Canada Law Journal.

VOL. XLVI. TORONTO, MARCH 1. No. 5.

*THE PRINCIPLES OF ARGUMENT.**

Mr. Bell's work is described in his preface as "designed not only for students in schools and colleges as an educational discipline and a guide for the practice of debate, but also, and especially, for young men who have left school, for law students, lawyers, journalists and others who are daily engaged in the practice of argumentation." The author has admirably accomplished the end that he has in view. His work may be well described as an application of logical principles to the treatment of legal argument and as such is a work that should be read by every student of law. But it is much more than a student's manual. Starting with the principle that while "inference is the business of the investigator, argument is the business of the advocate," he bears in mind throughout this whole work the practical and resultant value to the advocate of the logical application of facts. He proceeds upon the sound logical basis laid down by Mr. Sidgwick, that "proof for all practical purposes essentially consists, not in demonstration, but in successful resistance to attack; not in complete establishment beyond all doubt, but establishment on a sound basis in the face of hostile criticism, by means of those tests which are in our power to apply." His principles are illustrated by such apposite and interesting illustrations of reasoning, taken from newspapers, magazines, speeches and law reports, that the reader will find his attention attracted and held by the illustration apart altogether from the logical principle that is applied. The two chapters on "Arguments from Circumstantial Evidence" and on "Refutation" will repay any lawyer for reading them. There is plenty of suggestive food for thought in this exceedingly able and sound application of logical principles to the business of the advocate. It is a very creditable performance.

H. H. DEWART.

**Principles of Argument.* By Edwin Bell, LL.B. Toronto: Canada Law Book Company, Limited. 1910.

A DISTINGUISHED GERMAN JURIST.

Heinrich Brunner, professor of law in the University of Berlin, will celebrate on June 21, 1910, his seventieth birthday. A committee of prominent German jurists has been formed to assure due recognition, on this anniversary, of Brunner's achievements as teacher and as writer. It is proposed to publish, as is customary on such occasions, a volume of essays prepared in his honour by his colleagues and former pupils, and also to raise a fund for a permanent memorial. In view of the fact that Brunner's researches in early German law and in the law of the Frank Empire have direct bearing upon the legal history of all the West-European states, including England, and that the results attained by him have been of the greatest value to French, Italian and English legal historians, it has seemed proper to give to the lawyers and historical students of all these countries and of the United States an opportunity to contribute to the memorial fund.

All American lawyers and historians who are familiar with the development of legal history during the last forty years are aware that Brunner, in his monumental "History of German Law," has cleared up many important and previously obscure points in Anglo-Saxon and in Anglo-Norman law, and that before the appearance of this work he had shewn, in a now famous little book, the origin of the English jury system. No reader of Maitland or of Thayer or of Ames is ignorant of the debt which English legal history owes to Brunner. It is hoped that American lawyers and other Americans wh. are interested in legal history will largely embrace this opportunity to do honour, during his life, to one of the most eminent of living scholars. Since the value of the testimonial will depend far more on the number of subscribers than on the amount of their subscriptions, it is hoped that no one who wishes to contribute will hesitate to send a small sum. By direction of the German committee, American contributions are to be sent to Professor Munroe Smith, Columbia University, New York City.

A FICTION OF LAW.

In giving judgment in the recent case of *Rex* v. *Dibdin,* in which the effect of the Imperial statute of 1907 allowing marriage with a deceased wife's sister was in question, Lord Justice Farwell remarks: "It is to my mind so repulsive as to be inconceivable that the King, by and with the advice of the Lords Spiritual and Temporal and Commons, should have continued the declaration that such marriages are contrary to God's law as incestuous, and yet should have legalized them as regards clergy and laity alike, and authorized their solemnization in church to the desecration of the House of God." If the Act in question had in fact been passed "with the advice and consent of the Lords Spiritual," that fact certainly would well warrant the learned judge's opinion, but inasmuch as a matter of fact the Act was passed against the advice and without the consent of a single bishop, and on the contrary in direct opposition to the votes of the Archbishop of Canterbury and ten other bishops present, it is a mere fiction of law to describe it as being enacted "with the advice and consent of the Lords Spiritual." In the interests of truth would it not be better that even Acts of Parliament should not be made to bear on their face what is nothing less than a falsehood?

REVIEW OF CURRENT ENGLISH CASES.

EMPLOYER AND WORKMAN—COMPENSATION—ACCIDENT—REFUSAL OF WORKMAN TO SUBMIT TO SURGICAL OPERATION.

In *Marshall* v. *Orient Steam Navigation Co.* (1910) 1 K.B. 79, the question again arose in a workman's compensation case as to the effect of the workman having refused to submit to a surgical operation on his right to compensation. In this case the plaintiff was a sailor, and in the course of his employment had injured his finger. The ship's doctor proposed a slight surgical operation, which the plaintiff refused to submit to, and the plaintiff's finger had subsequently to be amputated. The evidence was conflicting as to whether the proposed operation would have saved the finger. In these circumstances the Court of Appeal (Cozens-Hardy, M.R., and Moulton and Farwell, L.JJ.) held that the employers had failed to discharge the onus of shewing that the loss of the finger was due to the refusal to undergo the operation, and therefore that the plaintiff, notwithstanding his refusal to submit to it, was entitled to compensation.

SOLICITOR AND CLIENT—VERBAL AGREEMENT AS TO COSTS—NO COSTS PAYABLE BY CLIENT—RIGHT TO RECOVER COSTS FROM OPPOSITE PARTY—ATTORNEYS' & SOLICITORS' ACT, 1870 (33-34 VICT. C. 28), SS. 4, 5—(9 EDW. VII. C. 28, SS. 24, 28).

In *Gundry* v. *Sainsbury* (1910) 1 K.B. 99, the plaintiff recovered damages against a defendant for injuries sustained by being bitten by the defendant's dog. It appeared that the plaintiff had made a verbal agreement with his solicitor that he was not to be liable to him for any costs; the County Court judge who tried the action therefore refused to give the plaintiff any costs. The Divisional Court (Darling and Bucknill, JJ.) held that the County Court judge was right, and that it made no difference that the agreement was verbal and not in writing as provided by 33-34 Vict. c. 28, s. 4; (see 9 Edw. VII. c. 28, ss. 24, 28).

Correspondence.

GETTING MONEY OUT OF COURT.

To the Editor, CANADA LAW JOURNAL:

SIR,—The incident referred to on p. 44 in regard to the old Court of Chancery is incorrectly stated. The money in question was not money in court, but money of the Law Society which had been received by the secretary in payment of solicitors' fees too late to bank, it was placed in the vault of one of the officials of the court, the key of which was handed to the secretary of the Law Society; but the money was not in any sense in court or in the custody of the court. The secretary was an elderly and infirm gentleman living in the east wing, and after placing the money in the vault could not have had access thereto, and was a man above all suspicion. On the following morning my recollection is that the door of the vault was found to be shut, but the window, including the iron shutter, which had been fastened from the interior were found to be open, and the money gone, but it was never proved, as far as I ever heard, who took it.

AN OLD STAGER.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Board of Railway Commissioners.] [Feb. 15.

G.T.R. Co. *v.* DEPARTMENT OF AGRICULTURE.

Appeal—Limitation of time—Railway Commissioners—Question of jurisdiction—Leave of judge—Powers of Board—Completed railway—Order to provide station—R.S. (1906) c. 37, ss. 26, 151, 158-9, 166-7 *and* 258.

Except in the case mentioned in rule 59 there is no limitation of the time within which a judge of the Supreme Court may grant leave to appeal under s. 56(2) of the Railway Act on a question of the jurisdiction of the Board of Railway Commissioners.

The Board of Railway Commissioners has power to order a railway company whose line is completed and in operation to provide a new station at any place where it is required to afford proper accommodation for the traffic on the road.

Appeal dismissed with costs.

Chrysler, for appellant. *Lancaster*, K.C., for respondent.

Ont.] [Feb. 15.

ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO.

Lessor and lessee—Covenant to renew—Severance of term—Consent of lessor—Enforcement of covenant—Expropriation.

A lease of water lots in Toronto contained a covenant by which the lessees at the expiration of the term, on conforming to the conditions and giving notice to the lessors, would be entitled to a renewal or payment for their improvements at the option of the latter. Part of the leasehold premises were sold by the lessees to the C.P. Ry. Co. and the balance became vested in the appellants who gave the required notice for renewal as to their portion and remained in possession for some time after the

lease expired with no intimation from the lessors that it would be refused. The C.P. Ry. Co. proceeded to expropriate a further strip of the leased lands and an action was brought to determine the right of the appellants to compensation on the basis of the term being renewed.

Held, affirming the judgment of the Court of Appeal for Ontario, 18 Ont. L.R. 85, that the covenant for renewal could only be enforced for the whole of the lands and not for the part held by appellants.

Held, also, that though the lessors by consenting to the assignment to the C.P. Ry. Co. had recognized the existence of some right of renewal which was also assigned, it was not the right to renew for a part only. The appellants, therefore, were not entitled to the compensation claimed. Appeal dismissed with costs.

Shepley, K.C., and *Miller*, for appellants. *Armour*, K.C., and *MacMurchy*, K.C., for respondents.

Province of Ontario.

COURT OF APPEAL.

[Dec. 31, 1909.

RE LAKE ONTARIO NAVIGATION CO.

DAVIS'S CASE.

HUTCHINSON'S CASE.

Company — Winding-up — Contributory—Shares—Allotment—Right to repudiate—Voting on shares—Director—Misfeasance.

Appeals by Davis and Hutchinson from the order of TEETZEL, J., 18 O.L.R. 354.

The appeals were heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN and MEREDITH, JJ.A.

F. J. Dunbar for Davis. *I. F. Hellmuth*, K.C., for Hutchinson. *M. C. Cameron*, for the liquidator. *J. H. Moss*, K.C., for shareholders.

MEREDITH, J.A.:—The appellant Davis applied, in writing, for 150 shares at the price of $1,300. The whole testimony—to which credit has been given and which is not now questioned—

makes it very plain that the full price of that which this appellant was to get was $1,300.

The moment he became aware of that fact, he stopped the cheque he had given for the $1,300—the full amount of the purchase money; and refused to have anything more to do with the matter.

In the meantime he had given a proxy to vote upon the shares which he had applied for; and that proxy was acted upon; but there was no sort of acceptance of the stock actually allotted, nor any sort of intention to accept it; instead, there was the promptest rejection of the shares which were allotted.

In these circumstances, it would be extraordinary if the appellant were in law liable for the $13,000—liable to pay for something he never applied for, never bought, nor ever accepted.

It is not a case of buying the ordinary stock of the company under some mistake of law, or of fact, on the part of the purchaser, as to the legal effect of becoming such a purchaser.

I know of no difference in principle between a sale of personal property of this character and that of any other. There must be an actual sale; if one bargain for one thing, he cannot be compelled to accept another.

In this case the appellant applied for one thing and was offered another, which he promptly rejected. Authorizing his proxies to vote upon the stock which he was to get—not that which was allotted—was in no sense an acceptance of that which was offered in lieu of that which was sought; nor could it have any legal effect, conferring no legal power to vote.

Ex p. Sandys, 42 Ch. D. 98, is not an authority to the contrary; indeed, in that case it was held that there was no liability under the original contract, but it was held that subsequent conduct evidenced a subsequent contract to take the stock as allotted.

I would allow the appeal.

In Hutchinson's case there can be no liability if there be none in Davis's case. Davis should, and must, eventually have had the money returned to him if it had been actually paid over to, and been retained by, the company; so that any intervention by Hutchinson caused no loss or injury to the company.

MOSS, C.J.O., OSLER, GARROW and MACLAREN, JJ.A., concurred; MACLAREN, J.A., stating reasons in writing.

REX *v.* ELLIS. [Dec. 31, 1909.

Criminal law—Vagrancy—Criminal Code, s. 238(1)—Gaming—Betting.

Case stated by one of the police magistrates for the city of Toronto.

The defendant was charged with vagrancy. He pleaded "not guilty," but counsel on his behalf admitted that he took personal bets on horse races with different individuals in the streets of Toronto, having no fixed place for taking the bets or paying them; that the defendant made his living for the most part thereby, having no other business; that he took these bets with individuals in his own behalf, and, if he lost, he himself paid. The magistrate convicted, but reserved the question whether, upon the admissions, the defendant could be convicted as a vagrant under s. 238(1) of the Criminal Code: "Every one is a loose, idle or disorderly person or vagrant who,— . . . (1) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution."

The case was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN and MEREDITH, JJ.A.

T. C. Robinette, K.C., for the defendant. *E. Bayly*, K.C., for the Crown.

MEREDITH, J.A.:—The conviction cannot be sustained. The charge against the accused was vagrancy, in "having no peaceable profession or calling to maintain himself by, but, for the most part," supporting "himself by gaming . . ."

The conviction is based entirely upon the admission of the accused, that he made his living, for the most part, by betting on horse races. There was no sort of admission, or evidence, of "gaming."

Gaming and betting on horse races are different things; and the difference between them, under the Criminal Code, is marked, as ss. 226 and 227 shew: the one is aimed against gaming, the other against betting, in the manner dealt with in them; and all of the provisions of the Criminal Code, touching the subject, indicate the intention of Parliament to steer clear of making mere betting a crime: see s. 235 especially.

Having regard to the language employed in the sections of the Act to which I have referred, as well as to s. 238, it seems plain to me that, if it had been intended to make such things as the accused admitted he had done a crime such as he was accused

of, the vagrancy section of the Criminal Code, in the part from which I have quoted, would have, in conformity to other sections I have referred to, have had added to it the words "or betting" after the word "gaming." If this were not so, there would have been a great waste of energy in "barking up the wrong tree" in such cases as *Saunders* v. *The King*, 38 S.C.R. 382.

I would answer the question in the negative and direct that the accused be discharged.

OSLER, J.A., agreed, for reasons to be stated in writing.

MOSS, C.J.O., GARROW and MACLAREN, JJ.A., also concurred.

KIMBALL *v.* BUTLER.

Master and servant—Injury to and consequent death of servant —Negligence—Servant not acting in course of duty—Voluntary incurring of risk—No duty owing by master—Contributory negligence.

Appeal by the plaintiff from the order of a Divisional Court, dismissing an appeal by the plaintiff from the judgment of TEETZEL, J., at the trial, dismissing the action, which was brought by the widow of Wallace Kimball, deceased, to recover damages for the death of her husband while in the employment of the defendants, under circumstances of alleged negligence on the part of the defendants.

The work upon which the deceased was employed at the time of his death was that of constructing a tunnel under the Detroit river, and, being a civil engineer, his position was that of superintendent of shaft No. 2.

On the night of the 14th September, 1908, a fire occurred in shaft No. 4 which, it was supposed, was caused by the use of candles in the hands of some of the defendants' workmen engaged in making repairs to a bulkhead containing compressed air, which was leaking. The place where the fire occurred was about 2,000 feet distant from shaft No. 2, where the deceased was employed, and was territorially quite beyond any place in the tunnel where his duty to the defendants required him to be.

At the time of the fire there were workmen in the tunnel, and the deceased, attracted to shaft No. 2 by the fire, went, with others, down that shaft for the purpose of assisting to extinguish the fire and in the rescue of the workmen in the tunnel; and, while in the tunnel, was suffocated by the smoke, which

was very dense, although the fire itself was not otherwise of a serious nature.

Negligence was charged by the statement of claim in not providing and maintaining proper supervision of the work, in leaving timber or paper exposed, in permitting the improper use of fire, and otherwise conducting the work in a negligent manner, negligence in the person having superintendence, absence of proper appliances to put out fires, and insufficient modes of egress from the shaft in which the fire occurred.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

J. H. Coburn, for the plaintiff. *J. H. Rodd* and *E. C. Kenning*, for the defendants.

GARROW, J.A. (after setting out the facts as above):—It is perfectly plain . . . that in doing as he did the unfortunate deceased was acting not at all as the servant of the defendants, or under any orders or commands, directly or indirectly, from them, but solely as a volunteer. And it is also equally beyond question that in venturing into the shaft for the second time as he did, he did so with a full comprehension of the danger of so doing, and, indeed, after a warning not to do so from Mr. Wheeler, who was acting as the defendants' first aid physician. In such circumstances, and in view of the reservation made by consent at the trial that the court might deal with the issue of contributory negligence upon the evidence, the case for the plaintiff, notwithstanding the above and earnest argument of Mr. Coburn, seems upon both grounds absolutely hopeless.

Appeal dismissed.

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

OSLER, J.A., agreed, for reasons to be stated.

MOSS, C.J.O., and MACLAREN, J.A., also concurred.

HIGH COURT OF JUSTICE.

Master in Chambers.] [Jan. 15.

GREAT WEST LIFE ASSURANCE CO. *v.* SHIELDS.

Summary judgment—Affidavit in support of motion.

Motion by the plaintiffs for summary judgment under Rule 603 in an action on a judgment recovered in Manitoba. The Master held that the affidavit in support of the motion, being

that of one of the Ontario solicitors for the plaintiffs, deposing to his information and belief derived from letters and telegrams received from the plaintiffs' Manitoba solicitors, was insufficient: *Lagos* v. *Grunwaldt* (1910) 1 K.B. 41; *In re J. L. Young* (1900) 2 Ch. 753. This affidavit was fortified by an affidavit of one of the Manitoba solicitors, but that, too, was deemed insufficient, as no reasons were given for the belief that nothing had been paid on the judgment and that there was no defence to the action. Motion dismissed with costs to the defendant in the cause.

J. D. Falconbridge, for the plaintiffs. *M. Lockhart Gordon,* for the defendant.

Boyd, C.] [Jan. 17.

MACDONALD *v.* WALKERTON AND LUCKNOW R.W. CO.

Contract—Railway construction — Unpacked frog — Compensation to family of person killed—Default of contractor—Indemnity.

Action to recover $5,655.45, balance alleged to be due on a contract to build a railway for the defendants. The defendants set up that under the contract it was the duty of the plaintiff to fill with standard wooden blocks the narrow places between rails at switches, etc., and that, owing to the plaintiff's neglect to perform his duty, one Clarke, a conductor of a train of the defendants, had his foot caught in an unpacked frog and was run over by a car and killed, whereby the defendants incurred legal liability to and paid Clarke's representatives $5,250, which they claimed to deduct from the amount due to the plaintiff, and they brought $405.45 into court, and asked to have the action dismissed. The Chancellor found that the proximate cause of the conductor's death was the absence of the packing required by the Railway Act, R.S.C. 1906, c. 37, s. 288, and by the contract; that the amount of compensation paid was such as should be accepted as fair and reasonable, and so binding on the contractor; that there was a sufficient supply of available material provided by the defendants to pack the dangerous gaps; and that the contract covered such a case of indemnity as was presented. Action dismissed with costs; money in court to be paid out to the plaintiff, unless the defendants seek to have it impounded to answer the costs.

G. H. Kilmer, K.C., and *J. A. McAndrew,* for the plaintiff. *I. F. Hellmuth,* K.C., and G. A. Walker, for the defendants.

Divisional Court.] McDONALD *v.* CURRAN. [Jan. 18.

Fraudulent conveyance — Intent to defeat execution — R.S.O. 1897, cs. 115, 147—Amendment—Unjust preference—Following notes or proceeds—Disposition—Consideration—Bar of dower—Husband and wife—Transaction between—Bona fides.

Forrest v. *Laycock*, 18 Gr. 611, cited by the Chancellor, is conclusive that where a wife in good faith claims to be entitled to dower, and refuses to join in the conveyance without a reasonable compensation being made to her, the payment made to her by the purchaser to induce her so to join in the conveyance is valid against the creditors of the husband.

In *Drewry* v. *Percival*, 19 O.L.R. 463, a question not unlike this was considered.

The appeal should be dismissed. There will be no costs (except disbursements, if any), the defendant appearing in person.

Boyd, C.] RE BUCKLEY. [Feb. 1.

Will—Devise to two as tenants in common in fee—Restriction upon incumbering during lives—Validity—Restriction upon alienation except the one to the other—Invalidity.

Appeal by Nicholas Buckley, petitioner, from the refusal of the Referee of Titles under the Quieting Titles Act to give the petitioner a certificate of title in fee to certain land under a will, free from the restriction imposed by the will.

BOYD, C.:—The testator gives land to two grandchildren, John and Nicholas, "to have and to hold unto them, their heirs and assigns, as tenants in common forever"; "without power to incumber the same during the lifetime of said John and Nicholas," but with the "power of disposing of the right, title, and interest of the one to the other, but to no other person whomsoever."

Nicholas has bought John's share, and now seeks to quiet the title. The clause forbidding incumbering during the lifetime of John and Nicholas is valid as a competent restriction, and will apply to the land when in the sole ownership of Nicholas.

The other clause forbidding disposing of the land except from the one to the other appears to be legally inoperative. "Dispose" is the largest possible term as to dealing with the land,

covering sale, lease, mortgage, or testamentary disposition. According to *Attwater* v. *Attwater*, 18 Beav. 330, 336, if the testator intends to impose this fetter—that, if the brother will not buy, the devisee is not to be at liberty to sell the property to any one—such a condition is void and repugnant to the nature of the estate conveyed. On this point *Attwater* v. *Attwater* has not been impeached. See *In re Macleay*, L.R. 20 Eq. 186, at p. 192. The validity of the restriction is sought to be supported by reading the will as if the clause "during the lifetime of John and Nicholas" controlled all the clauses of the restriction. But, even so, it appears to me that the authorities are against regarding this as a permissible qualification of the restraint. In *Attwater* v. *Attwater*, though not so expressed, it is obvious that the extent of the fetter was during the lifetime of the devisee and the brother—their joint lives.

When it was submitted from the text-books, *In re Dugdale* (1888) 38 Ch. D. 176, 179, that a total restriction of alienation for a limited time may be good, the comment of Kay, J., was, "There is no decision to this effect."

On the other hand, *In re Parry and Daggs*, 31 Ch. D. 130, 134, Fry, L.J., said: "The courts have always leant against any device to render an estate inalienable"; and when the form of the devise was to fetter the power of alienation during the lifetime of the testator's son, to whom the land was given, the court held it was an illegal device.

In re Rosher, Rosher v. *Rosher*, 26 Ch. D. 801, decides that a condition in restraint of alienation annexed to a devise in fee, even though limited to the life of another living person, is void as being repugnant to the nature of a fee simple. And this was followed by MacMahon, J., in *Heddlestone* v. *Heddlestone*, 15 O.R. 280.

Earls v. *McAlpine*, 6 A.R. 145, to the contrary, was discussed adversely in *McRae* v. *McRae*, 30 O.R. 54, and was overruled by the Supreme Court in the *Blackburn* case, afterwards cited.

Legally and practically the effect of forbidding disposing of property to all the world except one individual is a general restraint, which is invalid, and, that being so, it was decided in *Blackburn* v. *McCallum* that any limitation as to time does not make it valid: (1902) 33 S.C.R. 65.

The restraint as to mortgaging in the life of the devisees is valid as to Nicholas; the other restraint as to disposal of the

land is void. Costs to the guardian of the infants, to be paid by the petitioner.

M. Lockhart Gordon, for the appellant. *J. R. Meredith,* for infants and all persons interested in opposing the petition.

Britton, J.] WILSON *v.* HICKS. [Feb. 2.

Life insurance—Assignment of policy to stranger—Absence of delivery—Gift—Intention—Revocation—Insurance Act.

The plaintiff in 1888 effected an endowment insurance on his life in the Mutual Life Insurance Company for $5,000, and, by a subsequent writing, executed what purported to be an assignment to the defendant, Emma Hicks, of the policy. Afterwards he desired to appoint his niece, Helen Louisa Young, his beneficiary, but was told that the policy was already assigned, and that he was not at liberty to change. The policy matured on the 28th December, 1908, and the defendant claimed the amount, $6,799.30. Neither the policy nor the assignment was delivered to the defendant, but the assignment was lodged with the insurance company.

The plaintiff asked for a declaration that he was entitled to be paid the moneys, and that the assignment to the defendant had been effectually revoked.

The money was paid into court by the company.

BRITTON, J., after stating the facts, said that it must be taken that there was no consideration for the assignment; if it holds as such, it must be as a gift inter vivos.

(Reference to *Weaver* v. *Weaver,* 182 Ill. 287; *In re Trough's Estate,* 75 Pa. St. 114.)

The policy being the thing given, there ought, in addition to the assignment evidencing the gift, to be an actual handing over of the thing itself or something equivalent to it, or some reason to the contrary, to comply with the rule of law, "To perfect a gift, the delivery must be, so far as the thing is capable of it, an actual delivery."

My conclusions are:—

(1) That there was no intention on the part of the plaintiff to give absolutely and irrevocably to the defendant the policy in question. It was his intention to make the policy payable to her at his death, should that occur before maturity of the policy, and subject to any change he might desire to make before such death or maturity.

(2) That the transaction was not such that the plaintiff transmitted the title to this policy and the money it represents to the defendant as donee.

(3) That there was no delivery, constructive or otherwise, of the assignment of the policy to the defendant.

My decision has been quite irrespective of the Insurance Act.

Apart from the form of the assignment in question, the plaintiff relies upon the Insurance Act, R.S.O. 1897, c. 203, s. 151, s.-ss. 3, 4, 5, as amended by 1 Edw. VII. c. 21, s. 2, s.-ss. 5, 6, 7.

The assignment lodged with the company did designate the defendant as beneficiary. She was not of the preferred class, and not a beneficiary for value, so the plaintiff had the right to change, as he has done.

The assignment was executed on the 22nd December, 1896, prior to the enactment of s. 159 of the Insurance Act; but, if "declaration" means or includes "declaration designating a beneficiary," as I think it does, then s.-s. 4 of s. 151, of R.S.O. 1897, c. 203, makes it applicable to any contract of insurance or declaration made before the passing of the Act.

The judgment will be for a declaration that the plaintiff, subject to payment of the defendant's costs, is entitled to be paid the money due and payable under the policy in question, and that the paper called the assignment has been effectually revoked.

Owing to the special facts and circumstances of this case, it is not one for costs to the plaintiff, but is one where the costs of the defendant should be paid out of the money in court. The residue of the money will be paid out to the plaintiff.

W. E. Middleton, K.C., and *J. M. Best*, for the plaintiff. *W. Proudfoot*, K.C., and *F. Holmested*, for the defendant.

Divisional Court.] BRENNAN *v.* CAMERON. [Feb. 2.

Foreign judgment—Action on—Defence—Foreign court not having jurisdiction over defendants—Domicil—Judgment of court of another province of Canada.

Appeal by the defendants from the judgment of TEETZEL, J., in favour of the plaintiff in an action upon a judgment recovered by the plaintiff in the Supreme Court of British Columbia, on the 9th June, 1908, against the defendants for $1,014.19 debt and $45.63 costs.

The defendant D. H. Cameron was a person of unsound mind, and the defendant O'Heir was duly appointed his committee, and as such defended this action.

The defence relied upon was that the Supreme Court of British Columbia had no jurisdiction in respect of the subject-matter of the action in which the judgment was obtained, as the defendants were not at any time in the course of the action subjects of or resident or domiciled in the Province of British Columbia, and they did not appear or consent to jurisdiction; that the cause of action, if any, did not arise in British Columbia; and that the cause of action, if any, upon which the judgment was recovered, was marred by the Statute of Limitations in force in Ontario, where the defendants resided.

The judgment was proved by an exemplification, and, with the formal judgment, all the papers, including writ, order for substitutional service, etc., were before the court.

It was admitted that the defendants had resided in Ontario for 10 years.

The trial judge found in favour of the plaintiff for the amount of the British Columbia judgment and costs.

The judgment of the court was delivered by BRITTON, J., who, after stating the facts as above, referred to *Manning* v. *Scott*, 17 C.P. 606; *North* v. *Fisher*, 6 O.R. 206, and proceeded:—

In addition to what is disclosed by the papers in the action in British Columbia, the plaintiff gave evidence that his judgment was for $500, money lent. It was the same $500 for which the first judgment was recovered in British Columbia.

The authorities, I think, clearly establish that this plaintiff, in bringing his action in Ontario now, is in no better position bringing it upon the judgment recovered on the 9th June, 1908, than he would be if he brought it upon his judgment recovered on the 2nd August, 1889, or if he brought it upon his original cause of action, viz., for money lent.

(Reference to *Sirdar Gurdyal Singh* v. *Rajah of Faridkote* (1894) A.C. 670; *Emanuel* v. *Symon* (1908) 1 Q.B. 302; *Vezina* v. *Will H. Newsome Co.*, 14 O.L.R. 658.)

In this case it may be said, as it was in the *Vezina* case, at p. 664, that "the binding effect of the judgment sued on must, therefore, depend upon the rules of international law"; and, the appellants here not having been domiciled or resident in British Columbia when served with the writ of summons, the judgment must be treated in the courts of this province as a nullity.

Appeal allowed with costs and action dismissed with costs.

A. O'Heir, for the defendants. *H. Arrell*, for the plaintiff.

Boyd, C.] RE MCKAY *v.* CLARE.

Division courts—Jurisdiction—Splitting cause of action—Money lent—Separate loans.

Motion by the defendant for prohibition to the Seventh Division Court in the county of Essex.

On the 3rd September, 1909, the plaintiff lent $20 to the defendant at Fort Erie on a promise to repay it in a short time. On the 16th September the defendant wrote from Montreal asking a further loan from the plaintiff, and this was responded to by sending a cheque for $50. On the 25th September the parties met in Toronto, and another loan of $50 was made to the defendant. The defendant made another application from Hamilton to the plaintiff, who lived in Toronto, in consequence of which a cheque for $25 was given to the defendant. On the 2nd October they met in Hamilton and another loan of $25 followed.

The plaintiff brought two actions in the Division Court, one for the first two sums lent, amounting to $70; the other for the remaining $100.

The cases went to trial, and the evidence of the plaintiff was that each of the amounts advanced was a separate and distinct loan, without any reference to any further advance or loan of any kind, and upon the defendant's promise to pay in each instance, and with an offer to give his several promissory notes for each sum if desired.

The defendant objected to the jurisdiction, on the ground that the whole was one transaction, suable as one cause of action for money lent and could not be split into two actions: Division Courts Act, R.S.O. 1897, c. 60, s. 79.

The objection was overruled, and judgment entered for the plaintiff in both cases.

The motion for prohibition was on the same ground.

The Chancellor referred to *Re Gordon* v. *O'Brien*, 11 P.R. 287, 294; *Re Clark* v. *Barber*, 26 O.R. 47; *Re McDonald* v. *Dowdall*, 28 O.R. 212; *Re Real Estate Loan Co.* v. *Guardhouse*, 29 O.R. 602; *Re Bell* v. *Bell*, 26 O.R. 123, 601; and said that the present case stood clearly apart from those cited, which were decisions on causes of action arising out of one controlling contract. The same idea of connection or continuity exists where liabilities are incurred in a series of dealing which are linked together, in this sense that each dealing is not intended to terminate with itself but to be continuous, so that one item shall go with the next item and so form one entire demand. But such

is not the case here, according to the evidence and finding of the judge. These claims, while similar in character, are yet for moneys lent as distinct loans at different times and places, but pursuant to a course of dealing, and not necessarily to be massed en bloc for the purpose of litigation.

The present case is within the authority of *Rex* v. *Herefordshire*, 1 B. & Ad. 672. See *Harvey* v. *McPherson*, 6 O.L.R. 60.

Application refused with costs.

Frank McCarthy, for the defendant. *J. T. White*, for the plaintiff.

Master in Chambers.] [Feb. 7.

CANADA CARRIAGE CO. *v.* DOWN.

Venue—Change—County Court.

Upon motion of the defendants, an order was made transferring the action from the County Court of York to the County Court of Perth. The action was for the price of a waggon made by the plaintiffs, who carried on business at Brockville, and sent to the defendants at Stratford. The Master thought it would be reasonable to have the trial at Stratford, where the waggon could be inspected by the judge and witnesses. Costs in the cause.

H. E. Rose, K.C., for the defendants. *Mervil Macdonald*, for the plaintiffs.

Master in Chambers.] [Feb. 9.

STIDWELL *v.* TOWNSHIP OF NORTH DORCHESTER.

Venue—Change—Expense.

Motion by defendants to change the venue from St. Thomas to London. The Master held that, with an hourly electric service between the two cities, there would scarcely be any substantial difference in cost; and pointed out that a successful defendant can always apply to the trial judge for a direction as to the taxation of the costs of the witnesses if it appears that the costs have been materially increased by the trial being at the place chosen by the plaintiff. Motion refused; costs in the cause.

H. S. White, for the defendant. *J. F. Lash*, for the plaintiff.

Mulock, C.J. Ex.D.] [Feb. 9.

RE NIAGARA FALLS HEATING AND SUPPLY CO.

Company—Winding-up—Contributory—Shares illegally issued at half price—Liability of subscriber for balance of price—Conduct—Receipt of dividend—Estoppel.

Appeal by J. G. Cadham and others from the report of the local Master at Welland, who placed the appellants upon the list of contributories of the company, in liquidation under the Winding-up Act.

The evidence shews that Cadham agreed to subscribe for four shares of $50 each in the capital stock of the company, and upon the 17th September, 1906, paid $200 to the company for eight shares. Thereupon the company issued and delivered to him a certificate, bearing date the 14th September, 1906, to the effect that he was the owner of eight shares of $50 each in the capital stock of the company. This certificate he accepted and gave to the company a receipt therefor in the following words: "Received certificate No. 28 for eight shares this 17th day of September, 1906. J. G. Cadham." Thereupon Cadham's name was entered in the books of the company as shewing Cadham the holder of eight shares of $50 each.

On the 19th January, 1907, the board of directors ordered that "a four per cent. dividend be paid per annum based on the said report for three months in which business has been done, namely, October 1st to December 31st, 1906." At this time Cadham was treated by the company as being a shareholder to the extent of $400, the year's dividend upon which, at the rate of 4 per cent. per annum, would amount to $16, and, on the 4th of March, 1907, the company issued its cheque of that date upon the Bank of Hamilton, payable to J. G. Cadham or bearer, for $4, the three months' dividend at the rate of 4 per cent. per annum—the body of the cheque containing the word "dividend." This cheque Cadham received and indorsed, obtaining and retaining the proceeds thereof.

How can he be entitled to retain the dividend and at the same time say that he is not the holder of the shares which alone entitle him to the dividend? Although in the first instance he may not have intended to subscribe for eight shares, yet the company having placed his name upon the lists of members to the extent of eight shares, his subsequent conduct is evidence of an agreement upon his part to become such member, and he is now

estopped from denying such membership: *In re Railway Time Tables Publishing Co., Ex p. Sandys,* 42 Ch. D. 112.

T. W. Griffiths, for the contributories. *T. F. Battle,* for the liquidator.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] THE KING *v.* SWEENEY. [Feb. 5.

Constable—Powers to arrest on view—Employment by private corporation—Loitering about streets—Sufficiency of charge—Magistrate—Jurisdiction to try and convict—Town by-law—Variation from statutory provision.

Defendant was arrested by a constable of the town of Glace Bay charged with loitering on the streets of the town after midnight and refusing to go home or get off the streets after having been warned that he was violating the law and that he would be arrested if he persisted in doing so.

Held, that the offence was one for which the constable was justified in arresting without warrant, and that defendant having been lawfully brought before the stipendiary magistrate of the town by arrest, on view it was unnecessary that there should have been any warrant or information to give him jurisdiction to deal with the case.

Also, that the fact of the constable having been employed and paid by a private corporation for the protection of their property did not disqualify him from performing his duty in making the arrest or affect the jurisdiction of the magistrate, who was not called upon to inquire into the authority of the officer, but to sit in judgment upon the offence for which he arrested the accused.

The town council framed a by-law in respect to loitering (among other offences) in which the provisions of the statute were duplicated but a lesser penalty was imposed.

Held, that this fact would not stay the hand of the magistrate, who would be governed by the explicit terms of the statute, and who appeared to have proceeded under the statute and not under the by-law.

Held, also, that the charge as entered by the constable "loiter-

ing about the streets'' was within the words of the statute ''loitering in the streets'' and was not calculated to mislead defendant.

W. B. A. Ritchie, K.C., in support of appeal. *Mellish*, K.C., and *L. A. Lovett*, contra.

Full Court.] McQUARRIE *v.* DUGGAN. [Feb. 5.

Cabman—Lien on passenger's baggage for fare—Master and servant—Right of master to intervene to recover servant's property—Jury—Unreasonable verdict set aside—Opinion of trial judge.

A cabman who undertakes to drive a passenger to his destination is justified in detaining a portion of the passenger's baggage as a means of enforcing payment of his legal fare, but he has no other right than this and where plaintiff having been tendered the legal fare demanded an equal amount for baggage carried which the passenger, defendant's servant, was unable at the moment to pay, but which plaintiff was told would be paid on the return of defendant, who was expected to arrive immediately, and plaintiff was proceeding to carry away a portion of the baggage, and defendant arriving grasped plaintiff's horse by the head and stopped the carriage.

Held, GRAHAM, E.J., dissenting as to facts, that defendant was justified in taking the action he did to regain possession of his servant's property.

Where on the trial of an action claiming damages for assault the jury declined to accept the directions of the trial judge, and disregarding the evidence of defendant and two credible witnesses, by whom he was supported, contradicting plaintiff's statements as to any personal assault, and accepting the evidence of plaintiff, who appeared to have been under the influence of intoxicants at the time, gave their verdict in plaintiff's favour.

Held, that there must be a new trial.

Also, that in such a case the opinion of the trial judge, who has all the parties before him, and is in a position to estimate the credit to be given to them, is of peculiar value.

J. J. Ritchie, K.C., in support of appeal. *W. B. A. Ritchie*, K.C., contra.

Full Court.] CARROLL *v.* DOMINION COAL CO. [Feb. 12.

Deed—Covenant not running with land.

Plaintiff on his own behalf and other heirs of C. conveyed to the Low Point, Barrsois and Lingan Mining Co., a certain lot piece or parcel of land described in the deed subject to certain reservations, provisoes, conditions and covenants to be performed and kept by the parties of the second part, their successors and assigns, one of which was that the parties of the second part, their successors, etc., should give or cause to be given annually to the party of the first part and his heirs sixty tons of slack coal for the benefit and use of the heirs of C.

The Low Point Co. conveyed the land described in the deed to the defendant company.

Held, that the covenant in relation to the supply of coal was not one running with the land, but was merely personal or collateral and was not binding upon the defendant company.

J. J. Ritchie, K.C., in support of appeal. *L. A. Lovett,* K.C., contra.

Full Court.] CROWE *v.* GOUGH. [Feb. 12.

Sale of goods—Breach of contract—Failure to prove damage.

Defendant contracted to purchase from plaintiff tobaccos to the amount of $300 per week of such brands as plaintiff should have in stock at prices mentioned in a schedule delivered to defendant at the time of the making of the agreement.

Defendant failed to carry out his undertaking by purchasing to the amount agreed and finally ceased buying altogether.

Held, that the judge of the County Court erred in assessing damages for an estimated loss of profit that would have been earned by plaintiff if defendant had carried out his contract, in the absence of evidence to shew that plaintiff suffered any loss by reason thereof.

Per TOWNSHEND, C.J.:—On principle plaintiff was entitled to recover more than nominal damages, but in the absence of evidence to shew exactly what the damage was, it was impossible to allow the amount assessed by the County Court judge.

Per MEAGHER, J.:—There was a breach every time defendant failed to take goods according to contract and there was room for the contention that inasmuch as the terms of the contract required plaintiff to keep goods on hand, he would be entitled to

damages in the nature of interest upon the value of the stock he was obliged to keep on hand to meet the terms of the agreement.

Murphy, in support of appeal. *Russell*, contra.

Full Court.] THE KING *v.* QUIRK. [Feb. 12.

Intoxicating liquors—Sale to minor—Owner of premises—Liability for act of servant contrary to instructions—Conviction restored.

The Nova Scotia Liquor License Act, R.S. 1900, c. 100, s. 62, provides that a licensee shall not give, supply or furnish, or allow to be given, supplied or furnished, in or upon his licensed premises, any description of liquor to any minor, and every licensee who gives, supplies or furnishes any liquor to any minor in contravention of this section shall be liable, etc.

Defendant was convicted by the stipendiary magistrate of a violation of this section of the Act, but the conviction was set aside on appeal to the County Court on the ground that it appeared from the evidence that the liquor in question was supplied by one of defendant's employees without defendant's knowledge and contrary to his instructions.

Held, reversing the judgment of the County Court judge and restoring the conviction that the section of the Act is an absolute prohibition in the interests of the public to prevent the sale or supply of liquor to minors and that the act of the servant being within the scope of his duty, defendant was liable to the penalty provided by the Act, notwithstanding the fact that the servant acted without defendant's knowledge and in violation of his instructions.

Meagher, in support of appeal. *J. J. Ritchie*, K.C., contra.

Full Court.] [Feb. 12.

MATTHEWS *v.* CANADIAN EXPRESS CO.

Carriers—Perishable article—Loss through unavoidable delay—Evidence—Findings of jury set aside—New trial.

Defendants, an express company, undertook to forward a quantity of fresh fish for plaintiffs from Port Mulgrave, in the Province of Nova Scotia, to New York, and the evidence shewed that defendants spared no effort to have the fish forwarded with all possible despatch, but on account of the journals of the car, upon which they were placed, heating, the car was delayed at two

points, and when the fish arrived at their destination they were spoiled, and that the accident which caused the delay was one which could not have been avoided.

Held, that the trial judge erred in not submitting to the jury questions tendered on behalf of defendants and intended to secure the finding of the jury as to where the defendants were negligent or failed in their undertaking, such finding being material to the decision of the case.

The jury found in answer to the only question submitted that defendant company did not deliver the fish within a reasonable time, looking at all the circumstances of the case.

Held, that the latter finding was against the weight of evidence and could not stand and that there must be a new trial.

Mellish, K.C., in support of appeal. *W. B. A. Ritchie,* K.C., and *J. A. Fulton,* contra.

Full Court.] PATTERSON *v.* CAMPBELL. [Feb. 12.

Bills and notes—Statute of Limitations—Payment by surety after statute has run—Does not give right to contribution as against co-surety.

The makers of a joint and several promissory note are joint contractors within the meaning of the Statute of Limitations, R.S. 1900, c. 165, s. 5, and Lord Tenterden's Act and where such a note was entered into by plaintiff and defendant as sureties for C., the principal maker, and the note was dishonoured by C., and was paid by plaintiff after the Statute of Limitations had run as against the payee in favour of plaintiff and his co-surety.

Held, that such payment was voluntary on the part of plaintiff and that he could not by waiving in his own favour the defence of the statute, establish a claim against his co-surety for contribution.

J. J. Ritchie, K.C., in support of appeal. *Mellish,* K.C., contra.

Full Court.] WOODWORTH *v.* LANTZ. [Feb. 12.

Land—Agreement to lease for lumbering purposes—Word "belonging"—Title acquired subsequentl, —Representations—Estoppel.

Plaintiff entered into an agreement in writing with defendant to lease to defendant for the term of fifteen years, for

lumbering purposes all the timberland and woodland "belonging" to plaintiff at A. At the time of the making of the agreement plaintiff represented to defendant that he was the owner of the whole block of land referred to and defendant acted upon that representation, the fact being that the title to a portion of the block was in the Crown, although plaintiff was in occupation, and, by virtue of such occupation, had a prior right to a grant as against other applicants. Plaintiff subsequently applied for and obtained a grant of the portion of the land previously ungranted.

Held, that he was precluded from saying that the whole block, including the disputed area, did not belong to him.

Per GRAHAM, E.J.:—When plaintiff obtained the grant from the Crown he became trustee for defendant of the title and must include it in his lease.

Mellish, K.C., and *Whitman*, in support of appeal. *W. B. A. Ritchie*, K.C., and *H. B. Stairs*, contra.

Russell, J.] ADAMS *v.* SLAUGHENWHITE. [Feb. 24.

Collection Act—Provisions not applicable to married women.

The damages recoverable from a married woman in respect of her contracts are payable only out of her separate property and not otherwise (R.S. 1900, c. 112), and therefore she is not a debtor within the meaning of R.S. 1900, c. 182, the Collection Act and the provisions of that statute are not applicable to her.

Held, that a motion for a writ of prohibition to restrain a commissioner from proceeding with the examination of a married woman under the Collection Act must be allowed.

Meagher, in support of application. *Russell*, contra.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] SIMPSON *v.* DOMINION BANK. [Jan. 17.

Husband and wife—Married woman's separate property—Interpleader—Estoppel.

Interpleader issue between an execution creditor and the wife of the judgment debtor as to the ownership of horses and cattle.

The evidence shewed that the wife had money of her own before she married, that with that money she, after the marriage, bought cattle, that she exchanged part of the increase of these cattle for other cattle and for horses, and that in that way, between purchases, exchange and increase, she had acquired the animals in question.

The evidence also shewed, however, certain isolated instances of the husband dealing with some of these animals, amongst others he had given a chattel mortgage on some of them with the wife's consent.

Held, that the wife was entitled to a verdict upon such evidence, and there would be no estoppel as against her except in favour of the chattel mortgagee.

Haffner v. *McDermott,* K.B., Manitoba, unreported, followed.

Fullerton, for plaintiff. *Haffner,* for defendants.

Full Court.] TETT *v.* BAILEY SUPPLY CO. [Jan. 17.

Adjournment of trial by judge mero motu to admit further evidence—Judicial discretion.

When, at the trial of an action in a County Court, both parties have put in all their evidence, and the judge comes to a conclusion as to the proper verdict to be rendered, it is not a proper exercise of judicial discretion, under s. 131 of the County Courts Act, R.S.M. 1902, c. 38, for him of his own motion, without an application by either party or any suggestion as to further evidence being available, to postpone the giving of judgment to allow either party to put in further evidence, and the Court of Appeal will, in such a case, order that judgment be entered in the County Court in accordance with the conclusion arrived at by the trial judge, subject to all rights of parties as if it had been so entered originally by his direction.

Bergman, for plaintiff. *Noel Bernier,* for defendant.

Bench and Bar.

THE LAW SOCIETY OF ALBERTA.

The following is a summary of the proceedings of the fifth convocation held at Edmonton on the 11th and 12th days of January, 1910:—

Present—James Muir, K.C. (President); C. F. P. Conybeare, K.C. (Vice-President); W. L. Walsh, K.C.; J. C. F. Bown, K.C.; D. G. White, Geo. W. Greene, O. M. Biggar and E. P. McNeill.

The usual number of communications, matters of discipline and special petitions were received and referred to the proper committees for consideration and recommendations.

The secretary-treasurer presented his balance sheet for the half year ending December 31st, 1909, properly audited, together with statement of assets and liabilities.

The solicitor of the society reported on matters of discipline which he had dealt with since his last report and on his work as editor and examiner for the same period.

Several matters of reporting and discipline having been considered by the committee on reporting, printing and discipline, it was resolved that the recommendations of the committee be concurred in.

The examining and legislation committee reported on a number of petitions for special relief, for enrolment and relating to other matters, and same were dealt with in accordance with committee's report. On this committee's report a memorial from the benchers was ordered to be forwarded to the Attorney-General bringing to his attention the necessity for bringing into force at the earliest possible day the legislation respecting the sixth judge of the Supreme Court and that such judge should, upon his appointment, be stationed at Calgary in order that the great volume of business required to be done there, particularly in judges' chambers, might be transacted as speedily and easily as possible.

The report of the finance and library committee was also received and adopted with some amendments. This report covered the estimate of the receipts and probable expenditures for the first six months of 1910 and made grants for the addition of new text books for the law libraries throughout the province.

The special committee appointed at July, 1909 Convocation, to meet a committee of the senate of the University of Alberta for

the purpose of considering joint arrangements in regard to legal education, brought in its report, which was adopted. It contained the following recommendations:—

1. That the standard of admission as a student-at-law should be raised from ordinary to senior matriculation on and after January 1st, 1911.

2. That applicants for admission as students-at-law who have second year standing at the University of Alberta, should be required to serve under articles during only four years instead of five.

3. That the examinations of law students both intermediate and final, prescribed for admission to the bar, should be held by the University of Alberta, it being understood that the Law Society obtain representation upon the senate.

4. That the university should, as soon as possible, undertake the provision of lectures in legal subjects.

The special committee was re-appointed to settle a draft contract with the university along the lines of this report and to submit the same to next convocation.

Report of a special committee appointed to draft an amendment to the rules providing for admission of practitioners from points outside of His Majesty's dominions, recommended that rule 44c. be repealed and the following substituted:—

> 44c. "Any person being a qualified legal practitioner of a foreign country may be enrolled as a student-at-law upon payment of the fee prescribed for enrolment and upon satisfying the examining and legislation committee as to his standing on the law list of such foreign country and upon entering into articles of clerkship with a member of this society for a period of three years and shall thereafter be admitted as a barrister and solicitor upon furnishing satisfactory evidence as to his character and of service under such articles, and upon passing the final examination and upon payment of the fee imposed upon a student for admission to the bar."

A largely signed petition from members of the society dealing with recent amendments to rule 35a was received, and after consideration the following resolution was adopted:

> That convocation has carefully considered the petition of R. B. Bennett, K.C., and others, but finds it impossible to agree with the petitioners that the rules of the society be so framed as to make it possible for students to escape from the requirements of actual practical service in a law office, so

as to reduce his practical experience to less than the period of three years, but considers that pending satisfactory provision being made for academic legal education in this province a matriculant student might be permitted at any time during his term of service to spend two years continuously at one of the law schools approved by the examining and legislation committee for that purpose, that the time spent at such law school, as shown by proper certificates, might be allowed as part of his term of service, and that rules conflicting with this resolution should be amended accordingly, and that the examining and legislation committee shall have power to deal with pending and future applications to convocation in accordance with the terms of this resolution.

The following rule was adopted as a rule of the society:

(1) *No member of the society shall either on his own behalf or on behalf of any other person, request or canvass votes at any election of benchers or give any notice to any person that he, or any other person is a candidate at such election.*

(2) No distinction shall be made between retiring benchers and other members of the society in any list of members eligible to vote at any election of benchers and no list of retiring benchers shall be given by the secretary at or before such election.

(3) A copy of this rule shall be forwarded with his voting paper to each member of the society eligible to vote.

The secretary was instructed to suggest to the Attorney-General and the Minister of Public Works the desirability of utilizing any available space at the new Land Titles Office at Calgary to relieve the congestion at present existing in the offices of the clerks of the Supreme and District Courts at Calgary.

Rule 14 of the society was repealed.

Convocation then adjourned to meet at Red Deer on Tuesday, 28th June, 1910, at 2 p.m.

Book Reviews.

Butterworth's Yearly Digest. London: Butterworth & Co. 1910.

This digest contains the reported cases decided in England and includes a copious selection of cases decided in the Irish and Scotch courts for the year 1909. It is the second annual supplement of Butterworth's valuable Ten Years' Digest.

Saskatchewan Law Reports. Editor: ALEXANDER ROSS, Regina. Toronto: Canada Law Book Company, Limited.

Parts 1 and 2 of Vol. II. have recently been issued. This series of Reports, which is ably edited by Mr. Alexander Ross, of Regina, follows the general style of the Ontario Law Reports, and the printing, paper and make-up reflects credit alike on editor and publishers.

O'Brien's Conveyancer. 4th edition. By A. H. O'BRIEN, M.A. Toronto: Canada Law Book Company, Limited. 1910.

The fact that a fourth edition of this work has been called for is eloquent testimony to its popularity and usefulness. Each successive edition has been a distinct advance on the preceding one. The new edition is no exception and contains practically all the forms that are required in conveyancing practice.

Canada Law Journal. Vol. XLV.

The completed volume for 1909 contains an unusual number of special articles dealing with subjects of present interest and importance. The review of current English cases, which is full and complete, is alone worth the subscription price. On the whole, the present volume maintains the high level which is a distinguishing feature of the oldest legal publication in Canada.

Butterworth's Workmen's Compensation Cases. Vol. II., new series. By HIS HONOUR JUDGE RUEGG, K.C., and DOUGLAS KNOCKER, of the Middle Temple, Barrister-at-law. London: Butterworth & Co. 1910.

This new series of reports is a continuation of "Workmen's Compensation Cases" edited by the late R. M. Minton-Senhouse, which consists of nine volumes. The present volume, being the second of the new series, contains reports of cases decided under the Workmen's Compensation Acts during the period from September, 1908, to September, 1909. It contains also a table of cases reported in the nine volumes of the old series and of the cases reported in Vols. I. and II. of the new series. It is needless to point out the great utility of these reports. They deal with a branch of law that is of growing importance in every industrial community, and the names of the editors are a sufficient guarantee of their trustworthiness.

Canadian Criminal Cases. Vol. XIV. By W. J. TREMEEAR. Toronto: Canada Law Book Company, Limited.

The Canadian Criminal Cases form the Canadian counterpart of Cox's Criminal Cases in England, and has won an enviable reputation both in Canada and the United States. As an aid to criminal practice, the series is indispensable. The present volume contains reports of the important decisions of all the Canadian courts during the past year.

The Law of Merchandise Marks. By D. M. KERLEY, M.A., Third edition by F. G. UNDERHAYE, M.A. London: Sweet & Maxwell, Limited, 3 Chancery Lane, W.C. 1909.

Included in this is the criminal law of false marking, with a chapter on warranty of trade marks and a collection of statutory general orders and forms. The law on this subject was formerly included in Kerley on Trade Marks, but it has been found more convenient to have the two subjects treated separately. The cases on the subject in our own courts are not numerous, but any one who has to look into this edition by Mr. Underhaye will find it invaluable.

Flotsam and Jetsam.

It was a clever lawyer in a Boston court recently who took advantage of the nautical knowledge he possessed to work upon the mind of a juryman who did not seem to shew much comprehension of a case of suing a street railway for damages.

The dull member was an old sailor, who, though doubtless very keen of perception along some lines, was, nevertheless, rather slow in his understanding of the points involved in the case being tried. The lawyer noticed this and made his strike with this particular man. Approaching the jury box he addressed himself to this one juryman and said:—

"Mr. Juryman, I will tell you how it happened. The plaintiff was in command of the outward bound open car, and stood in her starboard channels. Along came the inward-bound closed car and just as their bows met she jumped the track, sheered to port, and knocked the plaintiff off and ran over him."

The sailor was all attention after this version of the affair, and joined in a $5,000 verdict for the injured man.—*Gloucester (Mass.) Times.*