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MR. JUSTICE FALCONBRIDGE at the recent sittings of the Assize Court at Toronto made some forcible remarks on the delay of Justice in that Court. It appears that of the 75 jury cases entered for trial at these sittings 28 only were disposed of, and four of these were settled by the litigants themselves. Of the 117 non-jury cases, not one, we believe, was tried, and only 12 appear to have been disposed of by settlement or reference. Of the cases undisposed of, some have been standing for over a year, as remanets from Court to Court. A number of cases on the list are from outside counties, being placed on the Toronto list for convenience of counsel or for similar reasons. One of the cases, which was tried at the last sittings, here occupied twelve days, though it should have been tried at Hamilton, where the parties and nearly all the witnesses reside. It is an injustice to the taxpayers of the County of York that they should be burdened with the expense of trying outside cases, especially while litigation arising within the County is thereby delayed. Some means, either by appointment of new Judges, or re-arrangement of the Assize and Chancery Circuits, or change in the rules as to venue, should be devised to prevent the scandal and failure of justice shown by the present state of the civil docket at Toronto.

FOOT BALL LAW.

Foot ball is with us again, and schools and colleges are made up of two mighty hordes, the kickers and the kicked. It is an old game, known in England before 1175, but the law has never smiled upon it. The *Albany Law Journal* editorially condemns it; the learned editor says: "Base ball is a game of skill and judgment, and is comparatively gentlemanly; foot ball is only a little less rough and not half so entertaining as a prize fight. We almost wish old Noll (the Lord Protector of England) were alive to kick these ruffian kickers out." This, we think, is the latest legal blast against the game.

The first law against it was passed in the 39th year of the reign of the Third Edward, 1365, and it was then forbidden in consequence of its tendency to impede the progress of archery. A similar law was enacted in 12 Richard II., chap. 6, 1388. In the kingdom of Scotland in "the first parliament of King James the First, holden at Perth the XXVI day of May, the Yeir of God, ane thousand foure hundreth twentie foure yeires: and of his reigne the nineteene

yeir," a law was passed saying: "That na man play at the fute-ball." "It is statute, and the King forbiddis, that na man play at the fute-ball, under the paine of fiftie schillings to be raised to the Lord of the land, als oft as he be tainted, or to the Schireffe of the land or his ministers, gif the Lords will not punish sik trespessoures." Under James the Second, in 1457, it was "decreeted and ordained, that the fute-ball and golfe be utterly cryed downe, and not to be used . . . . and to be punished by the Barronis un-law, and gif he takes not the un-law, that it be taken be the Kinges officeares." James the Third decreed against it at his sixth parliament held in Edinburgh in 1471. And in 1491 King James the Fourth enacted "That in na place of the Realme there be used fute-ball, golfe, or other sik unprofitable sportes, for the common gude of the Realme and defence thereof," and directed the use of the bow.

Seeing that his ancestors held these views, we are not surprised that James the First of England—the magnificence of whose court and the fame of whose wisdom and justice and of the civility of whose subjects, allured divers foreign princes, and other strangers of all estates, to make frequent visits to his country—(Scots Acts, 24 June, 1609), we are not surprised that he should deem the game too rough for his heir apparent, and in his "Basilikon Doron" he writes: "From this Court I debarre all rough and violent exercises, as the foot-ball, meeter for lameing than making able the users thereof."

James' famous predecessor, "that bright occidental star, Queen Elizabeth, of most happy memory," was also against foot ball. In the eighteenth year of her reign there was found at the Middlesex Sessions a true bill against sixteen persons, husbandmen, yeomen, artificers, and the like "with unknown malefactors to the number of a hundred, who assembled themselves and unlawfully played a certain unlawful game, called foot-ball, by reason of which unlawful game there arose amongst them a great affray, likely to result in homicides and fatal accidents." Some seven years after there was a coroner's inquest at "Southemyous" on the body of Roger Ludford, yeoman. It was shewn that the deceased, with one Nicholas Martyn and Richard Turvey, were playing at foot ball in a field, when Ludford ran towards the ball with the intention of kicking it; whereupon Nicholas Martyn "cum cubiti dextri brachii sui" struck Ludford on the forepart of his body, under his breast, giving him a mortal blow and concussion, of which he died in a quarter of an hour. The jury found that Nicholas and Richard in this manner feloniously slew the said John.

In Cromwell's days a youth was indicted for the playing of the game; this is how the indictment ran: "Kent—Before the justices of the peace it was presented that at Maidstone, in the county aforesaid, John Bistrod, of Maidstone, etc., apothecary, with force of arms, did wilfully and in a violent manner run to and fro, and kicked up and down in the common highway and street within the said county and town, called the High Street, a certain ball of leather, commonly called a foot-ball, unto the great annoyance and incumbrance of said highway, and to the great disquiet and disturbance of the good people of this commonwealth passing on and travelling in and upon the same, and in contempt of the laws, etc., and to the evil example of others, and against the public peace."

In early times among the English the great foot ball festival of the year was Shrove-Tuesday—though why Shrove-Tuesday, heaven only knows, unless there was supposed to be some resemblance between the state of some of the players after the scrimmage and the pancakes they had eaten at dinner on that day. Chitty (2 Chit. Crim. La., 494) gives an indictment drawn in the year 1797, by a very eminent pleader, for the purpose of suppressing the ancient custom of kicking about foot-balls on Shrove-Tuesday at Kingston-upon-Thames. We give it in the hope that some of our Canadian officials will have the courage to prefer a similar one against players in our towns. "Surrey.—That A. S. B., late of, etc. (and other defendants), together with divers other evil disposed persons to the jurors aforesaid unknown, being rioters, routers and disturbers of the peace of our said Lord the King, on, etc., with force of arms, at the town, etc., unlawfully, riotously, and routously did assemble and meet together to disturb the peace of our said Lord the King, and being so assembled and met together, did then and there unlawfully, riotously kick, cast and throw a certain foot-ball in and about the said town, and then and there wilfully, riotously, routously made a great noise, riot, disturbance and affray therein, in contempt, etc., to the evil example, etc., and against the peace, etc. And the jurors, etc., do further present, that the said defendants, together with divers other evil-disposed persons to the jurors aforesaid as yet unknown, on the said, etc., with force and arms, at, etc., did unlawfully assemble and meet together, and being so assembled and met together did then and there wilfully kick and cast and throw a certain foot-ball in and about the said town, near the dwelling-houses of divers liege subjects of our said Lord the King, and also in divers streets and common highways there, to the great damage and common nuisance of all the liege subjects of our said Lord the King, residing in the said dwelling-houses and passing and repassing in and along the said streets and highways, to the evil example, etc., and against the peace, etc." These fellows evidently played according to the Rugby rules.

R.

COMMENTS ON CURRENT ENGLISH DECISIONS.

We continue the Law Reports for September comprised in 23 Q.B.D., pp. 261-372 and 42Chy.D., pp.1-92.

APPOINTMENT IN FRAUD OF POWER—POLICY OF ASSURANCE—MEASURE OF LIABILITY OF APPOINTOR—CESTUI QUE TRUST JOINING IN BREACH OF TRUST.

In re Deane, Bridger v. *Deane*, 42 Chy.D., 9, is a decision of the Court of Appeal (Lord Esher, M.R., Cotton and Fry, L.JJ.) on appeal from Kekewich, J. The facts of the case were, that a sum of stock was settled in 1834 upon trust to keep up a policy of assurance on the life of J. B. Deane, and subject thereto upon trust for him for life, and after his decease the fund and the moneys payable under the policy were to be held in trust for his three children, or such one or more of them and in such shares and proportions as Deane should by

deed or will appoint. In 1849 and 1850 Deane and his three children released the trustees from the stock and all liability to keep up the policy, Deane entering into a covenant with the trustees to keep it up, and the stock was transferred by the trustees to Deane. In 1852 Deane appointed the policy to Mrs. Bridger, one of his daughters, to her separate use without restraint on anticipation, upon a bargain with her that she should surrender the policy and pay the money to him. He promised her to effect and keep on foot a fresh policy, and to settle it upon the same trusts as the old one. The trustees, having no notice of this bargain, transferred the policy to Mrs. Bridger, who surrendered it to the office for £897, and paid the proceeds to Deane. Deane effected a new policy but failed to devote it effectually to the trusts. The sum which would have been due on the original policy, had it been kept on foot till Deane's death, would have been over £5,000. It was held by Kekewich, J., that the appointment to Mrs. Bridger was a fraud on the power, and was therefore invalid; and that after his death his estate was liable not merely for £897, but for the sum which would have been received had the policy been kept on foot until his death, and that therefore £5,000 must be raised out of his estate to be distributed as in default of appointment. But the Court of Appeal, though holding this was a correct measure of liability where none of the *cestui que trust* had concurred in the fraudulent appointment, yet were also of opinion that as Mrs. Bridger had actively concurred in the improper transaction, the amount payable by Deane's estate must be diminished by the amount Mrs. Bridger's share would have been in default of appointment had she not concurred; and their Lordships further held that Deane's promise to her to settle a fresh policy, which he failed to do, was not a misrepresentation entitling her to say that she had been deceived into concurring.

VENDOR AND PURCHASER—LIFE ESTATE—UNDISCLOSED RESTRICTIVE COVENANT—ABSTRACT—OMISSION OF DOCUMENT FROM ABSTRACT—POWER OF SALE.

In re Ebsworth and Tidy, 42 Chy.D., 23, an application was made under the Vendors and Purchasers' Act by the purchaser for a declaration that the vendor had not delivered a perfect abstract, nor made out a good title to his property, and for a return of the deposit with interest and costs. The property sold was a life estate. The land on which a house, which formed part of the property, was built was subject to a covenant that no public house or beer shop, or building of a less cost than a specified sum, should be erected thereon. The contract of sale contained no reference to this covenant. The purchaser required proof that the covenant did not bind him. North, J., overruled the objection on the ground that the purchaser had only bought an estate for life, and that the property was then fully built upon, and that the covenant could not interfere with his enjoyment. But on appeal, Lord Esher, M.R., Cotton and Fry, L.JJ., thought the objection a valid one, because an application might be made by the tenant for life under the Settled Land Act to sell the fee simple of the property, in which event the existence of this restrictive covenant would materially affect the price it would bring. Other questions were also raised by the petition. One being

whether the omission of a will, under which the vendor claims title, from the abstract, is an objection—full particulars of the will being given in the recitals of another instrument set out in the abstract. It was held by North, J., that although the abstract was technically defective in not setting out the will, yet as the recital had conveyed all the information about the will necessary, that the abstract was sufficient. Part of the property was subject, together with other land belonging to the vendor, to one tithe rent charge. The contract contained no provision as to apportionment, and it was held by North, J., and the Court of Appeal, that the purchaser could not require the vendor to procure an apportionment at the vendor's expense. The other question, was whether a power of sale in a mortgage in favour of a building society had been duly executed. The mortgage provided that upon default the property should be sold by the trustees for the time being of the building society. The society was ordered to be wound up. Six directors were appointed liquidators, and it was ordered that all acts required or authorized by the Act to be done by the official liquidators might be done by any two of them. By another order, all the property of the society was vested in the six liquidators, with power to exercise the powers of sale conferred by the 95th section of the Companies' Act, without the further sanction of the Court. After this, two of the six liquidators, without any further sanction of the Court, sold the mortgaged property and executed a deed to the purchaser free from the mortgage. North, J., and the Court of Appeal were unanimous that the power of sale had been validly exercised; but while North, J., and Lord Esher, M.R., thought the legal estate had been conveyed by the two liquidators, Cotton and Fry, L.JJ., were of opinion that their conveyance had only passed the legal estate in two-sixths of the property, and that the conveyance of the four other liquidators was necessary in order that there might be a complete conveyance of the legal title.

WILL—CONSTRUCTION—EXECUTORY TRUST FOR SETTLEMENT ON DAUGHTER, HER HUSBAND AND CHILDREN—GIFT OVER SHOWING INTENTION TO INCLUDE CHILDREN OF EVERY MARRIAGE—SECOND HUSBAND.

In *Nash* v. *Allen*, 42 Chy.D., 54, the construction of a will was in question. By this will the testator bequeathed his personal estate upon trusts for his children equally, and directed that in case any of his daughters should marry, the share of such daughter or daughters should be assigned to trustees in settlement "upon such respective marriages" for the benefit of the daughter for life, "and after her or their deceases for the use of her or their intended husband or husbands for his or their life or lives, and after their decease respectively for the children of such marriage or respective marriages," with a gift over in the event of a daughter "without leaving any issue her surviving." The only daughter of the testator was twice married. On her first marriage, she being then an infant, a settlement was made of her share on herself, husband and children, containing no provisions in favor of the husband and children of a future marriage. And this settlement Kay, J., held to be inoperative by reason of the infancy of the lady and its not being according to the trusts of the will. On her second marriage a

settlement of her share was made whereby a life interest was limited to her second husband, who survived her. She died without leaving any issue. The contest was between those children entitled under the gift over, and the second husband. Kay, J., was of opinion that the gift over furnished the key to the proper construction of the trusts of the will, and that as that provided that the gift over was not to take effect except on the daughter dying without issue, it was obvious that would include the children of any marriage she might contract, and therefore under the trusts of the will, the settlement in favour of the second husband was valid.

WILL—CONSTRUCTION—RESIDUE—DIRECTION THAT SHARE SHALL SINK INTO RESIDUE—SHARE OF RESIDUE TO BE SETTLED UPON SAME TRUSTS AS LEGACY.

In re Ballance, Ballance v. *Lanphier*, 42 Chy.D.,62 is another decision of Kay, J., upon the construction of a will. In this case the testator gave legacies upon trust for each of his daughters for life, and after her death for her husband and children, and subject thereto he directed that each legacy "should sink into and form part of my residuary estate, and be applied and disposed of as hereinafter mentioned." He gave his residue to his children equally, "the shares of daughters to be paid to the same trustees respectively, and to be settled upon the same trusts" as their respective legacies. One of the daughters died unmarried. The question was how her share ought to be disposed of? Kay, J., held that the direction for the settlement of the daughter's share of residue being executory, in framing a settlement of this share the Court should modify the ultimate gift over by inserting a limitation in favour of the other residuary legatees, excluding the particular daughter, and that the share of the deceased daughter was divisible accordingly among the other residuary legatees.

DAMAGES—DETENTION OF GOODS—MEASURE OF DAMAGES—RIGHT TO DAMAGES NOT TAKEN AWAY BY APPOINTMENT OF RECEIVER.

In *Dreyfus* v. *The Peruvian Guano Co.*, 42 Chy.D., 66, Kay, J., lays down the principle that where goods of a plaintiff are wrongfully detained by a defendant under circumstances entitling the former to damages, such right to damages is not lost by the appointment of a receiver by consent *pendente lite*. The action was brought for delivery to the plaintiffs of certain cargoes then at sea, to which the plaintiffs claim to be entitled, and for an injunction to prevent the defendants from receiving them, and for damages for detention. The defendants by their pleadings claimed the right to receive the cargoes, and shewed that they intended to receive them. Previous to the hearing a receiver was appointed by consent—at the hearing the plaintiffs proved their title to the cargoes—and Kay, J., held they were entitled to damages for their detention, which he allowed at 5 per cent. on the value of the cargoes up to the date of the judgment. Another point in the case arose in reference to an order of the House of Lords, whereby it was declared that the defendants were entitled to be reimbursed by the plaintiffs certain expenses "so far as the same have not been already repaid to them

or allowed to them in account with" third persons, such qualifying words being inserted at the instance of the plaintiffs. Kay was of opinion that the burden of proving repayment, or allowance in account, rested on the plaintiffs.

VOLUNTARY ASSIGNMENT OF LEASEHOLDS—VENDOR'S LIEN.

A very short point was involved in *Harris* v. *Tubb*, 52 Chy.D., 79, namely, whether an assignment of leaseholds in consideration of paternal love and affection was voluntary or not. Kekewich, J., on the authority of *Price* v. *Jenkins*, 5 Chy.D., 619, held that it was not voluntary, although confessing to considerable doubt as to the correctness of the decision. The theory on which the case proceeds is that an assignee of a lease comes under responsibility for the rent and performance of covenants. In this case the effect of the decision was to enable the assignee to cut out a vendor's lien, to which his assignor's interest was subject.

The Law Reports for October comprise 23 Q.B.D., pp. 373-413; 14 P.D., pp. 131-150; and 42 Chy.D., pp. 93-208.

SHERIFF—ACTION FOR TAKING DEFAULTING DEBTOR TO PRISON WITHIN TWENTY-FOUR HOURS OF ARREST—32 GEO. II., C. 28, S. 1—ARREST UNDER DEBTORS' ACT.

Mitchell v. *Simpson*, 23 Q.B.D., 373, was a case in which the plaintiff having been arrested by the sheriff by virtue of an order made under the Debtors' Act of 1869, for making default in payment of debt, brought the present action against the sheriff for carrying him to prison within twenty-four hours of his arrest, being, as alleged, contrary to the provisions of 50 & 51 Vict., c. 55, s. 14, which is a consolidation of the 32 Geo. II., c. 28, s. 1 (which is still in force in this Province). The question was, whether the order for arrest was "an attachment for debt," and the Divisional Court (Denman and Charles, JJ.) were agreed that it was not, but was that and something more, namely, a punishment for contumacious conduct; and therefore the sheriff need not wait twenty-four hours after the arrest before taking such a debtor to prison.

PRACTICE—DISCOVERY—LIBEL—ACTION AGAINST PROPRIETOR OF NEWSPAPER—ADMISSION OF PUBLICATION—INTERROGATION AS TO NAME OF WRITER OF ALLEGED LIBEL.

In *Gibson* v. *Evans*, 23 Q.B.D., 384, it was held by Lord Coleridge, C.J., and Hawkins, J., that in an action against the proprietor of a newspaper for libel, who admits the publication and pleads an apology, the plaintiff is not entitled to examine the defendant as to the name of the writer, unless the identity of the writer is a fact material to some issue raised in the case.

PRACTICE—LIBEL—PLEADING—PAYMENT INTO COURT WITH DEFENCE DENYING LIABILITY—ORD. XXII R. 1—(ONT. RULE 632)—EMBARRASSING DEFENCE.

Fleming v. *Dollar*, 23 Q.B.D., 388, is another libel action, in which a question of pleading is discussed. The defendant by his defence partly justified the alleged libel, but wound up his defence with an admission that the words were

not wholly justified by the facts, and paid into court 40/ in satisfaction of the plaintiff's claim. Lord Coleridge, C.J., and Hawkins, J., affirmed the order of Pollock, B., striking out this defence as being both embarrassing and contrary to Ord. xxii., r. 1, inasmuch as it left in doubt what the defendant justified and what he did not.

PRACTICE—WRIT OF SUMMONS—SERVICE—IRREGULARITY WAIVED.

Two or three points of practice come under consideration in *Fry* v. *Moore*, 23 Q.B.D., 395, which was an application by a defendant to set aside the service of the writ of summons and all subsequent proceedings, and it shows how careful it is necessary for a party to be who complains of an irregularity, not to take any step in the action which can be construed into a waiver of his right to object to it. In this case the plaintiff issued a writ for service within the jurisdiction, the defendant being at the time resident out of the jurisdiction; this the Court held was not of itself an irregularity, as the plaintiff might have waited until the defendant came within the jurisdiction and then served it; but instead of doing this he obtained an order for substituted service on the defendant's brother, which the Court held was an irregularity, the plaintiff's proper course being to have issued a writ for service out of the jurisdiction, inasmuch as the substituted service was to be effected whilst the defendant was abroad. The defendant not having appeared, the plaintiff signed judgment by default. The defendant having made two unsuccessful attempts to set aside the judgment, and to compel the delivery of a statement of claim, then made the present motion, and the Court of Appeal (Lindley and Lopes, L.JJ.) affirmed the order of Field and Cave, JJ., dismissing the application, holding that the two previous applications were a waiver of the irregularity.

MEDICAL PRACTITIONER—COUNCIL OF COLLEGE OF PHYSICIANS—JURISDICTION—REMOVAL OF NAME FROM REGISTER—POWER OF COURT TO REVERSE DECISION—MANDAMUS—LIBEL—PRIVILEGE—MEDICAL ACT (21 & 22 VICT., C. 90, S. 29)—(R.S.O., C. 148, S. 34.)

Allbutt v. *General Council of Medical Education*, 23 Q.B.D., 400, s a decision under the English Medical Act (21 & 22 Vict., c. 90, s. 29), which is similar in terms to our R.S.O., c. 148, s. 34. The Act in question empowers the General Council of Medical Education to keep a register of medical practitioners, and by s. 29 if any registered practitioner after due inquiry be judged by the Council to have been guilty of infamous conduct in any professional respect, the Council is empowered to direct the removal of the name of such practitioner from the register. The plaintiff had published a book for popular circulation, parts of which the Council, after due inquiry, at which the plaintiff was represented by counsel, considered detrimental to public morality, and its publication infamous conduct in a professional respect, and they ordered his name to be removed from the register, and the proceedings of the Council in the matter were published. The plaintiff claimed a mandamus to the Council to restore his name to the register, and damages for the publication of the proceedings, as being a libel on the plaintiff. The Court of Appeal (Lord Coleridge, C.J.,

and Lindley and Lopes, L.JJ.) upheld the decision of Pollock, B., at the trial, that—the *bona fides* of the Council not being impeached—the Council had the sole jurisdiction under the Act to deal with the matter, and the Court had no power to review their decision; and that the publication complained of was privileged, and therefore not actionable.

SALVAGE—AGREEMENT—SUPERVENING CIRCUMSTANCES PUTTING AN END TO AN AGREEMENT.

In *The Westbourne*, 14 P.D., 132, the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) affirm a decision of Butt, J. The master of a vessel in a helpless condition made an agreement with the master of another vessel to tow the vessel in distress to Gibraltar for £600, the latter vessel to supply the hawsers. The weather became worse, and all the hawsers except one broke, and it became impossible to proceed to Gibraltar. The towing vessel therefore took the disabled vessel to the nearest safe port. Under these circumstances the Court held that the original agreement was put an end to by the act of God making it impossible of performance, and that the salvors were entitled to be remunerated as though no such agreement existed, and £900 was awarded.

SHIP—DAMAGE—WHARF—OBSTRUCTION IN BED OF RIVER—NEGLIGENCE.

The Calliope, 14 P.D., 138, is a decision on the same lines as that in *The Moorcock*, 14 P.D., 64, noted *ante* p. 362. In this case goods were consigned in the plaintiff's vessel to defendants, who were proprietors of a wharf on the river Usk, and lessees of part of the bed of the river in front of the wharf. There were two berths to the wharf, and in the space between the two berths a ridge of sand had been allowed by the defendants to accumulate, and on which the plaintiff's vessel, in approaching the wharf, struck upon, and was damaged. It was held by the Court of Appeal (Lord Esher, M.R., and Cotton and Lindley, L.JJ.) overruling Butt, J., that the defendants were liable for the damage.

BILL OF LADING—DELIVERY OF GOODS WITHOUT PRODUCTION OF ONE OF THE PARTS OF THE BILL OF LADING—FOREIGN LAW.

In *The Stettin*, 14 P.D., 142, Butt, J., held that a ship-master delivering goods to the consignee named in the bill of lading, without requiring him to produce one of the parts of the bill of lading, is guilty of a wrongful delivery, and that the owners and charterers are liable for the damages occasioned thereby. In this case foreign lawyers were called to prove the law of Germany on the point, and they differing in opinion, Butt, J., decided what, upon the evidence, the German law was.

APPOINTMENT—SPECIAL POWER—GENERAL DEVISE—WILL NOT REFERRING TO POWER—WILLS ACT (1 VICT., C. 26, SS. 24, 27)—(R.S.O., C. 109, SS. 26, 29).

In re Williams, Foulkes v *Williams*, 42 Chy.D., 93, a testator, having a special power by will to direct the trustees of certain real estate to pay the income to his wife for life, and having no real estate of his own, made a will whereby he devised and bequeathed all his estate, real and personal, to his wife

absolutely. The will contained no reference to the power, and the question was whether it could be deemed an execution of the power; and it was held by Kay., J.,that it could not, and this opinion was affirmed by the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.); s. 27 of the Wills' Act (R.S.O., c. 109, s. 29), the Court held, did not apply, because the power was not a general one, but a special power, and the fact that the testator had no real estate was held to be no reason for assuming that he intended to execute the power, because as a will now speaks from the death of the testator, though he may have had no realty at the time of its execution, he may have contemplated the possibility of having some before he died.

COMPANY—SHARES—ISSUE OF SHARES AT A DISCOUNT—DEALING WITH SHARES BY HOLDER—MISTAKE OF LAW—ACQUIESCENCE.

In re Railway Time Tables Co., 42 Chy.D., 98, was an application by an allottee of certain shares in a company, to be relieved of liability in respect thereof, under the following circumstances. The company offered to allot to, and Mrs. Sandys agreed to accept 673 £5 shares of the company at a discount of £4 10s. per share. She accepted the shares in January, 1887, and paid therefor 10s. per share, and was duly registered as a shareholder in respect of the shares. She sold 150 of them in March, 1887, as fully paid up shares, and in April and August, 1887, she attempted to alienate some of the rest. In December, 1887, the validity of issuing shares at a discount was doubted by the Court of Appeal in the case of *In re Adlestone Linoleum Co.*, 37 Chy.D., 191. In January, 1888, Mrs. Sandys applied for, as a shareholder, and sent to the company, proxies in respect of the 523 shares she retained. In February, 1888, she wrote to the company that she had been advised that the issue of shares at a discount was illegal, and if they attempted to make a further issue at a discount she would apply to restrain them. In June, 1888, she applied to the company to pay back the amount she had paid for the 673 shares, and remove her name from the list of shareholders in respect of them. In September, 1888, she took back the 150 shares she had sold in exchange for 150 fully paid up shares, and in November, 1888, she applied to the Court to strike her name out of the list of shareholders in respect of the 673 shares. The application came before Stirling, J., who held hat she was entitled to be relieved in respect of 523 of the shares, but as to the 150 shares, he held that as they had been sold to a purchaser for value without notice, the purchaser would be entitled to hold them as fully paid up shares, and that Mrs. Sandys would be entitled to hold them on the same terms, and therefore as to these shares she was entitled to no relief. The company appealed as regarded the 523 shares, and the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.) were unanimously of opinion that she was bound to keep the shares, and pay the full amount of each share; that the liability arose not from contract, but by virtue of the statute, which, on her acceptance of the shares and dealing with them as her own property, imposed the legal liability to pay the full par value of the shares, from which her mistake of law as to her liability could not relieve her. The decision of Sterling, J., on this point was therefore reversed.

LUNATIC—PROMISSORY NOTE PAYABLE BY INSTALMENTS GIVEN BY SANE PERSON SUBSEQUENTLY BECOMING LUNATIC IN SATISFACTION OF A MORAL OBLIGATION—PAYMENT OF UNPAID INSTALMENTS.

In re Whitaker, 42 Chy.D., 119, reveals a somewhat curious and unusual state of facts. A gentleman of large estate made his will in 1878, whereby he gave all his real and personal estate, which was worth £400,000, to Stephen Whitaker. Shortly after making this will, the testator gave it to his agent, with whom it remained until August, 1885, when he took it away, saying he wished to alter it. On 10th October, 1885, he was seized with an attack of *angina pectoris*, and died on 11th October. After his death, with the will of 1878 was found a second will unexecuted, entirely in the testator's writing but bearing no date except 1885, whereby he gave all his estate to one Holden. After his seizure and after he had rallied slightly, the testator told his medical attendant that he had a little business he wished to transact, but the doctor advised him to wait till the morning, and it was believed that the business he referred to was the execution of the unsigned will. After the testator's death Whitaker saw Holden, and in the presence of his own solicitor told him of the existence of the unsigned will, and that he intended to give Holden some substantial benefit. He subsequently sent him a promissory note for £50,000, payable by instalments. After £15,000 had been paid on account of the note, Whitaker became lunatic, and this was an application for the payment of the balance of the note out of the lunatic's estate. The Court of Appeal (Cotton and Lindley, L.JJ.) were agreed that although the promissory note constituted no legal obligation against the lunatic's estate, and therefore that the holder was not a creditor, yet that it constituted a good moral obligation, which the Court in its discretion could authorize to be paid. They, however, held, that the application should have been made by the committee, and that he must be joined as a co-petitioner, and that the wife of the lunatic must consent—which being done, the payment was sanctioned.

Correspondence.

POWER OF DISALLOWANCE.

To the Editor of THE CANADA LAW JOURNAL:

DEAR SIR,—In what you say in your last number of the great usefulness and value of Dr. Bourinot's lectures I perfectly agree; they well deserve to be made a text-book on the subjects to which they relate, and ought to be in the hands of every student of the profession of the law, and, indeed, of every citizen who wishes to know his rights and duties as such, and the admitted lawyer will find it worth while to have them at hand for reference. They state very clearly the constitutional law on non-doubtful points, and on doubtful ones they offer comments and suggestions wisely and lucidly thought out, and aidful towards their solution. I can hardly think you right in supposing that Dr. Bourinot favours the doctrine that the power of disallowance of Provincial Acts should be exercised only in cases where the powers of the provincial legislature are exceeded, though I agree that the power in question should be exercised with the utmost caution and regard for provincial rights. I observed in a late number of *The Week* something like

the doctrine to which you suppose Dr. Bourinot leans, but adopting it rather more decidedly than you suppose the Doctor to do, and, indeed, maintaining that disallowance should never be resorted to except when the disallowed Act is *extra vires;* and in some papers I have seen a like opinion expressed, accompanied with an intimation that our Premier had adopted it. I do not think this doctrine correct, and I think Sir John repudiated it in his speech at the laying of the corner stone of a Methodist church, and said, as the writer of the article in your journal does, and as I humbly follow them in believing, that the power of disallowance was intended to be exercised whenever the Provincial Act contained any provision inconsistent with the safety, honour or welfare of the Dominion; as, for instance, repudiation of a provincial obligation or contract, or any provision inconsistent with justice or morality. To confine an exercise of this power to cases where the Act is *extra vires* would make it superfluous and useless, for the Act would be void to all intents and purposes, and might be so declared by any court before which its illegality should be pleaded, at any time after its passing, and although it should have been sanctioned without objection. It might, of course, be disallowed, and its disallowance desirable to avoid doubt, delay and litigation; but the intent of the disallowance provision in the constitutional Act was not merely to stop the unlawful assumption of power by the Provinces, which the courts could do, but to prevent the abuse of the powers vested in them but exercised to the detriment of the Dominion. I think this power of disallowance is rightly vested in the Governor, acting by and with the advice of an Executive Council, under the virtual control of the Dominion Parliament, in which all the Provinces are represented, rather than in any court, which could only have determined the legality of an Act questioned, and not its policy and effect on the Dominion generally. Vested as it now is, I hold the power of disallowance to be useful, and indispensable to the conservation and welfare of the Dominion. W.

Notes on Exchanges and Legal Scrap Book.

THE LAWYER'S ADVICE.—A good case of outwitting a fraudulent bailee is given by Mr. Uttley in the *Law Journal:* "Many years ago, a farmer having occasion to spend some days at an inn, asked and obtained leave from the inn-keeper to deposit with him a sum of money, amounting to one hundred pounds, for greater safety and security. When the time came to depart, the farmer naturally asked his host for the return of the money deposited with him. The landlord, however, evinced much surprise at the request, and vowed there must be some mistake, and that the money must have been entrusted to some one else. There being no receipt, nor any witnesses of the transaction, the farmer felt that he could do nothing. Subsequently meeting a friend and relating the facts of the case to him, he was advised to consult an attorney. The lawyer, after listening to his recital of the facts, thereupon, to his great amazement, advised him to return to the inn-keeper, take his friend with him as a witness,

and deposit another hundred pounds. The farmer did as he was bid, and then called on this lawyer to report the fact. That gentleman then told him to go alone to the inn-keeper and ask him for the hundred pounds. The farmer did so, and got it, but was as puzzled as ever, there still being a hundred pounds in the inn-keeper's possession. The lawyer, however, on being informed of the safe receipt of the money, next instructed him to take his friend with him and demand from the inn-keeper the hundred pounds which had been deposited in the witness's presence. Boniface, of course, protested and swore that the money had been repaid, but the presence of the witness silenced him, and the farmer got his money. A remarkable instance this of reposing confidence in your lawyer, and benefiting by his shrewdness and sagacity."

CITATION OF AMERICAN DECISIONS IN THE ENGLISH LAW COURTS.—In our own courts American decisions are frequently cited in cases where the point is not covered by our own or English decisions, especially on questions of municipal and corporation law. The subject of how far such decisions are to be followed has attracted the attention of the English Court of Appeal, and we cite the following remarks on the subject from the *Solicitor's Journal* :—" In the course of the hearing of a case before the Court of Appeal, No. 2, on Wednesday, the Lord Chancellor took occasion to observe that the practice of citing American decisions in our courts as if they were of binding authority was growing to an extent to which he, for one, could not assent. Those decisions were worthy of all respect as expressing the opinions of very learned lawyers on analogous questions, but they could not be quoted as decisions binding our court on questions of English law. The Lords Justices (Cotton and Fry) joined in protesting against this mode of citation of American decisions. We believe that a similar protest was recently made by Lord Justice Fry, in Court of Appeal No. 1, on the occasion of the hearing of an important appeal which turned to a great extent upon the law of conspiracy. On that occasion a great number of American decisions were, however, cited without objection on the part of the other members of the court. We rather think that the practice to which the Lord Chancellor alluded owes its origin to the rapidly increasing practice of citation of American authorities by text-book writers. Since the late Mr. Benjamin, Q.C., in the first edition of his work on 'Sale of Personal Property,' published in 1868, inserted copious references to the decisions of the courts of his own country, as he modestly phrased it, 'in order to afford some compensation for the imperfections' of his book, but also, no doubt, with a view of rendering it useful on both sides of the Atlantic, the custom of giving American authorities in text-books has very largely increased, and American cases now find their way into English digests. A few years after Mr. Benjamin's treatise appeared, we remember discussing the subject of utility of American decisions to the advocate in English courts with a member of the common-law bar, now a distinguished judge in India, whose practice lay largely in a branch of the law upon which the decisions of the United States courts are specially valuable. 'Do I use them?' he said; 'yes, I use them con-

stantly. When I want an argument I go to the American reports, and very frequently I find in the judgments what I want. But of course I don't cite the cases as authorities.' From this it was an easy stage to citing the decisions as on the same footing as a view expressed in a work by Lord St. Leonards or Mr. Dart would be cited in the Chancery Division—that is to say, as the opinion of lawyers of exceptional learning and experience. But latterly it would appear that the practice has arisen of citing the decisions of American and English courts indiscriminately as if they were equally binding on questions of English law. This is, of course, an error; but we conceive that the error lies in the mode of citation, not in the citation itself. Most English lawyers know that there are probably no decisions upon which more anxious deliberation is bestowed than those of the Supreme Court of the United States, and the opinion of that court on a point not yet covered by English authority is entitled to, and would doubtless receive the most respectful consideration from any of our judges. The matter to which the observations of the Court of Appeal were addressed was, we conceive, merely the citation of American authorities as binding on English Courts. It may be remembered that in *Steel* v. *Dixon*, 17 Chy.D. 825, in which an important and novel point on the law of suretyship arose, Lord Justice Fry (then Mr. Justice Fry), while holding that the point was governed by the principle established by the well known case of *Dering* v. *Earl of Winchelsea*, 1 Cox 318, added, that in coming to this conclusion, as he did upon principle, he was much strengthened by the American authorities to which his attention had been called by counsel, and he mentioned Mr. Justice Story's Equity Jurisprudence, and read passages from the judgments of American courts. We can hardly suppose that the learned Lord Justice has completely altered his estimate of the weight which is to be attributed to American decisions."

THE BEST HUNDRED LAW BOOKS.—A writer in the *Irish Law Times* suggests that it would be a very useful thing if some one would prepare a concise and comprehensive list of good law books, including such works as would be most necessary for the general practitioner. "The list," he adds, "should, according to my view, include the leading and most reliable standard works on the different branches of international, constitutional, criminal, property, commercial and maritime law, the best books on practice and specialty subjects, and to be brief, the best of the many treatises which exist, but are only to be accidentally met with—not always when they are wanted—on the miscellaneous subjects turning up from day to day in the course of business. Such a list need not necessarily contain, or be confined to, a hundred books, but that seems to be the fashionable number in those matters, and in the present instance is not, perhaps, too ample, though it may be the reverse. If you think my hint worth any consideration, you may be kind enough to initiate a list, and you could hardly be troubled with very much discussion on the subject of it. Before concluding, you will let me add that I feel a difficulty such as Byron had in offering a translation of the 'Romaic expression of tenderness' occurring in 'Maid of Athens.' Many of

your readers may, and justly, consider they do not stand in need of instructions as to what their office shelves should contain in the shape of legal literature, and may be affronted at anything like the shadow of a suggestion that they do. 'For fear of any misconception,' therefore, as the poet said, I will remark that my list will not be for them, but for students like myself who are open to a little light and leading, and who frequently fail to find it in libraries."

In a recent number of the *Columbia Law Times* Professor Theodore Dwight, of the Columbia Law School, gives the following list of "Fifty Leading Law Books," which he thinks will be useful to a young practitioner in commencing a law library. "Being limited to that number, I have failed," he remarks, "to include many highly valuable works. These are not to be regarded as disparaged because they are not named. I have been guided frequently in making the selection by practical considerations, and equivalent books might have been suggested. I have not aimed to mention ordinary text-books used in the law school, and have omitted digests, which are indispensable, as well as reports. The various valuable collections of leading cases are not embraced in the list.

"*List of Books.*—Holland's Elements of Jurisprudence (3d ed.), Revised Statutes of the United States, Revised Statutes of the Practitioner's State, Kent's Commentaries, Schouler on Personal Property, Pollock on Contracts, Addison on Contracts, Story on Agency, Daniel on Negotiable Paper, Reeves' Domestic Relations, Smith on Master and Servant, Bishop on Marriage and Divorce, Bishop on Married Women, Tyler on Infancy, Morawetz on Corporations, Dillon on Municipal Corporations, Angell and Ames on Corporations, Sugden or Dart on Vendors and Purchasers, Benjamin on Sales (Corbin's or Bennett's ed.), Taylor on Landlord and Tenant, Burge on Suretyship, Story on Bailment, or Schouler on Bailment, Redfield on Railways, Story or Wharton on Conflict of Laws, Abbott on Shipping, Arnold on Marine Insurance, Phillips on Insurance, May on Fire and Life Insurance, Dwarris on Statutes, Browne on Statute of Frauds, Angell on Statute of Limitations, Mayne on Damages, Sedgwick on Measure of Damages, Kerr on Fraud and Mistake, Bigelow on Estoppel, May (H. W.) on Fraudulent Conveyances, Lindley on Partnership, Parsons on Partnership, Pomeroy's Equity Jurisprudence, High on Receivers, High on Injunctions, Perry on Trusts, Lewin on Trusts, Williams on Real Property, Jones on Mortgages, Washburn on Easements, Rawle on Covenants, Jarman on Wills, Humphrey's Precedents, Taylor on Evidence, Stephens on Evidence (Chase's ed.), Gould on Pleading, Daniel's Chancery Pleading and Practice."

A MANAGER stole certain negotiable securities from his employers and sold them to X., who paid value, and who was innocent of the fraud. Afterwards the manager obtained by fraud from X. a portion of the original bonds and some other bonds of a like kind and corresponding value. These bonds were returned to the employers, who knew nothing of the whole transaction. Can X. sue the employers and recover the bonds?

This is the case of *The London and County Banking Company* v. *The London and*

River Plate Bank, L.R. 20 Q.B.D. 232, and L.R. 21 Q.B.D. 535; 61 L.T. Rep. N.S. 37, and is discussed in the last number of the *Harvard Law Review*.

The question as a point of extreme legal nicety is an interesting and difficult one. "It is absolutely new, and must be decided on principle," remarks Lord Justice Lindley. The Court of Appeal holds that the defendants, *i.e.*, the employers, have given value for the bonds, and so can retain them. The value given is this: the defendants have lost a right to sue the manager for conversion by accepting from him the bonds in question. The right to sue for the conversion of the bonds has been exchanged for the bonds themselves. Acceptance of the bonds by the defendants is presumed, because "it would be contrary to human nature to suppose that the defendants would not have kept the bonds they had known of their theft from themselves, and of their restoration; and we know as a fact that the defendants have insisted on their right to retain the bonds ever since they discovered the theft." There is the analogous doctrine that the acceptance of a gift is presumed, 3 Co. Rep. 25 a; 31 Chy.D. 282, even when the gift is of an onerous nature, 5 El. & Bl. 367, at p. 382. This is the argument of Lord Justice Lindley. Lord Esher, M.R., seems to regard acceptance as immaterial, for he says: "When they restored them they lost their right, for how could they bring an action for the conversion of instruments which were in their own possession? I am of the opinion that the destruction of this right of action is a value moving from them, and that it is immaterial they did not know what they were doing." No direct authority is cited by either Lord Justice.

The cases of *Thorndike* v. *Hunt*, 3 DeG. & J. 563 (1859), and *Taylor* v. *Blakelock*, L R. 32 Chy.D. 560 (1886), however, both seem to support this doctrine. In the former case a trustee misappropriated part of one trust fund, and being called on to account and pay into court the amount of the trust, he fraudulently misapplied part of another trust fund to make good the deficiency; the court decides that the *cestuis* of the first trust estate can retain the proceeds of the second misapplication, because they have given value; *i.e.*, "There was a debt due from the trustees; they were called on to pay it, and if it had not been paid, they would have been liable to execution." The latter case is quite similar. One Carter was a trustee with the plaintiff under a will, and also trustee with the defendant under a settlement. Carter misappropriated part of the settlement fund, replacing, however, what he had taken by a corresponding portion of the will fund. Carter then died. It was *held* that the trust funds should not be disturbed; the defendant is a purchaser for value, because "in taking payment he relinquishes the right for the fruition of the right."

There seems to be no real distinction between the cases just cited and *The London and County Banking Co.* v. *The London and River Plate Bank*. The values, to be sure, given in the former cases are equitable *choses in action*, while the value given in the latter case is a legal right to sue for the tort. This, it is believed, is no reason for distinguishing the principles of the two decisions.

"It is," says Bacon, V.C., in *Taylor* v. *Blakelock*, L.R. 32 Chy.D. p. 565, "one of those painful cases in which, as between two innocent persons, a loss having

been sustained, the court is to decide upon whom that loss shall fall." Why not let the loss lie where it falls ?

LEGAL EDUCATION.--This subject is at the present time attracting attention in England as well as in Ontario. Dissatisfaction is expressed with the methods provided by the Council of Legal Education for the instruction of students for the Bar. The lecture system is criticised as being too theoretical, disconnected, and lacking in thoroughness—the time at the disposal of the lecturers not admitting of more than a dry outline sketch of the subjects of which they treat. Lord Justice Lindley, in his recent inaugural address before the Law Department of Owens College, made some suggestive remarks on the subject. "Law," he said, "was a subject which affected everybody, and everybody ought to know something about. As law related to conduct, they would see that it was a branch of the larger subject of ethics. There was in the human breast a sense of duty, a sense of obligation, and it was upon this that law was built. The subject was so vast that it would be impossible in the space of a few minutes to give even an outline of it. He would say something of the materials for the study of the law, the method of study, and something about the law as a profession. Taking, then, law to be the aggregate of the rules of conduct enforced by the State, the first question was, where were they to be found. They were not to be found in a pocket volume of 500 pages. A book which proposed to make every man his own lawyer would soon take him in trouble to his solicitor. The law was to be found in Acts of Parliament, running back to Magna Charta, and it was to be found in legal decisions filling volumes upon volumes. But a student of law was not to be appalled by the masses of books he found in a law library. Nine-tenths of them he would never have occasion to consult. If any human being could see at the outset of his life all the potatoes and mutton chops he would have to eat before he died he would stand appalled. So if a law student supposed he would have to master all the books he saw in a law library, he would not only be appalled, but he would be making a very serious error. Principles were what he had to master to acquire the 'legal mind' which enabled him to solve difficulties as they arose. Good law books which put the raw materials in a readable shape would help immensely. To him the law was an engrossing subject, because a succession of puzzles or problems arising out of human conduct. It was by no means a dry subject, but one eminently calculated to stimulate inquiry and awaken every faculty a man had. But law must be studied as a science. They must not only know the rules but know the reason for them; simply to burden the mind with rules was of no use toward making a man a lawyer. The subject was to be studied in the same way as they studied other subjects—inductively and deductively. The mechanical part of the subject could be learned only in the office of a solicitor or the chambers of a barrister. But an articled clerk would find his knowledge of little use to him without the extra culture he could obtain from the college lectures. He would advise all articled clerks to attend the college lectures, and he would also advise all other

persons who took an interest in law to do the same. He strongly condemned the system of cramming. The one good thing about cramming was that it cultivated a habit of close attention, without which a man would not be good for much in the legal profession. To master his subject the student must get hold of general principles, and he could not do this by cramming. He would be the last person to say that a man could become a lawyer by attending lectures. One might as well say that a man could become a shoemaker by studying the anatomy of the foot. The principles expounded in the lectures must be applied in the offices of legal practitioners. Unless they combined the two things they could not expect to make headway in their profession. It was said that the law was 'going down,' that it was not what it used to be, and that it was hardly worth entering upon. He believed that was an entire mistake. There never was a time when so much was done to render the law free from technicality and to make good sense and reason and love of truth prevail. Technicality after technicality was being brushed away with a rapidity only known to those who closely observed the process. If one went into a court of law and listened to an argument he would seldom find himself bewildered now by technicalities. What he would see was a desire first of all to get at the facts, and then to apply the law. Subtleties were laughed at now that would have been listened to twenty-five years ago. What was the ground for saying that the law as a profession was not what it used to be? So far as he knew, it was that owing to recent changes it was found that a great deal of work which used to be done by rising barristers could now be done by solicitors' clerks. The public, he thought, were entitled to the benefit of this discovery. But apart from this he saw no sign whatever that the law was in any sense going down. On the contrary, he saw signs everywhere that it was becoming a nobler and nobler profession; and it could not fail to progress in that direction so long as there was a desire to discredit technicalities and pursue truth and justice, come what might. He wished to give the young men he saw before him the benefit of a long experience not only as regards their studies but as regards their conduct in life. First of all he would say, let them throw their whole soul into their profession. A man who did not do that was not worthy of it. To succeed in the law a man must make it part of his religion. He did not know of any instance where a man who had done that had failed. Another thing was that they should never do anything when they were angry. If they wrote a letter when they were angry it would probably recoil on their own heads. If at the bar they lost their temper, they not only disarmed themselves, but put a double-edged sword in the hands of their opponents. They must never advise a client till they had a full knowledge of the material facts in the case, and they ought never to advise an appeal the day they were beaten. He regarded the study of the law as part of a liberal education, whether the student meant to go in for the law as a profession or not. Every young man ought to know something of the laws of the country in which he lived. And the more democratic the country became the more essential was this. In particular he recommended the study of the history of the country since the Reform Bill of 1832, since which time England had become more and more democratic."

AGENT OR CONTRACTOR.—In *Rogers* v. *Florence R. Co.*, South Carolina Supreme Court, defendant made a contract with H., a railroad contractor, for the grading of a section of its road, by the terms of which H. was to employ and pay the laborers, and do the work subject to the approval of defendant's engineer; to increase the force of laborers whenever required by the engineer; to discharge any laborer who might be offensive to defendant. If he failed to complete the work within the time stipulated, defendant was authorized to employ laborers and complete it at his expense. He agreed to remove or burn up all trees, logs, and other perishable material along the line of the road, and to be responsible for damages as between himself and defendant. Defendant's assistant-engineer was to personally direct the execution of the work.

Held, that H. was an independent contractor, and not an "authorized agent or employee" of defendant, within the meaning of the statute making railroad companies liable for damages by fires. The court said: "We have examined the numerous cases referred to by the counsel, and while there are expressions in many of them, and decisions which seem to sustain respondent's view of this contract, yet we think at last each case must rest on its own facts, with the conceded doctrine overhanging all the cases that the question of liability depends on the fact whether the company is doing the work, or whether it is being done by an independent contractor. Here we think in this case that Mr. Hardin was an independent contractor. It is said, however, that there are certain exceptions to the rule above, under one of which the case may be brought. . . . The second exception claimed to the general rule above is 'that the employer is liable where he does not release the entire charge of the work to the contractor, but retains supervision of its construction.' This is nothing more than saying that where the contractor is not an independent contractor, but is under the control of his employer, the employer is liable. In other words, instead of its being an exception to the admitted doctrine above, it seems to be nothing more than stating it in different phraseology; or rather, while recognizing the doctrine it states a certain condition where the employee would not be an independent contractor, to wit, where the employer had not released the entire charge of the work to him. etc. In *Railroad Co.* v. *Hanning*, 15 Wall. 649, this matter is fully discussed, both in the opinion of Mr. Justice Hunt, and in a note attached; and without incumbering this opinion with a discussion of the character of the control reserved, which will hold the employer responsible, we may say that no such control was reserved here. See the case of *Railroad Co.* v. *Hanning*, *supra*, the numerous cases there cited in the opinion, and the notes. The reserved control, to have that effect, must be both general and special, and not only as to what work shall be done, but also how it shall be done. See *Hughes* v. *Railroad Co.*, 15 Am. & Eng. R. Cas. 101, and notes attached. See also *Lesher* v. *Navigation Co.*, 56 Am. Dec. 495; *Bailey* v. *Mayor*, *etc.* 38 ib. 669; *Hilliard* v. *Richardson*, 63 id. 743, and the notes. The liability depends upon the fact whether the party is an independent contractor or an agent and servant of the company, which must be ascertained from the facts of each case."—*Albany Law Journal.*

DIARY FOR NOVEMBER.

1. Fri.....All Saints' Day. Sir Matthew Hale born 1609.
2. Sat.....Last day for filing papers and fees for Final Exam.
3. Sun.....*Twentieth Sunday after Trinity.* O'Connor, J.Q.B.D., died 1887.
5. Tues...1st Intermediate Examination.
7. Thu.....2nd Intermediate Examination.
9. Sat.....Prince of Wales born, 1841.
10. Sun.....*21st Sunday after Trinity.* J.H. Hagarty, 12th C.J. of Q.B, 1878. Richards, 10th C.J. of Q.B., 1868. J.
12. Tues...Court of Appeal sits. Solicitors' Exam.
13. Wed...Barristers' Examination.
14. Thu.....Falconbridge, J., Q.B.D., appointed 1887.
15. Fri.....Sir M. C. Cameron, J., Q.B., 1878. Macaulay, 1st C.J. of C.P, 1849.
17. Sun.....*22nd Sunday after Trinity.* Lord Erskine died 1823, æt 73.
18. Mon.....Mich. Term commences. High Court Justice Stttings begin.
19. Tues...Armour, J., gaz. C.J., Q.B.D., 1887. Galt. J., gaz. C.J., C.P.D.. 1887.
21. Tues...J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
24. Sun.....*23rd Sunday after Trinity.*
25. Mon.....Marquis of Lorne, Governor-General, 1878.
30. Sat.....Moss, J.A., appointed C.J. of Appeal, 1887. Street, J., Q.B.D., and McMahon, J., C.P.D., appointed, 1887.

Early Notes of Canadian Cases.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Div'l Ct.] [June 22.

LOUIS ROUTHIER *v.* MCLAURIN.

Malicious prosecution — Reasonable and probable cause—Information for assault—Justification for assault—Misdirection—New trial

The defendant laid an information against the plaintiff for assault, which the magistrate dismissed on the ground that the title to land came in question. It appeared that the defendant had come upon land of which the plaintiff's father was in actual possession, for the purpose of removing some wood, so as to give possession to one to whom he had assumed to sell the land. There was a scuffle, and the defendant was put off the premises.

At the trial of this action, brought for malicious prosecution, there was contradictory evidence as to what part the plaintiff took in the scuffle, and whether he laid hands on the defendant.

The trial judge asked the jury to say whether the plaintiff made an assault on the defendant on the occasion, and told them that if they answered "yes," they need not go any further for that would end the case. They answered "yes," and judgment was entered for the defendant.

Held, that there was misdirection; the answer was not decisive of the question whether there was reasonable and probable cause for laying the information; and the plaintiff was entitled to have the circumstances relied on as justification for the assault submitted to the jury, and to have their finding as to whether the defendant was conscious when he laid the information that he had been in the wrong. A new trial was ordered.

Hinton v. *Heather*, 14 M. & W., 131, followed.

Fulton v. *Johnstone*, 1 T. R., 493, distinguished.

Watson for the plaintiff.

Shepley for the defendant.

Common Pleas Division.

Div'l Ct.] [June 29.

DABY *v.* GEHL.

Division Court judgment—Transcript to District Court—Issuing fi. fa. lands without fi. fa. goods—Sale under expired writ—Sale after return of fi. fa. lands under ordinary fi. fa. instead of alias fi. fa.—Estoppel—Payment.

A transcript of a Division Court judgment was obtained to the District Court of the Thunder Bay District.

Held, that it was not necessary to issue a *fi. fa.* goods from such District Court before a valid sale could take place under a *fi. fa.* lands issued therefrom.

Lands were sold under a *fi. fa.* lands after the expiry of a year, and a deed executed by the sheriff. The deed recited that the writ had been duly renewed, but neither the sheriff's nor the district clerk's books showed any such renewal.

Held, that no renewal was proved, and the sale was invalid.

Subsequently writs of *fi. fa.* goods and lands were issued on the judgment, the former being returned *nulla bona*, and a sale was made under an ordinary writ of *fi. fa.* lands and a deed executed by the sheriff.

Held, that the fact of an ordinary *fi. fa.* lands being issued instead of an alias *fi. fa.*, and the

advertisement being as if the proceedings were initiatory proceedings towards effecting a sale of defendant's lands, would not of itself invalidate the sale.

In 1886 the now defendant commenced an action against the present plaintiff and others to set aside the first sheriff's deed, which was dismissed for want of prosecution.

Held, that the defendant was not thereby estopped from setting up the invalidity of the sheriff's sale, for there was no determination of this matter and no final judgment of the Court pronounced on the matters now in issue.

Held, also, that under the circumstances, the defendants could not set up that the proceedings under the expired writ constituted a payment of the execution debt.

Delamere for plaintiff.

Cattanach for defendant.

Div'l Ct.] [June 29.

CARTY *v.* CITY OF LONDON.

Accident—Municipal corporations—Want of repair of street—Contract with street railway company to keep in repair—Liability of corporation—Remedy over against street railway company—Evidence of contributory negligence.

By 36 Vict., c. 99 (O.), the London Street Railway Company was incorporated, by sec. 13 of which the City of London were authorized to enter into an agreement for the construction of the railway on such of the streets as might be agreed on, and for the paving, repairing, etc., of the same. By sec. 14 the city was also empowered to pass by-laws to carry such agreement into effect, and containing all necessary provisions, etc., for the conduct of all parties concerned, including the Company, and for enforcing obedience thereto. A by-law was passed by the city providing for the repair of certain portions of the streets by the Street Railway Company, who were to be liable for all damage occasioned to any person by reason of the construction, repair, or operation of the railway or any part thereof, or by reason of the default in repairing the said portions of the streets, and the city should be indemnified by the company for all liability in respect of such damage.

An accident having happened to plaintiff by reason of said portions of said streets being out of repair, an action was brought by the plaintiff against the City of London therefor. After action was brought, and more than six months after the occurrence of the accident, on the application of the City of London, the Street Railway Company were made party defendants.

Held, that, notwithstanding the said legislation, by-law and agreement, the city was liable under sec. 531 of the Municipal Act, R.S.O., c. 184, to the plaintiff for the damage he had sustained; but that the city was entitled to have a remedy over against the Street Railway Company.

Held, also, following *Anderson* v. *Canadian Pacific Railway Co.*, ante p. 479, that the six months' limitation clause in the Railway Act, did not apply, the question being one of contract.

Osler, Q.C., and *Marsh* for plaintiff.

Meredith, Q.C., for the defendants, the City of London.

Robinson, Q.C., and *Flock* for the defendants, the London Street Railway Company.

Div'l Ct.] [June 29.

SMITH *v.* SMITH.

Will—Life estate—Annuity—Costs—Consolidation of mortgages.

The testator by his will made a provision for his wife as follows: "I give and devise to my beloved wife," etc., "all household goods," etc., for the term of her natural life; and I give and devise to her one bedroom and one parlour of her own choice in the dwelling house wherein I now dwell;" etc., "also the use of the kitchen yard garden; also I give and devise to my said wife her life in the said lot heretofore mentioned, also an annuity of $20 yearly." He then, subject to the above and to the payment of $1,000 to his eldest son, D., and other legacies, devised the lot to his second son, J.

After the testator's death the plaintiff, the widow, and J. lived on the lot, arranging between them as to her maintenance. In order to raise money to pay D.'s legacy, the plaintiff and J. mortgaged the lot to a building society, and in default proceedings were taken under the power of sale to compel payment. The plaintiff set about making arrangements to pay off the mortgage, but the company refused to accept payment unless the amount of two other

mortgages made by J. alone were also paid. No tender was made by plaintiff, nor any demand made for arrears of annuity or dower. An action was brought by plaintiff to establish the will and to have the rights of the building society declared.

Held, that the proper construction of the will was that the widow was to have a life estate in the bedroom and parlour she should select and also in the kitchen yard garden, and also the annuity of $20; and that the building society could not claim to have the mortgages consolidated, and that as the plaintiff had not made any tender to the building society she could not claim her costs, but it was directed in lieu of her paying costs the arrears of annuity and dower should be wiped out.

Osler, Q.C., and *Follinsbee* for the plaintiff.

Meredith, Q.C., for the defendant.

Div'l. C't.] [Sept. 7.

REGINA *v.* HENDERSON.

Conviction—Carrying on "petty trade"—Evidence of.

The defendant, a wholesale and retail dealer in teas in the county of W., where he resided, went to the county of H. and sold teas by sample to private persons there, taking their orders therefor, which were forwarded by him to county of W., and the packages of teas subsequently delivered, all the packages being sent in one parcel to H. county and then distributed. The defendant was convicted under a by-law passed under R.S.O., c. 184, sec. 495, sub-sec 3, par. (*a.*) and (*b.*), for carrying on a petty trade without the necessary license therefor.

Held, that the conviction could not be sustained and must be quashed.

McGibbon, of Orangeville, for the applicant.

Kappelle contra.

Div'l Ct.] [Sept. 7.

REGINA *v.* HIGGINS.

Canada Temperance Act—Village joined to another county for municipal purposes—Jurisdiction of Justices of county within which village situated—Conviction differing from minute of conviction—Validity of.

The defendant was convicted by two Justices of the Peace of the District of Muskoka for a breach of the 2nd part of the Canada Temperance Act, for selling liquor in the village of B. in the district of M. The Act was in force in the village of B. only by reason of its being no municipal purposes within the county of V., within which county the Act was in force, there being no evidence to show that the Act was in force in the district of M., within which B. was situated.

Held, that the Justices of the Peace for the M. district had no jurisdiction to convict the defendant, for he could only be convicted by Justices of the Peace whose commissions lay within V. county.

The adjudication and minute of conviction did not award distress, but provided that in default of payment forthwith of fine and costs, imprisonment, while the conviction ordered that in default of payment forthwith, distress, and in default of sufficient distress, imprisonment.

Held, following *Regina* v. *Kennedy*, 12 O.R. 358, 360, 361, the conviction was bad on this ground.

Aylesworth for the applicant.

Delamere contra.

MACMAHON, J.] [July 20.

YOUNG *v.* CORPORATION OF RIDGETOWN.

Municipal corporations—Invalid by-law—Injunction restraining acting under—Passing new valid by-law.

The municipal corporation of R. were restrained by injunction from purchasing a site for a town hall under a by-law passed therefor, because the by-law did not provide for the levying a rate therefor, and there was no money on hand for the purpose. After the injunction was obtained the corporation passed a new by-law reciting that the validity of the existing by-law had been questioned, and directed its repeal, and that their solicitors should move the Court to have proceedings stayed thereunder and to settle the action therein. The new by-law provided for the levy of a rate during the year to raise the money required to purchase said site.

Held, that the corporation, by repealing the old by-law and directing the purchase of the same property under the new by-law valid on its face, was not disobeying the injunction which prohibited the purchasing of the property under the old by-law; and a motion for a writ of sequestration was therefore refused.

Meredith, Q.C., for the plaintiff.

Matthew Wilson contra.

Div'l Ct.] [Sept. 7.

REGINA *v.* VERRAL.

Baggage Transfer Co.—Employee going through train for baggage under agreement with railway company—City by-law against soliciting baggage—Evidence—Ultra vires.

A city by-law prohibited any person licensed thereunder soliciting any person to take or use his express waggon, or employing or allowing any runner or other person to assist or act in consort with him in soliciting any passenger or baggage at any of the "stands, railroad stations, steamboat landings, or elsewhere in the said city," but persons wishing to use or engage any such express waggon or other vehicle should be left to choose without any interference or solicitation. C., an employee of a baggage transfer company, boarded an arriving railway passenger train at one of the city stations, on its way to the Union station, and went through the cars calling out "Baggage transferred to all parts of the city," and having in his hands a number of the transfer company's checks. No baggage was taken at the time. C. was continually doing this, and it appeared to be his sole duty. C. acted under instructions from the transfer company who had an agreement therefor with the railroad company.

Held, that there was no breach of the by-law but merely the carrying out of the transfer company's agreement with the railroad company; and further that the railroad train did not come within any of the places mentioned in the by-law.

Per ROSE, J.—If the by-law had covered this case it would have been *ultra vires*.

Aylesworth for the applicant.

Bigelow contra.

GALT, C.J.] [Sept. 7.

COBOURG *v.* VICTORIA.

Victoria University—Meetings of senate—Where to be held—4 and 5 Vict., c. 37—47 Vict., c. 93 (O.)

By 4 & 5 Vict., c. 37, Victoria College was incorporated as at Cobourg. Sec. 3 enacts that the Principal and Professors together with the Board shall constitute the College Senate, which may be assembled as occasion may require by the Principal by giving one month's notice in the official *Gazette* in this province. In 1884 47 Vict., c. 93 (O.) was passed whereby Victoria College and another college was placed under the charge and control of the General Conference of the Methodist Church under the name of Victoria University. Sec. 10 enacts that the President of the University shall be the Chancellor thereof and shall call and preside at all meetings of the Senate. Certain statutes of the University were passed relative to the sessions of the Senate, which provided (1) That the Senate should meet on the first Monday after the college opening, and continue in session by adjournment for eight weeks; (2) A second session should be held commencing on the first Wednesday in March, and continue by adjournment until the close of the academic year; (3) Special sessions of the Senate might be called at any other date by the Registrar on the authority of the Chancellor. On 20th of May, 1889, the Chancellor issued a notice calling a meeting of the Senate at Toronto, and the Registrar of the University issued a similar notice. A meeting was held at Toronto under protest. After the passing of 38 Vict. special meetings of the senate had been held at Toronto, but it did not appear how these meetings had been called, or if any notice had been given in the official *Gazette*.

Held, that under the existing statutes the meetings of the Senate must be held at Cobourg, the site of the University, and therefore the meeting called for and held at Toronto on May 20th was illegal.

Robinson, Q.C., and *C. J. Holman* for the plaintiff.

Britton, Q.C., and *Moss*, Q.C., for the defendants.

Div'l Ct.] [Sept. 7.

REGINA *v.* GRANT.

By-law authorising imprisonment for six months—Validity of—Conviction—Costs of conveying to gaol included in—Invalidity of—Evidence of defendant.

A by-law of the city of Brantford enacted that any person found drunk in any of the public streets, etc., thereof, should be subject to the penalty thereby imposed, namely, to a fine of not exceeding $50 inclusive of costs, and in default of payment forthwith of the fine and costs, distress, and in default of sufficient distress, imprisonment in the common gaol for a period not

exceeding six months unless the fine and costs were sooner paid.

Held, that under sub-sec. 19 of sec. 473, R.S.O., c. 184, there was power to authorize imprisonment for the period mentioned.

A conviction under the by-law directed in default of payment forthwith of the fine and costs and sufficient distress, imprisonment for ten days in the common gaol unless the costs and charges, including the costs of conveying to gaol, were sooner paid.

Held, that the conviction was bad, as there was no power to include the costs of conveying to gaol.

On a trial of an offence under the by-law the magistrate cannot refuse to receive the defendant's evidence.

Mackenzie, Q.C., for the motion.

Aylesworth contra.

ROBERTSON, J.]

MCMILLAN *v.* BARTEN.

Trust—Evidence of fraud—Statute of frauds—Costs.

Certain lands were purchased by the defendant G.B., who paid the cash required at time of purchase, taking the deed in the name of his daughter, the defendant F.B., who gave a mortgage for the balance of the purchase money. Parol evidence was admitted to show that the defendants were trustees for the plaintiff. The evidence also showed that the defendants were acting in collusion to defraud plaintiff. The plaintiff was held entitled to redeem on repaying the amount advanced, and on indemnifying F.B. against the mortgage.

When the purchase by plaintiff was at first contemplated, the intention was to repay the amount required for the cash payment out of moneys due for work done by plaintiff's husband on a contract entered into in his wife's name, the husband being insolvent, but this was not carried out and formed no part of the arrangement subsequently made with G.B., whose sole object was, as he said, to assist the plaintiff.

Held, therefore, that an objection taken that the plaintiff had no *locus standi* to maintain the action could not prevail, the purchase of the land being by G.B. as the plaintiff's agent, and in furtherance, as was shown, of an offer therefor in writing by plaintiff, which was verbally accepted.

Held, that the statute of frauds had no application.

Bain, Q.C., and *Greene* for plaintiff.

Moss, Q.C., for defendant, F. Barton.

Millar for defendant, G. Barton.

MACMAHON, J.]

PRITCHARD *v.* PRITCHARD.

Order on solicitor to repay money into court—Disobedience of—Contempt of court—Order for committal—Con. Rule 867.

The plaintiff solicitor in a case had obtained an order for the payment out to him of certain moneys in court together with the accrued interest thereon, and upon such order obtained the moneys. Subsequently an order was obtained rescinding the above order, and directing the solicitor to forthwith repay the said moneys into court and to pay the costs of the application; and that upon such repayment into court, he could have his bills of costs taxed, and out of such moneys the amount thereof should be paid out to him. The order was personally served on the solicitor, and on his non-compliance therewith, a motion was made for his committal.

Held, that the order for committal should go, for what was sought by the motion was the punishment of the solicitor for his contempt in disobeying the order of the court, and that Con. Rule 867 had no application.

F. C. Moffatt for the motion

C. J. Holman contra.

BANK OF COMMERCE *v.* BRITISH AMERICA ASSURANCE CO.

Insurance—Fire—Statutory condition as to terminating risk—Notice of termination—Sufficiency of—Amount of unearned premium—Tender of.

By the 19th statutory condition of fire insurance policies, "The insurance may be terminated by the company by giving notice to that effect, and, if on the cash plan, by tendering therewith a rateable proportion of the premium for the unexpired term, calculated from the termination of the notice; in the case of personal service of the notice five days' notice, excluding Sunday, shall be given. Notice may be given

by any company, having an agency in Ontario, by registered letter addressed to the assured at his last post-office address notified to the company, and where no address notified, then to the post-office of the agency from which application was received, and where such notice is by letter, then seven days from the arrival at any post-office in Ontario shall be deemed good notice. And the policy shall cease after such tender and notice aforesaid, and the expiration of the five or seven days as the case may be."

The defendants' agent called on A., who was insured under a policy of fire insurance in the defendants' company, and handed him a letter written by himself, stating that the company "have instructed me to cancel their policy 2,862,361, held by the Bank of Commerce, and I therefore send you herewith $13.75 for unearned premium on same."

The agent said that on handing A. the letter he took the money out of it, counted it over, and laid it down beside the letter, and when A. refused to receive the money he (the agent) said he had no alternative but to tender it. He also said that he told A. that he had, under the conditions of the policy, a limited time to replace the insurance.

Held, GALT, C.J., dissenting, that the letter was not a sufficient cancellation of the insurance within the meaning of the condition; that the condition required written notice; and such notice must state that the insurance would be cancelled on the expiration of five days, whereas here the notice was of an immediate cancellation; and also that the rateable proportion of the premium for the unexpired term should have been calculated from the termination of the notice.

Caldwell v. *Stadacona Fire and Life Insur. Co.*, 11 S.C.R. 212, commented on.

Quære, per ROSE, J., whether the letter was anything more than a notice of the agent's instructions.

Lash, Q.C., for the plaintiffs.

Bain, Q.C., for the defendants.

PAXTON *v.* SMITH.

Statute of Limitations—Defendant maker of note and sole executor of surety—Payment by defendant on his own account.

The defendant, who was the maker of a promissory note and also the sole executor of the surety thereto, out of his own money and on his own account only, within six years before action was brought, paid interest on the note.

Held, that such payment had not the effect of taking the note out of the Statute of Limitations as regarded the surety's estate.

Scane, of Chatham, for the plaintiff.

Pegley, of Chatham, for the defendant.

Chancery Division.

ROSE, J.] [Sept. 21.

OLDFIELD *v.* DICKSON.

Time the essence of a contract—Offer to sell land—Acceptance—Net price—Reasonable time to pay money.

Time may be of the essence of a contract even without any express stipulation, if it appears that such was the intention.

Defendant wrote his agent on March 25th, "If O. (plaintiff) still wants that farm . . . . . he can have it for $150 net, provided it can be arranged at once. Kindly advise me . . . . . if he accepts, and when he will pay the money over." Ten days after (April 6th) the agent telegraphed defendant, "O. will take the farm, will pay the money in two weeks." On April 11th defendant telegraphed, "Your offer of 6th comes too late."

Held, that an arrangement between defendant and his agent as to the latter's commission would not affect the *net* price as between plaintiff and defendant.

Held, also, that the enquiry, "When he will pay over the money" showed an intention to give a reasonable time for such purpose, and that under the circumstances two weeks was not an unreasonable time. But

Held, also, that the acceptance of defendant's offer was not in time.

Crossfield v. *Gould*, 9 A.R., 318, referred to.

Pepler and *J. H. Bowes* for plaintiff.

Hewson for defendant.

Practice.

BOYD, C.] [Oct. 23.

GRAHAM *v.* DEVLIN.

Judgment debtor—Examination of—Unsatisfactory answers—Motion to commit—Re-examination—Evidence—Rules 928, 932.

Upon a motion to commit the defendant for

unsatisfactory answers upon his examination as a judgment debtor;

Held, that the examination should not be so conducted as to try to entrap the debtor, but it should be full, fair, and searching.

2. That the broad test to be applied in gauging the character of the answers, in order to determine whether they are satisfactory, is: Having regard to the circumstances of each particular case, are the answers sufficient to satisfy the mind of a reasonable person that full and true disclosure has been made?

3. That where the particulars wherein dissatisfaction is felt have been pointed out, an opportunity should be given to the debtor of reconciling what may be conceived to be contradictions, or supplying what may appear to be omissions.

4. That the ordinary rules for dealing with evidence in litigated matters where money or money's worth only is involved, are not to be applied without more to cases where the liberty of the person is at stake. And in the present case, where the examination was protracted and ranged over a period of more than two years, during which the defendant had had two lines of business going on, he was allowed an opportunity to protect himself by explanations upon various parts of his examination, relied upon as showing that a considerable sum of money had not been accounted for, being brought to his notice; and having been thus further examined, and it not having been shown that he had any means available to satisfy the judgment, and his answers as a whole being reasonably satisfactory, in view of the rules above laid down, a motion to commit was refused. History of the enactments contained in Rules 928 and 932.

Hoyles for the plaintiff.

C. J. Holman for the defendant.

BOYD, C. [Oct. 23-24.

GARDNER *v.* BURGESS.

Receiver—Rents and profits of mortgaged premises—Actions by mortgagees—Leave to proceed—Petition—Receiver's costs of appearing on—Tender of costs—Rule 1193.

Where actions were brought by mortgagees without the leave of the Court for sale of mortgaged premises, after the appointment of a receiver to receive the rents and profits of such premises, an order was made, upon the petition of the mortgagees, allowing the proceedings in the actions to stand, and allowing the petitioners to proceed with the actions notwithstanding the appointment of the receiver.

The receiver was served with notice of the presentation of the petition, and appeared thereon by counsel. The petition, besides praying for the relief which was granted, asked in the alternative that the receiver might be discharged, or that he might be ordered to pay the petitioners the arrears of principal and interest due on their mortgages, and the costs of the actions and the petition.

Held, that if the petitioners wished to protect themselves from paying costs they should have proceeded under Rule 1193, and tendered the receiver $5 with the petition; and this not having been done, and the relief asked in the alternative prayers being such as justified the appearance of the receiver, the receiver was entitled to be paid his costs by the petitioners; and the petitioners were allowed to add the sum so paid and their own costs to the mortgage debt.

Gunther for petitioner.

Arnoldi for receiver.

GALT, C.J. [Oct. 25.

LLOYD *v.* WARD.

Close of pleadings—Default note—Time—Delivery, service, and filing—Rules 7, 371, 393, 398, 480.

The last of the eight days within which the defendants should have delivered their statements of defence, as required by Rule 371, was Saturday, the 12th October.

Rule 7 prescribes that the offices of the Court shall be kept open from ten a.m. to three p.m., except on holidays, etc.

Rule 480 prescribes that service of pleadings shall be effected on Saturdays before the hour of two p.m., and that service effected after two shall be deemed to have been effected on the following Monday.

Rule 393 provides that where any party makes default in delivering a statement of defence, the officer with whom the pleadings are filed may enter a note that the pleadings are closed.

Rule 398 says that delivering a pleading includes filing.

On Saturday, the 12th October, at twenty-five

minutes past two in the afternoon, no statements of defence having been filed or served on the plaintiff's solicitor, the officer entered a note that the pleadings were closed.

Held, that the officer had no power to close the pleading until the end of the day, which would be three o'clock; and therefore the note was irregular and should be set aside.

Watson for the plaintiff.

Hoyles and *C. J. Holman* for the defendants.

Appointments to Office.

COUNTY JUDGES.

Grey.

S. J. Lane, of Owen Sound, County Court Judge, to be a Surrogate Judge of the Maritime Court of Ontario.

Carleton.

W. Mosgrove, of Ottawa, to be Junior Judge of the County Court of the County of Carleton and Local Judge of the High Court of Justice.

Elgin.

D. J. Hughes, of St. Thomas, County Court Judge, to be a Surrogate Judge of the Maritime Court of Ontario.

Prescott and Russell.

P. O'Brian, of L'Original, Judge of the County Court of the United Counties of Prescott and Russell, to be a Local Master of the Supreme Court of Judicature for Ontario, and of the High Court of Justice and Court of Appeal, respectively, *vice* L. A. Oliver, deceased.

POLICE MAGISTRATE.

Lennox and Addington.

J. Daly, of Napanee, to be Police Magistrate in and for the Town of Napanee.

DIVISION COURT CLERKS.

Middlesex.

E. Rowland, of Strathroy, to be Clerk of the Sixth Division Court of the County of Middlesex, *vice* J. English, deceased.

BAILIFF.

Thunder Bay.

J. T. Campbell, of Fort William, to be Bailiff of the Third Division Court of the District of Thunder Bay, *vice* E. Donovan resigned.

Law Society of Upper Canada.

TRINITY TERM, 1889.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School, Osgoode Hall, Toronto.

Those Students-at-Law and Articled Clerks, who under the Rules are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be the most necessary for the guidance of the student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, Q.C.

Lecturers, { E. D. ARMOUR. A. H. MARSH, LL.B.

Examiners, { R. E. KINGSFORD, LL.B. P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the Rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be. At the first Law School Examination to be held in May, 1890, fourteen Scholarships in all will be offered for competition, seven of those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students.

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School:

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subject and text-books for lectures and examinations are those set forth in the following Curriculum:

CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.

Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectues on Real Property, and Practice an Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.

CURRICULUM OF THE LAW SOCIETY OF UPPER CANADA.

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

three of this Curriculum, and presenting 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 a Certificate of having passed, within four years of his application, an examination in the subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be), on conforming with clause three of this Curriculum, without any further examination by the Society.

3. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, on or before the fourth Monday 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 file with the Secretary a petition and a presentation signed by a Barrister (forms prescribed), and pay prescribed fee.

4. The Law Society Terms are as follows:—

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

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

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

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

5. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday of June of the same year.

6. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with 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.

7. 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.

8. Service under Articles is effectual only after the Primary Examination has been passed.

9. When the time of an Articled Clerk expires between the third Saturday before Term and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit only, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

10. 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 favorable 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.

11. Candidates for call to the Bar must give notice signed by a Bencher, on or before the fourth Monday before Term. Candidates for Certificates of Fitness are not required to give such notice.

12. Candidates for Call or Cert ficate 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.

13. No information can be given as to marks obtained at Examinations.

14. A Teacher's Intermediate Certificate is not taken in lieu of Primary Examination.

15. All notices may be extended once, if request is received prior to day of Examination.

16. Questions put to Candidates at previous Examinations are not issued.

FEES.

Notice Fee	$ 1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	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 1889.

Students-at-Law.

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

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

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

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.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical reading of a selected Poem:

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.

1888, 1889 } Souvestre, Un Philosophe sous le toits.

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 year 1889, the same portions of Cicero, *or* Virgil, at the option of the candidate, 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 AS TO 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. 123, Revised Statutes of Ontario, 1887, and amending Acts.

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, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44, the Consolidated Rules of Practice, 1888, the Revised Statutes of Ontario, 1887, chaps. 100, 110, 143.

For Certificate of Fitness.

Armour 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. I., containing the Introduction and Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's 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 Examination 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.