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We have received from Mr. Lefroy an answer to Mr. Labatt's criticism on his article in the *Law Quarterly Review* in reference to some matters of constitutional law which arose in the Canadian Fisheries appeal case. Want of space compels us to hold it over until our next issue.

Practitioners will be glad to see the announcement of a new book of legal forms, by Mr. Edwin Bell, of Chatham, and Mr. H. L. Dunn, of Toronto. It is further noticed in our review columns. It was much needed. It is the first in the field under the new Rules and the work is apparently done excellently well.

CONCERNING COURTESY IN JUDGES.

"Four things," said the greatest of all the Greeks, "belong to a judge; to hear courteously, to answer wisely, to consider soberly, and to decide impartially." We make the first of this quartette of judicial qualities the text of our present observations, and do not refer to incompetence, partiality or failure of duty, which should be dealt with after a different fashion.

The judicial Bench is perhaps of all stations in life the one that calls for suaviter in modo with a carefully balanced fortiter in re. It demands, and, of necessity, should have untrammeled freedom of action and absolute immunity from all control, political or otherwise, and it is the very counterfeit presentment of sovereignty itself—which can do no wrong in thought, word or deed. Judges are channels of the pure fountain of justice which must receive no pollution whatever, as it flows through them from its royal source to water the seed grain of national peace and prosperity.

It will not be said that this journal has been unmindful of its duties in upholding the dignity and good name of the Bench. We have therefore no hesitation in referring to the subject, especially as it is interwoven with the high standard of the Bar and the welfare of the community at large. We are not unmindful of the evil resulting from criticism of the judiciary by the lay press, fanning, as it does, the flame of revolt against authority, forever smouldering in the dregs of society; but we are not writing to the public, but to and for those who are deeply interested in the subject, and are themselves actors in the scene.

Sacred as are the rights of the Bench, equally so are those of the Bar, who are the helpmeets of the Bench, and the ranks of the former are the recruiting ground of the latter. To the judges, the profession, and especially its younger members, look for, or should look for, inspiration and a worthy example, and so it comes that as is the Bench, so will be the Bar. A decadence in the tone of the one works a corresponding decadence in that of the other.

It may as well be said plainly that there is a feeling of dissatisfaction on the part of the Bar, and especially of its younger members in certain parts of the Dominion, at their discourteous treatment by some judges. Indignant and angry comment is also heard in reference to the ungoverned temper which so frequently disturbs the harmony of our highest Court. If we are told that its chief is a man of great ability, it may be answered that we can better dispense with a judge of extraordinary attainments than with that which conserves the respect due to the sovereign power which he represents.

In some instances discourtesy to the Bar is of a nature which can only be characterized as cowardly. It is not the leaders of the Bar who are on these occasions treated to a sneer, or a snub, or a rude rebuff, but rather those whose youth and inexperience would give to the large hearted, generous judge, strong in the knowledge of his power, the happy opportunity of encouraging the timid, teaching the inexperienced, or, if necessary, courteously rebuking a breach

of professional decorum, or an offensive pertinacity, or, it may be, severely censuring a piece of sharp practice, or other conduct unworthy of our noble profession. The evils complained of are growing ones, and there must be an end to them. The traditions of the Canadian Bench are a sacred trust, and he who violates them is doing his country a wrong which he can never remedy.

It is not at present necessary further to particularize. We trust it may never be necessary so to do. We are not writing as we have said, to the public, but to those who know whereof we speak. Names need not now be given, for the members of the Bar have a keen sense in such matters, and those of the Bench (happily only a few) who offend in these respects, also know to whom these remarks apply. It is necessary in this matter to hew to the line, and let the right men fill their baskets with the chips.

We are very proud of the Bench of this Canada of ours. No country outside of England can compare with it as a whole, and it is because we are jealous of its reputation, as well as impelled by a sense of duty to the profession, that we now call attention to the complaints referred to.

Indelibly impressed upon the memory of the writer is a scene in the library of Sir John Beverley Robinson, when Chief Justice of old Upper Canada. It was in the days of technical pleading and practice, and petty motions by way of summons and order. The room was crowded with barristers and law students, waiting their turn for a hearing. The Chief sat in one chair, with his feet on another, one foot swathed in flannels, with marks of agonizing pain occasionally passing across his face. One by one the motions were made and patiently heard. Never once did the pain he suffered, or the ignorance, or pertinacious stupidity of some novice, ruffle the serene courtesy of his speech or manner. Leaders, juniors and students were treated alike and, if there was an exception, it was in favor of the last, when this learned and venerated judge, with an encouraging smile, explained to some raw student what the practice was, or wherein his material was defective. As it was in the

days of such men as a Robinson, a Macaulay, a McLean or a Draper, in Upper Canada, so it was in Nova Scotia and the other provinces by the sea.

In those days we heard no such tales as come to us from time to time in these days. The judges knew their place, and wherein the strength of their position lay, and the Bar respected and admired, and in the main, sought to imitate them, and both clients and the country were the gainers.

Every true man is, or should be, jealous of the honor of the order to which he belongs, and we feel confident that this word to the wise coming, not from an individual, but as the general voice of the Canadian Bar, will not be contemptuously passed by. We are not fearful, therefore, of giving offence in this matter, nor, should anyone be offended, are we careful to consider who that person may be.

ATTACHMENT OF RENT.

To what extent rent is attachable does not appear to be very satisfactorily settled. Rent actually payable can clearly be attached, as was decided by the English Queen's Bench in 1867, in *Mitchell* v. *Lee*, L.R. 2 Q.B. 259. It has been said by some judges that rent accruing due may now also be attached, as under the Apportionment Act, R.S.O., c. 170, s. 4, it becomes due *de die in diem*, and that on the following gale day the portion accrued up to the service of the attaching order may be properly ordered to be paid to the attaching creditor: *Massie* v *Toronto Printing Co.*, 12 P.R. 12; but in that case the Master-in-Chambers says that an attaching order could only affect rent which had accrued up to the date of it, and could not affect future accruing rent, because it might not become payable by reason of the eviction of the tenant. And this view was confirmed by Galt, J., and subsequently approved by Boyd, C., in *Patterson* v. *King*, 27 Ont. 56; but the reasoning which the Master-in-Chambers assigned for the non-attachability of future accruing rent would appear to apply just as forcibly to every day's rent before the day it actually becomes payable. In *Clapham* v. *Draper*, 1 Cab. & E.

484, a tenant was evicted by a superior landlord during a quarter. His lessor claimed to recover a proportionate part of the quarter for the period he had had possession, but it was held that the eviction was a bar to his recovering any part of the quarter's rent.

Even in the Division Courts, where legal questions are not too rigidly considered, a difference exists on this point, in part due to the difference between the wording of the Division Court Act and the Consolidated Rules; the former only authorizing the attachment of debts due and owing, while the Consolidated Rules enable debts "due and accruing due" to be attached. Dean, Co. J., in the case of in *Birmingham* v. *Malone*, 32 C.L.J. 717, thought this difference in wording ought to make no difference in the construction of the Act and Rules, but Ketchum, Co. J., in *Christie* v. *Casey*, 31 C.L.J. 35, thought it a vital point of difference. In the latter case it was decided that rent between gale days could not be attached, and in *Birmingham* v. *Malone*, it was held that it could. A recent case of *Barnett* v. *Eastman*, 61 L.J. Q.B. 517, seems to support the view of Ketchum, Co. J., even though the Division Court Act is construed as being to the same effect as the Rules, for there Day, J., held that under the English Supreme Court Rules, which are the same in effect as the Ontario Consolidated Rules, rent cannot be attached before the day of payment. So far as the Courts of Ontario are concerned the foundation of attaching rent before the day of payment is *Massie* v. *Toronto Printing Co.*, supro, a decision of the late Mr. Dalton (certainly a lawyer of no mean rank), affirmed by Galt, J., and acquiesced in by Boyd, C., in *Patterson* v. *King*. But as we have already pointed out, the very case on which the practice is founded seems also to contain a refutation of its soundness, rather shows that rent not yet payable is within the decision of the Court of Appeal in *Webb* v. *Stenton*, 11 Q.B.D. 518. The point is deserving of the attention of a Divisional Court as soon as possible.

INTOXICATING LIQUORS.

The question as to what is an intoxicating liquor within the prohibition of the Ontario Liquor License Act—the Act itself furnishing no assistance in the matter by definition or otherwise—has lately come up for decision in magistrates' courts in the city of Toronto and the county of York. The police magistrate of Toronto held that a beer containing 2.11 per cent. of alcohol was not an intoxicating liquor, and a few days later two county magistrates decided that samples of the same beer showing on analysis 2.43 and 2.66 per cent. of alcohol, respectively, were intoxicating liquors. In deciding as they did the county magistrates followed a considered but unreported judgment of His Honor Judge McDougall, given in November, 1885. This decision was that a beer containing from two to three per cent. of alcohol was an intoxicating liquor within the meaning of the Act.

For some months past light beers showing on analysis two to three per cent. of alcohol, have, under various names, been freely sold throughout the province by unlicensed persons. These drinks are advertised to resemble, as they do in fact, both in taste and appearance, the ordinary lager beer, and it is said that every dive keeper in Toronto has his regal beer or jubilee pumps, and that in the parks and at the fall fairs these beverages have been popular drinks. In seeking to bring them within the License Act the provincial authorities say, not only that the drinks are mild intoxicants, but that being sold as temperance drinks they are taken as such by young persons and others unaccustomed to the use of intoxicants, and thus an appetite for stimulants is unconsciously aroused, and moreover that resembling so closely ordinary lager beer, it is impossible, without an analysis in every case, for the officers of the law to tell whether the booth and dive keepers are selling the diluted forms or the ordinary lager. Lager beer, it may be stated, contains from three to five per cent. of alcohol, and is admittedly an intoxicant.

The decision of Judge McDougall having been reached after a most exhaustive inquiry, extending over several days,

during which nearly fifty witnesses, most of them physicians, were examined, and being one that applies to all liquors of the class above referred to, it is unfortunate that it should have been allowed to drop out of sight. But it is never too late, even for law journals, to mend, and a sound declaration of the law, even though it were as old as the twelve tables, is always in order. A report of this judgment will be found in extenso in another place.

Though no mention is made of the fact by Judge McDougall in his judgment, it is noted in the Canadian Pharmaceutical Journal of December, 1885, as an incident of the trial—which, of course, had a medical as well as a legal interest—that towards its close one of the witnesses procuring some of the beer reserved by the inspector, made an experiment in the presence of medical gentlemen on two persons not accustomed to the use of intoxicants who consented to become subjects, with the result that both became undoubtedly "tight," after taking six or seven glasses each. The evidence of this novel experiment was put in in rebuttal.

In connection with this subject it is worth noting that the British Revenue Act of 1885 defines the word beer as follows: "The term beer in the Inland Revenue Act of 1880 shall be construed to extend to any liquor which is made or sold as a description of beer, and which on analysis of a sample thereof at any time shall be found to contain more than two per centum of proof spirit." Two per cent. of proof spirit equals about 1.14 per cent. of absolute alcohol; so that in Great Britain any beer containing more than that percentage of alcohol is for legal purposes classed with ales and porters containing six, eight, or ten per cent. of alcohol, and can only be made or sold by persons holding licenses under the Inland Revenue Act. Whether our courts, following the analogy of the British Statute, would hold that a beer containing more than the last named percentage of alcohol comes within the prohibition of the Liquor License Act, remains to be seen. At present the declaration of the law in Ontario goes no further than Judge McDougall's decision.

W. E. RANEY.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

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JUDICIAL SEPARATION — CRUELTY COMMITTED OUT OF JURISDICTION—JURISDICTION OF COURT.

Armytage v. *Armytage* (1898) P. 178, was a matrimonial action, in which a wife claimed a judicial separation on the ground of cruelty. Both parties were living within the jurisdiction when the action was commenced, but the defendant's domicil was in Australia, and the cruelty had been committed abroad, and the plaintiff alleged that she feared a repetition of it if she resumed cohabitation with the defendant. The question was raised whether the Court had jurisdiction to entertain the action under these circumstances. Barnes, J. held that it had.

COMPANY—DEBENTURES—CHARGE ON ALL PRESENT OR FUTURE "PROPERTY" OF COMPANY—UNCALLED CAPITAL—WINDING UP.

In re Russian Spratts (1898) 2 Ch. 149. The point involved was a very simple one. A company by its debentures had expressly charged all its "present or future property," and the question was, whether capital uncalled at the time of a winding-up order being made was future property of the company within the meaning of the debentures, and charged thereby. The Court of Appeal (Lindley, Rigby and Collins, L.JJ.), agreed with Stirling, J., in answering that question in the negative.

COMPANY—SECRET PROFIT—PROMOTERS.

Re Olympia (1898) 2 Ch. 153, is a decision of the Court of Appeal (Lindley, Rigby and Collins, L.JJ.), overruling Wright, J., on a point of company law. The object of the proceedings was to compel certain promoters of a company to make good to the company, for the benefit of its creditors, a secret profit which the promoters had made under the following circumstances. A syndicate was formed for the purpose of buying up the property of a company in liquidation,

and for the purpose of promoting a new company to take over the property so to be purchased. The property in question was subject to debentures for £100,000 and a mortgage for £10. The syndicate agreement provided that if a new company was formed, four members of the syndicate named therein should be directors of the company, and these four were also appointed trustees, to do what was necessary to carry out the objects of the syndicate, with power to purchase, as an interim investment of the syndicate's funds, any debentures of the old company. It was also provided that any sale to a new company was to be subject to certain agreements for giving the contract for advertising and furnishing refreshments to firms in which members of the syndicate were interested. The syndicate purchased the mortgage and some of the debentures much below the amount they ultimately realized, and made a profit of £20,000, of which the share of the four trustees was £6,341. They subsequently bought the property of the defunct company for £140,000, and resold it to one Close as trustee of the new company for £180,000, and it was declared that the purchase was not to be in any way avoided by any secret profit made by the promoters or any of them, nor should the vendors be required to account for any such profit. The new company was thereafter formed, and the four trustees became directors thereof, and ratified and affirmed the agreement made by Close with the syndicate, and it was agreed that any profits made by the syndicate from interim investments were not included in the sale to the new company. The new company thus formed, having been ordered to be wound up, the liquidator claimed that the four directors should make good to the company the £6,341, which they had made as above-mentioned. Wright, J., was of opinion that they were in no fiduciary relation to the company at the time the purchases of the mortgage and debentures were made, and were therefore not liable to account. The Court of Appeal (Lindley, M.R., and Rigby and Collins, L.JJ.), however, were of a different opinion; they considered that the syndicate trustees owed a duty to the new company when formed, not to make any profit out of it

without informing it of the fact, and giving it the opportunity of declining to allow such a profit to be made at its expense. That the disclosure of the facts to themselves and their confederates, who were the signatories of the articles of association, was not sufficient, and that the adoption by the directors of the agreement with Close did not bind the company to forego its claim to an account of the secret profit made by the directors, because they were not an independent body, but acting in their own interests. It was urged that the company was not in a position to recover this profit without rescinding the contract, which it could not do, because it was not in a position to restore the property. The Court of Appeal, however, held that this fact formed no bar to the company's right to recover, and they held that the four directors were jointly and severally liable to refund the £6,341.

BANKRUPTCY—PROPERTY—COVENANT FOR INDEMNITY.

In re Perkins, Poyser v. *Beyfus* (1898) 2 Ch. 182, the Court of Appeal (Lindley, M.R., and Rigby and Collins, L.JJ.), affirming, North, J., held that a covenant for indemnity contained in an assignment of a lease, is "property" of the covenantee within the meaning of the Bankruptcy Act, and, as such, assignable by his trustee, and that the damages recoverable by the assignee of such a covenant are not restricted to the dividend which a bankrupt's estate would pay in respect of the liability which was the subject of the indemnity, but extend to the whole amount of such liability.

INTEREST—VENDOR AND PURCHASER—"DEFAULT OF VENDOR"—DELAY IN COMPLETION—REMEDYING DEFECT IN TITLE.

In *Re Woods & Lewis* (1898) 2 Ch. 211, the Court of Appeal (Lindley, M.R., and Chitty and Collins, L.JJ.), have affirmed the decision of Romer, J. (1898) 1 Ch. 433, to the effect that where there was a delay in remedying a defect in the title unknown to the vendor at the time of the contract, and the purchaser did not draw and keep his money ready, making no interest of it; such a delay is not due to "a default of the vendor" so as to exonerate the purchaser from

paying interest on his purchase money in pursuance of his contract to pay interest in case of delay occasioned otherwise than "by default of the vendor."

PROFIT COSTS—Solicitor trustee—Will—Power to charge costs—Legacy—Insolvent estate.

In re White, Pennell v. *Franklin* (1898) 2 Ch. 217. The Court of Appeal (Lindley, M.R., and Chitty and Collins, L.JJ.), here affirmed the judgment of Kekewich, J. (1898) 1 Ch. 297 (noted ante p. 308), to the effect that where a solicitor trustee is empowered to charge profit costs for professional services rendered to the estate, such a power is in the nature of a legacy, and cannot be asserted in competition with creditors of the estate. How far such a legacy would be considered in the nature of payment of a statutory obligation in Ontario, and on that ground entitled to stand on a different footing, may perhaps be open to question. The decision is based on the ground that a trustee is not by English law entitled to be paid for his services.

HUSBAND AND WIFE—Marriage settlement—Covenant by husband that after acquired property of wife shall be settled.

In re Haden, Coling v. *Haden* (1898) 2 Ch. 220, appears at first blush to be a somewhat curious case. From the head note it appears that in a marriage settlement, executed by the husband and wife, the husband alone covenanted that the after acquired property of the wife should be settled on the same trusts as were declared by the marriage settlement, and that the Court held that th after acquired property of the wife was bound by the covenant. We are inclined to think that this is hardly a strictly accurate account of the actual decision of Sterling, J., who seems, as we understand the case, to hold that the existence of the covenant in a deed executed by the wife amounted to an agreement on her part that the property should be settled in accordance with the covenant; that we take it is what is meant by the concluding words of the judgment, "it is an agreement that all the real property of the wife shall be settled, and a person assenting to such covenant would be taken to mean that the covenant shall take effect

accordingly. I hold that the property is bound by the settlement." It will be observed that he does not say bound by the covenant.

POWER OF SALE—MORTGAGE—VENDOR AND PURCHASER—DEFECTIVE EXERCISE OF POWER IN MORTGAGE—SPECIFIC PERFORMANCE—CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44 & 45 VICT., C. 41), S. 19, SUB-S. 1 (i); SS. 20, 21, SUB-S. 2—(R.S.O., C. 121, SS. 18, 20 AND 21).

Life Interests Corporation v. *Hand-in-Hand Society* (1898) 2 Ch. 230, is a decision of Stirling, J., which shows that, notwithstanding the provision in the Conveyancing and Property Act, 1881, s. 21 (see R.S.O., c. 121, s. 21), to the effect that a sale in assumed exercise of a power in a mortgage shall not be impeached as against a purchaser by reason of the sale not being warranted by the power, or by reason of the irregular or defective exercise of the power,—a purchaser at such a sale cannot be compelled specifically to perform the contract, if he can show affirmatively that the power has not been properly exercised. In other words he cannot be compelled to rely on the statutory indemnity.

BUILDING SCHEME—RESTRICTIVE CONDITION—POSITIVE COVENANT—IMPLIED NEGATIVE STIPULATION

In *Holford* v. *Acton* (1898) 2 Ch. 240, the facts are as follows: Certain building land described as adapted for shops and business premises was put up for sale by auction, subject to a condition that the purchasers of certain specified lots should covenant with the vendors to erect within a specified time on such lots purchased by them a shop and dwelling house of a given minimum value. These lots all remained unsold, but the plaintiff purchased another lot included in the advertisement. The unsold lots subsequently became vested in the defendants, a municipal corporation, who prepared to erect thereon a fire engine station exceeding the aggregate value of the proposed shops and dwelling houses, and the action was brought to restrain this erection as being a breach of an implied stipulation on the part of the vendors, that on the lots in question only shops and dwelling houses were to be erected. Stirling, J., dismissed the action; he held it to be quite clear on the authorities that the vendors could not

have been required to erect shops and dwellings houses on the lots in question; and that the stipulation for the erection of shops and dwelling houses did not involve any implied agreement on the part of the vendor that the land should not be used for the erection of any other kind of building.

TRUSTEE—BREACH OF TRUST—UNAUTHORIZED INVESTMENT—RIGHT OF TRUSTEE TO DEFECTIVE SECURITY ON PAYING LOSS—RETIRING TRUSTEE, LIABILITY OF, FOR ACTS OF NEW TRUSTEES—SOLICITOR.

In *Head* v. *Gould* (1898) 2 Ch. 250, two or three questions relating to the law of trusts are involved. The facts of the case are somewhat voluminous, extending as they do to over nine pages of the report, but the salient points may be briefly stated thus. Clapp and Houlditch were trustees, the plaintiff an infant, being one of the cestuis que trustent. The plaintiff's mother and sister were also cestuis que trustent. The mother was in pecuniary straits, and she and her daughter urgently pressed Clapp and Houlditch to advance the trust money to them. £1,500 was in consequence advanced by them to the mother on improper security, she and her daughter giving them a covenant of indemnity: and thereafter Clapp and Houlditch refused to make any further advances, and suggested their retirement as trustees; and acting upon this suggestion, one Gould, a solicitor, and Miss Head, the plaintiff's sister, were appointed new trustees, the latter having recently attained twenty-one, and known to be under the influence of her mother, and Gould, being a friend of Mrs. Head, and a person of no substance. Under the management of Gould and Miss Head the rest of the trust fund, including the securities on which the £1,500 had been advanced, were dissipated. The action was brought against Clapp, Houlditch, Mrs. and Miss Head and Gould, to compel them to make good the plaintiff's share of the trust estate, it being claimed that Clapp and Houlditch were not only liable for the £1,500, but also for the defaults of the new trustees. Clapp and Houlditch claimed indemnity from Mrs. and Miss Head in respect of the £1,500, but contended that they could not be made liable therefor, because on payment of the amount they were entitled to the defective securities, which could not be handed to them, because they

had been dissipated by the new trustees. Miss Head also claimed indemnity against Gould on the ground that he was a solicitor, and she had acted by his advice. With regard to this latter claim Kekewich, J., was of opinion that no case for relief was made on the evidence, which showed that Miss Head had been an active participator in the breaches of trust committed by herself and her co-trustee, and did not show that she had concurred therein, merely by the advice or under the control of the solicitor. As regards the claim of Clapp and Houlditch in regard to the securities on which the £1,500 had been improperly invested, he was of opinion that notwithstanding the fact that those securities had been dissipated by the new trustees, Clapp and Houlditch were liable to make good the loss to the plaintiff, who had never assented to the improper investment, or done anything to put it out of the power of Clapp and Houlditch to obtain the benefit of the investment on making good the loss. On the question of their liability for the acts and defaults of the new trustees the case is important, as very little authority on the point is to be found in the books; but on the evidence the learned judge came to the conclusion that it did not warrant him in finding that Clapp and Houlditch had contemplated the commission of a breach of trust by the new trustees, when they were appointed, or that they were unreasonably negligent in assenting to the appointment of Miss Head and Gould as the new trustees. In order to make them liable, he holds that it is necessary to show "that they were guilty as accessories before the fact of the impropriety actually perpetrated." On this branch of the case therefore the plaintiff failed. Clapp and Houlditch's claim for indemnity against Mrs. and Miss Head was allowed. Possibly the learned judge's view in regard to the liability of Clapp and Houlditch may to some extent have been influenced by the fact that what they had done had been at the urgent solicitation of Mrs. and Miss Head, and that for yielding to their importunities they were now attacked in the name of the infant plaintiff, "but really no doubt at the instigation of those whom they honestly, though unwisely, endeavored to assist," but that is not an uncommon experience of trustees.

EVIDENCE—Admissibility of evidence to contradict witness as to immaterial point.

In re Haggenmachers' Patents (1898) 2 Ch. 280, was a petition presented to revoke a patent on the ground of prior user at a particular place. The petitioner's witness proved the prior user at the place named in the petition, and in cross-examination stated that he had also seen the invention used on other occasions prior to the patent. The respondent tendered evidence to contradict the witness as to the alleged user on such other occasions, but Romer, J., held it to be inadmissible, as not being material to the issue raised by the petition.

VENDOR AND PURCHASER—Condition as to rescission—Rescission after action commenced—Costs.

In *Isaacs* v. *Towell* (1898) 2 Ch. 285, the plaintiff had purchased land subject to a condition that if any requisition were made which the vendor should be unable to remove, "notwithstanding any intermediate negotiation," the vendor should be entitled to rescind, and the purchaser to get back his deposit. Nothing was said in the condition as to litigation. The plaintiff objected that the defendant had misrepresented that the property was freehold, when in fact title was only shown to a term under an under lease, and on this ground the action was commenced for rescission, and return of the deposit, and payment of expenses for investigating the title. Before entering an appearance the defendant gave notice rescinding the contract and that he had authorized the auctioneer to return the deposit, which the plaintiff refused to accept. An appearance was then entered and the plaintiff proceeded with the action. Byrne, J., held that, notwithstanding the commencement of the action, the defendant was entitled to rescind the contract, the alleged misrepresentation not being established. Under the circumstances the plaintiff was held entitled to the deposit, and the costs up to the notice of rescission, and was ordered to pay the plaintiff's costs of the action subsequent to the notice.

JOINT CONTRACTORS—Judgment by consent against one joint contractor—Release of joint contractor.

McLeod v. *Power* (1898) 2 Ch. 295, is an import it case to be remembered in actions against joint contractors, inasmuch

as Byrne, J., decides that a consent judgment in such an action against one of the joint contractors will operate as a release of the other contractors, as against whom judgment has not been obtained. *Weall* v. *James* (1893) 68 L. T. 54, established that if the judgment against one is recovered *in invitum*, it will not have that effect as against the other joint contractors.

GAMING—PURCHASE AND SALE OF SHARES—MONEY DEPOSITED TO ABIDE THE EVENT—GAMING ACT, 1845 (8 & 9 VICT., C. 109), S. 18—(CRIM. CODE, S. 201).

In re Cronmire (1898) 2 Q.B 383, although a decision arising in bankruptcy, may be usefully referred to as governing transactions of a gaming character in reference to the sale and purchase of shares. In this case gaming transactions between a stockholder and his client for differences on the sale and purchase of shares resulted in a balance in favour of the client. The broker agreed to sell certain stock to the client in settlement of the balance due, and forwarded a contract note to the client. The stock not having been delivered, the client claimed to prove against the broker's estate in bankruptcy for damages for non-delivery of the stock; but the Court of Appeal (Smith, Williams and Rigby, L.JJ.), held that, as the balance resulting from the gambling transactions was not recoverable, there was no valid consider ation for the promise to deliver the stock, and therefore that the proof must be rejected. (See Cr. Code, s. 201.) The client had deposited money to cover any loss which might arise on the gaming transactions, a balance of which still remained in the broker's hands to the credit of the client, and as to this sum the Court of Appeal held that the client was entitled to prove against the broker's estate, as the money had not been used for the purpose for which it was deposited.

STATUTORY DUTY—FACTORY -NEGLECT TO FENCE MACHINERY—PENALTY—MASTER AND SERVANT—COMMON EMPLOYMENT—FACTORY AND WORKSHOP ACT, 1878 (41 AND 42 VIC., C. 16), S. 5, SUB-S. 4; SS. 81, 82, 86, 87—(R.S.O., C. 256, S. 20).

Groves v. *Wimborne* (1898) 2 Q.B. 402, was an action brought by a servant against his master to recover damages for breach by the latter of a statutory duty to fence machinery,

in consequence of which the plaintiff was injured. There was some evidence that there had originally been a fence provided for the machinery in question, but that it had been removed, and had not been replaced during the six months of the plaintiff's employment. Grantham, J., who tried the action, was of opinion that the action would not lie, and that the only remedy was for the penalty provided by the statute for the breach of its provisions. On appeal it was also urged by the defendant that the defence of "common employment" was open to him, and that the defendant, having provided a fence as required, was not liable for damages occasioned by the improper removal of the fence by the plaintiff's fellow servant. The Court of Appeal (Smith, Rigby and Williams, L.JJ.), however, were of the opinion that the action would lie, that the employer's duty under the Act was not only to erect, but to maintain, the fence, and that he could not shelter himself under the wrongful act of the plaintiff's fellow servant; the doubts expressed by Lord Chelmsford in *Wilson* v. *Merry*, L.R. 1 H.L.Sc. 326, as to the correctness of *Gray* v. *Pullen* (1864), 5 B. & S. 870, were held to be not well founded.

LANDLORD AND TENANT — NEGLIGENCE OF PLUMBER EMPLOYED BY LANDLORD—OVERFLOWING CISTERN.

Blake v. *Woolf* (1898) 2 Q.B. 426, presents us with a solution of the question whether a landlord is responsible to a tenant for damages sustained by the latter, through the negligence of a competent plumber employed by the landlord to repair a leak in a water cistern. The cistern in question was on the fourth floor, and the plaintiff was tenant of the ground floor, and took his supply of water from the defendant; the plaintiff having observed a leakage from the cistern, pointed it out to the defendant, who promptly employed a competent plumber to repair the defect. Through the negligence of this plumber the cistern overflowed, and the plaintiff's goods were damaged. Under these circumstances Wright and Darling, JJ., held that the landlord was not liable for the negligence of the plumber, and that he could only be liable for wilful neglect and default, and that, having employed a competent workman to repair the defect, he had discharged his duty to the defendant.

NEGLIGENCE—Injury causing death—Lord Campbell's Act (9 & 10 Vict., c. 93) (R.S.O. c. 166)—Negligence of British subject out of the jurisdiction—Alien killed out of jurisdiction—Alien's right of action under English statute.

Adam v. *The British & F. S.S. Co.* (1898) 2 Q.B. 430, was an action brought by aliens to recover damages for the death of an alien who was killed upon the high seas, through the alleged negligence of the defendants. The action was brought under the provisions of Lord Campbell's Act, (see R.S.O. c. 166). It was conceded that, independently of that Act, the plaintiff would have no right of action, and Darling, J., was of opinion that that Act only applies to British subjects, or foreigners within the jurisdiction, and therefore conferred no right of action on foreigners out of the jurisdiction. As the learned Judge puts it, "A British Act of Parliament is not an allocution addressed urbi et orbi." The action therefore failed.

MARRIED WOMAN—Limited administration to the estate of deceased married woman—Will of married woman—(R.S.O., c. 128).

In the goods of Leman (1898). P. 215, a woman married before the Married Women's Property Act of 1882 (45 & 46 Vict., c. 75) took effect, who, before her marriage, had been entitled to a mortgage debt, which her husband had not reduced into possession, had, during her marriage, made a will purporting to dispose of all her real and personal property. The husband applied for administration of her estate limited to the mortgage debt, he swearing that he had not authorized her to dispose of it by will. Jeune, P.P.D., made the grant limited to such estate as the deceased had not power to dispose of by will. In Ontario between 1st May, 1859, and 1st January, 1874, married women had a limited right to make wills, but since 1st January, 1874, their right to do so has been unrestricted. (See R.S.O., c. 128, s. 6; s. 7 (5).)

Correspondence.

DIVISION COURT JUDGMENTS.

To the Editor of the Canada Law Journal:

DEAR SIR,—The legislature in repealing those sections of the Division Court Act enabling a plaintiff to transfer a case to the County Court whe: ; the balance amounted to $40, and an execution had been returned nulla bona, seems to me to have put the law in an unsatisfactory state (see R.S.O. (1897), c. 60, s. 230). The execution now issues from the Division Court; but can a plaintiff pursue the same remedy for the recovery of his judgment as if the judgment was in the County Court? Can he, for example, obtain an appointment from the Clerk of the County Court for the examination of a defendant as a judgment debtor? A plaintiff may not be able to make the affidavit required by section 231, and yet think the defendant has made a fraudulent disposition of his lands. If a plaintiff cannot get an appointment from the County Court Clerk, as some judges hold, even if he get an order under section 231 for leave to proceed in the Division Court and issue a judgment summons, it is doubtful if on such examination a plaintiff can enquire into a fraudulent disposition of lands, as Division Court executions, except under section 230, do not reach lands, and the execution to be issued under a judge's order under section 231 is clearly meant only to affect goods. Yours truly,

A. SHAW.

Walkerton.

UNIFORMITY OF THE LAWS.

To the Editor of the Canada Law Journal:

Referring to the letter of your correspondent, in your number for Oct. 1, with reference to the uniformity of the laws of the several Provinces of Canada, I would call attention to a late Imperial Act. By the 31 & 32 Vict., c. 54, an Act was passed

called the Judgment Extension Act, 1868, by which a judgment obtained in England may be registered in Scotland and Ireland. The judgment so registered is to have the same effect as if obtained in the country where the cause was tried for purposes of execution, and the party subject to it cannot go behind it for the purpose of proving that the debt adjudged was statute-barred: *In re Low* (1894) 1 Ch. 147; but the judgment so registered is for the purpose of execution only: *In re Watson* (1893) 1 Q.B. 21; and therefore it would seem that a summons for examination of the debtor for disclosure, etc., could not be had upon such judgment. An Act such as the above might be passed under the provisions of the British North America Act, s. 94; and there is the question of the advisability of having such a law (see *In re Low*). Again, it is a question whether the defendant should be forced to defend an action in a province with whose laws he is unfamiliar, and, mayhap, costly as to witnesses, etc., say, for instance, an action in British Columbia against a party here in New Brunswick, The Act might be confined to causes of action arising in the country where the action is brought. The subject is worthy of discussion.

Yours truly,

EDMUND W. KAYE.

St. John, N.B.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Quebec.] CITIZENS' LIGHT & POWER CO. *v.* LEPITRE. [Oct. 6.

Negligence—Insulation of electric wires—Cause of death.

The deceased was employed as a lineman by the company, and at the time of the accident was at his work passing a wire along the ceiling of the cellar of the power house in close proximity to a large number of wires charged with a strong electric current. There was some evidence to show a possibility of imperfect insulation of the live wires, as the ends of the tie-wires by which they were attached to porcelain insulating knobs were left bare instead of being covered with insulating tapes. The witnesses declared that it was not usual to cover the ends of tie-wires in this manner, but that if such precautions had been taken the possibility of accident through coming in contact with live wires would have been decreased. The deceased was not seen to come in contact with the tie-wires, but was found dead on the floor, where he had been working, with a wound on his arm, as from a burn, and one of his shoes burnt and broken in the sole. The trial judge found that the cause of the injury might reasonably be attributed to the tie-wires being left uncovered, and rendered a verdict against the company on the ground that the presumption of fault had not been rebutted, and it had not been shown that deceased had been guilty of any imprudence which might have caused him to receive an electric shock.

Held, that there was sufficient evidence to sustain the findings of the trial judge, as it appeared that an obvious precaution for the prevention of accidents by live wires had been neglected by the company, whose duty it was to take the utmost care for the prevention of injury being caused by the dangerous material with which they were dealing. Appeal dismissed with costs.

Allan, for appellant. *Desmarais* and *Belcourt*, for respondent.

Quebec.] VIAU *v.* THE QUEEN. [Oct. 13.

Appeal—Jurisdiction—Supreme Court—Criminal law—New trial—Criminal code, 1892, ss. 742-750, 55 & 56 Vict., c. 29, s. 742.

An appeal to the Supreme Court of Canada does not lie in cases where a new trial has been granted by the Court of Appeal under the provisions of the criminal code, 1892, s.s. 742 to 750, inclusive.

The word "opinion" as used in the s. 742, s-s. 2 of the criminal code, 1892, must be construed as meaning a decision or judgment of the Court of Appeal in criminal cases.

Cannon, Q.C., for Crown. *Poirier*, for prisoner.

Ontario.] HYDE *v.* LINDSAY. [Nov. 2.

Statute—60 & 61 Vict., c. 34—Application to pending cases.

60 & 61 Vict., c. 34, which provides that in cases decided by the Ontario Courts no appeal will lie to the Supreme Court of Canada unless title to land or some interest therein is in question, or more than $1,000 is in controversy, or (as in other cases specified) received the royal assent on June 29th, 1897. In this case the trial was concluded and judgment reserved on June 25th, 1897. The case eventually went to the Court of Appeal, whose judgment was pronounced in the spring of 1898, and an appeal was taken therefrom to the Supreme Court. On an application to KING, J., in Chambers, to approve of the security for costs on said appeal, the respondent claimed that the above statute prohibited the appeal, as the judgment appealed from gave the respondent less than $1,000. The learned judge referred the matter to the Court.

Held, that the statute did not apply to the case, as the proceedings therein were pending when it came into force, although the judgment appealed from was not pronouced until afterwards. *Hurtubise* v. *Desmarteau*, 19 S.C.R. 562: *Couture* v. *Bouchard*, 21 S.C R 81; *Williams* v. *Irvine*, 22 S.C.R. 108; *Cowan* v. *Evans*, 22 S.C.R. 331 followed.

Belcourt, for the motion. *Pratt*, contra.

Province of Ontario.

COURT OF APPEAL.

Practice.] CRAWFORD *v.* BRODDY. [April 16.

Costs—Appeal as to—Error in principle—Recovery of land—Construction of will—Improvements under mistake of title—Reference.

In this action the plaintiffs claimed a certain farm, a portion of the estate of their father, under an executory devise over to them in the will of their father, after the life estate of their brother. The defendants were the executors of the will of the brother's grantee, and were in possession of the farm, asserting that their grantor's estate was not a life estate, but in fee simple or fee tail. The plaintiffs claimed in the alternative, as two of the heirs-at-law of their brother, upon the ground that the conveyance to the defendants' testator was void for mental incapacity and fraud. The plaintiffs succeeded upon their first contention, and were awarded possession of the farm, subject to payment for the defendants' improvements, less the rents received by them.

Held, that, as the estate of the original testator was not all before the Court, nor the executors, nor all the persons representing that estate, it was impossible to give costs out of the estate, in the ordinary sense, and an appeal lay from the judgment of the High Court ordering the costs to be paid out of the farm in question, which was wrong in principle. The costs should be disposed of as in an ordinary action for the recovery of land, in which the

plaintiffs had succeeded, subject to a claim for and a balance found due to the defendants for improvements under mistake of title. There should be no costs of the trial, to either party, because, although the plaintiffs ultimately succeeded upon one claim, they failed upon another; the plaintiffs should have the costs of their appeal to a Divisional Court, upon which they succeeded, although they renewed their alternative contention there; there should be no costs to either party of the reference, which was for the benefit of both, for, although the defendants had succeeded in establishing a lien for improvements, they were not in the position of a mortgagee or chargee who has taken possession in order to obtain payment of his debt; and the plaintiffs should have the costs of the motion for judgment on further directions. Judgment of FALCONBRIDGE, J., reversed.

J. C. Hamilton, for appellants. *W. H. McFadden* and *T. J. Blain*, for respondents.

HIGH COURT OF JUSTICE.

Boyd, C.] MERCER *v.* NEFF. [Oct. 20.

Executors and administrators—Will—Devise—Power to mortgage—Payment of debts—Trustee Act—Devolution of estates Act.

The testatrix devised land to her executor and trustees, and his executors and administrators, upon trust to retain for his own use for life, and directed that after his decease his executors or administrators should sell the land, and divide the proceeds among her children.

Held, that this was a devise of the farm out and out as to the legal estate —the words "and his executors and administrators" being equivalent to "heirs and assigns," the executor had the right by virtue of s. 16 of the Trustee Act, R.S.O. c. 129, to mortgage for debts: and the mortgagee in such a mortgage, made within eighteen months of the death, was exonerated from all inquiry by s. 19.

In re Bailey, 12 Ch. D. 273, and *In re Tanqueray*, 20 Ch. D. 478, followed.

The Devolution of estates Act, R.S.O. c. 127, does not apply to a case where the executor acts under the will and the provisions of the Trustee Act.

J. R. Roaf, for plaintiff. *W. H. Irving*, for defendant Richardson. *C. H. Porter*, for other adult defendants. *A. J. Boyd*, for infant defendants.

Rose, J.] CONFEDERATION LIFE ASSOCIATION *v.* LABATT. [Oct. 25.

Notice of trial—Close of pleadings—Reopening—Order permitting third parties to defend.

Where a third-party notice had been served by the defendant before the close of the pleadings between the plaintiffs and defendant, but the action had been set down by the plaintiff to be tried at Toronto without a jury, and notice of trial given before the plaintiffs were aware that such third-party notice had been served, and before notice of motion had been given by the defendant for an order giving directions as to the trial:

Held, that the order made upon such motion, which permitted the third

parties to come in and defend, and directed that the issue between the defendant and the third parties should be tried at the same time as the action, reopened the pleadings, and they were not closed (the third parties having delivered a defence) until the expiration of the time for replying to that defence. The duty of the plaintiffs then was to draw up a new record of the pleadings, including in it the defence of the third parties, enter the case again for trial, and give notice for trial to the defendant and third parties, under Rule 542.

Nasmith, for plaintiff. *Rowell*, for defendant. *Kilmer*, for third parties.

Boyd, C.] DELAP *v.* ROBINSON. [Oct. 31.

Interim injunction—Undertaking for damages—Foreign plaintiff.

Where a plaintiff before prosecuting an action is required to give security for costs, as where he resides out of the jurisdiction, he must also give the undertaking for damages of a responsible person within the jurisdiction as one term of getting an interlocutory injunction.

Arnoldi, Q.C., for the plaintiff. *C. C. Robinson*, for defendant.

Boyd, C.] IN RE HUMPHRIES, MORTIMER *v.* HUMPHRIES. [Oct. 31.

Payment into court—Infants' moneys in hands of executor.

Where infants are entitled to maintenance out of a fund in the hands of the executor of their father's will, against whose character or solvency there is no imputation, it is nevertheless their right to have the fund brought into court.

Kingsmill v. *Miller*, 15 Gr. 171, and *Governesses' Benevolent Institution* v. *Rusbridger*, 18 Beav. 457, followed.

E. D. Armour, Q.C., for applicant. *H. F. Hunter*, for executor. *Langton*, Q.C., for residuary legatees. *F. W. Harcourt*, for infants.

IN RE SUPREME LEGION SELECT KNIGHTS OF CANADA.

Boyd, C.] CUNNINGHAM'S CASE. [Oct. 31.

Life insurance—Friendly society—Liquidation—Master's report—Practice—Notice of filing—Appeal—Total disability benefit—Repeal of provisions as to — Assessments—Non-payment — Suspension —"Fixed dates"—Time—Notice.

The provision of Con. Rule 769 that notice of filing a master's report is to be served upon the opposing party is a prerequisite to the report becoming absolute.

Where the report is upon a claim to rank on the assets of an insurance corporation in compulsory liquidation under the Ontario Insurance Act, R.S.O., c. 203, notice of filing the report given in the *Ontario Gazette* and other newspaper, pursuant to section 193 of that Act, is not tantamount to personal service.

Where the section of the constitution and rules of a friendly society which provided for payment of a benefit to the insured upon total disability was duly abrogated and repealed by the society during the membership of the insured,

Held, that he was bound by such action.

Baker v. *Forest City Lodge*, 28 O.R. 238, 24 A.R. 585, followed.

By s. 165 of R.S.O., c. 203, it is provided, in effect, that where the time for payment of assessments is not definitely fixed in the contract with the insured or in the by-laws of the society, there shall be no suspension or forfeiture for non-payment unless specific notice of the amount is given, as mentioned in sub-section 2, and default thereafter for not less than thirty days. The meaning is that in the case of assessments, which by implication are of fixed amount, and which by the rules or constitution of the society are payable at fixed dates, it is left to the society to provide for the consequence of non-payment; but if this periodicity of payment does not exist, the statute intervenes and regulates the procedure.

By the constitution and rules of the society, the amount and frequency of the assessments depended on the discretion of the governing board. Notice of assessments was given to the members merely by insertion in the official journal of the society, sent by post to the last known address of each member. The rules provided that the assessments were to be levied on the first day of the month, and were to be paid within thirty-one days thereafter. The minimum assessment for each member was fixed according to age at entrance, but the assessments upon that basis were single, double, or treble, according to the needs of the society.

Held, that the assessments could not be regarded as "payable at fixed dates," and as, in the case of the member whose standing was in question, the notice to pay three assessments levied, in the way mentioned, upon the first days of three consecutive months, was less than thirty days, the statute had not been complied with, and no forfeiture or suspension had been incurred.

Hartley v. *Allan*, 4 Jur. N.S. 500, 31 L.T.O.S. 70, 6 W.R. 407, not followed. *Llewellyn* v. *Ross*, 35 Beav. 592; *Re Maxwell*, 1 H. & M. 615; *St. Aubyn* v. *St. Aubyn*, 1 Dr. & Sm. 620; and *Jones* v. *Ogle*, L.R. 8 Ch. 198, specially referred to.

A. B. Cunningham, for claimant. *J. H. Hunter*, Insurance Registrar, in person. *D. F. MacWatt*, the receiver, in person.

Boyd, C., Robertson, J.] [Nov. 10.

MALCOLM *v.* PERTH MUTUAL FIRE INS. CO.

Malicious prosecution—Reasonable and probable cause—Burden of proof—Nonsuit.

In an action for the malicious prosecution of a charge of arson against the plaintiff,

Held, affirming the judgment of ROSE, J., ante p. 413, 29 O.R. 406, that

the burden was on the plaintiff to show that the defendants acted without reasonable and probable cause, and the evidence of the plaintiff failing in this respect, and enough appearing to satisfy the Court that the defendants took reasonable steps to inform themselves of the facts touching the fire and the apparent complicity of the plaintiff therein, he was properly nonsuited.

Brewster, for plaintiff. *J. P. Mabee*, for defendants.

Boyd, C., Robertson, J.] ANDERSON *v.* HENRY. [Nov. 10.

Distress for rent—Delay in sale—Distress left on demised premises—Bond by tenant—Abandonment—Goods in custodia legis.

Delay in the sale of goods distrained for rent does not prejudice the distress, if there be no fraud or collusion between the landlord and tenant to defeat the rights of third parties.

Where the goods seized are left by the landlord's bailiff upon the demised premises, in the possession of the tenant, the taking of a bond from the tenant to the bailiff to produce and keep, and deliver the chattels and crops, and not to remove, or allow them to be removed from the premises, and to hold them for the bailiff, is not evidence of an abandonment of the seizure, but the contrary. Pending the distress, the goods taken are in the custody of the law, and not liable to seizure under a chattel mortgage, so long as no fraud is on foot and no intention or contrivance exists to prejudices the mortgagee. *McIntyre* v. *Stata*, 4 C. P. 248 ; *Roe* v. *Roper*, 26 C.P. 76 ; and *Whimsell* v. *Giffard*, 3 O.R. 1, distinguished. *Langtry* v. *Clark*, 27 A.R. 280, distinguished and not followed.

A. H. Macdonald, Q.C., and *Drew*, for plaintiffs. *E. F. B. Johnston*, Q.C., for defendants.

Meredith, C.J.] CAMPBELL *v.* DUNN. [Nov. 12.

Costs—Interlocutory motion—Costs out of estate—Consent on judgment without costs—Effect of.

Certain interlocutory orders awarded "costs to all parties out of the estate." At the hearing the parties settled the action, and a consent judgment was entered, which directed that "the parties other than the official guardian do pay their own costs." The plaintiffs, however, claimed the costs awarded by the interlocutory orders.

Held, reversing the ruling of the local master at Woodstock, that the disposition of the costs made by the consent judgment must be taken to apply to all costs of the litigation, including those upon interlocutory motions, and that the plaintiffs were not entitled to tax the costs which they claimed.

F. A. Anglin, for plaintiffs. *J. H. Moss*, for adult defendants. *A. J. Boyd*, for infant defendants.

SURROGATE COURT.

COUNTY OF WATERLOO.

MILLER *v.* MILLER.

Proving will in solemn form—Parties—Procedure—Attestation of will—Revocation—Costs.

S. M. having m . e a second will, attested by one witness only, and which contained a clause revoking the first will, tore off his signature to the first will in presence of a witness, leaving the greater part of the letter "S" only as part of the signature, believing that he had made a subsequent valid will.

Held, that the first will was not revoked, and should be admitted to probate.

Held, also, on the evidence o' one of the witnesses to the execution of the will, although he could not distinctly remember that he and the other subscribing witness signed their names as witnesses in presence of the testator, and on the presumption of law in such case, the Court having powe to draw inferences of facts, that the proof was sufficient although the attestatio. clause was incomplete.

Costs of all parties allowed out of the estate, except costs of contestant, in connection with the incapacity of the testator, which although set up, was not established.

[BERLIN, Aug. 5—CHISHOLM, SUR.J.

This case was tried at the June sessions of the County Court of Waterloo, without a jury. The defendant by his answer, (1) put the plaintiff to proof of the several allegations contained in the petition, and of the facts upon which probate of the alleged will may be granted. (2) Stated that if the deceased did execute the said alleged will he was not at the time of such execution of sound and disposing mind and understanding. (3) That if it was a valid will at the time of the execution thereof, it was revoked by the testator in his lifetime by the act of tearing off his signature thereto if the same had been ever affixed thereto, and the said alleged will was not the will of the deceased at the time of his death.

Clement, for petitioner. *Morphy*, for defendant, Thos. Miller. *McBride*, for defendant, Matilda Playford. *Dalzell*, for infant defendants.

CHISHOLM, Surr. Judge —The petition sets forth the name of the alleged testator, and the date of his death. There can be no doubt from the evidence that the alleged testator died on March 18th, 1897, and that he had at the time of his death his fixed place of abode at the Township of Wellesley in the County of Waterloo. Then did he, as alleged, in his lifetime duly make his last will and testament, and is the document submitted for probate, bearing date, July 6th, 1889, with most of the signature torn off his last will and testament? The evidence of Mrs. Catharine Miller proves the identity of the paper produced with that in the possession of deceased on the day when he employed Boomer to draw a second will for him. She says, "After Mr. Boomer left I went into deceased's room ; he asked me to put his papers away, . . . and I took this 1889 will, . . I handed it to him, and he then tore his name off. She recognized the paper, exhibit D. as the paper he tore ; she says she burned the piece that was torn off ; it was in little pieces, they were lying on the bed, and she burnt them. She says she laid this torn will in a drawer in "our" bedroom ; it is a desk that this drawer is in , it was laid in the drawer in the presence of her husband as well as of herself ; this was in January

1891. She says she does not remember looking at it again until October of last year (1897). Alexander Miller says he saw the will of 1889 for the first time the evening of the day Boomer was at the house, his wife had it; he noticed the signature was torn off; it was dropped into his desk, and it lay there from that time; it was not referred to again until he got word from Mr. Morphey that the other will was "no good;" thinks it was "somewhere" about the middle of October.

Then the two witnesses to this document, namely F. Colquhoun and Thomas Hilliard, recognize their signatures as witnesses to the execution of the document, Mr. Colquhoun recognizes the writing in the instrument as that of a Mr. Hunt, who was at that time (the date of the instrument) his clerk, he also recognizes that the date in the instrument is "filled in" in his (Colquhoun's) own handwriting. I have no doubt from the evidence that this instrument produced was signed by the deceased Samuel Miller, and that he himself tore the signature off.

Then was it executed as required by the Wills Act, at that time R. S. O. 1887, c. 109, s. 12. There can be no question as to the position of the signature of the testator, it was placed at and after the end of the will with only two blank ruled lines intervening between the signature and the concluding word of the will and opposite to what attestation clause there is. Then the signatures of the said two witnesses are subscribed under the words "Signed, published and declared by the said Samuel Miller, the said testator, in the presence of," but the said Act requires that "no will shall be valid unless the signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." The attestation clause says it was "signed published and declared by the said Samuel Miller, the said testator, in the presence of." Then follow the signatures of the witnesses. It is silent, however, as to the two witnesses being present at the same time, and attesting and subscribing the will in the presence of the testator. The testator might subscribe the will in presence of the witnesses, yet the witnesses might not subscribe their names as witnesses in presence of the testator. This may be supplied by evidence or from inferences of fact and presumptions. Does the evidence of the witnesses to the will supply this defect? Mr. Hilliard can say nothing as to this. Mr. Colquhoun says, according to reporter's notes: "I say it was executed on the day of its date by Samuel Miller in presence of Mr. Hilliard and myself at Waterloo." Q.: "What do you say about the signing of the witnesses' names, when were they signed?" A.: "At the same time, and in the presence of each other, it was properly executed." Q.: "You and Mr. Hilliard signed your names in the presence of the testator, and in the presence of each other, then you observe that the signature is torn off?" A.: "Yes, part of the S is still there." In my notes of the evidence I have it, "It was excuted on the day of its date at the town of Waterloo, witnesses' names were signed at the time of execution in presence of testator and in presence of each other." In cross-examination of Mr. Colquhoun by Mr. Morphy: Q.: "I suppose you had forgotten that you had witnessed

this will until you saw it lately? A.: "Until I saw it." Q.: "And the details of the execution of it are still in the clouds to you?" A.: "Yes." Q.: "You couldn't pretend to say what took place so long ago?" A.: "I am satisfied it is correctly executed in the usual way." Q.: "Do I understand you cannot fix your mind as to the sitting down and executing it?" A.: "I don't know." Q.: "From your methods and knowledge of the law you knew it was properly done?" A. "Yes, and my signature." Q.: "Not from recollection of what actually took place, but what you see on paper?" A.: "What is on the paper."

The learned Judge then referred to the following authorities: Cooke's Prob. Prac., 5th ed. (1866), 61; Jarman on Wills, 5th ed., 91; Taylor on Evidence, 8th ed., 905; *Doe* v. *Davies*, 9 Q.B. 648, 650; *Crawford* v. *Curragh*, 15 U.C. P. 55 (in which the attestation clause was similar to that in the present case); *Re Young*, 27 O.R. 698; *Little* v. *Aikman*, 28 U.C.R. 337.

It is worthy of remark and observation that in this case Mr. Colquhoun, a solicitor of long standing and of the best reputation, is one of the witnesses to the execution of the will by the testator Samuel Miller. Mr. Colquhoun drafted the will, got his clerk to engross it, leaving the date blank, which was afterwards filled in by Mr. Colquhoun in his own handwriting. I hold that the will is properly executed.

[No evidence was offered as to the second objection.]

As to the third and last objection, that it was revoked by the testator in his lifetime by the act of tearing off his signature. There is no doubt that the signature was torn off by the testator with the intention of revoking the will, under the belief that he had made a subsequent and a valid will. This subsequent testamentary instrument is put in as exhibit "C;" it contains a clause revoking all former wills, etc., by him at any time theretofore made, and would doubtless have had such effect, but it is invalid on account of its having only one witness. The testator, however, had no intention in tearing off his signature of dying intestate, which would be the effect if he had revoked the will of 1889 absolutely.

Mr. Boomer, who drew this void will, says that after having signed it, the testator said "he supposed it (the other will) might as well be destroyed," to which he, Boomer, assented. Mrs. Alexander Miller says: "After Mr. Boomer left I went into deceased's room; he asked me to put his papers away; he asked me if I ever read a will, I answered "No"; he said he had willed his property in this 1889 will to his daughter, now to-day he had deeded it to her, and he had made a new will, and I took this 1889 will, and he said perhaps my husband had never read a will, that perhaps it might help him. I handed it to him, and he then tore his name off. He said the will that I had locked up took the place of that one. I had locked up the 1891 will in a dressing-case in his bed-room."

It is laid down in Jarman on Wills. 5th ed., 119-20, "When the act of destruction is connected with the making of another will so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, such will be the legal effect of the transaction, and therefore, if the will intended to be substi-

tuted is inoperative from defect of attestation or any other cause, the revocation fails also, and the original will remains in force." "The act of destruction is referable not to any abstract intention to revoke, but to an intention to validate another paper, and as the condition upon which alone the revocation was intended to operate is in neither case fulfilled, in neither does the animus revocandi exist." There are many other authorities to the same effect. *Dantzer* v. *Crabb*, 42 L.J. Rep. 53; *Ex parte Earl of Ilchester*, 6 Rev. Rep. 138; *Powell* v. *Powell*, 35 L.J. Rep. 100.

I hold finally that said will of late Samuel Miller of date the 6th day of July, 1889, has not been revoked, and that it is a properly executed, valid and existing will, and that it should go to probate as prayed for.

The learned Judge then allowed all costs out of the estate, except the costs of the contestant in connection with the incapacity of the testator, which, although set up, was not established.

COUNTY COURT.

COUNTY OF YORK.

REG. *v.* WOTTEN.

Liquor License Act—R.S.O.—Temperance beverage—Light beer—Percentage of alcohol.

Held, that it is illegal, without a license, under the guise of its being a temperance beverage, to sell a liquor which is capable, if freely drunk, of producing even the incipient stages of intoxication, even though it only contains from two to three per cent. of alcohol.

[TORONTO, Nov. 3, 1885—McDOUGALL, Co.J.

This was an appeal to the County judge of the county of York, sitting in Chambers, from a conviction made by G. T. Denison, police magistrate of the city of Toronto, against the appellant, David Wotten, for an alleged offence against the Liquor license Act, s. 40 (R.S.O., c. 181), as amended by 47 Vict., c. 34, s. 8, (O.) (now R.S.O. c. 245, s. 49.)

The information was laid by the license inspector for Toronto, and charged that the appellant, David Wotten, on the 6th Sept., 1885, at the city of Toronto, in the county of York, unlawfully did keep liquor for the purpose of sale, barter, and traffic therein, without the license therefor by law required.

The liquor in question, as appeared from the evidence, was a beverage known as Blue Ribbon beer, and a keg of it was seized on the premises occupied by the appellant, at the Exhibition grounds, by the license inspector. The appellant had no license for the sale of liquors, and admitted both the possession and sale of the liquor in question herein, but affirmed that the same was not an intoxicating drink, and therefore its possession or sale, or the keeping of it for sale by a person not holding a liquor license, was not prohibited by law. The police magistrate, after hearing evidence, convicted the appellant and imposed a fine of $20 and costs. Appeal from this conviction..

Maclaren, Q.C., for Crown.

McDOUGALL, Co. J.—As the question involved in this appeal is of con-

siderable moment to a number of persons other than the appellant, there being, I am informed, a large number of cases, some thirty or forty I believe, adjourned to await the result of the present appeal, I decided, instead of forming my conclusions from reading the evidence taken before the police magistrate, to hear the parties and their witnesses, and allow what has amounted practically to a new trial.

Except the testimony of two professional analysts and of two witnesses called in rebuttal the mass of evidence adduced before me consisted of that most unsatisfactory, inconsistent and highly contradictory class of evidence known as expert testimony, or as it is more properly and correctly styled "opinion evidence." Some thirty-three medical men were called one after the other, and each gave his opinion as to whether a fermented malt liquor containing a certain percentage of alcohol is intoxicating or not. In answering this query some were outspoken, some were cautious, some hedged their answers about with conditions; others wanted preliminary admissions or concessions made before they could make up their minds. What was meant by intoxication? Was the liquor to be taken on a full or empty stomach? Was it with reference to the effect upon a person unaccustomed to the use of intoxicating liquors, or were we asking as to its effect upon more seasoned vessels? Then the changes were successively rung upon the words inebriation, stimulation, exhilaration, obfuscation and intoxication. I was told that there was a great difference between becoming intoxicated in the popular sense, and in becoming intoxicated in the medical sense. I had the various stages of intoxication graphically described to me, and the capacity of the human stomach earnestly considered with reference to the number of pints, or quarts of liquid it might or could contain. The probable effect of drinking a large quantity of Blue Ribbon beer at one draught, as compared with drinking a glass every ten minutes, was sought to be established by the opinions of skilled witnesses. The analysts, had by their testimony, fixed the percentage of alcohol in the liquor seized, and I had the virtues and evil properties of this ingredient considered in every phase—its effect upon the human system, upon the circulation, upon the brain, and upon the legs. I was assured that a man might not be considered intoxicated whose legs were a little groggy, so long as his brain was clear, and I was also informed that giddiness and talkativeness, coming on after drinking certain quantities of alcoholic beverages, were, in a medical sense, no reliable indication of insobriety. One medical gentleman asseverated that in his opinion one could drink enough liquor containing 2½ to 3 per cent. of alcohol to burst, but as to discovering any symptoms of intoxication, the earlier calamity would supervene and prevent further investigation. I was told that vomiting and rejection by the stomach of liquor of the strength of that described to the witnesses, would most certainly follow rather than any symptoms of alcoholism. On the other hand I was most solemnly assured by four or five most eminent physicians that two or three glasses of this liquor would certainly produce symptoms of intoxication, and four or five glasses would successfully inebriate the patient.

It is upon contradictory evidence of this character that I am to form my conclusions as to the quality and properties of the liquor seized in the possession

of the appellant, and for the keeping of which he has been duly convicted by the police magistrate. Mr. Shuttleworth, the analyst called by the prosecutor, analysed a portion of the liquor seized, and states that he found it contained 2.97 per cent. of alcohol. Mr. Ellis, public analyst, also examined a portion of the same liquor, and states he found but 2.14 per cent. From these conflicting analyses, counsel agreed that it would perhaps be fair to treat the liquor seized as containing 2.5 per cent. of alcohol, this being the average of the two reports. It also appeared from the evidence of Mr. Heys, lecturer on chemistry, called by the appellant, that beer of this quality, if kept for a short time, might by reason of fermentation still proceeding up to a certain period, develop an increased percentage of alcohol, say to the extent of .33 per cent. beyond the quantity present when turned out of the brewery. Mr. Davies, the brewer, who manufactures the Blue Ribbon beer, when called by the prosecutor, also admitted this fact. He said fermentation and production of alcohol would go on unless the beer had been treated by a special process, which, however, could only be applied to it when bottled, and this fermentation must be expected unless the beer is kept in a very cool place.

From this evidence I do not think it at all unfair to assume that 3 per cent. would be taken as approximately the maximum strength of this beer, as possibly 2 per cent. may be said to be minimum strength. It was established by clear evidence that with a strength of 2.5 per cent. of alcohol an imperial pint of this liquor would contain ½ oz. of alcohol, and with 3 per cent. the quantity of alcohol would be three-fifths of an ounce; an imperial quart would, therefore, contain from 1 oz. to to 1 1-5 oz. of alcohol. Now, it was shown by a large number of the medical witnesses called on both sides that a person unaccustomed to the use of liquor, and taking it upon a comparatively empty stomach, would exhibit signs of intoxication if he took a drink of any liquor containing from one to two ounces of alcohol. Some thought one and a half to two ounces would undoubtedly produce that effect; others that one ounce would be sufficient to indicate perceptibly to a third person observing the patient that he, the patient, had been drinking. In other words, the first stages of intoxication, as it is popularly known, would be produced. This being the case, from one quart to three pints of Blue Ribbon beer would render a person unaccustomed to the use of liquor, perceptibly under the influence of liquor, though not drunk. The first stages of intoxication would be produced; and such a person would, in a large proportion of cases, become excited, talkative, perhaps giddy and unsteady on his legs, though possibly not incapacitated from performing all his ordinary duties.

In view of this evidence, and the fact that this liquor is one that may increase perceptibly in strength if exposed to heat or motion, I can come to no other conclusion than one adverse to the appellant's contentions. It would be opening a wide door to a fraudulent evasion of the Act, and its wise provisions for controlling and regulating the sale of and traffic in intoxicating liquors if a liquor which contained even so small a percentage as 2½ to 3 per cent. of alcohol could be openly offered for sale without a license in every grocery, house, or shop in the community. The law is not made alone to regulate what shall be sold to the man accustomed to the use of liquor, but is equally for

those who are unaccustomed to its use, and these also must be protected. No one can be allowed to offer for sale without a license, under the guise of a temperance beverage, a liquor which is capable, if freely drunk, of producing eve he incipient stages of intoxication. I think Blue Ribbon beer will do this if used freely by the class of persons last mentioned, though doubtless its effect upon more seasoned drinkers may be questionable. Upon the whole case and from the whole evidence I must decide that this beer is an intoxicating liquor, and that the appellant has been properly convicted.

McDougall, Co.J.] VERNEY *v.* GUTHRIE. [Nov. 10.

Easement—Non-reservation—Derogation from grant—Drainage.

Plaintiff and defendant owned adjoining houses, which originally belonged to one owner The defendants' house was drained by a branch drain which went under the plaintiff's house and connected with the plaintiff's drain, which drain, so used for both premises, but on plaintiff's land, emptied into the street sewer. There was no mention of the drain in any of the conveyances, and neither party knew of the position of the drains until shortly before the action was commenced.

Held, that the privilege to drain defendant's house through plaintiff's premises not being an easement of necessity, and there being no reservation of any such right, the defendant had no right to use the drain on the plaintiff's premises, and he was liable for damages resulting to plaintiff by such user. *Wheeldon* v. *Burrows*, L.R. 12 Ch.D. 49, followed.

D. T. Symons, for plaintiff. *Smoke*, for defendant.

Province of New Brunswick.

SUPREME COURT.

McLeod, J.] MELLIN *v.* MUNICIPALITY OF KINGS. [Oct. 29.

Practice—Striking out name of defendant—Action in tort—Power to plaintiff to enter nolle prosequi—60 Vict. c. 24, s. 145.

The Court or a judge has no power to strike out the name of a defendant in an action ex delicto, s. 145 of 60 Vict. c. 24, being limited to an action on contract. But the plaintiff may get rid of it in the action by entering a nolle prosequi, and this may be done at any time, even after verdict.

A. A. Stockton, Q.C., and *J. P. Byrne*, for plaintiff. *A. S. White*, Solicitor-General, for defendants.

Full Bench. FIDELE *v.* LEGERE. [Nov. 1.

Costs of County Court appeal—Next friend—Attachment.

Court refused an attachment against the next friend of the respondent for non-payment of appellant's costs on a County Court appeal, holding that they should be added to the appellant's costs in the Court below, and recovered by attachment out of the County Court.

J. D. Phinney, Q.C., in support of the motion.

Full Bench.] EX PARTE TURNER. [Nov. 4.

Payment of debt by instalments—Future earnings.

The Court made absolute an order nisi to quash an order made by a Clerk of the Peace under Act 59 Vict., c. 28, s. 53, for the payment of a debt by instalments against a laborer, holding, as in *Ex parte Killam*, 34 C.L.J., 390, that the Act does not contemplate future earnings or income that may be uncertain.

M. G. Teed, in suport of order nisi. *J. H. Dickson*, contra.

Full Bench.] EX PARTE JACOBS. [Nov. 4.

Disclosure—Service of notice on agent—Proof of agency.

J. H. B. acted as attorney of the applicant, the plaintiff, in a suit in the City of Fredericton Civil Court, and after judgment gave directions as to the suit against the bail therein.

Held, on motion to make absolute an order nisi for certiorari to remove an order discharging the defendant from arrest under the Act 59 Vict. c. 28, that service of the disclosure notice on J. H. B., as agent of the plaintiff, was sufficient proof, of the said J. H. B. having acted as above having been made before the County Court Judge, who granted the order of discharge on the day on which the summons against the bail was returnable (the defendant having been in the meantime rendered in discharge of his bail). Order nisi discharged.

J. H. Barry, in support of order nisi. *O. S. Crocket*, contra.

Full Bench.] MACPHERSON *v.* WALLACE. [Nov. 8.

Trover—Title to property—Res judicata.

In an action of trover for the conversion of a carload of wood, brought by appellant against one R., the judge of the York County Court, who tried the cause without a jury, found the property in defendant. An appeal to the Supreme Court from this finding was dismissed. Appellant subsequently proceeded to trial in another action of trover against the present respondent, W., who purchased the wood from R., the action against W. having been commenced simultaneously with that against R. On the trial the judgment in the action against R. was proved, and the County Court judge nonsuited the plaintiff, holding that the property having been found in R. in the action first tried, and W. having purchased from him, the matter was res judicata.

Held, on appeal, that that the nonsuit was right, and appeal dismissed with costs.

C. E. Duffy, in support of appeal. *F. St. John Bliss*, contra.

Province of Manitoba.

QUEEN'S BENCH.

Bain, J.] O'CONNOR *v.* FAHEY. [Oct. 20.

Administration of estates—Q. B. Act, 1895, Rule 766—Discretion of the Court.

This was an application under Rule 766 of the Queens' Bench Act, 1895, by a legatee under the will of the deceased for an order for the administration of his estate on the ground that more than a year had elapsed from the testator's death, and the legacy had not been paid. The only property out of which the legacy could have been paid was a hotel in the city of Winnipeg, which the executors were directed by the will to sell as soon after the testator's death as they might deem proper, and as soon as they could conveniently do so without sacrificing the estate. The executors had tried to sell the property, but had so far been unable to do so. There were also unpaid creditors' claims to a large amount.

Held, that the Court had a discretionary power to grant or refuse the order, and that, as the executors were acting in the administration of the estate, and were in no default, the application should be dismissed with costs.

Elliott, for applicant. *Culver*, Q.C., and *West*, for executors.

Province of British Columbia.

SUPREME COURT.

Irving, J.] TOWN *v.* BRIGHOUSE. [Sept. 14.

Practice—Agreement for sale—Lis pendens—Cancellation of—R.S.B.C. c. 111, s. 85.

Action for specific performance of an agreement for sale of land. The plaintiff entered into an agreement with an alleged agent of defendant for purchase of certain land belonging to defendant, who repudiated the agreement. Another agent of defendant then made a sale of the same property, and as the conveyance was about to be completed the plaintiff commenced his action for specific peformance, and filed a lis pendens against the property. The defendant then applied under the provisions R.S.B.C. c. 111, s. 85, to have the lis pendens cancelled.

Held, that an order will not be made cancelling a lis pendens under s. 85 of the Land Registry Act in a case where damages would not be complete compensation.

As the learned judge had doubts as to the plaintiff's ultimate success the lis pendens was not cancelled, but the plaintiff was ordered to give an undertaking to abide by any order the Court or a judge may make as to damages

should the Court or judge hereafter be of opinion that the defendant has incurred any, by reason of the registration of such lis pendens, and furnish security in the sum of $800, conditioned for the fulfilment of said undertaking. Conditions were also imposed on plaintiff to speed the cause.

Martin, Attorney-General, for defendant. *C. B. Macneill*, for plaintiff.

Book Reviews.

Practice Forms in Proceedings under the Rules of Practice and Procedure of the Supreme Court of Judicature for Ontario, the Surrogate Court Rules, the statutes of Ontario, and the statutes of the Dominion of Canada, by EDWIN BELL, L.L.B., of Osgoode Hall, barrister-at-law, and HERBERT LANGELL DUNN, B.A., of Osgoode Hall, barrister-at-law, one of the examiners of the Law Society of Upper Canada. Toronto, Canada Law Law Journal Co., 1898.

Some books are useful to the practitioner, whilst others may be regarded as indispensable. This volume belongs to the latter class. It consists of a collection of over 700 forms and precedents for use in proceedings in the High Court, the County Courts and the Surrogate Courts. While the book has been prepared especially for use in Ontario it will prove a great assistance to the profession in the other provinces. Every solicitor knows what a great advantage it is to have at hand a precedent which he may follow, or to which he may refer in drawing a pleading, judgment, order, or other document. Some active practitioners no doubt make collections of forms for their own use, but even these will find in the book much that is useful and not readily accessible elsewhere, there being in addition the advantage of having the forms collected in a convenient volume well arranged and indexed.

A glance over the index shows the wide field covered. In addition to the forms required in every day proceedings, attention is given to the less frequent practice in proceedings relating to Certiorari, Prohibition, Habeas Corpus, Municipal Drainage, Quashing By-laws, Quashing Convictions, Quo Warranto, Winding-up, and other special subjects. A number of useful forms of pleadings are also given. The editors have done their work with great care and accuracy, and have provided an unusually good index. The paper, printing and binding, are of the very best description; and we think we can congratulate the editors upon having produced one of the most useful handbooks ever published in this province.

The Law Quarterly Review, October, 1898. Stevens & Sons, London.

The articles in the *Law Quarterly Review* for October take so wide a sweep through the various outlying regions of the globe in which Britain is directly or indirectly interested, that one might almost surmise that the editor has succumbed to a mild attack of what may be styled "Lues Imperialistica"—a malady which during the last few months has doubtless been raging with unusual violence on the banks of the Thames. If we except his own ever-welcome comments upon current cases of interest, and a short article in which Mr. Griffith acutely analyses the law which defines the position of a surety

after time has been given to the principal debtor, the entire number is taken up by discussions of matters juridical and quasi-juridical, far beyond what are known in English law as the "Four Seas."

The place of honour is occupied by a lengthy discussion of the judicial crisis in the Transvaal, from the pen of Mr. J. W. Gordon. Constitutional lawyers, both in Canada and the United States, will be much interested in this account of high-handed fashion in which President Kruger defeated the attempt of Chief Justice Kotze to arrogate to his Court the power of testing the validity of statutes by considering whether their provisions were or were not in harmony with the "Grandwet." This law, though in some respects organic, is apparently not in the same category as the British North America Act, or the Constitutions of our southern neighbors, but rather analogous to the Magna Charta, and the Chief Justice was therefore quite unwarranted, on strictly technical grounds, in taking the stand he did. India is represented by an article in which Mr. Rattigan puts forward an urgent and persuasive plea for an extension of the system of codification, which he maintains to be the only remedy for the lamentable vagueness of the law in that great dependency. Even those who are opposed to codification in England and on the continent will, we think, admit the desirability of finding some means of imparting greater fixity to rights and obligations in a country in which the uncertainties of the practical administration of justice are aggravated indefinitely by the fact that, if Mr. Rattigan is to be believed, a suitor has to consider very anxiously and carefully the mental proclivities of his prospective judge! The article by Mr. Lefroy, which was noticed ante. p. 677, carries us to the western hemisphere, but India comes to the front once more in a discourse by Mr. Petheram on "English Judges and Hindu Law," in which some curious instances are given of the deplorable errors which result from committing to English judges the function of administering a system of jurisprudence which, with all their indüstry and concientiousness, they are very apt to misunderstand. The East also claims attention in the next contribution, in which a learned Japanese lawyer has something of interest to tell us about the application of international law during the late war between his country and China. The number concludes with an obituary monograph by M. Enest Nys upon M. Rivier, one of the most distinguished of the Continental authorities on Roman and international law.

Jervis on Coroners, 6th edition, by RUDOLF E. MELSHEIMER, barrister-at-law; London, Sweet & Maxwell, limited, 3 Chancery Lane; Stevens & Sons, limited, 119-120 Chancery Lane, 1898.

This work rearranges the whole of Sir John Jervis' work, giving the Acts of 1887 and 1892, with forms and precedents. This is, of course, the standard work on "Crown quest" law, and those who have need of information on this subject will doubtless supply themselves with it.

The Law of Bankruptcy in the United States under the National Bankruptcy Act of 1898, by WM. MILLER COLLIER; Albany, N.Y., Matthew Bender.

We recently referred to the fact of a new bankruptcy law having come into force in the United States. The work before us will be of interest in view

of possible Dominion legislation on a similar subject. It is a treatise on the principles and practice of the law of bankruptcy, as embodied in the recent Act, with the citations of cases decided under the former United States Acts, as well as many English decisions, and extended notes and comments upon the new statutory provisions. The book is intended for American readers but will be useful here also, should there be insolvency legislation in this country, and especially so in view of the similar trade conditions of the two countries, and of the probable similarity of many of the provisions.

Flotsam and Jetsam.

In an English County Court it has been held that the presence of disorderly co-tenants in a flat is not a valid excuse for the non-payment of rent.

An excellent joke reaches us from a barrister's chambers. A somewhat bumptious pupil, of critical habits, had a point put to him by his coach. Putting his head on one side he replied, "Pup. will consider." "Why don't you put it in the right form," said the coach, "and say Cur. adv. vult.?"—*Ex.*

A correspondent of the Daily Telegraph writes: "Some of your readers may not be aware why the amusing collections of anecdotes you are publishing are called 'bulls.' It appears that the first man to perpetrate them was one Obadiah Bull, an Irish lawyer, who came to London and flourished in the reign of Henry VII. He had a strong brogue, and his entertaining blunders were circulated as another Irish Bull."

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1898.

TUESDAY, Sept. 13.

Present: The Treasurer and Messrs. Barwick, Bayly, Bruce, Edwards, Idington, Lash, Osler, Ritchie, Shepley, Strathy, Teetzel and Wilkes.

Mr. Shepley, from the Legal Education Committee, laid on the table the Schedule of the Supplemental Examinations to be held during the present term.

Mr. Shepley, from the same Committee, presented their reports upon applications for special relief. Ordered that Mr. D. S. Bowlby's notice for call do remain posted until the last meeting of Convocation this term, and that he then be called if no objection appear. Ordered that the notice for call given by Mr. S. A. Hutchison do remain posted until 23rd September, and that if no objection appear, he be then called to the Bar, that upon completing proof of service under articles up to 2nd October, 1898, and his papers being in other respects correct and regular, he do then receive his certificate of fitness. Ordered that Mr. C. E. Hollinrake and Mr. J. R. Graham be called to the Bar and receive certificates of fitness.

Mr. Shepley, from the same committee, further reported upon the results of the Third Year examination, Easter, 18[illegible]. Ordered that the following gentlemen be called to the Bar :—Messrs. A. R. Hassard, F. E. Perrin, O. E. Culbert, G. H. Draper, H. G. Kingstone, W. S. Davidson, H. H. Shaver, R. R. Griffin, J. L. Paterson, D. S. Storey, D. M. Stewart ; and these gentlemen were with Messrs. C. E. Hollinrake and J. H. Graham introduced and called, also Mr. E. H. McLean, who had been ordered for call last term. Ordered that the following do receive their certificates of fitness :—The same gentlemen, with the addition of Mr. D. S. Bowlby, and with the exception of Mr. Shaver, who does not complete until next term.

Mr. Shepley, from the same committee, reported in respect of the special petition of Miss Eva Maude Powley :—This lady passed her first Intermediate Examination in Easter, 1897, not being bound by the Rules to attend the Law School up to the present time. In regular course, she should commence her attendance at the school at the approaching term. She presents a special petition asking that such attendance be altogether dispensed with. The Committee is of opinion that no special grounds for the petition are made out, and recommend that the petition be not granted. The report was adopted, and it was ordered accordingly.

The letter of Mr. H. H. Dewart, president of the Osgoode Amateur Athletic Association, asking for a grant of $150 towards the purposes of the Association, was read. Ordered that the request be not granted.

The complaint of Mr. S. M Barnes, Police Magistrate, of Smith's Falls, as to the conduct of Mr. A. B., accompanied by the declaration of one Eastron was read. Ordered that the same be referred to the Discipline Committee for inquiry, whether a prima facie case be made out. Ordered that the complaint of Mr. J. McDonald against Mr. C. D., the consideration of which had been deferred until to-day, be taken into consideration to-morrow.

WEDNESDAY, Sept. 14th.

Present between 10 and 11 a.m., the Treasurer, and Messrs. Edwards, Hoskin and Shepley; and after 11 a.m., Messrs. Kerr, Osler and Ritchie.

Mr. Shepley, from the Legal Education Committee, presented a further report in respect of the Third Year examinations, Easter, 1898. Ordered that the following gentlemen be called to the Bar and receive their certificates of fitness :—L. F. Stephens, H. J. F. Sissons, J. D. McMurrich, W. Finlayson, and further that Mr. Stephens be called to the Bar with honours, and do receive a gold medal, and that Mr. Sissons be also called with honours. These gentlemen were subsequently introduced and called.

Dr. Hoskin, from the Discipline Committee, reported that a prima facie case had been shown in the matter of the complaint of Mr. S. M. Barnes against Mr. A. B., and of the complaint of W. S. Wilson against Messrs. E. F., G. H. and I. K., and that the matters should be investigated according to the Rules of the Society. Ordered accordingly.

The complaint of Mr. John McDonald against Mr. C. D. was further directed to stand until Friday, 23rd inst.

FRIDAY, Sept. 23rd.

Present : The Treasurer, and Messrs. Bayly, Clarke, Guthrie, O'Gara Ritchie and Watson.

Mr. Shepley, from the Legal Education Committee, presented the report of that Committee in respect of applications for special relief. Ordered that Mr. F. M. Devine be required to re-article himself for an additional period of twenty-two days. Ordered that Mr. T. J. Murray be required to re-article himself for an additional period, up to the first day of Michaelmas Term, 1898. Ordered that Mr. B. W. Thompson, who passed his Third Year Examination in Easter, 1898, be called to the Bar, and afterwards, upon furnishing

satisfactory proofs of his completion of service under articles, receive his certificate of fitness. Ordered that Mr. D. S. Bowlby, whose notice for call has remained posted, be called to the Bar. Ordered that Mr. S. A. Hutchison, who has produced satisfactory proofs of his attendance in chambers, be called to the Bar. Mr. Shepley presented a report from the same committee in respect of the Third Year Examinations, Easter, 1898. Ordered that the following gentlemen be called to the Bar :—S. S. Sharpe (with honours), and F. J. Maclennan, also that each do receive his certificate of fitness. Mr. Shepley presented a report from the same committee, in respect of the Third Year Supplemental Examination, Trinity Term, 1898. Ordered that the following gentlemen be called to the Bar :—W. D. Henry, J. D. Ferguson and N. Williams, and that the same gentlemen and Mr. J. C. L. White do receive their certificates of fitness. Ordered also that Mr. J. C. L. White, whose notice for call was late but has remained duly posted, be called to the Bar. Ordered also that Mr. G. H. Davy, who applied for leave to write at said Supplemental Examination, and has written and obtained sufficient marks, be allowed said examination.

Mr. Shepley presented a report from the same committee in respect to admissions of students-at-law in the ordinary course. Ordered that the following gentlemen be admitted as students-at-law of Trinity Term, 1898 :— J. P. Weeks, of the Graduate Class, and J. E. Farley, J. M. Jamieson, L. R. Knight, A. S. Bond, H. C. Gilleland, of the Matriculant Class.

Mr. Shepley also presented a report upon applications for special relief in respect to admission of students-at-law who have failed to give notice, at the proper time, for admission. Ordered that the following gentlemen be admitted as students-at-law as of Trinity Term, 1898 :—Messrs. Edward Gleason (Graduate), and E. Proulx (Matriculant), and that the notices given by Messrs. J. K. Howitt (Grad.) ; H. R. Frost, E. H. Parker, F. Symington and A. S. Williams (Matr.), do remain posted until the first day of Michaelmas Term, and that if no objection then appear they be admitted as of this Term. Ordered that Mr. W. B. Kingsmill, who presents a diploma of graduation from the Royal Military College at Kingston, be admitted as a student at-law of the Graduate Class as of Trinity Term, 1898. In the matter of the application for admission of Mr. R H. McKay, Mr. Shepley, from the Legal Education Committee, reported that he had passed the Junior Leaving Examination in 1893, and had obtained the full standing of a Matriculant in July, 1894 ; that he is not within the Rule as to admission, and the Committee thinks that if the Rule is to be relaxed it should be upon some principle to be defined by Convocation. It was ordered that in the absence of special circumstances, as required by section 40 of the Law Society Act, Mr. McKay's applications cannot now be entertained, and that in the meantime it stand, in order to give him an opportunity to show special circumstances, if any such exist.

Mr. Shepley, from the Legal Education Committee, reported in respect to the petition of Mr. H. L. Boldrick. Ordered that Mr. Boldrick be allowed to exercise the option of dividing his Third Year lectures between the fourth and fifth years of his course.

It was ordered that the complaint of John McDonald against Mr. C. D., barrister and solicitor, be referred to the Discipline Committee for investigation, and report. The following gentlemen were then introduced and called to the Bar :—S. A. Hutchison, B. W. Thompson, F. J. Maclennan, D. S. Bowlby, D. S. Storey, W. D. Henry, J. C. L. White, N. Williams, J. D. Ferguson.

The letter of Mr. W. S. Wilson, of 22nd September, 1898, to the Secretary, was read and referred to the Discipline Committee in connection with the complaint of Mr. Wilson, already referred to said Committee.