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WE have received the annual report of the York Law Association, and an account of the proceedings at their annual meeting held recently, but want of space compels us to hold it over until our next issue.

SIR CHARLES HIBBERT TUPPER, Q.C., Minister of Justice and Attorney-General for the Dominion of Canada, was, on the 8th inst., introduced to the Benche of the Law Society, and presented to the High Court of Just Common Pleas Division), by Christopher Robinson, Q.C., and Frank MacKelcan, Q.C.; and was on that occasion sworn in and enrolled as a barrister-at-law. The Bar of Ontari elcome to their membership the eminent representative of th Bar of Nova Scotia.

THE deplorable accident on the Grand Trunk Railway which occurred on the 8th inst. has evoked universal sympathy for those who suffered thereby. Whilst the profession mourns the loss of one of its members, and of one who was identified with us as an official stenographer, and who bore the good will and respect of all, we thankfully record the preservation from sudden death of Mr. Justice Burton and Mr. Justice Osler, as well as of two leaders of the Bar, Mr. Osler, Q.C., and Mr. Aylesworth, Q.C., who were occupants of the same car in which Mr. Frank Joseph and Mr. Monahan came to an untimely end.

In Mr. Joseph the profession loses a most useful member, a man of many friends and without an enemy, a most estimable citizen of high honour and blameless character, in private life kind and courteous. He will be mourned also by many who were the recipients of his unostentatious charity. We are glad to know that Mr. Justice Burton, who was the one of the survivors who sustained the most serious injury, is progressing towards recovery. The accident seems to have been largely the result of a defective system of despatching trains, unintelligently carried out, combined with culpable thoughtlessness on the part of the officials in allowing passengers to remain in the rear car when a train was following them in a blinding snow storm.

We are glad to see that Lord Herschell, Lord High Chancellor, has stated, in the House of Lords, that there is no truth in the rumour that the Companies' Winding-up business had been transferred by him from Mr. Justice Williams to Mr. Justice Romer with any sinister object. There is no doubt that Williams, J., was sent on circuit, and that the Company business was temporarily transferred to Romer, J., with the sanction of the Lord Chancellor. The reason attributed to the Lord Chancellor for making this change was that Mr. Justice Williams had given annoyance in high quarters by the firm and fearless manner in which he had discharged his duty in the New Zealand Loan and Mercantile Agency case, and that he would be likely to give trouble to parties in other cases likely to come before him in connection with the winding up of companies. As has been stated in some of the English legal journals, such a proceeding, if based on any such reason on the part of the Lord Chancellor, would have been a deadly blow at the independence of the Bench, and would justify the impeachment of the offender; and we can scarcely imagine that any one holding that high and honourable position would for a moment enter on so perilous a course. It is always a very difficult thing to ascertain what are the motives of any action; and, while it is easy to assign bad motives, it is by no means so easy to make good the charge. We think it is to be regretted that a legal periodical should have started the accusations of bad faith unless it had incontrovertible evidence of its truth.

PECULIARITIES OF LIFE INSURANCE LAW.

The question of construing those sections of the Act to secure to wives and children the benefit of life insurance on the lives of their husbands and parents, R.S.O., c. 136, relating to the declaring or apportioning insurance moneys whether by an Act *inter vivos* or by will, has recently presented itself on several occasions for judicial consideration. The Legislature in its wisdom has from time to time authorized such amendments in the original Act as appeared necessary for its more effective working, and for the purpose of meeting the requirements which public opinion dictated, and which the working of the statute appeared to render necessary for carrying into effect the intention of the original framers of this protective enactment. One of the more recent amendments to the statute in question which engrossed the attention of the learned Chancellor in *Re Lynn* v. *The Toronto General Trusts Company*, 20 Ont. Rep. 475, and *Beam* v. *Beam*, 24 Ont. Rep. 189, was the provision enabling the assured under section 5 of the statute by any writing identifying the policy by its number or otherwise to make a declaration that the policy shall be for the benefit of his wife or of his wife and children, or any of them.

In the two cases referred to, which came before the same learned judge, the Chancellor laid down the proposition that such a declaration as is contemplated by the statute may be made by will, or, in other words, that the assured may by a revocable instrument (inasmuch as the will may be revoked) make a disposition of the insurance money, and by identifying the policy in a written document comply with the letter of the statute, although it is doubtful whether it is satisfying the spirit of the Act.

It is submitted with great respect that the view taken by the learned Chancellor, in holding that because a will is an instrument in writing and identifies by name the principal insurance it comes within the meaning of the statute, is much too narrow, and is losing sight of the intention of the Legislature in granting this boon to assurers, and that the construction placed upon it in the more recent case of *McKibbon* v. *Fegan*, 21 A.R., page 93, by Mr. Justice Osler seems much more reasonable, and more in accordance with the view of the Legislature in the earlier enactments providing that a man shall not be allowed to effect

such an insurance at the expense of his creditors and resume possession of the policy to do as he pleases with it at his own sweet will, which he could do if he could make a declaration by a revocable instrument such as a will. The Court of Appeal consisted at the time of only three members (Hagarty, C.J., Maclennan and Osler, JJ., as Burton, J.A., was absent), but the reasoning of Osler, J.A., who was in the minority, seems very convincing, and in strict accord with what has been deemed by the profession as the true intention of the statute. That intention the learned judge says was that the policy once declared should be no longer available to the assured for his own purposes. He must determine what he will do in respect of it. He may take advantage of the Act and devote it to the use of his wife and children, in which case it is no longer subject to his control or that of his creditors, and it will not form part of his estate when the policy becomes a claim, or he may, as provided by the statute, vary the declaration so as to restrict or extend, transfer or limit, the benefits of the policy to the wife alone, or the children, or to one or more of them, although the policy may have been previously expressed or declared otherwise.

The Act seems to provide that where a declaration has been made the variation only can be among parties who may be beneficiaries under the statute. Osler, J.A., commenting upon the special power which the Act confers to vary and limit the apportionment originally made, adds that it seems to show that such declaration is something which should take place in the declarant's lifetime; and it is also most significant that the Act is silent as to making a declaration by will, as it would certainly be a most natural provision to have been made in the section had it been intended that the assured should be able to retain the policy within his own control during his life, and then by his will withdraw it from the control of his creditors. I certainly think that among the profession who live in an atmosphere of insurance law it is generally conceded that the decision of Mr. Justice Osler is more in accordance with the original intention of the statute.

Section 6 as amended seems rather to favour this view, as it appears to limit the appointment by will to a variation or alteration of the apportionment originally made, showing, as it seems to me, very clearly that the settlement, so to speak,

must be by a declaration which places the policy beyond the control of the assured or his creditors, subject to a variation of the apportionment either by declaration or by will, but that the settlement once made it cannot be revoked or changed except within the limits referred to. That section (which applies to policies heretofore issued as well as to future policies) is as follows:

"6 (*a*) The insured may, by an instrument in writing attached to or endorsed on, or identifying the policy by its number or otherwise, vary a policy or a declaration or an apportionment previously made so as to restrict or extend, transfer or limit, the benefits of the policy to the wife alone, or the children, or to one or more of them, although the policy is expressed or declared to be for the benefit of the wife and children, or of the wife alone, or for the child or children alone, or for the benefit of the wife for life, and of the children after her death, or for the benefit of the wife, and, in case of her death during the life of the insured, then for the child or children or any of them, or although a prior declaration was so restricted; and he may also apportion the insurance money among the persons intended to be benefited, and may, from time to time, by an instrument in writing attached to or endorsed on the policy or referring to the same, alter the apportionment as he deems proper; he may also, by his will, make or alter the apportionment of the insurance money, and an apportionment made by his will shall prevail over any other made before the date of the will, except so far as such other apportionment has been acted on before notice of the apportionment by the will.

The English Acts, from which our more recent Acts have been largely borrowed, require that the trust for wife or children should appear on the face of the policy, but there appears to be no power for making a subsequent declaration such as is permitted by our statute; and while, perhaps, circumstances might render it desirable that a man should be in a position to throw the protecting influence of the statute about his life policy even after the issue of the policy, it might be fairly contended that the principle adopted by the English statute would render the contract less liable to the suspicion of fraud.

This division of judicial opinion emphasizes more strongly than ever the necessity for the intervention of the Legislature, as it strikes one as dangerous legislation and an encouragement to

fraud at the expense of creditors if these decisions are upheld, and it is to be hoped that at the next sittings of the House the matter will be placed beyond dispute, and the Act made to conform to the original intention, which was a highly beneficent and benevolent one. Moreover, the element of uncertainty which at present prevails as to the construction of the statute, and to which attention has been drawn by this article, renders it all the more necessary that no time should be lost in making the statute conform to the original intention of the framers.

W. F. BURTON.

Hamilton, February, 1895.

CURRENT ENGLISH CASES.

(Continued from Page 49.)

SLANDER OF GOODS—INJUNCTION.

Mellin v. *White*, (1894) 3 Ch. 276: 7 R. Aug. 128, was a somewhat curious case of slander. The defendant was a chemist, and sold a preparation manufactured by the plaintiff, but on the packages furnished by the plaintiff he affixed a notice in which he recommended the public to try another preparation, of which the defendant was the proprietor, as being far better "than any other preparation yet offered." The plaintiff claimed an injunction to restrain the defendant from affixing these notices to goods manufactured by the plaintiff. The plaintiff adduced evidence to show that his preparation was much better than the defendant's. Romer, J., without calling on the defendant, or hearing his evidence, dismissed the action, being of opinion that the notice was a mere puff of the defendant's preparation, and was not actionable: but the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) were unable to assent to this view of the case, and directed a new trial, being of opinion that if, on the whole evidence, it should be established that the notice was false in fact the action would lie.

CONTRACT TO PAY DIFFERENCE ON REALIZATION OF SECURITY—CAUSE OF ACTION—TIME OF ACCRUER OF CAUSE OF ACTION—STATUTE OF LIMITATIONS (21 JAC. 1, C. 16), S. 3.

In re McHenry, *McDermott* v. *Boyd*, (1894) 3 Ch. 290; 7 R. Nov. 194, the simple question was, When did the cause of action accrue? By a memorandum of deposit, dated in 1882, of bonds

to secure the repayment, in 1883, of an advance, the borrower authorized the lender to sell the bonds for the purpose of repaying the advance, and undertook to pay the lender any deficiency between the amount realized from the bonds and the advance. In 1889 the lender sold the bonds, and the proceeds proved insufficient to repay the advance. In 1891 the borrower died without having given any acknowledgment of the debt. The action was brought against his executors to recover the amount of the deficiency, and they set up the Statute of Limitations (21 Jac. 1, c. 16), s. 3, as a bar to the action. North, J., was of opinion that the cause of action did not accrue until the bonds were sold in 1889, but the Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.) were of opinion that the cause of action accrued when the debt became due in 1883, and that the clause giving the lender a power to sell the bonds did not affect the original promise or obligation to pay, nor create any new obligation to pay on the realization of the securities. They, therefore, held that the action was barred, and must be dismissed.

POWER OF APPOINTMENT—REVOCATION—JOINT APPOINTMENT—REVOCATION BY SURVIVOR.

In re Harding, Rogers v. *Harding*, (1894) 3 Ch. 315: 7 R. Oct. 64, is a case on the law of powers. By a marriage settlement certain funds were made subject to a power of appointment by the husband and wife during their joint lives by deed, with or without power of revocation and new appointment: and, in default of and subject to such appointment, then as the survivor of them should by deed, with or without power of revocation and new appointment, or by will, appoint. The husband and wife made a joint appointment of part of the fund, with a proviso that the appointment thereby made was made "subject to the power of revocation and new appointment mentioned in the settlement." After the wife's death the husband executed a deed revoking the joint appointment, and making a new appointment of the fund. The question was whether this latter appointment was valid. It was contended that it was void because the power to revoke the joint appointment could only be reserved to the husband and wife, and, even if it could have been reserved to the survivor, it had not been effectually so reserved. The Court of Appeal

(Lord Herschell, L.C., and Lindley and Davey, L.JJ.) agreed with North, J., that, upon the true construction of the settlement, a power of revocation of a joint appointment might be reserved to the survivor, and that it had been effectually so reserved, and, therefore, that the revocation and new appointment by the husband were valid. They conceived the case to be governed by *Brudenell* v. *Elwes*, 1 East 442, the principle of which is thus stated by Davey, L.J.: "That, when you have a joint power to appoint by deed, with or without power of revocation, that reserves the power of revocation either to the joint appointors or the survivor."

PARTNERSHIP ACTION—COSTS OF PARTNERSHIP ACTION—DEBT DUE FROM PARTNERSHIP TO ONE OF THE PARTNERS.

Ross v. *White*, (1894) 3 Ch. 326: 7 R. Oct. 70, was a partnership action in which, on the taking of the accounts, it appeared that there was a debt due from the partnership to one of the partners of £649, and that the assets were £1,371, which were insufficient to pay the debt and cost in full. The question was: In what order this debt and the costs of the action were payable out of the assets? Kekewich, J., held that the debt due to the partner must be first paid, and then the residue applied in payment of the costs: and the deficiency must be made up by the partners in the proportion they were respectively interested in the partnership, which, in this case, was equally. The defendants' contention that the costs of the action were first payable out of the assets was met by saying that the debt due to the plaintiff partner must be treated as assets received by the defendant in excess of his share, and that unless the defendant made good that portion of the assets the plaintiff was entitled to say to him, "Pay your own costs out of that portion of the assets which you have drawn out in excess of my drawings which you have in your hands." The decision of Kekewich, J., was affirmed by the Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.).

EQUITABLE EXECUTION—RECEIVER—EARNINGS OF THEATRE—RENTS AND PROFITS OF LEASEHOLD PREMISES OF JUDGMENT DEBTOR.

In *Cadogan* v. *Lyric Theatre*, (1894) 3 Ch. 338; 7 R. Dec. 66, Kekewich, J., appointed a receiver, by way of equitable execution, of the rents due and accruing due, and the profits earned

by the judgment debtors. The debtors carried on a theatre on leasehold premises, and had mortgaged the lease, and Kekewich, J., was of opinion that the receiver was entitled to receive the money paid by the public for admission to the theatre, which he considered was of the nature of rent. The Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.), on the other hand, thought that the plaintiff was entitled to a receiver of the rents and profits of the defendants' land, because having mortgaged the lease they had a merely equitable interest in it which could not be reached by legal process, and that the defendants were bound to deliver up possession to the receiver; but they were of opinion that the price of admission to the theatre was not in the nature of rent, and that Kekewich, J.'s, order appointing a receiver of the profits of the debtors' business was wrong. The order of Kekewich, J., was therefore varied, and a receiver appointed of the rents and profits of the lands of the judgment debtors, coupled with an order for the delivery of possession thereof to the receiver.

PRACTICE—INTRODUCTORY ORDER FOR PAYMENT INTO COURT—ADMISSION BY DEFENDANT—ORD. XXXII., R. 6—(ONT. RULE 756).

In *Neville* v. *Matthewman*, (1894) 3 Ch. 345; 7 R. Nov. 178, Chitty, J., following a practice which has prevailed in England, but not, we believe, to any extent in Ontario, made an order on an interlocutory application for the defendant to pay into court a sum of £1,000, which, in the course of correspondence, he had before action admitted to be in his hands. The Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.) reversed the order, being of opinion that it was plain on the defendant's affidavit that, notwithstanding the alleged admission, there was a *bona fide* dispute as to the amount, if any, for which he was liable. See Ont. Rule 756, under which such an application might be made upon admissions appearing in the pleadings or examination of the party. See also *Nutter* v. *Holland*, *infra*.

COMPANY—WINDING UP—CONTRIBUTORY—DIRECTOR—QUALIFICATION SHARES—RESIGNATION DURING PERIOD ALLOWED FOR QUALIFICATION.

In re Bolton, (1894) 3 Ch. 356; 8 R. Aug. 229; 7 R. Nov. 171, the oft-recurring question as to the liability of directors who have acted and resigned before qualifying is discussed. In this

case the articles of the company provided that the signatories thereof were to be directors until such time as six of them should nominate another director in their place; also that the qualification of a director was to be the holding £100 in shares, but that he might act before acquiring the qualification, but that he was to acquire it within three months from his appointment, and unless he should do so was to be deemed to have agreed to take the shares The six signatories, within three months of their appointment, signed a paper appointing a director in their place. Two of them never otherwise acted as director, and never acquired their qualification shares. Wright, J., held that these two, by accepting office and acting as directors, had agreed to take the qualification shares, and that they were not relieved from the agreement by their resignation within the three months. The majority of the Court of Appeal (Lord Herschell, L.C., and Davey, L.J.), however, overruled this decision, and held that the directors who resigned within the three months were under no obligation to take the qualification shares. The value of this decision is somewhat impaired by the dissent of Lindley, L.J., *facile princeps* in this branch of law, who coincided with Wright, J., and we confess, with all due respect, that the reasoning of Lindley, L.J., appears to us preferable to that of the majority of the court.

ADMINISTRATION—CREDITORS' CLAIM—AMENDMENT OF BANKRUPTCY WITH CONSENT OF CREDITORS—SECRET AGREEMENT WITH CREDITOR—FRAUD.

In re McHenry, McDermott v. *Boyd*, (1894) 3 Ch. 365; 7 R. Nov. 199, which was an action for the administration of the estate of James McHenry, deceased, the claim of Levita, a creditor, for £6,000, was disallowed by North, J., under the following circumstances: McHenry, the deceased, had been adjudicated bankrupt, and he, being desirous of obtaining an annulment of the bankruptcy, induced some of the creditors to sell their debts to two trustees for McHenry, who were, as assignees, to consent to the annulment. Among the debts so assigned was one due to Levita for £25,000, for which he was paid £2,000, and a promise made to him that after the annulment he should be paid a further sum of £5,000, which was the debt now in dispute. This agreement was not disclosed to the court or to any other creditor, and the court made an order annulling the bankruptcy on the consent of the creditor North, J., disallowed the claim on the ground that

the agreement was invalid; but the Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.) were unanimous that the agreement was valid, and that there was no duty to disclose it to the court, or to other creditors, as the creditors were not acting on any common basis. Lindley, L.J., said: "The key to this case is to be found in the fact that when creditors consent to an annulment of adjudication of bankruptcy, each creditor consents upon such terms as he thinks proper. They do not work in unison."

WILL—DEVISE—TRUST TO WORK OUT GRAVEL PITS AND THEN SELL—GIFT TO UNASCERTAINED CLASS—REMOTENESS.

In re Wood, Tullett v. *Colville*, (1894) 3 Ch. 381; 7 R. Nov. 162, the Court of Appeal (Lindley, Lopes, and Davey, L.JJ.) have affirmed the decision of Kekewich, J., (1894) 2 Ch. 310 (noted *ante* vol. 30, p. 635). In this case the testator had devised gravel pits to trustees upon trust to work them out and then sell them, and divide the proceeds among an unascertained class. Kekewich, J., held the gift void for remoteness, notwithstanding that the pits were actually worked out within six years from the testator's death, and consequently that the property fell into the residue. Another point in the case was as to the construction of the residuary devise, which was to divide the income amongst all his children during their respective lives, and upon the death of any such child, whether before or after his own death, to hold the corpus whereof the income would have been payable to such child upon trust for all or any child or children of such child, etc. A child of the testator had died before the date of the will, leaving children. Kekewich, J., held that these children were not entitled to the benefit of the residuary devise, and his judgment on this point was also affirmed. As regards the first point, Lindley, L.J., affirms the correctness of the law as laid down in Theobald on Wills, 3rd ed., p. 401, viz.: "In applying the rule against perpetuities, the state of things existing at the testator's death, and not at the date of the will, is to be looked at. But possible and not actual events are to be considered, and, therefore, if at the testator's death a gift might possibly not have vested within the proper time, it will not be good, because, as a matter of fact, it did so vest."

PATENT—EXCLUSIVE LICENSE—IMPROVEMENTS ON PATENT MADE BY LICENSEE—REVOCATION OF LICENSE—NON-PAYMENT OF ROYALTY—INJUNCTION.

In *Guyot* v. *Thomson*, (1894) 3 Ch. 388; 8 R. Dec. 208, the plaintiff had, in consideration of a lump sum and an agreement to pay a royalty, obtained from the defendant an exclusive license to manufacture and sell articles manufactured according to a patent owned by the defendant. The plaintiff was also empowered to grant sub-licenses, with power to revoke them; but no power of revocation was reserved to the defendant. The plaintiff made certain improvements in the patented invention and the articles he made and sold had these improvements. Disputes arose between the plaintiff and defendant in consequence, the latter claiming that the improvements were not improvements, but the contrary, and the plaintiff refused to pay the royalty. The defendant then purported to revoke the license to the plaintiff, and notified the customers of the plaintiff that the articles made by the plaintiff were not made according to the defendant's patent, but were spurious imitations thereof. The plaintiff claimed an injunction to restrain the defendant from revoking the patent, and from representing that the plaintiff's articles were not made according to the patent. The defendant counterclaimed for the royalties in arrear. Romer, J., held that the license was not revocable, and that the plaintiff was entitled to an injunction as claimed, and that the defendant was also entitled to succeed on his counterclaim for the royalties, and this decision was affirmed by the Court of Appeal (Lindley, Lopes, and Davey, L.JJ.).

CO-SURETIES, RIGHTS OF, INTER SE—PAYMENT OF WHOLE DEBT BY CO-SURETY—ASSIGNMENT OF PRINCIPAL DEBT TO CO-SURETY—PROOF OF CLAIM BY SURETY AGAINST ESTATE OF CO-SURETY—MERCANTILE LAW AMENDMENT ACT (19 & 20 VICT., C. 97), S. 5—(R.S.O., C. 122, S. 2).

In re Parker, *Morgan* v. *Hill*, (1894) 3 Ch. 400; 7 R. Dec. 156, one of two co-sureties paid the principal debt in full, and took an assignment of it; his co-surety having made an assignment for the benefit of his creditors, the surety who had paid the principal debt claimed to prove against the estate for the full amount, and to be paid a dividend thereon, so long as such dividend did not exceed the proper proportion of the principal debt payable by the co-surety. Kekewich, J., held that he was so entitled, and the Court of Appeal (Lindley, Lopes, and Davey, L.JJ.) agreed

with him. Whether the result would have been the same if the claim had been based merely on the right to contribution seems doubtful.

PRACTICE—ORDER FOR PAYMENTINTO COURT—ADMISSION BY DEFENDANT—ORDERS LV., R. 41, XXXII., R. 6—(ONT. RULE 756).

Nutter v. *Holland*, (1894) 3 Ch. 408; 7 R. Nov. 158, is a case on a similar point to that involved in *Neville* v. *Matthewman*, *supra* p. 83. The defendant, a trustee, had admitted, in an account rendered by him, that he had received £809 of the trust estate, but there was no admission that the money was still in his hands. The plaintiff made an application for an order on the defendant to pay the £809 into court; the defendant claimed that an account should be taken in the ordinary way. In this case the application was made under the English Rule Ord. lv., r. 4, which authorizes an originating summons to be issued for payment into court of money in the hands of trustees. Of this Rule there is no counterpart in Ontario (but see Rule 756). The Court of Appeal (Lindley, Lopes, and Davey, L.JJ.) held that the Rule only applied to money actually in the hands of the trustee, and if it is not in his hands, though he may be responsible for it, the Rule does not apply; they therefore made an order simply for administration of the trusts.

COPYRIGHT—SLEEVE PATTERN AND SCALE—MAP, CHART, OR PLAN.

In *Hollinrake* v. *Truswell*, (1894) 3 Ch. 420; 7 R. Dec. 134, the Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.) have been unable to agree with the decision of Wright, J., (1893) 2 Ch. 377 (noted *ante* vol. 29, p. 514), that a cardboard pattern sleeve containing upon it scales, figures, and descriptive words for adapting it to sleeves of different dimensions, can be the subject of copyright as being a map, plan, or chart, but they thought it might possibly be the subject of a patent as an instrument or tool.

STATUTE OF LIMITATIONS—PARTNERSHIP—PAYMENTS BY FIRM AFTER RETIREMENT OF PARTNER—MERCANTILE LAW AMENDMENT ACT (19 & 20 VICT., C. 97), S. 14—(R.S.O., c. 123, s. 2).

In re Tucker, *Tucker* v. *Tucker*, (1894) 3 Ch. 429, the defendant William Tucker appealed from the decision of Romer, J., (1894) 1 Ch. 724 (noted *ante* vol. 30, p. 500). As will be seen from that note, William Tucker was liable to the plaintiff for a debt as a member of a firm of Baker, Tucker & Co., from which he retired

in 1883. His retirement was not gazetted, and the continuing members of the firm agreed with him to pay the liabilities of the firm. In pursuance of this agreement, they paid interest on the plaintiff's debt down to 1891. The question raised on the appeal was whether, having regard to the Mercantile Law Amendment Act (19 & 20 Vict., c. 97), s. 14 (R.S.O., c. 123, s. 2), this payment prevented the statute from running as against William Tucker, and the Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.) were of opinion that it did, because the agreement made by William Tucker with the continuing partners for the payment of the debt of the firm had the effect of constituting them agents of William Tucker in respect of the payments made by them in pursuance thereof.

LIS PENDENS—PERSONAL ESTATE—ASSIGNMENT OF CHOSE IN ACTION—BOOK DEBTS—RECEIVER.

Wigram v. *Buckley*, (1894) 3 Ch. 483; 7 R. Nov. 136, was a contest between two assignees of the same choses in action, in which it was sought to apply the doctrine of *lis pendens*. A firm of traders had assigned to the plaintiffs all their book debts, but the plaintiffs omitted to give notice of the assignment to the debtors. The plaintiffs brought an action against the firm to enforce their security, which they registered as a *lis pendens*, and obtained an injunction and receiver, but no notice of the action or receiver was given to the debtors. Subsequently the firm assigned the same debts to a banking company, who gave notice to the debtors. The banking company had no notice of the plaintiffs' assignment, or of the action, or of the receiver, unless the registration of the *lis pendens* constituted constructive notice. They applied to get in the debts assigned to them, notwithstanding the appointment of the receiver. Chitty, J., refused the application, being of opinion that the doctrine of *lis pendens* applied; but the Court of Appeal (Lord Herschell, L.C., and Lindley and Davey, L.JJ.) unanimously reversed his decision, holding that the banking company were assignees for value without notice of the plaintiffs' prior assignment, over which they had acquired priority by reason of their having been the first to give notice to the debtors, and they were agreed that the doctrine of *lis pendens* has no application to personalty except chattels real. But even if it did, the Court of Appeal considered that the laches of the plaintiffs in omitting to give notice to the debtors was, of itself sufficient to prevent their claiming priority over the banking company.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

MICHAELMAS TERM, 1894.

Monday, November 20th.

Present, between ten and eleven a.m., the Treasurer, and Messrs. Moss, Kerr, Shepley, and Hoskin, and in addition, after eleven a.m., Sir Thomas Galt, and Messrs. Aylesworth, Bruce, Watson, and Mackelcan.

The minutes of 13th October, 1894, were read and confirmed.

Ordered, that Miss Clara B. Martin, having furnished reasons for absence from lectures, be allowed a first year examination, passed last Easter.

Ordered, that Mr. J. C. Makins be admitted as a student at law.

Ordered, that Messrs. C. Guillet, W. J. Withrow, and G. H. P. Macdonald be admitted as students at law as of Trinity Term.

Proceedings after eleven a.m.: The petitions of Messrs. H. W. Delaney and C. M. Foley, solicitors of over ten years' standing, were read. Ordered, that they be called to the Bar.

The following gentlemen were then called to the Bar: Messrs. C. W. Craig, A. Macfarlane, W. T. Henderson, G. T. Denison, jun., J. F. Warne, W. S. Deacon, J. R. Grant, W. S. McCallum, G. R. Geary, H. L. Watt, H. M. Ferguson, F. A. W. Ireland, R. E. Heggie, J. E. Cohoe, H. C. Small, R. H. C. Pringle, D. Ross, C. T. Sutherland.

Mr. Moss, from the Legal Education Committee, reported in the cases of Messrs. W. A. Robinson and W. Mulock, jun. Ordered, that their notices do remain posted until the last day of term, and that they be then called if no objection appear.

Mr. Moss reported on the petition of Mr. T. B. German, that the Legal Education Committee are unable to recommend the granting of this petition. The Report was adopted.

In the case of Mr. G. F. T. Arnoldi, that he be required to attend the session of the third year in the Law School for twenty-five additional lectures, and that upon compliance with all other requirements his attendance and examination be allowed. Ordered accordingly.

Mr. H. W. Delaney was then called to the Bar.

A call of the Bench was ordered for Friday, the 30th November, for the election of a Bencher, to fill the seat made vacant by the elevation of Mr. W. R. Meredith, Q.C., to the Chief Justiceship of the Common Pleas Division.

Ordered, that the matter referred to in the motion made by Mr. Watson on 22nd September, 1893, with regard to the reduction of the number of reporters, and reported upon to Convocation on the 24th November, 1893, be referred anew to the Joint Committee referred to in that motion.

Ordered, that when Convocotion adjourns on Friday, 7th December, it do stand adjourned until Saturday, 22nd December, at 11 a.m.

Tuesday, November 20th.

Present, between ten and eleven a.m., Dr. Hoskin, and Messrs. Moss, Maclennan, Shepley, Macdougall, and Watson, and in addition, after 11 a.m., Messrs. Aylesworth, Guthrie, Kerr, Barwick, and Ritchie.

In the absence of the Treasurer, Dr. Hoskin was appointed chairman. The minutes of the last meeting were read and confirmed. Ordered, that Messrs. W. M. McClemont and C. H. Glassford do receive their certificates of fitness.

Proceedings after eleven: The petition of Mr. John Carruthers, a solicitor of ten years' standing, was read. Ordered, that he be called to the Bar. Messrs. M. C. Biggar, C. M. Foley, and J. Carruthers we then called to the Bar.

Ordered, that the time for reporting on the subject of the supply of the Supreme Court Reports be extended, and the Special Committee dealing with this matter be permitted to report at the meeting to be held on 22nd December, next.

Mr. Watson, from the Finance Committee, reported on the impaired condition of the iron fence surrounding the grounds at Osgoode Hall. Ordered, that the matter be referred back to the Finance Committee, with a request to make some recommendation.

The Secretary was directed to notify all members of Convocation of the intention to appoint members of the Reporting staff on Friday, 7th December.

Friday, November 23rd.

Present, Dr. Hoskin, and Messrs. Watson, Magee, Barwick, Britton, Riddell, Osler, Moss, Lash, and Shepley.

In the absence of the Treasurer, Dr. Hoskin was appointed chairman. The minutes of the last meeting were read and confirmed.

Mr. Osler, from the Reporting Committee, reported as follows:

The committee considered the terms of the offer dated 12th October, 1894, of Messrs. Rowsell & Hutchison for printing the Law Reports at the price of $1,700 per volume of 750 pages, edition of 2,000 copies, and have resolved to report to Convocation their acceptance of same, provided the best Canadian paper is used, equal to a sample to be submitted.

Ordered, for immediate consideration, and adopted.

The Report of the Legal Education Committee was presented, as follows:

Convocation having on the 13th day of October, 1894, referred to this committee the request of the examiners for an increase of salary, or a special allowance for last year's services, with a request to report what, under the circumstances, would be a reasonable compensation, the committee, having considered the matter, are of opinion that, in view of the special circumstances, $50 to the senior examiner, and $40 to each of the junior examiners for the extra services rendered by them during the year ending the 30th September, 1894, would be a reasonable allowance. Adopted, and ordered accordingly.

Ordered, that the Society arrange with Mr. Chief Justice Meredith to sit for his portrait, to be placed in Osgoode Hall, and that a committee consisting of Messrs. Osler, Shepley, Barwick, and Aylesworth be appointed to make the necessary arrangements.

Friday, November 30th.

Present, the Treasurer, Sir Thomas Galt, and Messrs. Idington, Hoskin, Magee, Britton, Barwick, Shepley, Bruce, Strathy, Macdougall, Ritchie, Osler, Robinson, Teetzel, Douglas, and McCarthy.

The minutes of last meeting were read and confirmed.

Mr. Richard Bayly was elected a Bencher in the place of Mr. W. R. Meredith, Q.C., recently appointed Chief Justice of the Common Pleas Division.

The Editor's quarterly Report on the state of reporting was read as follows:

The work of reporting is in a forward state.

In the Court of Appeal there are fourteen unreported cases—all judgments delivered on the 13th inst. In the Queen's Bench there are six, all of October.

In the Chancery Division Mr. Lefroy has four, of which one is of October and three of this month. Mr. Boomer has thirteen, one of August not handed out until September, one of September, and eleven of October. In the Common Pleas there are no judgments unreported. Of the Practice cases, eight are unreported, three of October and five of November.

The Report was received.

Mr. Shepley, from the Building Committee, presented an interim Report on the subject of the Library extension, as follows:

The Government has passed an Order in Council, which is submitted herewith, agreeing to the proposed extension being made according to the plans already before Convocation upon terms which bring the extension, when completed, within the provisions of the contracts now existing between the Government and the Society with regard to the main library, which contracts are dated July 1, 1874, and November 26, 1885. Your committee has let the contracts for all the work except the shelving, at a cost of $4,074.87. The architect's estimate upon the shelving is $2,200, but the tenders for that work have not yet been asked for.

The work is to be commenced forthwith, and prosecuted to completion without delay.

SCHEDULE OF CONTRACTS AWARDED.

Masonry and brick work, C. C. Witchall	$ 680 00
Carpentry, J. C. Scott	1,485 00
Ironwork, R. L. McIntyre	649 00
Roofing and sheet metal, Douglas Bros	480 00
Steam heating, Bennett & Wright	268 00
Painting and glazing, M. O'Connor	512 87
	$4,074.87

COPY OF ORDER IN COUNCIL.

November 24th, 1894.

"Upon the recommendation of the Honourable the Minister of Public Works, the Committee of Council advise that the proposed extension of the Library at Osgoode Hall by the Law Society be approved of, such extension to be in accordance with the accompanying plans, and subject to the terms and conditions expressed and contained in the deed of surrender by the said Society to Her Majesty, dated 1st July, 1874, and the Deed of Rectification dated 26th November, 1885."

The Report was adopted.

The petition of Mr. Robert Miller, a solicitor of over ten years' standing, was read. Ordered, that he be called to the Bar, and he was called accordingly.

Dr. Hoskin read the petition of Rebecca Thompson against Mr. T. E. Williams, a solicitor. Convocation being of opinion that a *prima facie* case had been shown, it was ordered that the matter be sent to the Discipline Committee for investigation in the usual way.

Friday, December 7th.

Present: The Treasurer, and Sir Thomas Galt, and Messrs. Proudfoot, Bell, Bayly, O'Gara, Osler, McCarthy, Martin, Barwick, Watson, Moss, Shepley, Lash, Ritchie, Hoskin, Riddell, Aylesworth, and Robinson.

The minutes of Friday, November 30th, were read and confirmed.

Mr. Richard Bayly, Q.C., took his seat as a Bencher, and was then appointed a member of the Committee on Journals and Printing, and also of the Legal Education Committee.

Mr. Magee was appointed a member of the County Libraries' Aid Committee.

Mr. Lash, from the Special Committee appointed to draft a resolution expressing the feelings of Convocation in reference to the death of the Honourable Stephen Richards, Q.C., reported as follows:

That the Benchers of the Law Society of Upper Canada, in Convocation assembled, desire to express their sorrow for the recent death of the Honorable Stephen Richards, Q.C., and their sympathy for his widow and family. Mr. Richards was for many years a Bencher of the Society, and for some time occupied the high position of its Treasurer. He was an honourable man, a sound lawyer, a skilful advocate, and, when in active practice, he held a leading place in the profession. His memory is respected by all.

Resolved, further, that a copy hereof be suitably engrossed and sent to Mrs. Richards.

Colonels Denison, Hamilton, Davidson, Mason, and F. C. Denison attended Convocation and read over to the Benchers the communication from the officers of the Toronto Garrison, dated November 28th, 1889, and the Report of the Special Committee appointed on November 29th, 1889, which was presented to Convocation on February 8th, 1890.

The officers withdrew, and it was moved by Mr. Lash, seconded by Mr. Ritchie: That it is expedient that the Dominion Government should have certain privileges over Osgoode street, in rear of Osgoode Hall grounds, in connection with the drilling of the active militia thereon, and that Messrs. Shepley, Barwick, Osler, and the mover be a special committee to prepare and submit to the next meeting of Convocation a draft of such agreement and statute as, after conference with the governments and municipal authorities, they may think should be entered into and passed for the purpose of granting such privileges and protecting the interests of the Law Society, Mr. Lash to be the convener.

Mr. Osler then presented the Report of the Joint Committee appointed to deal with the question of the reduction of the Reporting staff, as follows:

The Joint Committee advise the reappointment of the Editor and Reporters under the Rules for the residue of the term, namely, for two years from the last day of Michaelmas Term, such appointment to be subject to any Rules hereafter to be passed by Convocation readjusting the duties of the reporters of the High Court. The Joint Committee suggest that the proposed changes in the duties of the High Court reporters be considered at the half-yearly meeting.

Ordered for immediate consideration and adopted.

The Secretary read the names of the applicants for the positions of Editor and Reporters.

Mr. Osler moved that the gentlemen who now held the offices of editor of the Reports and reporters for the Court of Appeal and for the High Court of Justice, including the reporter of Practice cases, be appointed to

those positions for the period of two years from the last day of the present Michaelmas Term. Carried.

Mr. Moss, from the Legal Education Committee, reported with reference to applications for admission as students at law as of Trinity Term.

Ordered, that Mr. C. W. S. Kappele be entered as a student at law of the graduate class of Trinity Term, 1894.

Ordered, that Messrs E. C. Sanders, W. A. Chisholm, F. H. A. Davis, W. T. Goodison, A. A. Macdonald, R. H. M. Temple, W. S. West, R. A. Harry, J. Milden, J. A. M. Armstrong, L. W. Brown, T. H. Crerar, O. Delaplante, A. B. Drake, H. R. Smith, J. A. Thompson, and David Mills, jr., be admitted as students of the matriculant class.

Ordered, that Messrs. W. Mulock, jr., and W. A. Robinson, whose notices had remained duly posted, be called to the Bar.

Ordered, that Mr. E. W. J. Owens, who had duly passed the examination for certificate of fitness under the old curriculum, be granted his certificate of fitness as a solicitor.

Ordered, also, that Mr. W. D. Moss, who was successful at the third year examination in the Law School, do receive his certificate of fitness as a solicitor.

Mr. Moss, from the Legal Education Committee, reported on the question of the expenditure of the income derived from the Phillips Stewart estate, and on the increase of the books in the Phillips Stewart library, recommending that the balance at present charged against the Phillips Stewart library account be written off, and that a sum equal to the income of the fund for the current year be placed at the credit of the committee for the purchase of books, and that this course be followed in successive years. The Report was taken into consideration and adopted.

Mr. C. H. Ivey, who had been ordered for call in Easter, Messrs. W. A. Robinson, and W. Mulock, jr., were then introduced and called to the Bar.

Pursuant to order of 19th November, Convocation adjourned until Saturday, 22nd December, at 11 a.m.

Saturday, December 22nd.

Present: The Treasurer, and Sir Thomas Galt, and Messrs. Proudfoot, Maclennan, Martin, Aylesworth, McCarthy, Strathy, Riddell, Watson, Robinson, Osler, Ritchie, Mackelcan, Shepley, and Bruce. The minutes of last meeting were read and confirmed.

Mr. Watson, from the Special Committee on Fusion, reported progress, and asked leave to report on the second day of Hilary Term, 1895. Ordered accordingly.

Ordered, that the present arrangement under which the Society receives 930 copies of the Supreme Court Reports at $2.00 per copy be not interfered with, but that the proposition of the Registrar of the Supreme Court as contained in his letter of November 3rd last to supply the Society with such additional number of copies of the Supreme Court Reports as may be required to furnish those Reports to all practitioners who issue their annual certificates at the rate of $1.25 per copy be accepted, and the Supreme Court Reports be furnished without extra charge to all practitioners who issue their annual certificates.

Mr. Martin, from the County Libraries' Aid C ittee, reported on the application of the Oxford Law Association f in initiatory grant, recommending a grant of $580. Adopted.

Mr. Martin moved for leave to introduce a Rule that subsection 2 of Rule 73 be amended by striking out the words "under Chapter 173 of the Revised Statutes of Ontario," and substituting the words, and "incorporate the same." By unanimous consent the Rule as to the stages was suspended, and the Rule was passed.

Mr. Moss, from the Legal Education Committee, reported on the case of Mr. G. H. Gauthier, recommending that he be entered as a student at law of the matriculant class as of Trinity Term. Ordered accordingly.

Ordered, that Messrs. William Mulock, jr., and G. H. Hayward do receive their certificates of fitness as solicitors.

Mr. Osler, from the Reporting Committee, submitted a scheme of the Editor of the Reports for the division of work among the Reporting staff, and on his motion consideration of the proposed changes in the duties of the High Court reporters was deferred until Tuesday, the second day of Hilary Term.

The time for the Report of the Special Committee appointed to deal with the question of closing Osgoode street was extended to the first day of Hilary Term, 1895.

Mr. Watson, from the Finance Committee, presented a Report on the question of repairs to the iron fence around the grounds. The Report was adopted, and it was ordered that the work be proceeded with as soon as practicable.

The petitions of Messrs. H. A. E. Kent and H. E. F. Caston, solicitors of over ten years' standing, were read. Ordered, that they be called to the Bar, and they were called accordingly.

It was then moved by Mr. Mackelcan, seconded by Mr. Robinson:

The Benchers of the Law Society of Upper Canada share with the country at large the deep sorrow which is felt throughout the Dominion at the sudden death of the Right Honourable Sir John S. D. Thompson, Minister of Justice and Premier of Canada.

As Attorney-General of Canada and a Bencher of the Law Society of Upper Canada, Sir John Thompson was regarded with the highest admiration and warmest friendship by the Benchers of this Society, and his memory will ever be cherished as a leader whose example all should emulate, and as a man whose high character and distinguished ability conferred great honour upon the profession of which he was so illustrious a member.

His loss will be deeply felt by the whole Bar of Canada, and, as representing the members of the legal profession in the Province of Ontario, the Benchers desire to convey to his widow and family their sincere and heartfelt sympathy in their sad bereavement.

Ordered, that the above resolution be engrossed and a copy thereof be forwarded to Lady Thompson, with the expression of Convocation's deep sympathy.

Convocation then rose.

DIARY FOR FEBRUARY.

1. Friday.....Sir Edward Coke born, 1552.
3. Sunday.....*4th Sunday after Epiphany.*
4. Monday.....Hilary Term begins. Toronto Assizes, jury (civil) cases. 4th week, Ferguson, J., Q.B. and C.P. Div. Ct. sit.
6. Wednesday....W. H. Draper, 2nd C.J. of C.P., 1856. County Court non-jury sittings in York. Convocation meets.
8. Friday.....Convocation meets.
9. Saturday.....Union of Upper and Lower Canada.
10. Sunday.....*Septuages. Sunday.* Canada ceded to Great Britain, 1763.
11. Monday.....Toronto Assizes, jury (civil) cases, 5th week, Robertson, J. T. Robertson, appointed J. Chy. Div., 1887.
14. Thursday.....Toronto University burned, 1890.
15. Friday.....Convocation meets.
16. Saturday.....Hilary Term ends.
17. Sunday.....*Sexagesima Sunday.*
18. Monday .....Robert Sedgewick, J. of S.C., 1893.
19. Tuesday.....Supreme Court of Canada sits.
21. Thursday.....Chancery Division Court sits.
24. Sunday.....*Quinquagesima Sunday.*
27. Wednesday....Ash Wednesday, Sir John Colborne, Administrator, 1838.
28. Thursday.....Indian Mutiny began 1857.

Reports.

FIRST DIVISION COURT, COUNTY OF LAMBTON.

[Reported for THE CANADA LAW JOURNAL.]

MATHEWSON *v.* HOW.

Landlord and tenant—Abatement of nuisance—Costs of, to be borne by tenant, where occasioned by him—R.S.O., c. 205. ss. 62 and 104.

A nuisance was caused on the demised premises by the tenant;

Held, (1) that R.S.O., c. 205, s. 104, does not declare the liability of an owner in every case to bear the expenses of abating a nuisance, but only applies in cases where he has been proved to be liable.

Held, (2) that s. 62 fixes the liability to pay such expenses upon the party causing the nuisance.

[SARNIA, June 30, 1894. MCKENZIE, J.J.

H., the defendant, was the tenant of a certain residence under written lease from the plaintiff, M., dated 10th October, 1891, and made pursuant to the Act respecting Short Forms of Leases.

The rent was payable monthly, and the lease contained the usual statutory covenant by the lessee to repair reasonable wear and tear, and damage by fire only excepted.

There was also a special covenant by the lessee that he would, on the determination of the lease, remove all ashes and refuse from the demised premises, and leave the same in a cleanly condition, fit for the reception of an incoming tenant; sewerage rates were to be paid by the lessor.

The house and appurtenances were new when the defendant took possession, and had never been occupied before. There was no connection with the public sewer, but the water and refuse from the house was all drained into a cesspit in the yard, used only by the defendant's household.

After the defendant had been in possession under the lease for upwards of two years, a leak in his bathroom caused the cesspit to fill and overflow, and

occasioned a nuisance on the premises. The defendant (the tenant) thereupon complained to the health inspector, and requested him to abate the nuisance. The inspector did cause the nuisance to be abated, and charged the costs and expenses incurred to the tenant, who paid them, and deducted them out of his next month's rent, claiming to be entitled to do so under R.S.O., c. 205, s. 104, which reads as follows: "(1) Any costs or expenses recoverable from an owner of premises under this Act, or under any provision of law in respect of the abatement of nuisances, may be recovered from the occupier for the time being of such premises; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of said premises, as if the same had actually been paid to such owner as part of said rent: Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses truly to disclose the amount of his rent and the name and address of the person to whom rent is payable; but the burden of proof that the sum demanded from such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall be on such occupier.

"(2) Nothing in this section contained shall affect any contract between any owner or occupier of any house, building, or other property whereby it is, or may be, agreed that the occupier shall pay or discharge all rates and dues, and sums of money payable in respect of such house, building, or other property, or affect any contract whatever between landlord and tenant." 47 Vict., c. 38, s. 27.

The plaintiff thereupon brought this action to recover the month's rent kept back to meet these expenses, alleging that the defendant had caused, and should, therefore, pay for abating the nuisance, and citing s. 62 of the same Act, which reads as follows: "All reasonable costs and expenses incurred in abating a nuisance shall be deemed to be money paid for the use and at the request of the person by whose act, default, or sufferance the nuisance was caused, and such costs and expenses shall be recovered by the municipal council, or local board of health, or person incurring the same, under ordinary process of law, and the court shall have power to divide costs, expenses, and penalties between persons by whose acts or defaults a nuisance is caused, as to it may seem just." 47 Vict., c. 38, s. 34.

R. A. Bayly for the plaintiff.

T. H. Purdom for the defendant.

McKENZIE, J.J.: My findings in this case are as follows:

(1) The nuisance in question was caused by the defendant.

(2) There is no special stipulation on the part of the plaintiff to pay for removal of same.

(3) The special clause in the lease that the defendant will, on its determination, remove all ashes and refuse from the demised premises, and leave the same in a cleanly condition fit for the reception of an incoming tenant, might fairly be held to cover the cleaning of sediment from bottom of cesspool, th

same as removal of ashes from an ashpit, and the presumption would follow that the plaintiff did not intend or agree to perform this work during the term of the lease.

(4) S. 104, c. 205, R.S.O., on which defendant relies, does not define under what circumstances an owner shall be liable, but only provides for a case where he is liable, whereas s. 62 provides that costs incurred in abating a nuisance shall be deemed to be money paid for the use of the person by whose act the nuisance was caused.

(5) I think s. 62 would make the defendant liable for costs of abating the nuisance, and I fail to see by what authority he can claim to be reimbursed by plaintiff.

(6) If the English law governs in this case it would not help the defendant, as that provides that "a rate for ordinary annual repairs falls on the tenant." See Woodfall's "Landlord and Tenant" under "Sewers Rates."

From this I would hold that while the landlord should provide and keep in repair a sewer, or as in this case a cesspool, as a receptacle for outflowings from a house, the tenant should see that the connections and means of escape should be kept clean as an ordinary annual repair for his own use and benefit. I have consulted with my brother judges in this matter, and they agree with me that under the circumstances the defendant is not entitled to set off his claim against the rent.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Dec. 19, 1894.

DOLEN *v.* METROPOLITAN LIFE INSURANCE CO.

Life insurance—Policy—Interest and rights of insured and of beneficiaries—Assignment of policy to secure debt—Judgment for debt, effect of—Loss of assignment—Secondary evidence—Affidavits—Rule 585—Costs.

Where an insurance was effected upon the life of a person for the benefit of her father, brothers, and sisters, the plaintiffs,

Held, that the beneficial interest in the policy, as soon as it was issued, vested in the plaintiffs, and the contract of the insurers being to pay them the moneys payable under the policy the insured could not by any act of hers deprive them of the interest so vested in them, or of their right to call upon the insurers for payment; and an assignment made by her to a stranger to secure a debt had no effect upon such interest or right of the plaintiffs; but an assignment made by the father to such stranger was effectual to transfer his individual beneficial interest and right; and the assignee, under the circumstances in evidence, became the mortgagee of such interest and right; and the

recovery of a judgment by the assignee against the father for the amount of the debt did not prejudicially affect the security.

It having been shown at the trial that an assignment of the policy had been made, but it being doubtful whether sufficient evidence of its loss had been given to warrant the admission of secondary evidence of its contents, the court allowed further evidence of such loss to be given by affidavit, under Rule 585; and such further evidence being satisfactory,

Held, that the trial judge was right in finding that an assignment according to the form in use by the insurers, and produced at the trial, had been executed by the insured and her father.

Consideration of question of costs.

M. G. Cameron and *W. J. Elliott* for the plaintiffs.

Fair for the defendant Lamb.

Div'l Court.] [Dec. 19, 1894.

PORT ELGIN PUBLIC SCHOOL BOARD *v.* EBY.

Principal and surety—Bond—Condition—Breach—Demand—Executors and administrators—Liability of sureties.

The plaintiffs' treasurer, who died before action, and two sureties on his behalf, executed a joint and several bond in favour of the plaintiffs, conditioned that he should receive, safely keep, and faithfully disburse all school moneys collected, and deliver up to the plaintiffs, *on demand*, all moneys not paid out.

Held, that there could be no recovery against the sureties upon the bond without showing a demand personally made upon the treasurer; and a demand upon the administrators of his estate was of no avail.

Shepley, Q.C., for the plaintiffs.

Shaw, Q.C., for the defendants Eby and Carroll.

D. Armour for the defendants, the Trusts Corporation of Ontario.

MEREDITH, C.J.] [Nov. 24, 1894.

KOCH *v.* HEISEY.

Will—Legacy to widow—Right to annual specific sum—Children of deceased child—Right to their parent's share.

The testator by his will bequeathed to his wife $150 a year, payable half yearly out of the rent of his farm, until the sale thereof, which was to be three years after his death, when she was to be paid the interest on $2,500 at 6 per cent., or the $150. On the sale, the purchaser was to pay not less than $3,000 in cash, and the balance as his executors might deem most beneficial. $2,500 was to be left on mortgage or invested by the executors at interest, payable half yearly to the widow during her lifetime or widowhood, and such provision was to be in lieu of dower. Legacies of $500 were given to each of testator's twelve children (one of whom M. was dead at the date of the will), to be paid out of the proceeds of the sale of the real estate. J., one of the sons, was to have his $500, or a part of it, out of the first sum realized from the sale. The residue of the deceased daughter's legacy to be placed at interest and divided equally between her surviving children on their attaining twenty-one years.

In case any of testator's children should die before receiving their full shares and leaving issue, the deceased's child's share should be equally divided between his or her children; but if they should die without issue, his or her share should be divided equally between her surviving brothers and sisters. All the residue of the estate, not thereinbefore disposed of, he gave to his children and their issue as aforesaid provided for, to be divided equally between them from time to time as the money should become payable.

Held, that there was a clear and distinct gift to the widow of $150 a year, and of not merely the annual interest derivable from the investment of the $2,500, which she was entitled to have paid her in priority to the other legatees.

Held, also, that M.'s children were entitled to share in the residue of the estate.

G. W. Holmes for the plaintiff.

T. M. Higgins for the defendants, Selina Heisey and Albert Heisey.

D. Hoskin, Q.C., for the infant defendants.

J. McCullough for the defendant Jacob Heisey.

Gregory for the defendant Campbell.

J. W. McCullough for the other defendants.

Chancery Division.

FERGUSON, J.] [Oct. 21, 1894.

SCOTTISH AMERICAN INVESTMENT CO. *v* SEXTON.

Fixtures—Furnaces—Removal of—Rights of mortgagee.

On an application to a company for a loan on seven dwelling houses it was agreed that the houses were to be completed, including furnaces, before the money was to be advanced. The houses were completed and the furnaces put in before the money was advanced and a mortgage taken. After the mortgage was given the mortgagor removed five of the furnaces and put them in other houses belonging to another party, and proposed to remove the other two.

Held, that as between the mortgagor and the company the furnaces were part of the freehold, that the company was the owner, and the wrongful taking by the mortgagor would not enable him to pass title even to an innocent purchaser for value, and injunctions were granted restraining the removal of the two not removed, and ordering the delivery up of the five removed.

W. Cassels, Q.C., and *Howell* for the plaintiffs.

Cook for the defendants.

STREET, J.] [Dec. 29, 1894.

IN RE TRUSTS CORPORATION OF ONTARIO *v.* BOEHMER.

Vendor and purchaser—Contract to buy from administrators—Execution—Priority.

The administrators of a deceased person contracted to sell some of his lands. Subsequent to this contract one who had obtained a judgment against the deceased in his lifetime obtained *ex parte* an order to issue execution upon

the judgment against the estate in the hands of the administrators, and issued execution accordingly.

Held, that the execution formed no charge or encumbrance on the lands contracted to be sold.

It is wrong to order an issue of execution against goods of a testator or intestate in the hands of an executor or administrator without giving the latter an opportunity to show cause.

F. E. Hodgins for the petitioners, the vendors.

No one appeared for the purchaser.

Full Court.] [Jan. 10.

HOGABOOM *v.* GRAYDON.

Bills of sale and chattel mortgages—Transfer from husband to wife—Actual and continued change of possession—R.S.O., c. 125, s. 1—55 Vict., c. 26, s. 3.

Held, that if a transaction of sale takes place between a married woman and her husband as to furniture, etc., if she and her husband continue to live together as before, her right must be manifested and protected by a registered instrument if she wishes to hold as against his creditors, for there cannot be said to be in that case such an actual and continued change of possession as is required by the above enactments.

Allan Cassels for the defendant.

Riddell for the plaintiff.

Full Court.] [Jan. 10.

STRIDE *v.* THE DIAMOND GLASS COMPANY.

Employers' liability—Defect in "way"—Public street—55 Vict., c. 30, ss. 3, 6.

The defendants' factory was built immediately on a public street which was fourteen feet wide at the place, but on the other side of that part of the street there was a steep declivity. One of their workmen was employed at the time of the accident in unloading straw off a wagon into the defendant's premises through an apperture facing the above portion of the street. He lost his balance, fell off the load of straw and down the declivity, and was killed. It was contended that if there had been a fence on the side of a street where the declivity was the accident would not have happened.

Held, that the defendants were not liable.

The defective condition of a public street used by an employer in connection with his business is not a "way used in the business of the employer" within the meaning of 55 Vict., c. 30, s. 3. The defect to render the employer liable must be on his premises, or on a place over which he had control, that could be made right by the employer, but this is not so in regard to a public street, upon which the employer had no right to construct a fence or barrier, as here suggested.

Carscallen, Q.C., for the plaintiff.

Martin, Q.C., for the defendants.

Full Court.] [Jan. 10.

STARKE *v.* REID.

Mortgage—Redemption—Right to assignment—Right to reconveyance—R.S.O. c. 102, s. 2.

The plaintiffs, being mortgagees of certain lands, afterwards acquired by transfer a second mortgage on the same property, and now sued the covenantors in the former mortgage, who demanded, upon payment of the amount, of the former mortgage, a reconveyance subject to equities of redemption existing in other parties.

Held, that the defendants were entitled to this, and that the plaintiffs could not tack the amount of the second mortgage to the first and require payment of both.

Kinnaird v. *Trollope*, 39 Ch.D. 635, followed.

Per BOYD, C.: When the mortgagor who pays under his covenant has assigned the equity of redemption, the form of conveyance should be of the legal estate to the mortgagor who pays subject to the equity of redemption of his assignee, and the mortgage should itself be handed over for securing him in the amount paid upon it.

Moss, Q.C., for the plaintiffs.

F. Hodgins and *Coatsworth* for the defendants.

Full Court.] [Jan. 10.

MOLSONS BANK *v.* HEILIC.

Principal and surety—Security held by creditors—Release of same without consent of surety—Rights of surety—Judgment.

The plaintiffs sued the defendant as endorser of a promissory note made by a customer, of which notes they held a number endorsed by various parties, and also a mortgage from the customer on certain lands to secure his general indebtedness. Before this action the plaintiffs had released and discharged certain of the lands comprised in the mortgage, without the consent of the defendant.

Held, on appeal from the judgment of ROBERTSON, J., 25 O.R. 503, that the plaintiffs were entitled to judgment against the defendant for the amount of the note, but without prejudice to the right of the latter to make the plaintffs account for their dealings with the mortgaged property held for the benefit of the endorsers when that security had answered its purpose or the debt had been paid by the sureties, or when in any other event the application of the moneys from the security could be properly ascertained.

Crerar, Q.C., and *P. D. Crerar* for the plaintiffs.

J. W. Nesbitt, Q.C., for the defendant.

ROSE, J.] [Jan. 10.

JOHNSON *v.* JONES AND TOBICOKE.

Indians—Capacity to make a will—Female Indian—43 Vict., c. 28, ss. 16-20 (D.)—R.S.C., c. 43.

Held, that an Indian, male or female, may make a will, and may by such will dispose of any lands or goods or chattels, except as far as such rights may be interfered with by the Indian Act or other statute.

Held, further, that in the case of the will of an Indian widow, where the property bequeathed was personal property, there being nothing in the Indian Act to restrict or interfere with her right to dispose of the same either by act *inter vivos* or by will, the will was valid and sufficient to pass the property named in it.

Quære, however, whether the last part of section 20 of the Indian Act does not leave all questions arising in reference to the distribution of the property of a deceased Indian, male or female, to the Superintendent-General, so that his decision, and not that of the court, should determine such questions.

Snider and *Thompson* for the plaintiff.

Furlong for the defendant Jones.

Washington for Tobicoke.

STREET, J.] [Jan. 12.

PATTEN *v.* LAIDLAW.

Money in court—Subsequent order for costs—Claim of set off.

By the report of the Master in a mechanics' lien action a certain sum of money was found due from the owner Laidlaw to the contractor, and the former was ordered to pay the amount into court, which she did. The contractor then appealed from the report, but without success, and he was ordered to pay the costs of the appeal to Laidlaw. Laidlaw now asked that these costs might be paid out of the moneys paid by her into court, upon the ground that otherwise she would lose them owing to the contractor's inability to pay.

Held, that the order could not be granted.

The applicant no longer owed anything. The payment into court was a discharge of her liability, and the money so paid in was no longer hers, but was in court for distribution according to the findings of the report. She therefore had no money in her hands and no right to the money in court, and must look to the contractor personally for her costs of the appeal.

O'Heir for the appellant.

Logie for the other defendants.

No one appeared from the plaintiff.

MEREDITH, C.J.] [Jan. 28.

RE COLQUHOUN.

Devolution of Estates Act, R.S.O., c. 108, s. 6—Rights of children of deceased brother or sister.

The children of a deceased brother or sister are not entitled, under section 6 of the Devolution of Estates Act, R.S.O., c. 108, to participate in the distribution of the intestate's estate.

J. M. Clark for the applicant.

A. J. Boys for the official guardian for infants.

Common Pleas Division.

Div'l Court.] [Nov. 19, 1894.

CROMBIE *v.* YOUNG.

Mortgage—Subsequent voluntary settlement by mortgagor—Validity of.

The mortgagees of land are not, merely by reason of their position as such, creditors of the mortgagor within the 27 Eliz., c. 4., nor is the mortgage debt a debt within that statute, but only when it is shown that the mortgage security at the time of the loan was of less value than the amount thereof.

Where, therefore, shortly after the making of a mortgage, the mortgagor, otherwise financially able to do so, made a voluntary settlement on his wife of certain property, the mortgaged property at the time being greatly in excess of the amount of the loan, and deemed by all parties as ample security, and no intention to defraud shown, the settlement was upheld, though, from the stagnation of real estate when the mortgage matured, a sale of the property for the amount of the indebtedness thereon could not be effected.

Worrell, Q.C., for the plaintiff.

Moss, Q.C., and *Douglas* for the defendant.

MEREDITH, C.J.] [Nov. 19, 1894.

ROBERTS *v.* DONOVAN.

Contempt—Imprisonment for—Judgment directing discharge of mortgage—Failure to perform—Liability to commitment—Married woman.

Where, in accordance with the judgment of the Court of Appeal herein, the judgment directing the defendants to discharge a mortgage within a limited time was served on them with a notice endorsed thereon that the failure to comply with such demand, after the expiration of a month, from the service thereof, would render them liable to commitment for contempt. On a motion therefor, after the lapse of the month, an order for commitment was made which included both defendants, one of whom was a married woman.

Remarks as to the policy of the order, but that this was for the legislature, and not for the courts, to deal with.

Moss, Q.C., for the motion.

The defendant, J. A. Donovan, for himself in person, and for the defendant Julia Donovan, his wife.

Div'l Court, BOYD, C.] [Dec. 20, 1894.

CHAPMAN *v.* BUNBURY.

Vendor and purchaser—Rule to prove possessory title.

A different rule of practice exists in cases of vendor and purchaser and in matters of litigation between adverse claimants; for while in the latter purely affirmative evidence is all that is required, in the former a vendor may be required to furnish evidence to prove or disprove facts which, if he were,

litigant, it would be the duty of his opponent to negative or establish. This applies to cases of possessory title where the courts will recognize peaceful and continuous possession for the statutory period as constituting a good title, while before such title will be forced on an unwilling purchaser it may be necessary for the vendor to furnish satisfactory evidence negativing any of the exceptions contained in the statute. This, however, is not a matter to be put on the abstract, but rather on the verification of title before the master.

Moss, Q.C. for the plaintiff.

Allan Cassels for the defendant.

Div'l Court.] [Dec. 21, 1894

RE REED *v.* GRAHAM BROS.

Prohibition—Division Court—Judgment summons—Commitment.

After judgment had been obtained in a Division Court action against a partnership firm consisting of two members, one of whom only had been served with the summons, judgment summonses were issued against both the defendants, and on their non-attendance thereon orders of committal against them were issued.

On a motion by way of appeal from the judgment of BOYD, C., refusing prohibition the judgment was affirmed as against the partner who had been personally served, but reversed as against the partner who had not been served, his not being a debtor against whom execution could issue, and so not liable to committal, such committal not being process for contempt, but in the nature of execution or limited or qualified execution.

D. Armour for the plaintiff.

Neville for the defendant.

Div'l Court.] [Dec. 21, 1894.

CONFEDERATION LIFE ASSOCIATION *v.* WILLSON.

Married woman—Conveyance from husband to wife—Separate estate.

A husband, married in 1863, granted, in 1874, certain land to his wife, to her sole and separate use, upon which mortgages were subsequently made by the wife and the husband, containing covenants for payment of the mortgage money, the husband at the time declaring that the land was his wife's and that she had been in possession of same since the date of the deed. No question was made as to the wife's right to the property until some years subsequently, and after she had reconveyed to her husband, when it was claimed that it had never been intended to convey the property to the wife as her separate estate.

Held, that the effect of the conveyance was to vest the land in the wife as her separate estate, so as to enable her to make the mortgages on it, and to enter into the covenants contained therein.

Snow for the plaintiff.

J. A. Mills for the defendant.

Div'l Court.] [Dec. 21, 1894.

WILKINSON *v.* WILSON.

Land—Bedroom, etc., in dwelling house—Right of occupation—Duration of.

J. W. conveyed to his son A. W. certain farm lands, but subject to a life estate to himself therein, and subject also, amongst other things, to the use by another son, S. W., of a bed, bedroom, and bedding in the dwelling house on said farm, and to board so long as he should remain a resident on said farm, etc.

Held, that the plaintiff took no estate under the deed, but merely the use, after the termination of the father's life estate, of the bedroom, etc., and board while resident on the land; that no period was fixed for such occupation, and, therefore, no forfeiture was created by his not occupying for any period.

Neville for the plaintiff.

W. A. Douglas, contra.

Div'l Court.] [Dec. 21, 1894.

REGINA *v.* SLATTERY.

Liquor License Act—Having liquor for sale, etc.—Manager of club—Liability.

Section 50 of the Liquor License Act, R.S.O., c. 194, which forbids the keeping or having in the house, etc., any liquors for the purpose of selling, etc., by any person unless duly licensed thereto under the provisions of the Act, does not justify a conviction of the manager of a club incorporated under the Ontario Joint Stock Companies Letters Patent Act, who had the charge or control of the liquor merely in his capacity of manager, the act of keeping, etc., being that of the club, and not of the manager.

DuVernet for the applicant.

J. R. Cartwright, Q.C., *contra.*

Div'l Court.] [Dec. 21, 1894.

COLE *v.* HUBBLE.

Action for carnal connection by force—Previous acquittal for rape—No defence to action—Amendment.

In an action for enticing away the plaintiff's daughter and carnally knowing her, the plaintiff, against the protest of the defendant, was allowed, at the close of the case, and after the addresses of counsel, to amend by setting up as an alternative cause of action the enticing away of the daughter and connection with her by force and against her will, and consequent loss of service. No application was made by defendant to put in further evidence, nor any suggestion made that he was in any way prejudiced by the amendment.

Held, that the amendment was properly allowed.

Held, also, that the fact of the defendant having been previously acquitted on a criminal charge of rape constituted no defence to the action.

Mickle for the plaintiff.

Clute, Q.C., for the defendant.

Div'l Court.] [Dec. 21, 1894.

THE CORPORATION OF LONDON WEST *v.* BARTRAM.

Municipal corporation—Removal of clerk—Resolutions therefor—Sufficiency of.

The removal of a clerk of a municipal corporation may be by a resolution, it not being essential that a by-law should be passed for such purpose.

Vernon v. *Corporation of Smith's Falls*, 21 O.R., followed.

E. R. Cameron for the plaintiff.

The defendant in person.

Div'l Court.] [Dec. 21, 1894.

MCDERMOTT *v.* TRACKSEL.

Assessment of taxes—Leaving tax bill with ratepayer—Demand of payment—Sufficiency of.

The mere delivery to a ratepayer of the statement of taxes due is not sufficient evidence of the demand required to be made for the payment of such taxes, unless a by-law has been passed stating such delivery sufficient for the purpose.

Maybee for the plaintiff.

Idington, Q.C., for the defendant.

Div'l Court.] [Dec. 21, 1894.

BACHLER *v.* ANDREWS.

Malicious prosecution—Production of original record of acquittal—Sufficiency of.

Where, in an action for malicious prosecution in proof of the determination in plaintiff's favour of the criminal proceedings in respect of which the action is brought, a record of acquittal, unobjectionable in form, is produced at the trial by the officer of the court in whose custody it is, though without a fiat of the Attorney-General, it is properly receivable in evidence.

Aylesworth, Q.C., for the plaintiff.

Garrow, Q.C., for the defendant.

Div'l Court.] [Dec. 21, 1894.

HEWITT *v.* CANE.

Malicious prosecution—Record of acquittal—Necessity for production of—Admissions on examination for discovery.

In an action for malicious prosecution, the indictment, with an endorsement thereon of the acquittal of the plaintiff of the criminal charge of which he had been prosecuted, was produced by the Clerk of the Court, having been sent to him by the Registrar of the Queen's Bench Division, to whom the indictment had been returned, and which he had been subpœnaed by the plaintiff to produce, the court being informed that the Attorney-General had refused his fiat to enable a record of acquittal to be made up. The defendant's counsel objected to the admission of the indictment, and its admission was refused.

Held, that the indictment so endorsed and produced was not, under the circumstances, sufficient evidence of the termination of the prosecution, but

that the formal record of acquittal should have been produced; and that no such record or a copy thereof could be obtained without a fiat of the Attorney-General.

Quære, whether the termination of such prosecution can be proved by admissions made by the defendant on his examination for discovery.

Wm. Steers for the plaintiff.

Lount, Q.C., for the defendant.

MEREDITH, C.J.] [Dec. 10, 1894.

STEELE *v.* GROVER.

Will—Bequest to poor and needy residents of county—Town detached from county for municipal purposes only—Right of such residents to participate in.

The testatrix by her will gave the residue of her estate in trust for the benefit of the sober and industrious, but destitute and needy, widows and orphans of the county, who must have been *bona fide* residents of the said county before becoming destitute or needy. A town in the county originally formed part thereof for all purposes, but was in 1859, under the provisions of the Municipal Act then in force, detached from the county for municipal purposes only.

Held, that residents of the town coming within the class referred to in the bequest were included therein.

The various statutes passed from time to time discussed.

E. T. Malone for the plaintiff.

J. R. Cartwright, Q.C., for the Attorney-General.

C. Robinson, Q.C., and *Stratton* for the county.

Edwards for the town.

MEREDITH C.J.] [Dec. 10, 1894.

WHEELER *v.* BROOKE.

Mortgage—Right of mortgagor to an assignment of the mortgage.

Where plaintiff, the mortgagor of certain lands, sold same for a sum in excess of the amount of his mortgage, the purchaser raising such excess by a mortgage to the defendant, the original mortgagee, the plaintiff was held entitled to an assignment of the mortgage made by him on his paying the defendant merely the amount due on his mortgage.

Brewster for the plaintiff.

W. H. Blake for the defendent.

ROSE, J.] [Dec. 13, 1894.

DINGHAM *v.* HARRIS.

Married woman—Liability—Contract—Separate estate.

A married woman having separate estate may enter into a contract along with others.

Rowan for the plaintiff.

Kilmer for the adult defendant.

W. Dawson for the infant defendants.

MEREDITH, C.J.] [Dec. 13, 1894.

KINSEY *v.* KINSEY.

Will—Bequest to agricultural society—Restrictions against Freemasonry, etc. —Impure personalty—Validity—Bequest to promote freethought—Validity.

By one of the provisions of a will, testator directed his executors to invest $2,000 and pay over the yearly interest to an agricultural society (incorporated under R.S.O., c.35 (1877), under which it was authorized to acquire and hold real estate, but not to take by devise), to be applied as a premium for the best results in a specified mode of agriculture, but with a provision that all competitors should declare that they were neither Freemasons, Orangemen, nor Oddfellows; and, in case of neglect to comply with the conditions, the executors should apply such yearly interest in procuring lectures against Freemasonry and other secret societies. The legacy was payable out of a mixed fund consisting in part of impure personalty.

Held, that the society came under the Mortmain Acts, and therefore, so far as the bequest consisted of impure personalty, it was void.

Held, also, that the society was not bound to expend annually the interest received by it, but might apply the money received from time to time as it might deem best, so long as it acted in good faith and did not divert the money from the purpose directed by the testator.

The executors were to invest the residue of the estate and to apply the annual interest therefrom in such way and manner as the executors should deem expedient and proper for the promotion of freethought and free speech in the Province of Ontario.

Held, that this bequest was void, as opposed to Christianity.

Pringle v. *Corporation of Napanee*, 43 U.C.R. 285, followed.

Haines for the plaintiff.

W. R. Riddell for Phœbe M. Howell.

A. J. Boyd for the infants, defendants, and next of kin.

Langton, Q.C., for the Agricultural Society.

J. R. Cartwright, Q.C., for the Attorney-General.

MACMAHON, J.] [Dec. 28, 1894.

MARTIN *v.* CHANDLAR.

Will—Failure of issue—Meaning of.

By the second clause of a will, testator devised to his son W. the use of, and during his lifetime, certain land in C., but should he die without issue then it was to be equally divided between two named grandsons, and by the tenth clause on the death of testator's widow all his lands in C., and all other property not bequeathed by his will, were to be equally divided amongst all his children, *i.e.*, his executors were to sell same and divide the proceeds amongst said children. W. died, leaving issue. The testator's widow was also dead, her death occurring prior to W.'s.

Held, that under R.S.O., c. 109, s. 32, failure of issue referred to in the second clause was a failure during W.'s lifetime, or at his death, and not an

indefinite failure, and that by virtue of the tenth clause W., therefore, took a life estate, and not an estate tail by implication; and that on the termination of W.'s life estate the lands fell in and formed part of the residue.

Aylesworth, Q.C., for the plaintiffs.

McBrady for the widow of William Paul Quinn Chandlar.

C. J. Holman for the executors and Marcellos Anderson.

Dr. Hoskin, Q.C., for the infant defendants.

Practice.

MEREDITH, C.J.] [Jan. 23.

WELSBACH INCANDESCENT GASLIGHT CO. *v.* ST. LEGER.

Security for costs—Foreign corporation—Assets in Ontario—Doing business in Ontario.

The plaintiffs, a foreign corporation, having acquired the patent right to manufacture and sell a certain incandescent light in the Dominion of Canada, entered into an agreement with another company by which the latter were to act as the agents of the plaintiffs in Ontario, and to manufacture and sell the lights at a fixed price or lease them, and the plaintiffs were to receive the net profits, guaranteeing the other company against loss. The other company carried on the business and leased the lights in their own name. A large number of these lights were in existence in Ontario, under lease to different persons.

Held, that, as the lights could not be made available in execution without a taking of accounts between the two companies, they were not assets of the plaintiffs in Ontario sufficient to answer a motion for security for costs.

Nor could the plaintiffs be regarded as resident in Ontario by reason of their doing business through the medium of the other company.

R. McKay for the plaintiffs.

C. W. Kerr for the defendant St. Leger.

Hulme for the defendant Christie.

John Clark for the defendant Nelson.

MEREDITH, C.J.] [Jan. 28.

IN RE PARKER, PARKER *v.* PARKER.

Security for costs—Executors and administrators—Money in court—Motion for payment out.

An executrix stands in no different position as to the liability to give security for costs from a litigant suing in his own right.

And an executrix resident abroad, applying for payment out of court of moneys to the credit of her testator, was ordered to give security for the costs of an alleged assignee of the fund, who opposed the application.

The rule as to security applies to a motion as well as to a petition.

H. E. Caston for the executrix.

Masten for the assignee.

MEREDITH, C.J.] [Jan. 28.

ARNOLD *v.* TORONTO RAILWAY COMPANY.

Trial—Stay of—Appeal from order directing new trial.

The court may, in a proper case, stay the trial of an action pending an appeal from an order directing a new trial, but only under special circumstances.

It is not a ground for a stay that in the event of the appeal being successful the costs of the new trial will be thrown away, and that one party will be in danger of losing such costs, the other not being a person of means; and it is not desirable that the trial should be delayed, to the possible prejudice of a party by the loss of testimony.

Watson, Q.C., for the plaintiff.

J. Bicknell for the defendants.

ARMOUR, C.J.] [Jan. 31.

IN RE SOLICITOR.

Solicitor—Striking off roll—Client's money—Costs of taxation and motion.

Ordered, that a solicitor should be struck off the roll unless by a named day he should pay an amount found by the report of a taxing officer to be in his hands, the moneys of a client, together with the costs of the taxation, and of the motion to strike him off the roll.

Walter Read for the client.

Tremeear for the solicitor.

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.] [Jan. 25.

LA BANQUE D'HOCHELAGA *v.* THE MERCHANTS BANK.

Warehouse receipt—Bank Act, ss. 64, 68, 74, and 75—Substitution of other goods for those mentioned in receipt—Purchase for value without notice.

This was an action of replevin to recover possession of a quantity of bacon, which had been transferred by one Allan to the plaintiffs on the 1st of May, 1894, by an instrument in the form of Schedule C to the Bank Act to secure a pre-existing debt due by Allan to the plaintiffs. Allan was proved to be a wholesale purchaser and shipper of dead stock within the meaning of s. 74 of the Act.

The defendants claimed the bacon under a similar instrument obtained from Allan on the 27th of March, 1894, covering 40,000 pounds of bacon, which was at that time set apart in his warehouse and ticketed as the property of the Merchants Bank.

On the 21st of June, 1894, the plaintiffs' inspector visited Allan's premises, and got him to set apart about 10,000 pounds of bacon to represent the quantity covered by their warehouse receipt. This was done by removing the tickets of the Merchants Bank and putting on tickets to show that the bacon was the property of the plaintiffs, and the result was that the amount of bacon appropriated to the Merchants Bank was diminished to that extent. It further appeared that Allan had sold and removed all the bacon which had been hypothecated in March to the Merchants Bank and substituted other bacon in its place, so that at the date of the issue of the writ of replevin none of the original bacon referred to in the warehouse receipt held by the Merchants Bank was on hand, and there was not on the 21st of June enough bacon on the premises to cover the claims of the two banks. Allan having absconded a few days afterwards, the defendants took possession of all the bacon under their security.

Held, that the defendants were entitled to the property, and that, notwithstanding the language of s. 75 of the Act, a bank may take securities of the kind provided for by s. 74 even for pre-existing debts.

Howell, Q.C., and *Ashbaugh* for the plaintiffs.

Phippen and *W. S. Tupper* for the defendants.

Law Students' Department.

THE OSGOODE LEGAL AND LITERARY SOCIETY.

The recurrence of the annual "At Home" given by the Society furnishes occasion for a brief sketch of its doings during the present season, now almost ended.

The interest manifested by the profession in this time-honoured institution was shown by the incidents of the election of officers in October last to be as deep as ever, no less than 437 votes having been cast. The ticket led by Mr. Leighton McCarthy was returned to power, and the officers have been indefatigable in their efforts to maintain the standard and traditions of the Society. Meetings have been held almost every Saturday evening during the winter in Convocation Hall, with an average attendance exceeding fifty; and the enthusiasm evinced by all in the debates and other proceedings has been greater than for some years.

The public entertainments consisted of a debate held in November, and the "At Home" which took place on the 8th instant.

The programme of the former consisted of a number of vocal selections by Mrs. Frank MacKelcan, of Hamilton, assisted by one of Toronto's best tenor soloists; and a debate, participated in by four student-members of the Society.

The annual "At Home" has now become one of the social events of Toronto, and is looked forward to with pleasant anticipation by many not connected with the profession. The Library, Convocation Hall, and upper rooms of the Law School furnish beautiful accommodation for the "light fantastic," whilst

the many courts and other rooms supply ample space for cosy nooks for conversation. Tables laden with delicacies were spread on the ground floor of the rotunda; wide stairways and halls were filled with softly-tinted lights; rich lounges and easy chairs and clusters of plants filled all the available corners of corridor and hall. Even in the Benchers' convocation room was heard the rustling of silken robes of brighter hue than those usually seen in this sanctuary of the Law Society.

This dance is held under the auspices of the Society and the patronage of the Treasurer and Benchers of the Law Society. The wives of the Benchers resident in Toronto lend their names as patronesses, and insure success by their presence. Among the distinguished guests present this year were his Honour the Lieutenant-Governor and Mrs. Kirkpatrick, Sir Mackenzie Bowell, Sir Charles Hibbert Tupper and Lady Tupper, besides many of the judges and their wives. The attendance this year was perhaps smaller than usual, owing to the prevailing severe weather, but about five hundred persons who braved the storm enjoyed themselves "more than ever before," so gossip hath it.

The students are now turning from the gay festivities, which help to keep "Jack from being a dull boy," to the books to be read for their spring examinations, now drawing near. The work of the Society for the present winter may be said to be pretty well over, but another public debate will probably close what has been one of the most successful seasons of the Literary Society.