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DIARY FOR FEBRUARY.

16. Tues...Sittings of Supreme Court Canada begin
18. Thur...Sittings of Divisional Court of Chan. Div. begin.
21. Sun.....*Septuagesima Sunday.*
28. Sun.....*Sexagesima Sunday.*

TORONTO, FEBRUARY 15, 1886.

Two correspondents send in specimens of a new style of advertisement, sent to their clients by a New York attorney. It is in the shape of a post card, on which is given a well executed engraving of the advertiser, who concludes his laudatory observations on himself by saying: "We are neither too dignified or modest to ask for work." This is honest and above board, if not professional.

THE dinner on Thursday evening last, was from a material point of view a decided success, and reflected great credit on the committee. There was plenty to eat, plenty to drink, and plenty of noise. In fact, we think we are well within the mark in saying there was at least ninety per cent. too much of the last named element of conviviality. Much to the annoyance of everybody else, a handful of individuals present seemed to think there was nothing unseemly, nothing disrespectful, in treating the eight or nine Superior Court Judges, and the other gentlemen of seniority and position, who attended the dinner to a mingled assortment of popular songs, cries of "rats," "how do ye do," "put 'em on the list," and inarticulate noises, and senseless clamour of various descriptions. They probably considered that they were having a "high old time." For our own part, however, it struck us as not "high" but the reverse, and not "old" but very, very "young," and we could not help wishing that the judges who honoured the banquet would exercise their united jurisdictions by enjoining to perpetual silence the principal offenders. Nothing of the sort occurred at the dinner of the Legal and Literary Society last year. Let us hope that nothing of the kind will ever occur again.

IT is really of some importance that these annual professional gatherings should continue. They are calculated to draw the profession together, and to create *esprit de corps* among the members of it. Perhaps, however, it may be better henceforth to make the dinner an exclusively Bar dinner. It does not do to make the numbers too great, and we would suggest that the dinners of the Legal and Literary Society and of the Bar should be held on separate occasions. We would further venture to suggest that on no account should extra orders for wine be permitted. If the amount of wine consumed had been confined to what was supplied by the committee there would have been far less of what the chairman euphemistically called "enthusiasm." It is hard to get any "forrarder" on claret, or even pale sherry; but champagne would appear to present too great attractions to some, whom we would like to sentence to a prolonged diet of toast-and-water. Lastly, we would add that it would be a result which we feel sure would be regretted by the vast majority of barristers and students if the occupants of the Bench should cease to join in these annual reunions.

A GENTLEMAN of the Pennsylvania Bar, in the course of a clever and entertaining speech at the dinner, made the somewhat curious statement that for ways that are dark, and tricks that are vain, the American Bar is peculiar. If we were stupid enough to take the joke seriously, we should say that we are sorry for it. We should not notice it, however, were it not that he went on to say, somewhat emphatically, that the American Bar and the Canadian Bar were brethren, implying a decided connection between the two remarks. Now the Bar in England, and we hope in Canada, has always been the profession of a gentleman. It would cease to be so if it was not characterized by the highest possible tone and most scrupulous sense of honour. These two qualities are not compatible with overmuch trickiness, and we sincerely hope that if we are indeed brethren to our American neighbours the link of affinity will be found to rest on something else than the darkness of our ways or the vanity of our tricks.

MR. MCLAREN'S speech at the dinner is deserving of notice. His earnest protest against the policy of decentralization, which is now so much in favour with some of our county brethren, is all the more valuable, coming as it does, from one who has had full experience of its baneful effects. As a member of the Lower Canada Bar, Mr. McLaren was able to contrast the relative merits of the two systems as displayed in Quebec and Ontario. In the former, decentralization has resulted, according to his testimony, in the most serious deterioration of both the Bench and the Bar of that Province, and yet it is to this goal that some of our brethren would lead us. The advantage of having the judges of the High Court scattered through the Province would consist in enabling country practitioners to argue their own cases. They would thereby save some money which is now paid to counsel at Toronto; but at what a lamentable cost to the country? Such a system, from the nature of things, would inevitably result in poor advocates and poor judges. Judicial and forensic ability is not acquired merely by reading. One of the most important factors for success, either on the Bench or at the Bar is experience, and experience can only be acquired by a constant and varied practice.

Able and experienced judges cannot, as a rule, be expected to be produced by a Bar whose average experience is merely that of a country practitioner—from the simple fact that the business of any one county is insufficient to afford that variety and quantity of work without which the necessary experience for making a good judge or a good advocate cannot be gained.

Even without decentralization the number of counsel who, on their merits, are entitled to stand in the front rank of the profession is exceedingly small. Out of the whole ten or twelve hundred barristers, not more than twenty, if indeed so many, can fairly be said to have attained eminence, and we may be sure that even this small number would disappear if the decentralization craze were carried out, as some desire, and the whole Bar would then sink to the level of a dismal mediocrity.

We trust that those who have favoured any such schemes will have the good sense and patriotism to have regard to what Mr. McLaren has said on the subject, and to refrain from urging their adoption, fraught as they are with such manifest danger to the best interests of the public. Self-interest, no doubt, is a very powerful motive to action; but the members of a liberal profession owe some regard both to the public interests and the honour and dignity of the profession to which they belong.

ELECTION LAW FOR LADIES.

IN a note to his forthcoming edition of the Dominion Franchise Act, Mr. Thomas Hodgins, Q.C., has given a summary of the cases which throw some light on the "rights of women" in respect to their holding of public offices and their right to vote.

Some of the cases lead to the inference that the judicial assertion of the legal incapacity of women voting at Parliamentary elections draws its inspiration from Lord Coke's observations on the right of the *Procuratores Cleri*, or spiritual assistants of Parliament, to represent the clergy, because the clergy were not parties to the election of knights, citizens and burgesses. Lord Coke says (4 Co. Ins. 4):—"In many cases multitudes are bound by Acts of Parliament which are not parties to the elections of knights, citizens and burgesses; as all they that have no freehold, or have freehold in ancient demesne, and *all women having freehold*, or no freehold, and men within the age of twenty-one years," etc. Sir William Bovill, C.J., in *Charlton* v. *Lings*, L. R. 4 C. P. 374, cites this reference with approval, thus:—"Lord Coke, in the 4th Institute, p. 5, treats it as clear law in the time of James I. that women were incapacitated from voting;" and after admitting that "possibly instances may be found, in early times, not only of women having voted, but also of their having assisted in the deliberations of the Legislature," he adds: "But these instances are of comparatively little weight as opposed to the uninterrupted usage to the contrary for centuries; and what has been commonly received, and acquiesced in, as the law, raises a strong presumption of what the law is."

Mr. Hodgins has with some industry and research, collected a number of references on the "Law of women's rights to hold office and vote," which he has appended as a note to the statutory definition of "Person" in his edition of the Franchise Act. And as spinsters and widows have lately obtained the right to vote, and have voted, in municipal elections, we need not be surprised should their long lost right to vote at parliamentary elections come back to them after many years. The note is as follows:—

(*c*) A woman is not a "person" within the meaning of the Act, and cannot appeal from the decision of the Revising Barrister: *Wilson* v. *Salford*, L. R. 4 C. P. 398. Women, being under legal incapacity, have no common law right to vote at Parliamentary elections, though possessing the requisite property qualification: *Charlton* v. *Lings*, *Ibid.* 374. "Persons disabled from voting at elections are those who, holding freehold lands and tenements, either lie under natural incapacities, and therefore cannot exercise a sound discretion, or are so much under the influence of others that they cannot have a will of their own in the choice of candidates: of the former are women, infants, idiots and lunatics; of the latter, persons receiving alms and revenue officers:" Heywood on Elections, 159. Women are disqualified at common law in Ireland: Hudson on Elections, 159; and also in Scotland "by a long and uninterrupted custom": *Brown* v. *Ingram*, 7 Sess. Ca. (3rd. ser.) 281. In the United States, a female who possessed all the qualifications entitling a person to vote, except that she was not a male, voted at an election for a member of Congress: *Held*, that she was rightly convicted for knowingly voting at such election without having a lawful right to vote: *United States* v. *Anthony*, 11 Blatch, 200. Though a woman has no common law right to vote at elections of members of Parliament, she appears to be capable of holding many public offices—such as Queen: "Queen regnant is she who holds the crown in her own right," 1 Bl. Com. 219; also Marshall, Great Chamberlain, and Champion of England, 2 T. R. 397; Constable of England, 3 Dyer, 285*b*. Anne, Countess of Pembroke, held the office of hereditary Sheriff of Westmoreland, and exercised it in person. At the Assizes of Appleby she sat with the Judges on the Bench: 2 T. R. 397, note (*a*). Lucy, Countess of Kent, was returning officer, and signed the indenture and return of the member for the County of York in 1412. And in 1415, Margaret, widow of Sir H. Vavaseur, also acted and signed a similar indenture. So Lady Elizabeth Copley made the return for the Borough of Gatton in 1553, and again in 1555. Dame Dorothy Packington

also acted as Returning Officer, and made the return of the two members for Aylesbury in 1572: Prynne's Brev. Parl. 152. And in 1628 the return of a member for Gatton was made by Mrs. Copley, *et omnes inhabitantes:* Heywood on Elections, 160. Before Lord Coke promulgated his opinion that "women having freehold" were not parties to elections, it was said to be the opinion of the judges that a *feme sole*, if she has a freehold, might vote for members of Parliament; *Catharine* v. *Surrey*, cited 7 Mod. 264. Women, when *sole*, had a power to vote for members of Parliament: *Coates* v. *Lisle*, 14 Jac. 1, cited *Ibid.* 265. A *feme sole* freeholder may claim a voice for Parliament-men; but, if married, her husband must vote for her; *Holt* v. *Lyle*, 4 Jac. 1, cited *Ibid.* 271. "The case of *Holt* v. *Lyle* is a very strong case:" *per* Probyn, J., in *Olive* v. *Ingram*, *Ibid*, 267. "Whether women have not anciently voted for members of Parliament, either by themselves or attorney, is a great doubt. I do not know upon enquiry but it might be found that they have:" *per* Lee, C.J., in *Ibid.* "Possibly other instances may be found in early times, not only of women having voted, but also of their having assisted in the deliberations of the Legislature:" *per* Bovill, C.J., in *Charlton* v. *Lings*, L. R. 4 C. P. 383. Votes given by women at a Parliamentary election in Canada, were not struck off on the mere *prima facie* evidence of the poll book: Halton (1844), Patrick's El. Cas. 59. Women, not having men at all, may be struck off the poll on a scruting of votes: 1 O'M. & H. 159. Widows and spinsters were burgesses of Lyme Regis in 1577: 2 Lud. 13. By the custom of the ancient Britons "women had prerogative in deliberative sessions touching either peace, government, or martial affairs:" 3 Selden's Works, 10, cited L. R. 4 C. P. 389. Coming to Saxon times we find it stated: "All *fiefs* were originally masculine, and women were excluded from the succession of them, because they cannot keep secrets:" West on Peers, 44, cited 7 Mod. 272. "A woman is excluded from military tenures and from councils *quia quæ audit reticere non potest:*" Wright's Tenures, 28. "A woman cannot be a pastor by the law of God. I say more, it is against the law of the realm:" *per* Hobart, C.J., Hob. R. 148. A woman may be a commissioner of sewers, which office is judicial: Callis, 250; and Clerk of the Crown in the King's Bench: 7 Mod. 270; governor of a workhouse: 2 Ld. Ray. 1014; sexton of a parish church in London: 2 Stra. 1114; keeper of the prison of the gatehouse of the dean and chapter of Westminster: 3 Salk. 2; governess of a workhouse at Chelmsford: 13 Vin. Abr. 159; custodian of a castle: Cro. Jac. 18, 13 Vin. Abr. 159 constable at the Sheriff's Court: 2 Hawk. P. C. c. 10, s. 36; which is an office of trust and likewise in a degree judicial: 2 T. R. 406; gaoler: 2 T. R. 397; overseer of the poor: *Ibid.* 395. Although it is uncouth in our law to have women Justices and commissioners and to sit in places of judicature, yet by the authorities this is a point worth insisting upon, both in human and divine learning; for in the first commission ever granted (Genesis i. 28), by virtue of the word *dominamini* in the plural, God coupled the woman in the commission with man: Callis (1685), 250. Women who were housekeepers, and paid church and poor rates, were entitled to vote for a sexton: 2 Stra. 1114. Women may vote for churchwardens: 23 Gr. 49. "It might be more reasonable that one or more churchwardens should be women than men; one-half the congregation are likely to be women, and a female overseer would be able to watch over their conduct, to counsel and advise them, better than men:" *per* Proudfoot, V.C., *Ibid.* In municipal elections, spinsters and widows who are rated for property are entitled to vote, but they lose that right on their marriage: *Reg.* v. *Harrald*, L. R. 7 Q. B. 361. Marriage is at common law a total disqualification, and a married woman could not, therefore, vote, her existence for such a purpose being entirely merged in that of her husband: *Ibid.* Nor can it be supposed that the statute which was passed *alio intuitu* has by a side wind given them political rights: *Ibid.* A *feme covert* can do no act to estop herself at law: *per* Lord Kenyon, C.J., 7 T. R. 539. *Contra* in equity: 1 Mac. & Gor. 599. "The policy of the law thought women unfit to judge of public things, and placed them on a footing with infants; by 7 & 8 Wm. III. c. 25, infants cannot vote—and women are perpetual infants:" *per* Strange, Sol.-Gen., 7 Mod. 272. Under our present political system, the legislative, executive and judicial functions of the government are carried on in the name of a woman: "Her Majesty, etc., enacts," or "commands," etc,; yet women, because of their sex, are said to be "disqualified by the common law" from having any voice or representation in the process of legislation or government.

RECENT ENGLISH DECISIONS.

The *Law Reports* for December comprise 15 Q. B. D. pp. 561-711: 10 P. D. pp. 137-199; 30 Chy. D. pp. 191-657; and 10 App. Cas. pp. 437-679.

Bail in criminal case—Deposit of money with bail as indemnity.

Taking up first the cases in the Queen's Bench Division the first to be noted is *Herman* v. *Jeuchner*, 15 Q. B. D. 561, a decision of the Court of Appeal overruling the judgment of Stephen, J., and the case of *Wilson* v. *Stringnell*, 7 Q. B. D. 548, on which he proceeded. The plaintiff, having been convicted of keeping a disorderly house, had been ordered to find sureties in £50 for his good behaviour for two years. He applied to the defendant to become surety for him, but the defendant refused to do so unless the amount for which he was to become surety should be deposited with him for two years. The plaintiff accordingly deposited with the defendant £49, and the defendant became surety. Before the expiration of the two years the plaintiff brought the present action to recover the money. Stephen, J., at the trial gave judgment in his favour, but the Court of Appeal held the transaction illegal, and that no action would lie before or after the specified period, although the plaintiff had not committed any default, and although the surety had not been called on to pay the amount for which he had become bound. Brett, M.R., speaking of the effect of the contract, says:—

To my mind it is illegal, because it takes away the protection which the law affords for securing the good behaviour of the plaintiff. When a man is ordered to find bail, and a surety becomes responsible for him, the surety is bound at his peril to see that his principal obeys the order of the Court; at least this is the rule in the criminal law, but if money to the amount for which the surety is bound is deposited with him as an indemnity against any loss which he may sustain by reason of his principal's conduct, the surety has no interest in taking care that the condition of the recognizance is performed. Therefore, the contract between the plaintiff and defendant is tainted with illegality.

In *Langlois* v. *Baby*, 11 Gr. 1, it was held equally illegal to indemnify bail in a civil case, and see *Emes* v. *Barber*, 15 Gr. 679, and *Mendell* v. *Tinkiss*, 6 O. R. 625.

Arbitration—Torts—Death of party before award.

In *Bowker* v. *Evans*, 15 Q. B. D. 565, we have another decision of the Court of Appeal affirming the judgment of a Divisional Court. The case is an illustration of the maxim "*actio personâlis moritur cum persona.*" The parties to an action of tort agreed, before trial, to an order referring the matter in dispute to an arbitrator. The order provided that the arbitrator should publish his award, "ready to be delivered to the parties in difference, or such of them as required the same (or their respective personal representatives, if either of the said parties die before the making of the award)." After the hearing of the evidence, but before the award was made, the plaintiff died. The arbitrator afterwards published his award; the plaintiff's executors proved his will and took up the award, and, having applied to be substituted as plaintiffs in place of their testator, Field, J., granted the order, which was subsequently set aside on appeal to a Divisional Court, which latter decision the Court of Appeal now affirm. Brett, M.R., says at p. 568:—

The stipulation as to the delivery of the award to the respective personal representatives of the parties, if either of them dies before the making of it, being a matter of mere procedure, it has become absolutely futile, and has no meaning and no sense, and must be struck out of the order of reference; that is, the order of reference must be read as if the stipulation were omitted, the action being in tort. The stipulation has been introduced inadvertently, and we must decide the appeal on the footing that the cause of action was gone on the death of the plaintiff, that the jurisdiction of the arbitrator then determined, that there was nothing for him to decide, and that his award cannot be enforced.

Composition arrangement—Secret bargain to give creditor a bonus in addition to composition.

Re Milner, 15 Q. B. D. 605, although a bankruptcy case, is one re-affirming an important principle of law, applicable to all composition arrangements between a debtor and his creditors. The Court of Appeal lays down the rule that any secret understanding or bargain with any creditor signing a composition deed that

he is to get more than the composition payable under the deed, whether the additional sum is to be paid by the debtor, or by some third person with the debtor's privity, invalidates the deed as to all other creditors, whether they have signed it before or after the making of the secret bargain. This principle of law is very clearly stated by the Master of the Rolls thus:—

Equality among the creditors is an implied condition of such an arrangement, and if the arrangement is carried into effect by a deed this becomes an implied condition of the deed, and if this condition is not carried out, any creditor who has executed the deed is no longer bound by it, even if the breach of the condition takes place after his execution. Then the case of *Knight* v. *Hunt*, 5 Bing. 432, carries the principle still further, for it decides that it is immaterial whether the bribery is to be carried out at the expense of the debtor or not; if one of the creditors derives an advantage from some other person than the debtor, still he has broken faith with the other creditors, and they are entitled to say that they are not bound by the deed. I should hesitate to say that this would be so, if the preferential payment was made without he knowledge of the debtor.

Contract—Carriers of goods—Privity of Contract.

The question involved in *The Great Western Railway Co.* v. *Bagge*, 15 Q. B. D. 625, appears to have been a simple one. The defendants had delivered some goods to the plaintiffs to be returned to the owner; the consignment note stated that the freight was to be paid by the consignees, and that the defendants requested the plaintiffs to receive and forward the goods as per address and particulars on the note, and on the conditions stated therein. The plaintiffs delivered the goods to the consignees who refused to pay the freight, on the ground that the defendants had agreed to pay it. The action was brought to recover the freight from the defendants. A County Court judge held that there was no contract by the defendants to pay the freight, but a Divisional Court, composed of Coleridge, C. J., and Mathew, J., reversed this decision and gave judgment in favour of the plaintiffs. Coleridge, C. J., thus construes the contract between the parties:—

The consignors say, we wish to forward these goods to the consignee, who, between us and him, has agreed to pay; forward them for us, and if you do that work for us, if the consignee does not pay, there is the resulting contract that we will pay; because we have handed the goods to you, you have taken them for us and have performed the work which you undertook with us you were to perform.

Easement—Prescription—2 & 3 W. IV., c. 71, s. 8—(R. S. O. c. 108, s. 41.)

Symons v. *Leaker*, 15 Q. B. D. 629, we have already noticed, *ante* p. 385, when referring to the earlier report of the case which appeared in the *Law Times* Reports. It is only necessary here to say that the case decides that a remainderman is not a "reversioner" within R. S. O. c. 108, s. 41, and consequently has not the additional time for resisting a claim to an easement by prescription which that section reserves to "a person entitled to a reversion expectant on the determination" of a term.

Costs—Order on solicitor personally to pay costs—Appeal.

The case of *Re Bradford*, 15 Q. B. D. 635, is a somewhat ancient one, having been decided in 1883, and of which a report appeared long since in 50 L. T. N. S. 170, and in which the Court of Appeal held, reversing the judgment of a Divisional Court, that when an order is made on a solicitor to pay costs personally, an appeal from the order lies to a Divisional Court without leave, on the ground that the Court has no power to order a solicitor to pay costs personally, unless he has been guilty of some misconduct or negligence, and therefore an appeal in such a case is not an appeal "as to costs only which by law are left to the discretion of the Court." See Ont. Jud. Act, s. 32.

Married woman—Action for tort—Limitations.

The only remaining case to be noticed in the Queen's Bench Division is *Lowe* v. *Fox*, 15 Q. B. D. 667, in which the Court of Appeal held that a married woman may, since the Married Woman's Property Act, 1882 (47 Vict. ch. 9 O.), maintain an action for an assault and false imprisonment committed before the coming into operation of that Act, even though the course of action occurred more than four years before the suit, provided the action be brought within four years after the Act came into force, as thereby she became "discovert" within the meaning of 21 Jac. I. c. 16, s. 7.

Evidence—Admission by master of ship.

Turning now to the cases in the Probate Division we find only two necessary to be noticed here. The first is *The Solway*, 10 P. D. 137, in which the short point is how far a letter of a master of a ship to her owners was evidence against the owners; and it was held by the President, Sir Jas. Hannen, that the letter was evidence against the owners in regard to the facts stated therein, but that the opinion of the master expressed in such a letter is not evidence.

Separation deed—Agreement not to sue for restitution of conjugal rights—Public policy.

The other case in the Probate Division which we think it useful to note is *Clark* v. *Clark*, 10 P. D. 188. It may be remembered that at one time it was considered that the living of husband and wife apart is against the policy of the law, and therefore that the Court should neither sanction nor enforce agreements of that kind. An instance of this may be found in our own Courts in the case of *Gracey* v. *Gracey*, 17 Gr. 114, where Spragge, C., refused to make a decree for alimony upon the consent of the parties, considering that it was incumbent on the wife to make out a case on the merits for the intervention of the Court. This view of the law was, however, considered by Strong, V.C., to be contrary to the current of the later English decisions, and in *Henderson* v. *Buskin*, which came before him in 1873, he declined to adopt the rule laid down in *Gracey* v. *Gracey*. The case of *Clark* v. *Clark* confirms the opinion of Strong, V.C. The question in that case was as to the validity of an agreement entered into by a wife for valuable consideration, and without fraud or duress, that she would not take proceedings to compel her husband to return to cohabitation; and the Court of Appeal held that it was a valid agreement and a bar to proceedings for restitution of conjugal rights. The case is also noteworthy from the fact that the Court held that the recital of the agreement to live separate, being contained in a deed to which the wife was a party, was evidence of a contract by her to allow her husband to live separate from her, and that after accepting the benefits under the deed, she could not be heard to say that she had not contracted, because the covenant not to sue was entered into only by the trustees and not by her. The following opinion of Sir James Hannen in *Marshall* v. *Marshall*, 5 P. D. 19, was quoted by Baggallay, L.J., with approval:—

> There has been considerable fluctuation of opinion as to the extent to which voluntary engagements of married persons to live separate should be recognized by the Courts of law. But since the decision of the House of Lords in *Wilson* v. *Wilson*, 1 H. L. C. 538, it can no longer be contended that there is anything illegal or contrary to public policy in an agreement between married persons that no suit for restitution of conjugal rights shall be instituted by either of them. For my own part I must say that the opinion I have formed after several years' experience in the administration of the law in this Court is that it is in the highest degree desirable, for the preservation of the peace and reputation of families, that such agreements should be encouraged, rather than that the parties should be forced to expose their matrimonial differences in a Court of justice.

We may also observe that upon the argument of the appeal the junior counsel for the respondent disputed the authority of *Marshall* v. *Marshall*, which his leader did not desire to impugn, and the Court, though thinking it inconvenient, nevertheless, entertained the junior's argument on this point. See *ante*, Vol. XIX., p. 358.

Assignment of debt—Marshalling—Lien.

We turn now to the cases in the Chancery Division. *Webb* v. *Smith*, 30 Chy. D. 192, is described by Lindley, L.J., as an "experiment." It was an attempt to invoke the doctrine of marshalling under the following circumstances. The defendants were auctioneers and had two funds in their hands belonging to a man named Canning; one of these funds consisted of the proceeds of some furniture, and the other was part of the proceeds of the sale of a brewery, on which latter fund the defendants had a lien for their charges in connection with the sale. Canning, being indebted to the plaintiff, gave him a letter charging the proceeds of the sale of the brewery with the payment of his debt; this letter was sent to the defendants who acknowledged its receipt, and afterwards paid Canning the proceeds of the furniture, and applied the balance of the proceeds of the brewery to the payment of their charges. The plaintiff contended that the defendants should have marshalled the funds in their

favour, and have deducted their charges for the sale of the brewery from the proceeds of the sale of the furniture; but the Court of Appeal (reversing Bacon, V.C.,) held that the doctrine of marshalling had no application to such a case from the fact that the defendants had not a lien on both funds for their charges for the sale of the brewery, but only on the fund realized by that sale, and as to the other fund they had at most a right of retainer or set-off; and, further, that the doctrine of marshalling applies only when the funds in question are under the control of the Court. But Lindley, L.J., said that he did not think the defendants could have deprived the plaintiff of the benefit of his charge if there had been two funds to which they might have resorted under equal circumstances.

WILL—OPTION TO PURCHASE.

In re Cousins, Alexander v. *Cross*, 30 Chy. D. 203, the question was whether a right of purchase given by a will could be exercised by the executors of the person to whom the option was given. Bacon, V.C., held that it could; but the Court of Appeal reversed this decision, and held that it was a personal right which did not pass to the executors. The occasion of the contention is thus summarized by the Master of the Rolls. He says:—

Now, how is it the dispute has arisen? It has arisen by an accident. Cardiff is a wonderful place, as everybody who has been there knows; and Cardiff, for some reason or other, either by reason of the extension of the docks and other works, or by the careful superintendence and personal interest of its great proprietor, Lord Bute, has jumped up into a town double or treble the size that it was; not according to its natural growth, but according to a sudden artificial increase; and therefore this hotel, which was probably worth £10,000, has jumped up to a largely increased value, and immediately there is a law suit, and with the admirable ingenuity of lawyers of every description they try to make out of a man's will what he did not say, and what he never thought of.

How far this can be said to be complimentary to the profession we are not prepared to say.

WILL—MORTGAGE OF TURNPIKE TOLLS AND TOLL-HOUSES, NOT REAL SECURITY.

In the case of *Cavendish* v. *Cavendish*, 30 Chy. D. 227, the Court of Appeal reversed the decision of North, J., 24 Chy. D. 685, upon the construction of a will whereby the testator had made a specific bequest of all moneys, stocks, funds, shares and other securities, "except mortgages on real and leasehold security," the point in controversy being whether or not mortgages of turnpike road tolls and toll-houses were within the exception. North, J., held that they were; but the Court of Appeal decided that they were not, the latter Court being guided to this decision by a reference to other parts of the will in which the testator disposed of mortgages on freehold and copyhold hereditaments, and also by the fact that turnpike securities are not ordinarily called "mortgages."

Brett, M.R., thus laid down the canon of construction to be adopted:—

Unless I am dealing with questions as to real property, and unless the words are conveyancers' language which has been received and adopted in a certain sense for years, I am for construing every will by itself according to the ordinary meaning of ordinary people using the English language. . . I think that the person who drew this will did not go into the refinement of considering whether, in point of law, money lent on turnpike tolls was money lent on real property or not. He was not dealing with matters of that kind. Any person would call the piece of parchment upon which the mortgage was drawn up a security for money; he would not call it a mortgage on real or leasehold property

WILL—CONSTRUCTION—LAPSE BY DEATH OF LEGATEE

The following case of *In re Roberts, Tarleton* v. *Bruton*, 30 Chy. D. 234, is another decision of the Court of Appeal upon the construction of a will. The testator bequeathed the residue of his estate to trustees upon trust for a nephew and three nieces equally, and in case any or either of them should die under twenty-one he directed that the share or shares of the parties so dying, whether original or accruing, should go to the other or others of them; but he provided that the trustees should retain the shares of the nieces upon trust for the niece for life for her separate use, and after her decease as to the capital upon trust as she should appoint, and in default of appointment for her issue who should attain twenty-one, or marry, and in default of such issue for her next of kin. One of the nieces married and predeceased the testator, leaving a child who

survived him, and the question was whether one-fourth share of the residue had lapsed, or whether the child of the deceased niece was entitled to it contingently on her attaining twenty-one, or marrying. Mr. Justice Pearson held that the share lapsed, and the Court of Appeal affirmed his decision.

AMENDING ORDER—ORDER PASSED AND ENTERED.

The Court of Appeal, *Re Swire*, *Mellor* v. *Swire*, 30 Chy. D. 239, held that though it is the proper practice to move to vary the minutes of an order which has been improperly settled by the registrar; yet that when that course has been omitted, the Court may, on motion, amend the order if it does not in fact conform to the judgment of the Court pronouncing it, even after it has been passed and entered, without putting the party to an appeal; but the costs of the application under such circumstances were ordered to be borne by the applicant.

AUTHORITY OF SOLICITOR TO RECEIVE MONEY—POSSESSION BY SOLICITOR OF TRANSFER DEED EXECUTED BY CLIENT.

The case of *Gordon* v. *James*, 30 Chy. D. 249, arose out of the fraud of a firm of solicitors, one of whom bore the appropriate name of "Dodge," and was a contest between two innocent parties as to who should bear the loss occasioned by the fraud. The plaintiffs were mortgagees for £1,000, and their solicitors, who had the title deeds in their custody, without the plaintiff's authority applied to the defendant in 1878 to buy the mortgage. The defendant bought the mortgage, and gave the solicitors £1,000. The solicitors afterwards procured from the plaintiffs a transfer of the mortgage to the defendant, with a receipt for the purchase money endorsed, representing that it was a reconveyance of the property to the mortgagor on his paying off the mortgage. This deed was shortly afterwards handed to the defendant, and the solicitors henceforth paid him interest as if they had received it from the mortgagor, whereas the latter was paying it to the agents of the plaintiffs who made no enquiry about the mortgage, and this went on until 1883 when the solicitors became bankrupt, and the £1,000 paid by the defendant, which was never handed over to the plaintiffs, was lost. The present action was brought by the plaintiffs claiming a vendors' lien. The Vice-Chancellor of the County Palatine dismissed the action, and the Court of Appeal affirmed his judgment on the ground that the plaintiffs, by handing the deed of transfer and receipt to the solicitors, had enabled them to represent to the defendant that the £1,000 previously paid by him had been handed to the plaintiffs, and that this raised a counter-equity in favour of the defendant which prevented the plaintiffs succeeding. But the Court said the case would have been different if the £1,000 had been paid to the solicitors at the time the deed of transfer was handed over by them, in which case, assuming the solicitors had no authority to receive it, the defendant would not have been protected. The point of the decision is neatly stated by Cotton, L. J.:—

> The plaintiffs, though dealing innocently, have, by negligence, put into the hands of their agent the means of representing that that money had in fact come to their hands, cannot now insist on their vendors' lien, which is inconsistent with the representation then made by their agent, and which they, by their own act, enabled him to make.

That the plaintiffs were trustees it is almost needless to state.

REAL PROPERTY LIMITATION ACT, 37 & 38 VICT. c. 57 s. 8 (R. S. O. c. 108, s. 23)—BOND BY SURETIES FOR PAYMENT OF MORTGAGE.

Two points were determined in *In re Powers*, *Lindsell* v. *Phillips*, 30 Chy. D. 291, by the Court of Appeal—one a point of practice, and the other a point of law. The plaintiff applied on what is called an originating summons (which is a proceeding equivalent to an application by motion in Chambers under our practice) for the administration of the estate of a deceased person. There was no dispute as to the facts, but there was a dispute as to whether, upon the undisputed facts, the plaintiff's claim was barred by the Statute of Limitations. Bacon, V.C., before whom the originating summons was returnable, refused to determine the point and dismissed the summons, on the ground that when the plaintiff's debt is disputed the question ought not to be determined on summons. In this the Court of Appeal considered he was wrong, and that under the circumstances he should have decided the question of law and not have put the parties to bring an action. As to the merits, the case turned upon the question, whether a bond given in 1867 by the deceased to the

plaintiffs, as collateral security for part of a mortgage debt due to the plaintiffs by third parties, was barred by the Statute of Limitations (*See* R. S. O. c. 108, s. 23), the condition being that if the mortgagor paid the debt the bond should be void. The mortgagor had paid the interest up to December, 1877, after which it fell in arrear, and in 1880 the mortgagees went into possession. The obligor died in 1883 without having made any payment or given any acknowledgment. The Court of Appeal had no difficulty in deciding that the debt on the bond was not barred, and they placed their judgment both on the ground that although the principal debt was secured upon land, yet the debt on the bond was not so secured, and therefore the Real Property Limitation Act had no application, and in this respect they held that the case differed from the case of a covenant or collateral bond given by the mortgagor himself, as in *Sutton* v. *Sutton*, 22 Chy. D. 511, and *Fearnside* v. *Flint*, *Ib.* 579; and also on the ground that, even supposing that the statute did apply to bonds given by third parties, yet in this case the statute had not run because the mortgage was alive and the mortgagor still liable thereon, and that the part payments by the mortgagor had prevented the statute from running on the bond.

INFANT—BRITISH SUBJECT LIVING ABROAD—APPOINTMENT OF GUARDIAN BY ENGLISH COURT.

In re Willoughby, 30 Chy. D. 324, the Court of Appeal affirmed the order of Kay, J., appointing a guardian to an infant British subject resident abroad, and who had no property within the jurisdiction. The infant's mothe was a Frenchwoman, and entitled by the law of France—where the infant resided—to the status of natural guardian of the infant; but she was not a person who would have been appointed guardian had she and the infant been domiciled in England, and she had brought proceedings in the French Courts for the appointment of guardians, which proceedings had been directed to stand over until it should be ascertained what course the English Courts would adopt. Under these circumstances it was considered proper to make the order, and although it was admitted by Cotton, L.J., that it is only under extraordinary circumstances that the Court would make an order where the infant is not within the jurisdiction, has no property within the jurisdiction, and where the persons who have the custody of the infant are also out of the jurisdiction, yet he had no doubt of the jurisdiction of the Court to appoint a guardian to an infant British subject, under the circumstances existing in this case.

MORTGAGEES IN POSSESSION—ACCOUNT OF RENTS AND PROFITS.

Noyes v. *Pollock*, 30 Chy. D. 336, settles a question of practice in mortgage actions. The action was for redemption, and the usual accounts were directed to be taken against the defendants as mortgagees in possession. One Blood (who had since died) had acted as agent for the defendants in receiving the rents, and in their accounts the defendants merely credited the lump sums received by them from Blood, without showing what Blood himself had received from the tenants. On a motion for a better account Pearson, J., had held the account sufficient, and that the plaintiffs' proper course was to surcharge; but the Court of Appeal held that the defendants were bound to render an account showing what Blood had received, and that the death of Blood did not absolve them from this liability; and, moreover, that it was a question not of technicality but of substance, because the receipts of Blood were in fact as between the plaintiffs and defendants the receipts of the defendants, and without the knowledge derived from such an account the plaintiffs could not properly frame their surcharge.

EQUITABLE DEMAND—SUBJECT-MATTER UNDER £10.

In *Westbury* v. *Meredith*, 30 Chy. D. 387, the Court of Appeal held (affirming Kay, J.,) that when a claim to equitable relief is made, and the subject-matter of the action is below £10 in value, the High Court has no jurisdiction to entertain the claim. This case shows therefore that *Gilbert* v. *Braithwait*, 3 Chy. Ch. R. 413; *Westbrooke* v. *Browett*, 17 Gr. 339; and *Reynolds* v. *Coppin*, 19 Gr. 627, are still good law.

REPORTS.

ONTARIO.

DIVISION COURT—COUNTY OF NORFOLK.

McCULLY ET AL., Primary Creditors, v. ROSS ET AL., Primary Debtors, ROWLEY, Garnishee.

Mechanics' lien—Garnishment—Priority.

Ross & Co. contracted to build, for a fixed amount, a kitchen for R., and purchased materials for the work from L., and sublet the contract to other mechanics. He absconded without paying L. or the sub-contractors, before the contract was completed. R. took possession and adopted the work, such as it was, and admitted a debt due to R. & Co., which was garnished by McC. and P., under two D. C. attachments.

After the service of the garnishee summons, but within thirty days after furnishing the last of the material, L. and some of the workmen who did the work on the building filed their liens and took proceedings under R. S. O. cap. 120, and intervened in the garnishee suit, claiming to be entitled under their liens to the money in R.'s hands, and that the proceedings under that act gave them preference over the attachment.

Held, that the garnishee proceedings bound the debt as against the lien holders, and that the garnishors must be paid first out of the fund in the hands of R.

[Hughes, J.—St. Thomas, Dec. 12, 1885.

This was a case in which a question arose under the garnishee clauses of the Division Courts Act, and the Mechanics' Lien Act, as to priority on the part of two garnishors, and as to preference on the part of certain claimants, who had supplied materials and labour to the primary debtors, who were contractors for the building of a kitchen as an addition to the house of the garnishee.

The facts of the case appear above and in the judgment of

HUGHES, Co. J.—An admitted balance is due by the garnishee to the primary debtors, the contractors, and he stands ready to pay $79 as that balance. The balance he has not paid into Court, but holds it in his hands ready to pay over, on the decision and order of the Court being given, so that the contention forms an interesting interpleader between the garnishors and the claimants, under the provisions of the 144th section of the Division Courts Act.

It is unlike the case of *Lang* v. *Gibson*, 21 C. L. J., 74, cited in the argument, for reasons which will hereinafter appear.

Whatever may be the provisions of other statutes respecting the effect of garnishee proceedings, the clauses of the Division Courts Act for the attachment of debts are so clearly defined, and to my mind, so unqualified, that I have in view of decisions delivered in garnishee proceedings in England, and decisions under the Statute of Frauds, to which I shall allude further on, no hesitation in saying that they fortify the opinion I gave at the trial of these cases, as to the respective rights of the garnishors and of the claimants to the balance in the hands of the garnishee.

I am not prepared to say what my decision would be, nor is it necessary for me to either draw or not to draw a distinction between these claimants and the primary debtors supposing the question arose in another form, as was the case in *Lang* v. *Gibson*. It is enough for me to consider this case upon its merits, and to decide it as the law applies to these parties circumstanced as they are. The case is not, as has been suggested, on all fours with *Lang* v. *Gibson*.

It is well understood that, whatever may be the right of a contractor, sub-contractors, labourers and material men, have to stand upon the contract between the owner and the contractor; and the owner is not obliged to pay any greater or other sum or amount than the price stipulated or agreed to be paid by the contract—their remedy is confined to money due to the principal contractor for the work which he agreed to do, but which the sub-contractor or mechanic has actually performed or for the materials which the contractor was to have furnished, but which the material-man supplied. It does not extend to money payable to the contractor on any other account; and for the labour so performed, and the materials so supplied, a lien may be acquired to the extent of the contract price. To that amount the lien is limited, and to the extent of any balance due by the owner to his contractors under the contract with him, they may recover and have the right to lien, but only on such balance; so that primarily, under our statutes, the extent to which the law has secured these claims has been to give to the contractor a lien upon the premises for the entire work and materials expended by him, and to the sub-contractors, and labourers, and material-men, a lien to the extent that there may be funds in the hands of the owner and due to the contractor (see Philips on Mechanics' Liens, sec. 211, etc.,) and no more.

It is urged for these claimants that their's are privileged claims—rights of priority over these garnishors, who are prior in point of time. This contention must have the direct sanction of statutory law, or none such exists; for there is no sanction under the common law for the contention of either of the parties in the question before me.

Do we find in any of the statutes affecting the rights of these parties a provision that the liens or

preferences which they respectively cla.. s..all supersede every other lien or encumbrance to the time when the work was commenced o. materials furnished? I find none such, which will have the effect of giving preference over a garnishment served on the owner against the contractor, after the work was commenced, but before the filing and serving notice of lien.

It is laid down in Philips on Mechanics' Liens, sec. 249:—"If an act provides 'that the liens shall be preferred to every other lien or encumbrance which shall have attached upon the property, subsequent to the time when the work was commenced or materials furnished,' the lien of a sub-contractor takes precedence over a garnishment served on the owner against the head contractor, after the work was commenced, but before the filing and serving notice of lien. The lien of a mechanic does not, however, prevent an attachment as between creditors. The mechanic alone can assert his lien to defeat the attachment, and the amount of his lien being subsequently paid the surplus is bound by the attachment." This is all predicated on the hypothesis that the act creating mechanics' liens contains a provision such as neither of our Provincial Acts contemplates or furnishes. I find this point very much pressed and dwelt upon in argument in this case, that an attaching creditor can acquire no higher or better rights to the property or assets attached than the primary debtor had when the attachment took place, and that garnishment is a purely statutory proceeding, and cannot be pushed in its operation beyond the statutory authority under which it is resorted to. I fully assent to these propositions; but I find it clearly laid down on the other hand, to which I also assent, that "there is no distinction to be observed in the construction of statutes creating these liens and other expressions of legislative will" (see Philips on Mechanics' Liens, sec. 14), and again, "as acts in relation to mechanics' liens establish a system out of the course of the common law, when points arise evidently not foreseen by the legislature, and upon which the statutes have not spoken, the grounds of decision to be resorted to must be the general scope and spirit of the enactment. The analogy of cases, which have already been settled, and such considerations of policy as may be supposed to have had their influence on the minds of the lawmakers, and to aim at such results as will most effectually promote the interest and security of those classes of men whom the system was designed to favour." . . . So where an injustice would result from the construction of an act it should not be adopted without the most explicit language. This is a conflict of creditors arising from the preference afforded to two different classes of creditors under two several Acts of Parliament. Each seeks his own advantage to the exclusion of the others, and is a case not reached by the Creditors Relief Act, under which the policy of the legislature seems to favour a rateable division of the assets of a debtor amongst all his creditors, without priority or preference in certain cases. And with this conflict each of the two Acts of Parliament is set up as favouring the side of the contestants who have acted under the provisions of either.

Under the garnishee clauses of the Division Courts Act there is no provision for any other course than that of the exclusive benefit of the attaching creditor, to the extent of the debt claimed and the amount attached. Under the Mechanics' Lien Act there is no provision for creditors generally, but only for certain specified classes of creditors to the exclusion of such as have taken proceedings here under the garnishment clauses of the Division Courts Act.

In this case I find the 124th, 133rd, 137th and 138th sections of the Division Courts Act are quite as clear, absolute and positive as are those of the Mechanics' Lien Act, for the service of the summons in a garnishee proceeding has the effect not only of "attaching" (which means, in law, *taking*, *seizing*, or *distraining*) but also of "binding" in the hands of the garnishee ("subject to the rights of other parties" to whom I shall refer presently) the debt sought to be garnished from the time of such service until a final decision, made on the hearing of the summons; and any payment of such debt by the garnishee, during such period to any one other than the primary creditor or into Court, for satisfying his claim is declared, to the extent of such claim, to be void, etc., unless the judge otherwise orders. Thus we see that the debt is, as it were, tied up for the satisfaction of the claim of the garnishor, and kept under seizure until and unless the judge otherwise orders.

The subjecting the debt so garnished to the rights of other parties does not mean those creditors who are pursuing their remedies under other statutes, because the law does not favour a creditor adopting a multiplicity of remedies at the same time. If he chooses his remedy and his forum he is expected to confine himself to these, and not to indulge in every weapon within his reach. Section 142 provides a remedy for the rights of other parties who may be interested in the subject attached, although there may be judgment against the garnishee, or even if the money has been paid over by him, and then the parties may "be remitted to their original rights in respect thereto." This,

I apprehend, may be held to apply to lien holders whose liens attach to the debt before the service of the process or to persons who hold a claim prior, in point of time, by assignment, but not to those who take proceedings subsequent to the garnishee proceedings and who seek for a lien, not upon the debt due by the garnishee, but upon his real property to the extent of all that he justly owes the primary debtor. The creditors who (like the claimants in this case) have taken proceedings under the Mechanics' Lien Act cannot "be remitted to their original rights" in respect of the debt attached, simply because that when these proceedings were taken they had no "rights" beyond that of being creditors, with the right to sue or take any remedy they chose. And it cannot be reasonably contended now that because they have taken their proceedings under the Mechanics' Lien Act that they can get in and frustrate or make ineffective prior proceedings which the garnishors have legally taken and are legitimately pursuing under another Act of Parliament. In my opinion neither the words in the parenthesis of the 137th section nor those of the 142nd section of the Division Courts Act apply to them.

It will thus be plainly seen that I do not agree in the opinion of His Honor Judge McDougall, as expressed in the case of *Lang* v. *Gibson*, 21 C. L. J., 74, nor do I see the application of the cases cited in his judgment, for reasons which I shall give further on.

In *Ex parte Joselyne*, 8 Ch. D., 327, it was held that the moment the order of attachment was served upon the garnishee, the property in the debt due from him was absolutely transferred from the judgment debtor to the judgment creditor; that the garnishee could then only pay his debt to the judgment creditor of his original debtor; that the property in the debt was transferred, and there was a complete and perfect security the moment the order for attachment was served. The judgment in this case overruled several previous decisions on this point.

I regard the Mechanics' Lien Act as affording a lien to the persons described therein, in respect of the subject of such lien, so as to make a charge upon the land to the extent of an unpaid account or demand against the lien holder for such materials or labour "upon any amount payable by the owner of the land under the lien, but not upon what the law may compel him to pay to some other attaching creditor.

The charge created is *upon the money payable by the "owner"* to the person entitled to the lien, and not upon the land, and the person entitled to the charge must first prove his right as against all other rightful claimants and the right may be enforced by suit in default of payment by the owner of what he may justly owe the primary debtor. It is, in other words, another kind of attachment, and for enforcing payment by holding the land as security.

My view is strengthened by a reference to the broad provision of the 124th sec. of the Division Courts Act, which is introductory to the clauses relating to garnishee proceedings, for it says: "When any debt or money demand . . . is due and owing by any party to any other party . . . and any debt is due, or owing to the debtor from any other party; the party to whom such first mentioned debt is due and owing . . . may *attach* and *recover* in the manner herein provided any debt due or owing to his debtor from any other party . . . or sufficient thereof, to satisfy the claim of the primary creditor—subject to the rights of other parties to the debts owing from such garnishee." I do not see what could be broader or plainer in its language, or how a provision of law could be more absolute in its terms than this. A creditor may "attach and recover," and the debt is to be *attached* and *bound* until he recovers judgment, in order to satisfy, and to the extent unsatisfied on his judgment; and any payment by a garnishee into Court, or to the primary creditor, of the debts attached is declared to be a discharge to the extent of the debt owing from the garnishee to the primary debtor.

It was suggested on the argument that had the garnishee paid the money claimed here into Court, it would have been a bar to further proceedings; but that inasmuch as he did not pay it into Court, the remedy of the primary creditors has gone, and the subsequent proceedings under the Mechanics' Lien Act by other creditors cut out the claim of the primary creditors, and give it to the lien holders under the Mechanics' Lien Act; but that argument amounts to a mere play upon words—as if the provisions of a statute were to be subjected to defeat by those who seek to snatch an advantage to the prejudice of those who fairly and squarely bring themselves within its provisions. A payment of the money into Court may be made under the statute by a garnishee doing it at once after the attaching process is served, or upon the order of the Court after judgment is rendered, and the doing of that is declared by the statute to operate as, and to have the effect of, a discharge at law, to the extent of the debt owing, and the amount paid in; and once discharged the law is not so contradictory as to change it in favour of any one else: much less to *revive* it for the benefit of another creditor.

Had a provision such as is found in the Creditors'

Relief Act, sec. 21, sub secs. 3, 4, 5 and 6 (see Ontario Stat. of 1885, chap 15,) been embodied in the Mechanics' Lien Act, of course the case would have been different; but regarding, as I do, the garnishee clauses of the Division Court Act as for the benefit of an, creditor who avails himself of its provisions, and the Mechanics' Lien Act as one which exists for a particular class of creditors, to the exclusion of all others, I must hold that each class or set of creditors is entitled in the fullest extent to the advantage of remedies afforded by the several statutes whilst they exist. Whilst the legislature leaves the statute law of the Province giving these preferences and advantages, there is no injustice in according and applying the remedies which creditors pursue in order to get their just dues.

The words employed in the C. L. P. Act with regard to the effect of an attaching order are (see section 308) "service upon him" (the garnishee) of an order that debts due to the judgment debtor shall be attached, and shall "bind" such debts in his hands. The word "bind" here, as explained in note (n) to Harrison's C. L. P. Act, has received the same construction as the same word used in the Statute of Frauds, 29 Car. II., cap 3. As under the Statute of Frauds the goods are bound in the hands of the sheriff, so under this section the debt is bound in the hands of the garnishee: *Holmes* v. *Tutton*, 5 E. & B. 80; *Turner* v. *Jones*, 1 H. & N. 878; *Tilbury* v. *Brown*, 30 L. J. Q. B. 46; *Sweatman* v. *Lemon*, 13 U. C. C. P. 534; *Tate* v. *The Corporation of Toronto*, 10 U. C. L. J. 66, 3 Prac. Rep. 181.

Under these authorities the word "bind" has been interpreted to mean "that the debtor or those claiming under him shall not have power to convey or do any act as against the right of the party in whose favour the debt is bound, and as not giving any property in the debt in the nature of a mortgage or lien but a mere right to have the security enforced." I regard the case, *Ex parte Greenway, in re Adams*, L. R. 16 Eq. Ca. 619, like others of the previous decisions, as overruled by the more recent case of *Ex parte Joselyne*, to which I have before referred. Had it not been overruled I should have looked upon it as only one of construction under the peculiar provisions of the English Bankruptcy Act, 1869, and unlike the present case the debt was not seized under the process of the Tolzey County Court, under the English County Court Attachment Act, until several months after the property of the judgment debtor had vested in a trustee under the Bankruptcy Act, and I cannot see how it could be held to apply to the circumstances or the law of the cases before me.

Ex parte Pillers, L. R. 17 Chan. Div., was in like manner a case of construction under the same Bankruptcy Act, 1869; and as to whether or not the title of a trustee under the act related back so as to defeat the attachment under the garnishee clauses of the English County Court Act, and whether or not by virtue of the adjudication of bankruptcy, and the relation back of the trustees' title, all the property which the bankrupt had at the time he committed the act of bankruptcy was vested in the trustee, and became divisible among the creditors generally. It was adjudged that the debt had ceased to be due to the bankrupt, who was the primary debtor, and had became due to the trustee and, therefore, that the garnishee process could not bind the debt.

There is but little analogy between the attaching of the property of an absconding debtor, and the garnishment of debts, because the respective statutory provisions under which the proceedings are taken are different, for the one is essentially a process in the nature of a distress or sequestration of property, in order to secure the appearance of an absent debtor, and to hold his estate subject to the payment of his debts, and for the benefit of his creditors, who may bring suits within a prescribed limit of time, and it does not always follow that such an attaching creditor secures anything of the proceeds. The other attachment is in the nature of a proceeding *in rem*, which attaches and *binds* a debt for the payment of whatever creditor adopts it, to the extent of the indebtness of the garnishee. By this latter garnishment the creditor obtains an effectual attachment of the debt due by the garnishee, and its effect is to prevent the garnishee from paying his debt to the primary debtor. These attachments (where there are more than one) take precedence in the order of their service, and a payment into Court, either before or after judgment against the garnishee, is a complete discharge of the debt due to the primary debtors; and a payment into Court, when the law authorizes the Court to require the garnishee to pay the money in, will be, and must be regarded in legal effect, the same as a payment under execution. (See *Ohio, etc., R. W. Co.* v. *Alvey*, 43 Indiana 180, *Turnbull* v. *Robertson*, 38 L. T. N. S. 389; *Wood* v. *Dunn*, L. R. 2 Q. B. 73, *Culverhouse* v. *Wickens*, L. R. 3, C. P. 295; Drake on Attachmen, sec. 244.)

I do not think it necessary to further extend my remarks upon these cases, beyond saying that I do not consider that this decision will have the effect of pushing the operation of the statute, under which these garnishors are proceeding, beyond the statutory authority under which they claim their priority, and payment of their respective debts

from the garnishee, and, as the claimants who set up the liens under the Mechanics' Lien Act are invoking a merely statutory authority, they have no right, in my opinion, to set up that the statute under which they act gives them a superior right to the garnishors, in the absence of any provision of law entitling them to the precedence which they claim.

I, therefore, under the powers conferred upon me by sec. 144 of the Division Courts Act, and the general provisions affecting the question before me, decide and adjudge that the debt due by the garnishee is subject to payment of the respective debts of the primary creditors, Robert McCully and John Patterson, because nothing but the order of the Court can undo the effect of the service of the garnishee summonses: (see O'Brien's D. C. Manual 131, note (*e*).

I do not see that *King* v. *Alford*, 9 O. R. 643, cited by Mr. Farley, in any way affects the question in controversy between these parties.

I therefore order Charles Rowley, the garnishee, to pay into Court, and there will be judgment recorded against him for the sum, due by him to the primary debtors, David Ross and Peter Ross, of $79.

That the Clerk do pay the claim of the garnishor, Robert McCully, the debt due by the primary debtors, amounting to the sum of $21 00
Costs of suit 3 02

$24.02

And to the garnishor, John Patterson, his debt of $18 20
Costs of suit 3 02

$21 22

Total $45 24
Which leaves a balance of $33 76
to be divided ratably amongst the other creditors under the Mechanics' Lien Act as follows, viz.
To Henry Lindop cr. $30 46 ..... $18 99
" James Stewart " 19 44 ..... 12 12
" Mark Bowley " 2 65 ..... 2 65
Total $33 76

And I further order, that upon each of the said Henry Lindop, James Stewart and Mark Bowley executing and filing with the Clerk, a full discharge of the said liens, ready for registry, that the said sums be respectively paid them, as in full of their said liens.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Divisional Court.] [Dec. 3, 1885.

FERGUSON V. WINSOR.

Vendor and purchaser—Mistake—Sale by plan—Representation—Notice.

The judgment of O'CONNOR, J., reversed.

Per BOYD, C.—The evidence in this case does not come up to the standard laid down in *Dominion Loan Society* v. *Darling*, 5 A. R. 577, by Moss, C.J., that "it must be demonstrated what the true terms of the bargain were, and that by mutual mistake they were not incorporated in the writing. The proof must be clear, satisfactory and conclusive."

The defendant bought lot 7 as contained in S.'s mortgage, and obtained a deed from the executors according to a registered plan which is to be treated as incorporated therewith, and he is even, as against his representation to the plaintiff that the piece in dispute was a portion of the property she was in treaty for and subsequently purchased, entitled to claim the benefit of Gordon's position as purchaser and registered owner for value.

Per PROUDFOOT, J.—Even if the representation were proved, the plaintiff owned no property at the time it was made to be affected by it, and such an expression of opinion should not estop him from purchasing lot 7 eighteen months afterwards. The purchasers at the auction sale got a better bargain than they thought they had made, but they had no knowledge of any right to be interfered with had they chosen to assert their title to the whole lot, this raises no equity against them in the plaintiff's favour.

Even if the defendant had notice of the plaintiff's equity, he is entitled to claim the benefit of the want of notice of the purchasers at the auction sale.

Lash, Q.C., for the appeal.

Moss, Q.C., contra.

Ferguson, J.] [January 12.

IMPERIAL BANK v. METCALFE.

Vendor and purchaser—Conditions of sale—Time for objections—Statute of Uses—Discharge of mortgage.

Appeal from the Master's report.

When on a sale of lands the contract provided that the purchaser should be allowed ten days to make requisitions on title, and the purchaser made certain objections within the ten days, and the answers not being satisfactory refused to complete, whereupon the vendor sued for specific performance and obtained the usual judgment.

Held, that the purchaser could not raise in the Master's office fresh objections not raised within the ten days mentioned in the contract.

Certain owners of the equity of redemption in lands by deed granted the same to "A., his heirs and assigns, to have and to hold the same to A., his heirs and assigns, unto, and to the use of B., his heirs and assigns." This was dated July 17th, 1875, and registered July 21st, 1875.

Held, that whether this deed operated under the Statute of Uses or not, B. took under it the beneficial interest in fee, and it had the same effect as if it were a conveyance to A. upon trust for the benefit of B.

The equity of redemption in the said deed conveyed was subject to two mortgages—the M. mortgage and the S. mortgage. The discharge of the M. mortgage was registered on July 21st, 1875, the same day as the deed.

Held, that the deed must be assumed to have been delivered before the day it was registered, and the discharge of the M. mortgage on registration operated as a re-conveyance to B., who was the assignee of the mortgagor within the meaning of the statute respecting the effect of registering a discharge of a mortgage.

Maclennan, Q.C., and *Galt*, for the appellant.

Bain, Q.C., and *Masten*, for the respondents.

Cameron, C.J., C.P.] [February 1.

INGALLS v. MCLAURIN.

Mortgagor and mortgagee—Collusive sale—Fraud—Right to redeem.

Action for redemption.

The defendant, being mortgagee of certain lands, advertised them for sale under the power of sale, and employed one M. to buy them in for him, and M. bought them in in his own name, but forthwith conveyed them to the defendant. The defendant, being advised that the sale was bad owing to defects in the mode of exercising the power, went to J., the mortgagor, and bargained with him for the purchase of his wife's dower, which was not barred in the mortgage, and of two adjoining lots for $700. A deed was accordingly prepared and signed, J. joining therein under a mistaken idea that he was doing so merely for conformity, and that the defendant already had a good title to the equity of redemption under the mortgage sale. This deed was sent to J.'s solicitors, who advised him as to his legal position, and retained the deed in their hands, while J. brought this action for redemption.

Held, that the plaintiff should be allowed to redeem.

Though it may be that a mortgagee is not, strictly speaking, a trustee for the mortgagor, but is entitled to enforce his security for his own benefit to satisfy the mortgage money, the right of the mortgagor to redeem is a very pronounced and decided right and one that he cannot be deprived of by any dealing between him and the mortgagee that is not carried out in a full spirit of fairness without undue pressure, influence, or concealment of anything of which he should be informed by the mortgagee.

J. R. Roaf, for the plaintiff.

W. Nesbitt, and *A. R. Lewis*, for the defendant.

PRACTICE.

Boyd, C.] [December 15, 1884.

YEMEN v. JOHNSTON.

Money in Court—Assignment—Solicitor's lien—Priority—Salvage money.

The fact that an assignment was made by the defendant to a creditor of a portion of a fund in Court, as to which litigation was pending between the defendant and plaintiff (mortgagor and mortgagee) as to the amount to which each was entitled, and which, therefore, involved the incurring of costs before the amount could be apportioned, imposed upon the assignee the necessity of submitting to all just and proper deductions for the charges of the solicitors by whose exertions the portion of the fund payable to the defendant was ascertained. To the extent to which the defendant's solicitors incurred costs in resisting and prevailing against the account brought in on behalf of the plaintiff, to that extent their lien should precede the claim of the assignee. Such costs are in the nature of salvage money, and are always entitled to meritorious consideration.

Shepley, for the solicitors.

Holman, for the assignee.

Ferguson, J.] [Dec. 8, 1885.

DUFRESNE v. DUFRESNE ET AL.

Sale at undervalue—Purchase for value without notice—Advance by wife to husband without any contract for repayment.

L. F. D. being the owner of certain valuable property mortgaged it for $700, became of unsound mind and was confined in an asylum. During his confinement M. A. D., his second wife, procured S., the holder of the mortgage, to sell under the power of sale, and it was sold for $900 to E. R., the sister of M. A. D. Two years after E. R. sold the property to M. E. B. for $5,000, and a mortgage for $4,000 unpaid purchase money was taken to M. A. D.

In an action by L. F. D. by L. D., his next friend, to set aside the sale, or for an account, it was

Held, on the evidence, that the property was sold at a great undervalue under the power of sale, and that E. R. was the agent of M. A. D., but that as M. E. B. was a purchaser for value without notice the sale must stand, but an account of the proceeds was ordered against M. A. D.

During the trial M. A. D. obtained leave to amend, and claimed to be allowed a sum of $1,500 which she alleged she had given to her husband the plaintiff as a loan, and which was employed in the purchase of the property and building thereon.

Held, that as no contract for repayment was shown, no security being taken, and no attempt having been made to collect the amount, although many years had passed, it was not a loan and the wife could not recover it.

W. H. Barry and *Sinclair*, for the plaintiff.

Lees, Q.C., for the defendants Mary Ann Dufresne and Eliza Ross.

Oliver, for the defendants the Benoits.

O'Gara, Q.C., for the defendants the Société.

Boyd, C.] [Dec. 23, 1885.

BLEAU v. BLEAU.

Vendor and purchaser—Sale of infant's estate—Title—12 Vict. c. 72—R. S. O. c. 40, s. 76.

Certain infant's lands were sold under an order which appeared upon its face to have been presented under the statutable jurisdiction of the Court of Chancery relating to the sale of infants' estates, 12 Vict. c. 72; R. S. O. c. 40, s. 76. The petition and order were entitled in the matter of the infants, and the subsequent proceedings were taken as provided by the general orders of the Court, the order for sale set out that what was being done was because it was beneficial to the infants, and the conveyance was executed by the Referee for the infants.

Held, that the Court would never allow the infants to recede from what was so done for their benefit, and that a subsequent purchaser cannot conjure up doubts as to jurisdiction when upon the face of the proceedings the statute authorizing the sale appears to have been followed. *Calvert* v. *Godfrey*, 6 Beav. 97, considered and distinguished.

R. M. Meredith, for the purchaser.

H. Becher, for the vendor.

Proudfoot, J.] [February 3.

CANADIAN PACIFIC RY. CO. v. MANION.

Changing place of trial—Ejectment—Rule 254 O. J. A.—R. S. O. ch. 51, sec. 23.

In an action of ejectment the place of trial may be changed by order of a judge. If the power is not given by Rule 254 O. J. A., it is not taken away by that rule, and it is given by R. S. O. ch. 51, sec. 23.

Arnoldi, for the plaintiffs.

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

Mr. Dalton, Q.C.] [February 11.

ONTARIO BANK v. REVELL.

Interpleader—Sale of goods—Payment into Court—Gross proceeds.

Where an interpleader order directs the sheriff to sell the goods seized and pay the proceeds into Court, it should provide that the whole proceeds be paid in without deducting the sheriff's expenses of sale or possession money.

Langton, for the sheriff.

McDougall and *Holman*, for claimants.

Leeming, for the execution creditors.

CORRESPONDENCE.

INSOLVENT ACT OF 1875, SEC. 125—IS IT ULTRA VIRES?—CONFLICTING DECISIONS IN DIFFERENT PROVINCES.

To the Editor of the LAW JOURNAL:

SIR,—Controversies as to the respective powers of the Dominion Parliament and Local Legislatures are in no cases more important than where they arise under the Insolvent Act of 1875. True, this statute has been repealed, but there doubtless yet remain many estates to be settled under it, calling for the application of different sections of the Act. A very important section is 125, purporting to compel a resort to the Insolvent Court or Judge by summary petition for the enforcement of "any debt, privilege, mortgage, hypothec, lien, or right of property in the hands, possession, or custody of an assignee," and to preclude "any suit, attachment, opposition, seizure, or other proceedings of any kind whatever"; a provision which, if not *ultra vires*, is a most salutary and necessary one, and will be sure to find a place in any Insolvent Act that may hereafter be enacted. I desire to call the attention of the profession to the conflict of decisions respecting this provision in the several Provinces. In *Crombie* v. *Jackson*, 34 U. C. Q. B. 575, it appears that Judge, now Chief Justice' Wilson, of Ontario, held section 125 valid, on the ground that the same provision existed in the Insolvent Act of the old Province of Canada, and that the British Parliament, in enacting the B. N. A. Act, must be presumed to have taken notice of the then existing laws of the Provinces. I cite from Clark on Insolvency, p. 294. But the Maritime Provinces had no Insolvent Act prior to Confederation; and if there is no better reason for upholding the section than the one ascribed to the eminent Chief Justice, it would seem to follow that portions of what ought to be and was certainly meant by its framers to be a uniform insolvent law for the whole Dominion would be in force in some Provinces and not in others. In New Brunswick, where, previous to Confederation, as I observed, no insolvent law existed, the corresponding section in the Canadian Act of 1869 was held valid in the case of *McQuirk* v. *McLeod*, 2 Pugs. 323, so that the holder of a bill of sale, by way of mortgage of chattels, could not maintain replevin against the assignee in insolvency who had taken the goods. But in the case of *Pineo* v. *Gavaza et al.*, in the Supreme Court of Nova Scotia, a diametrically opposite conclusion was arrived at. There the plaintiff, a creditor of the insolvent, shortly before his insolvency, agreed to lend him an additional $50 on his giving him a chattel mortgage to secure him the aggregate amount of his past and this newly created indebtedness. The goods mortgaged coming into the hands of the assignee, with other property in possession of the insolvent, the plaintiff brought replevin for them in the County Court. Like the case of *McQuirk* v. *McLeod*, it was not a question of the simple ownership of property as between the insolvent and a third party who, not being a creditor, could not file a claim; nor was it a case of a mortgage on real estate, which the Insolvent Court has not the machinery to effectually deal with. Assuming that, in the absence of actual fraud at common law or under the statutes of Elizabeth

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the plaintiff ought to have been recouped from the estate, the $50 loaned to the insolvent when the chattel mortgage was taken, just as a mortgage for a present *bona fide* advance would be good, it is evident that no adjustment of any such equitable claim could be made in an action of replevin. The County Court held, as was held in *McQuirk* v. *McLeod*, that the plaintiff was driven to his remedy under sec. 125, and therefore, that the action must fail; but the Judge went on further to find on the evidence that the chattel mortgage was made in contemplation of insolvency, and therefore, so far as it purported to secure a pre-existing debt, it was void as an unjust preference; thus deciding for the defendant under both sections, 125 and 133. On appeal to the Supreme Court of Nova Scotia, this judgment was set aside, the decision being pronounced by the Honourable the present Minister of Justice (whose opinion has become, from his new position, a matter of practical legislative importance,) as follows:

THOMPSON, J.—"The learned judge below decided this case on the principle that sec. 125 of the Insolvent Act of 1869 prevents all actions being brought against a person who is an assignee of an insolvent for anything done as assignee, and compels all persons who seek redress against him to resort to the Judge of Insolvency. Sec. 125 has, however, no such general application. The Dominion Parliament, probably, had no power to enact that every one who has a cause of action against a certain class of persons must resort to a certain tribunal, and that all other Courts must be closed against him, as was suggested by Wilson, C. J. (then Wilson, J.,) in *Crombie* v. *Jackson*, 34 U. C. 575. I think that Parliament never intended that by sec. 125. For the performance of those duties which arise from the Insolvent Act, and for the enforcement of those rights which are created by that Act, the remedy is that pointed out in sec. 125 as, for instance, in relation to the manner in which the assignee shall administer the estate and pay dividends, the resort must be to the Judge of Insolvency, in order to prevent the estate from being consumed in litigation, and to accomplish speedy justice. When, however, the assignee does that which the law does not authorize him to do, in relation, for example, to a person who has not filed a claim, and is, therefore, not a creditor within the meaning of the Insolvent Act, even though that person be a creditor of the insolvent in the ordinary acceptation of the term, or has property of the insolvent under lien, section 125 does not interfere with the jurisdiction of the ordinary tribunals. In this case, therefore, that section did not prevent the plaintiff, who held a bill of sale on the property of the insolvent, from enforcing that bill of sale, or from holding the property until the security was paid off. The assignee took all that the insolvent could give him, but that was only an equity of redemption in the goods, unless the bill of sale was fraudulent, in which case the assignee also had in him the rights of creditors as well. The matter of fraud, then, had to be tried irrespective of sec. 125. This was the decision of Ritchie, E.J., in *Tucker* v. *Creighton*, N. S. Eq. Rep. 261, and has been held in the various cases there referred to as well as in others—for example. *Burke* v. *McWhirter* 35 N. C. As to the question of fraud, there is in the case some evidence which would be allowed to go to a jury as evidence of fraud. If the learned judge had found that evidence sufficient, we should have had to decide whether it was so in our opinion in view of what the insolvent and the plaintiff say on the subject, but the judge has not so found. He has felt controlled by section 125 and, so far from concluding that the bill of sale was wholly fraudulent, he intimates that he thinks it may be good to the extent of $50. If good to that extent the plaintiff must recover, and as the case went off below on the first point we think that justice will be best served by simply allowing the appeal with costs, and sending the case back to be tried anew."

There was no dictum in the judgment below that the section applied to "all actions" against an assignee for "anything done as assignee," and if there were, the application of the section to the particular case, or cases of the same class, was all that was in controversy. The oral decision of the judge below was reported in the following words: "I gave judgment for defendant on the ground that the action would not lie in face of section 125 of the Insolvent Act, and because I find the bill of sale was made in contemplation of insolvency, and adjudge it an undue preference contrary to the policy of the Insolvent Act; although I intimated that in the administration of the estate the plaintiff might, perhaps, successfully claima lien on the proceeds of the goods in question to the extent of any money lent at the time the bill of sale was executed—say the $50 if so loaned at that time—but not for the antecedent debt; as that would be giving him an undue preference over other creditors."

Tucker v. *Creighton*, *ante*, was a case of real estate; and in *Burke* v. *McWhirter* it would seem that the claimant of the goods was not a creditor at all; it was a mere case of disputed ownership.

In view of these conflicting decisions by Courts and judges of high authority, I would suggest the urgent necessity of such legislation as will tend to more fully secure uniformity in the administration

and application of statutes of the Dominion Parliament. To this end an amendment to the Supreme Court Act will be necessary, giving to the Supreme Court an appeal from any case originating in any inferior Court, when the decision has turned on the validity or construction of any enactment of Parliament, whether the question has been raised by the pleadings or not; or at least such an appeal in any case, wherever originating, if the cardinal point for its determination involves the validity, construction or application of any such enactment relating to insolvency. Or if, as probably is the case, the leading Nova Scotian decision is the correct one, an amendment to the B. N. A. Act ought to be sought by which Parliament may acquire the power to legislate in respect to rights, liabilities and jurisdictions arising out of insolvency as the terms of section 125 purport to do. If one section of the Insolvent Act is to be rescinded or curtailed in its operation as clashing with the powers of the Local Legislatures over property and civil rights, or the establishment of Courts, it is easy to point out many others which will require to be similarly treated for the same reason; so that while parliament may enact the shell of an insolvent law the inconvenient necessity will remain of invoking the Local Legislatures to supply the kernel. Meanwhile I invite discussion of the conflicting doctrines of the three cases referred to, and trust that some of the able writers on the B. N. A. Act will favour the profession with their views.

Nova Scotia, Nov. 9, 1885. Yours etc., LEX.

[The above communication suggests two questions for discussion:—(1) The propriety of the decision of Thompson, J. (now Minister of Justice), in *Pinco* v. *Gavaza*, and (2) The right of appeal from inferior Courts to the Supreme Court in cases involving the constitutionality of Acts of the Dominion or the Provinces.

1. As to the first point we say that if the judgment of Thompson, J., was delivered while the Insolvent Act was in force, it would seem to conflict with the Ontario cases cited in his judgment, and also with cases under the English bankruptcy law. See *Ex parte Cohen*, L. R., 7 Ch 20; *Ex parte Baum*, L. R., 9 Ch. 673; *Ex parte Lopez*, 5 Ch. D. 65. *Dumble* v. *White*, 32 U. C. Q. B. 601. *Crombie* v. *Jackson*, 34 U. C. Q. B. 579, and *Burke* v. *McWhirter*, 35 U. C. Q. B. 1, decided that all creditors of an insolvent after the appointment of an assignee in insolvency, whether holding liens or securities on such insolvent's property or not, must enforce their legal rights through the Insolvent Court, and that under s. 50 of the Insolvent Act of 1869 they could not bring independent suits in other tribunals to enforce their claims as creditors or their specific liens on the insolvent's property. It was further held in *Crombie* v. *Jackson* that the 50th section of the Act was not *ultra vires*, nor an interference with legislative authority of the Provinces in regard to property and civil rights in the Provinces, nor in establishing Provincial Courts for the administration of justice; and further that the Dominion Parliament had authority to legislate respecting property and civil rights in so far as the same were affected by Acts relating to bankruptcy and insolvency—a decision since abundantly sustained by the judgments of the Supreme Court and Judicial Committee of the Privy Council, and notably by the Judicial Committee in *The Citizens' Insurance Company* v. *Parsons*, 7 App. Cas. 96.

But if the judgment in *Pinco* v. *Gavaza* has been rendered since the repeal of the Insolvent Act by 43 Vic. c. 1 (D.), it may be a question whether the absolute prohibition from litigating in other Courts applies, seeing that the saving proviso in the latter Act does not in express words refer to "creditors and the enforcement of their rights or liens in respect of such insolvent's estate." The judgment of Thompson, J., does not touch that ground; but though the reasons given by him may not be sound, the result of his judgment nevertheless may be found to be good law. As to the partial validity of the mortgage we would refer to *Totten* v. *Douglas*, 15 Gr. 126, 18 Gr. 341, and the cases there cited.

2. We endorse the remarks of our valued correspondent as to the right of appeal to the Supreme Court as respects the validity of Acts of the Dominion and Provinces. A general provision authorizing such appeals will be found in ss. 54 to 57 of 38 Vict. c. 11, (D.), as amended by 39 Vict. c. 26, s. 17 (D.), and which was accepted by Ontario by R. S. O. c. 38. And in 1881 the Legislature of Ontario by 44 Vict. c. 27, s. 17, authorized the Attorney-General to appeal to the Court of Appeal in cases arising under the summary jurisdiction of the Courts to quash convictions by justices of the peace under the Liquor License Acts, whenever the Attorney-General certified "that in his opinion the point in dispute is of sufficient importance to justify the case being appealed;" and under which power *Reg.* v. *Hodge* and *Reg.* v. *Frawley* reached the Court of Appeal (7 App. R. 246), and the former the Judicial Committee (9 App. Cas. 117). Similar provisions in the laws of Nova Scotia would enable litigants in that Province to test the validity of the laws of the Dominion and the Province by the same or a similar process of appeal.—ED. L. J.]