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DIARY FOR JUNE.

4. Sat......Easter sittings end. Lord Eldon born, 1751.
5. Sun.. *Trinity Sunday.*
12. Sun.. *1st Sunday after Trinity.*
13. Mon....C. C. York term begins.
14. Tues...C. C. sittings for trials commence, except in York.
15. Wed...Magna Charta signed, 1215.

TORONTO, JUNE 1, 1887.

A SPECIAL sitting of the Division Court of the Chancery Division is to be held, commencing on the 13th June inst. Practitioners will do well to remember that the practice regulating proceedings before this branch of the High Court is governed by Rules 522, 523.

HAPPENING recently to pass by the Convocation Hall while the students' examinations were going on, we observed that one of the examinants was hard at work in his shirt sleeves. It was satisfactory, however, to find the examiners were seated on the platform in professional attire, and the other examinants were able to keep their coats on.

We presume the coatless gentleman was going in for honours, and was wrestling with a personified fiend of equity jurisprudence, or a lusty problem in common law.

The writer remembers once in one of the hottest days of a hot vacation that an athletic law student appeared on a taxation before the then clerk of the Common Pleas in his shirt sleeves. No sign of fear, however, crossed the face of that inexorable official, as he majestically informed the hot young man from the country that he and his room were preferable to his company, even though, without his coat, he was invisible to the quasi-judicial eye.

SOME amusing incidents occasionally occur to the judges on their visits to the various county towns. A late learned Chancellor of Ontario once gave directions to a Deputy Registrar to telegraph to a hotel-keeper at the next town he was to visit, to inform him that he was coming, and to request him to make the requisite preparations for his reception. The Deputy accordingly telegraphed to Boniface, "The Chancellor will be at your place at noon, make all necessary preparations." On his lordship's arrival at the appointed hour, however, no preparations had been made for him, and somewhat disgusted at the apparent inattention, he inquired of the defaulting landlord if he had not received a telegram announcing his arrival. The landlord was profuse in his apologies, and assured him no such message had been received. In fact, said he, "the only telegram I have received for a week past is one saying, that the stud horse 'Chancellor' will be at my place to-day, and to get the box-stall ready for him, which I have done"!

MOST circuit goers have heard how a former Chief Justice was once met at his hotel door by a certain Sheriff and four seedy looking bailiffs, with a view to escorting his lordship in state to the Court House, and how, when the learned judge had learnt the purpose of Mr. Sheriff, he thus addressed him: "Mr. Sheriff, if you and your men will kindly go that way (pointing to the right), I will go this way (pointing to the left)—Good morning."

THE REVISED STATUTES OF CANADA.

THE revision and consolidation of the Statutes of Canada having been completed by the incorporation therein of the Acts passed in the session of 1886, and brought into force on, from and after the first day of March, 1887, by proclamation of His Excellency the Governor-General, issued on the 24th day of January now last, under the Act 49 Vict. chapter 4, as "The Revised Statutes of Canada," and being printed and distributed in English, in two volumes containing 185 Acts or chapters, in 2,246 pages, with a table of contents, a general index, and an index to chapters appended to each volume, some account of the revision will be interesting and useful to our readers, the revisers having prefixed no preface or introduction to their work.

The Commission for the revision was issued in June, 1885, to the following Commissioners viz.: — Sir Alexander Campbell, K.C.M.G., Minister of Justice; James Cockburn, of Ottawa, Q.C.; Joseph Alphonse Ouimet, of Montreal, Barrister; Wallace Graham, of Halifax, Q.C.; George Wheelock Burbidge, of Ottawa, Barrister and representative of the Minister of Justice; Alexander Ferguson, of Ottawa, Barrister, and William Wilson, of Ottawa, Assistant Law Clerk to the House of Commons of Canada.

Mr. Cockburn died before, or soon after, this commission issued, having done some preparatory work only; the other six gentlemen made the report of the commission on the 31st December, 1884.

After the formal opening, the commission reads as follows:—

Whereas, it having become necessary to revise and consolidate the Statutes of Canada,

And whereas each of the Provinces of Canada before Confederation possessed legislative authority over, and passed laws with respect to matters now within the exclusive legislative control of the Parliament of Canada,

And whereas, the British North America Act, 1867, continued these laws in force until repealed or altered by the Parliament of Canada, some of which have been so repealed or altered, some remain still the laws of the Province in which they were enacted, some are local in their nature, not being capable of being extended to the whole of our Dominion of Canada; while others might properly be extended to the whole or other parts of Canada, and it is probable that some should be entirely repealed;

And whereas, certain schedules of Acts requiring examination having been previously prepared, We deemed it necessary that further examination, collection and classification of the several Statutes of Canada should be made preliminary to the proper revision and consolidation thereof, and for the purposes aforesaid did cause a commission under the Great Seal of Canada to issue to the said James Cockburn, bearing date the 15th day of November, in the year of our Lord 1881, constituting and appointing him to be, from the 1st day of July then last past, our commissioner to complete the said Schedules already prepared, and to examine the Statutes passed by the Parliament of Canada since the first day of July, in the year of our Lord 1867, and to collect therefrom all those enactments which are still in force, and to note the enactments of the Old Provincial Statutes which have been repealed or altered; also to classify all unrepealed enactments according to subjects, care being taken to distinguish those applying to one or more provinces only; and generally to make such examinations, classifications and collections of the said Statutes as might be necessary preliminary to the proper revision and consolidation thereof.

And whereas We deem it advisable that the commission, which it was proposed to constitute after the preparatory work of consolidation as aforesaid had been completed, should be constituted without delay.

Now, therefore, know ye, etc., that reposing, etc., by and with the advice of our Privy Council for Canada, etc., We do hereby constitute and appoint you the said (*names of Commissioners*) to be our commissioners to consolidate and revise the Statutes of Canada.

To have and to hold, etc., the said office of, etc., with all powers, etc., during pleasure. And we do hereby appoint you, the said the Hon. Sir Alexander Campbell, to be chairman, and you, the said William Wilson, to be the secretary of this our commission, and hereby authorize and require you to report to our Privy Council for Canada from time to time as they may require, what may have been done by you in the premises, and to

transmit to them all such tables, schedules, annotations, classifications, collections, revisions, and consolidations as may have been prepared.

In testimony, etc.

Dated 7th June, 1883.

On the 31st December, 1884, as aforesaid the Commissioners made the following report:

To His Excellency the Most Honourable the Marquess of Lansdowne, Governor-General of Canada, etc., etc., etc.

MAY IT PLEASE YOUR EXCELLENCY—

The Commissioners appointed to consolidate and revise the Statutes of Canada, have now the honour to submit a draft of the work entrusted to them.

In preparing the several chapters, care has been taken to preserve uniformity of language throughout, to remove redundancies, and to arrange the provisions of the law in the most natural sequence. To effect this it has, in very many instances, been necessary to divide chapters, and divide and transpose sections. The Interpretation Act provides that the law shall be considered as always speaking, and for that reason the present tense has been used in the consolidation.

Among the Statutes of the several Provinces, passed previous to Confederation, there are certain Acts in respect to which doubts have arisen as to the authority with which the legislative power rests. There are also Acts, both among the Statutes above referred to and the Statutes of Canada, which it has not been considered advisable to consolidate, although their repeal is not recommended. These include Acts authorizing the raising of loans by Government, Acts of indemnity, Acts relating to specific localities less than a whole Province, and Acts of a temporary character. These Acts have been collected in a separate schedule.

Another class of provisions, which make violations of Acts within the legislative power of Provincial Legislatures indictable offences, and provide for their punishment, have also been collected in a separate schedule. It is suggested that provision should be made that these should be repealed in each instance, from the time when the punishment of the offence, by fine or imprisonment, is provided for by the proper Provincial Legislature.

A table is appended to each chapter, showing what Acts are proposed to be consolidated therein, the portion consolidated, the portion which it is proposed to repeal, the portion to be consolidated elsewhere, and a note of the Act with which such latter portion is to be incorporated, and to each section is attached a reference, showing the corresponding Act and section of the Statutes now in force.

When material changes have been found necessary, a note in smaller type has been inserted, showing the nature of the change, or the new matter is printed in italics.

Ottawa, 31st December, 1884.

This report, with the draft of the work therein mentioned, was laid by order of His Excellency the Governor-General, before both Houses of the Parliament of Canada, and by them referred to a Joint Committee of the Senate and House of Commons, of which the Minister of Justice was chairman, and examined and reported by the said Committee with certain amendments.

These amendments were attended to by the Commissioners in their final Report made in the following year. They will be found in the Minutes of Proceedings of the Senate of Monday, 6th July, 1885, with the report of the Committee. They relate mainly to changes made, not in the substance, but in the expression of the law, to render it clearer and to better ensure the accomplishment of its intent. They extend to the Schedule A annexed, providing for the repeal of certain Provincial enactments; and their most striking effect is to reject the suggested repeal of enactments respecting the observance of the Lord's Day. The report of the Committee contains the following passages: "The Committee have carefully examined the consolidation and revision submitted to them." "Without retracing the whole labour of the Commissioners in preparing the draft of the proposed consolidation and revision, it was impossible for the Committee to compare with the original each of the sections represented to be transcripts of sections now in force, to verify absolutely the completeness of the consolidation, or to ascertain beyond doubt that no statutory provisions have been

omitted or repealed provisions included. The time at the disposal of the Committee did not allow more than a general examination and the application of tests to ascertain the character of the work in these respects. In the opinion of the Committee it has been well and carefully done."

"The chapters of the draft were apportioned among sub-committees, who made a careful examination, comparison and verification of all those sections of existing Statutes, which are noted in the draft as having undergone any changes in arrangement or language, as having been repealed, or in regard to which any change is suggested by the Commissioners."

"The general arrangement and execution of the proposed consolidation and revision are, in the opinion of the Committee, convenient and satisfactory."

The Commissioners having thus performed the work entrusted to them, Messrs. Wilson and Ferguson, who had been members thereof, with Mr. A. Power, of the Department of Justice, and a barrister of the Province of Nova Scotia; and Mr. J. G. Aylwin Creighton, a barrister of the Province of Quebec, the Law Clerk of the Senate, were instructed by the Government, after the close of the Session of 1885, to incorporate the Public General Acts of that Session with the reported work of the Commission, to superintend its translation into French, and generally to prepare it for publication.

The French version was prepared by Mr. Coursolles, chief French translator to the House of Commons, or under his immediate supervision.

It was found, however, that it would not be possible to have the work ready for publication before the commencement of the then next session: and on the 31st December, 1885, the gentlemen last named made the following report:

To the Honourable the Minister of Justice of Canada:

SIR,—Pursuant to the instructions which we received from you, we have incorporated with the draft submitted by the Commissioners appointed to consolidate and revise the Statutes of Canada, such of the Acts passed during the last session of Parliament as appeared to be proper subjects for consolidation therewith, and also the amendments suggested in the report of the Joint Committee of the Senate and House of Commons appointed last session to consider that draft. In the execution of this work we have adhered closely to the system and rules adopted by the Commissioners in the performance of the duties assigned to them.

We have also carefully revised, and made the additions to the Schedules to the report, rendered necessary by the legislation of last session, and we have completed the chronological and analytical table, showing in what manner each Act of Canada, and of each of the Provinces, which relate to matters within the control of Parliament, have been dealt with by the Commissioners and by ourselves.

We have also in course of preparation for publication, according to your instructions, a collection of all the statute law of a public general nature, relating to subjects within the legislative authority of the Parliament of Canada, now in force, but which in the opinion of the Commissioners could be more conveniently dealt with in this way than by consolidation.

Ottawa, 31st December, 1885.

This report was accompanied by a draft of the work in its then state, which was laid before Parliament, submitted to a Joint Committee of both Houses, reported with amendments, and being approved by Parliament as so amended, the Act now 49 Vict. c. 4 was passed, authorizing the Governor-General to cause such Public General Acts of the Session as he should deem proper to be incorporated with it, and to bring it into force on and after such time as he should appoint.

The work as now published consists of one hundred and eighty-five Acts, each forming a chapter, on some subject within the exclusive jurisdiction of the Dominion Parliament; and printed separately with the Royal Arms and the imprint of the Queen's Printers, and from stereotype plates kept by him, so that he can furnish copies of any required Act or number of Acts, or the Acts relating to any subject or class of subjects can be taken out of the volumes and bound or stitched separately,

a great convenience to professional men, or officers of departments, or others, requiring to have the Statute Laws on any matter in a handy and portable form.

In this portion of their work the Commissioners have followed generally the order and lines of the Consolidated Statutes of the old Province of Canada, and of Upper and Lower Canada, and have indicated at the end of each section the sources from which it has been taken or derived, thus affording easy means of finding the date at which any provision became law, a facility not given in the Revised Statutes of the Maritime Provinces or British Columbia; and they have also here given effect to the provision in their commission empowering them to collect and classify Provincial enactments still in force on subjects under the exclusive jurisdiction of Parliament, by inserting such enactments in the chapters on the matters to which they respectively relate, distinguishing them clearly as applying only to the Provinces by the Legislature whereof they were passed. When such Provincial enactments contain provisions of like effect with those of sections of the Revised Statutes, they are incorporated with them, and referred to as being so; otherwise, if they are intended to apply to the whole Dominion, they are made separate sections, and their origin indicated; but if, though they relate to the subject of the chapter, they are not so to apply, the Province or Provinces to which only they are to apply are indicated. Provincial enactments thus extended to a Province or Provinces to which they did not before apply, will, of course, be so extended only from the coming into force of the Revised Statutes (1st March, 1887). Many such Statutes are repealed, such repeal taking effect from the same date.

Schedule A, hereinafter mentioned, contains a list of all Acts so repealed, whether of the Dominion of Canada or of any of Provinces thereof. The following chapters will be found to extend, or to act as extending, to the Dominion, or to set forth and declare as applicable only to a Province or Provinces named, enactments of Provincial Legislatures:

Chap. 123. Bills of exchange and promissory notes.

Chap. 127. Interest.

Chap. 144. Application of criminal law of England to Ontario and British Columbia.

Chap. 147. Riots and unlawful assemblies.

Chap. 148. Improper use of weapons.

Chap. 152. Peace at public meetings.

Chap. 157. Offences against public morals and convenience.

Chap. 159. Lotteries and betting.

Chap. 161. Offences relating to the law of marriage.

Chap. 163. Libel.

Chap. 164. Larceny and similar offences.

Chap. 165. Forgery.

Chap. 168. Malicious injuries to property.

Chap. 173. Threats, intimidation, etc.

Chap. 174. Procedure in criminal cases.

Chap. 179. Recognizances.

Chap. 180. Fines and forfeitures.

Chap. 181. Punishments.

Chap. 183. Public and reformatory prisons.

After the chapters Volume II. contains Schedule A:—"Acts and parts of Acts repealed, from the date of the coming into force of the Revised Statutes of Canada, so far as the said Acts and parts of Acts relate to matters within the legislative authority of the Parliament of Canada." Of the Consolidated Statutes of (the Province of) Canada it repeals the whole or parts of 44 Acts; of the Consolidated Statutes for Upper Canada, 39; of the Consolidated Statutes for Lower Canada, 31; of the Acts of the late Province of Canada, 101; of the Acts of Nova Scotia (revised and since revision), 86; of the Statutes of New Brunswick (revised and since revision), 147; of the Revised Statutes of British Columbia, including those of the former colonies of Vancouver Island and British Columbia, 61; of the Statutes of Prince Edward Island (revised and since

revision), 173 (all these being, of course, Statutes respecting matters now subject to the exclusive control of the Parliament of Canada, and passed before the coming into force of the B. N. A. Act, 1867, after which no such Provincial Statute could be legally passed); and of public general Statutes of the Parliament of Canada, 612; making the total number of Statutes so repealed, in whole or in part, 1294.

Schedule B:—" Acts and parts of Acts of a public general nature, which affect Canada, and have relation to matters not within the legislative authority of Parliament, or in respect to which the power of legislation is doubtful, or has been doubted, and which have in consequence not been consolidated; and also Acts of a public general nature, which for other reasons have not been considered proper Acts to be consolidated." In this table the portion of each Act as to which the Commissioners entertained the doubts mentioned is given in the outer column, and the subject of the Act is shown by the title given in the centre column, except as to the Act 29 Vict. (1865, 2nd session) of the Revised Statutes for Lower Canada, as to which the outer column indicates only the numbers of the Articles of the Civil Code of Lower Canada brought into force by proclamation under the said Act, which the Commissioners, for reasons other than those mentioned in the heading to the said Schedule B, have not considered proper Acts to be consolidated. It may be useful to mention here the subjects of said Articles, which are as follows:

Arts. 12 to 21. Interpretation of laws and terms used in them.

Art. 23. Status of alien woman married to British subject.

Pars. 6, 7 of Art. 36. Legal effect of civil death.

Art. 108. Legal presumptions of death from absence.

Arts. 115 to 127. Qualities and conditions necessary for contracting marriage.

Arts. 135 to 156. Opposition to marriage on grounds of nullity.

Arts. 185, 206. Dissolution of marriage. Separation from bed and board.

Art. 367. Corporations not to carry on business unless authorized to do so.

Art. 369, Par. 2. How only corporations can be dissolved.

Arts. 400, 402, 403. Public roads, gates and walls of fortifications.

Art. 803. Gifts by insolvents.

Art. 1569. Sale of registered ships. 1573. Sale of notes, checks, etc.

Arts. 1678, 1679, 1681, 1682. Common carriers.

Arts. 1785, 1786. Loans on interest.

Art. 1886. Claims of special partners in bankruptcy cases.

Art. 1989 Privileged claims of Crown. 1998, 1999. Do. of vendors.

Art. 2007. Claims on ships and cargoes and freight.

Art. 2022. What moveables are susceptible of hypothecation.

Art. 2032. Legal hypothec of the Crown.

Art. 2090. Hypothecs created within thirty days before bankruptcy.

Art. 2151. Form of consent to discharge of hypothecs by Crown, etc.

Arts. 2211 to 2216. Prescription, and rights not prescriptible.

Arts. 2279 to 2354. Bills, notes and cheques.

Arts. 2355, 2356, 2359, 2361, 2362, 2373, 2374. Merchant shipping.

Arts. 2383 to 2403. Privileges and liens on vessels, cargo and freight.

Arts 2406 to 2462. Affreightment of ships.

Arts. 2464 to 2467. Passengers in ships.

Arts 2582 to 2558. Contribution by average in case of loss. 2560 to 2567. The same.

Arts. 2594 to 2612. Bottomry and respondentia.

All the Acts and parts of Acts, or of the Code, mentioned in Schedule B will be found in a third volume, prepared by the Commissioners and in the hands of the printer, but not yet ready for distribution.

The articles respecting bills and notes are referred to by the Commissioners in a note on chapter 123, p. 1655. All the articles above mentioned are unquestionably law in the Province of Quebec, and those on bills and notes and shipping are more especially interesting to commercial men, as rights may exist or be affected by them or under them in any

Province. The articles of the code relating to shipping have been largely amended by the Dominion Acts, 36 Vict. chaps. 128, 129. The articles respecting bills and notes are referred to in chap. 123, but none of the articles of the code or of the Acts and parts of Acts in Schedule B have been printed in Volumes I. and II., the insertion of Provincial enactments being confined to such as it was thought right to incorporate in the Revised Acts (and so extend to the whole Dominion) or such as related directly to the subject of any chapter, and could therefore be conveniently printed with it, though distinguished as applying only to one or more named Provinces. But Schedule B is a most important portion of the revision as indicating the Provincial enactments, including those of the Code, on subjects under the exclusive legislative authority of the Dominion Parliament, and therefore demanding the most attentive consideration in any attempt to make the law of Canada uniform on any such subject. The Civil Code, more especially, is deserving of attention as having been framed by a Commission composed of a Chief Justice and Judges, who gave their whole time to the work for several years, with most able secretaries and assistants, and the authorities relied on are stated at the end of each article. The fourth book relates entirely to commercial law, and the authorities cited are from the best English as well as French authors. This book, and indeed the whole Code, is well worth the attention and study of lawyers of the other Provinces of the Dominion, and yet more especially of legislators who wish to make the law uniform throughout Canada, as in commercial cases, at any rate, it ought certainly to be.

Schedule C, appended to Vol. II., contains a list of "Acts and parts of Acts repealed, so far as they constitute indictable offences, from and after a day when the proper Legislature makes provision for the punishment of the offence by fine or imprisonment or by both, under the British North America Act, 1867." This Schedule is founded on sub-section 15 of the 92nd section of the B. N. A. Act.

There are also appended to Vol. II.: "A Table of Acts passed prior to Confederation by the different Provinces now comprised in the Dominion of Canada, and of Acts of the Dominion of Canada, showing how much of each is in force, and how each has been dealt with;" and "A Table of Acts and parts of Acts consolidated, showing whence each section, or part of a section, is consolidated." These two schedules embody a full and detailed account of the work done by the Commissioners, and enable the reader to judge of the care and labour bestowed upon it; and with the tables we have mentioned, and the full and detailed index repeated in each volume, afford every facility for using the work and testing its correctness; and though we have not been able to give to the examination of their work the time which the Joint Committees of the Senate and House of Commons were able to bestow upon it, yet we have given it no slight attention and consideration, and feel safe in saying with that Committee that "it has been well and carefully done."

W.

SELECTIONS.

COMPENSATION FOR MISDESCRIPTION IN SALES OF LAND.

Considerable variation is noticeable in the practice of the Courts of Equity in granting compensation to a purchaser for a misdescription innocently made by the vendor in a contract of sale of real property. This has been caused partly by the fluctuation of feeling as to the propriety of substituting new contracts for the contracts made by the parties, partly by the fact that the courts, in following prior decisions, have not always distinguished between cases in which the vendor sought to have the contract enforced with compensation for the misdescription, and cases in which the purchaser was the party desiring to have compensation granted, and partly also from the variety of opinion necessarily to be found on the Bench when such questions are asked as, "Does the misdescription relate to an essential matter?" and, "Can compensation be fairly assessed?"

An examination of the cases will, however, the writer ventures to think, show that the following rules are usually observed by the court in granting compensation.

First, in the absence of any previous agreement between the parties:

1. The court will, at the desire of the purchaser, rescind the contract if there has been an essential misdescription, although the vendor would prefer to complete giving compensation.

2. The court will, at the desire of the vendor, decree partial performance with compensation, if the misdescription was non-essential [and if compensation can be fairly assessed], although the purchaser would prefer to abandon the contract.

3. The court will, at the desire of the purchaser, decree partial performance with compensation, although the misdescription was one which would usually be regarded as essential, and even though the vendor would prefer to abandon the contract, provided that the misdescription was contained in the written contract, and that compensation can be fairly assessed. If the misdescription was not contained in the written contract, the purchaser's only remedy is rescission. If the misdescription was contained in the written contract, but compensation cannot be assessed, the purchaser may [at his option] rescind [or accept an indemnity (?)].

Strictly speaking, the words, "abatement of purchase-money," should be used instead of "compensation;" but the ordinary phraseology may be retained, as there is no ambiguity in it.

The words "essential" and "non-essential" in the above rules need definition:

An "essential misdescription" is one whereby the purchaser was induced to purchase something which, but for such misdescription, he would never have purchased at all.

A "non-essential misdescription" is one the only effect of which was to induce the purchaser to give a higher price than he would otherwise have given.

The words "essential" and "non-essential" represent the expressions "very material," "substantial," "substantially and materially different," "very exaggerated description," and "small," "trifling," "infinitesimal," "slight variation," "minor and subsidiary," which are to be found in the cases. In a former number of this Review* Mr. Bigelow suggests that where mistake has been made with reference to an agreed term of a contract, the question of the materiality of the term ought to be excluded; "the parties," he continues, "by making it a subject of agreement have made it material, and the courts have no right to put a different construction upon it." The term mistake as used in the article quoted would include misdescription arising from mistake on the vendor's part. Tested by Mr. Bigelow's suggested principle, all misdescriptions contained in the written contract even though innocently made would seem to be material. Whether the suggested principle is applicable to ordinary mercantile contracts, or not, it certainly is inapplicable to contracts for the sale of land, especially the usual contract entered into upon a sale by auction, and consisting of particulars and conditions of sale and a memoran-

* July, 1885, at p. 299.

dum. In such a contract many clauses are obviously ancillary, and therefore rightly treated by the courts as non-essential; thus, for instance, conditions as to time are considered as not "of the essence of the contract" unless it is so stipulated, or to be inferred from the circumstances. Further, a vendor in describing real estate is so exposed to error, on the ground of wrong measurement, or of defect of title unknown to or forgotten by him, that it would be manifestly unfair to rescind the contract for some slight mistake which could, perhaps, only have been avoided by an expense disproportionate to the value of the property sold; and the "want of mutuality," an evil which cannot always be avoided in the rescission or enforcement of contracts, would appear more glaring if the purchaser were allowed to rescind or complete at his option, whenever the vendor had made an unimportant error in describing the property.

The essentiality of a misdescription is not determined in the abstract, but the court has regard to the purchaser's desire at the date of the contract, e.g., his intention to use the land in a particular way and to his position, e.g. as the owner of adjacent land. Thus, in one case*, the court took into consideration the fact that the purchaser was a timber-merchant and had bought the estate for the sake of the timber trees. The cases illustrating what are and what are not "essential" misdescriptions are very numerous; but without entering into much detail they may be classified as misdescriptions affecting (1) the identity of the property: (2) the tenure, quantum of vendor's estate, or nature of vendor's interest; (3) the size; (4) the situation and physical conditions; (5) the incumbrances, contingencies and liabilities affecting the property; (6) the rent or profits produced by it.

(1) Misdescriptions affecting the identity of the property are essential; thus, where a house numbered 2 was described as "No. 4," the contract was rescinded, although No. 2 was the same sort of house as No. 4, and in better repair. (2) Misdescriptions affecting the tenure, etc. Such misdescriptions are, as a rule, essential; e.g., describing leasehold or copyhold as "freehold," or an underlease as a "lease," or a reversion or a life estate as "fee simple;" but describing freehold as "copyhold," is probably non-essential*, and a slight error in the length of the term in describing leasehold property, e.g., a 97 years' lease described as 99 years, is not essential. (3) Misdescriptions affecting the size of the property will be treated as essential if the deficiency is large in proportion to the whole acreage, or if the part which is wanting is necessary to the enjoyment of the residue, or possesses some special value in the purchaser's eyes, or would, if possessed by another, be liable to affect the purchaser's enjoyment of the residue. (4) Misdescriptions affecting the situation, etc. of the property. In some of the earlier cases misdescriptions as to the situation of the property were treated as non-essential which would now be regarded as essential; thus, where an estate in Kent was described as being situate in Essex, the contract was enforced, although the purchaser declared that his object in purchasing was to become a freeholder of Essex†. Such misdescriptions seem, in fact, hardly distinguishable from misdescriptions as to identity; see No. (1). Misdescription as to the state of repair is not essential, except in the case of a house wanted by the purchaser for immediate occupation. Ornamental timber is an essential matter in the purchase of a residential estate; ordinary timber is non-essential, unless the purchaser is a timber-merchant buying for the express purpose of cutting the timber. The absence of houses, water supply, or frontage, described as belonging to the property, is essential. (5) Incumbrances, etc. The absence of title to tithes where an estate is sold tithe-free is usually essential; but the existence of small rent-charges not mentioned by the vendor is not essential. Rights of mining and common, restrictive covenants, rights of sporting, and, in the case of land sold as building land, rights of way are essen-

* *Lord Brooke* v. *Rounthwaite*, 5 Hare, 298.

* See *Twining* v. *Morrice*, 2 Bro. C. C. 326; secus, *Ayles* v. *Cox*, 16 Beav. 23, where, however, Lord Romilly's statement, "it is unnecessary for a man who has contracted to purchase one thing to explain why he refuses to accept another," seems incorrect, as the cases show, that unless the error is obviously essential the purchaser must explain why it is essential to him.

† *Shirley* v. *Davis*, cited with disapproval in *Drewe* v. *Hanson*, 6 Ves. 678.

tial defects. (6) Misdescriptions affecting the rent or profits would seem to be non-essential. Lastly, where the misdescription or defect in title affects not the whole estate but only a portion, the essentiality of the misdescription or defect depends on two questions: first, Is the defect an essential one as regards that portion? secondly, If so, is that portion essential as regards the whole property?

The phrase occurring in Rules 2 and 3, "if compensation can be fairly assessed," requires some explanation. In Rule 2 the words are put in brackets as practically unnecessary, because if a misdescription is non-essential it is from the nature of the case capable of pecuniary compensation. In Rule 3 the words are inserted with some doubt, because the courts have assessed compensation in some cases where it would seem that no pecuniary compensation could be fairly given; thus the absence of any title to work the minerals has been the subject of compensation (see below). It must be observed that the proviso is not "if compensation can be assessed," but "if compensation can be fairly assessed." It is, of course, always possible to assess compensation, just as it is always possible to measure damages for injuries to the body, the feelings, or the reputation. But in assessing damages for a tort it is not considered necessary nicely to weigh the damage in the interest of the aggressor, justice being satisfied if the damages given to the person injured are sufficient, and not caring if they may happen to be too much. In computing compensation for a misdescription however, the rough calculations of a jury are unsuitable: the interests of the vendor have to be considered as well as those of the purchaser, and if the compensation does not admit of a pecuniary valuation which shall be as fair to the vendor as it is to the purchaser, the court will probably refuse to make a rough estimate or an educated guess. The mere difficulty of assessment, where a fair assessment is possible, will not, however, deter the court. In one or two cases, where the possibility of assessment was doubtful, the court directed an enquiry whether compensation could be assessed. Sometimes the surrounding circumstances offer a clue to the amount of compensation due to the purchaser. In one case, the sale of a colliery*, where the annual profits had been overstated, the purchase-money was taken as the basis for calculating the capitalized value of the deficiency in the profits, because the purchaser had, by offering such sum, shown how he himself capitalized the annual profits as stated by the vendors. So, too, upon the sale of tithes†, which the vendor had omitted to describe as subject to an annual fee-farm rent, the court assessed the compensation at 29 years' purchase of the fee-farm rent, because this was the number of years at which the purchaser had himself capitalized the tithes; and similarly, in an action‡ to rescind the sale of a contingent reversion, on the ground of the inadequacy of the price, the fact that the purchaser had offered one sum under the belief that the reversion was absolute, and on hearing that it was contingent had reduced his offer by one half, enabled the court to fix the value of the contingent reversion as half the value which such reversion would have borne if it had been absolute.

A deficiency in the vendor's interest, which depends for its extent on the duration of a life, admits of actuarial computation and will therefore be assessed by the court. Nor does the chance that the duration of the life may be so different from the actuary's estimate as to give the purchaser both the estate and the compensation make this method of assessment unfair; because the purchaser is equally exposed to the chance of the compensation being, in the event, too small, and the court will "throw the chances together§." In this way compensation has been given where the vendor had only a life estate instead of the fee, or had only a remainder expectant on the determination of a life estate, or had only an estate *pur autre vie;* similarly too, upon a contract to grant a lease for years, where the lessor turned out to have only a life estate.

Where the thing to be compensated for is the absence of title to the minerals, the question "Can compensation be fairly assessed?" is more difficult to answer. The authorities are conflicting. Compensation

* *Powell* v. *Elliott*, L. R. 10 Ch. 424.

† *Hornblow* v. *Shirley*, 13 Ves. 84.

‡ *Baker* v. *Brent*, 1 Russ. & M. 424.

§ Lord Eldon in *Milligan* v. *Cooke*, 16 Ves. 1.

was assessed in *Seaman* v. *Vawdrey*, 16 Ves. 390 (which, however, was a suit by the vendor for specific performance), *Ramsden* v. *Hirst*, 4 Jur. n. s. 200, and *English* v. *Murray*, 49 L. T. 35 (where purchaser wished to rescind, the vendor pressing for specific performance with an abatement); but was considered not to admit of calculation in *Smithson* v. *Powell*, 20 L. T. 105, and *Re Bunbury's estate*, 1 Ir. R. Eq. 458. The method of assessment followed in *Ramsden* v. *Hirst**, viz. to deduct from the purchase-money the value of the minerals to be ascertained by an expert appointed by the judge, seems to be unfair to the vendor, as introducing too much uncertainty, since it was not even known whether there were any minerals at all. A fairer method, at all events in an agricultural neighbourhood, would be to estimate the value of the land as agricultural land, and if necessary reduce the purchase-money to such estimated value. In the case of a house in a residential neighbourhood, it seems impossible to say how much less the property is worth on account of the absence of title to the minerals, since the enjoyment of the property being unimpaired by the defect, the difference in value could only arise from the diminished saleableness of the house, which is too uncertain to admit of computation.

Upon the whole it seems the better opinion that where compensation cannot fairly be assessed the court will not grant compensation. But some of the cases undoubtedly go far to show that a way out of the difficulty can always be found; see (in addition to the cases referred to above, of compensation for the absence of title to minerals) the case of *Peacock* v. *Penson*, 11 Beav. 355, where compensation was assessed* for the damage sustained by the purchaser, in consequence of the vendor's inability to construct a road, which, by the conditions of sale, he had undertaken to make.

The proviso in rule 3 as to the misdescription being contained in the written contract is inserted on account of the law relating to parol variations of written contracts. A purchaser asking for partial performance with compensation for a parol misdescription will not be aided by the courts, because this would be enforcing a contract, one of the terms of which has not been reduced to writing. It would perhaps be unnecessary to make this insertion if reliance could be placed on the definition which is sometimes† given of "misdescription," distinguishing it as something which necessarily occurs in the written contract, the word "misrepresentation" being reserved for misstatements made *dehors* the contract. But this is an arbitary distinction, as a description may be made by parol, and a representation may be contained in the written contract. The distinction really aimed at in *Behn* v. *Burgess*, is that made above between essential and non-essential misdescriptions.

The words in brackets at the end of rule 3 are open to serious doubt; probably on the whole they should be omitted. In *Bolmanno* v. *Lumley*‡ Lord Eldon expresses the opinion that the court can neither force the purchaser to accept, nor the vendor to give, an indemnity. It is probably correct to say that a purchaser cannot be forced to accept an indemnity, on the broad ground that the purchaser is entitled to rescind if the misdescription is essential, and no indemnity will be necessary if the misdescription is non-essential, and therefore capable of pecuniary valuation; though in *Wood* v. *Bernal*, 19 Ves. 220, Lord Eldon himself thought the purchaser might be compelled to take an indemnity for a small incumbrance upon a considerable estate. But a vendor has in many instances been held bound to give an indemnity. This has been ef-

* See the report of that case in 4 Jur. n. s. 200; the decree, however, merely declares that the purchaser "is entitled to compensation out of his purchase-money" (it was a sale by the court) "in respect both of an outstanding right under the agreement of 22nd Nov. 1823, to enter the land and sink shafts and work the mines, and also of the purchaser being precluded from working the coal (if any) under the said land himself," 1857 B. 1259. A subsequent order shows that £195 was paid to the purchaser for compensation, the amount of the purchase-money being £2,241; 1857 B. 1354. I have been unable to find the decree in *Seaman* v. *Vawdrey* either in the index or in the Records themselves.

* However, the decree itself contains no order or direction as to compensation, 1848 B. 257.

† Cf. *Behn* v. *Burgess*, 3 B. & S. 751.

‡ 1 Ves. & B. 224 followed in *Aylett* v. *Ashton*, 1 My. & Cr. 105.

fected either by the vendor's executing a security, or by his paying into court a sufficient portion of the purchase-money to abide the event. In *Milligan* v. *Cooke*, 16 Ves. 1, the court ordered an enquiry, what was the difference in value of the interest proposed for sale and the interest the vendor had, and if the Master should find that he was unable to ascertain such difference in value, "the Master should settle such security by way of indemnity as it should appear just that the vendor should execute." In *Wilson* v. *Williams*, 3 Jur. n. s. 810, where the vendor had omitted to state that his wife would be dowable out of the property, and she refused to concur, it was directed that so much of the purchase-money should be retained in court, the annual interest whereon would equal the annual profits receivable by the wife as her dower, the vendor to receive the interest during the joint lives of himself and his wife, the interest to be paid to her during her life if she survived him, and the principal upon her decease to go to the vendor. But it may be doubted whether compensation could not have been assessed in that case; an actuary could have calculated the chance of the wife having dower, and the probable duration of such dower. And to compel a vendor to pay money into court to abide the event for the purpose of protecting the purchaser against a contingency, might be an even greater hardship to him than to order him to pay a lesser sum out and out by way of compensation.

Secondly, where there has been a condition of stipulation in reference to compensation.

The condition may be either that compensation shall, or that it shall not, be allowed.

A condition allowing compensation seems to have no effect on the mutual rights of vendor and purchaser, except in the three cases mentioned below. The rules given above, as to the granting of compensation in the absence of any previous agreement, will therefore be applicable even where there is an agreement that compensation shall be given; e.g. the court will rescind the contract, notwithstanding the condition, if there has been an essential misdescription and the purchaser wishes to have the contract rescinded.

The three exceptions above referred to are the following:

(1) A condition allowing compensation to the purchaser will be enforced even where the error has not been discovered until after completion, unless the condition is especially limited to error discovered before completion. This, notwithstanding some conflicting decisions, may be taken as having been settled by the case of *Bos* v. *Helsham*, L. R. 2 Ex. 72, *Re Turner and Skelton*, 13 Ch. D. 130, and *Palmer* v. *Johnson*, 12 Q. B. D. 32, 13 Q. B. D. 351. The condition, however, does not apply, after completion, in the case of a defect in the title, where the vendor has not made any misstatement. Thus in *Exp. Riches*, 27 Sol. J. 313, where the vendor had only a life estate in part of the property, but sold as absolute owner, the Court of Appeal held that a condition for compensation in case any "error, misstatement or omission" should occur did not apply, as this was a mere defect in title. And where the condition for compensation is only in respect of any "deficiency in the quantity or acreage," the purchaser would probably not be able after completion to obtain compensation for any other error, e.g. a misstatement of the rental. If the condition embraces in terms only "errors and misstatements," or "misdescriptions," a question might arise whether a mere omission would be within the condition. The actual decision in *Manson* v. *Thacker*, 7 Ch. D. 620, might perhaps be upheld on the ground that the non-mention of the hidden culvert was an "omission," and not an "error" or "misstatement," and that the condition did not expressly include "omissions."

(2) Where there is the usual condition for rescission, the right of the vendor to enforce that condition may be affected by the fact that the contract contains a condition for compensation. In the absence of any condition as to compensation the purchaser's demand for compensation would, like any other requisition, enable the vendor to rescind under the condition for rescission. If there is a condition for compensation, and an error covered by that condition is admitted or clearly proved by the purchaser, the vendor will have to give compensation, and cannot rescind on the ground of unwillingness to comply with the purchaser's requisition.

(3) The third exception to the general rule is one which in the opinion of the writer has no good foundation, but it is inserted here in deference to the authorities mentioned below. It is this, that where the defect is known to the purchaser at the date of the contract, or is one which the purchaser is by the conditions precluded from objecting to, the condition for compensation will nevertheless enable him to obtain compensation. The authorities for this very disputable proposition are the opinions of Mr. Justice Kay in *Lett* v. *Randall*, 49 L. T. 71, and of Vice-Chancellor Bacon in *English* v. *Murray*, 49 L. T. 35. In the former case the vendors had described the property as let on lease for 75 years from 1850, the fact being that the term commenced in 1858. Mr. Justice Kay thought that the purchaser did not actually know the description was wrong, but that even if he did, the vendors were bound to give compensation because they had contracted to give it. The argument that the purchaser had paid a higher price owing to the misdescription, because even if the purchaser knew of the mistake the other bidders did not, and being influenced by the description bid higher than they would otherwise have done, does not seem conclusive. Either the purchaser was content to give the price he offered, in which case he wanted no compensation, because he had suffered no damage; or he paid more in the expectation of obtaining compensation, in which case he committed a fraud on the vendors. In the case *Camberwell and South London Building Society* v. *Holloway*, 13 Ch. D. 754 (see p. 762), the late Master of the Rolls held that a purchaser who had notice that property described as a lease was only an underlease, was not entitled to compensation under a condition allowing compensation "if any error or mistake shall appear in the description, or in the nature or quality of the vendors' interest therein." And though the word "lease" was only ambiguous and therefore no actual misdescription had occurred, the principle of the case is certainly at variance with the opinion of Mr. Justice Kay in *Lett* v. *Randall*. The second part of the proposition above set out is even more doubtful, but is founded on *English* v. *Murray*, where a condition which was held to be sufficient to preclude the purchasers from rescinding on the ground of a defect in the vendors' title, was in the Vice-Chancellor's opinion not sufficient to preclude them from demanding compensation under the condition for compensation. But it is to be observed that the vendors there, both before the action and at the hearing, conceded the purchasers' right to compensation, the only point for the Vice-Chancellor's decision being whether the purchasers were entitled to rescind.

The condition that no compensation shall be allowed to the purchaser, though sufficient to prevent a purchaser from insisting on completion with an abatement of the purchase-money, is not sufficient to enable the vendor to enforce specific performance where there has been an essential misdescription. It has been said (by Malins, V.-C., in *Whittemore* v. *Whittemore*, 8 Eq. 603), "conditions of this kind must be construed as intended to cover small unintentional errors and inaccuracies, but not to cover reckless and careless statements." But it is not, properly speaking, a question of construction; it is rather a principle of equity that, notwithstanding the conditions of sale or the agreement, the vendor shall not have specific performance if he have materially misled the purchaser (*Re Terry & White*, 32 Ch. D. 14; see judgments of Lord Esher, M.R., and Cotton, L.J.). And not only is specific performance refused to the vendor in such cases, but the purchaser can obtain a decree for rescission of the contract.—*Law Quarterly Review*.

REPORTS.

COUNTY COURT OF LINCOLN.

PURCELL ET AL. V. GREAT NORTH-WESTERN TELEGRAPH COMPANY.

Telegraph company—Repeating message—Misrepresentation—Gross negligence.

The plaintiffs received at St. Catharines on defendant's line, a message from Aylmer, in which they suspected there was an error (as in fact there was, the word "Five" having been substituted for "Two" by the operator at Aylmer), and requested the defendant's manager at St. Catharines to have the message repeated. He telegraphed the Aylmer office to repeat the message, and it was repeated with the same mistake as before. Defendants made no charge for repeating the message.

The plaintiffs having acted upon the message, and sustained loss thereby,

Held, that the defendants were not liable to the plaintiffs for the mistake.

[St Catharines.

This action was brought to recover damages sustained by the plaintiffs in consequence of the negligence of the defendants in the transmission of a telegraphic message over their line, sent by the Aylmer Canning Co. to the plaintiffs, and which was subsequently repeated at the instance of the plaintiffs, the word "five" being erroneously used in the message as delivered (both in the original and the repeated message), instead of "two" as the word was on the message handed in for transmission to defendants' office at Aylmer.

The question arose as to whether an action could be brought by the receiver of a message to recover damages for negligence in its transmission, and it was held by the learned judge, in accordance with the English and Ontario authorities, that it could not.

The plaintiffs also contended that they entered into a contract with the defendants to have the message repeated, and that there was negligence again on the part of the defendants in the repeating of the message, and that they were entitled to recover for the loss sustained by them in consequence of this negligence.

SENKLER, Co.J.—There is no doubt that the plaintiffs' manager asked the defendants to have the message repeated, and that the defendants agreed to do this, and did have it repeated, and I should have no hesitation in finding that the defendants' operator at Aylmer was guilty of negligence in sending the message again with the third word "five" instead of "two."

The question remains to be decided whether the repetition was done under a contract or as a gratuitous act, and if the latter whether any liability attaches to the defendants in respect of any negligence on their part in performing it.

The plaintiffs' agent swears positively that when he asked to have the message repeated he told Dudley to charge to them, and Dudley replied "all right." Dudley is equally positive that nothing of the kind was said. As the conversation took place over a telephone, the words may have been used by Fenton, and not heard by Dudley. Fenton intimated in his evidence that the item had been charged, and subsequently abandoned when the mistake was discovered. He was unable, however, to produce any proof of this assertion, which was positively denied by Dudley. While I do not doubt Mr. Fenton's good faith in alleging that he used the words "charge to us," I do not see how I can, in the face of Dudley's denial, hold that they came to his ears, unless there is something in the surrounding circumstances to make his statement the more probable, and I must say I do not see anything. Then assuming that Fenton simply told Dudley to have the message repeated, and Dudley answered that he would, is that a contract? That would depend upon whether it was to be paid for. Ordinarily when a person who is engaged in any business or calling is told to do something in that business or calling, the presumption will be that he is to be paid for it, and if he does what he is told to do, he can collect its value. It is urged on behalf of the plaintiffs that the term "to repeat a message" is well understood in the business of telegraphing, and that it is regularly charged and paid for, and that the order to repeat the message must be understood in this way.

To this it is answered that in one sense to repeat a message is a well understood term, but not in a sense that applies to the message in question. That any person about to send a message can, if he chooses to pay a further sum equal to half the price charged for the message itself being forwarded, have the message repeated back from the office to which it is sent, and in this way he can be certain that the message is received in the office to which it is sent in the same words as he has sent it. That this mode of repetition does not apply to parties receiving messages, that so far as they are concerned there is no recognized system of having messages repeated, but, that as a matter of fact, when a person does not understand a message he has received, it is the custom for the receiving office to ask the transmitting office to repeat or

duplicate the message, and that this is done without charge and as a matter of favour; and it is sworn that it was so done in the present case, and that no charge was ever made or intended to be made for the repeating the message.

Mr. Fenton does not say that he ever paid for having a message repeated in this way, nor does he show that any other person ever did so, or bring any evidence to contradict Mr. Dudley's evidence as to the custom of the defendants in this particular, and I am of opinion on the evidence that the company in having the message repeated did so gratuitously and without consideration.

Then what responsibility does the law impose upon the defendants, in respect of this gratuitous act? I have been unable to find any express decision on the point. In England the management of telegraphs is now under the control of the Government, and consequently no such point could arise there, and during the period in which telegraphs were managed by private companies, I cannot find any case in which the case came up, nor can I find any in our own reports. In the United States the question would not arise, because there the defendant would be held liable in respect of negligence in transmitting the original message—See Gray on "Communication by Telegraph" pages, 115, 116, and cases there cited. The American law differs widely from the English in this particular. The English cases I have previously referred to deny there being any analogy between the consignment of goods through a carrier, and the transmission of a telegram—See *per* COCKBURN, C.J. in *Playford* v. *U. K. Tel. Co.*, L. R. 4 Q. B. at page 714, and *per* BRAMWELL, L.J. in *Dickson* v. *Reuter's Telegram Co.*, 3 C. P. D. at page 7.

Upon principle I do not see how the liability of the defendants can at most be placed higher than that of an ordinary mandatory without reward, viz.: "That they would only be liable for gross negligence." I cannot see how the question of skill comes in; there is no question as to the skill of defendants' employees in working the telegraph; what is complained of is the carelessness of the operator in reading the message.

According to the dictum of MARTIN, B. in *Mills* v. *Holton*, 2 H. & N. at page 18, the defendants, by merely doing an act of kindness, would not incur any responsibility. But assuming that they would be liable for gross negligence, is that proved?

In those cases in which a person is liable for gross negligence, he is bound to exercise something less than ordinary care. This statement of law is easier made than applied to the circumstances of any particular case. It is probable that the word in respect of which the difficulty has arisen in this case, was so written that at a first glance it might be taken for either "two" or "five." Judging from its appearance in Ex. 3 (a copy made by Nairn in the telegraph office at Aylmer on the morning of the 29th September), I should say that it was so; still on examination it would, at least, be doubtful if it was "five" under these circumstances, I should consider it the duty of a person bound to exercise ordinary care, to make inquiries, but I find a difficulty in saying that a person would be guilty of gross negligence if he did not do so. I am of opinion, therefore, that the plaintiffs have not shown that the defendants were guilty of gross negligence. I have considered the question of defendants' liability, on the supposition that they would be liable for gross negligen[illegible] This liability for gross negligence is general[illegible] found in cases where there has been a gratuitous bailment of goods or a gratuitous service done for a person, and through the negligence of the bailee or person doing the service some physical injury has been suffered by the goods or person. The bailee has possession or charge of the goods or person, and, while this is the case, they are injured by his negligence. In the present case these facts do not exist, and I doubt very much whether the principle I have referred to applies to it. It seems to me that this is more like a case of misrepresentation, and no action will lie for misrepresentation of facts, simply because made carelessly—it must be fraudulent—(*per* BRAMWELL, L.J. in *Dickson* v. *Reuter's Telegram Co.*, 3 C. P. D., at page 6).

I am of the opinion that the action must be dismissed with costs.

DIVISION COURT.

BOYLE ET AL. V. GRAND TRUNK RY. CO.

Snow fence—Damages arising therefrom—Limitation of right of action.

In an action against a railway company for damages occasioned by a large accumulation of snow upon the plaintiffs' lands, caused by the defendants' snow fence, whereby, on the melting thereof in spring, it became unworkable, and the crop sown thereon deficient.

Held, that the damages were continuous during the whole growth of the crop, and that, therefore, the statutory six months within which to commence the action is to be counted from the date of harvesting.

[Whitby, February, 1886.

The plaintiffs proved damages to the extent of at least $40. After the removal of the snow fence, in the spring of 1886, a large body of snow, which had accumulated upon the plaintiffs' land by the action of the defendants' snow fence, remained thereon for some weeks, melting gradually, and rendering a considerable portion of a twenty acre field wet, sour and difficult to work. The grain

put in on the land injuriously affected only partly germinated, and by reason of the baking of the soil did not yield anything like the rest of the field. The crop was harvested during the last few days of August, and the plaintiff commenced his action in the middle of December, 1886.

DARTNELL, J.J.—The defendants contend that the statutory period of six months within which an action may be brought has expired, and that therefore the plaintiffs are out of court. This is a question of some interest, and calls for determination.

Sec. 46 of the Railway Act permits railway companies, on and after the 1st November in each year, to enter upon lands adjacent to the line of railway, and erect and maintain snow fences, subject to the payment of such land damages as are thereafter established. Such fences are to be removed before 1st April in the following year. In the case in question the fence was not removed until the middle of April, but no complaint is made on this score.

Sec. 27 of the same Act provides that all actions or suits for any damages or injury sustained by reason of the railway "shall be commenced within six months next after the time when such supposed damage sustained, or, *if there is a continuation of damage*, within six months next after the doing or committing of such damage ceases, and not afterwards"; and the defendants rely upon this as a defence to the plaintiffs' claim.

It is quite clear that the six months did not commence to run from the date of erecting the fence, nor from the date of its removal; for at these dates, and for the intermediate period, no actual damage was occasioned.

The erection of the fence occasioned the collection and retention of a large amount of snow on the plaintiffs' land which theretofore had been free from it. This mass of snow remained long after the rest of the land was workable and fit for crop, retarding the early sowing of the seed (barley) and injuring it during its growth. I think the damage was continuous during the whole growth of the grain; which, from the state of the land, caused by the unwonted accumulation of snow, and the gradual melting thereof, caused appreciable damages to the plaintiffs' land and crop.

It seems to me that such damages cannot be said to have "ceased" until the cutting of the grain; and as the action was brought within six months of that date, that the defendants must fail in their contention, and the plaintiffs recover the amount of the damages they have clearly proved.

N. F. Paterson, Q.C., for plaintiffs.

The defendants were not represented.

NOTES OF CANADIAN CASES.

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CHANCERY DIVISION.

Boyd, C.] [April 6.

McINTOSH V. ROGERS.

Conditions of sale—No deeds to be produced other than those in vendor's possession—Sale of land.

By written agreement for the purchase of land it was provided "no title deeds, abstracts or evidences of title to be required other than those in vendor's possession, nor shall the vendor be required to give a covenant for the production of the same."

Held, that under this condition the vendor was relieved from the absolute obligation of making out the title to be good; while if the evidence of title coupled with the abstract, and it may be the public register did not disclose and prove a good title, the purchaser was not bound to complete.

W. W. Fitzgerald, for the vendor.

G. W. Marsh, for the purchaser.

Robertson, J.] [April 29.

RE WATSON.

Will—Restraint on alienation—Invalidity.

By his will P. T. devised lands as follows: "That T. T. do inherit the same as his property, on the conditions that he never will or shall make away with it by any means, but keep it for his heirs."

Held, the condition attached to the devise was invalid, being an absolute and unqualified restraint on alienation.

Smith v. *Faught* 45 U. C. R. 484, and *In re Winstanley*, 6 O. R. 315, distinguished.

G. H. Smith, for the purchaser.

A. H. Marsh, for the vendor.

PRACTICE.

Rose, J.] [Sept. 3, 1884.

REGINA v. RILEY.

Magistrate — City and county — Jurisdiction — R. S. O. c. 72, s. 6.

R. S. O. c. 72, s. 6, does not limit the territorial jurisdiction of county magistrates, but prohibits them from acting "in any case for any town or city"; the limitation is as to the cases, not as to place, and is only partial, *i.e.*, for a city where there is a police magistrate, and then only when not requested by such police magistrate to act, or when he is not absent through illness or otherwise; and therefore in any case arising in a county, outside of a city, a county justice having jurisdiction to adjudicate while sitting in the county, may adjudicate while sitting in the city.

Owing to changes in the statute law, the decisions in *Regina* v. *Row*, 14 C. P. 307, and *Hunt* v. *McArthur*, 24 U. C. R. 254, are no longer applicable.

J. G. Scott, Q.C., for the Crown.

V. MacKenzie, Q.C., for the prisoner.

Court of Appeal.] [May 11.

LANGDON v. ROBERTSON.

Leave to appeal—Time.

Where leave of the Court is necessary for an appeal, application therefor should be made within three months from the judgment to be appealed from; but in a case where, although leave to appeal was necessary, none was obtained, and the appellant gave notice and filed his appeal bond, which was allowed without objection by the respondent,

Held, that such an equity was raised in the appellant's favour by the respondent's not objecting to the allowance of the security, as entitled him to relief after the three months. The rule laid down in *Sievewright* v. *Leys*, 9 P. R. 200, is the rule that should be acted upon in regard to extension of time.

Upon an interlocutory application the Court will not hear more than one counsel for any party.

J. L. Murphy, for the appellant.

Mackelcan, Q.C., for the respondent.

C. P. Div. Ct.] [May 18.

WAGHORN v. HAWKINS.

Order made at trial, how signed—Divisions of High Court.

Where an action in the Queen's Bench or Common Pleas Division of the High Court of Justice is, under Rule 590, set down for trial at a sittings for trial of actions in the Chancery Division, any order made in such action by the Judge presiding at such sittings should be signed by the officer who acts as Registrar at such sittings, and not by the Registrar of the Division to which the action belongs.

J. M. Clark, for the plaintiff.

Q. B. Div. Ct.] [May 19.

REGINA v. HALL.

Canada Temperance Act—Conviction—Adjournment to consider of judgment—32 & 33 Vict c. 31, s. 46—Evidence—Certiorari.

The decision of BOYD, C., *ante* p. 193, was affirmed on appeal.

Walter Read, for the appeal.

Aylesworth, contra.

FLOTSAM AND JETSAM.

THE London *Law Times*, referring to the second re[illegible]ing in the House of Lords of Lord Bramwell's bill to enable prisoners, and the husbands and wives of prisoners, to give evidence on their trial, says:—"We wish the measure all success, for although it will no doubt work unfavourably to criminals as a class, we feel convinced that it will be a boon to innocent persons, and aid materially in unravelling mysteries in which innocent persons are charged with crime. The fifth clause of the bill, to which Lord Esher objects, provides that a prisoner shall not be cross-examined as to any previous convictions. But we fail to appreciate Lord Esher's objection. Evidence from the dock under any circumstances would always be received by a jury with reserve, but the admission by a prisoner of a previous conviction would in nine cases out of ten ruin his chance of acquittal, and completely defeat the object of the act. A prisoner, although innocent of the immediate crime charged against him, would hesitate to give evidence, however important his evidence to his case might be, if he knew that he ran the risk of having to admit a previous conviction."—*Ex.*

IT is a beautiful story that in one of the old cities of Italy the king caused a bell to be hung in a tower in one of the public squares, and called it "The bell of justice," and commanded that any one who had been wronged should go and ring the bell, and so call the magistrate of the city, and ask and receive justice. And when in the course of time the lower end of the bell rope rotted away, a wild vine was tied to it to lengthen it; and one day an old and starving horse that had been abandoned by its owner and turned out to die, wandered into the tower, and in trying to eat the vine, rang the bell. And the magistrate of the city, coming to see who rang the bell, found this old and starving horse; and he caused the owner of that horse, in whose service he had toiled and been worn out, to be summoned before him, and decreed that as his poor horse had rung the bell of justice, he should have justice, and that during the horse's life his owner should provide for him proper food and drink and stable.—*Central Law Journal.*

PROMPT DECISION.—It is not unusual to find certain people judging their neighbours from intuition rather than from evidence. Such brilliant rashness is mischievous enough in private life, but in the court-room it is even more out of place.

Great difficulty was once experienced in collecting a jury, in one of the backwoods settlements of the far West. Eleven jurors had at length been sworn in, and there remained but one man to dispose of. He was a small, lean, lank fellow, with a very shrewd face and uncouth demeanour, and his apparel suggested the fact that he had never before been within sight or sound of civilization.

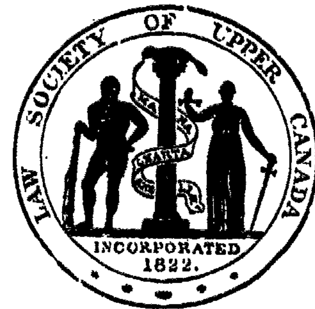
He was asked the usual questions, whether he had formed any opinions about the case, whether he had any prejudice against the prisoner, or whether he was conscientiously opposed to capital punishment. To all these he returned a decided negative.

Neither the judge nor the lawyers particularly liked the man's manner, but it was late, and jurors were scarce; so he was accepted.

In accordance with an old form, surviving strangely in out-of-the-way places, he was set before the alleged murderer, while the judge said, "Juror, look upon the prisoner; prisoner, look upon the juror."

When this command was given, the little man leaned forward, and for some moments scanned the culprit carefully from head to foot; then he raised his head, and, turning to the judge, said, in a firm and solemn voice, "Yes, judge, I think he's guilty!"—*Central Law Journal.*

Law Society of Upper Canada.



OSGOODE HALL.

CURRICULUM.

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

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

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

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

5. The Law Society Terms are as follows:

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

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

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

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

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

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

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

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

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2.30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

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

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

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

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

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

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

19. No information can be given as to marks obtained at examinations.

20. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES

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

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM FOR 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (1-33.)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33)

1890
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's Composition, and re-translation of single passages.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.

Critical reading of a Selected Poem:—

1887—Thomson, The Seasons, Autumn and Winter.

1888—Cowper, the Task, Bb. III. and IV.

1889—Scott, Lay of the Last Minstrel.

1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

A paper on Grammar.
Translation from English into French Prose.

1886, 1888, 1890 } Souvestre, Un Philosophe sous le toits.
1887, 1889 } Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics and Somerville's Physical Geography; *or* Peck's Ganot's Popular Physics and Somerville's Physical Geography.

ARTICLED CLERKS.

In the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.

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

RULE RE SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

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

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

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

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

Copies of Rules, price 25 cents, can be obtained from Messrs. Rowsell & Hutchison, King Street East, Toronto.