The Canada Law Journal.

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THE many friends of Chancellor Boyd (and by his many friends we mean the whole legal profession and everyone else who knows him), regret his severe illness. If there is one member of the Ontario Judiciary more than any other whose absence from official duty is a public loss, the learned President of the High Court is the one. We are glad to learn that he is somewhat better, and sincerely hope for his speedy restoration to complete health.

A MATTER which we think is ripe for reform is that of printed appeal books in the Court of Appeal. The practice of requiring these is quite unjustifiable, in our opinion, and the County of York Law Association might well take the subject up. The Court of Appeal in England requires no printed appeal books, and the consequence is not only a great saving of expense, but greatly increased expedition in hearing cases. We could point to a Canadian solicitor who, being interested in a case in the Courts in England, was surprised to find that, two days after judgment before the Judge of first instance, the case was up for argument before the Court of Appeal. To come nearer home, our own Divisional Courts, which are practically Courts of Appeal, require no printed appeal cases, and what is enough for three Judges should be enough for four. The profession have, as it is, to bear a very heavy burden in being made tax collectors for the Province, and it is time that the further burden of printed appeal books was taken off their shoulders.

THE LAW OF DIVORCE.

THE receipt of an early copy of Mr. Gemmill's book on the Law of Divorce in Canada again draws our attention to this important subject.*

We are among those who think the encouragement of divorce a great evil and would rather have it wholly denied in Canada, than to see Divorce Courts

*The Practice of the Parliament of Canada upon Bills of Divorce, including an historical sketch of Parliament Divorce and summaries of all the Bills of Divorce presented to Parliament from 1867 to 1888; also notes on the Provincial Divorce Courts, etc., by John Alexander Gemmill, of Osgoode Hall, Barrister-at-Law, Toronto: Carswell & Co., Publishers, 1889.

established amongst us of the character and range, as to cause, of those in the United States.

In most Christian countries divorce is permitted for the one great matrimonial crime, and unfortunately, we think there is a tendency to expand the grounds upon which it may be granted, and to drive the machinery as rapidly as a small debt case moves in a Division Court. Under the constitution of this Dominion, divorce is fortunately reserved to Parliament, which in its discretion makes a law in a particular case severing the marriage bond. The trial and preliminary enquiry has always been before the Senate. The mode of procedure was ill defined and unsatisfactory, and until last session never received any particular consideration. But owing mainly to the exertions of Senator Gowan, the matter was taken up and the procedure entirely remodelled and systematized under a complete set of new rules. When these were established a free opening was given for a full examination, treating the subject as a whole. And this we find well and ably done by Mr. Gemmill, an experienced Parliamentary practitioner, in the book before us. He has produced a work of great practical value, and one showing much careful research and very able treatment of the material he collected.

The subject matter had not before been treated of by any Canadian writer; indeed only last session did it become ripe for full consideration. It is true that a number of cases have been before Parliament since Confederation, but they were little known and were never before collected and examined. Legislation would seem to have been without any very clear or very definite principle of action, and the procedure was certainly faultly and ill-defined. In truth there could be no full view of the subject as now; the ground was not before prepared for consideration of principles and exactness in procedure.

As already observed, this is changed to a great extent under the rules of last session. But much will depend upon careful and intelligent administration, and in this respect we are inclined to think Parliament has advantages over a Divorce Court. It will certainly have a larger grasp and will be capable of ever holding in chief regard the higher interests of morality, and ought to be able to dispose of individual cases in a manner consistent with justice and equity.

A carefully prepared work like the one before us must be an invaluable aid in securing safe and uniform administration, and as useful as such works have been found in the business of the ordinary courts.

In addition to full and comprehensive notes on the rules, and clear instructions as to procedure from the notice of application for divorce till the final passing of the bill, Mr. Gemmill's work gives an excellent epitome of the history of legislative divorce, and all the cases before Parliament for the last twenty-one years. A great many important general questions are considered and much useful information given in an appendix.

A better idea may be obtained of the comprehensive character of the work by referring to the chapters.

Chap. I.—In some sixteen pages gives in outline the origin and history of divorce in England.

Chap. 2.—Covers some twelve pages and makes the reader fully acquainted with the history of divorce in Canada, a most interesting and instructive chapter.

Chap. 3.—Treats of marriage, and presents very clearly the sacred character of the tie, and the function Parliament properly exercises in dissolving it.

Chap. 4.—Gives an account of the several Provincial Divorce Courts in Canada, and the time and mode of constitution of each, and their jurisdiction; and also shows what powers are exercised by the ordinary courts in connection with marriage in those Provinces in which no Divorce Courts are established.

Chap. 5.—Is confined to Parliamentary divorce in Canada, and fully covers the ground.

Chap. 6.—Discusses the question of equal rights of husband and wife to relief.

Chap. 7.—Is a chapter of great value, treating of the jurisdiction of Parliament under the B.N.A. Act, and gives some extended remarks in respect to domicile.

Chap. 8.—Is perhaps the most important to the practitioner, in it every one of the twenty-three new rules being carefully annotated and explained, in some cases at considerable length; for example, the notes on the rule as to the first reading of the bill and suggestions as to preparing it, fill four pages. The rule as to evidence, defences, and the intervention of the Minister of Justice, takes nineteen pages. The work is well done and much and valuable information brought together and conveniently arranged.

Chap. 9.—The Procedure in the House of Commons.

Chap. 10.—Gives a general outline of procedure on bills of divorce.

Chap. 11.—Deals with the effect of divorce as to marriage and property.

And then follows a tabulated statement and summary of the several cases before Parliament since Confederation.

The most cursory glance through the book will convince any one of the great labor bestowed upon it. Some of the topics discussed in the early chapters are very important and suggestive. We may be able at a future day to notice them more at length, but can now do no more than call attention to this valuable work, and can only say, speaking of it in a general way, that it shows careful and extended research by one who evidently understands his subject. To the general reader it throws a flood of light upon the history of divorce in Canada and elsewhere, and several moral and constitutional questions are discussed with much ability. To the practioner and Parliamentary counsel it is simply invaluable. The whole is well written and in a good spirit. The author has evidently felt that marriage and the family are important social concerns, and a conscientious care in examination and treatment is manifest in every page. We hope Mr. Gemmill's book will bring to the author all the credit and advantage it so well deserves.

COMMENTS ON CURRENT ENGLISH DECISIONS.

SALVAGE—QUEEN'S SHIP—RIGHT TO REWARD.

The Ulysses, 13. P .D. 205, was a case of salvage. The vessel, with a valuable cargo, stuck on a reef on an uninhabited island in the Red Sea, near the mainland, and the crew began to jettison part of the cargo, which they threw into shallow water. Armed Arabs then crossed over from the mainland and began to plunder the cargo. A Queen's ship having come up, the commander anchored near the wrecked vessel, and sent a number of his crew to act as sentinels on the beach of the mainland, who were posted for about a mile along the beach, exposed to severe heat. Others of the crew were employed in discharging the cargo, working up to their waists in water, which was greatly fouled. They threw out the cargo and hauled it across the reef, where it was collected by the sentinels and laborers. The commander and crew of the Queen's ship claimed salvage, and it was held by the President (Sir Jas. Hannen) that the services rendered were beyond the scope of their public duty and were salvage services for which they were entitled to remuneration.

NULLITY—AGREEMENT NOT TO SUE—CONSIDERATION.

Aldridge v. *Aldridge*, 13 P.D. 210, is deserving of a brief notice. The action was brought by a husband against his wife for a decree of nullity of marriage on the ground of the malformation of the wife, which prevented the consummation of the marriage. The respondent set up as a bar to the suit that the parties had entered into an agreement of separation, each agreeing not to molest the other or to bring any suit against the other. This was held by the President (Sir Jas. Hannen) to be a bar to the action.

PRACTICE—SUBSTITUTED—SERVICE OF DEFENDANT—WAIVER OF RIGHT TO MOVE, TO SET ASIDE ORDER FOR SUBSTITUTED SERVICE.

The only point for which it is necessary to notice, *Boyle* v. *Sacker*, 39 Chy. D. 249, is this: An order had been made for substituted service on the defendant, who was residing out of the jurisdiction, of the writ of summons, and notice of motion for an injunction. The defendant did not enter an appearance, but appeared by counsel on the motion for injunction, and filed affidavits and argued the case on the merits; and it was held by the Court of Appeal on a motion to discharge the order for substituted service, that the defendant's proper course was to move to discharge the order in the Court below, but that after arguing the injunction motion on the merits, he could not be heard to say that he was not properly served.

WILL—PRECATORY TRUST—"IT IS MY DESIRE THAT SHE ALLOWS."

In re Diggles Gregory v. *Edmonson*, 39 Chy. D. 253, is a case which shows the strong disinclination of the Court now-a-days to extend the doctrine of "precatory trusts." A testatrix gave all her property, real and personal, to her daughter,

"her heirs and assigns: and it is my desire that she allows to A.G. an annuity of £25 during her life, and that A.G. shall, if she desire it, have the use of such portions of my household furniture as may not be required by my daughter." The daughter and her husband were appointed executors. It was held by the Court of Appeal (Cotton, Bowen and Fry L.JJ.) (reversing the Vice-Chancellor of the County Palatine), that no trust or obligation to pay the annuity, or to permit the use of the furniture, was imposed on the daughter, but that there was only a request to the daughter, not binding on her at law, to make that provision for A.G. Cotton L.J. at p. 257 says: "No doubt in the old cases slight expressions were laid hold of to create a trust, but the recent authorities have gone the other way. I adhere to what I said in *In re Adams* v. *the Kensington Vestry*, 27 Chy. D. 394, 410: 'Having regard to the later decisions, we must not extend the old cases in any way, or rely on the mere use of any particular words, but, considering all the words which are used, we have to see what is their true effect, and what was the intention of the testator as expressed in his will.' A reasonable construction is to be given to the will."

COMPANY—WINDING UP—CONTRIBUTORY—AGREEMENT TO APPLY DEBT IN PAYMENT OF CALLS.

In re Land Development Association, 39 Chy. D. 259. The decision of Kay, J., noted *ante* vol. 24, p. 270, was affirmed by the Court of Appeal (Cotton, Fry and Lopes, L.JJ.)

WILL—CONSTRUCTION—REMOTENESS—DIVISIBLE GIFT.

In re Harvey, Peck v. *Savory*, 39 Chy. D. 289, the Court of Appeal (Cotton, Bowen and Fry, L.JJ.) differed from the construction placed by North, J., on the will of a testatrix whereby she made an alternative limitationof her real estate to her right heirs in case both her daughters (for whom and their husbands and issue provision had been made by the will) should die without having any child, *or the issue of any child* living at the decease of the survivor of them, or the survivor of their respective then present or any future husbands. Neither of the daughters married again, and each of them died leaving her husband surviving, but no issue. The Court of Appeal held that the gift over was not in the alternative on the happening of either of two distinct events, but a single gift over on one event involving two things, and that as the testatrix had not separated the gift, the Court could not separate it and that it was therefore void for remoteness.

TRUSTEE—TRUSTEE RELIEF ACT—PAYMENT INTO COURT—COSTS—JURISDICTION.

In re Parker's Will, 39 Chy. D. 303, shows that when a trustee pays money into Court under the Trustee Relief Act and deducts his costs and expenses, that on an application to pay out the fund, the Court has no jurisdiction to order payment of the costs and expenses so deducted; but that if it is claimed that costs and expenses have been improperly retained by the trustee, separate proceedings must be taken by writ.

COMPANY—WINDING UP—TAXES, DISTRESS FOR—INJUNCTION—(R.S.C., c. 129, s.s. 16. 17.)

In re Dry Docks Corporation of London, 39 Chy. D. 306, was an application by the liquidators of a company to restrain proceedings by distress to enforce the payment of municipal taxes which had become due for the current half year in respect of the Company's premises before the commencement of the winding up, but after a provisional liquidator had been appointed. Kay, J., held that the municipal authorities were not entitled to any priority in respect of the taxes, and ought to be restrained from proceeding by distress to collect them; but the Court of Appeal (Cotton, Fry and Lopes, L.JJ.) were of opinion that as the right of distress was defeated only by the appointment of a provisional liquidator, the case was one where, if leave to distrain had been applied for, it should have been granted, and that therefore an injunction could only be granted on the terms of the liquidators paying the taxes.

PRACTICE—EXAMINATION OF DEFENDANT FOR DISCOVERY.

In re Morgan, Owen v. *Morgan*, 39 Chy. D. 316, the plaintiff as executrix of Anne Morgan, sued the defendant as executor of Howel Morgan, alleging that Howel Morgan had received £6,000 in trust for Anne Morgan, had invested it in securities producing 5% per annum and applied the interest to his own purposes, and claiming payment of the £6,000 with interest. The defendant alleged ignorance of the matters alleged by the plaintiff and set up several alternative defences; (a) that Howel Morgan had not received the £6,000; (b) that if he had, he had paid it to Anne Morgan; (c) that if he received the £6,000, Anne Morgan had agreed that he should retain it for his own use as a gift from her; (d) that if he received it, Anne Morgan had agreed that he should retain it in satisfaction of a claim which he had against Anne Morgan; (e) that Anne Morgan was, at her death, indebted to Howel Morgan in a sum exceeding the £6,000. The plaintiff, for the purpose of discovery by interrogatory 18, asked the defendant to give particulars as to the way in which the £6,000 had been invested by Howel Morgan and at what rate of interest, and how the income had been disposed of; and by interrogatory 23, he asked whether the defendant was not the brother of Howel Morgan, and whether, during the period of the transactions referred to in the statement of claim, he had not lived with him and acted as his confidential agent with respect to his property and become acquainted with all his affairs. In answer to interrogatory 18 the defendant stated that Howel Morgan had invested the £6,000 and applied the income to his own purposes, and declined to answer further or to make any answer at all to interrogatory 23. North, J., ordered him to put in further answers to both interrogatories; but on appeal, the Court (Cotton, Fry and Lopes, L.JJ.) held that as the plaintiff was not seeking to follow the investments of the £6,000, the defendant was not bound to give particulars of the investments; but that as the defendant did not admit the rece pt of 5% interest, he was bound to state the amount of interest which had been received, as that would enable the Court, at the hearing, in the event of

the plaintiff establishing the trust, to make an immediate decree for payment of principal and interest. But it was held by Fry and Lopes, L.JJ. (Cotton, L.J., dissenting), that the defendant was not bound to answer interrogatory 23, because an interrogatory asking in substance whether the defendant had not been in such a position that he must know whether the allegations in the statement of claim were true or false, did not relate to any "matter in question in the cause" within the meaning of Ord. 31, r. 1 (Sec. C.R. 487) This appears to be rather a technical restriction of the right of discovery, and we doubt whether it would prevail in this Province.

PRACTICE—ATTACHMENT—ORD. 44, R. 2 (C.R. 879)

In *Davis* v. *Galmoye*, 39 Chy. D. 322, it was held that an application for leave to issue a writ of attachment for contempt, must be made in Court and not in Chambers: Ord. 44, r. 2 (C.R. 879).

COMPANY—DIRECTOR—QUALIFICATION SHARES, TRANSFER OF, TO ESCAPE LIABILITY—MEMBERS—SHAREHOLDERS.

Perhaps the only points for which it is worth noticing *In re South London Fish Co.*, 39 Chy. D. 325, is the decision of Kay. J., which was affirmed by the Court of Appeal (Cotton, Fry and Lopes, L.JJ.), that directors of a company cannot validly transfer their qualification shares for the purpose of escaping liability, and that their doing so is a fraud on the creditors of a company; and also the dictum of Cotton, L.J., that "members" of a company does not necessarily mean "shareholders," and that directors may continue to be "members" even though they have parted with their shares.

MASTER AND SERVANT—DISMISSAL OF SERVANT FOR BREACH OF DUTY—SECRET PROFIT MADE BY SERVANT.

In Boston Deep Sea Fishing Co. v. *Ansell*, 39 Chy. D. 339, the defendant was employed as managing director of the plaintiff company for five years at a yearly salary. On behalf of the company the defendant contracted for the construction of fishing smacks, and, unknown to the company, took a commission from the shipbuilders on the contract. Several months afterwards the plaintiffs dismissed the defendant on the ground of other alleged acts of misconduct, which they were not able to substantiate in the action, being at the time ignorant of his receipt of the commission from the shipbuilders. The defendant was a shareholder in an Ice Company and Fish Carrying Company, which paid in addition to ordinary dividends, bonuses to shareholders who were owners of fishing smacks and employed the companies in supplying ice and carrying for them. The defendant employed these companies in respect of the plaintiffs' smacks and received bonuses as if the smacks were his own. The plaintiffs brought the action to compel the defendant to account for commissions and bonuses so received

by him, and for damages for breach of duty: the defendant counter-claimed for wrongful dismissal. The Court of A[illegible] (Cotton, Bowen and Fry, L.JJ.) held (reversing Kekewich, J.) that the receipt of a commission from the ship-building company was a good ground for dismissal, although it was not discovered until after the dismissal had taken place; and though it had happened several months previously, and might have been an isolated act; and that the defendant must account for the bonuses received from the ice and carrying companies, although the plaintiffs would not themselves have been entitled to the bonuses, not being shareholders; and that as the defendant's salary was payable yearly, he was not entitled to any part of the salary for the current year in which he was dismissed. Cotton, L.J., at p. 357, says:—"If a servant, or a managing director, or any person who is authorized to act, and is acting, for another in the matter of any contract, receives, as regards the contract, any sum, whether by way of percentage or otherwise, from the person with whom he is dealing on behalf of his principal, he is committing a breach of duty." And further on, he says: "When an agent entering into a contract on behalf of his principal, and without the knowledge or assent of that principal, receives money from the person with whom he is dealing, he is doing a wrongful act, he is misconducting himself as regards his agency, and, in my opinion, that gives the employer, whether a company or an individual, and whether the agent be a servant, or a managing director, power and authority to dismiss him from his employment as a person who by that act is shown to be incompetent of faithfully discharging his duty to his principal." And he goes on to say that the employer has this legal right, whenever he discovers the offence, even though it may have been committed long ago and been an isolated act; though after knowledge, if he continue the servant in his employment, he may thereby condone the offence. See *Priestman* v. *Bradstreet*, 15 O.R., 558.

BUILDING SOCIETY—ARBITRATION—ACTION AGAINST DIRECTORS, MEMBERS OF SOCIETY, FOR RETAINING MONEYS OF SOCIETY.

Municipal Building Society v. *Richards*, 39 Chy. D. 372, was an action by a building society against former directors, and the former secretary of the society, to recover moneys alleged to have been improperly retained by them The defendants were members of the society, and by the 49th rule of the society, it was provided that disputes between the society and members thereof should be settled by arbitration. The defendants applied to stay the action, and to refer the dispute to arbitration. But it was held by Stirling, J., and his decision was affirmed by the Court of Appeal (Cotton, Bowen & Fry, L.JJ.), that a claim by a society against its officer for misappropriating and keeping in his hands moneys of the society, was not a dispute between the society and a member thereof "in his capacity of a member," and the motion was therefore refused.

WILL—CONSTRUCTION—LIMITATION TO "EVERY OTHER SON AND SONS TO BE BEGOTTEN"—ELDEST SON EXCLUDED.

In *Locke* v. *Dunlop*, 39 Chy. D. 387, Stirling, J., was called upon to construe a will whereby the testator devised real estate to his second son for life, with remainder to his first and other sons in tail male; with remainder to the third son for life, with remainder to his first and other sons in tail male; with remainder to the testator's fourth, fifth, and every other son and sons to be begotten, born, or *en ventre sa mere*, at the time of his decease successively in tail male, with remainder to the testator's daughters begotten, or to be begotten as tenants in common in tail; all the testator's sons, except the eldest, having died without issue male, the eldest son claimed the estate; but it was held by Stirling, J., and also by the Court of Appeal (Cotton, Fry & Lopes, L.JJ.) that having regard to the various limitations of the will, the eldest son was excluded from taking under the words "every other son," and although the words "to be begotten" do not in their primary legal sense point to futurity, yet they will be held to do so if such an intention can be gathered from the will.

PRACTICE—SERVICE OUT OF JURISDICTION—PETITION UNDER TRUSTEE RELIEF ACT FOR PAYMENT OF MONEY OUT OF COURT.

In re Jellard, 39 Chy. D. 424, North, J., held that the Court had no jurisdiction to allow service out of the jurisdiction of a petition under the *Trustee Relief Act*, for payment of money out of Court. But on appeal, if appearing that the order sought by the petition was one to carry into full effect an order which had been recently obtained by the respondent, the Court of Appeal, without deciding that leave was necessary, gave leave to serve the petition on the solicitors who had presented the former petition, and who were willing to accept service.

WILL—CONSTRUCTION—GIFT OVER ON DEATH WITHOUT LEAVING ANY CHILD OR CHILDREN SURVIVING.

In re Hamlet Stephen v. *Cunningham*, 39 Chy. D. 426, the Court of Appeal (Cotton, Fry & Lopes, L.J.J) affirmed the decision of Kay, J., 38 Chy. D. 183, noted *ante*, vol. 24, p. 361. The Court holding that the rule laid down in *Howgrave* v. *Cartier*, 3 V. & B. 79, in favor of putting on a settlement or will making a provision for a family, such a construction as will give the children indefeasible interests on their attaining 21, is only a rule of construction to be applied in construing ambiguous words, and is not a positive rule which will modify the effect of plain and unambiguous words.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

MICHAELMAS TERM, 1888.

DURING this term the following gentlemen were called to the Bar, viz :—

November 19th.—William Francis Johnston, with honours, and awarded a gold medal ; John Frederick Dumble, John Alexander Victor Preston, James Henry Macnee, William Craig Chisholm, Ira Standish, Arthur Collins, Thomas Walmsley, George Frederick Bradfield, Alexander Dobbs Cartwright, Henry M—— East, Alexander Cameron Rutherford, Thomas Scullard, Frederick Clarence Jarvis, Malcolm Smith Mercer, Matthew Ford Muir, Alfred Burke Thompson Edward William Hume Blake, William Edmund Thompson, Donald Reginald Anderson, Albert Edward Kingsley Greer, Robert Grant Fisher, Gordon Joseph Leggatt, Albert Edward Taylor, Frank Howard Kilbourn, Thomas Robert Ferguson.

November 24th.—Francis Brown Denton, Herbert Macbeth, John Percy Moore, John Adelbert Wright, Horatio Venice Lyon.

November 30th.—Andrew Gordon Chisholm.

December 8th.—Thomas Martin Bowman.

The following gentlemen were granted Certificates of Fitness as Solicitors, viz :—

November 19th.—J. A. V. Preston, J. F. Dumble, F. W. Carey, W. C. Chisholm, H. V. Lyon, J. P. Moore, H. W. Church, T. Walmsley, A. G Farrell, T. F. Johnson, D. R. Anderson, T. Scullard, A. Collins, A. D. Cartwright, S. A. Henderson, J. Coutts, F. Hornsby, L. C. Raymond, D. McArthur.

November 20th.—J. H. Macnee, A. C. Camp, W. H. Campbell, I. Standish, H. S. W. Livingston, T. Reid, M. S. Mercer, G. F. Bradfield, F. C. Jarvis, H. B. Witton.

November 24th.—W. H. Stafford, A. B. Thompson, F. H. Kilbourn, C. A. Ghent.

November 30th.—W. S. Turnbull.

December 8th.—W. F. Bannerman, T. R. Ferguson.

The following candidates passed the Second Intermediate Examination, viz :—C. E. Burkholder, with honours, first scholarship ; W. H. Hunter, with honours, second scholarship ; P. H. Bartlett, with honours, third ; H. W. Lawlor, W. J. Hatton, D. Hoocy, with honours, and O. K. Fraser, W. L. Ross, A. J.

Forward, R. E. Fair, G. H. Cowan, J. Ross, E. S. Brown, W. H. Walker, G. N. Beaumont, R. V. Clement, H. W. Macoomb, A. J. J. Thibeaudeau, R. F. Lyle, R. E. Lazier, M. C. Biggar, W. G. Green, W. L. Lister, H. A. Simpson. G. J. Smith, R. W. Smith.

The following candidates passed the First Intermediate Examination, viz :—

William Johnston, with honours, first scholarship; H. C. Boultbee, W. F. Langworthy, W. T. Evans, C. D. Grant, T. G. A. Wright, T. F. D. Hector, T. A. Beament, J. F. Tannahill, F. R. Blewett, C. P. Smith, C. Fraser, R. M. Noble, G. B. Wilkinson, F. Billings, L. V. McBrady, J. H. McCurry, W. B. Nicol, R. B. Matheson, G. P. Deacon, T. H. Lloyd, E. L. Middleton, J. B. Pattullo, H. E. Stone.

The following gentlemen have been admitted as Students-at-Law, viz :—

Graduates—William John MacDonald (as of Trinity Term), Willian John Robertson, William Stewart, Nelson Simpson, Lyman Poore Duff, Wilson Saunders Morden, George Robert Sweeney, Frederick Desmond Boggs, Charles Howard Glassford, William Henry Hodges, Alban Cartwright Macnaughton Bedford Jones, Edmund Cumming Senkler, Thomas Brown Phillips Stewart, Malcolm Mackenzie.

Matriculants—William Perkins Bull, Alexander Cowan, James Edward Dudley Day, Archibald Sloan Dickson, Francis William Hall, Herbert Ira Lyon, George Ellsworth Martin, John Milton Pike.

Juniors—Charles Lawrence Dunbar, Albert Edward Shaunessy, William Andrew Fraser, William Henry Perry, John Alfred Murphy, Arthur Carson McMaster, Frederick Charles Kerby, Hugh Matheson, Mathew James McFarlane, Charles Francis Larkin, Frank Moore, Henry David Petrie, George Mortimer Kelly, Gordon Smith Henderson, Charles Edward Gillan.

Monday, November 19th.

Convocation met.

Present—The Treasurer and Messrs. Beaty, S. H. Blake, Bruce, Ferguson, Foy, Fraser, Guthrie, Irving, Lash, Mackelcan, Martin, Meredith, Moss, Murray, Osler, Shepley.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee.

In the case of D. J. Hurteau, recommending that he be allowed to present himself for his Second Intermediate Examination in next Easter Term.

In the case of D. S. Wallbridge, recommending that he be allowed to present himself for his Final Examination in next Hilary Term.

In the case of H. M. East, reporting that Mr. East having presented himself this Term, and having passed the call examination, they deem that no action is necessary on the part of the Committee.

The Report was ordered for immediate consideration and adopted.

Mr. Moss presented the Report of the Select Committee on Honours and

Medals in connection with the Call Examination, reporting that W. F. Johnston is entitled to be called with honours and to receive a gold medal.

Ordered for immediate consideration and adopted.

Mr. W. F. Johnston was called with honours and received a gold medal.

The Petition of S. R. Clarke was received, read and deferred to Saturday next.

The letter of the Minister of Justice relating to certain solicitors was received and read.

Ordered, that this being a communication from the Minister of Justice, and having regard to the correspondence, copies of all be sent the solicitors with a request that they would transmit to the Secretary for the information of the Benchers any explanations or observations they may wish to offer.

The letters of T. A. Gorham and E. Banane, relating to certain solicitors, were read.

Ordered, that the papers be referred to the Discipline Committee to consider and report whether *prima facie* cases are made for enquiry.

The letter of Mr. Justice Maclennan, resigning his seat as Bencher, was received and read.

Ordered, that Mr. Shepley be appointed a member of the Discipline Committee in the place of Mr. Maclennan, resigned.

Ordered, that a call of the Bench be made for Friday, 30th November, for the election of a Bencher in the place of Mr. Maclennan, resigned.

The complaint of Seth Ashton and A. F. Stevenson against a solicitor was read.

Ordered, that the papers be referred to the Discipline Committee for due enquiry and investigation.

The case of C. E. Lyon, ordered to be considered this Term, was reconsidered.

Ordered, that the whole matter be referred to the Legal Education Committee, with instructions to report on the new facts.

The Petition of G. A. Montgomery was read and ordered to be referred to the Finance Committee for report.

The letter of Mr. Read, reporting the judgment in the Hands case, was read.

Mr. Osler moved the first reading of a Rule of which he gave notice last Term, relative to the reporting in the Court of Appeal, as follows :—

"Notwithstanding anything in Section XIV. contained, there shall during the incumbency of the present reporter of the Court of Appeal, be an assistant reporter for the said Court. The salary of the reporter of the Court of Appeal shall be dollars per annum ; the salary of the assistant reporter of the Court of Appeal shall be dollars per annum."

The Rule was read a first time.

Ordered to be read a second time to-morrow.

Mr. Meredith moved the first reading of the Rule of which he gave notice as to the Intermediate Examinations, as follows :—

Where a candidate for honours is both a Student-at-Law and an Articled Clerk, the regular year in which he is for the purpose of the rules relating to scholar-

ships shall be determined by reckoning from the period from which it would be reckoned if he were Student-at-Law or Articled Clerk only, whichever shall be the earlier period.

The rule was read a first time.

Ordered, to be read a second time to-morrow.

Tuesday, November 20th.

Convocation met.

Present—The Treasurer and Sir Adam Wilson, and Messrs. Ferguson, Fraser, Hardy, Hudspeth, Irving, Mackelcan, Moss, Murray, Osler, Shepley.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee.

In the case of F. B. Denton, recommending that his examination be allowed and that he be called to the Bar.

In the case of H. S. W. Livingston, recommending that his examination be allowed and that he be allowed to present himself for call to the Bar next Term, on showing that he has given due notice.

In the case of A. G. Farrell, recommending that his examination be allowed and that he be allowed to present himself for call to the Bar next Term, on showing that he has given due notice.

In the case of C. E. Lyons, referred yesterday, recommending that on the new facts his Second Intermediate Examination be allowed as of this present Term.

The Report was ordered for immediate consideration and adopted.

Also a Special Report upon the case of Malcolm Mackenzie, reporting that he had attended before the Committee and explained the circumstances of his previous non-attendance, and recommending that he be admitted as a Student-at-Law of the Graduate Class as of the present Term.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss presented the Report of the Special Committee on Honours and Scholarships.

Finding that Messrs. C. E. Burkholder, W. H. Hunter, P. H. Bartlett, H. W. Lawlor, W. J. Hatton, and D. Hooey passed their Second Intermediate Examination with honours, and that Mr. Burkholder is entitled to a scholarship of one hundred dollars, Mr. Hunter to a scholarship of sixty dollars, and Mr. Bartlett to a scholarship of forty dollars; that Mr. William Johnston passed the First Intermediate Examination with honours, and that he is entitled to a scholarship of one hundred dollars.

The Report was ordered for immediate consideration and adopted.

Ordered, that the honours and scholarships recommended be awarded.

Pursuant to the order of the day, the Report of the Library Improvement Committee was read.

Ordered, that the remaining long stacks suggested under item two in the plan of the Committee, be authorised, and that the Committee be authorised to cause

the shelving and partitions between the southern alcoves to be carefully removed, and that action on the remainder of the Report be deferred.

Ordered, that the orders for to-day for the second reading of rules do stand to the next meeting of Convocation.

Saturday, 24th November.

Convocation met.

Present—The Treasurer and Sir Adam Wilson, and Messrs. Bruce, Cameron, Ferguson, Hoskin, Irving, Mackelcan, McCarthy, Morris, Moss, Purdom, Robinson, Shepley, Smith.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee, recommending that W. H. Stafford, A. B. Thompson and F. H. Kilbourn receive Certificates of Fitness, and that the examination of C. A. Ghent be allowed, notwithstanding that it was passed within nine months of his Second Intermediate, and that he do receive a Certificate of Fitness.

The Report was taken into consideration, adopted, and ordered accordingly

Mr. Hoskin from the Discipline Committee reported on the case of E. Banane, that a *prima facie* case has not been shown for enquiry.

Also in the complaint of T. A. Gorham against a solicitor, that a *prima facie* case has been shown for enquiry and investigation.

The Report was adopted.

Ordered, that the complaint of T. A. Gorham against a solicitor be referred to the Committee on Discipline for enquiry and investigation.

Mr. Irving presented the Report of the Committee appointed under the resolution of last Easter Term (June 9th, 1888), to consider the re-arrangement of the conduct of the business by the officers of the Society, in the following words :—

The Committee find that the office of the Secretary on the ground floor (in the east wing) is available for the transaction of the Society's office business, and recommend that all the work hitherto done by the Secretary and Sub-Treasurer in respect of his said office shall be discharged therein, and that the Student's Lending Library, comprising the books borrowed for reading at home, as well as the books borrowed for reading in Osgoode Hall, shall be placed there.

That the hours during which the Secretary's office shall be kept open shall be from 9 a.m. to 4 p.m., except on Saturdays, when it shall be open from 9 a.m. to 3 p.m.

To further carry out the suggestions of the resolution of 9th June, 1888, the Secretary shall receive all moneys in his office, and he shall be expected to be in attendance there, personally, from 10 a.m. to 11 a.m., daily.

The Secretary shall place one of his assistants in charge of the office to perform secretarial work by this report required to be done there. The office hours of the assistant in charge to be limited to the time while it is open.

The Secretary shall direct the other assistant to remain in the Library during the hours the same is open, to assist there and discharge all duties connected therewith, and both assistants shall discharge such other duties as the Secretary may at any time assign to either of them.

The Report was ordered for immediate consideration.

Mr. Irving moved the adoption of the Report. Read clause by clause and adopted.

A letter from R. S. David, complaining of the non-payment of an account by a firm of solicitors, was read.

Ordered that the Secretary do inform Mr. David that the matter of his complaint is not within the jurisdiction of the Society.

Mr. McCarthy presented the Report of the Reporting Committee as follows :—

(1). The late Chairman of the Committee, Mr. Maclennan, acting upon the communication of the publishers submitted herewith, gave directions for the immediate increase of 200 in the number of copies of Reports printed, making the total number 1,700.

Your Committee recommend this increase, and that a further increase of 50, making the total number 1,750, be made, to commence at the conclusion of each current volume.

Your Committee submit herewith the Report of the Editor upon the state of the work of reporting.

Your Committee is unable to report any improvement in the work of reporting in the Court of Appeal.

Your Committee is of opinion that the remedy for the unsatisfactory condition of affairs referred to, regard being had to the circumstances of the case, is to be found in the employment of an assistant reporter for the Court of Appeal, at such salary and with such duties as Convocation may determine and appoint, such modification being made in the salary of the present reporter as to Convocation may seem meet.

Ordered for consideration at next meeting of Convocation.

Friday, 30th November.

Convocation met.

Present—The Treasurer and Messrs. Beaty, Cameron, Ferguson, Foy, Fraser, Hoskin, Irving. Kerr, Mackelcan, Martin, McCarthy, Meredith, Morris, Moss, Murray, Shepley, Smith.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Committee.

In the case of W. S. Turnbull, recommending that on his producing a release by Mr. C. A. Durand of his unexpired term of service, his service he allowed and he do receive a Certificate of Fitness.

In the case of W. J. McDonald, recommending that he be entered as a student in the graduate class as of Trinity Term last, and that his admission as a student of the junior class be cancelled, and that thereafter his standing be reckoned as a student in the graduate class from the first day of Trinity Term last.

In the case of W. E. Thompson, recommending that he be required to place himself under articles for two months and three days, and that his examination stand for favorable consideration on his proving service.

The Report was ordered for immediate consideration, adopted and ordered accordingly.

A letter was read from H. R. Hardy, asking for an appropriation for the *Ontario Legal Chart.*

Ordered, that an appropriation of one hundred dollars be made in respect of the *Legal Chart* to Mr. Hardy, for next year, on condition of his supplying the Society with twenty copies free, and that the Secretary be directed to distribute one to each County Library.

Mr. McCarthy presented the Report of the Committee on Reporting, as follows:—

(1). That they have considered the question as to the salary of the Assistant Reporter of the Court of Appeal, and the duties respectively of the Reporter and Assistant Reporter upon the appointment of the latter.

(2). The Reporter should be required to complete the work of reporting the cases in which judgment has already been given, the Assistant Reporter giving such assistance as, under the circumstances, he can reasonably do.

(3). The Assistant Reporter should be responsible for the work of Reporting the cases now standing for judgment, and the cases to be argued after his appointment. The Reporter to aid and advise the assistant in his work.

(4). That the reporter's salary shall be, from the first of January next, one thousand dollars per annum.

(5). That the salary of the Assistant Reporter shall be one thousand dollars per annum.

(6). That in future the Editor is not to certify that any Reporter's work has been satisfactorily performed, so as to entitle the Reporter to the payment of his salary, unless the reports are issued with such expedition as the Committee may from time to time determine upon and designate to the Editor.

The Report was ordered for immediate consideration, read clause by clause, and adopted.

On the order of the day for the election of a Bencher in the place of Mr. Justice Maclennan, Mr. Nicol Kingsmill was elected a Bencher.

Mr. Martin, from the County Libraries Aid Committee, presented the following Report:—

(1). The Perth Law Association—

This association has made an application for an initiatory grant and furnished due evidence of incorporation, and a copy of its declaration and by-laws and proof of the condition of its funds, and that it has acquired a suitable room for the purposes of the association, all in accordance with the rules respecting County Libraries.

Two hundred and seventy dollars have been contributed in money actually paid in, and there are twenty-three resident practitioners in the county.

Your Committee recommend that the association be paid four hundred and sixty dollars for the initiatory or first grant, such amount being less than double the amount of contributions in money and equal to twenty dollars for each practitioner, that being the full amount payable under the Rules (Section xii., clause 1, page 145).

(2). The Carleton Law Association—

This association has applied for the grant of the Reports commencing vol. 1, Ontario Reports, vol. 1, Appeal Reports, and 1, Practice Reports. It appears that under rule 16, sub-sec. 9, the association are entitled to these Reports, and therefore the Committee recommend that the application be granted.

(3). The Bruce Law Association—

This association has applied for a special grant of one hundred and eight dollars (under rule 15, sec. 22) for the purpose of purchasing the English Law Reports, which are greatly needed.

The association has also asked for the payment of the arrears of annual grants which have been withheld until the Inspector's report on the Library should have been received. The Inspector reports in favour of making the advance, and that the condition of the library has greatly improved since the making of his report.

The Secretary of the association certifies that all subscriptions in arrears and those for the present year have been paid.

Your Committee recommend that a special grant of one hundred and eight dollars be made re-payable (without interest) out of the next annual grant, security having been given to the satisfaction of Convocation for the due expenditure of the grant, and also that the arrears of the annual grants be paid as soon as the amount of these arrears are established to the satisfaction of your Committee and reported to the Finance Committee.

Ordered for immediate consideration, read clause by clause, and adopted, and ordered that it be referred to the Finance Committee to approve of the security to be given by the Bruce Law Association under the Report.

Mr. Meredith having moved the second reading of the rule as to candidates for honours,

Ordered, that "Whenever a candidate for honours in the intermediate examinations is both a Student-at-Law and an Articled Clerk the first day of the Term on which he was admitted on the Books of the Society, and not the date of his articles, shall be the time from which the commencement of his year's or course of study shall be reckoned for the purpose of the examination for honours.

The rule was read a second and third time and adopted.

Mr. Martin having moved the second reading of Mr. Osler's rule as to reporting in the Court of Appeal, it was ordered as follows :—

That "notwithstanding anything in section xiv. contained, there shall be, during the incumbency of the present Reporter of the Court of Appeal, an Assistant Reporter for the said Court.

"The salary of the present reporter for the Court of Appeal shall be one thousand dollars per annum; the salary of the Assistant Reporter for the Court of Appeal shall be one thousand dollars per annum."

Ordered, that a call of the Bench be made for the election of an assistant reporter for the Court of Appeal, pursuant to the above rule, on Saturday, the 8th day of December, and that the usual steps be taken.

Saturday, December 8th.

Convocation met.

Present—Sir Adam Wilson, and Messrs. Beaty, S. H. Blake, Bruce, Cameron, Ferguson, Foy, Hoskin, Irving, Lash, McCarthy, Martin, Meredith, Morris, Moss, Murray, Shepley, Smith.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

The complaint of Mrs. Jane Messett against certain solicitors, was referred to the Discipline Committee, to report whether a *prima facie* case has been shown.

The Secretary read the letter of the Solicitor of the Law Society on the subject of G. M. Gardner.

The letter was referred to the Finance Committee.

The letters of the Solicitor in reference to certain solicitors were referred to the Finance Committee for report.

Mr. McCarthy, on behalf of the Reporting Committee, reported the list of applicants for the position of Assistant Reporter to the Court of Appeal, for the appointment of which a call of the Bench had been made for this day.

The Report was received and adopted.

Convocation then proceeded to the consideration of the applications, and Mr. Richard Scougall Cassels was appointed Assistant Reporter.

Ordered, that Mr. Kingsmill be placed on the Special Legal Education Committee in place of Mr. Justice Maclennan.

HALF-YEARLY MEETING.

December 26th.

Convocation met.

Present—The Treasurer and Messrs. Bell, Bruce, Ferguson, Foy, Irving, Kerr, Lash, McCarthy, McMichael, Martin, Moss, Murray, Osler, Shepley.

The minutes of last meeting were read and approved.

Mr. Murray, from the Finance Committee, presented a Report referring to the complaints against certain persons.

The Report was ordered for immediate consideration, and was considered paragraph by paragraph.

In the case of G. M. Gardner, the Report was adopted, and an order made accordingly.

The Secretary was ordered to intimate to the Solicitor the circumstances of other recent cases within the knowledge of the Benchers for action in the same connection.

In other cases, the Report was referred back to the Finance Committee for further report.

In the case of J. A. Donovan, the paragraph of the Report was adopted, and the Solicitor ordered to take proceedings.

Mr. Osler, from the Reporting Committee, presented a Report as follows :—

They have further considered the question of the respective duties of the Reporter and the Assistant Reporter, and they advise,

That the Reporter whose duty it is to report any judgment should be charged with the preservation of the manuscript, and he should be entitled to any fees payable for copies thereof.

The Report was ordered for immediate consideration, adopted and an order made accordingly.

Mr. Irving presented the Report of the Library Committee, which, as amended by Convocation, reads as follows :—

It having been suggested to members of the Committee that it is desirable that Convocation reconsider sub-section 9 of rule 13, at page 42 of the book of the Rules of the Society, which sets forth the circumstances under which books may be carried out of the Library,

The Committee beg leave to submit to the consideration of Convocation the following propositions, which they believe would not create any inconvenience should Convocation be disposed to favor any change.

(1). Text books of which duplicates are in the Library, at least one copy of the latest edition being always retained in the Library.

(2). Legal periodicals named in the schedule to the Report may be taken out over night, to be returned at the next morning's opening of the Library.

Books relating to literature other than legal literature may be taken for a week, this definition not to include books of reference, dictionaries and encyclopædias.

If the above concessions are approved, the Committee advise that the books may be

available to Barristers and Solicitors only upon application to the Librarian, whose duty it shall be to issue them on such application, if the applicant shall not have disregarded these rules, previously taking a receipt, on which shall be recorded the time of the return of the book and its condition.

The Report was received, ordered for immediate consideration, amended and adopted.

Mr. Irving moved for leave to introduce a rule based on the Report.

Ordered accordingly.

The rule was read a first time, and was ordered to be read a second time at next meeting of Convocation.

Mr. Martin, from the Special Committee on the subject of Legal Education presented their Report as follows :—

SPECIAL LEGAL EDUCATION COMMITTEE.

OSGOODE HALL, *14th December*, 1888.

To the Benchers of the Law Society.

1. The Special Committee on Legal Education appointed by resolution of Convocation, dated 14th April, 1888, have carefully considered all the matters referred to them, and beg to report thereon as follows:

2. It is not desirable to enter into any arrangement with any University for the joint education of Students, nor to shorten in any way the period of study or service of Students.

3. It is expedient to continue and re-organize the Law School, and to appoint a President who shall have supervision and general direction of the School.

4. An improved system of legal education for Students-at-Law and Articled Clerks should be provided by the delivery of lectures and otherwise at Toronto.

5. The question of the delivery of lectures in other places than Toronto should be deferred till after experience of the working of the School.

6. The attendance of Students at the lectures and other methods of instruction to be adopted should be compulsory, but the committee did not arrive at any conclusion as to the period of such attendance in the respective cases of Students serving in Toronto and of those serving elsewhere.

7. No person should be called to the Bar unless he shall have served under articles or shall have actually and *bona fide* attended in a Barrister's office for a term of three years if a graduate, and of five years in other cases, except in special cases provided for by any Statute.

8. The present Primary Examinations for Students and Clerks by this Society should be abolished, and in lieu thereof each person applying for admission who shall present a certificate of having passed within four years of his application an examination in the subjects approved of by the Society in any University in this Province, shall be admitted upon the books.

9. The Intermediate and Final Examinations of the Law Society should be held twice during each year instead of four times as at present, namely, during May and November in each year.

10. The Committee, in accordance with the instructions of Convocation, requested the presence of a representative of each County Law Association at its meetings. They have had the assistance of delegates from some of the Law Associations who attended several of the meetings, and the Committee received from other Associations resolutions or other written communications expressive of their views. The minutes of all the meetings held by the Committee, together with the resolutions and other written communications received from the County Law Associations, are herewith submitted for the consideration of Convocation.

11. Appended hereto are certain suggestions for defining the qualifications and duties of the President and staff of the Law School, and also in regard to other matters affecting the School.

All of which is respectfully submitted,

(Signed), EDWARD MARTIN.
Chairman.

SUGGESTIONS.

(*a*) It is suggested that the President of the Law School should be a Barrister of not less than ten years standing, he should be paid a salary of $ per annum, and should devote the whole of his time to the duties of his office, including the preparation and delivery of lectures, superintending classes, and preparing questions for the classes.

(See Memo of Lectures and Law Classes for 1888-9
Weekly Notes of 13th October, 1888, p. 451.)

(*b*) There should be two Lecturers who should be paid salaries of $ for each term.

(*c*) The subjects of instruction to include the books required for Examination for Call and Admission, with such books on Civil Law, Constitutional Law and History, and International Law, as the Law Society shall from time to time determine.

(*d*) The first duty of the President should be to prepare and submit to Convocation for their approval a plan in detail for the practical work of the School, delivery of lectures, holding of Moot Court, and other means of instruction. After this plan has been approved of the standing Legal Education Committee should be charged with all matters of administration in connection with the scheme, and the President should, from time to time, receive such directions from the Committee as occasion might require.

(*e*) The School Term should open on October and close on June of each year with a vacation of weeks at Christmas, and except during vacation senior and junior classes should be held on at least two days in each week and lectures delivered to such classes on at least two days in each week; the lectures should occupy at least one hour, and the classes the same time, lectures and classes to be held at such hours as should be approved by convocation or the standing Legal Education Committee. At the close of the term an examination should be held by the President or Lecturers, subject to such regulations as the Legal Education Committee may make in regard to students taking intermediate or final examinations in May.

(*f*) Every student attending the Law School should pay $10, in advance for the term, and the school should be open to every student and articled clerk. The course of study should be three years for graduates, and the same for ordinary students. Every student should attend per cent. of the lectures and classes; special provision to be made for the students now on the books, and also students preparing for Intermediate and Final Examinations. Lectures and classes should include the books required to be read for the Intermediate and Final Examinations.

(*g*) The Intermediate Examinations should be fixed at dates to be approved of by the standing committee.

(*h*) Neither the President nor any Lecturer should act as Examiner for any Intermediate or Final Examination.

(*i*) Arrangements should be made for the publication (fortnightly between October and June) of the Examination questions and a short resumé of the Lectures delivered during the preceding fortnight.

MEMORANDUM.

From Examination of the Books of the Society, and returns obtained by the Secretary during the present month, it appears that there are about 580 Students on the Books of the Society; of these 150 are Graduates.

The number of Students residing in the different cities and towns, are as follows:—

Toronto	214	Brought forward	360
London (including County of Middlesex)	45	Guelph	7
Hamilton (including County of Wentworth)	30	Cobourg	6
Belleville	25	Brantford	5
Ottawa	27	Peterborough	4
Barrie	12	Brockville	9
Kingston	7	St. Thomas	10
		Lindsay	4
Carried forward	360	Total	405

The remainder are scattered throughout the Province.

The report was read and ordered for immediate consideration.

Mr. Martin moved the adoption of the report.

1. *Ordered* that it be considered paragraph by paragraph.
2. *Ordered*, that the consideration of the first clause of the second paragraph be postponed.

2, (*a*) *Ordered*, that the consideration of the second clause of the second paragraph be postponed.

3. *Ordered*, that the third paragraph be amended so as to read as follows:—It is expedient to continue and re-organize the Law School; and to appoint a Principal, who shall, in addition to the duty of lecturing and the discharge of such other duties as may be assigned to him, have supervision and general direction of the School.

The fourth paragraph was struck out.

The fifth paragraph was carried.

6. The attendance at the lectures and other methods of instruction shall be compulsory, as follows:—Students under service or in attendance in Toronto during the last two years of their course, and more, shall be required to take three courses—all other Students shall be required to take two courses.

7. The seventh paragraph was carrried.

8. The present Primary Examinations for both Students and Articled Clerks in the Junior Class shall be abolished, and in lieu thereof, Students and Clerks shall be admitted under section 4, sub-section 7 of the rules.

8. (*a*) Personal attendance of any applicant for admission as a Student or Clerk, shall be dispensed with.

9. The Intermediate Examinations shall take place at the close of the school course for the first and second terms of the course. The examination on the work of the third term of the course shall be taken as part of the examination for Call to the Bar and admission as Solicitors.

10. The Principal of the Law School shall be a Barrister who has been called not less than ten years. His salary shall be $3,500 a year, and he should devote the bulk of his time to the duties of his office, including the supervision and general direction of the School.

11. There shall be two Lecturers who shall be paid salaries of $800 for each year.

12. There shall be two Examiners who shall be paid salaries of $500 for each year.

13. The Student's fee shall be $10 in advance for each term.

Ordered, that the Resolutions of this day on the subject of the Law School be printed and distributed; and that they be made the first order of the day for the next meeting of Convocation, when each clause shall be open for reconsideration.

Ordered, that Convocation, when it is adjourned, stands adjourned to Friday, 4th January, 1889.

The petition of J. W. Coe was read, and the draft affidavit of G. E. Watterworth not having been sworn, was ordered to stand over.

Convocation adjourned.

J. K. KERR, *Chairman Committee on Journals.*

HAMILTON LAW ASSOCIATION.

THE Trustees beg to present their Ninth Annual Report, being for the year 1888.

The number of members at the date of the last Report was seventy; two vacancies have occurred and one new member has been added, namely, Ralph R. Bruce, and the present membership is sixty-nine.

The annual fees to the amount of $302.50 have been paid.

The number of volumes in the Library is about 1,963, exclusive of Sessional Reports and papers, of which 160 were added during the year. The following periodicals are received, namely:—*The Law Times* (English), *The Solicitors Journal, The Albany Law Journal, The Canada Law Journal, The Canadian Law Times.*

The Treasurer's Report is submitted herewith, giving detailed statement of the receipts and expenditures and of the liabilities and assets of the Association, and the same is also in the form required by the Law Society.

The Trustees were successful in obtaining from the Law Society a loan of $1,000, which is re-payable in ten yearly instalments of $100 each without interest; this sum has been partly expended in reports and the addition will no doubt prove a very useful one.

The Irish Law Reports and the Weekly Reporter, together with the Railway and Canal Cases and Privy Council Reports, will now be on the shelves of the Library, and further purchases will be made very shortly.

Out of the proceeds of this loan the indebtedness of the Association referred to in the last Annual Report and amounting to $547.76, has been paid, so that the indebtedness of the Association is now represented by the $1,000 owing to the Law Society.

The Trustees desire to call attention to the fact that the Barristers' Room is continually used during the Sittings of Court by litigants and witnesses; a witness room is already provided, and the Trustees think that some action should be taken to preserve the Barristers' Room for the use of the members of the profession only.

The Consolidated Rules of Practice have been published and are now in force; the consolidation and revision of all the existing rules have been a work of very considerable labor and one which seems to meet with the general approbation of the profession. No doubt some improvement can be made in the existing Rules, but the desirability of having a general consolidation was pointed out by this Association last year.

The re-organization of the Law School has received a considerable amount of attention during the current year, and a final report is shortly expected.

The Trustees felt that it would be very detrimental to the interests of the

Law Society to abandon their rights of examination. The Law School in its present shape can be rendered much more efficient, and the Trustees hope that the steps which have been taken in that direction may have the desired effect.

The opinions of the various County Associations throughout the Province have been noticeably felt in connection with the deliberations on the consolidation of the Rules and the re-organization of the Law School, and the Trustees consider that it is a matter of congratulation to the profession that questions of importance to the Bar now receive such general consideration.

Hamilton, 7th January, 1889.

E. E. KITTSON, *Secretary.*
EDWARD MARTIN, *President.*

Correspondence.

EDITOR OF THE CANADA LAW JOURNAL:

Sir,—At the last sittings of the Division Court here, a case involving some interesting points in municipal law was decided.

As neither the English nor our own reports, so far as could be discovered, contain any similar case, and being unable to assent to the views taken by the learned trial Judge, the writer ventures to state, shortly, the facts of the case, in the hope that additional light may be thrown upon the law it involves, by some of your subscribers.

In the year 1874, certain private persons subscribed and paid for the building of a two-plank sidewalk on a public street within the corporate limits of this town; the then Town Council being unwilling to be at more than the expense of grading the ground for the walk, which was accordingly done by them. After the lapse of several years, the corporation put down a third plank on a portion of the walk, and, from time to time, made certain repairs thereto, until last year, when upon the complaint of some of the citizens that the sidewalk was in a dangerous condition, it was by the authority of the Town Council taken up, and subsequently that portion of the plank which remained good was cut up and utilized in the construction of sidewalks upon other streets in the town.

Whereupon several of the subscribers more particularly interested, being residents upon the street whence the walk was removed, instituted the present action, on behalf of themselves and all the other subscribers, against the municipal corporation, claiming damages for the materials (plank) that had thus been converted, and for the loss of the use of the sidewalk.

It was in evidence that the parties' plaintiff had paid some $120 for the materials and the construction of the walk, and that it was laid down under their sole control and supervision; that, at the time it was taken up, it could

have been put in a fair state of repair for about $25; that the servants of the corporation were forbidden to remove the materials by one of the plaintiffs; and as special grievance for the bringing of the suit, it was shown that the plaintiffs, or some one of them, had been left "to take the road for it"—no substitute for the walk removed being given.

Counsel for the defendants objected that the plaintiffs could not show a right of property in the walk—that it belonged to the town. Plaintiff's counsel contended that it was a case of common law dedication—that the corporation must be held to be trustess of the walk for the plaintiffs in particular, and the public in general, to be used upon the street on which it was originally placed; that at most the corporation only obtained an easement in the walk, and that, so soon as it was misappropriated by them, and it became impossible (as in this case) to apply it to the use for which it was intended, the property in and the right to the possession of the materials that were of any value reverted to the donors, and the plaintiffs were justified in sueing, as well for the conversion of the materials, as the loss of the use of the sidewalk.

Dillon on Municipal Corporations was cited as an authority. It was admitted that such were the rules regarding the dedication of *real* property, but His Honor held they would not apply to *personal* property, and sustained the defendants' .ention, holding that the corporation might have removed the walk and converted the materials to their own use, at any time after it was placed there.

The query is, "Have the plaintiffs any redress, if not in an action in this form?"

C. W. PLAXTON.

BARRIE, *Jan'y 18th, 1889.*

DIARY FOR FEBRUARY.

1. Fri.....County Court Non-Jury Sittings in York. Sir Edw. Coke born 1552.
4. Mon....Hilary Term commences. High Court of Justice Sittings begin.
5. Tue....Maritime Court sits. W. H. Draper, 2nd C. J. of C. P., 1856.
10. Sun....*Fifth Sunday after Epiphany.* Canada ceded to G. B. 1763. Union of U. and L. C. 1841.
11. Mon....T. Robertson appointed to Chy Div, 1887.
16. Sat.....Hilary Term and High Court Justice Sittings end. Last day for notices for call for Easter Term.
17. Sun....*Septuagesima Sunday.*
19. Tue....Supreme Court of Canada sits.
21. Thur...Chancery Division High Court of Justice sits.
24. Sun....*Sexagesima Sunday. St. Matthias.*

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

[Dec. 15th, 1888

LONGUEUIL NAVIGATION CO. *v.* THE CORPORATION OF THE CITY OF MONTREAL.

39 V.c. 52 (P.Q.)—Constitutionality of By-law—Ultra vires—Taxation of ferry boats—Jurisdiction of harbor commissioners—Injunction.

By 39 Vic. ch. 52, sec. the city of Montreal is authorized to impose an annual tax on "ferrymen or steamboat ferries." Under the authority of the said statute the corporation of the city of Montreal passed a by-law imposing an annual tax of $200 on the proprietor or proprietors of each and every steamboat ferry conveying to Montreal for hire travellers from any place not more than nine miles distant from the same, and obtained from the Recorder's Court for the city of Montreal a warrant of distress to levy upon the appellant company the said tax of $200 for each steamboat employed by them during the year as ferry boats between Longueuil and Montreal. In an action brought by the apellant company, claiming that the Provincial statute was *ultra vires* of the Provincial legislature, and that the by-law was *ultra vires* of the corporation, and asking for an injunction, it was:

Held, (1), affirming the judgment of the court below, that the Provincial legislature was *intra vires*.

(2) Reversing the judgment of the court below, that the by-law was *ultra vires*, as the words used in the statute only authorize a single tax on the owner of each ferry, irrespective of the number of boats or vessels by means of which the ferry should be worked.

(3) Affirming the judgment of the court below, that the jurisdiction of the harbor commissioners of Montreal within certain limits does not exclude the right of the city to tax and control ferries within such limits.

JOILETTE ELECTION CASE—ELECTION PETITION.

Commencement of trial—Order of judge staying proceedings during session of Parliament—Power to adjourn recriminatory charges—Sections 32, 31, ss. 4, 33, ss. 2, 35, Ch. 9, 49 Vic.—Bribery by agent.

Where the proceedings for the commencement of the trial of an election petition have been stayed during a session of Parliament by an order of a judge, such trial, if commenced within six months from the date of the presentation of the petition (the session of Parliament being excluded in the computation of time), is a valid trial and within section 33, ch. 9, 49 Vic.

After the trial has been commenced, the trial judge may adjourn the case from time to time, as to him seems convenient.

The judge at the trial of the election petition against the return of the sitting member, cannot proceed to adjudicate upon recriminatory charges against the defeated candidate when the claim to the seat for such candidate has been abandoned by the petitioners.

An act of bribery committed by an agent of the sitting member, who has been cautioned by him to comply strictly with the law, will avoid the election.

Appeal dismissed with costs.

Cornellier, Q.C., and *Ferguson* for appellants.
Choquette, for respondent.

[Dec. 15, 1888.

FOOT *v.* FOOT.

Will—Absolute bequest—Subsequent restrictions—Effect of repugnancy.

A will contained the following clause:—"I order and direct that the whole balance of proceeds of the estate be divided into twelve equal parts, five of which I give and devise to (C.M.), four of which I give and devise to (A.E.F.) But in no case shall any creditor of either of my

children or any husband of either of my children, daughters (C.M. and A.E.F.), have any claim or demand upon the said executrices, etc., but their respective shares shall be kept and the interests, rents and profits thereof shall be paid and allowed to them annually.

In an action by C.M. and A.E.F. to have the said shares paid over to them, untrammelled by any trust, they claiming that the absolute bequest could not be cut down by doubtful words or by implication, and that the restriction as to claims of husbands and creditors was repugnant and illegal:

Held, affirming the judgment of the court below (20 N.S. Rep. 71), that the clear intention of the testator was that the principal of the said devise should be retained by the executors and only the rents, etc., paid to the devisees during their lives.

Appeal dismissed with costs.

Henry, *Ritchie* and *Weston*, for appellants.

Graham, *Tupper* and *Parker*, for respondents.

Dec. 15, 1888.

ROBERTSON v. PUGH.

Marine insurance—Warranty as to date of sailing—Limitation of action—Proof of loss—Protest—Inaccurate statement in.

A policy on the hull of a vessel contained this clause:—"Warranted to sail not later than 3rd Dec., 1882." And that on the freight the following:—"Warranted to sail from Charlottetown not later than 3rd Dec., 1882." The vessel left the wharf at Charlottetown on Dec. 3rd, but meeting with bad weather she came to anchor some two or three miles from the wharf, but within the harbor of the port, and proceeded on her voyage on Dec. 4.

Held, affirming the judgment of the court below (20 N.S. Rep. 15), that there was a compliance with the warranty in the policy on the hull, but not with that in the policy on freight.

An action on a marine policy was prescribed to twelve months from claim for loss or damage being deposited at the office of the assurers. The vessel being lost, a protest was deposited at the office of the insurers, which stated the voyage to have commenced at a date later than that warranted by the policy. Subsequently the master who had signed the protest deposited with the insurers a declaration stating that the vessel had sailed at a date within the policy, and that he had misstated the date in the protest through ignorance of the language of the country in which it was made. An action was brought on the policy within 12 months from the depositing of the amended statement, but more than 12 months from the service of the protest.

Held, also, affirming the judgment of the court below, that the protest was a claim for loss or damage within the meaning of the condition in the policy, and the action was too late.

Appeal dismissed with costs.

Henry, *Ritchie*, and *Weston*, for appellants.

Graham, *Tupper*, *Borden* and *Parker*, for respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

DONOVAN v. HAGAN.

Assessment Act—R.S.O. 1877, ch. 180, secs. 155, 156, 114, 129, 130, 131—Tax sale, invalidity of—Limitation of time for impeaching—Payment of taxes—Resident and non-resident roll—Distress for payment of taxes.

The two years limited by section 156 R.S.O., ch. 180, for impeaching a tax sale, runs from the time of making the tax deed, not from that of the auction sale.

The word *sale* in that section can be properly understood only in the sense of *conveyance*.

Hutchison v. *Callier*, 27 C.P. 249, *Church* v. *Fruton* 28 C.P. 204, approved of. The contrary view expressed in *Smith* v. *Midland* 4 O.R. 498, *Lyttle* v. *Broddy* 10 O.R. 530, *Claxton* v. *Shibley* 10 O.R. 295; and *Deverill* v. *Coe* 11 O.R. 222, dissented from.

Unoccupied land divided into lots was assessed for the year 1879 and entered in the non-resident division of the assessment roll, but instead of being assessed by the numbers and names of the lots alone, separately valued and without the name of the owner, it was

entered with the name of the owner prefixed and valued *en bloc*.

The taxes assessed against the whole, together with the name of the person taxed, were entered on the collector's roll for the year, instead of being entered on the non-resident tax roll and transmitted to the county treasurer. The owner became also the occupant of the lands, before the delivery to the collector of the collector's roll for 1879, and he paid the taxes so assessed to the collector in that year. The collector, notwithstanding, returned them to the clerk as non-resident taxes unpaid, and the township clerk returned them to the county treasurer in a "list of non-resident taxes returned from the collector's roll" and they were so entered in the treasurer's books. In the treasurer's list of land liable to be sold for arrears of taxes in 1882 sent to the township clerk, the land in question was entered charged with the taxes of 1879. The land had in the meantime been regularly assessed as occupied land for the years 1880, 1881 and 1882, but the assessor neglected to give notice to the occupant that it was liable to be sold for the arrears of 1879, and the township clerk omitted to include it, as he should have done, in the return made by him to the county treasurer, pursuant to section 111, in the list of non-resident lands which appeared by the assessment roll of 1882 to have become occupied.

The land was accordingly sold in December, 1882, for the taxes of 1879—the owner having continued in occupation and being ignorant of the sale or that the taxes were alleged to be in arrear:

Held, (1) that the taxes having been entered in the collector's roll with the name of the person assessed, the payment to the collector was valid, and consequently that there were no taxes in arrear for which the land could lawfully be sold:

(2) The duties of the assessor and township clerk under sections 109, 110 and 111, are imperative and conditional to the validity of a tax sale, and are not directory merely.

The spirit and true effect of section 130 is that lands which have been occupied and on which there is distress sufficient to satisfy the the taxes, are not to be sold, [BURTON J. A. dissenting on this point.]

Per PATTERSON J. A, *semble*, under the circumstances in evidence, the sale had not been properly conducted and therefore the land had not been sold in pursuance of and under the authority of the Act so as to give operation to section 155.

The judgment of FERGUSON J. affirmed,

[February 8, 1888.

ST. DENIS *v.* BAXTER.

Insufficient findings of jury—New trial—Costs.

The judgment of the Chancery Division reported 13 O.R. 41 was reversed and judgment directed to be entered for the plaintiff on the findings of the jury for $100 with county court costs; unless the defendants elected within a time to be named to take a new trial [HAGARTY C. J.O. dissenting].

Per HAGARTY C.J.O. There had been a miscarriage at the trial: Neither party was entitled to judgment on the findings of the jury and there should be a new trial.

BATE *v.* CANADIAN PACIFIC RAILWAY.

Railway—Negligence—Return ticket at reduced rate—Condition limiting liability.

The plaintiff, with her father and brother, went some hours before the departure of the train on which she was a passenger, to a ticket office of the defendants in O., in order to procure a ticket to W. and return. The only kind of return ticket issued on the route by the defendants was called a land-seeker's ticket, for which thirty dollars less than the fare each way separately was charged. These tickets were not transferable, and were subject to a number of conditions printed on them, among which was one limiting the baggage liability to wearing apparel not exceeding one hundred dollars in value; and another condition required the signature of the passenger to the ticket for the purpose of identification and to prevent its transfer. The plaintiff's brother purchased the ticket for her, and at his request the time for using it was extended beyond the time limited by the ticket. The defendants' agent then asked for and obtained plaintiff's signature to the ticket, by which she agreed, in consideration of the reduced rate, to all its provisions, explaining to her that it was for the purpose of identification. The plaintiff did not read the

ticket, having sore eyes at the time, and the agent did not read or explain the conditions to her further than by mentioning that she alone could use it.

On the trip to W., an accident happened to the road-bed of the defendants' railway by reason of which the train was over-turned, and the plaintiff's baggage, valued at over one thousand dollars, caught fire and was destroyed. The railway had been constructed by the government and transferred to defendants. There were no indications before the accident of any defect in the road-bed.

In an action for damages for such loss the jury found a verdict for the full amount of the alleged value, which on application to the Divisional Court was set aside [ROSE, J., dissenting] and the action dismissed with costs. On appeal to this Court it was

Held, [by the majority of the Court] affirming the judgment of the Court below, that there was no evidence of any negligence with which the defendants were chargeable.

Held, also, [BURTON, J. A., dissenting,] that, whether or not the plaintiff signed the ticket or informed herself of its contents, it embodied the terms and conditions on which alone the defendants contracted to carry her and her baggage.

Per BURTON J. A.—The delivery of the ticket with any condition, by itself amounted only to a proposal to carry on certain terms, and until brought to the notice of the party intended to be bound was not a contract.

BULL v. THE NORTH BRITISH CANADIAN INVESTMENT CO., AND THE IMPERIAL FIRE INSURANCE CO.

Fire insurance—Mortgagor and mortgagee—Subrogation clause—4th statutory condition—Assignment by way of mortgage—Proofs of loss—Waiver.

The right of an insurance company to be subrogated to the mortgage rights of the mortgagee in the case of a policy of insurance containing the usual subrogation clause referred to below, depends upon whether they have a good defence against the claim of the mortgagor, who, as between himself and the insurance company, is the party insured.

Premium Securities Company v. *The Canada Fire and Marine Insurance Co.*, 10 R. 494, observed upon.

The fourth statutory condition provides if the property insured is assigned without the written permission of the company, the policy shall be avoided:

Held, that the assignment by this condition is one by which the assignor divests himself of all title and interest. The condition is directed against a change of title, not the creation of an incumbrance, and therefore a mortgage by the person named is not a breach of the condition. *Sands* v. *The Standard Insurance Co.*, 26 Gr. 113, 27 Gr. 167, approved.

Held, also, that an agreement for sale by the mortgagees under their power of sale which was never carried out by conveyance was not within the conditions.

After the loss the insurance company received certain proofs of loss from the mortgagees. They made no objections to them for many months after, and gave no notice that any further proofs were required. When making payment of the loss they alleged that they were entitled to be subrogated to the rights of the mortgagees, and that they objected to recognize any claim on the policy by the mortgagor, by reason of non-compliance with the statutory condition as to proof of loss.

Held, that they must be taken to have dealt with the mortgagees as agents of the mortgagor, and that they had waived further proofs of loss, and that the payment enured to the benefit of the latter.

Judgment of the Court below affirmed.

HALL v. FARQUHARSON.

Tax sale—Sale honestly and fairly conducted—Sale for more than was due—R.S.O. ch. 180, sections 137, 155—Double assessment—Identity of parcel sold with that taxed—Payment of taxes—Statute labor.

Plaintiff was the owner of a group of small islands in Lake Rosseau, in the township of Medora, containing in all less than 50 acres. The island in question was patented to one Pape by the description of Island D. Plaintiff purchased it from Pape, called it by the fancy name of Oak Island, and built a house and made other improvements thereon, and resided there for some months in each year.

The assessor having been erroneously informed that Pape was the owner of an island in Lake Rosseau called D., put down Island D. in the non-resident division of the assessment roll with the name "Robert T. Pape." This was done to distinguish it from another Island D. in the same lake and township. He did not know that this Island D. was one of the group belonging to Hall, though he knew that Hall was putting improvements on one of the islands, which was, in fact, Island D. or Oak Island. He supposed that the name of the improved island was Flora, and this was the name of one of Hall's Islands, a small rock on which there were no improvements. The improved island was the one meant to be assessed and actually assessed, though under a wrong name. The taxes so assessed were actually paid. In 1883, the Island D. was sold for arrears of taxes for the years 1879, 1880, 1881 and 1882. The purchase money was $1.00, although the value with the improvements was about $1,000, no inquiry having been made as to its value, and the township officials having apparently taken no pains to acquire any information about it beyond what appeared on the assessment roll:

Held, [affirming the judgment of the Chancery Division] that Island D. being identified as that intended to be assessed and being that on which the improvements had been made, the owner was not affected by the mistake of the assessor in describing it as Flora Island; and that the taxes having been duly paid the sale was void.

Semble per HAGARTY, C.J.O., PATTERSON and OSLER J. J. A., that the sale would also be void as not having been under the circumstances openly and fairly conducted within the meaning of section 155.

The duty of the county treasurer in reference to tax sales observed upon.

Hall v. *Hall* 2 E. and A. 569; *Haisley* v. *Somers*, 13 O.R. 605 considered.

Semble, a sale for more taxes than are actually due cannot be supported under section 137, where section 155 does not apply, in consequence of the sale not having been openly and fairly conducted.

Yokkam v. *Hall* 13 Gr. 235, *Edinburgh Life Ins. Co.* v. *Ferguson* 32 U.C.R. 253, followed.

Semble, that Island D. or Oak Island should have been assessed on the resident instead of the non-resident division of the assessment roll.

Per PATTERSON, J.A., observations as to assessment of several parcels of non-resident land less than 200 acres for statute labor.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.] [Dec. 22.

REGINA v. SMITH.

Canada Temperance Act—R.S.C. c. 106. s. 100, construction of "Not less than $50"—Penalty —Powers of magistrate.

The words "not less than $50" and "not less than $100" in the Canada Temperance Act, R.S.C. c. 106, s. 100, should be construed as "$50 and no less" and "$100 and no less"; and a summary conviction by a police magistrate for a first offence against the Act was quashed because the penalty imposed, $75, was beyond the jurisdiction of the magistrate; FALCONBRIDGE, J., dissenting.

Regina v. *Cameron*, 15 O.R. 115, not followed.

Stimpson qui tam, v. *Pond*, 2 Curtis (Mass.) 502, referred to and approved.

S. A. Jones, for the defendant.

Delamere, for the complainant.

Chancery Division.

Full Court] [Dec. 15, 1888.

JONES v. MCGRATH.

Deed of land—Husband and wife—Consideration —49 Vic. c. 20, s. 6—R.S.O. 1887, c. 100 s. 6.

An action for the recovery of land. One of the deeds in the chain of title was a conveyance from the defendant direct to his wife, dated Oct. 18, 1884, which the defendant contended was a void conveyance. It purported to be for the consideration of $100, the receipt being acknowledged in the usual way in the body of the deed and in the margin. The plaintiff got his conveyance from the wife of the defendant on March 28, 1887, and therefore after the enactment of 49 Vic. c. 20, s. 6, which makes a receipt for consideration

money in the body of a conveyance sufficient evidence to an innocent purchaser, such as the plaintiff was in this case, of the payment thereof.

Held, that under this enactment the consideration of $100 must, as against the plaintiff, be held to have been truly paid, and this being so, the conveyance from the husband to the wife was good, as the Court would declare a trust in favor of the grantee who had paid the consideration.

English for the plaintiff.

McGregor for the defendant.

Full Court.] [Dec. 15, 1888.

CLARKE v. FREEHOLD LOAN & SAVINGS CO.

Mortgage—Right of payment off to obtain partial releases—Assignee of equity of redemption—Running with the land.

A mortgage on five stores, and expressed to be for $10,500, contained a provision that on payment of $2,500, the mortgagees would release the easterly store mortgaged, and any one or more of the other four stores on payment of $2,000 each, at any time on receiving a bonus of three months interest on the sum so paid.

Held, that the benefit of this clause passed to the assignee of the equity of redemption, who was entitled to enforce it.

It appeared that the whole $10,500 had not been advanced.

Held, that the amount required to be paid to entitle the assignee of the equity of redemption to obtain a release of any of the stores must be abated proportionately.

S. R. Clarke, plaintiff in person.

Hoyles, for the defendants.

Full Court.] [Dec. 14, 1888.

RE PUBLIC SCHOOL BOARD OF TUCKERSMITH.

Case submitted by Minister of Education under s. 237 of the Public Schools Act.

Held, that the plain meaning of s. 63 of the Public Schools Act, R.S.O. 1887, c. 225, is that after the township public school board has existed for five years at least, there may be at any time the submission of a by-law for the repeal of the by-law under which that board was established, upon the presentation of a properly signed petition therefor. The by-law establishing the township board may be attacked with a view to its repeal again and again, so long as the agitation against it subsists.

Moss, Q.C., for certain ratepayers.

W. Blake, for the township council.

Full Court.] [Dec. 15, 1888.

JONES v. DALE.

Specific performance—Written contract—Omitted term—He who comes into equity must do equity.

In an action for specific performance of an agreement for the sale of lands, it appeared that the parties intentionally omitted from the writing a part of the agreement, as to the tenure of which both parties agreed; and the defendant asked to have this inserted in the judgment for specific performance, but the plaintiff objected.

Held, that on the principle that he who comes into equity must do equity, it was proper that the omitted portion of the agreement should be inserted as claimed.

Where both parties concur, in an action such as this for specific performance, that there is a material ingredient of the transaction left unexpressed because one party chose to trust the other without writing, it is eminently proper for the Court to deal with the whole contract and not to pass over any part for technical reasons.

G. H Watson, for appellant.

McGillivray, *contra*.

Full Court.] [Jan. 8, 1889.

GIBBONS v. WILSON.

Debtor and Creditor—Preference—Principal and agent—R.S.O. c. 124, s. 3—Chattel mortgage—Assignment for Creditors.

C. being insolvent, was taken by one of his creditors to S., a solicitor, and there it was arranged that S. should find some one who would lend C. $600 on his stock in trade, S. at the same time taking from C. a written authority to pay the claim of the said creditor in full out of the moneys advanced. S. accordingly got one W. to lend the money on chattel mortgage of the stock in trade, W., however, knowing nothing of C's circum-

stances or of why the money was wanted, or how it was to be applied. Out of the money S. paid off the creditor in question in full. C. afterwards made an assignment for the benefit of his creditors to G., who brought this action to set aside the chattel mortgage.

Held, that the action must be dismissed, for the mortgage was made in consideration of a present *bona fide* advance of money within the meaning of R.S.O. c. 124, s. 3. It could not be said that the "effect of the mortgage" was to prefer the creditor, for this was the effect solely of the act of S., acting apparently altogether for another principal.

The rule is that the fraudulent act of an agent does not bind the principal unless it is done for the benefit of the principal, unless the principal knows of or assents to it, or takes an advantage by reason of it.

Moss, Q.C., for the plaintiff.

Walker, for the defendant.

Boyd C.] [Jan. 9, 1889.

RE PRITTIE *v.* CRAWFORD.

Vendor and purchaser act, R.S.O. c. 112—Equitable interest in land—Effect of fi. fa. lands in Sheriff's hands.

R.W.P. became the purchaser of certain lands under an agreement in writing, but being unable to carry out the agreement he assigned all his interest in it to J.P. At the date of the agreement there were writs of *fi. fa.* lands in the Sheriff's hands, which were subsequently duly renewed and were not paid or satisfied. In an application under the Vendor and Purchaser Act, in which J.P. was making title, it was

Held, that the executions did not bind R.W.P's. interest under the agreement.

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

D. Macdonald, for the vendor.

Practice.

FERGUSON, J.] [Jan. 4th, 1889.

In re HIME *and* LEDLEY.

Priorities—Execution creditor—Mortgagee—Removal of fi. fa. lands for renewal—Neglect to replace—Mistake—Time.

Rule 894, providing for the renewal of writs of execution, necessarily intends the removal in each case of the writ out of the actual possession of the Sheriff for the purposes of such renewal. This is an exception to the general rule, and the time during which a writ may for the purposes of renewal be kept out of the hands of the Sheriff without interference with the right of priority is commensurate with the time reasonably necessary to effect the renewal; but the exception cannot be made to extend so as to cover mistakes, never so honestly made, the consequence of which is a failure to replace the writ in the hands of the Sheriff for so long a period as six or seven months.

And where H. placed a writ of fi. fa. lands in the hands of a Sheriff in November, 1883, and renewed it from year to year till October, 1886, when he removed it for the purposes of renewal only, and by mistake did not replace it till April, 1887;

Held, that he had lost his priority over L., a mortgagee, whose mortgage was registered against the land of the execution debtor in July, 1885.

Aylesworth, for Hime.

Carson, for Ledley.

C. P. Div'l. Ct.] [Jan. 7, 1889.

WILSON *v.* MCDONALD

Foreign commission—Evidence of a defendant—Application of co-defendant—Material on application—New material on appeal—Costs.

The Court will not hesitate to make an order for a foreign commission for the examination of a witness who is abroad and whose presence cannot be procured for the purpose of giving evidence in Court, because such witness is a co-plaintiff or co-defendant of the person applying. The Divisional Court, on appeal, admitted evidence which was not formally before the Master or Judge in Chambers below, and being satisfied that the defendant McD. could not be induced to return from abroad to give evidence, and that his evidence was important to the defendant C. were of opinion that the latter was entitled to a commission to examine McD. abroad; but gave no costs of the appeal.

Dartnell, Co.J. Whitby.] [Chy. Div.

RE WOON, WOON *v.* WOON.

Practice—Sale—Vendor tendering—Right to withdraw tender.

A plaintiff having conduct of the proceedings, is precluded from tendering for the lands affected by the judgment to the same extent and for the same reasons that prohibits his bidding at a sale of the same lands by auction.

A person tendering for lands to be sold at a judicial sale can withdraw his tender at any time before acceptance.

I refer to *Re Follis, Kilbourn* v. *Cultis* 6 P.R. 160, *O'Connor* v. *Woodward* 6 P.R. 223, *Crawford* v. *Boyd* 6 P.R. 278, *Dickey* v. *Heron* 1 chy. ch. 149, *McRoberts* v. *Durie* 1 chy. ch. 211, *McDonald* v. *Gordon*, 2 chy. ch. 125.

DIVISION COURTS.

DARTNELL, Co. J., Whitby.]

COLTON *v.* SCHELL.

Garnishee practice—Authority of solicitors to consent.

There is no practice or rule which will authorize the ignoring of an order by consent of solicitors or agents, without disclosing the facts upon which such order is asked for. Such authority to consent is confined to the time or hearing of any cause, matter or proceeding.

MUNICIPAL CASES.

DARTNELL, Co. J.] [Whitby, Jan. 11.

In re THE DITCHES AND WATERCOURSES ACT.

Furness, appellant.

Gilchrist, respondent.

Ditches and watercourses act—Inequitable and irregular award—duty of clerk and engineer—Alternative route—Amending award.

The failure of agreement is a condition precedent to taking action under the Act.

It is the duty of the clerk and engineer to examine and satisfy themselves before acting that the requirements of the Act have been strictly complied with.

The engineer is not obliged to adopt the route or course of the drain asked for, but can deviate therefrom or lay out a different or alternative route, and may notify such persons as may be interested or affected by such new route, and the persons so added will be covered by the award as if originally notified.

An award founded upon proceedings wholly irregular cannot be amended.

Appointments to Office.

SHERIFF.

Welland.

James Smith, of Willoughby, to be Sheriff of the County of Welland, *vice* George J. Duncan, deceased.

REGISTRARS OF DEEDS.

Elgin.

J. H. Coyne, of St. Thomas, to be Registrar of Deeds for the County of Elgin, *vice* A. McLachlin, deceased.

Northumberland.

A. E. Mallory, of Warkworth, to be Registrar of Deeds for the East Riding of Northumberland, *vice* J. M. Grover, deceased.

CORONERS.

Wellington.

S. M. Henry, M.D., of Harriston, to be an associate Coroner for the County of Wellington.

Kent.

P. N. Davey, M.D., of Duart, to be an associate Coroner for the County of Kent, *vice* A. Decon, M.D., left the county.

DIVISION COURT CLERKS.

Huron.

Charles Seager, of Goderich, to be Clerk of the First Division Court of the County of Huron, *vice* J. S. McDougall, deceased.

BAILIFFS.

Prescott and Russell.

Docitte Lavergne, of Cumberland, to be Bailiff of the Fifth Division Court of the united Counties of Prescott and Russell.

Wentworth.

H. A. Combs, of Saltfleet, to be Bailiff of the Fifth Division Court of the County of Wentforth, *vice* S. S. Springstead, deceased.

Carlton.

William Falls, of Huntley, to be Bailiff of the Third Division Court of the County of Carleton, *vice* John Reilley, resigned.