THE

CANADA LAW JOURNAL.

VOLUME XXI.

From January to December, 1885.

TORONTO:
CANADA LAW JOURNAL OFFICE, 5 JORDAN STREET, TORONTO.
1885.

TABLE

OF REFERENCE TO CASES NOTED AND REPORTED IN THIS VOLUME

WHICH ILLUSTRATE THE PRACTICE UNDER

THE ONTARIO JUDICATURE ACT.

TABLE OF CASES

REPORTED AND NOTED IN THIS VOLUME IN "RECENT ENGLISH DECISIONS" AND "RECENT ENGLISH PRACTICE CASES."

TABLE OF RECENT ENGLISH DECISIONS.

TABLE OF CANADIAN CASES

REPORTED AND NOTED IN THIS VOLUME

TABLE OF CANADIAN CASES.

TABLE OF CANADIAN CASES.

TABLE OF CANADIAN CASES.

Canada Law Journal.

VOL. XXI. JANUARY 1, 1885. No. 1.

DIARY FOR JANUARY.

1. Tues.....*New Year's Day.*
4. Sun.....*2nd Sunday after Christmas.*
5. Mon.....Co. Ct. and Sur. Ct. Terms commence. Christmas vacation in Exchequer Court ends.
6. Tues.....Christmas vacation H. C. J. ends.
8. Thur.....Christmas vacation in Supreme Court ends.
10 Sat.....Co. Ct. and Sur. Ct. Terms end. Vacation Sup. Ct. ends.
11. Sun.....*1st Sunday after Epiphany.*
12. Mon.....Sir Charles Bagot Gov.-Gen., 1842.
13. Tues.....Prim. Ex. for Students and Articled Clerks begin. Court of Appeal sittings begin.

TORONTO, JANUARY 1, 1885.

THAT the English judges, much to their honour, do not hesitate to use very plain language towards practitioners when occasion calls for it, is illustrated by the remarks of Fry, L.J., in the newest *Lyell* v. *Kennedy* case, in the November number of the *Law Reports* for the Chancery Division. He says:—"I have rarely come across a case in which greater folly has been shown than that which has been manifested in the way in which this case has been conducted. There has been a competition of demerits on both sides; each has striven to use the practice and forms of the Court to the utmost for the purpose of aggravating and annoying the other, and they have each been successful to a considerable extent, and the result has been a most incredible waste of money, which will have ultimately to be borne by one or other, or both of the parties."

THE *American Law Review* has recommenced its periodical ravings about Canada and its connection with England, with its usual remarks upon our "knee crooking," "dependence," "inferiority," etc. It is quite unnecessary to be perpetually saying how much the Eagle wants to clasp the Beaver to its bosom. We know that already. The difficulty is that we do not want to be clasped. In truth, should that bubbling, fermenting and rapidly disintegrating conglomeration of discordant elements lying to the south of this great Dominion offer to annex themselves to Canada we should politely decline the honour. We, however, quite agree that Sir J. A. Macdonald is "one of the ablest of living statesmen," and it is quite evident that they want a man of his capacity to try and put things in order for them. They find it difficult to do it for themselves. We are told that "the highest offices within the gift of the Republic would be opened to Canadians. Americans would delight to honour themselves by making such a statesman as Sir John A. Macdonald their President; and the conservative influence of Canada in American politics would be very salutary." It would indeed. One cannot, however, touch pitch without being defiled, and so we think that after the political exhibition of our cousins during the late Presidential contest the less attention they draw to the subject the better.

THERE is overmuch truth in the following remarks clipped from the *Manitoba Law Journal* on the subject of Queen's Counsel, apropos of some recent appointments in that Province; and some of these appointments are relatively not quite so absurd as the last batch in Ontario:

"The practice of singling out, from time to time, certain barristers for invidious distinction, should have been abolished together with patents of monopoly—that is some centuries ago.

"There are two grounds upon which these patents of precedence are supposed to be granted —political services and professional merit. Of the two, we think the former the less objectionable. Let it be understood that during Tory reign the Tory lawyers can, on application, obtain their silk, and when the Grits succeed to office that their friends shall succeed at the bar, and, all events, we have an intelligible system. But, if merit is to be the ground, who is to award the prize? It is safe to say that the Governor-General and his council are seldom, if ever, personally aware of the respective abilities of those who are in daily competition at the bar, and yet they are those who decide the question. If the matter were as easy of decision as a horse-race, by all means let there be an annual contest, and let the best man get his reward. But, in so doubtful a matter as legal ability, who can decide? What is the criterion? Is it success? That comes sometimes without learning. Is it learning? That may exist without success. Is it both learning and success? Then what degree of each? Twenty briefs at an assizes, with fifteen wins to five losses? There is no gauge, and from the leaders to the duffers the gradation is so sensible that there must always be great difference of opinion as to the proper order of merit. It will not do to let the judges make the selection—although they are the most competent to do it—for they must keep themselves free from the suspicion of favouritism. It would disturb the harmonious relations of the bar to place the matter in the hands of practitioners, or the Law Society. Practically those with influence at Ottawa dispense the patronage, and usually the list is absurd and indefensible.

"We object to the system because it gives one barrister a fictitious importance and dignity over his fellows. If nature has endowed him with greater ability or industry, that is no reason why the Government should add to his advantages, and if his inclinations are political rather than professional, he should look for political and not professional rewards.

"We object to the system also, because it is carried out at the expense of jealousy, ill-feeling and heart-burning, and because it subserves no useful purpose. What propriety is there in exalting one man and, in consequence, relatively depressing another? Till nature changes, favoured elevation will turn conceit into superciliousness, and slights will discourage and dishearten the most indomitable."

As the person responsible for the above was one of the recipients of the so-called honor he had the greater freedom in thus "swairing at lairge."

SOME PECULIARITIES IN THE LAW OF LIFE INSURANCE.

[Communicated.]

The Legislature during its last session passed an act consolidating and in many important respects amending the law securing to wives and children the benefit of life insurance, but in its over-anxiety to protect everybody and to make provision for all manner of cases which might arise has cast about the seventh section of the Act a cloud of uncertainty, and shrouded it with a degree of abstrusness that would render it difficult of construction even by the "Philadelphia lawyer" whose sagacity for construing knotty points has earned for him a degree of notoriety much to be envied by his less intelligent brethren.

The Act after making provision for the endorsing of policies (not originally taken out under the Act) in favour of the wife, or the wife and children of the insured, proceeds to deal with the question of making apportionments, and then declares:

"That where it is stated in the policy or declaration that the insurance is for the benefit of the wife and children generally, or of the children generally, without specifying the names of the children—the word *children* shall be held to mean all the children of the insured living at the maturity of the policy, whether by his then, or any other former wife, and the wife to benefit by the policy shall be the wife living at the maturity thereof."

Now this leaves little doubt as to the children—there has been a merciful and tender harted solicitude displayed by the legislators in providing for the issue of all the marriages, and the unfortunate insured can descend peacefully to his grave with the sweet assurance that his $1,000 policy (or as the case may be) will at all events be divided equally among his surviving "olive branches," but it remains for that astute lawyer from the City of Brotherly

Love to say in the event of the insured having had two wives, and having made a declaration in favour of his (while the first wife was living) wife generally, without naming her, whether he can apportion her share after her death in favour of his children, or of his second wife. The very object of the statute seems to be to permit the insured, in the event of the death of all the beneficiaries during his own life, to re-apportion the shares, or deal otherwise with the policy, but in the case of a modern Blue Beard, it would seem that a trust is raised by the statute in favour of the wife who shall have the misfortune (or good fortune) to outlive her lord and master.

A distinction has been drawn between the case of a policy made for the benefit of (or subsequently endorsed in favour of) the wife alone though not specifically named, and a policy made in favour of "the wife and children," and the construction put upon same has been, I understand, that in the latter case the beneficiaries cannot be separated, and that the clause in question must be considered in connection with the whole section, and that therefore the literal construction must be put upon the words "That the wife (in a policy payable to wife and children) is the one who shall be alive when the policy becomes a claim," but that in the former case, as it is not a state of things contemplated by the section (that is not a wife in whose favour along with the children a trust is raised by the statute) the wife there, though not named, means the present or then wife, *i.e.*, the one living at the time the policy is taken out, or at the date of the declaration endorsed.

Such a construction can undoubtedly be placed upon the section in question, and is reasonable, though the last two lines of the section admit of a construction the other way, shewing very conclusively the necessity for an amendment to the Act, and at all events demonstrating very emphatically how necessary and prudent it is for the party insured to be careful, when availing himself of the advantages of the Act, to name the wife he intends to benefit. It seems to me that it would be wiser to amend the law in such a way that in the event of the death of the party or parties intended to be benefitted, the insured might, as to such share or shares, be able to re-allot as he deemed proper.

RECENT ENGLISH DECISIONS.

The remaining number of the November *Law Reports* is a very small one, comprising 13 Q. B. D. p. 649-696, and 9 P. D. p. 181-217, and contains only two or three cases which it comes within the scheme of these articles to notice.

RAILWAYS—UNDUE PREFERENCE.

The first of these is the *Manchester, etc., Railway Co.* v. *The Denby Main Colliery Co.*, 11 Q. B. D., p. 674. Sec. 90 of the Railways Clauses Consolidation Act, 1845, provides (to the same effect as R. S. O. c. 165, sec. 23, sub-sec. 6) that tolls charged by railway companies for the carriage of goods shall be charged equally to all persons, and after the same rates in respect of all goods of the same description passing over the same portion of the line of railway, and that no reduction or advance in any such tolls shall be made either directly or indirectly, in favour of, or against any particular person using the railway. It appeared that the plaintiffs' railway charged one uniform set of rates per ton for the carriage of coal from about forty-eight different collieries to a number of specified places lying eastward of these collieries, and served by the plaintiffs' railway. The rates so charged were termed "group-rates." The consequence was that the coal from the collieries westernmost in the group were carried a

further distance for the same sum as that charged for coal from those further to the east. Pearson, J., held this a violation of sec. 90. He says, p. 678:—"We cannot adopt the narrow construction of sec. 90, contended for by the plaintiffs' counsel, namely, that it only applies where the *termini* of the transit correspond. In the absence of special circumstances to justify the same charge for carrying a greater distance for one customer than for another, there would appear to be that kind of inequality which sec. 90 is intended to prevent. In such cases part of the services to the particular customer would practically be rendered gratuitously and to the disadvantage of others. We think, therefore, that sec. 90 applies."

TIME FOR MAKING AWARD—ENLARGEMENT BY THE COURT.

Next has to be briefly noticed *re May and Harcourt*, *ib.* p. 688, which decides, apparently for the first time, that where, by a written submission to arbitration, the time within which the award was to be made was fixed at one month, and the submission contained no power to enlarge the time, and the award was in fact made after the expiration of the month, the court nevertheless has power subsequently to the making of the award to enlarge the time under sec. 15 of the Common Law Proceedure Act, 1854 (cf. R. S. O. c. 50, sec. 204). It is pointed out by Lord Coleridge, C. J., that in *Lord* v. *Lee*, L. R. 3 Q. B. 404, it had been held that where the submission fixes no limit, the statutory limit of three months may be extended by the court, though the application for an extension is not made till after the expiration of the three months and after the award has been made, and the decision here proceeds on the same principle.

REVOCATION OF PROBATE—COURT OF CHANCERY—JURISDICTION.

Lastly, *Priestman* v. *Thomas*, 9 P. D. 210, must be mentioned as authority for saying that in England at all events, the Court of Chancery Division has no jurisdiction to revoke the probate of a will.

A. H. F. L

OUR ENGLISH LETTER.

(From our own Correspondent.)

WE have just come to the end of a year of unprecedented depression, and this same depression of commerce has produced a terrible effect upon the fortunes of English lawyers. Traders have been exceptionally averse to litigation, and have rarely consented to put in an appearance at the law-courts, except under peremptory summons from the Bankruptcy Court. Yet even this Court has been comparatively idle, since, under the new *regime*, it affords relief neither to the debtor nor to the creditor, is ruinous to what the *Pall Mall Gazette* contemptuously describes as "bankruptcy practitioners," and provides no one with an income except a single Government office. Yet I am much mistaken if even the favoured servants of the Board of Trade, the fifty or sixty official receivers who were gloating a year ago over their success in obtaining what they hoped would prove lucrative appointments, have not found that, on the whole, the reality falls sadly short of the promise. The Bankruptcy Act was passed with the avowed intention of placing the management of insolvent estates in the hands of creditors to whom it was supposed that the official receiver would pay a certain amount of deference, but it has lately been demonstrated in Court, and creditors in general have long ago discovered, that their wishes were a matter of secondary importance. The result has been that private arrangements have become enormously common, so much so that an association has been formed with the view of obtaining statutory sanction for such arrangements. Now I am well aware that a gentleman,

eminent enough to subscribe his name to an article, asserts that this is not the case; but it can only be said that, on the whole, the despised practitioners are likely to know more of the normal consequences of insolvency than the outside world, and that the practitioners are of the contrary opinion. In this letter I devote particular attention to this Act, because it is evident, from the attention given to the subject by a recent Canadian writer of the highest eminence, that the problem of bankruptcy is not much nearer to solution in the Dominion of Canada than it is in the Mother Country, and that there, as here, its supreme importance obtains due recognition. Further, the subject is one with which I am somewhat familiar, as an exponent, however, and not as a victim, having followed the present Act of Parliament from the beginning of its operation, and I believe that in such following is to be found the surest method of detecting faults and discovering merits. The chief faults have already been indicated, and there is only one bad one, which is that practitioners are underpaid, which is the worst kind of economy. Men are so constituted that they will not, as a general rule, work well unless they are paid well, and the intricacies of bankruptcy law are such that they cannot be mastered without careful study. Again the ordinary bankruptcy brief involves more labour in preparation and perusal than any other. Let any man ask himself whether it is easier to argue a reference in a large commercial dispute, or in the Bankruptcy Court, over interminable figures, and having done so let him assign, if he can, any reasonable principle upon which justice demands that the bankruptcy lawyer should be paid at a low rate. The very law which cuts down the practitioners' fees indirectly admits the difficulty of the subject-matter by assigning a special judge of the Queen's Bench Division to the department of bankruptcy. The Lord Chancellor, in exercising his discretion in choosing a judge for the work, selected Mr. Justice Cave, a judge notorious for conscientious industry and clearness of insight above any of his brethren of the Queen's Bench Division. Yet the work of the judge is certainly not as hard as that of the advocate. Let us pass, however, to the merits of the Act. Has it checked fraudulent bankruptcies? It has certainly decreased their number. Beyond this it has brought a good many fraudulent trustees to account and unearthed dividends which had been undistributed for many years. Also, it has done much good work in the relief of small debtors. But it is very severe. Here is a recent case: A trader failed for a large amount; his assets were small, and he was found guilty of "rash and hazardous speculation." In the result the judges of the Divisional Court in Bankruptcy, Matthew and Cave, J.J., ordered the debtor to file a yearly statement of his income and to pay over to the creditor's trustee everything above £400 a year until the whole debt was discharged. This was a case in which the debtor could not sell the goodwill of his business, which, as Mr. Justice Matthew vaguely phrased it, was entirely personal, but it cannot be said that it was lenient to compel the unfortunate man to carry on business for his creditors, as their manager, for an indefinite number of years, for this in fact is the result of the decision. There is no appeal against such an order as this. The judge may grant a man his discharge upon terms, and, so far as I am aware, there is no appeal except to the clemency of the judge who has imposed the terms. If so, and the point being undecided, it is proper to suggest doubt; the case is rather similar to that which often occurs on circuit when the junior inflicts an outrageous fine upon one of the members of the mess, against which decision there is no appeal except

to the clemency of the junior, which is somewhat difficult to reach when the fine, in the shape of champagne, has disappeared down the throats of the mess.

The controversy concerning the Lord Chancellor's delay in appointing Queen's Counsel still continues, and is waxing impatient. He has now announced that no promotions will be made before Easter, at the earliest, and he is likely enough, when Easter comes, again to defer the evil day. Why a man should want to be promoted one hardly knows. Little work as there is for juniors, there is still less for silks, and it is all concentrated in a very few hands. Still the silk gown is the sign of an honourable dignity, and the desire to protect the Inner Bar is no reason for refusing a prized privilege to capable men. Besides, if the Inner Bar requires protection, the Outer Bar is entitled to equal consideration, and what would be the storm of popular indignation if the Benchers of the Inns of Court declined to call more men to the Bar until the numbers of their seniors were sensibly diminished. In brief, the logical consequence of limiting the numbers of Queen's Counsel must also be to limit the numbers of juniors.

Crowded courts have been the rule during the past term, and one doubts whether the crowd was densest over *Adams* v. *Coleridge*, *Finney* v. *Garmoyle*, or the *Mignonette* case. On the whole, however, the fair Mrs. Weldon has, from time to time, collected as many hearers as any other litigant. Her general appearance has been described on a former occasion, and it only remains to be said that she has registered a couple more victories of late. The *Lotinga* insurance case has recently been the subject of a lengthened and, it may be added, a remarkably disgusting trial. The practical point at issue was whether a deceased money-lender and bankrupt had been, at the time when he effected a life insurance, a person of strictly sober habits. An array of witnesses on the one side swore that he was always drunk; an equal array declared that his sobriety was exemplary and remarkable. This conflict of testimony went on for something like a week, the witnesses being carefully kept out of court in the meantime. But, as the judge remarked, the precaution was futile, because the witnesses naturally read in the daily papers the account of the evidence which had been given on the preceding day. In fact, having regard to the abnormal and unnecessary length of our modern trials, there can be no question that this good old custom of the criminal courts has become a mere matter of form. By the way, the conclusion of the *Lotinga* case was not otherwise than instructive. Clearly the jury had nothing to do except to decide which of two armies of witnesses was committing perjury, and to give a verdict in harmony with the decision. But the jury entirely failed to agree, thereby passing a significant comment upon the character of the evidence submitted to them. In fact, it is not too much to say that there has been a phenomenal increase of perjury of recent years, and that, whatever Mr. Homersham Cox may say, the failing is not peculiar to Wales.

If one may be permitted to take a general survey of the talk among lawyers now-a-days, I should be inclined to say that it was strangely dull and monotonous. Bad times do not conduce to lively discussion, and such reforms as the Franchise Act and the Redistribution Bill are exciting enough to distract men from professional topics. A good many barristers will lose their seats, amongst them Mr. Warton, who has been known to appear in the courts. Mr. Charles Russell, Q.C., intends, so it is said, to stand for Holborn, though rumour originally assigned him to the Irish dock labourers in Liverpool. Mr. Edward Clarke, Q.C., will probably reappear as the representative of one of the minor

constituencies into which Southwark is doomed to be dissected. Also a host of lesser legal luminaries intend to seek Parliamentary honours for some of the lesser London constituencies, of which the names will sound strange. There will be a member for St. George's in the East, and one for Bethnal Green, one for Mile-End-Town, and so on. In the present Parliament there are at least a hundred barristers, and in the next more may be expected. As for forthcoming topics there are none in prospect, except the proposal to amalgamate the professions, which is far from realization and, for the present at least, quite visionary, and the assize system, which will be discussed in about a fortnight's time with the usual acerbity.

Temple, Dec. 23rd, 1884.

CANADA REPORTS.

ONTARIO.

MASTER'S OFFICE.

(Reported for the CANADA LAW JOURNAL.)

RE BOLT AND IRON CO.

HOVENDEN'S CASE.

Winding up Insolvent Company—Allotment of stock —Proceedings against contributory—Costs.

Under an order for winding up an Insolvent company under 45 Vic. c. 23 D., the proceedings to enforce the liability of contributories must be taken by the liquidator, and not by the petitioner for the winding-up order.

When proceedings are so taken by the liquidator and are unsuccessful, costs may be awarded against the liquidator personally, leaving him to apply to be allowed such costs against the assets of the company.

A contract between a company and a person who makes application for shares must be dealt with as ordinary contracts: there must be an offer by the one to take shares, and an acceptance of such offer by the company, or something by words or conduct which shows that the offer has been accepted.

One H. subscribed for shares in a company but no shares were formally allotted to him by the directors. Calls were made by the general manager, and notices of such calls were sent by the secretary to, and received by H., but the calls had never been authorized by the board of directors.

Held, that the unauthorized acts of the officers named could not be construed to be an allotment, or a notification of an allotment of stock so as to bind the company or prove an acceptance of H's. subscription for stock.

A board of directors cannot delegate to its officers or to third parties its statutory powers to allot stock, or make calls.

[Mr. Hodgins Q. C.—Oct. 18.

This was a reference under the Dominion Insolvent Companies Act of 1882.

Laidlaw, for liquidator and petitioner.

Lash, Q. C., for Hovenden.

THE MASTER IN ORDINARY—In proceeding to wind up the business of this company a list of parties alleged to be contributories is brought in, and application is now made to have one R. J. Hovenden declared to be a shareholder in the company, and liable as a contributory in respect of $1,000 worth of shares subscribed for by him in the capital stock of the company.

There is evidence of a subscription under a power-of-attorney given by Hovenden to one Moodie, a director in the company. There is also some evidence which tends to show a revocation of the power prior to the subscription by Moodie, but the evidence is not pressed. No evidence has been given of any allotment of stock to Hovenden by the board of directors, or of any notification of allotment. The liquidator relies upon certain notices of calls received by Hovenden subsequent to his subscription, which it is contended establish a *prima facie* case of allotment of stock. These alleged calls, it appears, were made by the general manager of the company, and were notified by the secretary, without any authority or warrant from any resolution, by-law or other act of the board of directors.

The statute R. S. O. c. 150 authorizes the directors (s. 29) to make by-laws to regulate the allotment of stock, and the making of calls thereon; and provides (s. 34) that if the letters patent of the company make no definite provision, the stock of the company, so far as it is not alloted by the letters patent, shall be allotted when and as the directors by by-law or otherwise ordain.

The letters patent make no provision regulating the allotment of stock, and no by-laws have been proved before me.

In *Pellatt's case* L.R. 2 Ch. App. 527, Lord Cairns, L. J., held that where an individual applies for shares in a company, there being no obligation to let him have any, there must be a response by the company, otherwise there is no contract. And in *Gunn's case* L. R. 3 Ch. App. 40 Sir John Rolt. L. J., held that the contract between a company and a person who makes application to become a member must be dealt with according to the principles which apply to ordinary contracts, there

must be the consent of the two parties to the contract: an offer by one, and an acceptance by the other, or something which satisfies the Court either by words or conduct that the offer has been accepted to the knowledge of the person who made the offer.

There is no evidence that the directors had authority to delegate, or in fact did delegate to the officers named the statutory powers vested in them to allot stock and to make calls. Unless expressly authorized, directors cannot delegate to third parties their power of allotting shares, or of making calls. Under a similar power, a board of directors passed a resolution delegating the allotment of shares "to the discretion of the manager and the two private directors." The court held that the board had no such power, that the maxim *delegatus non potest delegari* applied, and that an allotment made by these delegates was not binding: *Howard's case*, L. R. 1 Ch. App. 561.

In this case I cannot, therefore, hold that the unauthorized act of the general manager in making calls; nor the act of the secretary in notifying this party of such unauthorized calls was such an allotment or notification of an allotment of stock as would bind the company or make this party a shareholder.

A question has been raised whether these proceedings to enforce, the liability of the shareholders should have been taken by the liquidator or by the petitioner.

The English and Canadian Acts are substantially the same as to the powers of the liquidator, (Imp. Act 25-26, Vict. c. 89, ss. 94-5; 45 Vict. c. 23, ss. 33-5, D.) And it would appear from *re Duckworth*, L. R. 2 Ch. App. 578, approved in *Waterhouse* v. *Jamieson*, L. R. 22 H. L. Sc. 29, that in winding up proceedings the liquidator represents the creditors only because he represents the company, and that through the company so represented, the rights of the creditors are to be enforced. Other cases show that proceedings against contributories are taken by the liquidator by his name of office on behalf of the company, and not by the petitioner on whose application the winding up order is made.

The statute (s. 34) directs the liquidator to take into his custody all the property effects and choses in action to which the company is entitled; and (s. 35) to bring suits in his own name as liquidator or in the name or on behalf of the company. The proceedings to enforce the liability of contributories must therefore be taken by the liquidator and not by the petitioner.

Having found that Hovenden is not a contributory, the proceedings against him must be dismissed with costs, which I award against the liquidator personally, leaving him to apply in respect of the same against the assets of the company as he may be advised: *Ferrar's case*, L. R. 9 Ch. App. 355. A similar rule applies in insolvency proceedings: *Ex parte Angerstein*, L. R. 9 Ch. App. 479.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

BROWN v. NELSON.

Statute of Frauds—Contract not to be performed within a year—Part performance—Rescission.

The plaintiff agreed to purchase from the defendant seventy-six shares of stock in the Globe Printing Company, and gave to the defendant his note, payable in two years, for the price of the shares, which were transferred to him. At the defendant's request he then pledged these seventy-six shares, and, as the jury found, lent the defendant forty-four other shares of his own, to pledge to a bank, which discounted the note for the defendant.

The jury also found that it was a condition of the purchase that the defendant, who had a large interest in the Globe Printing Company, should keep the plaintiff in the position which he occupied as managing director of the Globe Printing Company, at a fixed salary. The defendant at the maturity of the note retired it and took an assignment to himself of the one hundred and twenty shares.

The plaintiff having been afterwards dismissed from his position as managing director, brought this action for a return of the forty-four shares, on the ground that the purpose for which they had been pledged, viz.: the raising of money by the defendant for George Brown's estate, had been fulfilled; and for a return of the note, and to be relieved from the purchase of the seventy-six shares, on the ground that the condition of the purchase, viz.: his being retained in office, had not been fulfilled, but had been broken by the defendant procuring his dismissal.

Held, that as there had been a partial performance of the defendant's agreement, by retaining the plaintiff in office for the period within which the seventy-six shares were to have been paid for, there could be no rescission of the whole contract: that the plaintiff—the finding of the jury as to the forty-four shares not having been moved against—was entitled to a return of these shares, and the defendant to judgment for the price of the seventy-six shares; and that the plaintiff's remedy, if any, for wrongful dismissal was by an independent action.

Held, also, that the defendant having performed his portion of the agreement, the Statute of Frauds, as regards agreements not to be performed within a year, was not applicable to the undertaking to keep the plaintiff in office.

Osler, Q.C., and *Nesbitt* for plaintiff.
Robinson, Q.C., and *Biggar*, contra.

REGINA v. BUNTING.

Ontario Judicature Act—Constitution of Courts—Criminal proceedings—Removal of indictment by certiorari—Practice.

An indictment was found against the defendants in the High Court of Justice at its sittings of Oyer and Terminer and gaol delivery, and, on being called upon to plead, the defendants demurred to the indictment. A writ of *certiorari* was subsequently obtained by the defendants, in obedience to which the indictment, demurrer and joinder were removed to the Queen's Bench Division. Upon the return the Crown took out a side-bar rule for a consilium, and the demurrer was set down for argument. A motion was made by the defendants to set aside the proceedings of the Crown on the ground that they should have been called upon to appear and plead *de novo* in this Division.

Held, WILSON, C. J., dissenting, that the Court of Assize of Oyer and Terminer and of general gaol delivery is now by virtue of the Judicature Act the High Court of Justice; that the indictment was found, and the defendant appeared and demurred thereto in the High Court of Justice; and that it was not necessary to plead *de novo* to the indictment.

Per ARMOUR, J., and O'CONNOR, J.,—The Supreme Court of Judicature is not properly a Court, and ought more properly to have been called the Supreme Council of Judicature. The Divisions of the High Court are not themselves Courts, but together constitute the High Court, which is thus divided for the convenience of transacting business; and the judges sit as judges of the High Court, and exercise the jurisdiction and administer the functions of the High Court.

The recognizance entered into by the defendants on the removal of the proceedings to this Division, provided that they should "appear in this Court and answer and comply with any judgment which may be given upon or in reference to a certain indictment, or upon or in reference to the demurrer to such indictment, and plead to said indictment if so required:"

Per WILSON, C. J., *semble*.—That the practice and procedure before the Judicature Act should be maintained in its entirety, though possibly it might be varied by agreement. By the recognizance the defendants had not agreed to vary it; but they might thereunder elect to appear and answer to the indictment, or to appear and argue the demurrer; and they, being ready to appear and answer the indictment, would fully perform the condition of the recognizance by so doing.

Irving, Q.C., and *Bethune*, Q.C., for the Crown.

McCarthy, Q.C., *Richards*, Q.C., and *W. A. Foster*, contra.

REGINA v. JAMIESON.

Lottery Act—Giving prizes for guessing number of buttons in glass jar—Quashing conviction—Costs.

The defendant placed in his shop window a globular glass jar, securely sealed, containing a number of buttons of different sizes. He offered to the person who should guess the number nearest to the number of buttons in the jar a pony and cart, which he exhibited in his window, stipulating that the successful one should buy a certain amount of his goods.

Held, that as the approximation of the number of buttons depended upon the exercise of judgment, observation and mental effort, this was not a "mode of chance" for the disposal of property within the meaning of the Act.

Quaære, whether defendant should not get the costs of quashing conviction, made to test the law in such a case.

COMMON PLEAS DIVISION.

Rose, J.] [Dec. 3.

THE CORPORATION OF STRATFORD V. WILSON.

Municipal Corporations—Agreement with officer to account for fees received outside of his office—Validity.

The plaintiffs appointed the defendant chief of police of the Town of Stratford at a named salary, but that he should account for, and pay over to the plaintiffs, all fees received by him from the county as a reward for services performed by him as a county constable.

Held, that under the 5th and 6th Ed. VI. ch. 16, and subsequent acts in force in this Province, the agreement to account for such fees was invalid.

Woods and *Smith*, for the plaintiffs.

Idington, Q.C., for the defendant.

Rose, J.] [Dec. 9.

MACDONELL V. ROBINSON.

Libel—Defence, sufficiency of—Demurrer.

Action against the defendant for a libel on the plaintiff published in a newspaper called *The Week*. The defence set up was that the plaintiff had for some time prior to the alleged defamatory publication addressed open letters to the public through the medium of the public press, and had invited public attention to his (the plaintiff's) character and position as a solicitor and barrister, and had challenged public criticism upon his conduct in connection with the subject-matters referred to in the said article, and such criticism invited by the plaintiff had been made, and had been made in various newspaper articles and letters and correspondence, from time to time, immediately prior to the said article, and such article was a moderate expression of opinion thereupon and in no way damnified the plaintiff as a barrister and solicitor. And the defendant further said that the alleged libel and words were and formed part of an article printed and published in the said newspaper called *The Week*, and which said article was a fair and *bona fide* comment upon a public matter of public and general interest, and it was printed and published *bona fide* and for the benefit of the public, and not otherwise, and without any malicious intent or motive whatever.

Held, if true, a good defence, and the learned judge could not say on the pleadings that it was untrue.

W. Nesbitt, for the plaintiff.

Falconbridge, for the defendant.

Full Court.] [Dec. 20.

FLETCHER V. NOBLE.

Promissory notes—Consideration.

In an action on four promissory notes, made by the defendant, H., payable to the plaintiff, the defendants set up that the notes were given for the purchase of the plaintiff's interest in certain homestead lands in the State of Michigan, H. being the purchaser and defendant, N. surety; that under the laws of Michigan only persons of twenty-one years of age could hold homestead lands, and that plaintiff was under that age. There was no representation by plaintiff that he was of such age, while the fact was as much within the knowledge of H. as of the plaintiff. H. also obtained a surrender from the plaintiff of his interest in the land, whereby he was enabled to have himself located in his stead, which he otherwise might have had difficulty in doing, and got the same he would have got if plaintiff had been of full age.

Held, that there could not be said to be no consideration for the notes, and the plaintiff was therefore held entitled to recover.

G. T. Blackstock, for the plaintiff.

Osler, Q.C., for the defendant.

HAYES V. ARMSTRONG.

Provincial election—Returning officer—Refusal to delay return after notice of recount—Evidence of—Person aggrieved—Jurisdiction to make order.

Action by the plaintiff, a defeated candidate at an election for the local legislature against the defendant, the returning officer, for wilfully

contravening the provisions of R. S. O. ch. 10, sec. 125 in not delaying his return after receiving notice from the county judge of a recount of the ballots.

The learned judge at the trial *held* that the plaintiff was a person aggrieved within the meaning of sec. 181 of the act; that the defendant could not question the power of the county judge to give the appointment or issue the notice on the material before him, because the process of the Court or judge must be obeyed while it stands when as here there was jurisdiction, but he also held, which was affirmed by the full Court, CAMERON, C.J. *dubitante*, that this evidence did not show that the notice of the recount came to the knowledge of the defendant before he made his returns, and therefore he did not wilfully contravene the section; and the plaintiff therefore could not recover.

Per CAMERON, C.J. The doubt in his mind arose from the defendant not affirming by his oath that the fact of a recount did not come to his knowledge before he made his return.

Lount, Q. C., for the plaintiff.
Aylesworth, contra.

HUGHES v. HAND IN HAND ASSURANCE COMPANY.

Insurance—Reference to arbitration—Costs of arbitration and award—Construction of order.

After the action had been commenced on a policy of assurance containing the statutory conditions, the defendants gave notice of arbitration under the condition in that behalf, when the Court made the following order: "And the Counsel for the defendants agreeing thereto and abandoning all defence to this action and admitting their liability under the policy sued on, it is ordered that all proceedings in this action be stayed, the plaintiff to be at liberty to sign judgment and proceed in this action for amount as may be awarded to him by the arbitrator or arbitrators now or hereafter to be appointed between the parties under the policies of insurance sued on in this action, and the statutory condition therein in that behalf, together with the costs of this action, etc. And it is further ordered without the consent of the defendants that either party be at liberty, after the making of said award, to apply to a judge in Chambers in respect of the payment of the costs of the reference and award."

On motion to ROSE, J., an order was made directing the defendants to pay the costs of the reference and award.

On appeal to the Divisional Court, CAMERON, C.J., was of opinion that the appeal should be allowed, and GALT, J., that it should be dismissed. The Court being equally divided the judgment was affirmed and appeal dismissed.

G. H. Watson, for the plaintiff.
Foster and *J. B. Clarke*, contra.

WARD v. HUGHES.

Assignment of chose on action—Absolute in firm though interest retained by assignor—Action by whom—Failure of consideration—Evidence of.

An assignment of a mortgage on land was absolute in form, though as a matter of fact the assignors retained an interest in himself.

Held, ROSE, J., *dubitante* that an action on the covenant in the mortgage must be brought in the name of the assignee.

At the trial the learned judge dismissed the action on the ground that there was a total failure of consideration for the said mortgage. The Divisional Court was not satisfied that there had been such failure of consideration, and granted a new trial, with leave to have such parties added as might be deemed necessary.

George Bell, for the plaintiff.
The defendant in person contra.

PORTEOUS v. MUIR.

Promissory notes—Parol evidence—Suspension of time of payment.

To an action on a promissory note, payable on demand, the defendant set up a parol agreement whereby the payment of the note was to be suspended for two years; and *per* GALT, J., even if such evidence were admissible it showed that the agreement never came into effect, because one of the conditions upon which agreement was to take place was not complied with.

Held, that evidence of such parol agreement was not admissible.

H. P. O'Connor, for the plaintiff.

Moss, Q.C., for the defendant.

WEBSTER v. STAGGART.

Award—Misconduct of arbitrator—What constitutes.

Held, that the improper reception or rejection of evidence does not amount to legal misconduct on the part of the arbitrator so as to entitle the award to be impeached.

Milligan (of Brampton) for the plaintiff.

Osler, Q.C., and *Justin* (of Brampton) contra.

GREEN v. PONTON.

Registrar—Omitting to enter instrument on index—Evidence—Who entitled to recover.

Action against a registrar for omitting to enter on the abstract index as to a certain lot, the will of one M. which had been registered, whereby it was alleged that the plaintiff was damnified in purchasing a mortgage on the lot. The mortgage was first purchased by S., a solicitor, who searched the title and subsequently assigned to the plaintiff. S. though accustomed to act for the plaintiff in investing his moneys, was in purchasing the mortgage dealing for himself. The plaintiff never authorized S. to search the title for him, and it was not searched when the assignment took place to the plaintiff.

Held, that the evidence shewed that S. when he purchased was fully aware of the existence of the will, and relied on the fact, as he thought that the mortgagor had acquired a title by possession.

Held, also, that under the circumstances no benefit could be claimed in this suit of the search made by S.

Osler, Q.C., for plaintiff.

Dickson, Q.C. and *Ponton*, contra.

HALL MANUFACTURING CO. v. HAZLITT.

Sale of goods—Property passsing—Landlord and tenant—Right to remove tenant fixtures after expiration of term.

On 5th July, 1882, the plaintiff sold four Leffell double turbine wheels to U. & Co. under a written agreement that the title and property therein should not pass until the whole purchase money was paid; but merely the right to possession should pass to them, which should be forfeited on default of payment or on the goods being seized under distress or execution, the sale being conditional, and punctual payment being essential to it. The wheels were received by U. & Co., and were placed in a flume attached to a pulp and paper mill erected by them on land with water privilege, occupied under a written agreement for a lease made with H. & Co., the agreement providing that the lease was to contain provisions for forfeiture in the event of bankruptcy or nonpayment of rent or nonperformance of covenants. A lease was drawn up but was never executed. The wheels were placed in the flume so as to be capable of being taken out by the removal of a few boards and the expenditure of a few dollars. In February, 1883, the sheriff under an execution against goods seized the chattel property but not the wheels; and about the same time U. & Co. gave the key of the premises to H. & H. and voluntarily gave up possession to them, and in March following U. & Co.'s interest in, amongst other things, the wheels was sold to S. under proceedings to realize the amount of certain mechanics' liens. All the property of U. & Co. became vested in the defendants, the Ontario Pulp Co., who acquired the interests of H. & H. and S. U. & Co. made default in their payments to the plaintiffs, who in January demanded the wheels which the defendants refused to deliver up, claiming them as their property. In an action to recover amount due for said wheels,

Held, under the circumstances that the plaintiff was entitled to recover.

Ritchie, for the plaintiffs.

Osler, Q.C., for the defendants.

HORNER v. MERNER.

Agreement—Collateral verbal promise—Quantum meruit—Parties' minds ad idem.

The plaintiff in November, 1883, was engaged by A. M. as foreman of his brewery under an agreement, as he alleged, that he was to take charge of the brewery and make two brewings, and if they turned out well he was

to be paid the same wages as one B. got, which appeared to be $75 a month; that the brewings did turn out well, and he became entitled to the wages; that he continued working for A. M. for the wages until 21st June, when owing to financial troubles A. M. left leaving plaintiff's wages unpaid, and A. M.'s father, S. M., who was a large creditor, took charge of the business, and, as plaintiff alleged, verbally promised that if plaintiff would continue he would not only pay him his wages for the past, but for the future, and that plaintiff remained on these terms until August 21st, when he was discharged. Both A. M. and S. M. denied the agreement as alleged by plaintiff. The jury found that the agreement was as claimed by the plaintiff, and a verdict was entered against A. M. on this basis for the time prior to his departure, and against S. M. for such time and also for the subsequent period.

Held, that in any event there could be no recovery as to the time prior to A. M.'s departure, because the alleged promise was merely collateral and should have been in writing, and as to the subsequent period the evidence showed that the plaintiff could only recover on a *quantum meruit*, and he had been so paid; and that as to A. M. the evidence was most conflicting, and would lead to the conclusion that the minds of the parties had never been *ad idem*; and therefore the recovery should have only been on a *quantum meruit*; and that unless plaintiff would consent to reduce his verdict to an amount ascertained on such basis, there must be a new trial.

John King, for the plaintiff.

Osler, Q.C., for defendant.

McKENZIE v. McLAUGHLIN.

License—Right to revoke—Estoppel—Parol evidence.

The plaintiff, by a lease under seal, leased to the defendant a shop, save and except the bottom portion of the east window, and save and except a portion of the shop described by metes and bounds. The defendant urged that prior to his accepting the lease and entering into the consideration for such acceptance, an independent and collateral parol agreement, separate and distinct, and not made part of the written agreement, was entered into, whereby the defendant was to have permission or license to remove certain rough shelving, etc., and to fit up the shop, including the portion reserved by the plaintiff, with handsome and ornamental show-cases during the continuance of the term, so as to give the shop a uniform appearance for the defendant's benefit; and that in pursuance of such agreement, and with plaintiff's consent, the show-cases were put in.

Held, that the evidence of such agreement was not admissible as adding to the written agreement; but even if admissible it failed to establish the agreement; but, even assuming it to be proved, if it amounted to an easement or grant of an incorporeal right it should have been under seal, and not being under seal the license would be merely a parol license not incidental to a valid grant, and therefore revocable; and the fact of its being, as alleged, for a sum certain could make no defence; and also that the plaintiff was not estopped by his conduct from denying the defendant's right to retain the show-cases.

McCarthy, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

Osler, J.]

RE BELL TELEPHONE CO. ET AL. v. THE MINISTER OF AGRICULTURE.

Patent Act, 1870—Court, constitution of—Dominion Parliament—Ultra vires—Power of Minister.

Sec. 28 of the Patent Act, 1872, after providing for certain cases in which patents are to be null and void, continues: "Provided, always, that in case disputes should arise as to whether a patent has or has not become null and void under the provisions of this section, such disputes shall be settled by the Minister of Agriculture or his Deputy, whose decision shall be final."

Held, that a court or judicial tribunal for the determination of the matters referred to in the section was constituted by the Act; and that the constitution of such a court was not *ultra vires* of the Dominion Parliament as infringing upon subjects of exclusive Provincial legislation; and also that it was competent for the Minister to decide as to the existence of disputes arising for his decision.

Osler, J.]

GARDINER v. KLEOPFER.

Assignment for creditors—Assent of creditor.

After the execution of a deed of assignment in trust for creditors, the assignee called a meeting of the creeitors, at which the defendant, a creditor, attended and assented to a resolution appointing him one of the trustees to aid the assignee in winding up the estate, and a resolution was also passed to pay certain arrears of wages; and he examined and reported on the amount and condition of the stock. A few days afterwards he brought an action on his claim against the debtors, recovered judgment by default and issued execution, and then attacked the deed.

Held, that the defendant must be deemed to have assented, and was estopped from denying its validity.

CHANCERY DIVISION.

Full Court] [Sept. 5.

WRIGHT v. LEYS.

Assignment of mortgage—Purchase in trust for mortgagor—Statute of frauds—Notice.

The plaintiff, who was mortgagee of certain lands, alleged that L, the present holder of the mortgage, purchased it from C with knowledge of the fact that C had purchased it from the original mortgagee as trustee for the plaintiff, who was to be allowed to redeem on paying such sum as C should pay for the mortgage and a certain additional sum for C's services.

Held, that the above agreement fell within the statute of frauds, and should be evidenced in writing.

Held, also, that even if this were not so, L could not be affected by the said agreement, having purchased without notice of it.

D. B. Read, Q.C., and *W. Read*, for the appellant.

Boyd, C.] [November 19.

MCCARTER v. MCCARTER.

Liability of executors for estate moneys received by solicitor—Negligence.

A B and C, three executors under a will, sold certain real estate of the testator. C, who was entitled to the annual income of the proceeds, took the most active part in the management of the estate, as the others lived at a distance, and employed a solicitor who received two sums—$980 and $1,580—part of the proceeds of said sale, the former in January, 1876, and the latter in February, 1882. Both the other executors were aware of his employment and that these sums were in his hands. In February, 1884, the solicitor absconded, causing a loss to the estate of $1,960, the balance then in his hands. In the will there was a clause "that each (of the executors) should be responsible for his or her acts only, and irresponsible for any loss unless through wilful neglect or default."

Held, that all three were equally liable, and must make good the amount to the estate.

Laidlaw for the plaintiff.

G. H. Watson, *Ermatinger* and *Teetzel* for the defendants.

Boyd, C.] [Dec. 17.

STOBBART v. GUARDHOUSE.

Will—Devise—Child—Life estate—Estate in fee.

T. S., after providing for his widow in his will, made the following devise:—"And I give and devise to my nephew, R. S., Lot No. 30, in the Second Con. said Township of Etobicoke, during the term of his natural life (excepting he have a child or children) if not, at the expiration of his life to go to my daughter Ann Guardhouse or her heirs or . . ." The will also contained a residuary devise in favour of the testator's widow. R. S. took possession, married, had children, and died, leaving his widow and several children him surviving.

In an action by the widow of T. S., claiming that R. S. was only entitled to a life estate in the lot, and that she was entitled to it in fee under the residuary clause, it was

Held, following *Lethicullieur* v. *Tracy*, 3 Atk. 796, that an estate in fee may, by implication, be vested in the child, and that, by applying the rule in *Bifield's* case (acted upon in *Doe dem Jones* v. *Davies*, 4 B. and Ad. 55), and reading "child or children" as *nomen collectivum* created an estate tail in R. S., that "child" under the circumstances was not a *designatio personæ*, but

comprehended a class, and that the plaintiff must fail.

W. Mortimer Clarke, for the plaintiff.

McMichael, Q.C., and *A. Hoskin*, Q.C., for the adult defendants.

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

Full Court.] [Dec. 18.

HAMMILL v. HAMMILL.

Will—Construction—Effects.

Decision of PROUDFOOT, J., which is fully noted, *supra*, vol. 20, p. 192, affirmed.

Per BOYD, C.—The rules of construction laid down in *Smyth* v. *Smyth*, 8 Ch. D. 561, which PROUDFOOT, J., followed, and the interpretation there given to the word "effects," are, without going into more recondite law, sufficient to support the judgment now under review. The earlier authorities, now to be treated as overruled, influenced by a canon of construction then deemed sacred, leaned strongly against the disherison of the heir, whereas the latter decisions proceed upon a contrary principle, and lean strongly against any construction that involves intestacy.

C. *Moss*, Q.C., for the appeal.

J. Maclennan, Q.C., contra.

Full Court.] [Dec. 18.

LONDON AND CANADIAN CO. v. WALLACE.

Will—Construction—Direction to carry on testator's business—Power to mortgage.

Decision of FERGUSON, J., noted, *supra*, vol. 20, p. 130, reversed, and the usual mortgage judgment pronounced.

BOYD, C.—The testator charges all his estate with the payment of debts. . . . As I read the evidence, it is quite insufficient to affect the company, through their agent, with notice that the money advanced on the mortgage in question was not to be applied in conformity with the provisions of the will. To my mind, that disposes of the whole action. In *re Tanqueray*, 20 Ch. D. 482, the law is thus expounded by BRETT, L. J.—"Wherever a testator devises all his real estate to his executors and directs them to pay his debts, the debts are charged on the real estate, whatever may be the trusts declared of that real estate, unless upon the whole will, you can clearly find a contrary intention." That case also decides that such a delay as occurred in this case after the death, that is six years, raises no presumption that all his debts have been paid. The purchaser is not bound to inquire upon this matter, unless there has been a delay of twenty years. Within that limit, when there is a charge of debts with an implied power to sell or mortgage, and the purchaser gets the legal estate, he is protected in equity, whether there are debts or not, unless he has knowledge that there are no such debts. As I construe the will, I find no contrary intention clearly expressed therein. . .

PROUDFOOT, J.— . . I think the evidence fails to establish notice to Mr. Ward (agent of the plaintiffs) of the misapplication of the money, and the only notice suggested is that to him. The case is then brought entirely within the principle of *Ewart* v. *Gordon*, 13 Gr. 40, which was itself based upon that of *McLeod* v. *Drummond*, 17 Ves. 717. In other respects I agree in the opinion expressed by the Chancellor.

F. Arnoldi, for the plaintiffs (appellants).

C. Moss, Q.C., contra.

Full Court.] [Dec. 18.

FERGUSON v. FERGUSON ET AL.

Action impeaching a conveyance of land to M., the wife of K., on the ground that the land was really bought with K.'s money, and was so bought and conveyed to M. at K.'s direction, with the intent of delaying and hindering the plaintiff and other creditors of K.

There appeared no evidence of fraudulent intent connected with the conveyance to M. Moreover, it also appeared that the plaintiff was himself consulted with regard to the matter, and, knowing all the circumstances of K.'s financial position, he expressed his approval of what was done. He was not then a creditor of K., and did not become so till over a year afterwards.

Held, under these circumstances, affirming the decision of FERGUSON, J., that the plaintiff could not have the deed set aside as a fraud upon him.

C. Moss, Q.C., and *Hudspeth*, Q.C., for the plaintiff (appellant).

McIntyre, contra.

NOTES OF RECENT CASES IN MANITOBA.

From Manitoba Law Reports.

Tax sale — Irregularities — Foreign Corporation — Banking business.

A foreign corporation loaned money on mortgage in this Province. The mortgage was executed in the foreign country and the advances made there. The corporation had no license to do business in Manitoba,

Held, that the mortgage was valid and vested the land in the corporation.

The plaintiff corporation had for its purposes "The investment of capital on the security of real estate, personal property, assets and obligations," and was prohibited from engaging "in the business of banking." The plaintiff corporation made loans to L. & Co., taking notes from which the interest was deduced in advance. D. a member of the firm of L. & Co. made a mortgage to the plaintiff corporation to secure payment of the moneys so advanced.—*Farmer's and Trader's Loan Co.* v. *Conklin.*

Suit in equity—Power to garnish.

Held,—Affirming the order of the Referee, that under Con. Stat, c. 37, s. 78, the Court has power to issue garnishing or attaching orders in equity suits.—*Cameron* v. *McIlroy.*

Action for non-delivery of goods—Condition indorsed on shipping bill—Liability of carrier.

In action brought for the non-delivery of sawn lumber delivered to defendants at P. to be carried by them to B., defendants pleaded a condition indorsed on the shipping bill, as follows: "That the company will not be responsible for any deficiency in weight or measure of grain, in bags or in bulk, nor for loss or deficiency in the weight, number or measure of lumber, coal or iron of any kind carried by the car load."

The evidence shewed that the lumber was loaded at P. and that a portion of it was not delivered at B. There was no evidence as to how the loss occurred.

Held, 1. That by the statute 42 Vict. c. 9, s. 25, s.-s. 4, the defendants were precluded from setting up the indorsed condition when a loss is charged as happening through their own negligence.

2. That in the absence of evidence, the non-delivery might be assumed to have risen from misdelivery to some other person, or from the actual use of the property by the defendants for their own purposes, in which cases the condition would be no protection.—*Henry* v. *Canadian Pacific Railway Co.*

Married woman—Liability on contract—Separate estate.

In an action brought to recover from the defendant, a married woman, the balance of an account for goods sold and delivered to her,

Held, that in the present state of the law, debts contracted by a married woman in carrying on a business or employment, occupation or trade, on her own behalf or separately from her husband, may be sued for as if she were an unmarried woman, that is without regard to separate estate.—*Wishart* v. *McManus.*

Fradulent conveyance—Exemption from seizure.

Defendant, J. S., took up a quarter section as a homestead, performed settlement duties, and obtained a patent. He then made a conveyance to J. R., and J. R. conveyed to M. S., the wife of defendant J. S. Subsequently to these conveyances, plaintiff obtained judgments at law against the defendant J. S. The conveyances were without consideration. J. S. had no other property. Within three months after the execution of the conveyances, executions to the amount of $1,388.38, against J. S. were placed in the sheriff's hands.

Held, 1. That the conveyances must be set aside, and equitable execution decreed.

2. That it is not necessary that the debts should have become payable before the fraudulent disposal of the property was made.

3. Exemptions from execution under Con. Stat. Man. c. 37, s. 85, s.-s. 8, as amended by 47 Vict., c. 16, s. 6, discussed.—*Brimstone* v. *Smith.*

Equitable assignment—Notice.

Held, by the full court, affirming the decision of Taylor, J., that an equitable assignment of a *chose* in action may be made by any words or acts shewing a clear intention to assign; a deed or writing is not necessary.—*McMaster* v. *Canada Paper Co.*

Extradition—Habeas corpus—Form of taking evidence.

Where prisoner was charged with an extraditable crime and the evidence was taken down in

the narrative form in the judge's notes, and by way of question and answer by a shorthand reporter which were afterwards extended by the reporter but were not read over to the witnesses or signed by them.

Held,—Upon *habeas corpus* that there was no evidence—that is no evidence that the Court could look at—as proof of the alleged crime.—*Re G. A. Stanbro.*

Corporation—Contract under seal—Hire of servant or employé.

Plaintiff, a civil engineer, was engaged by defendants as provisional engineer at $300 per month. The employment commenced on 9th of August, 1882, he was dismissed on 16th of December, 1883 and paid up to that date: He sued for wrongful dismissal and claimed wages up to the 9th of February, the earliest period at which his service could have been terminated by a month's notice.

Held, that as the plaintiff was an important official, his engagement was not binding upon the corporation, not being under its corporate seal.—*Armstrong* v. *Portage, Westbourne, etc., Railway Co.*

Railway Company—Loss of baggage—Warehousemen.

Held,—1. A railway company is liable for the loss of a passenger's ordinary travelling baggage, but not for such articles as window curtains, blankets, cutlery, books, ornaments, etc., even when these are packed with the baggage for which they are liable.

2. When goods remain at the station at which a passenger alights but it does not appear that the Railway Company has charged, or is entitled to charge, for storage the Company is not liable as warehousemen.—*McCaffrey* v. *The Canadian Pacific Railway Co.*

Proceedings before the Legislature—Taxation of costs—Practice.

Held, that where a solicitor has obtained from the Speaker of the Legislative Assembly authority to act in any matter as a parliamentary agent, he can recover the amount due him for services, without being obliged to observe all the requirements of the English Act.—*Kennedy* v. *Austin.*

LAW STUDENTS' DEPARTMENT.

LAW SOCIETY.

EXAMINATION PAPERS.

FOR CALL;

Real Property and Wills.

1. What is the law as to the liability of a purchaser on covenants on his part contained in a deed not executed by him?

2. To what covenants is a purchaser entitled on a conveyance to him?

3. When is an abstract said to be perfect?

4. What is meant by (1) showing a good title, (2) making a good title?

5. Will a general devise of lands pass to the devisee the benefit of mortgages held by the testator? Explain.

6. Land is devised to A. for life, and after his decease to his heirs and the heirs female of their bodies. Construe this devise.

7. Are copies of deeds admissible in evidence under any circumstances on the trial of an action to recover land?

8. With what formalities must a will be executed under our present law?

9. A. having been in undisturbed possession of and for more than ten years, quits possession temporarily, and the person having the paper title gets in and holds possession. Would you advise an action to recover the land by A.? Give reasons for your opinion.

10. What is meant by a "satisfactory" title in a contract of sale?

Equity.

1. Speaking of specific performance it is said that "courts of equity will let in the defendant to defend himself by evidence to resist a decree where the plaintiff would not always be permitted to establish his case by like evidence." Illustrate this passage by an example.

2. In what cases will time be treated in equity as being of the essence of the contract?

3. State shortly the extent of the jurisdiction of the courts of equity apart from any jurisdiction conferred by legislative enactment to entertain interpleader actions, and state why it was that they would not usually entertain such an action by a sheriff in respect of goods seized by him in execution.

4. Give a state of facts showing a case where a court of equity would, apart from statutory enact-

ment, interpose by injunction to restrain the use of a trade mark, and state the ground on which such injunctions are granted.

5. What distinction is observed by courts of equity between their modes of construing executory trusts contained in marriage articles and those contained it wills?

6. A mortgagee having no power of sale in his mortgage foreclosed the mortgaged property and sold and conveyed a portion thereof; he then became convinced that the balance of his claim could not be realized from the balance of the property and he brought action against the mortgagor upon the covenant for payment contained in the mortgage seeking recovery of the balance of his claim, or of such deficiency as might arise after a sale of the balance of the property which action was defended by the mortgagor. Who should succeed in the action, and why?

7. Under what circumstances may a debtor revoke a general assignment made by him to a trustee for the benefit of his creditors?

8. Distinguish between the validity of an assignment of a pension granted for past services, and an assignment of the future emoluments of a public officer, and state the grounds for such distinction.

9. Lands are devised under the will of A. to B. in trust to raise money on the security thereof, for the purpose of complying with certain directions in the will. B., in pursuance of the provisions of the will, mortgages the said lands by an instrument in which he is described as trustee under the will of A., and in which he enters into the ordinary mortgage covenants. Default having been made in payment, the mortgagee seeks to recover payment of the mortgage moneys from B. personally. B. defends, on the ground that by his covenant he intended to bind and did bind the trust estate only. Who should succeed? Give reasons.

10. A. is the manufacturer of a certain medicine not protected by patent. His servant wrongfully discovers the process by which he compounds the same, and for value imparts the secret to B., who is aware of the manner in which the servant became possessed thereof. B. manufactures and sells the medicine in question. Has A. any, and if so what, remedy?

Examination for Certificate of Fitness.

Smith on Contracts and Benjamin on Sales.

1. Is an infant liable; (*a*) on an account stated when the account consists of the price of necessaries; (*b*) on a promissory note given by him for the price of necessaries; (*c*) for money lent to him for the purpose of enabling him to purchase necessaries, and which he has used for that purpose?

2. A written agreement is made between two persons by which one is to serve the other for six months from date, performing the duties, and receiving the wages therein specified. On the following day they agree verbally that some of the duties specified in the writing are to be omitted; and others not specified are to be performed instead thereof. On the trial of an action for breach of the written agreement, will parol evidence be admitted to prove that it was varied by the subsequent verbal agreement? Give reasons.

3. A resident of Ontario purchases goods in Buffalo from a merchant of that city, and then smuggles them into Ontario, the vendor being aware at the time of sale of the purchaser's intention to smuggle. Can the vendor recover the price of the goods in an Ontario Court? Will it make any difference, if the vendor pack the goods in a particular way, so as to assist the purchaser in smuggling them? Give reasons.

4. Is the receipt of goods by a carrier an *acceptance* and *actual receipt*, or either of them, by the purchaser within the meaning of the 17th section of the Statute of Frauds? Why?

5. Can a vendor who keeps possession of goods by virtue of his lien for unpaid purchase money recover from the purchaser storage, or other charges, for the time he so keeps them? Why?

6. Will a letter merely proposing to sell goods on the terms therein specified constitute a sufficient memorandum of a bargain within the Statute of Frauds? If so, when?

7. State briefly when a vendor will, and when he will not, be deprived of the right of *stoppage in transitu* by having taken a bill or note for the price of the goods.

8. After goods have been delivered to the vendee on a credit sale, the vendor, not receiving the price at the time agreed on, tortiously retakes the goods. What are the respective rights and remedies of the parties under these circumstances?

9. What difference does it make, as to the right of the vendor to recover the price of goods sold from the vendee, whether the property in the goods has passed to the vendee or not?

10. Give examples of *executed* and *executory considerations* respectively, and state what is the essential requisite of the former, as distinguished from the latter, in simple contracts.

Law Society of Upper Canada.

OSGOODE HALL.

TRINITY TERM, 1884.

During this term the following gentlemen were called to the Bar:—Samuel Clement Smoke, William Durie Gwynne, Stephen Frederick Washington, Thomas Thomson Porteous, Alexander Duntroon McIntyre, Matthew Munsell Brown, William Grant Thurston, Thomas Edward Williams, John Stewart, Napoleon Antoine Belcourt, George Washington Field, Francis Henry Keefer, Douglas Armour, Flavius Lionel Brooke, Alexander Carpenter Beasley. The names are arranged in the order in which the candidates were called.

The following gentlemen were admitted as students-at-law:—Graduates, James Morris Balderson, Alexander Robert Bartlett, Joseph Hetherington Bowes, Samuel William Broad, George Filmore Cane, John Coutts, George Henry Cowan, Robert James Leslie, Archibald Foster May, John Mercer McWhinney, James Albert Page, Horatio Osmond Ernest Pratt, Thomas Cowper Robinette, Robert Karl Sproule, Ernest Solomon Wigle, James McGregor Young, Roderick James Maclennan, George Frederick Henderson, Samuel Walter Perry, Richard S. Box, William Wallace Jones, William Louis Scott, Edmund Kershaw. Matriculants: Henry Herbert Johnston, Albert E. Baker, Herbert Holman, Charles D. Macaulay, George Albert Thrasher, John Williams, Seymour Corley. Junior Class: Henry Elwood McKee, Edward Lindsey Elwood, Walter Scott MacBrayne, Edwin Owen Swartz, Joseph Frederick Woodworth, Owen Richards, William Allan Skeans, Richard Lawrence Gosnell, Frederick Ernest Chapman, Nathaniel Mills, James McCullough, jun'r., John McKean.

The following gentlemen passed the examination of Articled Clerks:—John Alfred Webster, Alexander William McDougauld.

BOOKS AND SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—North America and Europe.
- Elements of Book-Keeping.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose.

MATHEMATICS.

Arithmetic; Algebra, to end of Quadratic Equations: Euclid, Bb, I., II. and III.

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a Selected Poem:—
1884—Elegy in a Country Churchyard. The Traveller.
1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

English History from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography, Greece, Italy and Asia Minor. Modern Geography, North America and Europe.

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,
Translation from English into French prose.
1884—Souvestre, Un Philosophe sous le toits.
1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

First Intermediate.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and cap. 117, Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Gov-

Law Society of Upper Canada.

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

Taylor on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jusisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

3. Every other candidate for admission to the Society as a Student-at-Law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with clause four of this curriculum.

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, six weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8 The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

9. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m..

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness, examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.