Canada Law Journal.

VOL. XXIII. OCTOBER 15, 1887. No. 18.

DIARY FOR OCTOBER.

15. Sat.....C. C. York, term ends. English law introduced into Upper Canada, 1792.
16. Sun.....19*th Sunday after Trinity.*
21. Fri.....Battle of Trafalgar, 1805.
23. Sun.....20*th Sunday after Trinity.* Lord Lansdowne Governor-General, 1883.
25. Tues....Primary Examinations for Students and Articled Clerks, University Grads. and Matics. seeking admission to Law Society to present papers. Sittings of Supreme Court Canada begin.
29. Sat. .....Last day for filing papers for call or admission.
30. Sun.....21*st Sunday after Trinity.*

TORONTO, OCTOBER 15, 1887.

THE vacancy on the Ontario Bench still continues. The difficulty of finding men in the front rank of the profession willing to leave the Bar for the Bench is a growing one. It will be a great evil when the opinions of leading counsel command more confidence than those of judges to whom is of course given the right of decision; and that time is fast approaching—in fact, in the opinion of many, has to a certain extent already arrived.

THE Blackstone Publishing Company of Philadelphia are continuing to issue their excellent series of Text Books with promptitude, and in the same excellent style in which they commenced. The books already issued are "Smith on Master and Servant," "Challis on Real Estate," "DeCollyar on Guarantees," "Smith on Negligence," "Blackburn on Sales," "Pollock on Torts," "Taylor on Evidence," Vols. 1 & 2. As their advertisement announces, this series will constitute in itself a complete collection of the freshest, most authoritative and the most valuable text books in the leading departments of law. Even the jocular is not forgotten, as witness the last two lines of the index in Mr. Taylor's most readable as well as most learned book:

ZEAL, danger of relying on.....75, etc.
Proof of indomitable, in illustrating this branch of the law.....*infra-passim*.

A WESTERN paper gets off rather a clever hit in reference to a mode of enforcing municipal regulations more common in the United States than in the Mother Country or in this Dominion. Thus:—

"Did you hear the sad news about Jinks?" asked Gus Snobberly of Charlie Knickerbocker. "No; what is it?" "He was drowned while rowing a boat in Central Park." "Couldn't he swim?" "That wouldn't have made any difference. Swimming in Central Park is strictly prohibited, and the park police enforce the law, you know. If he had tried to swim he would have been clubbed t death."

A natural concatenation of ideas takes one's thoughts to the state of things at present existing in Ireland. If the blatant nonsense preached by Irish demagogues as to non-payment of rent and their rascally incitements to murder and license were indulged in America, we venture to say that the authorities would soon initiate a "clubbing" process that would, in a very short time, knock some knowledge of *meum et tuum* into the heads of the malcontents. The views of the American citizen (not however expressed when a presidential election is on hand) are very similar to those attributed to Oliver Cromwell on the Irish question. The people—a generous and intelligent race—are good enough if left to themselves; but unhappily for themselves and their neighbours they are not. A stout rope and a "sour apple tree" for those who are leaders in the ruin of their country and for some of their English sympathizers would be the western, and possibly an effective mode of abating the nuisance.

BENCH AND BAR.

It is not undesirable to call attention from time to time to the legal action that members of the profession are in a sense officers of the courts in which they plead or practise. In no better way can the dignity of the courts or the proper administration of justice be upheld than by barristers and solicitors putting this theory into practice. Our namesake in England thus refers to some incidents related to this subject:—

"The reputation of the bar in England, Ireland and Scotland is affected by its degradation in any one of the sister countries, in each of which a similar organization and the same principles of professional conduct prevail. The legal profession in England cannot be indifferent to such spectacles as that presented in the coroner's court at Mitchelstown. A barrister in such a court is more than ordinarily on his honour in point of forbearance and candour because the court has imperfect powers of controlling him and the judge has frequently no great forensic experience; but we find at Mitchelstown the words 'scoundrel, villain, ruffian, and murderer,' addressed to a witness. The processes of intimidation perfected outside are brought into courts of law, and the barrister, an officer of justice, is made the instrument of frightening or attempting to frighten witnesses from speaking the truth, which it is his duty to ensure that they shall speak. The English bar is not altogether blameless in this matter. Topics are sometimes introduced in cross-examination, the only object of which is to give pain and obstruct justice; but the profession on this side of the Channel cannot but view with concern the prospect of the wig and gown in another part of the United Kingdom being used to cover the purposes of a political organization, of whatever colour it may be."

JUSTICES OF THE PEACE AND POLICE MAGISTRATES.

A case of some interest to the public, and to those concerned in the administration of justice, has recently been decided by the Judge of the County Court of York.

It is provided by the Revised Statutes of Ontario, cap. 72, sec. 6, that no Justice of the Peace shall act in cities and towns where there is a Police Magistrate, except during the absence or illness of such Police Magistrate or without his written request. During the absence of the Police Magistrate of the city of Toronto a woman named Seymour was charged with keeping a house of ill-fame, and was tried before two Justices of the Peace for the city, convicted and sentenced to six months in the Mercer Reformatory. From this decision the prisoner appealed to the General Sessions of the Peace. The appeal was heard before His Honor Judge McDougall and a jury. The jury confirmed the conviction, but the learned judge reserved sentence to consider points of law which had been raised by the prisoner's counsel. At the close of the case for the prosecution, counsel for the prisoner asked that the conviction should be quashed without going to the jury, on the grounds

1st. That there was a Police Magistrate for the city of Toronto.

2nd. That it did not appear upon the information, conviction or evidence that the Police Magistrate of the city of Toronto was ill or absent, or that the convicting justices were acting on his written request.

3rd. That the conviction could not be amended by inserting the fact that the Police Magistrate was absent.

The learned judge held that the objections were well taken and discharged the prisoner, quashing the conviction, but not giving costs to the prisoner on account of

the verdict of the jury sustaining the finding of the magistrate on the facts.

It is to be deduced from this decision that where Justices act during the absence or illness of a Police Magistrate, or at his written request, the fact of such absence, illness or request should appear on the information and conviction.

LAW SOCIETY.

TRINITY TERM, 1887.

The following is a *résumé* of the proceedings of Convocation during Trinity Term, 1887:—

The following gentlemen were called to the Bar during Trinity Term, 1887, viz.:

September 5th.—John Healy Reeves, William Louis Scott, James Alfred Mills, Edward James Barrow Duncan, Alfred William Lane, George Somerville Wilgress, John Mercer McWhinney, James McGregor Young, Wesley Byron Lawson, Ernest Heaton, Frank Meade Field, Edward Augustus Wismer, John Alexander Davidson, James Morris Balderson, Henry Edward Ridley, Joseph Hetherington Bowes, John Ross Shaw, John McKay, Alexander Claude Forster Boulton.

September 10th.—Norman McDonald, Neil McCrimmion.

September 16th.—Thomas Cowper Robinette, John Dawson Montgomery, Theodore Augustus McGillivray.

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

September 5th.—W. F. Johnston, J. H. Reeves, J. M. Balderson, A. W. Fraser, T. C. Robinette, J. H. Bowes, D. G. Marshall, W. L. Scott, J. D. Montgomery, J. M. Young, C. R. Boulton, T. A. McGillivray, N. McCrimmion, A. J. Arnold, J. A. Page, J. W. Bennett, C. H. Brydges, D. D. Grierson, F. F. Lemieux, H. O. E. Pratt, J. D. O'Neill, J. P. Eastwood, A. W. Lane, E. H. Ambrose.

September 6th.—J. R. Haney, G. W. Green, G. F. Henderson J. A. Mills, M. A. Everetts, J. McKay, H. E. Ridley, W. B. Lawson, J. H. Jacks.

September 10th.—N. McDonald, W. H. Hearst, J. E. Halliwell.

September 16th.—O. M. Jones, J. M. McWhinney.

The following gentleman passed the First Intermediate Examination, viz.:—

D. A. McKillop, with honors and first scholarship, R. M. Grahame, with honors and second scholarship, A. E. Lussier, with honors and third scholarship, A. Weir with honors; and Messrs. H. Armstrong, S. H. Brooke, H. W. Lawlor, W. H. Irving, P. H. Bartlett, G. A. Jordan, G. Ross, J. P. Dunlop, B. N. Davis, J. F. Keith, J. H. Cooper, J. Greenizen, G. E. K. Cross, W. J. Hanna, E. N. R. Burns, A. C. Patterson, F. M. Young, S. B. Arnold, W. G. Green, C. Murphy, A. W. Macdougauld, G. C. Hart, A. Henderson, J. Knowles, G. J. Smith, H. P. Thomas, J. W. Blair, T. W. R. McRae, E. G. P. Pickup, A. Purdom, J. W. Roswell.

The following gentlemen passed the Second Intermediate Examination, viz.:—

S. A. Henderson, with honors and first scholarship, C. Kemp, with honors and second scholarship, W. H. Williams, with honors and third scholarship, H. H. Johnston, F. Reid with honors; and Messrs. W. Mundell, A. B. Thompson, H. B. Witton, E. H. Johnston, J. B. Davidson, F. H. Sangster, S. W. Perry, A. E. K. Greer, I. B. McColl, A. L. Baird, W. F. Bannerman, A. W. Burk, C. D. MacCaulay, H. Holman, W. A. Chisholm, F. B. Fetherstonhaugh, A. F. Lobb, M. F. Muir, T. Graham, J. S. Walker.

The following candidates were admitted as Students-at-Law, viz.:—

Graduates.

A. G. Mackay, T. G. A. Wright, W. A. Cameron, A. Abbott, H. A. Aikins, A. J. Armstrong, E. Bayley, H. Carpenter, J. A. Ferguson, C. Fraser, J. J. Hughes, A. J. Keeler, A. H. Nesbitt, E. B. Ryckman, A. G. Smith, H. E. Stone, J. A. Taylor, R. B. Matheson, C. W. Williams.

Matriculants.

D. Ferguson, W. E. Gundy, A. T. Hunter, W. J. Harvey, L. G. McCarthy, M. H. McLaughlin, J. Kerr.

Juniors.

T. C. Thomson, J. O. Dromgole, B. S.

Lefroy, C. S. Leitch, A. B. Fry, A. Bicknell, J. B. Quinton, P. Sherwood, J. Isbister, W. J. Elliott, G. G. Duncan, N. Jeffrey, F. T. Costello, G. M. Vance, G. S. Macdonald, H. E. C. Stoney, G. A. Sayer, A. S. Macdonell, J. B. Ferguson, G. E. Watterworth, W. H. Grant, W. D. Card, F. G. Evans, H. F. MacLeod.

MONDAY, 5TH SEPTEMBER.

Convocation met.

Present—Messrs S. H. Blake, Falconbridge, Ferguson, Foy, Hoskin, Irving, Lash, Mackelcan, Maclennan, Morris, Moss, Osler.

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

The minutes of last meeting were read and approved.

Mr. Moss, from the Committee on Legal Education, presented a report on the case of Mr. W. E. Kelly, which was adopted.

A letter was read from Miss Ann Dolan, of Ohio, complaining of the conduct of a barrister and solicitor.

The letter was referred to the Committee on Discipline to report whether there was a *prima facie* case.

Ordered, That the Secretary be instructed to telegraph to Lord Herschell as follows:—

"The Benchers of the Law Society, on behalf of the Bar of Ontario, request the pleasure of Lord Herschell's company at dinner at Toronto on such day as he may name."

And that Messrs. Falconbridge, Irving, Kerr, Lash, McCarthy, Mackelcan, Maclennan and Murray be a committee to confer with the members of the Bar on the subject and to make all necessary arrangements—the committee to have power to add to their number.

The Secretary reported a verbal message from Mr. Tully, the Government architect, in reference to painting the east wing. Referred to the Finance Committee with power to act.

TUESDAY, 6TH SEPTEMBER.

Convocation met.

Present—Messrs. Beaty, Bruce, Falconbridge, Ferguson, Hoskin, Irving, Lash, Maclennan, Martin, Moss.

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

The minutes of last meeting were read and approved.

Mr. Hoskin, from the Committee on Discipline, reported in the matter of the complaint of Mr. Reynolds, that a *prima facie* case had not been shown.

The report was received, considered and adopted.

Mr. Moss, from the Committee on Legal Education, reported in the matter of J. R. Haney, recommending that the Certificate of Fitness, which had been signed in 1881 by the Treasurer, should be delivered to Mr. Haney.

The report was adopted, and it was ordered accordingly.

The petition of S. A. Henderson, J. Kyles, T. Walmsley and H. E. Irwin, respecting their admission to the Law Society as B. A.'s of Toronto University, was read and referred to the Legal Education Committee for report.

Mr. Lash, from the Select Committee on Honors and Scholarships, presented their report which was read, and is as follows:—

The committee, to whom was referred the question of honors and scholarships in connection with the First and Second Intermediate Examinations, beg leave to report as follows:—

1. The committee find that Messrs. D. A. McKillop, R. M. Grahame and A. E. Lussier passed the First Intermediate Examination with honors, and that Mr. McKillop is entitled to a scholarship of one hundred dollars; that Mr. Grahame is entitled to a scholarship of sixty dollars, and that Mr. Lussier is entitled to a scholarship of forty dollars.

The committee further find that Messrs S. A. Henderson, C. Kemp, W. H. Williams, H. H. Johnston, and F. Reid passed the Second Intermediate Examination with honors, and that Mr. Henderson is entitled to a scholarship of one hundred dollars, Mr. Kemp to a scholarship of sixty dollars, and Mr. Williams to a scholarship of forty dollars.

That Mr. Mundell obtained the necessary number of marks in the Second Intermediate Examination to entitle him to pass with honors and to be awarded the first scholarship had he been in due course, but owing to the length of time since he entered the Society (viz., Michaelmas Term, 1876), he is not under the rules entitled to be passed with honors, or to be awarded the scholarship.

That Mr. A. Weir obtained in the aggregate of marks for pass and honor examination in the First Intermediate more than three-fourths, but he failed by two marks in obtaining the necessary one-half of the aggregate of the marks in one subject. And under the rule Mr. Weir is not entitled to be passed with honors or to receive the third scholarship to which he would have otherwise been entitled. The committee, however, recommend that he be passed with honors, and receive a diploma in that behalf.

The report was received and adopted, and it was ordered accordingly.

Ordered, That under the circumstances mentioned in the report of the Select Committee, Mr. A. Weir be passed with honors in the First Intermediate Examination, and that he receive the proper diploma in that behalf.

SATURDAY, 10TH SEPTEMBER.

Convocation met.

Present — Messrs. Cameron, Falconbridge, Irving, Mackelcan, Maclennan, McCarthy, McMichael, Morris, Moss, Murray.

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

The minutes of last meeting were read and approved.

The Secretary reported that N. McDonald had completed his papers, and was entitled to be called to the Bar and receive a Certificate of Fitness.

The report was adopted, and ordered accordingly.

The Secretary reported that W. H. Hearst and J. E. Halliwell had completed their papers, and were entitled to Certificates of Fitness.

Ordered, That they receive certificates.

FRIDAY, 16TH SEPTEMBER.

[Subject to confirmation at next meeting of Convocation.]

Convocation met.

Present—The Treasurer and Messrs. Foy, Guthrie, Hardy, Hoskin, Irving, Kerr, Mackelcan, Maclennan, McMichael, Morris, Moss, Murray, Robinson.

The minutes of last meeting were read and approved.

Mr. Moss, from the Committee on Legal Education, reported on the case of O. M. Jones, dealt with by Convocation on the 18th November, 1884, that he had complied with the order, that his papers are regular, and having passed the examination he is entitled to his Certificate of Fitness.

The report was adopted, and it was ordered accordingly.

Mr. Moss, from the same committee, reported on the petition of Messrs. Henderson, Kyles, Walmsley and Irwin, recommending that the prayer be not granted.

The report was ordered for immediate consideration and adopted.

Mr. Maclennan, from the Committee on Reporting, presented their report as follows:—

Your committee have great pleasure in reporting that Mr. Grant's work is in a more satisfactory state than for a long time past. There are now only nineteen un-reported cases of which none are of an older date than May last. All the cases are in print and in the hands of the editor, and seven have been revised.

The work in the other divisions is well up, and it may be said there are no arrears.

There are also no arrears in the Practice Reports.

The Triennial Digest is expected to be in the hands of the profession in about ten days. It will include Volume XII., Ontario Reports, Volume XIII., Appeal Reports, and Volume XI., Practice Reports.

The report was ordered for immediate consideration and adopted.

The petition of W. Mundell was read and received.

Ordered, That it be referred to the Committee on Legal Education to report next Term.

The letter of Lord Herschell was read in reply to the invitation to dinner telegraphed to him on the 5th instant.

The letter of Mr. Justice Patterson on the subject of the rules was read, and ordered to be acknowledged.

The letter of the Secretary was read, and it was ordered that he have a fortnight's leave of absence.

Mr. Kerr reported that the visitors had approved of the new rules in so far as any of them is or are subject to approval or disapproval by the visitors, and laid before Convocation the certificate of approval which is as follows:—

"Approved, so far as any of the foregoing rules is or are subject to approval or disapproval by the visitors.

(Sgd.) "John H. Hagarty, C.J.O.
" "J. A. Boyd, C.
" "Thomas Galt, J.
" "John O'Connor, J.
" "Thomas Ferguson, J.
" "F. Osler, J.A.
" "John E. Rose, J."

Ordered, That the certificate be preserved of record.

Mr. Kerr moved that the rules as ap-

proved by the visitors be read the first time. Carried unanimously.

Mr. Kerr moved that the new rules be read a second and third time and passed. Carried unanimously.

Mr. Kerr reported that pursuant to instructions he had caused an index to be prepared, and the question of remuneration was ordered to be referred to the Finance Committee.

Ordered, That an edition of 1,000 copies with the index be printed.

Convocation adjourned.

SELECTIONS.

THE LAW OF RESISTANCE TO THE POLICE.

On September 14, in the House of Lords, in the conversation on the murder of Head-Constable Whelehan, Lord Bramwell said: His justification for rising to address their lordships was this. Supposing a case in which the police were in the wrong—interfering and doing things which they had no right to do. In the presence of lawyers, who he was sure would not contradict him, he said it was unlawful to resist them by beating them, or throwing stones at them, by charging them with horses, or in any other way than by as peaceful and pacific resistance as could possibly be shown. After the police had left the scene of the disturbance the notion that they were to be chased and pelted and beaten when on the ground was to suppose a condition of the law which was utterly untrue. In such a case as that the police had a right to resist with extreme measures. He was anxious not to be misrepresented. He did not say that if a stone was thrown at a policeman he had a right to fire on the person who threw it. He had no such right; but if his life was imperilled from continued stone throwing and manifestations of violence—if he did not know but what his life would be sacrificed, or the lives of his comrades lying disabled on the ground—he then said that there was no doubt the policemen had a right to resist the people, even to the extent of taking the lives of those committing the illegality. It was desirable that this should be known, and he challenged any one to deny that it was the law.

Lord Bramwell's challenge was taken up by Mr. Christopher Page Deane, who wrote: "Lord Bramwell maintains that opposition to a wrongdoing policeman must be only passive and pacific. I do not know where he would draw the line between this rule and the exceptions he must make to it in order to reconcile his doctrine with common sense. I will put two cases, which he might say are exceptional—*e.g.*, a policeman endeavouring to commit a murder or a rape. In these the victim of the attempt is justified in unlimited resistance, even to the extent of homicide. To come down to a more ordinary level, if policemen attempt to search my house without a warrant, my resistance is not limited to that which is passive and pacific. I claim full liberty to use all such force and means as may be requisite to expel any policeman in my house on such an errand. Or, again, if I am playing lawn-tennis on a Sunday in my garden, and a fanatical policeman, or half-a-dozen of them, come and forbid me and prevent my playing, I claim that I may in this case also expel them. I cannot conceive a case to which Lord Bramwell's doctrine of passive and pacific resistance to wrongdoing can apply, and I make bold to say he as completely misconceives the law as does Lord Randolph Churchill. No 'divinity doth hedge' a policeman. He is but a guardian of public order, with certain specific powers of applying and enforcing (*e.g.*, by arrest of offenders) those who transgress the laws relating to public order. If he is himself a transgressor the public have an inherent, necessary right to maintain order in spite of him and in opposition to him, to resist force by force, to meet an assault by a counter-assault with a view to disarm the offender. He is merely the deputy of the public. The amount of force which the public is entitled to use in self-defence against wrongdoing policemen is, however, strictly limited to that which is necessary for maintaining order. Throwing stones at them, chasing them from any place where they

have a right to be, beating them after aggression has ceased—these are contrary to public order, and therefore do not come within the right of the public."

To which Lord Bramwell made the following reply: "Mr. Deane says I completely misconceive the law and am hopelessly astray as to the 'rights and powers' of the police. This is pretty strong, and, I hope, incorrect for both our sakes—his and mine. For I entirely agree with his sensible letter, and think it would do (not for a definition, Mr. D.), but for an instruction to the police."

MR. CHRISTOPHER PAGE DEANE rashly accused Lord Bramwell of misconceiving the law, when it was Mr. Deane who had misconceived Lord Bramwell. Lord Bramwell might have returned Dr. Johnson's rude answer in a similar case, but he contented himself with kindly endorsing Mr. Deane's law. Lord Bramwell's and Mr. Deane's law that a policeman in the wrong can only be resisted by force reasonably sufficient for the purpose is only giving a policeman no less rights than a private person. If policemen in trying to get a front place for a reporter in a crowd are in the wrong, and the crowd resist them by stone throwing and charging them with horses, then the crowd is in the wrong, and if the violence becomes dangerous to life the policemen are entitled to shoot.—*Law Journal* (Eng.).

THE question of "Old Ceylon" whether it is usual for the Queen to grant a free pardon to a criminal without referring to the judge who tried the case must be answered in the negative. In the first place, the Queen never grants a free pardon of her own motion at all. If she were to do so, and the Secretary of State disagreed with the act, it would be his duty to resign. That protest is all the sanction provided by the Constitution, and no doubt the criminal would legally be pardoned. The circumstances in Ceylon no doubt are different; but we assume in favour of the Governor that he is his own Secretary of State. The practice of consulting the judges is very much older than the present constitutional relation of the sovereign to the Secretary of State in regard to the prerogative of mercy. When questions of law were involved the judges were from early times consulted, and the convicted person pardoned or executed according to their decision, a practice which was the origin of the court for the consideration of Crown cases reserved. We believe it to be the practice in England that the Secretary of State never interferes with a conviction without receiving the report of the convicting tribunal, whether judge of the High Court or justice at petty sessions. The practice arises not only in the interests of justice to the convicted person, but in order that the tribunal may vindicate its action, and that there may be no weakening of the judicial authority by any apparent slight being cast on its decision. The Secretary of State is responsible for the maintenance of this practice to Parliament, but in Ceylon the duty exists although there is no mode of enforcing it except by complaint at the Colonial Office.—*Law Journal* (Eng.).

REWARDS FOR APPREHENDING CRIMINALS.

REWARDS offered for the discovery of crime have long been part of the procedure resorted to in this country, for however public-spirited may be the majority of citizens, there are so many ramifications in the occasions and consequences of criminal acts, that no organization is equal to the speedy administration of this class of remedies. The older acts of parliament abound in inducements to public informers, and though these are seldom introduced in modern acts, the disposition to trace out and punish deliquencies is fortunately a very common attendant upon every species of wrong. Yet, as everybody knows, it is no uncommon occurrence for the government or for individuals to offer rewards for the discovery of offenders, and this quickens the diligence not only of constables, but of that large class of persons who are always looking out for employment. In working out this practice some interesting and useful decisions have been from time to time come to in the courts, for, as may be supposed, the offer of a reward brings forth

many competitors who jealously watch each other's claims, and as there is more of chance than merit in the prizes, the successful winner is subject to double scrutiny. The public policy of offering rewards has indeed often been doubted, especially where constables are concerned. A constable is bound by his very duty to search for criminals and bring them to justice. And it has been well remarked by several judges that the expectation of rewards must offer great temptation to delay an active search, by which delay the criminal might escape, or to delay taking into custody a criminal who gives himself up, so that the constable might appear to use exertions to procure complete information and for that to claim the reward. There would also be a temptation, particularly to those constables in the detective service, to look to bribes or to seek promises of reward from persons anxious to recover their property, and unless such were offered, to be inert in their efforts.

On the other hand, even private individuals are too apt at times to be careless of the public advantage, if only they can by any means whatever recover the possession of their property in those cases where it has been stolen. Many persons are quite willing in the circumstances to condone any crime, or by the expenditure of a small sum to pay to the first comer whatever will induce the surrender of the proceeds of crime. Hence the legislature has thought fit to subject to a penalty those publishers of newspapers who lend themselves to the same views by circulating advertisements that no questions will be asked if stolen property shall be returned to the owner. The Larceny Act of 24 & 25 Vict. ch. 96, s. 102, containing this enactment, in turn created hardships occasionally by enabling informers to sue publishers vexatiously for these penalties. And at last by the statute 33 & 34 Vict. ch. 65, a restriction was put on these informers to this extent, that the consent of the Attorney-General was in future to be required before any such action could be brought, and a short period of limitation was also prescribed.

The offer of a reward for the discovery of a particular criminal is a species of contract which is an exception to the usual rule, whereby both parties must be known and defined, and must agree on something definite and such as is mutually assented to, before they can create the obligations of contract. This difficulty is got over by one party defining certain conditions which the unknown co-contractor is to fulfil, and which are so distinct that the unknown person and no other becomes at length the obligee whenever the circumstances arise which had been anticipated as a proper basis of a contract. It is a contract *cum omnibus* in one sense—at least in the beginning, and it develops into a contract with another individual only when the latter creates or fulfils the character which was described in the offer. Hence the disputes which usually arise in the course of these undertakings take the form of a contention that the unknown party has not done the kind of service which was to be the basis of the obligation—and though the criminal may have been discovered, yet that the discovery was not made directly or immediately by the claimant to the reward, and hence that the reward has not been earned by the person claiming it. This difficulty has presented itself under many forms, and the cases already decided involve much useful comment on the evidence and the doctrine of proximate and remote causes which arises out of such transactions.

In the case of *Williams* v. *Carwardine*, 4 B. & Ad. 621, the plaintiff had been in company with a man found murdered, and gave no information which was of value. At a later date, however, she had been severely beaten on another occasion, and when on the point of death, as was then supposed, she relieved her conscience by telling some particulars of the murder, which followed up led to the discovery and conviction of the murderer. The plaintiff did not die, but recovered, and then sued for 20*l*., the reward that had been offered for discovery. The jury found that she did give the information, but that it was not given in consequence of the offer of a reward. Three judges, however, held that the plaintiff fulfilled the conditions on which the reward had been offered, and hence that she was entitled to the money.

In another case of *Lancaster* v. *Walsh*, M. & W. 16, an offer of a certain reward had "on application to the defendant."

The plaintiff had not made any communication to the defendant, but made it to a constable whose duty it was to search for the offender. The question came to be, whether in that event the plaintiff was entitled to the reward, and it was contended that the constable by his own activity followed up the clue and the person entitled. But the court held that the plaintiff was entitled, for that the communication led to the discovery. As Alderson, B., put it, information means the communication of material facts for the first time, and the constable was merely a channel of communication, but not the originator of the information.

Again, in *England* v. *Davidson*, 11 A. & E. 857, the constable of the district apprehended the criminal and sued for the reward; whereupon it was contended that it was contrary to public policy to allow the constable to sue, for it was part of his ordinary duty to arrest criminals. The court there held that the fact of the person giving the information being a constable did not necessarily disentitle him on the ground of want of consideration. And Lord Denman, C.J., observed that there may be services which the constable is not bound to render, and which he may therefore make the ground of a contract. In short, a constable as such was said not to be disentitled to a reward of this description. In *Moore* v. *Smith*, 1 C.B. 438, the plaintiff also was a police constable, but was temporarily suspended, and he apprehended a burglar, who, after his apprehension, voluntarily confessed. And the court held him entitled to the reward, as it was by the constable's suspicions, and apprehension in consequence of them, that the criminal was really discovered. In *Thatcher* v. *England*, 3 C. B. 254, the defendant, who had been robbed of jewellery, published an advertisement headed "30*l.* reward," describing the article stolen, and concluding thus:—"The above sum will be paid by the adjutant of the 41st Regiment on recovery of the property and conviction of the offender, or in proportion to the amount recovered." A soldier on the 10th of June informed his sergeant that B had admitted to him that he was the party who had committed the robbery, and the sergeant gave information at the police station. On the 13th of June the plaintiff, a police constable, learning from one C. that B. was to be met with at a certain place, went there and apprehended him. The plaintiff by his activity and perseverance afterwards succeeded in tracing and recovering nearly the whole of the property, and in procuring evidence to convict B. The Court of Common Pleas held that the plaintiff was not, but that the soldier was, the party entitled to the reward.

About twenty years ago an interesting case of this kind arose out of a great robbery of watches at a jeweller's shop in London. In *Turner* v. *Walker* (L. R. 2 Q. B. 301), soon after that robbery, a handbill was circulated by the defendant who offered a reward in these terms: "A reward of 250*l.* will be given to any person who will give such information as shall lead to the apprehension and conviction of the thieves. A further reward of 750*l.* will be paid for such information as shall lead to the recovery of the stolen property, or in proportion to any part thereof recovered." After the publication of the handbill Roberts brought a watch to the plaintiff to be repaired. The plaintiff, suspecting it to be one of the stolen watches, arranged with Roberts that the latter should call again and bring some more, and on the same day the plaintiff gave information to the defendant. In consequence thereof the police were employed, and Roberts was captured, and two other stolen watches were found upon him. After Roberts had been in custody three days he told the police that some female friends had informed him that the burglars were to be heard of at an eel-pie shop in 120 Whitechapel. The police accordingly there captured the burglars, who were subsequently convicted at the central criminal court. Roberts was viewed as only a receiver of the goods. The plaintiff sued for the reward, and the judge, Blackburn, J., left it to the jury to say whether the information given by the plaintiff led to the apprehension and conviction of the thieves. The judge was disposed to think that the plaintiff's information was too remote, and that the real discovery was made by the police on Roberts' information, but as the jury were in favour of the plaintiff, the question was afterwards fully argued before a court of three judges. Blackburn, J., on the argument, was still disposed to hold that the

plaintiff's information was too remote, but the other two judges held it was not, and that the plaintiff gave the clue or started the discovery. The case went to the exchequer chamber, and that court of seven judges unanimously held the plaintiff to be entitled. Kelly, C. B., said it was true that the arrest ought, in such cases, to be the immediate consequence of the information given by the plaintiff. But there was no reason why the fact of there being several steps should make any difference, if the first information led to the discovery and apprehension of the thieves. That was so in this case, and, therefore the plaintiff was justly entitled to the reward.

This last case was one of no small difficulty as it illustrated the complication caused by the first step leading to a series of other natural steps, all of which ended in the apprehension and conviction of the criminal. And the decision arrived at was one pre-eminently where common sense agreed with the rules of law. In a later case of *Bent* v. *Wakefield and Barnsley Bank* (C. P. D. 1), a somewhat puzzling case arose which involved the question whether any person can be entitled to such a reward when the criminal voluntarily surrenders himself. In this last case a handbill was published by the defendants as follows: "200*l*. Whereas, William Glover, shoddy dealer, absconded from Ossett, after committing various forgeries. Notice is hereby given that the above reward will be paid to any person or persons giving such information to Mr. W. Airton, police superintendent, Dewsbury, as will lead to the apprehension of the said William Glover." The plaintiff was the chief constable at Exeter, and sued for the reward under the following circumstances: "One day a person (who turned out to be Glover) came to the plaintiff at the police office and said, 'You hold a warrant for me; I am wanted for forgery.'" Thereupon names and particulars were entered upon, and the plaintiff, thinking the man might be out of his mind, searched the *Police Gazette*, and ended by telegraphing to Dewsbury and getting instruction to detain Glover. The latter was detained accordingly, and all ended by Glover being locked up and ultimately tried and found guilty. The present action was brought, and one of the defences was, that it was contrary to public policy that the plaintiff should succeed, as he did no more than his public duty, and as the criminal had surrendered himself. The question was ultimately considered in connection with the previous authorities, and the judge (Grove, J.) held that the judgment should be for the defendants. The court had, according to the learned judge, already decided in *England* v. *Davidson*, that actions by constables, though not necessarily excluded, yet require very clear grounds to support them, and he thought there was no clear ground in this case.

The discovery in this last case seems to have been a mere accident without any meritorious exertion by the police superintendent, who was almost passive. Nevertheless, he took pains to make inquiry and did his duty well. But all he did was merely by way of satisfying himself whether the criminal was the real man and not a sham. Certainly there was nothing which the constable did beyond his bare duty; he did not originate or discover anything, but simply reported to headquarters. And the judge cannot be supposed to have gone wrong by deciding against an action so entirely without special merits.—*Justice of the Peace, Eng.*

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

Ontario.]

PLUMB v. STEINHOFF.

Title to land—Old grant—Starting point to define metes and bounds—How ascertained.

In an action of ejectment the question to be decided was whether the *locus* was situate within the plaintiff's lot No. 5, in concession 18, or within defendant's lot adjoining, No. 24, in concession 17.

The grant through which the plaintiff's title was originally derived gave the southern boundary of lot 5 as a starting point, the course being thence eighty-four chains more or less to the river. The original surveys were lost, and this starting point could not be ascertained.

Held (affirming the judgment of the court below), STRONG and TASCHEREAU, JJ., dissenting, that such southern boundary could not be ascertained by measuring back exactly eighty-four chains from the river.

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

Atkinson, Q.C., for the respondents.

Ontario.]

ST. CATHARINES MILLING CO v. THE QUEEN.

Indian lands—Reserves—Surrender—Title of Crown.

Held (affirming the judgment of the Court of Appeal, 13 Ont. App. R. 148), STRONG and GWYNNE, JJ., dissenting, that the land surrendered by the Indians to the Dominion Government in 1873, by what is known as the N.-W. Angle treaty, were not, previous to such surrender, lands reserved for the Indians within the meaning of sec. 91, item 24 of the B. N. A. Act, but were public lands under sec. 92, item 5, and passed to the Province of Ontario absolutely on such surrender. Only lands specially set apart for the use of the Indians are reserved under sec. 91, item 24.

McCarthy, Q.C., for the appellants.

Cassels, Q.C., and *Mills*, for the respondents.

Ontario.]

GRAND TRUNK RAILWAY v. BECKETT.

Railway Co.—Negligence—Death caused by—Running through town—Contributory negligence—Insurance on life of deceased—Reduction of damages for.

In an action against the G. T. R. Co. for causing the death of the plaintiff's husband by negligence of their servants, it was proved that the accident occurred while the train was passing through the town of Strathroy; that it was going at a rate of over thirty miles an hour, and that no bell was rung or whistle sounded, until a few seconds before the accident.

Held (affirming the judgment of the Court of Appeal, 13 Ont. App. R. 174), that the company was liable in damages.

For the defence it was shown that the deceased was driving slowly across the track with his head down and that he did not attempt to look out for the train until shouted to by some persons who saw it approaching, when he whipped up his horses and endeavoured to drive across the track and was killed. As against this there was evidence that there was a curve in the road which would prevent the train being seen, and also that the buildings at the station would interrupt the view. The jury found that there was no contributory negligence.

Held, per RITCHIE, C.J. and FOURNIER and HENRY, JJ., that the finding of the jury should not be disturbed. STRONG, TASCHEREAU and GWYNNE, JJ., *contra*.

The life of the deceased was insured, and on the trial the learned judge deducted the amount of the insurance from the damages assessed. The Divisional Court overruled this, and directed the verdict to stand for the full amount found by the jury. This was affirmed by the Court of Appeal.

Held, that the judgment in this respect should be affirmed.

Osler, Q.C., for the appellants.

Blake, Q.C., and *Folinsbee*, for the respondent.

Nova Scotia.]

MOTT v. BANK OF NOVA SCOTIA.

Insolvent bank—Winding-up proceedings—45 Vict. cap. 23—47 Vict. cap. 39—Bank already insolvent placed in liquidation—Proceedings under what statute.

The Bank of Liverpool was placed in insolvency in 1879 under the Insolvent Act of 1875, and the Bank of Nova Scotia appointed assignee. In 1884 the assignee applied to have the insolvent bank placed in liquidation under 45 Vict. cap. 23, and 47 Vict. cap. 39. The Chief Justice of Nova Scotia granted the petition and appointed the Bank of Nova Scotia liquidator, holding that sections 2 and 3 of the Act of 1884 applied to banks. The Supreme Court of Nova Scotia affirmed this order. On appeal to the Supreme Court of Canada,

Held, STRONG and GWYNNE, JJ., dissenting, that these sections do not apply to banks, but an insolvent bank must be wound up with the same formalities as in the case of a bank not insolvent according to sections 99 to 102 inclusive of the Act of 1884, and three liquidators must be appointed in the manner therein provided.

Henry, Q.C., for the appellant.

Sedgewick, Q.C., and *Borden*, for the appellants.

British Columbia.]

SEA v. MCLEAN.

Sale of land—Sale by executors—Powers under will — Advertisement — Description — Words "more or less"—Breach of trust.

By the terms of the testator's will executors were empowered to sell so much of the real estate as might be necessary to pay off a mortgage thereon, and any other debts that the personal estate was insufficient to discharge. The executors offered for sale land described in the advertisement as "some sixty acres (more or less), Victoria District." The advertisement stated that the property to be sold adjoined M. Rowland's land, and had a frontage on the Burnside Road and on the road known as "Carey's Road."

At the sale a plan was annexed to the advertisement showing a lot coloured pink bounded by the above named roads. The auctioneer stated that the quantity was not known but would have to be determined by a survey to be made at the joint expense of vendor and purchaser. The land was offered for sale by the acre and knocked down to one S. at $36 per acre.

After the sale a survey was made and the land was found to contain 117 acres. S. claimed the whole quantity and tendered the price and a deed for signature to the executors. They claimed, however, that they only intended to sell sixty acres measured on the side adjoining Rowland's land, and to sell more would be a breach of trust on their part, as they only wanted some $2,000 to pay the mortgage and debts of the estate. S. brought a suit for specific performance.

Held (reversing the judgment of the Supreme Court of British Columbia). GWYNNE, J., dissenting, that S. was entitled to 117 acres.

Robinson, Q.C., and *Eberts*, for the appellant.

Ontario.]

BURGESS v. CONWAY.

Sale of land—Consideration in deed—Evidence—Sale of land or of equity of redemption.

B. sold to C. a lot of land, mortgaged to a loan society, claiming that it was a sale of the land for $1,400. C. claimed that it was merely a sale of the equity of redemption for $104.50, which B. had accepted as the amount due him according to the representation of C. who had figured it out, B. being incapable of figuring it himself. In the deed executed by B. the consideration was declared to be $1,400. C. paid off the mortgage for $1,081. In an action to recover the difference,

Held, TASCHEREAU and GWYNNE, JJ., dissenting, that the deed itself would be sufficient evidence of a sale of the land for $1,400 in the absence of proof of fraud or mistake, and B. was entitled to recover the difference between

that sum and the amount paid on the mortgage less the sum already paid.

Moss, Q.C., for appellants.

Robinson, Q.C., for respondents.

Ontario.]

McLEAN v. WILKINS.

Mortgagor and mortgagee—Assignment of mortgage—Purchase of equity of redemption by sub-mortgagee—Sale of same—Liability to account.

M. executor of a mortgagee, assigned the mortgage to C., who brought suit for foreclosure, but settled such suit by assigning the mortgage to H., one of the defendants. Prior to this, the mortgage had been deposited with H. as collateral security for a loan to M. H. then purchased the equity of redemption which he sold for a sum considerably in excess of the claim of C. and his own claim. In a suit by H. to foreclose M.'s interest,

Held, reversing the judgment of the Court of Appeal (13 Ont. App. R. 467), and restoring that of the Common Pleas Division (10 O. R. 58), that H. as sub-mortgagee was bound to account to M. for the proceeds of the sale of the equity of redemption.

Blake, Q.C., and *Cassels*, Q.C., for the appellants.

Moss, Q.C., for the respondents.

Quebec.]

ROBINSON v. CANADIAN PACIFIC RAILWAY.

Damages—Misdirection as to solatium—New trial—Art. 1056 C. C.

In an action for damages against a railway company brought by the widow of a servant of the company killed in the discharge of his work, the learned judge at the trial directed the jury that in assessing the amount of damages, if they found for the plaintiff, they might consider the nature of the anguish and mental sufferings of the widow and child of the deceased.

Held, reversing the judgment of the Court of Queen's Bench, Montreal, M. L. R., 2 Q. B. 25, that there was misdirection. Effect of Art. 1056, C. C., considered. (See 10 Leg. News, 241.)

Appeal allowed with costs, and new trial ordered.

Scott, Q.C., and *H. Abbott*, for the appellants.

J. C. Hatton, Q.C., for the respondents.

Quebec.]

LEGER v. FOURNIER.

Sale a remere—Term—Notice—Mise en demeure—Chose jugee—Improvements.

Held, affirming the judgment of the Court of Queen's Bench, Montreal, M. L. R., 3 Q. B. 124, where the right of redemption stipulated by the seller entitled him to take back the property sold within three months from the day the purchaser should have "finished and completed" houses in course of construction on the property sold, it was the duty of the purchaser to notify the vendor of the completion of the houses, and in default of such notice, the right of redemption might be exercised after the expiration of the three months.

2. The exception of *chose jugee* cannot be pleaded where the conclusions of the second action are materially different from those of the first, and so, although the present respondent attempted to exercise his right of redemption in a prior action for a less sum than stipulated, it was held that the dismissal of the first action was not *chose jugee* as regards the present action offering to pay the amount and conditions stipulated.

TASCHEREAU and GWYNNE, JJ., were of opinion in this case that appellant was entitled to $302 for improvements over and above the stipulated price, instead of $40 allowed by the court below.

DeLorimier, for appellant.

Laflamme, Q.C., for respondent.

Quebec.]

PION v. NORTH SHORE RAILWAY CO.

Navigable river—Access to, by riparian owner—Right of—Railway company responsible for obstruction—Damages—Remedy by action at law—When—43 Vict. (P.Q.) ch. 43, sec. 7, ss. 3 and 5.

Held, reversing the judgment of the Court of Queen's Bench, Quebec, 9 Leg. News, 218, TASCHEREAU, J., dissenting, that a riparian owner is entitled to damages against a railway company, although no land is taken from him, for the obstruction and uninterrupted access between his property and the navigable waters of a river, and the injury and diminution in value thereby occasioned to the property.

2. That the railway company in the present case not having complied with the provisions of 43 and 44 Vict. (P.Q.) ch. 43, sec. 7, ss. 3 and 5, the appellant's remedy by action at law was admissible.

Appeal allowed with costs.

Langelier, Q.C., for appellants.

Irvine, Q.C., and *Duhamel*, Q.C., for respondents.

Quebec.]

BRADY v. STEWART.

Litigious rights—Sale of—Arts. 1582, 83 C. C.

B. became holder of forty shares upon transfers from D. et al. in the capital stock of the St. Gabriel Mutual Building Society. At the time of the transfers the shares in question had been declared forfeited for non-payment of dues. Subsequently, by a judgment of a court rendered in a suit of one C., whose shares had also been confiscated for similar reasons, the shares were declared to be valid, and to have been illegally forfeited. Thereupon B., by petition for a writ of mandamus, asked that he be recognized as a member of the society, and be paid the amount of dividends already declared in favour of and paid to other shareholders. B.'s action was met, amongst other pleas, by one setting forth that B. had acquired, under the transfers in question, certain litigious rights, and that by law he was only entitled to recover from the respondents the amount he had actually paid for the same, together with legal interest thereon, and his cost of transfers.

Held, affirming the judgment of the Court of Queen's Bench, Montreal, M. L. R., 2 Q. B. 272, FOURNIER and HENRY, JJ., dissenting, that at the time of the purchase of said shares, B. was a buyer of litigious rights, and under Art. 1583, C. C., could only recover the price paid, with interest thereon.

Appeal dismissed with costs.

Doherty, Q.C., for appellant.

Curran, Q.C., for respondent.

Quebec.]

THE MAGOG TEXTILE AND PRINTING CO. v. DOBELL.

Joint stock company—31 Vict. ch. 25 (P.Q.)—Action for calls—Subscriber before incorporation—Allotment—Non-liability.

D. signed a subscription list undertaking to take shares in the capital stock of a company to be incorporated by letters patent under 31 Vict. ch. 25 (P. Q.), but his name did not appear in the notice applying for letters patent, nor as one of the original corporators in the letters patent incorporating the company. The directors never allotted shares to D., as required by 31 Vict. ch. 25, sec. 25, and he never subsequently acknowledged any liability to the company.

In an action brought by the company against D. for calls due on the company's stock,

Held, affirming the judgment of the court below, that D. could not be held liable for calls on stock.

Appeal dismissed with costs.

Bosse, Q.C., and *Beique*, for appellants.

Irvine, Q.C., and *Stuart*, for respondents.

THE CENTRAL VERMONT RAILWAY COMPANY v. TOWN OF ST. JOHNS.

Railway bridge and railway track—Assessment of, illegal—40 Vict. ch. 29, secs. 326 & 327—Injunction—Proper remedy—Extension of town limits to middle of navigable river—Intra vires of local legislature—43 & 44 Vict. ch. 62, P. Q.

Held, reversing the judgment of the Court of Queen's Bench, Montreal, FOURNIER and TASCHEREAU, JJ., dissenting, (1) that the portion

of the railway bridge built over the Richelieu river and the railway track belonging to appellant's company within the limits of the town of St. Johns, are exempt from taxation under section 326 & 327 of 40 Vict. ch. 29, P. Q.

(2) That a warrant to levy rates upon such property for the years 1880-83 is illegal and void, and that a writ of injunction is a proper remedy to enjoin the corporation to desist from all proceedings to enforce the same.

As to whether the clause in the Act of Incorporation of the town of St. Johns, P. Q., extending the limits of said town to the middle of the Richelieu river, a navigable river, is *intra vires* of the legislature of the Province of Quebec, the Supreme Court of Canada affirmed the holding of the court below that it was *intra vires*.

Appeal allowed with costs.

Church, Q.C., for appellant.

Robidoux, Q.C., for respondent.

COURT OF APPEAL.

RATTE v. BOOTH.

Riparian proprietor—Navigable stream—Reservation in Crown grant—Statute of Limitations.

A certain water lot on the river Ottawa was granted by the Crown to A. The description in the patent covered the lot and two chains distant from the shore, but there was a reservation of "all mines of gold and silver, the free uses, passage, and enjoyment of, in, over and upon all navigable waters that shall or may be hereafter found in or under, or be floating through or upon any part of the said parcel of land hereby granted." A. granted to P. the lot with certain exceptions, but including the part covered by water, and P. in 1867 granted to the plaintiff part of the lot down to and bounded by the water's edge. The plaintiff had been on the place on contract for purchase for a year before the conveyance, and had built a dwelling-house and a boat-house floating wharf, the latter extending at the time sixteen feet outwards from the bank into the stream, and being afterwards enlarged so as to extend forty feet into the stream. By means of this wharf the plaintiff carried on business as a letter of pleasure boats, and brought this action complaining of injuries to his business, and to him as a riparian proprietor by the deposit of refuse from the defendant's mills in the water in front of his land, hindering access from his wharf to the actually navigable part of the river, and fouling the waters of the stream upon or in contact with his land.

It was contended that the plaintiff had no title as a riparian proprietor, as P. owned the portion of the water lot outside of the plaintiff and could bar him from access to the river, and also that the reservation in the patent was repugnant to the rest of the grant, which should be read as giving the whole lot there specified.

Held (affirming the judgment of the Chancery Division, 11 O. R. 491) BURTON, J.A., dissenting, that the plaintiff was entitled to recover damages for the injuries complained of.

Per HAGARTY, C.J.O., and OSLER, J.A.—For the purpose of this suit the plaintiff is to be regarded as a riparian proprietor. How can wrong-doers in no privity with P. raise the question of his right to block the plaintiff from the water. The Crown, owning the bed of this navigable river, could grant a portion thereof, reserving the public right of user, which is the meaning of the reservation in the patent.

Per PATTERSON, J.A.—The terms of the reservation in the patent do not point to the public right of navigating the waters. The patent cannot be construed as reserving the use of the waters in any sense, or for any purpose different from the reservation of the mines; and the mines cannot be treated as reserved for the public benefit except in a sense foreign to the present discussion. The public right to the use of navigable waters is the right of each individual, and stands on a different footing—it does not come by grant from the Crown, but is a paramount right to be curtailed only by act of the legislature. A public easement cannot be the subject of an exception in favour of the grantor. If the exception were construed as perpetuating the *jus publicum*, it would be repugnant to the grant in its operation under the statute 23 Vict. ch. 2, s. 35, and would be void. The true reading of the patent is that the reservation touching navigable waters is applicable only to the

other parts of the lot, and not to the two chains of the river bed. The whole lot vested in A. free from the asserted *jus publicum*; and the plaintiff, as against his partner P., and *a fortiori* as against wrong-doers, has acquired a title to the river portion under the Statute of Limitations.

Per BURTON, J.A.—The plaintiff cannot be regarded as a riparian proprietor; the person filling that position is P., and on his filling in the lot, as he is entitled to do to the limit of his grant, the plaintiff will be entirely cut off from the stream.

The plaintiff, a trespasser, cannot complain of others trespassing on portions of the property of which he is not in possession, although it may interfere with his access to the portion of which he is in possession.

If the words of the reservation in the patent extend to the right of navigation the reservation is absolutely void. The statute 23 Vict. c. 2, s. 35, gives to the Crown the right to grant the bed of the river and the water upon it free from any rights *publici juris*. The Statute of Limitations could give the plaintiff no title to any part of the water-covered land, except that actually occupied by his floating wharf and boat-house.

BAKER AND THE MERCHANTS' BANK v. ATKINSON ET AL.

Lease, determined by forfeiture—Right of distress—One year's rent payable on insolvency—8 Anne ch. 14—Payment of rent to save goods.

By the terms of a lease it was stipulated that "if the said lessees shall make any assignment for the benefit of creditors, or, becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, the said lease shall immediately become forfeited and void, and the full amount of the next ensuing one year's rent shall be at once due and payable."

Held (1), affirming the judgment of the Q. B. D. 11 O. R. 735, notwithstanding the provisions of 8 A. ch. 14, s. 6, that a distress for the year's rent falling due next after an assignment by the lessees for the benefit of creditors was illegal and void, the statute applying only to cases where the tenancy has been determined by lapse of time, not by forfeiture; but, *Held* (2), in this reversing the same judgment, that money paid to the lessors by the solicitor of certain execution creditors in full of such rent, with knowledge of all the facts, so as to prevent a sacrifice of the goods, could not be recovered back, either by the execution creditors or the assignee, the amount having been repaid to the solicitor out of the proceeds of such goods when sold by the sheriff as was expected by the solicitor would be done when making such payment.

CHANCERY DIVISION.

Boyd, C.] [September 29.

RE CLARK AND THE UNION INSURANCE CO.

Dominion Winding-up Act—Application to Provincial corporations - Constitutionality—R. S. C. ch. 129.

Held that the Winding-up Act, R. S. C. ch. 129, is within the confidence of the Dominion Parliament under section 91, article 21 of the British North America Act, and that the present company, though incorporated under a Provincial charter, is subject to its provisions. *Gillespie v. The Merchants' Bank*, 10 S. C. R. 312, distinguished.

Bain, Q.C., for the petitioners.

Walter Cassels, Q.C., for Shoolbred, a creditor.

Ferguson, J.] [September 30.

RE HAGUE, TRADERS' BANK v. MURRAY.

Husband and wife—Dower—Equity of redemption—Building mortgage.

In the course of the administration in the Master's Office of the lands and personal estate of William Hague, it appeared that prior to his decease William Hague was seized in fee simple absolute of a certain vacant lot in the city of Toronto, and that in the year 1883, desiring to build upon the lands, he gave a mortgage of the land to a loan company, and executed at the same time a contemporaneous agreement setting out that the mortgage

moneys were to be advanced as the building progressed upon progress certificates of the architect of the house.

Evidence was given to show that the money was actually advanced and went into the building. Afterwards, on March 10th, 1886, after the completion of the building, William Hague died. In the Master's Office his widow claimed that she was entitled to dower in the full value of the land, though the above mortgage still subsisted upon it and had to be paid off out of the purchase moneys. It was objected, on behalf of the creditors, that she was only entitled to dower out of the equity of redemption, and in the value of the equity of redemption after paying off the mortgage.

Held, reversing the decision of the Master in Ordinary, that the widow was entitled to dower out of the equity of redemption in the full value of the lands.

C. Moss, Q.C., and *A. H. F. Lefroy*, for the creditors.

J. Reeve, for the widow.

H. A. Reesor, for the executor and trustee.

PRACTICE.

Rose, J.] [September 9.

SMITH v. CLARK.

Discovery—Action on building contract—Examination of architect.

In an action against the trustees of an Orange Lodge for the price of work and materials furnished in building a hall in which the principal defendant was examined and could give no information as to the matters in dispute, and it appeared from his examination that the architect employed by the defendants was the only one who could give the information sought, an order was made for the examination of the architect for the purpose of discovery only.

O'Sullivan, for the plaintiff.

Gwynne, for the defendants.

Rose, J.] [Sept. 9.

ROSS v. THE CANADIAN PACIFIC RY. CO.

Change of venue—Preponderance of convenience.

An action for trespass to land by cutting timber, etc., was commenced in Toronto where the solicitors for the plaintiff, the defendants and the third parties resided. The plaintiff lived in Quebec and his agent in Toronto. The third parties, who were really in the position of defendants, lived in Pembroke. The defendants swore that they would have at the trial four witnesses from Pembroke or vicinity, one from North Bay, two from Dakota, U.S.A., and one from Ottawa. The plaintiff swore to eight witnesses, all in Toronto or west of Toronto. The *locus in quo* was neither in the County of York nor Renfrew.

Held, that there was not sufficient preponderance of convenience in favour of Pembroke to warrant changing the venue to that place.

Shroder v. *Meyers*, 34 W. R. 261, followed.

W. H. P. Clement, for the plaintiff.

MacMurchy, for the defendants.

Rose, J.] [September 9.

KELLY v. WOLFF.

Landlord and tenant—Ejectment—Title of landlord, expiry of—Bona fide defence—Ejectment Act, ss. 65, 66.

In an action of ejectment by a landlord against a tenant whose term had expired,

Held, that the defendant was not precluded from setting up that the plaintiff's title expired or was put an end to during the term, and to raise such defence it was not necessary for the tenant to go out of and then resume possession.

Sections 65 and 66 of the Ejectment Act do not apply where a *bona fide* defence or dispute is raised; and in this case a motion by the plaintiff for security for damages and costs, under these sections, was refused.

Quære, whether ss. 65 and 66 would apply to any case where the tenant actually gives up possession, so that the landlord is in possession, and then retakes.

Alan Cassels, for the plaintiff.

Aylesworth, for the defendant.

Rose, J.] [Sept. 9.

NICHOLSON v. LINTON.

Change of venue—Preponderance of convenience.

An action to recover the price of a quantity of steel, the principal defence being inferiority in quality. The plaintiffs lived in England, and their Montreal agent sold the steel to the defendant at Galt, where the latter lived, delivered the steel there, attended there for the purpose of endeavouring to settle the dispute, and was present at a test made in Galt.

The plaintiffs laid the venue at Cornwall, and the defendant moved to change it to Berlin, fourteen miles from Galt.

All the defendant's witnesses, six in number including the defendant himself, lived in Galt. The plaintiffs named no witnesses except the Montreal agent, but after notice had been given of the motion to change the venue, the agent directed one bar of the steel to be reshipped from Galt to Montreal to have a test made, and then said generally that he would require to call experts from Montreal to prove the result of the test, but did not say how many. The defendant swore that the expense to him of taking witnesses to Cornwall would be about $135, and to Berlin about $14.

Held, that the very great preponderance of convenience was in favour of Berlin, and the venue was therefore changed.

Shroder v. *Meyers*, 34 W. R. 261, distinguished.

Osler, Q.C., for the plaintiffs.

Holman, for the defendant.

Rose, J,] [Sept. 9.

MCKAY v. PALMER.

Prohibition—Division Court—Matter of practice.

A motion for prohibition to a Division Court on the ground that the action was revived by the administrator of the plaintiff without serving a summons or notice on the defendant as required by the Division Court rules, was refused, the irregularity complained of being a mere matter of practice, and therefore not reviewable in prohibition.

Caswell, for the motion.

Holman, contra.

Ferguson, J.] [September 13.

IN RE SOLICITOR.

Solicitor—Delivery of bill to third party—Right to taxation—Præcipe order.

Upon the application of a mortgagor, the mortgagee's solicitor was ordered by a county judge to deliver to the applicant a copy of the bill of costs of a sale under the power in the mortgage (see *ante*, p. 297), and the bill was delivered pursuant to the order.

Held, that although the delivery was, under s. 45 of the Attorneys Act, to be regarded as for the purposes of a reference to taxation, yet the person so obtaining the copy of the bill had not necessarily the right to tax the bill; and a *præcipe* order for taxation was set aside, when at the time of making it there were two matters in dispute, viz.: whether payment as such had been made by the mortgagees to the solicitor, and whether the mortgagees had precluded themselves from the right to tax the bill.

Hoyles, for the solicitor.

E. Douglas Armour, for the mortgagor.

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The following books have been received at the Library during July, August and September, 1887:—

American Reports (various States), 202 vols.

Annual Register for 1886. London, 1887.

Appleton's Cyclopædia (N. S.), Vol. II. New York, 1887.

Brett's Leading Cases in Equity. London, 1887.

Chalmer's Bills of Exchange. 3rd edition. London, 1887.

Connoly's New York Citations. Albany, 1887.

Cox and Grady on Elections. 14th edition. London, 1885.

Duncan's Mercantile Cases. London, 1887.

Devlin on Deeds. San Francisco, 1887.

Elphinstone and Clark on Searches. London, 1887.

Encyclopædia Britannica. 9th edition. Vol. XXII. Edinburgh, 1887.

Erichsen on Concussion of the Spine. London, 1882.

Everest's Defence of Insanity. London, 1887.

Halliday's Examination Questions. 14th edition. London, 1886.
Harris's Post Mortem Hand-book, London, 1887.
Haviland's Table of Cases. 2 vols. Rochester, 1887.
Law Times Reports (N. S.), Index to Vols 31 to 40. London, 1887.
Macassey's Private Bill Legislation. London, 1887.
Mair's Church Law. London, 1887.
Manning's Serjeant's Case. London, 1840.
Myer's Digest Texas Reports. St. Louis, 1881-3.
Odgers on Libel and Slander. 2nd edition. London, 1887.
Ontario Statutes. Toronto, 1887.
Page's Injuries to the Spine, London, 1885.
Posey's Texas Civil Digest. St. Louis, 1887.
" " Criminal Digest. St. Louis, 1886.
Rorer on Inter-State Law. Chicago, 1879.
Salmon's Crown Colonies of Great Britain. London.
Slater's Mercantile Law. London, 1884.
Spencer's Agricultural Holdings Act. London, 1883.
Spens and Younger's Employers and Employed. Glasgow, 1887.
Stephen's National Biography. Vols. X. and XI. London, 1887.
Stephen's Digest Criminal Law. 4th edition. London, 1887.
Stephen's Law of Evidence. 5th edition. London, 1887.
Stoke's Anglo-Indian Codes, Vol. I. Oxford, 1887.
Taylor on Evidence. From 8th English edition. Philadelphia, 1887.
Thring's Criminal Law of the Navy. London, 1877.
Todd's Parliamentary Government in England. Vol. 1. London, 1887.
Waite's Questions on Equity. London, 1887.
Warde's Practice of Interpleader. London, 1887.
Wharton's International Law. 3 vols. Washington, 1886.
Withrow's History of Canada. Toronto, 1886.
Wood's Solicitors' Reports on Administrations and Executorships. London, 1887.
Wurtzburg on Building Societies. London, 1886.

FLOTSAM AND JETSAM.

The *Illustrated News* Co., of New York, publishes an American edition of the *Illustrated London News*, a paper so well known in all parts of the world as to make any comments of ours as to its excellence a waste of words. We can, however, bear testimony to the excellence of the edition before us. What the arrangements with the English Publishing House are we know not, but in comparing the issue before us with that in England one is tempted to express one's sentiments after the manner of the bewildered Irishman, who, in reference to another matter gave vent to his thoughts by the remark that "both were so like each you could not tell t'other from which!" The office of publication is 237 Potter Building, New York. The price is $4 a year in advance, or 10 cents a copy. At such a price it must have an enormous subscription list.

A Peripatetic Justice.—Constable Heffernan went to arrest James Walker, of Elderslie, who keeps a groggery on the roadside, five miles from Chesley. James took to the woods, and Patrick took after him. After a hot chase James surrendered, and was lugged along to the roadside, where police magistrate Vanstone sat in his buggy, calmly viewing the race. His Worship tried him on the spot, convicted him without the right of appeal, and fined him fifty dollars and costs. It is a great convenience to delinquents, thus to keep a travelling court on the concession lines.—Bruce *Herald*.

The Old Man Eloquent.—David Dudley Field, of the New York Bar, though he has attained the ripe old age of eighty-three years, is still forcible and eloquent. At a recent meeting of the American Bar Association he concluded a debate on the subject of Codification of the Law, by a speech of half an hour's duration with the following peroration, which deserves the attention of lawyers everywhere: "What is the reason of the indifference of lawyers to the reform of the law? The truth must be told. Too many of our calling look upon it not as a profession but as a craft. And it is because they so regard it that they do not strive to elevate it. The majority of the Bar of this country have hitherto opposed every great legal reform. I challenge the student of history to find any important

law reform in our times advanced by the great body of lawyers! Every such reform has been carried by the people with the aid of a minority of lawyers. Take heed in time. You of the majority opposed the abolition of imprisonment for debt. You opposed giving woman her rights. You have opposed every attempt at codification, and it will be so always until you arrive at a better sense of the dignity and the duty of the profession. Profession, I call it, and not a craft. We belong to a learned and noble profession, which has held in its ranks some of the greatest men of all time from Cicero to Bacon, from Bacon to Mansfield, from Marshall and Story to the great judges and lawyers of our day. Let us show ourselves worthy of them! Let us act as becomes their brethren, and do all we can to elevate this profession, which is our pride and boast, and make it a means of beneficence to all the people of the land."

"A GENERATION of Judges, by their Reporter," is the title of a little book of biographical sketches of Cockburn, Lush, Quain, Archibald, Kelly, Cleasby, Willes, Byles, Martin, James, Mellish, Theiger, Holker, Amphlett, Hall, Hatherley, Malins, Cairns, Jessel, Phillimore, Watkin Williams; and of Karslake and Benjamin, who were not judges. This is a very entertaining book, written in a light, rapid, vivid style, evincing strong powers of discrimination, and the greatest boldness and independence. The author's favourites are Cockburn, James, Cairns and Jessel. The sketches are enlivened by many amusing and interesting reminiscences. We are told how Lord Chief Justice Cockburn, being audaciously called on for a song at a bar dinner, sang "The Somersetshire Poacher"—

"It is my delight on a shiny night,"

"in a broad west country dialect, with great gusto and in good style;" how Lush was, "as a judge, guilty of the eccentricity of preaching on Sundays," and instead of saying to capital convicts, "and may God have mercy on your soul," would say, "and may you be led to seek and find salvation!" how he was fond of wine, and once, on a cry of "Lush and Shee!" some one said, "that is the old toast of wine and woman;" how Kelly, being attacked at night on the street by two ruffians, although a very aged man, backed against a railing and beat them off with his cane; how on the trial of Tawell, the Quaker, for poisoning, he suggested in the defence that the victim was poisoned by eating too many apples, whence he got the name of "Applepip Kelly;" how the kind-hearted Cleasby said to a prisoner, "you are one of the worst men I ever tried," and then gave him a month; how Byles used to ride a horse which the wags named "Bills," in order to realize "Byles on Bills," but which he and his clerks called "Business," so clients could be told he was "out on 'Business';" how he "amused his last days with theology, wrote a religious book," and left more than a million of dollars; how Martin was rumoured to have an interest in racing-horses, and how he sentenced an offender, "you are an old villain, and you'll just take ten years' penal servitude;" how on a summer circuit, his cushioned seat getting hot, he ordered a soap-box to sit on; how James and Mellish were familiarly known as "Flames and Hellish;" how Hatherley went to church every morning before breakfast; how Malins "gloried in his bad law," and "his personal virtues were judicial vices," and how "his death was accelerated by that failing of most lawyers, bad riding;' how Cairns was fond of a posy in his button-hole, taught in the Sunday School, and "to hear Moody and Sankey was, he declared, the richest feast he could have;" how Jessel, when overruled by the House of Lords, would exclaim when the decision was quoted, "don't cite to me the decisions of remote judges;" how he had trouble with his h's; how Karslake was a bit of a dandy, and on a wet day went to take a "view" in elaborate boots and gaiters, and how he left a million dollars; how Benjamin tied up his papers, dropped his argument, and left the House because Selborne said "nonsense!" and how he drew his own will, and it "held water." The following of Kelly is too good to be cut short: "'My good woman,' he would say to a witness, 'you must give an answer in the fewest possible words of which you are capable, to the plain and simple question, whether, when you were crossing the street with the baby in your arm, and the omnibus was coming down on the right side, and the cab on the left side, and the brougham was trying to pass the omnibus, you saw the plaintiff between the brougham and the omnibus, or between the brougham and the cab, or between the omnibus and the cab, or whether, and when you saw him at all, and whether or not near the brougham, cab or omnibus, or either or any two, and which of them respectively.'" This reminds us of a college president, who, addressing a Sunday School, said, "children, I am about to give you an analysis of the character of Moses. By an analysis you will understand the converse of synthesis." We are not informed of the name of the author of this very clever little book. The London *Law Times* does not approve the book, but we are just ignorant enough to like it.—*Albany Law Journal.*
