of Upper Canada.

DEAR SIR,—The committee of the Senate of the University of Toronto appointed to confer with the Benchers of the Law Society beg to call the attention of the Legal Education Committee of the Law Society to the circumstance that they have made arrangements whereby a course of lectures on the Law of Contracts (to be undertaken by Mr. Justice Proudfoot) will be added to the curriculum in the Department of Political Science and the Faculty of Law, concluding with an examination on these lectures, together with the text-books of Smith & Anson. They believe that the curriculum thus amended will include all the subjects dealt with in the first year of the law course of the Law Society, together with some others, such as general jurisprudence and Roman law, not yet included in the course at Osgoode Hall.

The committee of the Senate of the University of Toronto would be glad, therefore, to receive some assurance that when the above-mentioned amendment shall have been introduced into the curriculum graduates of the University of Toronto who have attended the prescribed lectures in law will be admitted to the benefit of Rule 157 among the Rules of the Law Society.

I have the honour to remain obediently yours,

W. J. ASHLEY, *Convener.*

Ordered for immediate consideration, adoption moved, and consideration adjourned to Friday, 27th May inst.

Mr. Moss, from the Committee on Legal Education, reported on the reference as to admission and call of barristers of the Northwest Territories:

The Legal Education Committee beg to report as follows:

Convocation having on the 29th of December, 1891, referred it to the committee to seek legislation with regard to the admission of the members of the Bar of the Northwest Territories to the Bar of Ontario, the committee, with a view of affording information to the Attorney-General, communicated with Mr. Frank Denton, of Messrs. Denton & Dods, in order to ascertain the requirements necessary for call to the Bar of the Northwest Territories, and the chairman received the annexed communications from Messrs. Denton and T. C. West, which the committee submit to Convocation for its direction.

All of which is respectfully submitted.

March 1st, 1892. CHARLES MOSS, *Chairman.*

TORONTO, Feb. 25th, 1892.

C. MOSS, Esq., Q.C., City.

MY DEAR SIR,—I am the person who is applying to be called to the Ontario Bar as a member of the Northwest Bar. I have called several times to see you, but you have been out each time. I enclose drafts of the amendments to the statutes, which Mr. Denton and I think will cover the case as requested by you. As to our examinations, a candidate is examined by one of our judges and an advocate appointed by the judge. There is no list of books set for the examinations, but the judges have always instructed students to get up the same work as that required in Ontario, and in my examinations I was compelled to pass an examination which one judge and the advocate who examined me said was fully as hard as the examination in Ontario. So far as that is concerned, I would pass the barrister's examination here if you thought it necessary. I hope these amendments will be all that are required. Yours faithfully, T. C. WEST.

TORONTO, March 17th, 1892.

CHARLES MOSS, Esq., Q.C., Toronto.

DEAR SIR,—I am in receipt of your kind favour of the 16th inst. with reference to Mr. T. C West's application, which is now under consideration by the Legal Education Committee of the Law Society, and in reply thereto I wish to state that Mr. West is quite willing, if the committee should so desire, not only to serve under articles for a year to become a solicitor (as he would have to do in any event), but also to pass the usual final examinations for Certificate of Fitness and for call to the Bar; but he would like to know now, before the Legislature closes, what can be done for him; and he is not at all anxious to have the Act amended as a general amendment, but simply to have something done by which he can be allowed to practise at our Bar and be a solicitor of our Law Society. Yours faithfully, FRANK DENTON.

Ordered, that the committee have power to seek legislation authorizing the Society to admit, under such rules and regulations and upon such examination as they may from time to time by general rule prescribe.

Mr. Martin gave notice of motion that he will on the 27th of May next introduce a rule to repeal Rule No. 157.

The Report of the Joint Committee as to division of duties of Secretary and sub-Treasurer was presented, as follows:

REPORT UPON THE DIVISION OF DUTIES OF THE OFFICES OF SECRETARY AND SUB-TREASURER.

To the Treasurer and Members of Convocation:

Your committee, composed of the members of the Finance and Legal Education Committees appointed by Rule of Convocation on February 6th, 1892, beg to report that they have considered the matters referred to them, and, in pursuance of the authority and direction to them, have assigned the duties of the officers Secretary and sub-Treasurer as follows:

The committee have assigned the following duties to Mr. Esten:

(1) He shall attend all meetings of the Legal Education and Disclipine Committee, and of any Select Committee on its direction.

(2) He shall receive all applications for Admission and for Certificates of Fitness, and all Petitions for Call, and shall book the same.

(3) He shall, as soon as the time for receiving the notices has expired, make out two lists containing the names, additions, and residences of all such applicants and petitioners, and shall affix one of such lists in a conspicuous place in his office, and the other in the entrance hall of the Law School.

(4) He shall examine and report upon the Petitions, Presentations, and Certificates of all applicants for admission to the Society as students.

(5) He shall certify on the receipt issued to a student for Law School fees the date of his admission to the Society.

(6) He shall examine and report upon the articles, assignments, affidavits of service, certificates, and petitions of all candidates for Certificates of Fitness.

(7) He shall examine and report upon the petitions, presentations, and bonds of all candidates for Call to the Bar.

(8) He shall write up the Roll of Students.

(9) He shall write up the Record of the Law School Examinations.

(10) He shall prepare all Certificates of Admission, all Certificates of Students, and all Diplomas.

(11) He shall forthwith, after the report on each Examination, post in a conspicuous place in the entrance hall of the Law School a list showing the names of successful candidates.

(12) He shall cause to be published in THE CANADA LAW JOURNAL, as soon as may be after each Term:

(*a*) The names of all gentlemen upon whom the Degree of Barrister-at-Law was conferred during such term, in the order of their call.

(*b*) The names of all members admitted into the Society as Students-at-Law or Articled Clerks during such term, with the date, class, and order of their admission.

(*c*) Such portions of the Rules or Standing Orders of the Society respecting admissions of Students-at-Law, and the Examinations for Call to the Bar and for Certificates of Fitness, specifying the subjects and books from time to time prescribed for such Examinations respectively as shall be sufficient to give every necessary information to all parties interested in the premises.

(13) He shall enter the names of Solicitors admitted to practice in the books prescribed by the Statute R.S.O., c. 147, ss. 14 and 15; and shall also discharge the duties prescribed by s. 30 of the same Act.

(14) He shall, after the entry upon the Journals of Convocation of the order of the Court of Appeal, or any of the Divisions of the High Court of Justice for Ontario, ordering a member of the Society to be struck off the Roll of Solicitors, notify by letter each of the judges of the said courts, and the judges of the County Courts of the counties in which the member of the Society affected by such order has practised, and also the said member himself, that the said order has been made and transmitted to the Treasurer of the Society.

(15) He shall enter in a book to be kept in his office for that purpose the names of Barristers from time to time admitted to practise at the Bar in Ontario, affixing to each name a number following in consecutive order the number affixed to the name last previously entered.

(16) He shall enter in another book to be kept in his office for that purpose all the names of Barristers so admitted, alphabetically arranged, with reference to the number of each name on the Roll.

(17) He shall prepare five lists of Solicitors who have paid annual fees, one for each Registrar of the Supreme Court of Judicature, one for the Secretary's office, and one for the publishers of the Reports, to be furnished immediately after the first day of January yearly.

(18) He shall prepare copies of, and, under the direction of the Discipline Committee, serve, or cause to be served, all complaints and answers to complaints in cases before the Discipline Committee.

(19) He shall have charge of the Students' Lending Library, and receive and pay out the deposits and fines in connection with the same; he shall deposit all such moneys coming into his hands to the credit of a special account in the Bank of Hamilton, or such other bank as may from time to time be named by the Finance Committee.

(20) He shall perform all duties heretofore performed by him as Secretary and sub-Treasurer which appertain rather to the Secretariat's than the sub-Treasurer's office, and which are not specifically assigned to either of the present officers.

(21) He shall perform such other duties as may from time to time be assigned to him by Convocation or by the Legal Education Committee, which shall report its action in this regard to Convocation at its next ensuing meeting.

The committee have assigned the following duties to the new officer:

(1) He shall attend all meetings of the Finance, Reporting, Journals and Printing, and County Libraries Aid Committees, and of any Select Committee on its direction.

(2) He shall attend all meetings of Convocation, and shall keep the minutes thereof as now or hereafter directed.

(3) He shall prepare lists of Barristers entitled to vote at the election of Benchers, and shall cause to be prepared and shall send out blank voting papers for such voters, and shall receive them when returned filled up and signed.

(4) He shall report to Convocation on the first day of each term, and at each meeting of Convocation held between terms, the names of such elected Benchers, if any, as have failed to attend the meetings of Convocation for three consecutive terms.

(5) He shall cause to be published in THE CANADA LAW JOURNAL, as soon as may be after each term—

(*a*) The names of all Benchers elected or appointed during the previous term.

(*b*) The name of the Treasurer, if any, selected during such term.

(6) He shall have the proceedings of Convocation during each term printed under the superintendence of the Standing Committee on Journals and Printing.

(7) He shall prepare an index to the minutes of Convocation after each term.

(8) He shall receive all fees for admission of students, admission of Solicitors, and call of Barristers, for Notices and Petitions, and all other fees, fines, and moneys, save the deposits and fines in connection with the Students' Lending Library.

(9) He shall issue to each student paying a Law School fee a receipt therefor.

(10) He shall keep a record of unpaid certificates and term fees.

(11) He shall prepare and issue all Solicitors' annual certificates, and keep an index of the same.

(12) He shall enter at length upon the journals of Convocation, in the minutes of the meetings at which they are laid before Convocation, all court orders for the restoration to the Rolls of persons previously struck off.

(13) He shall keep the Society's books of account.

(14) He shall daily, or at least as often as the sum received by him amounts to $100, deposit to the credit of the Society, in the bank duly authorized by the Finance Committee, all moneys received for and on account of the Society, which, being done, such deposit shall exonerate the sub-Treasurer making such deposit.

(15) He shall prepare and lay before the Finance Committee an annual statement of receipts and expenditures.

(16) He shall, during Hilary Term in every year, furnish to every member of the Law Society entitled to vote at the election of Benchers an audited statement in detail of the revenue and expenditure of the Law Society for the year ending 31st December preceding each statement (R.S.O., c. 145, s. 53).

(17) He shall lay, each month, before the Finance Committee a debit and credit statement of account of all moneys received up to and including the last day of the preceding month.

(18) He shall prepare and countersign all cheques, and enter them in the Finance Committee's record of cheques, and shall discharge all accounts and salaries under the direction of the committee.

(19) He shall, under the direction of the Finance Committee, have the general charge of those portions of the grounds, with the buildings thereon, which are or may hereafter be under the control of the Society, and shall, under the same direction, exercise supervision and control over the Society's servants. He shall, until further order of Convocation, reside in the east wing of Osgoode Hall, in such apartments as shall be assigned to him by the Finance Committee.

(20) He shall give security by bond of some guarantee company to the Society, to the extent of $5,000, for the due performance of the duties of his office.

(21) He shall perform such other duties, if any, heretofore performed by the Secretary and sub-Treasurer as appertain rather to the sub-Treasurer's office than to the Secretariat, and are not specifically assigned to Mr. Esten.

(22) He shall perform such other duties as may from time to time be assigned to him by Convocation, or by the Finance Committee, who shall report its action in this regard to Convocation at its next ensuing meeting.

All of which is respectfully submitted on behalf of the committee.

EDWARD BLAKE, *Chairman.*

Mr. Irving, from the Finance Committee, presented a report on the subject of the sub-Treasurer, as follows:

MONDAY, 16th May, 1892.

(1) The Finance Committee, in pursuance of the resolution of Convocation of 12th of February, 1892, upon the subject of the appointment of a sub-Treasurer, beg leave to report that they advertised in three Toronto daily newspapers that the Benchers were about to appoint a sub-Treasurer, and that names of candidates for the office would be received up to the 16th of April, 1892.

(2) That in reply to the advertisement they received applications from twenty gentlemen. Upon meeting to consider these applications, the committee became possessed of the fact that Mr. Esten, the Secretary and sub-Treasurer, had been seriously stricken with illness.

(3) And having before them the certificates of Drs. Strange and Macdonald (Albert A.), of 15th and 12th of April respectively, upon the health of Mr. Esten, and also other information, and fearing that he may never be able to resume the duties of his office, and believing that in that event a single officer would adequately discharge the work divided by the Rule of Convocation on that behalf passed on the 6th of February, 1892, with a somewhat higher salary than fixed for the office of sub-Treasurer, thought it expedient to defer the consideration of the applications before them for the office of sub-Treasurer until the opinion of Convocation should be taken.

(4) The committee were permitted to state, for the information of Convocation, that the chairman of the Legal Education Committee concurred in the postponement of the consideration of the applications above mentioned.

(5) The Treasurer having appointed Mr. J. Daley, the assistant Librarian, to attend in the Secretary's office until further ordered, the current work of the office has been kept up; the auditor, Mr. Eddis, having been called in to supervise the making up of the books of account for the month of April.

(6) Since the applications for sub-treasurership to the number of twenty were received, the committee state that three other gentlemen requested to be considered applicants, making twenty-three applicants to date.

Respectfully submitted,

ÆMILIUS IRVING, on behalf of the committee.

The letter of Dr. A. A. Macdonald to the Treasurer was read.

Ordered, that the consideration of the two Reports be adjourned to the half-yearly meeting of the 28th June, and that meantime the Finance Committee have power to employ any temporary assistance for the efficient conduct of the business of the Society.

Mr. Osler, from the Committee on Reporting, laid on the table the Ontario Digest completed.

Mr. Martin proposed that the Acting Secretary do give the following notice of the meeting of 27th May:

"I am directed to give you notice that at the meeting of Convocation to be held on 27th May instant the report of the Legal Education Committee on the application of the University of Toronto, under Rule 157, to have attendance at the Law Faculty of that university accepted in lieu of the like attendance upon the first year of the course of the Law School will be considered." Ordered accordingly.

The petition of John Crawford on behalf of J. L. Crawford was considered.

Ordered, that the Society cannot comply with the prayer of the petition, having regard to the positive terms of the Rules as to attendance.

The petition of Mr. H. E. A. Robertson, law student, was considered. The prayer of the petition was rejected.

The letter of G. C. Counsell, Librarian of the Hamilton Law Association, as to the supply of books on the Law School curriculum to students at Hamilton, was read. The letter was referred to the Library Committee, said committee to report generally on the question raised by this communication.

A communication from the Frontenac Law Association as to the supply of the Supreme Court Reports and of the Dominion and Ontario Statutes to the profession was read. Deferred.

A letter from Mr. Hoyles, Q.C., as to the Prison Reform Association meeting, was read.

Mr. Moss laid on the table the report of the Principal of the Law School on the results of the year. Ordered to be printed and circulated, the Report to be considered at the next half-yearly meeting.

Convocation adjourned.

Tuesday, 17th May, 1892.

Convocation met.

Present, between 10 and 11 a.m.—The Treasurer, and Messrs. Proudfoot, Moss, Irving, and Shepley. After 11 a.m.—Messrs. Robinson, Meredith, Macdougall, Osler, Kerr, Guthrie, Barwick, and Strathy.

The minutes of last meeting of Convocation were read, approved, and signed by the Treasurer.

The Report of the Committee on Legal Education respecting the cases of the gentlemen named therein was presented by the chairman. Ordered to be received and read. Ordered for immediate consideration.

In the case of W. M. Campbell, the committee reported that all requisites had been complied with; that he is entitled to receive a Certificate of Fitness as solicitor, and also to be called to the Bar. Ordered for immediate consideration, adopted, and ordered accordingly.

In the cases of W. A. Buchner and M. O. Sheets, reserved, the committee report that all requisites have been complied with, and that they are entitled to receive their Certificates of Fitness. Ordered for immediate consideration, adopted, and ordered accordingly.

The Report of the Examiners on the Second Intermediate Examinations was received and read. Ordered for immediate consideration and adopted.

The Acting Secretary reported that all the candidates who had passed were in due course.

Ordered, that Messrs. J. J. Coughlin, A. F. H. Mills, H. Matheson, and A. S. Dickson be entered as passed without an oral, and Messrs. E. F. Burritt and H. D. Petrie as passed with an oral examination.

After 11 a.m.

The following gentlemen were then called to the Bar, viz.: W. G. Owens, W. M. Campbell, and O. K. Fraser.

Mr. Irving moved the second reading of the Rule relating to the tenure of office.—*Carried.*

Mr. Irving moved that the Rule be read a third time and passed.—*Carried;* and the same is as follows:

Rule relating to the tenure of office:

(1) All offices in the gift of the Law Society or of Convocation shall be held during the pleasure of Convocation.

(2) In case the pleasure of Convocation be not earlier determined, no Examiner shall hold office for more than three years from the time at which his appointment takes effect, and no Examiner shall be eligible for reappointment.

(3) In case the pleasure of Convocation be not earlier determined no Lecturer, save the Principal, shall hold office for more than three years from the time at which the appointment takes effect, but each Lecturer shall be eligible for reappointment.

(4) In case the pleasure of Convocation be not earlier determined, no Editor or Reporter shall hold office for more than three years from the time at which his appointment takes effect, but every Editor and Reporter shall be eligible for reappointment.

(5) With reference to existing officers, the preceding Rules as to determination of offices by efflux of time shall operate to determine their tenure of office, as follows:

(*a*) As to Examiners, on the last day of Trinity Term, 1893.

(*b*) As to Lecturers, on the last day of Easter Term, 1893

(*c*) As to Editor and Reporters, on the last day of Michaelmas Term, 1893.

Mr. Osler, from the Committee on Reporting, reported recommending payments in respect of the Digest as follows:

(1)	Mr. Frank. J. Joseph	$3,000 00	
	Mr. J. F. Smith	750 00	
	Mr. J. R. Cartwright	300 00	$4,050 00
	Messrs. Rowsell & Hutchison	3,669 97	
	Paid on account	1,500 00	2,169 97
	Balance to be paid		$6,219 97

(2) Recommending that four copies in addition to the eight copies of the Digest, as provided by Rule No. 96, be given to the Osgoode Hall Library, and that the County Library Associations of York, Wentworth, and Middlesex, being those entitled under the Rules, receive two copies each.

(3) Recommending that the Acting Secretary enclose to the publishers the list of those entitled to free distribution under the resolution of Convocation of the 29th of December, 1891, and under the recommendation No. 2 to-day, with instructions to carry it out; the copies distributed to the visitors of the Society, the judges of the Supreme Court of Judicature for Ontario, to be full bound; all others to be unbound.

(4) Recommending that the application of Messrs. Copp, Clark & Co. for such information as will enable them to publish a law list in the *Canadian Almanac* be granted, the work to be done by their agent at Osgoode Hall under the supervision of their Society's officers.

The Report was ordered for immediate consideration, paragraph by paragraph; 1st paragraph adopted; 2nd paragraph adopted; 3rd paragraph adopted; 4th paragraph adopted. The Report was adopted as a whole.

Convocation adjourned.

Saturday, 21st May, 1892.

Convocation met.

Present—The Treasurer, and Messrs. Irving, Hoskin, Lash, Aylesworth, Kerr, Meredith, Watson, Moss.

The minutes of last meeting of Convocation were read, approved, and signed by the Treasurer.

Mr. Irving moved, seconded by Mr. Hoskin, that Mr. Blake be Treasurer for the year.—*Carried.*

Mr. Lash moved the several Standing Committees for the year 1892-3, as follows:

Finance.—Messrs. Æ. Irving, Walter Barwick, S. H. Blake, A. Bruce, W. Douglas, John Hoskin, Z. A. Lash, E. Martin, W. R. Riddell, C. H. Ritchie, H. H. Strathy, G. H. Watson.

Reporting.—Messrs. B. B. Osler, A. B. Aylesworth, B. M. Britton, J. Idington, Colin Macdougall, F. Mackelcan, D. McCarthy, James Magee, C. H. Ritchie, G. F. Shepley, J. V. Teetzel.

Discipline.—Messrs. John Hoskin, A. B. Aylesworth, A. Bruce, A. J. Christie,

Donald Guthrie, J. K. Kerr, F. Mackelcan, James Magee, C. Robinson, G. F. Shepley, G. H. Watson, W. Proudfoot.

County Libraries' Aid.—Messrs. E. Martin, B. M. Britton, A. Bruce, A. J. Christie, W. Douglas, D. Guthrie, A. S. Hardy, J. Idington, J. K. Kerr, W. R. Meredith, B. B. Osler, H. H. Strathy.

Library.—Messrs. G. F. Shepley, A. B. Aylesworth. W. Barwick, S. H. Blake, D. Guthrie, Æ. Irving, Charles Moss, W. Proudfoot, W. R. Riddell, C. Robinson, H. H. Strathy, G. H. Watson.

Legal Education.—Messrs. Charles Moss, W. Barwick, John Hoskin, Z. A. Lash, C. Macdougall, F. Mackelcan, E. Martin, W. R. Meredith, W. R. Riddell, C. H. Ritchie, C. Robinson, J. V. Teetzel.

Journals and Printing.—Messrs. J. K. Kerr, John Bell, B. M. Britton, A. J. Christie, W. Douglas, C. F. Fraser, J. Idington, Z. A. Lash, C. Macdougall, James Magee, Charles Moss, J. V. Teetzel.—*Carried.*

Mr. Lash, from the Legal Education Committee, presented a Report, as follows:

(1) In the case of Messrs. J. H. Hegler and H. A. Lavell, reserved, that the committee have considered the Examiners' and the Acting Secretary's reports and find that these gentlemen have passed the examination for Certificates of Fitness, that their service and papers are regular, and that they are entitled to their certificates. Ordered for immediate consideration, adopted, and ordered accordingly.

(2) In the case of H. E. McKee, directed by a former order to serve eight months, the committee report that he has completed his service, that his papers are regular, that his examination should be allowed, and that he should receive a Certificate of Fitness. Ordered for immediate consideration, adopted, and ordered accordingly.

(3) In the case of G. G. McPherson, who applies for call to the Bar under the Rules in special cases, the committee have examined his papers, and find that he has complied with the Rules, and they recommend, pursuant to Rule 209 as amended, that a Select Committee be appointed to conduct his examination. Ordered for immediate consideration, and adopted.

On motion of Mr. Lash, it was ordered that a Special Committee, consisting of Messrs. Meredith and Lash, be appointed to examine Mr. McPherson as to his qualifications, pursuant to Rule 209 as amended.

Mr. Moss gave the following notice of motion:

At the next meeting he will introduce a Rule to give effect to the report of the Legal Education Committee with respect to arrangements with the University of Toronto under Rule 157.

Ordered, that Mr. J. J. Daley be appointed Acting Secretary until further order.

The Special Committee appointed to examine Mr. McPherson as to his qualifications, pursuant to Rule No. 209 as amended, reported:

That Mr. McPherson had passed a satisfactory examination before them, and is entitled to be called to the Bar under the Rules in special cases. W. R. MEREDITH, *Chairman.*

Ordered for immediate consideration, and adopted.

Ordered, that Mr. G. G. McPherson be called to the Bar. Mr. McPherson was called to the Bar.

Convocation adjourned.

Friday, 27th May, 1892.

Convocation met.

Present—The Treasurer and Messrs. Proudfoot, Moss, Martin, Strathy, Idington, Aylesworth, Shepley, McCarthy, Barwick, Bruce, Kerr, Mackelcan, Irving, Osler, Robinson, Teetzel, Watson, Hoskin, and Lash.,

The minutes of the last meeting of Convocation (21st May) were read, approved, and ordered to be signed by the Treasurer.

Mr. Moss, from the Committee on Legal Education, reported on the reserved cases of Messrs. F. A. Heney and J. W. Bain, applying to be admitted as students-at-law of the matriculant class, that they are entitled to be so admitted. Ordered for immediate consideration, adopted, and ordered accordingly.

The special petition of J. H. Madden, praying for allowance of his examination, was received and read. Rejected.

The resolutions of the County of Frontenac Law Association were received and read.

The letters from Mr. Justice Osler and Mr. Justice Maclennan with reference to the new Digest were read.

The letter from the Registrar of Queen's University relating to the application of Queen's University was received and read. Ordered, that it be referred to the Legal Education Committee.

The Report of the Legal Education Committee on the subject of Law Lectures at the University under Rule 157, ordered for consideration this day, was taken up.

Mr. Moss moved the adoption of the Report, seconded by Mr. Hoskin.

Mr. Martin moved in amendment, seconded by Mr. Osler, that the question of the adoption of the Report be considered this day six months.

The amendment was lost.

Mr. Shepley moved, in amendment, to refer back the question to the committee for reconsideration by the committee with the pending application of Queen's University, and in view of probable applications from other universities.—*Carried.*

Mr. Osler moved, seconded by Mr. Hoskin, that Mr. Proudfoot be appointed to the Reporting Committee in the place of Sir Adam Wilson, deceased.—*Carried.*

Mr. Shepley moved, that Mr. Moss be appointed representative of the Law Society on the Senate of the University of Toronto.—*Carried.*

Mr. Martin presented the Report of the County Libraries' Aid Committee, as follows:

To the Benchers of the Law Society:

The County Libraries' Aid Committee beg to report that the County of Grey Law Association has transmitted proof of its incorporation, and a copy of the declaration and by-laws, showing compliance with the requirements of the Law Society. A suitable room for the library has been secured in the court house. The sum of four hundred and sixty dollars has been paid in cash by the members of the Association, and the value of the books given from all local sources amounts to forty-four dollars.

Your committee recommend that the usual initiatory grant be made to the Association, which will amount to five hundred and sixty dollars, which is less than double the amount of the cash paid in and actual value of books given as above mentioned, but not exceeding the maximum sum of twenty dollars for each practitioner in the county, the number of such practitioners being twenty-eight.

All of which is respecfully submitted.

May 27, 1892. EDWARD MARTIN, *Chairman.*

Ordered for immediate consideration, adopted, and ordered that the grant be made.

Mr. Osler moved, that it be referred to the Library and Reporting Committees jointly, to consider and report to Convocation a scheme for making and keeping up a continuous Digest of the Reports for the Osgoode Hall and County Libraries.—*Carried.*

Mr. Mackelcan moved, that Convocation desires to place on record their sincere regret at the death of Sir Alexander Campbell, who was so long a Bencher of the Law Society of Upper Canada, and who, when his health and his other engagements permitted, attended meetings of Convocation and took an active interest in the affairs of the Society.—*Carried.*

Ordered, that a copy of the resolution be transmitted to Sir Alexander Campbell's family.

Convocation adjourned.

DIARY FOR NOVEMBER.

1. Tues.....All Saints' Day.
2. Wed.....O'Connor, J., Q.B., died, 1887.
5. Sat. .....Sir John Colborne, Lieut.-Governor of U.C., 1838. Gunpowder Plot.
6. Sun.....*21st Sunday after Trinity.*
8. Tues.....Court of Appeal sits. John Milton died, 1674.
9. Wed.....Prince of Wales born, 1841.
11. Fri.....Battle of Chrysler's Farm, 1813.
12. Sat.....J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868. Magna Charta signed, 1215.
13. Sun.....*22nd Sunday after Trinity.* A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Mon.....Falconbridge, J., Q.B.D., 1887.
15. Tues.....M. C. Cameron, J., Q.B., 1878.
19. Sat.....J. D. Armour, 14th C.J. of Q.B., 1887. Thos. Galt, C.J., C.P.D.
20. Sun.....*23rd Sunday after Trinity.*
21. Mon.....Michaelmas Term begins. Q.B. and C.P. Divisions of H.C.J. sittings begin. J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
24. Thur....Battle of Fort Duquesne, 1758.
25. Fri.....Marquis of Lorne, Gov.-Gen., 1878.
27. Sun.....*1st Sunday in Advent.* Frontenac died at Quebec, 1698.
30. Wed.....St. Andrew's Day. Thos. Moss, C.J. of Appeal, 1877. Street, J., Q.B.D., and MacMahon, J., C.P.D., 1887.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[May 13, 1890.

MCMILLAN *v.* BARTON.

Principal and agent — Trusts and trustees — Fraud—Statute of Frauds.

Property of the plaintiff's husband having been offered for sale under mortgage, she agreed orally with the mortgagee's solicitors to purchase it; but, not having the means to make the cash payment required, she saw one of the defendants, who agreed to lend her for a year the necessary money and to take a deed of the property as security, and he gave to the solicitors a written offer to purchase on the terms arranged by the plaintiff, which offer was by the solicitors orally accepted. The property was, however, in fact conveyed to the other defendant, who was the daughter of her co-defendant.

Held, per HAGARTY, C.J.O., and MACLENNAN, J.A., that on the evidence the conveyance to the daughter was the result of a fraudulent conspiracy between her father and herself to deprive the plaintiff of her bargain, that therefore the daughter stood in no better position than the father, and that he was an agent for the plaintiff, whose agency must be proved by oral evidence notwithstanding the Statute of Frauds.

Held, per BURTON and OSLER, JJ.A., that on the evidence the purchase by the daughter was not a collusive one, but was one for her own benefit, and that it could not be impeached.

The court being equally divided, the judgment of ROBERTSON, J., at the trial was affirmed.

Upon appeal to the Supreme Court of Canada, 20 S.C.R. 404, the view of HAGARTY, C.J.O., and MACLENNAN, J.A., was adopted.

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

John Bain, Q.C., for the respondent.

[May 10, 1892.

DWYER *v.* PORT ARTHUR.

Municipal corporations—By-law—Street railways—Costs.

In January, 1891, the defendants passed a by-law to raise $75,000 for street railway purposes, with a recital that it was necessary to raise that sum for the purpose of building a street railway connecting the municipality of Neebing with the municipality of Port Arthur. The by-law had been submitted to the electors, and had been carried by their votes, but the approval of the Lieutenant-Governor in Council had not been obtained, and the provisions of section 505 of the Municipal Act had not been observed. This action was brought to restrain the municipality from constructing the street railway under this by-law; and on the 4th of May, 1891, while the action was pending, an Act, 54 Vict., c. 78 (O.), was passed declaring that the by-law in question was legal and valid to all intents. After the passing of the Act an injunction was granted by STREET, J., restraining the defendants from acting under the by-law on the ground that the Act in question did not go far enough. The action was afterwards brought down to trial, and MACMAHON, J., following the judgment of STREET, J., made the injunction perpetual.

Held, reversing these judgments, that the validating Act had the effect of changing the by-law from one for raising money merely to one for construction, and made it valid for all purposes.

Held, also, that the plaintiffs were entitled to the costs of the action down to the time of the passing of the Act, and, in addition, the costs of a motion in chambers for the disposal of the action, and that the defendants were entitled to the subsequent costs and to the costs of the appeal.

Observations on the course that should be followed by the Legislature in passing Acts to validate proceedings which are under attack in a pending action.

Delamere, Q.C., for the appellants.

Aylesworth, Q.C., and *D. W. Saunders* for the respondents.

[Sept. 13.

HODGINS *v.* CITY OF TORONTO ET AL.

Trees—Highways—Telephone—Tree Planting Act., R.S.O., c. 201—Municipal Act, R.S.O., c. 184, s. 479 (20).

The plaintiff was the owner of lands in the city of Toronto fronting on a street which was an original road allowance. The defendants, the Bell Telephone Company, with the assent, but without any express resolution or by-law of the city, or any notice or compensation to the plaintiff, cut off branches overhanging the street from trees growing within the plaintiff's grounds, and also branches off trees growing in the street in front of the plaintiff's grounds, alleging that the branches interfered with the use of the wires of a telephone system which they had contracted with the city to maintain. Section 3 of the Tree Planting Act, c. 201, had not been brought into force in Toronto.

Held, per OSLER and MACLENNAN, JJ.A., HAGARTY, C.J.O., dissenting, that s. 479 (20) of the Municipal Act, R.S.O., c. 184, applies only when s. 3 of the Tree Planting Act, R.S.O., c. 201, is in force, and that the plaintiff had no interest in or title to the trees growing in the street sufficient to enable him to complain of the cutting. But held also, per HAGARTY, C.J.O., and OSLER, J.A., MACLENNAN, J.A., dissenting, that as the overhanging branches of the trees growing within the plaintiff's grounds were not a nuisance, and in no way interfered with the use of the highway, the defendants had no right to cut them.

In the result, therefore, the judgment of the Junior Judge of the county of York was in part affirmed, the damages being reduced by $10.

H. M. Mowat for the city of Toronto.

S. G. Wood for the Bell Telephone Company.

F. E. Hodgins for the plaintiff.

[Oct. 3.

JOHNSON *v.* MARTIN.

Bills of exchange and promissory notes—Patent of invention—Fraud—Illegality.

The action was brought to recover the amount of certain promissory notes given by the defendant in April, 1888, on the purchase by him of patent rights in a washing machine. The notes were not marked with the words "given for a patent right," as required by R.S.C., c. 123, s. 12, and were taken by the plaintiff from the original holder with knowledge, as the jury found, of the nature of the consideration.

Held, not only that the plaintiff was in the same position as if the notes had been ear-marked with these words so as to enable the defendant to set up as against him any defences that would have been available against the original holder, but also that the original holder having committed a misdemeanor in accepting the notes without these words, and a further misdemeanor, in which the plaintiff participated, in transferring them to the plaintiff without these words, the plaintiff could not in any event recover.

Judgment of the County Court of Lennox and Addington reversed

C. J. Holman for the appellant.

Aylesworth, Q.C., for the respondent.

IN RE HAGGART BROS.' MFG. CO.

Company—Shares—Subscriptian—Charter—Allotment—Call—Statute of Limitations.

Persons named in the charter of a company as shareholders are liable as such for calls which may be afterwards made upon the stock stated in the charter to be held by them, and no further act of the directors in allotting such stock or giving them notice of allotment is necessary.

After the issue of letters patent in 1880, incorporating a company and naming certain persons as shareholders, these persons stated to certain of the directors of the company that

they would not accept their stock and would have nothing more to do with the company, but no proceedings were taken by them to relieve themselves from liability; and no proceedings were taken against them until the company was wound up in 1891.

Held, distinguishing *Nichol's Case*, 29 Chy.D. 421, that as these persons had not a mere inchoate right to receive shares, but were actually shareholders and members of the company by virtue of the charter, mere statements of this kind and the lapse of time and the failure of the directors to enforce payment of the shares did not relieve them.

There is no liability to pay for shares until a call is made and notice thereof given to the shareholder, and until that time the Statute of Limitations does not begin to run against the company. Where, therefore, persons were named in the charter issued in 1880 as shareholders, they were in 1891 held liable to pay the amount of their shares, no formal call having in the meantime been made.

Judgment of the County Court of Peel affirmed.

Shepley, Q.C., for the appellants.

Moss, Q.C., for the respondent.

[Oct. 10.

MORRISON *v.* WATTS.

Trusts and trustee—Fiduciary relationship—Purchase of trust property—Assignments and Preferences Act, R.S.O., c. 124—Inspectors.

A purchase by the assignee for the benefit of creditors of the assets of the estate made by him at the request of the inspectors of the estate, after futile efforts to sell at auction and by private tender, and after a circular letter was sent by the inspectors to each creditor stating that the sale would be made unless objection was taken, was set aside, there being evidence that at the time of the purchase the trustee knew of, and was negotiating with, a possible purchaser, to whom he afterwards re-sold at a large profit, and did not disclose this information to the inspectors.

Though the Assignments and Preferences Act, R.S.O., c. 124, does not clearly define the powers or duties of the inspectors of an insolvent estate, it would appear that they have no power, unless specially authorized by the creditors, to bind the creditors by anything they do in disposing of the estate, the disposal of which is in the hands of the creditors, and, in default of directions by them, in the hands of the judge of the County Court.

Judgment of ARMOUR, C.J., affirmed, BURTON, J.A., dissenting.

S. H. Blake, Q.C., and *A. Watts* for the appellant.

W. S. Bremster for the respondent.

GOODERHAM ET AL. *v.* CITY OF TORONTO.

Way—Public highway — Plan — Dedication—User—R.S.O., c. 152, s. 62—Municipal corporations—By-law.

Section 62 of R.S.O., c. 152, which provides that all allowances for streets surveyed in cities or any part thereof which have been or may be surveyed and laid out and laid down on the plans thereof, and upon which lots of land fronting upon such allowances for streets have been or may be sold to purchasers, shall be public highways and streets and commons, is retroactive, and applies to streets laid out on plans made and registered before the passing of the Act.

A piece of land in Toronto of about twenty acres in extent was, in 1854, surveyed and laid out in lots and streets, and a plan was duly registered. Certain lots were sold and were conveyed according to the plan, but were afterwards repurchased by the original owners of the piece of land, predecessors in title of the plaintiffs, and the whole piece was then fenced in and used as a field until 1888, when the city, without passing any by-law, proceeded to open the streets.

Held, that the streets shown on the plan were highways which the city were entitled to open, but that a by-law was necessary.

Judgment of the Common Pleas Division, 21 O.R. 120, affirming, by a division of opinion; that of FERGUSON, J., affirmed.

Moss, Q.C., and *R. McKay* for the appellants.

Robinson, Q.C., for the respondents.

STEVENSON ET AL. *v.* DAVIS.

Vendor and purchaser — Possession — Interest.

This was an appeal by the plaintiffs from the judgment of the Chancery Division, reported

21 O.R. 642, and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A, on the 20th and 21st of October, 1892.

Hoyles, Q.C., and *C. W. Colter* for the appellants.

Furlong for the respondent.

At the conclusion of the argument the appeal was dismissed with costs, the court seeing no ground for interfering with the judgment appealed from.

HIGH COURT OF JUSTICE.

Chancery Division.

ROBERTSON, J.] [Sept. 24.

IN RE HARTE & THE ONTARIO EXPRESS AND TRANSPORTATION COMPANY.

Dominion Winding-up Act, s. 56—Dominion and Provincial laws—Claim under Quebec law.

Held, that there is nothing in s. 56 of the Dominion Winding-up Act which alters or interferes with the *lex loci contractus*, and therefore in the case of a lease entered into in Montreal, where the Quebec law provided that, on the insolvency of the lessee, the rent not yet exigible by the terms of the lease should become so by reason of the insolvency of the tenant, a claim for the whole rent to the end of the term must be allowed to the lessors in these liquidation proceedings, which were being carried on under the said Dominion statute.

Maclaren, Q.C., for the New York Piano Co.
Hoyles, Q.C., for the liquidator.

Common Pleas Division.

Div'l Court.] [June 27.

REGINA *v.* RAWSON.

Auctioneers—Assignee of bankrupt estate compellable to take out license under by-law passed under s. 495 of the Municipal Act—Conviction—License fee not imposition of tax.

Where an assignee of a bankrupt estate put up and sold by auction the goods thereof, being the only occasion on which he so acted within the county, he was held to come within the terms of a county by-law passed under s. 495 of the Municipal Act, R.S.O., c. 184, prohibiting persons acting as auctioneers in the county without being duly licensed therefor, and was therefore properly convicted thereunder.

Per ROSE, J.: The fixing by the by-law of a sum of $25 to be paid for the license to so sell is within the power given to the municipality to regulate and license.

Shepley, Q.C., for applicant.
Pepler, Q.C., *contra.*

REGINA *v.* BUTLER.

Municipal law—By-law passed by police commissioners for licensing omnibuses, etc.—Restriction limited to owners and not to drivers—R.S.O., c. 184, s. 436.

A by-law passed under s. 436 of the Municipal Act, R.S.O., c. 184, by the police commissioners of a city, enacted that no person or persons should drive or own any omnibus, etc., without being licensed so to do.

Held, that this only applied to the owner and not to driver of such omnibus, etc.

Ryckman for the applicant.
Langton, Q.C., *contra.*

REGINA *v.* RHODES.

Criminal law—Forgery—Interest of witness—R.S.C., c. 174, s. 2—Construction of.

On the trial of an indictment for uttering a forged note, evidence in proof of the note being forged was given by E., who had no interest therein. Evidence in support of the uttering was also given by J. H. (the wife of R.H.), to whom the note was given, who was in attendance in her husband's shop and as his agent.

Per MACMAHON, J.: The note having been proved to be a forgery by a person having no interest therein, the question whether the wife's evidence should be corroborated on the ground of interest would not arise under s. 218 of The Criminal Procedure Act, R.S.C., c. 174.

Per ROSE, J.: The wife had no interest in the forged document; her interest, if any, was to prove its genuineness, but in any event there was abundant corroborative evidence.

Murdoch for the prisoner.
Cartwright, Q.C., *contra.*

SMITH *v.* FRANKLIN.

Landlord and tenant—Taxes—Distress therefor by municipality—Fourteen days demand—Damages recoverable by tenant—Irregularities in making distress—Liability of landlord—Covenant for quiet enjoyment.

The demand for taxes required to be made by the municipality fourteen days prior to distress, under s. 123 of the Assessment Act, R.S.O., c. 193, is satisfied by a demand made before the payment of the first instalment.

The fact that s. 24 enables the occupant to deduct from the rent taxes payable by the landlord does not limit him to such remedy, so as to prevent his bringing an action against the landlord for the recovery of the damages sustained by him by reason of a distress made for said taxes by the municipality, but such damages are restricted to the amount of the taxes paid to remove such distress, and do not include consequential damages.

No liability is imposed on the landlord by reason of irregularities by the municipality in making the distress, in the absence of any fraud by the landlord.

The distress does not constitute a breach of the covenant for quiet enjoyment in the Short Form lease, for, in distraining, the municipality is not claiming by, from, or under the landlord.

R. G. Smyth for the plaintiff.

Shepley, Q.C., *contra.*

REGINA *v.* FEARMEN.

The Liquor License Act—Evidence of license inspector laying information, and of defendant—Admissibility of—Indian reserve.

For an offence under the Liquor License Act, R.S.O., c. 194, the evidence of a license inspector who lays the information is admissible, for he has, under the Act, no interest in the penalty; but, apart from this, he is a competent witness under s. 2 of the Evidence Act, R.S.O., c. 74, which removes all disability by reason of interest; but the evidence of the defendant here was inadmissible, following *Regina* v. *Hart*, 20 O.R. 611, and *Regina* v. *Bittle*, 21 O.R. 605, and that the amending Act, 55 Vict., c. 14, s. 1 (O.), did not apply as passed after the trial and conviction.

The conviction was for selling liquor without a license at the village of M., in the township of O., and it was objected that such township comprised an Indian reserve, within which the Liquor License Act was not in force, and therefore the conviction should have negatived the offence having been committed therein; but there was nothing in the evidence to show this, and by s. 1 of R.S.O., c. 5, there was *primâ facie* jurisdiction; the objection was therefore held untenable.

Du Vernet for the defendant.

Langton, Q.C., *contra.*

TRIMBLE *v.* MILLER.

Division courts—Judgment for amount beyond jurisdiction of court—Prohibition for excess only—Promissory note—What constitutes.

Judgment was recovered in the Division Court for $108.63, being $100 balance due and $8.63 interest under the following instrument signed by defendants: "To G.T. We hereby undertake to pay the executors of the late J.D.K. the sum of $375 on a mortgage they hold against the Royal Hotel property, Streetsville, thereby reducing the mortgage to $2,000."

Held, that the document, even if a promissory note under s. 82 of the Bills of Exchange Act, 53 Vict., c. 33 (D.), which was open to doubt, only inured to the benefit of K.'s executors, and not to G.T., and therefore the action must be deemed to be for a breach of contract, in which the jurisdiction of the Division Court is limited to $106, and therefore the judgment was in excess of the jurisdiction, but that prohibition must be limited to the excess, namely, the $863.

Aylesworth, Q.C., for the plaintiff.

Justin and *Blain* for the defendants.

REGINA *v.* MCGOWAN.

The Liquor License Act—Reeves of municipalities in unorganized districts—Ex officio justices of the peace—Right to try alone offences against the Act.

The reeves of municipalities in unorganized districts are, under the legislation relating thereto, *ex officio* justices of the peace in their respective municipalities, with power to try alone and convict for offences under the Liquor License Act, R.S.O., c. 194.

Hewson for the applicant.

Langton, Q.C., *contra.*

MACMAHON, J.] [July 28.

REGINA *v.* TOLAND.

Constitutional law — Trial and conviction by police magistrate of persons charged with forgery—53 Vict., c. 18, s. 2 (O.)—Ultra vires.

Procedure in criminal matters which by the B.N.A. Act is assigned exclusively to the Parliament of Canada includes the trial and punishment of the offender, and therefore s. 2 of 53 Vict., c. 18 (O.), authorizing police magistrates to try and convict persons charged with forgery is *ultra vires* of the Provincial Legislature.

Tytler for the applicant.

Cartwright, Q.C., *contra*.

Practice.

BOYD, C.] [Sept. 28.

FAREWELL *v.* FAREWELL.

Will—Mortmain—Impure personalty—Legacy to promote temperance legislation—Validity of bequest.

Action for construction of a will.

Held: (1) That a promissory note collaterally secured by mortgage on land was, at the death of the testator, impure personalty within the authorities.

(2) That upon the language of the will, the testator had directed that the pure personalty was to be so marshalled as to give priority to the bequest in the will of $8,000 to the Foreign Christian Missionary Society of Cincinnati, Ohio.

(3) That a bequest to trustees of $2,000 upon trust, to "apply the same in such lawful ways as in their discretion they may deem best in order to promote the adoption by the Parliament of the Dominion of Canada of legislation prohibiting totally the manufacture or sale in the Dominion of intoxicating liquor to be used as a beverage, and in order to give practical aid in the enforcement of such legislation when adopted, and whether by educating and developing a strong public sentiment in its favour, or by other and more direct means, or in such other ways as my trustees shall think best."

Held, that this was a good charitable legacy, being for a lawful public or general purpose, and not contrary to morality or to public policy. The testator merely sought to procure what he deemed a desirable change in the law by constitutional means.

S. H. Blake, Q.C., for the plaintiffs.

A. H. Marsh, Q.C., *Maclaren*, Q.C., and *Greerson* for the defendant.

BOYD, C.] [Oct. 14.

IN RE ROBINSON, MCDONNELL *v.* ROBINSON.

Will—Legacy—Interest.

A testatrix by her will directed that a legacy should be paid out of the proceeds of the sale of lands, and that the lands should be sold at any time within two years after her death.

Held, that interest upon the legacy should be allowed from the day when the two years expired; or, if the lands were sooner sold, from the date of sale.

Masten for the plaintiff.

Frank Denton for the defendant.

Flotsam and Jetsam.

ACCORDING to the last census, there are 33,163 lawyers in the United States.

FIRST JURYMAN: "We can't convict the prisoner of bigamy."

SECOND: "Why not?"

FIRST: "His having a wife made his second marriage null and void. Hence he has but one wife, and, as I understand bigamy, it is having two."—*New York Sun.*

RECENTLY a northern recorder who is noted for the length and solemnity of his exhortations was addressing an old Irishwoman who had been convicted, not for the first time, of some trifling offence. His honour had gone on for half an hour or so, when suddenly the prisoner flopped on the floor of the dock. As the warder was trying to get her on her feet again, she made a remark in a very bitter and discontented tone. The recorder, not catching the drift of it, asked the warder in his most impressive manner:

"Warder, what does the prisoner say?"

"She says, your honour," replied the warder, "that she can stand penal servitude, but she's d——d if she can stand this."—*London Truth.*