The Canada Law Journal.

VOL. XXIV. JULY 3, 1888. NO. 12.

THE Canadian Institute is making a praiseworthy effort to collect and permanently preserve reliable data respecting the political and social institutions, the customs, ceremonies, beliefs, pursuits, modes of exchange and devolution of property and office which prevail among the Indian tribes of Canada. Knowing that the advance of civilization is yearly diminishing the sources of this information, the Institute seeks to secure the co-operation of every person who has the means of acquiring facts bearing on any of the sociological questions concerning the aborigines of this country. It is hoped that by the active and hearty assistance of those who tak an intelligent interest in the Indian tribes, much light may be cast upon the origin and development of government, and upon legal, social and economic progress. The circular issued by the learned society referred to, contains a somewhat elaborate classification of the points on which light is desired, and we refer those interested to that circular for fuller information than our space will admit of.

DR. LAVELL, the Warden of the Kingston Penitentiary, stated in the course of an address a few days ago, that of fifty-eight convicts who have come into his custody since the beginning of the present year, only one is over fifty years of age, while fifteen are between twenty and twenty-five, and thirteen are under twenty. At least two-thirds of the new convicts are under thirty. The Warden questioned the thirteen young criminals as to the causes which led them into crime, and found that they began with disobedience to parents, evil associates and Sabbath breaking. The general prevalence of illiteracy amongst the criminal classes is striking. Two-thirds of these convicts are unable even to read. One of the most ominous signs of our day is the lack of respect which children are allowed to show towards their parents; and the latter, in the face of the foregoing facts, by neglecting to exact proper respect for and deference to themselves and to enforce obedience, are paving the way for disobedience to the laws of the State, and a career of crime on the part of their children. Our schools are the enemies of crime, and every effort should be made to diminish illiteracy. It is to the advantage of the community to educate children when young, rather than to imprison them when they grow up.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The *Law Reports* for June comprise 20 Q. B. D. pp. 721-839, and 38 Chy. D. pp. 1-237.

PRACTICE—PAYMENT INTO COURT—DEFENCE SETTING UP TENDER—DENIAL OF LIABILITY—PAYMENT OUT OF COURT.

Davys v. *Richardson*, 20 Q. B. D. 722, shows that the English rules respecting the payment of money into court are sufficient to prevent the injustice which under the Ontario Rules, a party paying money into court with a denial of liability, is liable to, as demonstrated by the case of *Bell* v. *Fraser*, 12 App. R. 1; 13 S. C. R. 546.

In the present case, the action was brought for wrongful dismissal, claiming a year's salary. The defendant pleaded that the plaintiff was only entitled to one month's notice, or in the alternative to three months' salary; that before action, the defendant tendered three months' salary, which the plaintiff refused; that the defendant had paid that sum into court, and it was sufficient to satisfy the plaintiff's claim. The plaintiff took the money out of court without an order, but continued the action, and in the result was found only entitled to one month's salary. The present application was by the defendant to compel the plaintiff and his solicitor to refund the two months' salary paid in, over and above what the plaintiff had been found entitled to. Pollock, B., refused to make the order; but the Divisional Court (Lord Coleridge, C.J., and Mathew, J.), held that the defendant was entitled to the order as asked, and that the plaintiff, under the circumstances, was irregular in taking the money out of court without an order. The Consolidated Rules, we believe, will be found to have placed the practice on this point in Ontario, on the same footing as it is in England, as appears by this case.

ECCLESIASTICAL LAW—MANDAMUS.

The Queen v. *The Archbishop of York*, 20 Q. B. D. 740, is a case which the historical student can hardly afford to pass by. The application was for a mandamus to the Archbishop of York, as President of the Convocation of York, to compel him to admit the Rev. Canon Tristram, as a proctor to the Convocation duly elected. The Archbishop appeared in person, and, in a learned and able argument, succeeded in satisfying the court that it had no jurisdiction. The judgment of the court was delivered by Lord Coleridge, and in the concluding paragraph he says:

"What we are asked to do, is to interfere in the internal affairs of an ancient body as old as parliament and as independent, to control the action of its president, and to revise or reverse his decision on a matter relating to the constitution of the body itself. For 700 or 800 years it is conceded that no precedent for such an interference can be found. Such an interference would not only be without a shadow of precedent, but would be inconsistent with the character and constitution of the body with which we are asked to interfere."

PRACTICE—IRREGULARITY—POWER TO IMPOSE TERMS—WAIVER OF RIGHT OF APPEAL.

Aulaby v. *Prætorius*, 20 Q. B. D. 764, is a decision of the Court of Appeal (Fry and Lopes, L.JJ.), on a point of practice. A judgment had been entered prematurely for default of defence, and an application being made by the defendant to set it aside, and asking that the plaintiff should pay the costs; the Master refused the application, and his order was affirmed by Hawkins, J., but the Divisional Court (Huddleston, B., and Manisty, J.), ordered the judgment to be set aside, if £34 (which the defendant admitted that he owed) were paid into court within four days, and in that case, the costs of the application were made costs in the cause, but they ordered that the appeal should be dismissed with costs, if the money was not so paid into court. On appeal, however, from this order, the Court of Appeal held that the judgment being irregular, the defendant *ex debito justitiæ* was entitled to have the judgment set aside, and the court had in such a case no right to impose terms, except as a condition of giving the defendant his costs of the application. It was contended by the plaintiff that the fact that the defendant asked for costs, was sufficient to enable the court to impose terms; but this was held not to be the case. One other point in the case is also deserving of notice, and that is this: Pending the appeal to the Court of Appeal, the defendant paid into court the £34, and it was claimed that his doing so was a compliance with the order appealed from, and therefore, a waiver of the right of appeal from it. But the Court of Appeal said that the payment was made "under the compulsion of the order and not acceding to it," and therefore was no waiver.

SALE OF GOODS—WARRANTY—SALE OF HORSE CONDITION FOR RETURN HORSE DISABLED—IMPLIED CONDITION.

In *Chapman* v. *Withers*, 20 Q. B. D. 824, the plaintiff sued for breach of a warranty on the sale of a horse. The horse had been warranted "quiet to ride," subject to a condition that if the buyer contended the horse did not correspond with the warranty it should be returned on the second day after the sale, for the purpose of trial by an impartial person, whose decision was to be final. The plaintiff removed the horse, and while being ridden it ran away, fell, and broke its shoulder. The plaintiff immediately notified the vendors that the horse did not correspond with the warranty; but that owing to the accident the horse was not in a fit condition to be returned. The horse was ultimately killed. The defendant relied on the non-return of the horse, as a defence to the action, but the Divisional Court (Lord Coleridge, C.J. and Mathew, J.), affirmed the decision of a County Court Judge, that the agreement implied the continued existence of the subject matter of the agreement, and that inasmuch as it was clear on the evidence that the horse was no longer in a condition to be returned for the purpose of trial, the plaintiff was therefore relieved from any obligation to return it.

MARRIAGE SETTLEMENT—RECTIFICATION—AFTER-ACQUIRED PROPERTY—AGENCY OF WIFE'S FATHER.

In the case of *Tucker* v. *Bennett*, 38 Chy. D. 1, the Court of Appeal (Sir J. Hannen, P.P.D., Cotton and Lopes, L.JJ.), reversed the decision of Kekewich, J., 34 Chy. D. 754, noted *ante*, vol. 23, p. 232. The learned judge of first instance directed a marriage settlement to be rectified, on the ground that the settlement had been prepared and its terms settled according to the directions of the lady's father, and without her having any independent advice, and contained provisions for the settlement of her after-acquired property, and no power of appointment had been reserved to her over such after-acquired property in the event of her having no issue, and according to the trusts of the settlement, it would devolve in such an event on the next of kin of the settlor—the father. It was proved that the terms objected to had been the subject of express stipulation by the father at the time the settlement was drawn, and that they had been communicated to the daughter, and that she had left the matter to her father to do what he thought was right. Under these circumstances, the Court of Appeal held that no alteration could be made in the settlement; Hannen, P.P.D., however, dissented on the ground that he thought that the case turned on the question of fact, whether the objectionable provisions had been brought to the attention of the wife, and whether she had assented thereto, and on this point he was not prepared to say the conclusion of Kekewich, J., was wrong. Lopes, L.J., was of opinion that a father living on affectionate terms with his daughter, is "her natural agent" in matters relating to the preparation of her marriage settlement.

COMPANY—WINDING UP—CONTRIBUTORY—DIRECTOR.

In re Wheal Buller Consols, 38 Chy. D. 42, an important point of company law was decided. By the articles of association of a limited company it was provided that the qualification of a director should be the holding of 250 shares at least, that he might act before acquiring his qualification; but that his office should be vacated if he did not acquire it within three months after his election. One Jobling, who had subscribed for ten shares only, was elected a director, he accepted the office, and attended the meetings of directors; but he never applied for, nor had allotted to him any more shares. The Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), held, overruling the Vice-Warden of the Stannaries Court, that Jobling's acceptance of the office of director, and his continuing to act after the time by which the qualification ought to have been acquired, did not amount to a contract on his part, to take the additional shares requisite for his qualification, and that he was liable to be placed on the list of contributories for ten shares only.

CONSENT OF COUNSEL—WITHDRAWAL OF CONSENT—MISTAKE.

The only point for which it is necessary to notice, *In re West Devon Great Consols Mine*, 38 Chy. D. 51, is the decision of the Court of Appeal as to the effect of a consent by counsel not to appeal from an order. The appellants were

contributories of a company being wound up, they appeared by counsel before an inferior tribunal, to oppose certain claims against the company; this tribunal allowed the claims, and ordered the costs of all parties to be paid out of the assets, whereupon counsel for the appellants then undertook not to appeal. Before the order was passed and entered, they applied to have this undertaking omitted from the order, on the grounds that counsel could not give a consent not to appeal; and that he could not give such a consent after a decision on the merits; and that the consent was given by mistake, as the decision of the inferior court had turned on a resolution of the company, which the counsel had not seen, and that if they had known its terms they would not have consented. It turned out, however, that the resolution in question had been read in court on a former day. Under these circumstances, it was held by the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), that counsel had authority to consent not to appeal, and that as the counsel for the appellants had had an opportunity to become acquainted with the terms of the resolution, there was no such mistake as to entitle them to withdraw their consent. Cotton, L.J., thus disposes of the question: "Every compromise involves an undertaking not to appeal, it therefore cannot be beyond the authority of counsel to undertake that his clients shall not appeal. As to the other point, the counsel in fact, says: 'The judge has given a decision adverse to my client, and in consideration of his receiving his costs, I undertake that he shall not appeal against it.' That is a compromise. The undertaking is therefore *prima facie* binding."

MARRIED WOMAN—SEPARATE ESTATE—PROPERTY ACQUIRED SINCE 1882—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 AND 46 VICT. C. 75), SS. 5, 19—R. S. O. (1887), C. 132, SS. 7, 20).

In *Hancock* v. *Hancock*, 38 Chy. D. 78, the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), affirm a decision of North, J., upon a question arising under the Married Women's Property Act, 1882, from which R. S. O. c. 132 is adapted. By a marriage settlement made in 1870, the husband covenanted with the trustees that he would settle, or concur with the wife in settling any property which during the coverture should come to her or to him, in her right; but the settlement did not contain any such covenant by the wife, or any joint agreement or declaration to that effect. In 1883, the wife on the death of her mother, became entitled to a share of her mother's personalty, which was not limited to the separate use of the wife. The question was, whether the property thus acquired was subject to the covenant in the settlement, and it was held that it was. Cotton, L.J., on p. 89, observes: "The covenant in the settlement was undoubtedly the covenant of the husband only; and independently of the *Married Women's Property Act*, it would bind all property coming to the wife during the coverture, and not settled to her separate use. Then we come to sec. 5 of the *Married Women's Property Act*, 1882 (*R. S. O. c.* 132, *s.* 7); and this property is undoubtedly property to which the title accrued after the commencement of the Act. It is contended that the effect of sec. 5, is to give this property to the wife for her separate use, and consequently it is not property which the husband could settle.

If it had been left to her for her separate use, it is admitted that it would not have been within the covenant; does the Act have the effect of making it property to her separate use, so as to prevent it from coming within the covenant? If sec. 5 had been the only section . . . the covenant of the husband could not have touched the property; . . . but then we have sec. 19 (*R. S. O. c.* 132, *s.* 20), . . and we cannot help saying that it excepts from the Act everything which would interfere with the settlement, and would prevent the covenants contained in it from operating. The 5th section does interfere with the settlement. But for that section, the settlement would have given the property to the trustees to be settled for the wife and children, and to say that in the exclusion of this property from the settlement, it does not interfere with the settlement, is not a construction that can be seriously entertained."

JOINT STOCK COMPANY—COMPANIES ACT, 1863, S. 28 (R. S. C. C. 119, S. 44)—INSPECTION OF REGISTERS OF COMPANY—COPIES—ACTION BY SHAREHOLDER IN INTEREST OF A RIVAL COMPANY.

In *Mutter* v. *Eastern and Midland Railway Company*, 38 Chy. D. 92, the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), affirmed a decision of Chitty, J. The action was for an injunction by a shareholder of the defendant company to restrain the company from preventing the plaintiff from taking a copy of the entries in the company's register. The plaintiff was in the service of a rival company, and the stock he held in the defendant company had been given him by the chairman of the rival company to qualify him to attend the meetings of shareholders. The defendant company were willing to permit the plaintiff to inspect the register; but refused to permit him to take copies of the entries. Chitty, J., held that the fact that the plaintiff was seeking to serve the interests of a rival company, did not disentitle him to obtain the assistance of the court in enforcing his statutory right, and be granted an injunction, and the Court of Appeal held he was right.

AGREEMENT TO ENTER INTO AGREEMENT WITH THIRD PARTY—DAMAGES.

In *Foster* v. *Wheeler*, 38 Chy. D. 130, the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.) affirms a decision of Kekewich, J., 36 Chy. D. 695, noted *ante*, p. 73. Foster, the plaintiff, was lessee of a house, the lease for which was about to expire, and entered into an agreement with the defendant whereby she agreed within seven days thereafter to enter into a binding agreement with the plaintiff's lessor, for a lease of the premises, and upon such lease being granted the plaintiff agreed to surrender his term. The defendant having refused to carry out the agreement, this action was brought by the plaintiff for specific performance, or in the alternative for damages. Kekewich, J., gave judgment for damages, to be ascertained by reference. From this judgment the defendant appealed, contending that the agreement was invalid for want of consideration, but the Court of Appeal held that the plaintiff's agreement to surrender his term was a sufficient consideration.

PRACTICE—PARTICULARS—DISCOVERY.

In *Millar* v. *Harper*, 38 Chy. D. 110, a point of practice of some moment was determined by the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), affirming North, J., in which the rule is laid down, that where a defendant has means of knowing the facts in dispute, and the plaintiff has not, particulars of demand will not be ordered to be delivered by the plaintiff until after the defendant has given discovery. In this case, the plaintiff, as executor of a deceased married woman, sued her husband claiming that certain chattels in the defendant's possession were the separate property of his deceased wife. The husband applied for particulars showing the chattels claimed; but it was ordered that the application should stand over until the defendant had made an affidavit which of the articles belonged to the wife.

BILL OF SALE—MORTGAGE OF MILL PROPERTY—TRADE FIXTURES.

In re Yates, Batcheldor v. *Yates*, 38 Chy. D. 112, the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.) held, affirming the decision of the Vice-Chancellor of the County Palatine, that where a mortgage was made of a mill property on which there was fixed machinery, being trade fixtures, which passed to the mortgagee as being affixed to the freehold, and the mortgage contained a power of sale; that the mortgage was not an assignment of the trade machinery so as to require registration under the *Bills of Sale Act*, but was a valid mortgage both as to the land and machinery, and that the power of sale did not authorize the mortgagee to sell the machinery apart from the land.

COPYRIGHT—NAME OF NEWSPAPER.

Licensed Victuallers' Newspaper Co. v. *Bingham*, 38 Chy. D. 139, was an action brought to restrain the defendants from publishing a newspaper with the same name as the plaintiff's paper. The plaintiffs, on the 3rd February, 1888, commenced the publication of their paper, and registered it at *Stationers' Hall* the next day. No advertisement had been issued that a newspaper under that name was about to be published. On the 6th February the defendants published the first number of a newspaper with the same name. Very few copies of the plaintiff's paper had then been sold. The Court of Appeal (Cotton, Bowen and Lindley, L.JJ.) affirmed North, J., in holding that the registration of the plaintiff's newspaper at *Stationers' Hall* gave the plaintiffs no exclusive right to the name, and that a title to it by use and reputation could not be acquired by a publication for three days with a very small sale.

PRACTICE—THIRD PARTY PROCEDURE—RULES S. C. ORD 16, R. 53 (ONT. C. R. 232).

Barton v. *London & N. W. Ry. Co.*, 38 Chy. D. 144, was an action brought against the defendant company to compel them to re-transfer stock alleged to have been transferred out of the plaintiff's name by means of forged transfer deeds. The transferees were not made parties, but the company served them with third party notices, claiming indemnity. The company, in their defence,

set up all the grounds of defence that could be relied on against the plaintiff's claim. Some of the third parties desired to defend, and Kay, J., gave them leave to attend the trial and take such part as the judge should direct. Two of them appealed from this order, asking for leave to deliver a defence, appear at the trial, put in evidence, and cross-examine the plaintiff's witnesses. The Court of Appeal, however, dismissed the appeal, holding that the third parties would not, according to the old practice, have been necessary parties, and as the defendant company were *bona fide* defending the suit and raising all proper defences, the plaintiffs ought not to be embarrassed and put to expense by unnecessarily allowing persons who were not necessary parties to the action, to take all the same steps as if they had been made defendants.

COMPANY—CONTRACT ON BEHALF OF INTENDED COMPANY—RATIFICATION—POWER OF DIRECTORS—MORTGAGE OF UNPAID CAPITAL—UNAUTHORIZED ISSUE OF DEBENTURES.

Three points of some interest were decided by Kay, J., in *Howard* v. *Patent Ivory Co.*, 38 Chy. D. 156. A contract was made by one Jordan with one Wyber, who purported to act on behalf of an intended company, to sell certain property to the company, part of the purchase money being payable in cash and the balance in paid-up shares. The company was formed shortly afterwards, and the memorandum of association provided for the adoption of the agreement with Jordan. At meetings of directors subsequently held, at which Jordan, who was a director, was present, resolutions were passed adopting the agreement, and accepting an offer by Jordan to accept part of the purchase money in debentures instead of cash, and directing the seal of the company to be affixed to an assignment of leaseholds to be made by Jordan to the company, and to the debentures to be issued to him to the amount of £3,500; the debentures were accordingly issued to him, and the amount secured thereby was made a charge on the capital not called up, and the company took possession of the leaseholds. The company was subsequently wound up, and the liquidator took from Jordan an assignment of the rest of the property comprised in the agreement. It was held, first, that there was sufficient evidence of a contract by the company with Jordan to the effect of the previous agreement, as subsequently modified by the acceptance of debentures instead of cash, and that there was, therefore, at the time the debentures issued an existing debt due by the company; and secondly, that the directors being authorized to mortgage all or any part of the company's "properties and rights," they had power to mortgage the capital of the company for the time being not called up. But, thirdly, that their power of mortgaging being limited to £1,000 in all, the debentures issued for the £2,500 in excess of that sum were invalid.

COMPANY—AGREEMENT TO PAY INTEREST ON SUMS ADVANCED BY SHAREHOLDERS OVER AND ABOVE CALLS—SURPLUS ASSETS.

This number of the reports is somewhat rich in cases on company law. *In re Exchange Drapery Co.*, 38 Chy. D. 171, is another decision of Kay, J., on this

branch of law. A company which was being wound up had, by its articles of association, agreed that a shareholder advancing in respect of any of his shares beyond the amount actually called up, should receive interest on such advances. The company had ratified an agreement between the vendors and promoters, whereby it was agreed that the latter should be paid partly in paid-up shares, and that the holders of vendors' shares should be entitled to dividends upon so much thereof as should equal the amount for the time being paid up on the ordinary shares, and interest upon such amount of the nominal value of the vendors' shares as should equal the amount not called up on the ordinary shares. There being a surplus of assets after paying the debts of the company, it was held that the holders of vendors' shares were entitled to have paid to them on account of their shares such portion thereof as equalled the amount not paid up on the ordinary shares with interest until repayment, and not merely up to the commencement of the liquidation proceedings, such sum being treated as an advance to the company at interest.

WILL—ABSOLUTE GIFT—RESTRAINT ON ALIENATION—CONDITION.

In re Dugdale, Dugdale v. *Dugdale*, 38 Chy. D. 176, is an interesting decision of Kay, J., on the construction of a will, whereby the testatrix gave certain real and personal estate "upon trust for my third son, J., his heirs and assigns; but if my said son should do, execute, commit, or suffer any act, deed or thing whatsoever, whereby, or by reason or in consequence whereof, or if by operation of law, he would be deprived of the beneficial enjoyment of the said premises in his lifetime, then and in such case the trust hereinbefore contained for the benefit of my said son shall absolutely cease and determine and the estates and premises hereinbefore limited in trust for him" were to go and be held in trust for his wife, or in case he had no wife living, then for his children equally. J. survived his mother and was a bachelor, and the present action was brought by him against the testatrix's other children or their representatives, and the trustees of the will, for a declaration that he was absolutely entitled to the property devised, upon the ground that the executory devise over was repugnant and void, and it was held by Kay, J., that the executory gift over was void.

WILL—CONSTRUCTION—VESTED INTEREST—GIFT OVER ON DEATH WITHOUT "LEAVING" ANY CHILD OR CHILDREN SURVIVING—TESTATOR, WHETHER IN LOCO PARENTIS.

In re Hamlet, Stephen v. *Cunningham*, 38 Chy. D. 183, it was held by Kay, J., that though the artificial rules of construction adopted in *Emperor* v. *Rolfe*, 8 D. M. & G. 391, and subsequent cases in reference to settlements in order to overcome express words of defeasance, of an interest which by previous words of gift are vested in a child, may also apply to portions given by a will where the testator stands *in loco parentis* to the devisee; yet where the gift by will is not one of portions to children, or persons to whom the testator was *in loco parentis*, the words of the will must be construed according to their grammatical meaning; and the mere circumstance that a testator in a clause providing for the maintenance of future children of his only daughter, who was then unmarried,

speaks of shares previously given to such children as "portions," is not sufficient to show that he has placed himself *in loco parentis* to such children. In this case the testator gave personal estate and proceeds of real estate to trustees upon trust for his daughter and only child for life, and after her death for her children, who being sons should attain 21, or being daughters should attain that age or marry, with a gift over if his daughter "should happen to die without leaving any child or children her surviving, or having such, they shall all die without having obtained a vested interest in the said trust, and without leaving any issue him or her surviving." The daughter had five children, all of whom died unmarried in her lifetime, and only two of them attained 21. On the death of the daughter, it was held by Kay, J., that the gift over took effect.

PRACTICE—RECEIVER MORTGAGE ACTION.

In *Wills* v. *Luff*, 38 Chy. D. 197, which was an action for foreclosure by a subsequent equitable mortgage by deposit, and in which a final order had been obtained, but in which the conveyance of the property to the plaintiff remained to be settled, the plaintiff applied for the appointment of a receiver, and Chitty, J., held that after the final order of foreclosure the action was practically at an end, and the appointment could not therefore be made, because all the defendant's interest was vested in the plaintiff.

WILL—CONSTRUCTION APPOINTMENT REMOTENESS SEVERABLE PROVISO INFANT SETTLEMENT.

In *Cooke* v. *Cooke*, 38 Chy. D. 202, there were two points for decision. The first was as to the construction of the will of Isaac A. Cooke. By his marriage settlement the testator was empowered by deed or will to appoint the settled property among his children. By his will he appointed the property among his three daughters equally, with a proviso that if at the time of his death any of them should be unmarried her share should be held in trust for her for life, and after her decease, in case she should die without leaving issue, as she should appoint, and in default of appointment, or in case she should not have issue, on corresponding trusts in favor of his other children. One of his daughters (the plaintiff) was unmarried at the testator's death; and it was held by North, J., that as the effect of the proviso would be to tie up the shares longer than the rules against perpetuity allow, that, therefore, the proviso was void, and that the plaintiff took her share absolutely. The other point in the case related to the real estate affected by the appointment, and it was this: The settlement in question was made in 1834, the wife being then an infant; it, however, contained a covenant by the father and mother of the intended wife, that on the latter coming of age she would convey her real estate to the trustees to the uses of the settlement. The plaintiff was born in 1835, and her mother became of age in 1836, and then executed a conveyance in accordance with the covenant in the settlement. If the power of appointment contained in the settlement dated from 1834, before the plaintiff's birth, then the appointment executed by the testator,

so far as it affected the realty, would be void as offending against the rules against perpetuities: but if it dated from 1836, when the deed of confirmation was executed, and after the plaintiff was born, then the appointment as to the realty would be good. North, J., held that the settlement of 1834 was not void, but merely voidable, and the subsequent deed of 1836 amounted merely to a confirmation, and that therefore the power was conferred in 1834, and the appointment was consequently bad as regards the realty also.

WILL—CONSTRUCTION—CHARITABLE LEGACY—PERPETUITY.

In re Randell, Randell v. *Dixon*, 38 Chy. D. 213, North, J., decided that where a testatrix bequeathed £14,000 on trust to pay the income to the income of a specified church so long as he permitted the sittings to be occupied free; and in case payment for sittings was ever demanded, that the £14,000 should fall into her residuary estate, the bequest was for a specific charitable purpose, and not for charitable purposes generally, and on failure of the trust for the benefit of the incumbent the fund could not be applied *cy-près*, but that it would become part of the testatrix's residuary estate, which being a direction that the fund should go as '... law would otherwise carry it, did not offend the rule against perpetuities.

ENGLISH DOMICIL—MARRIAGE ACCORDING TO CUSTOM OF FOREIGN COUNTRY WHERE POLYGAMY ALLOWED.

The only remaining case to be noted is *In re Bethell, Bethell* v. *Hildyard*, 38 Chy. D. 220, in which the validity of the marriage of a domiciled Englishman with an African woman according to the customs of the Barralong tribe, to which she belonged, and which permitted polygamy, came in question. It appeared that the marriage in question was performed in Bechuanaland, according to the custom of the woman's tribe, and that the man had refused to be married in church, and had never communicated the alleged marriage to his friends in England, and had spoken of the woman as "that girl of mine." They, however, lived together as man and wife, and had issue one child. It was held by Stirling, J., that the marriage was not a marriage in the Christian sense as being "the voluntary union for life of one man and one woman, to the exclusion of all others," but was a marriage in the Barralong sense, which permitted polygamy, and that it was, therefore, not a valid marriage according to the law of England.

CONTINGENT AND EXORBITANT FEES.

I DO not propose to discuss the law of champerty, but would say some things from the ethical standpoint upon the practice of bargaining for large fees, generally, contingent upon the result of the suit, of taking in advance an assignment of a large proportion of the amount expected to be recovered, to be paid for by prosecuting the action as the attorney of him who is supposed to have suffered a wrong.

The practice of bargaining for such fees is very common, so common as hardly to excite remark, and if it be an evil, demands that we speak out upon the subject. Moral evils never cure themselves. The downward drag of our moral natures is such as to require moral force, actively applied, to lift it up.

In England, and in many of the States, the law gives the successful attorney advantages which are unknown in other States. He recovers costs which embrace respectable fees, and he has also a lien upon the judgment for his reasonable charges. Elsewhere his claim is simply that of any creditor, and he often gets nothing. I call to mind a cause in the prosecusion of which counsel had labored for years, had tried it twice before a jury, and once in the Supreme Court, and finally had recovered judgment. An attempt to defraud was fastened upon the defendant, and to revenge himself upon the attorney he made friends with the irresponsible plaintiff, and paid him the judgment. The attorney had recovered a just claim, which, without long and patient labor would have been lost, he had earned a liberal fee, yet his grateful client, under advice of his late antagonist, left the State without paying him a dollar. If a mechanic should have a lien upon the work of his hands, and the sailor or boatman upon his craft, I know not why a lawyer should not also have a claim upon the judgment he recovers. Deprived of taxable costs, and deprived even of a claim upon the judgment, it is not altogether unreasonable to claim exemption from some of the restrictions as well.

There are many having just claims, who are unable to employ counsel unless they are paid out of the proceeds. Also the statute may compel a plaintiff to give security for costs, and this he is sometimes unable to do, unless some one assumes a responsibility which a prudent man would avoid. This claim may be all the poor man has; if in order to secure counsel fees and costs he sells an interest in it, it may be champerty, if he is aided without consideration it may be maintenance, and so the demand must be surrendered. But if allowed to sell an interest at all, it must be a contingent one, and why not to the attorney who prosecutes it?

There are, however, grave objections to the practice of taking contingent fees, in other words, of purchasing a contingent interest in a claim, in order to provide for the expenses of its prosecution.

1st. It encourages litigation. Often legal claims had better sleep. The claimant may be magnanimous so long as the prosecution must be at his own risk, while, if it could be pursued at another's, even in part, the prospect of gain

and perhaps revenge, unchecked by the fear of loss, would arouse his sense of justice and make his duty clear. It may be an honest demand, but often, how much better that such demands be waived. The strife, perhaps permanent estrangement of the parties, extending sometimes through a community, as friends and neighbors range themselves upon one side or the other, accompanied it may be by serious breaches of the peace, is an evil of such magnitude as seldom to be compensated by the success of the right party, to say nothing of the risk that the wrong one will win. I do not agree with Ihering in regard to one's duty to go to law. It surely should be one's right to suffer a wrong, and it may become a duty to do so. Whether a duty or not, to thus suffer is often for one's interest; the expenses of a legal prosecution, the uncertainties incident to all controversies, especially under our imperfect mode of administering justice, will cause a prudent man to pause and count the cost. The travesty upon the common-law jury trial, adopted in some of our Western States, by which the trial judge is made little more than a presiding officer to assist the sheriff in keeping order, renders results in such States still more uncertain. A man should, therefore, weigh his cause and probable results before beginning a suit. He will see his own side of a controversy with sufficient clearness, and be sufficiently combative not to need special inducements. Besides, the law favors the settlement of disputes, the compromising of matters already in litigation, and without fraud or mistake, the court will not reopen a controversy even if the rights of one of the parties have been surrendered. By a sale of a contingent interest one may have so bound himself as to make a compromise impossible. To dismiss his action he must violate the contract with his attorney, which an honest man would not like to do, whether the transaction be held to be champerty or not. If the contract be sustained he is liable to the attorney, not for fees, but for the value of the interest he had agreed to give.* He has thus put it out of his power to do what the policy of the law has always favored, and what in the uncertainties of litigation, it may be for his interest to do.

2nd. It changes the relation of counsel to the cause. To be admitted to the bar is to become a sworn officer of the court. As such officer, the lawyer is bound by its rules and obligations as much as the judge or any other officer. The fact that he is not the judge, bound to impartiality between parties, the fact that he is not the sheriff, bound to discover and procure the seizure upon execution of property of his client, the fact, in a word, that his peculiar duties and obligations are not those of other officers, make him none the less an officer, and his duties and obligations none the less imperative. No one would feel safe if pecuniary motives were suffered to be addressed to a judge or sheriff, bearing upon the discharge of his duties. The zeal of partisanship and the ambition to win are incentives strong enough to test the integrity of most lawyers, and when we make him a partner in the prosecution, a real plaintiff, though a concealed one, may we not add a motive to unprofessional conduct too strong for his moral endurance. We every day see men treading the very verge, if not going beyond

* See Duke *v.* Harper, 2 Mo. App. 1.

the line which one may not honestly pass. We see them, and not without reason, suspected of deception, of trickery, and even of subornating perjury on behalf of clients, and under the pressure of only ordinary motives. To add the strong one of a personal interest in the result, may well blind one to the character of acts, the counsel merely might have been able to see.

3rd. It degrades the profession. I do not expect the modern lawyer to take the place of the aristocratic Roman jurisconsult, whose reward for the labor of studying and expounding the law was the fame, the influence and often the official positions they gave him; nor would I make his claim merely an honorary one. No class work harder than successful lawyers. To none is society more indebted than to the industrious and upright members of the bar, and I know no reason why they should not be paid like other workers. But the service should not be made the subject of a gambling venture. Reward for labor is one thing—speculation in chances is another. To receive a reward for honest work, and an adequate one, is honorable to him who receives and to him who pays. As an honest trade, each party feels the benefit, the sense of justice is satisfied and the transaction is not disturbed by the feverish excitement of a mere speculation. As gambling corrupts trade, changing the stock board or the corn exchange into a mere gaming resort, converting that which was designed to facilitate legitimate exchange into an excited arena of combatants with fortune, substituting the honor of the gambler for the obligations known to the commercial code, so, if the lawyer is taught to look to chance results for his gains rather than rely upon rules of justice and fair dealing, his mind will be diverted from professional duty to the calculation of chances, will be disturbed by its resultant fever, and he will necessarily become a poorer lawyer and a worse man. Fortunes have been made by this class of fees. Men have taken them who have had and who are entitled to public confidence. Yet I cannot but feel that the general effect upon the bar has been bad. Those eminent attorneys, who by successful draws, have thus received rewards out of all proportion to the value of their services, who are thereby enabled to ape the style of the shoddy contractor, or the successful speculator or gambler, become objects of envy and imitation to all their less successful brethren. Lawsuits become their lottery; and labor for a certain but moderate reward becomes a tame business. When applied too, or, more often, when they have hunted up a stale or sleeping demand, perhaps for unliquidated damages so trifling in fact as to be forgotten, but to be so exaggerated, if not simulated, as to wake the sympathy and imagination of a jury, or perhaps for valuable land for which the claimant, or his ancestors, or their vendors have once been paid, their first thought is how much they can draw from this scheme, not how much they shall earn. Need I describe the effect of such scheming upon character, upon that nice sense of duty and of right that one should cherish as more precious than the apple of his eye?

Our whole moral atmosphere is corrupted by the passion for sudden wealth. The slow accumulations of industry are despised. The healthy glow of honest toil gives way to the fever of gaming ventures The moral instincts, fed by such toil and its due reward, find only poison in the latter, and it is no wonder

that under the stimulus of such potions, the pathway of life is strewn with the skeletons of those who have mistaken it for wholesome food. Can the lawyer escape the moral influence of that which has proved so fatal to tradesmen, to bankers, to all indeed in whom this passion is roused? His occupation brings him into daily contact with them, his skill is in requisition to right the wrongs they have inflicted, or defend them from the penalties they have incurred. He sees, also, the prosperity of the few who succeed in their ventures and are able to surround themselves with the show of wealth, and he can look through the tinsel to the unrest and vulgarity beneath. Yet how few are strong enough to estimate things as they are, at the value they are known to possess, and not be blinded by external show, and how few are superior to the passion for mere wealth, without regard to the terrible sacrifice its gain may demand.

I would not have one despise property nor would I censure its accumulation. Lawyers are not monks, nor should they be content to be beggars. The ambition to accumulate is laudable and when gain is the product of industry and frugality, when it involves no sacrifice of duty nor the subordination of the higher powers, it is rather an honor than a reproach. The rich man in the Gospels was not condemned for his riches, but because he trusted in them, knew nothing higher or better; and the lawyer who seeks property, seeks a good thing, that which is desirable to have if the price be not too great. I only censure a method that arouses all the passions of a gambler. The supremacy of such passions must be at the expense of qualities essential to the character of a good man and a good lawyer. They tend to destroy his love of truth for truth's sake, of study for the knowledge and intellectual power it brings, and to blind every nice moral perception. Such passions with kindred appetites will never develop a Marshall or a Kent.

But after all, what if we always remain poor. It may be an evil, but it is far from being the greatest one. It may be, it often is, a blessing.

The merely rich have their worshippers, but of what sort. They may be able to buy much brick and much marble, to live in palatial halls with troops of servile attendants, to ride in gilded carriages and sport costly furs and diamonds, but how essentially vulgar is all this! Unfortunately for the future of our democracy, they may be also able to buy seats in legislative halls, to reach positions due only to worth, but the popular heart makes fruit thus plucked but ashes. The millionaire is at a disadvantage, especially if he has become such while in public life. He may be honest, but people will not believe it. The corrupt, by party machinery, may put him forward in the belief that he will use his opportunity, if not his money, for their benefit, but their success only places him in the stocks for missiles and jeers, not only from passers-by, but from history if it shall deign to notice him. Success in buying a seat—say in the United States Senate—gives its buyer but a cushion of thorns. No such man ever has or ever will, acquire a respectable standing unless with retainers and co-corruptionists. Hate may be exchanged for sneers, or *vice versa*, but for love and trust never.

Our very poverty may be the stimulant needed for success; constitutional

laziness may be overcome in no other way. Poverty, at least very moderate means, may be the necessary ladder for a great ambition. The great and noble among men, those who have impressed their ideas upon the generations, have not been rich. Aristotle was dependent upon patronage; Socrates, as he goaded the gilded fools around him, was almost barefoot; and a greater than Socrates had not where to lay His head! I would not sermonize, but would have it felt that there is something higher than wealth, that man is more than money.

4th. Aside from the corrupting tendency of speculative fees, they have the effect, by giving undue prominence to the idea of money making, to divert attention from professional learning. The ruling idea gives character and direction to one's thoughts. It has always been remarked that it is impossible for a lawyer without loss to engage in other business, or any kind of speculation, or even to give much attention to political discussions. If he devotes himself to his business, constant in his reading and legal researches, he will have fees, but will have little time to consider the money question as such, and the latter idea can take possession of his mind only at the expense of his strictly legal pursuits. The great lawyer is seldom a good speculator. A single heavy draw in a speculative suit may have the same effect, as to draw a large prize in an ordinary lottery, that is, to give a distaste for the ordinary results of industry, a distaste for causes and the labor accompanying them, when only ordinary fees are received, a distaste for study without the stimulus of similar gains, and will be likely to operate in the end to make him who has unfortunately been so successful, poorer in purse, much poorer in professional attainments, and especially poor in professional honor.

5th. An objection also arises out of the relation of the parties. It is confidential and fiduciary in its character. The attorney holds himself out as the trusted friend and confidential agent of all who may come into relations with him. It is true, this relation may not become actual until the retainer, present or prospective, is accepted, yet every step that so results should be, not only fair and honest, but in the interest of the client. The attorney is his agent, his trustee, and is bound, so far as he honestly may, to consult his interest. This confidential relation should prevent any business transactions between them. Trustees and beneficiaries may not deal together; the dealing, if not wholly forbidden, is tainted, and for very slight reasons the courts will condemn it. To obtain an interest in the result of a suit, however paid for, is to purchase an interest in a chose in action, and the relation of client and attorney is changed to one of partnership. Such dealings, whether in contemplation of the relation, or after it is consummated, are like all other dealings between trustees or agents and their beneficiaries or principals, and how they are regarded, every lawyer knows.

It may be said that when the contract is made the parties are dealing as strangers. But this is not true. The moment the client lays his case before the attorney, the confidential relation begins. The attorney, as frequently ruled by the courts and because of this relation, is forbidden to disclose any communication he may make, and this, whether he receives a fee or is in fact employed or not. He may, in civil cases, refuse to take his case, but if he takes it, every step must be in the interest of his client.

But admit that their relation when making the contract is not that of attorney and client, then they are negotiating for a special partnership, the one is selling and the other is purchasing an interest in a chose in action or in property to be claimed. The purchase is made, it does not matter whether with money or with promised service. When, then, does this special partnership cease, and when does the relation of attorney and client begin? Do they not hold both relations? And should not they both be the parties to the record? If the attorney did not act as such when he purchased his interest, he is like any other purchaser, and, while at common law he could not be a party plaintiff, not having a legal interest, in equity and under the code he should be joined as one of the real parties in interest. He is "united in interest" with his so-called client, and should at least share the odium of pursuing a perhaps disreputable claim. One comes into court exonerated from any personal responsibility; he is not responsible for the tricks of his client, he stands upon a high plane and looks an honest judge and honest lawyers in the face, as though he were like them; he is employed only to see that the legal rights of his client are protected. The client may be dishonest, he knows not, but he, his counsel, will be governed, in conducting the case, by all the rules that regulate the conduct of honorable members of the bar; and he is permitted to hold this representative relation undefiled by the nature of the claim, when in fact he is but a partner in his client's iniquity. If our old wholesome laws against champerty are not to be enforced, at least let courts obey the Practice Act, and compel the partner to place his name upon the record as such.

If we are led to condemn the practice of taking contingent or speculative fees, it does not follow that it is necessarily morally wrong under all circumstances. We have nothing, in this connection, to do with the law bearing upon the subject. Contracts for such fees may or may not be enforced by the courts, and they will be held to be obligatory, or contrary to public policy, without much regard to the circumstances under which they are made. But, in *foro conscientiæ*, the circumstances and the terms of the contract have much to do with its character. One has a meritorious claim and little or no other property; if he recovers he can afford to pay a liberal fee, if he fails, it would be impossible or difficult to pay anything. He asks his counsel to accept a liberal sum, something more than an ordinary fee, if the claim be recovered, upon condition that nothing, or a very small fee, be charged upon failure. Now, the evils arising from these contracts may be so great as to require that even this arrangement be condemned, not as wrong in itself, but as countenancing that from which great evils arise. But unconnected with the general influence of the practice, it would seem that this would be an innocent arrangement, provided its terms were fair and reasonable, and provided the proceeding was not set on foot by the attorney. But under cover of a willingness to aid the claimant at the risk of receiving no compensation, it will not do to oppress him on account of his poverty, by a charge, contingent though it be, largely in excess of the value of the service. Many, perhaps most, at once become equal partners with their client, and for professional aid alone, contract for half of the proceeds of the suit. There may

be a claim when this would not be an unfair proportion, if any proportion is to be tolerated, but this is not ordinarily so.

I will suppose a proceeding under the statute for negligence resulting in death. The verdict, if for the plaintiff, as it is very apt to be, is sometimes fixed by statute at five thousand dollars, and, if not so fixed, it seldom falls below that sum. Or, in a proceeding against a railroad company for injuries where death does not result, the damages are usually high. When the cause is really a meritorious one, the injured party or his representatives may be justly entitled to all that may be recovered, and even that may be a poor compensation. But in the contract supposed the attorney takes half. Are his services ordinarily worth from one to three or five thousand dollars? and for the reason that the amount recovered is all that the plaintiffs have? The facts are usually simple—there should be but one jury trial, although a new one may be granted, and an intelligent client, with a knowledge of the case, and where there is no combination at the bar, will hardly make such a contract. But the persons suffering are usually women or children, and to exact that amount would, in most cases, be oppressive. It is a lawyer's duty to undertake the cause of the poor, if a worthy one, and run his risk as to compensation, unless he decline for reasons other than the fact of poverty.*

In this connection something further should be said in regard to the extent, the amount which may be considered a just compensation for services, whether the charge be conditional or absolute. Of course no precise rule can be given: the same service by the same man may be worth at one time more than at another, and one man may be entitled to command more than another. But, while the matter must necessarily be left chiefly to the arrangement of parties, we sometimes hear of fees, if they may be so called, so out of all proportion to the value of the service as to shock our sensibilities. The actual owner of the money or property paid or donated, it may be said, has a right to do what he will with his own, and if his attorney shall receive it, who can complain? Call it a donation if you will, it is the attorney's good fortune, and no one is wronged. But it should be remembered that the attorney holds such a confidential relation towards his client that he cannot receive from him a gift. The law presumes undue influence, and forbids it. Besides, it is seldom free in fact, but is exacted by the recipient, and under circumstances that create a seeming necessity. The donation, however, is not usually the property of the one who makes it. Executors or other trustees may feel at liberty to give freely of the subject-matter of their trust when they might have been more scrupulous had it been the fruit of their own labor. Directors of a railroad corporation may have a friend whom they wish to benefit; or may have become so accustomed to deal in large sums as to make ordinary items seem petty, or for other or less excusable reasons, have become indifferent to the interests of the stockholders, and, out of other people's money, give tens of thousands of dollars for work that may be worth but hundreds. These things are not habitually done, but the instances are suffi-

*See the old French rule at the close of this article.

ciently numerous to have arrested public attention. Are those lawyers whose chief aim is to make all they can out of everything that comes into their hands, who demand what they think they can get without reference to what they earn, and who hence may have built up fortunes, the ones to be deemed successful lawyers? Shall we make of them examples or beacons?

To illustrate: an estate is to be settled, the dispute arising perhaps in regard to the validity or construction of a will. Instances are not unfrequent where large fortunes have been dissipated in these disputes, and chiefly by paying exorbitant fees. I have heard of an instance where a distinguished lawyer received a retainer of fifty thousand dollars on behalf of a rich estate in anticipation of an effort to break a will which was not in fact contested. On what principle, if we acknowledge any rule of right that should regulate the charge of counsel than the right to get all he can, could such a charge be justified, and how could the executor justify himself in paying it? Again, the directors of a great corporation—say a railroad—desire to perfect some contrivance or organization that shall enable them to profit personally and largely from the construction of the road. The object is itself illegal, for they can only work in the interest of the stockholders. But the temptation is great, and they look about for some astute lawyer that shall be able to draw up a successful plan. It is a work which of itself is wrong—no lawyer has a right to devise the means of fraud—but as money will tempt trustees to violate their trust, so money will blind some lawyers to the ethical character of their work. One is found sufficiently able and sufficiently unscrupulous, and for a compensation of, perhaps, two or three thousand dollars a day for his work, and an interest in the job, a safe plan is contrived. Another corporation—also likely to be a railroad, holds a demand, perhaps against the Federal government, perhaps some corporate body. The amount is large, perhaps a hundred thousand, perhaps a million. An arrangement is made with an influential lawyer, one who prides himself upon his ability to control political bodies, to collect the claim for perhaps one-fifth, perhaps one-half, the demand. He succeeds, and receives for his services ten, twenty, fifty thousand dollars or more for labor, that at a fair valuation—upon any acknowledged basis of compensation—would be worth from a hundred dollars to perhaps two or three thousand. If the claim be an honest one, the stockholders of the corporation are entitled to the whole, less the necessary and proper expenses of collecting; if it be simulated, the lawyer, as well as the directors, are guilty of fraud. It may be said that prosecutions of this nature are not professional, that those who engage in them do not do so as lawyers, but as claim agents. This, except as to those pursued in some court, is perhaps true—but a claim agent, or any other agent, acts in the interest of his principal and cannot deal with him to his disadvantage—I have also known instances of lawyers acting as attorneys of assignees, or who have become themselves receivers of the assets of insolvent corporations, and who came out with large additions to their fortunes; but of course, the stockholders lost everything and the creditors almost everything. This was quite common in the frequent crash of the old State Banks—it is now sometimes seen in the wrecking of insurance companies and railroad corporations.

I close by giving two or three rules which were prescribed in respect to the conduct of the old French advocate, the order known as the *Noblesse de la Robe*. Under a government wholly despotic, amid a nobility corrupt and debased, while the peasantry were brutalized by superstition and slavery, the French lawyer was still enabled to command the respect of all the classes, and these rules are the same substantially that are recognized as obligatory upon the English counsellor. Among a variety of them I find the following:—

The advocate was not to exhibit a sordid avidity of gain, by putting too high a price upon his services.

He was not to make any bargain with his clients for a share in the fruits of the judgments he might recover.

He was not, under pain of being disbarred, to refuse his services to the indigent and oppressed.—P. BLISS, in *American Law Review*.

Reviews and Notices of Books.

The Magistrates' Manual, being Annotations of the Various Acts relating to the Rights, Powers and Duties of Justices of the Peace; with a Summary of the Criminal Law. By S. R. CLARKE, Barrister-at-Law. Second edition, pp. xxiii.-591. Toronto: Carswell & Co.

After the usual preliminary matters, such as contents, preface, and table of cases cited, there is an introductory chapter of thirty-one pages, dealing with the appointment of magistrates, their qualifications, ministerial and judicial functions, the territorial limitations governing their jurisdiction, and a variety of other subjects of a general character. The Criminal Procedure Act, the Speedy Trials Act, the Summary Trials Act, the Juvenile Offenders' Act, and the Summary Convictions Act follow in order, each of them being fully annotated, with copious references to, and extracts from, decisions of the English and Canadian courts. Each of these Acts has its accompanying forms, and there are also supplementary forms not given in the Acts. These statutes, with annotations, etc., occupy 307 pages. The author then gives us a summary of the Criminal Law of Canada, under its different heads, arranged alphabetically. Each statement is supported and illustrated by references to decisions of the courts. This summary occupies 217 pages. An index of about 35 pages completes the work. It will be observed that the Ontario Statutes which have to do with justices of the peace are not inserted at length or annotated. The discussion of them is confined to the summary already mentioned, reference being made to each statute under the offence to which it relates. The reason for this arrangement doubtless is that, "In the Province of Ontario, by virtue of chapter 74 of the Revised Statutes, in reference to penalties or punishments imposed under the authority of any Statutes of the Province, the procedure before justices of the peace is assimilated to that prevailing under the Statutes of Canada."

A Manual of the Constitutional History of Canada, from the earliest period to the year 1888; *including the British North America Act,* 1867, *and a digest of judicial decisions on questions of legislative jurisdiction.* By J. G. BOURINOT, LL.D., F.R.S., Can., Clerk of the House of Commons of Canada, and author of works on Parliamentary Practice and Procedure in Canada, Local Government in Canada, etc. Montreal: Dawson Bros.

Dr. Bourinot's qualifications for the work he has undertaken in this useful little volume are too well known to need enumeration in our notice of it. In a prefatory note he tells us that it is in a large measure a revised publication of certain chapters of his larger book on Parliamentary Practice and Procedure in Canada, which has been recently placed on the list of books required for the study of political science in the University of Toronto; and that it has, therefore, been thought desirable to publish them separately in a cheap and convenient form, and with such additions and alterations as will make the sketch of the constitutional system of the Dominion, whose institutions are now attracting considerable attention in other countries, complete down to the present time.

In pursuance of this intention, he has, in the fifteen chapters into which the work is divided, treated succinctly, and yet with sufficient detail of facts and circumstances, the following subjects:

1. Canada under the French *régime*.

2. Its Government from 1760 (the date of its cession) to 1774.

3. The Quebec Act, 1774, the first Act of the British Parliament respecting Canada.

4. The Constitutional Act of 1791, by which representative government was first established in Canada, divided into the two Provinces of Upper and Lower Canada, with a local parliament in and for each.

5. The Union Act, 1840, reuniting the two provinces, as the Province of Canada, under one Parliament and Government, consequent upon the elaborate report of Lord Durham on the political difficulties under the former constitution.

6. The Federal Union of the Provinces, under British North America Act, 1867, uniting the three Provinces of Canada, Nova Scotia and New Brunswick, as the Dominion of Canada, under one Parliament, with legislative power over the whole Dominion, except on such matters as were not assigned exclusively to the legislatures of the several Provinces of Quebec, Ontario, Nova Scotia and New Brunswick respectively, into which it divides the Dominion, with provisions for the admission of British Columbia, Prince Edward and Newfoundland into the union with the consent of those Provinces respectively, and for the acquisition of the North-West Territories, and the creation of the Province of Manitoba out of part of it.

7. The Constitution of the General Government of the Dominion.

8. The Constitution of the Dominion Parliament.

9. The Constitution of the Provincial Governments, and organization of the North-West Territories.

10. The disallowance of Provincial Acts. Powers and responsibilities of the Dominion Government in this respect.

11. The distribution of legislative powers. Those of the General Government, and those of the Provincial Governments respectively; concurrent powers and difficulties as to jurisdiction.

12. Judicial decisions on questions of legislative jurisdiction.

13. Judicial decisions on such questions—the subject continued.

14. Rules of construction and constitutional principles evolved from judicial decisions.

15. Position of the judiciary in Canada.

In an appendix Dr. Bourinot gives the full text of the following Acts of the Imperial Parliament: The British North America Act (30-31 Vict. chap. 3); "An Act respecting the establishment of Provinces in the Dominion of Canada" (34-35 Vict. chap. 23); "An Act to remove certain doubts with respect to the powers of the Parliament of Canada, under section eighteen of the British North America Act, 1867" (38-39 Vict. chap. 38)—to which we think he should have added the short Act (49-50 Vict. chap. 35); "An Act respecting the representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province," under which two members have been added to the Senate, and four to the House of Commons by the Dominion Act (49 Vict. chap. 24).

We have thus given some, though, of course, a very condensed, account, of the contents of the volume before us; and when we add that, after careful examination, we feel that Dr. Bourinot has in it fully maintained his reputation for accuracy and fairness, as well in his statement of facts and his careful analysis of the important documents to which he refers, as in the faithful reproduction of those he inserts at length; and his remarks and opinions on the subjects to which they relate, we think we are justified in the epithet we have applied to his work as a "useful little volume," and in recommending it to our readers, as one which may be advantageously acquired and used by every Canadian who wishes to have at hand a succinct and correct account of the Constitution under which he lives and the steps by which it has been gradually brought to its present form. What these steps and that form are, the doctor has eloquently described in his closing paragraph, backed by the words of the Marquis of Lorne, in his reply to the farewell address of the Canadian Parliament, on the 25th of May, 1883.

Notes on Exchanges and Legal Scrap Book.

LIABILITY OF LANDLORD.—The Supreme Judicial Court of Massachusetts decided in *Daley* v. *Rice et al.* that if a landlord lets premises abutting upon a way, which are, from their condition or construction, dangerous to persons lawfully using the way, he is liable to such persons for injuries suffered thereupon, although the premises are occupied by a tenant, unless the tenant has agreed with his landlord to put the premises in proper repair. The fact that the tenant is also liable affords the landlord no defence.—*American Law Register.*

QUIT-CLAIM DEED AS CONSIDERATION FOR A BOND.—The Supreme Court of Pennsylvania, in *Goettel* v. *Sage et al.*, held that where a vendor, believing that he has a good tax title to land, so states, but declines to covenant or to convey, except by a quit-claim deed, and upon his advice, the vendee consults an attorney, by whom the title is pronounced valid, whereupon the vendee gives a bond for the purchase-money, he may, nevertheless, in an action on the bond, show that the tax sale upon which the vendor's title rested, was utterly void, and consequently that the bond was without consideration.—*Am. Law Register.*

Correspondence.

RE ACT RESPECTING THE DEVOLUTION OF REAL ESTATE.

TO THE EDITOR OF THE CANADA LAW JOURNAL:

From a matter that came into my hands, I find that the above Act may work greater charges than appear at first sight, without much benefit thereby

The following are the circumstances of one of the cases in hand. A person died intestate, leaving heirs all of age. They agreed to sell the farm left by their father. Can they execute a deed direct to the purchaser, or is the legal estate held in abeyance until a personal representative is appointed? The latter opinion is held by an eminent firm of solicitors, who refuse to accept the deed signed by all the heirs-at-law, and a declaration that they are all the heirs, and of full age.

Again, if a testator devises lands, must the devisee claim title under the will, and register it as part of the claim of title, or, must the executor's deed be obtained before the devisee's title is complete?

A case in this vicinity is as follows: A man died intestate, leaving issue, some of age, and others minors. One farm is all paid for, and another, lately purchased, is under mortgage for $2,000. To administer both real and personal estate in order to get a title of the realty, will make it necessary to furnish bonds to about $8,000, "having regard to the value of the realty." Now, where are the neighbors that will set their names to a bond of such an amount, and for a liability that may not be dischargeable for twenty years?

It appears to me that the Devolution Act requires considerable amendment to make it workable in this Province, and that it should be so altered as to make it appear plain that a son is the devisee or heir of his father without the confirmatory grant of the executor or administrator, as the case may be.

SOLICITOR.

DIARY FOR JULY.

1. Sun.....*5th Sunday after Trinity.* Dominion Day. Long vacation begins.
2. Mon....C. C. sittings for motions, except York.
3. Tues ...Quebec founded, 1608.
7. Sat.....C. C. sittings, excepting York, end.
8. Sun.....*6th Sunday after Trinity.*
13. Fri. ....Sir John Robinson, 7th C. J. of Q. B., 1829.
15. Sun.....*7th Sunday after Trinity.*
22. Sun.....*8th Sunday after Trinity.* W. H. Draper, 9th C. J. of Q.B., 1863. W. B. Richards, 3rd C. J. of C. P., 1863. Act uniting Upper and Lower Canada assented to, 1840.
24. Tues ...Lundy's Lane, 1814.
28. Sat.....William Osgoode, 1st C. J. of Q. B., 1792.
29. Sun.....*9th Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Divisional Court.] [May 28.

THOMPSON *v.* ROBINSON AND WILSON.

Solicitor and client—Breach of duty by solicitor—Liability of partner—Scrivener's business.

The defendants, who in 1878 entered into partnership as solicitors, carried on as part of their ordinary business that of investing moneys for clients. Previous to the partnership, the defendant R. had been employed by the plaintiff to do that kind of business for her, and during the period of the partnership the whole of the money originally entrusted to R. was lost, through a breach of duty on the part of R. in investing the plaintiff's money. From the commencement of the partnership down to March, 1883, after which time the breach of duty occurred, the account of the plaintiff was kept in the books of the firm, charges for services rendered were made against her, though not for the management of her affairs or for services in making investments, and were also made against borrowers from her funds for conveyancing, and the profits went to the account of the partnership.

The evidence showed that the plaintiff insisted upon dealing with R. as her special adviser and solicitor, that she disliked W., and never consulted him as to her affairs, and that she wished her affairs to be kept as free as possible from the knowledge of anyone but R.

It also appeared from the evidence that R. was to share in the profits arising from the investment which resulted in the loss of the plaintiff's money, and that he did not make any charge for services in connection with it.

Another fact shown was that R. during part of the period of partnership kept the plaintiff's accounts in a book which he called his private ledger.

Held, that in making the investment R. was acting as solicitor for the plaintiff, and that he and his partner, W., were both liable for the breach of his duty. The fact being established that down to March, 1883, both defendants were dealing as a firm with the plaintiff's affairs, the onus was thrown upon W. of showing that his liability for the subsequent acts of his partner was terminated with the consent of the plaintiff; and as the evidence did not show that W. had given the plaintiff to understand that his liability was at an end, she was justified in believing that it was continued, so long as the defendants remained in partnership; and none of the circumstances mentioned above operated to absolve W. from liability.

Semble, that in this Province the business which is called scrivener's business is a part of the ordinary business of a solicitor.

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

W. Cassels, Q.C., for the defendant Robinson.

Moss, Q.C., for the defendant Wilson.

Full Court.] [June 4.

REGINA *v.* SELBY.

Criminal law—Forgery—Corroboration—Interest of witnesses—R. S. C. c. 174, s. 218.

The defendant was convicted of uttering, with knowlege that it was a forgery, the indorsement of the name "Taylor Brothers" upon a promissory note, which had been discounted by a bank, but given up and destroyed before maturity, upon security being furnished to the bank. The manager of the bank and the business partner of the defendant gave

evidence of the forgery, and the three members of the firm of Taylor Brothers were also called as witnesses and denied having indorsed the note, or having any knowledge of it.

Held, that neither the members of the firm of Taylor Brothers, nor the bank managers, were persons interested or supposed to be interested in respect of the indorsement, within the meaning of R. S. C. c. 174, s. 218, and their evidence, therefore, was sufficient to corroborate that of the other witness.

Irving, Q.C., for the Crown.

Osler, Q.C., for the defendant.

Full Court.] [June 23.

REGINA *ex rel.* JOHNS *v.* STEWART.

Municipal elections—R. S. C. c. 184, ss. 187-188—Corrupt practices—Procedure—Quo warranto—Summons or information.

All proceedings taken to contest the validity of any election mentioned in s. 187 of the Municipal Act, R. S. C. c. 184, whether for bribery, corrupt practices, or any other cause, should be commenced by writ of summons in the nature of a *quo warranto*, as provided by s. 1882, and not by information in the nature of a *quo warranto*, or otherwise.

Aylesworth, for the relator.

McCarthy, Q.C., for the respondent.

Full Court.] [June 8.

REGINA *v.* GORDON.

Liquor License Act, R. S. O. (1877) *c.* 181—*Summary conviction—Absence of police magistrate from city—Jurisdiction of justices of the peace.*

The defendant was convicted by the police magistrate of the City of Toronto for an offence committed at Toronto against the Liquor License Act, R. S. O. (1877) c. 181, s. 39. Sec. 68 of that Act makes such magistrate the proper tribunal for the trial of such offence; but the information was taken before a single justice of the peace, who was acting for the police magistrate in his absence and at his request, and upon such information the defendant was brought before two justices of the peace and remanded till the day on which he was convicted.

Held, that the information was properly taken before one justice under the provisions of sec. 6 of the Summary Convictions Act, which is made applicable both by R. S. O. (1877), c. 181, s. 68, and R. S. O. (1877), c. 74, s. 1; and two justices being the tribunal substituted for the police magistrate in the case of absence, by 41 Vict. c. 4, s. 7, the defendant was legally convicted.

Murdoch, for the defendant.

Badgerow, for the complainant.

Full Court.] [June 23.

REGINA *v.* BROWN.

Canada Temperance Act—Disqualifying interest of magistrate—Rejection of evidence to show interest—Award of costs—Inspector's fee—Interpreter's fee—Evidence of prior conviction—Jurisdiction of magistrate—Certiorari.

Upon a motion to quash a conviction by a police magistrate for a second offence against the Canada Temperance Act:—

1. It was contended that the magistrate had a disqualifying interest in the prosecution, because he had employed and paid agents to secure convictions under the Act, and because he was a strong temperance advocate, with an alleged bias in favor of the prosecution in cases under the Act. It was not shown that the magistrate was interested or engaged in promoting or directing the prosecution of this offence, or defraying the expenses of it, or paying agents for evidence to be given upon it.

Held, that it was not to be inferred from anything alleged to have been done by the magistrate in other prosecutions, that the same was done by him in this; and that the statements were of too loose and vague a character to support a finding that the magistrate was disqualified from sitting.

Regina v. *Klemp*, 10 O. R. 143; *Regina* v. *Farrant*, 20 Q. B. D. 58; 4 Times L. Reps. 43 and 87; and *Regina* v. *Justices of Cumberland*, 4 Times L. Reps. 294, referred to.

2. At the hearing before the magistrate the defendant attempted to show by witnesses that the magistrate had a disqualifying witness interest in the case, but the magistrate refused to admit such evidence.

Held, that the evidence was inadmissible, and even if admissible, the rejection of it would not afford grounds for quashing the conviction.

Rex v. *Justices of Cambridgeshire*, 1 D. and R. 325; *Rex* v. *Justices of Carnarvon*, 4 B. and Ald. 86; and *Regina* v. *Dunning*, 14 O. R. 52, referred to.

3. It was also contended that the magistrate exceeded his jurisdiction by ordering the defendant to pay $3 as inspector's fees, $2 for an interpreter, and $1 justice's costs.

Held, that the fees to be paid to witnesses in prosecutions such as this are not established by any law, and such are to be allowed, under s. 58 of the Summary Convictions Act, as to the justice seems reasonable, and an interpreter may properly be treated as a witness.

In any case, however, the award of costs was within the jurisdiction of the magistrate, and *certiorari* would not therefore lie (being taken away by the statute under which the conviction was made) on the ground of want of jurisdiction; and the erroneous allowance of certain items of costs would not warrant the quashing of the conviction.

4. The information specifically charged that the defendant had been previously convicted under the Act, and the affidavit filed by the defendant did not deny the fact, but only the evidence of it.

Held, that the question whether the defendant had been previously convicted or not was a matter within the jurisdiction of the magistrate, and his finding as to it was conclusive.

Brittain v. *Kinnaird*, 1 B. and B. 432; *Regina* v. *Mullen*, 4 O. R. 127, referred to.

Held, also, that the provisions of s. 113 of the Canada Temperance Act are directory only.

Aylesworth and *Hewson*, for the defendant.
Delamere, for the complainant.

Full Court.] [June 23.

REGINA *v.* CATON.

Transient traders—42 Vict. c. 31, s. 22—Municipal by-law—Conviction.

The by-law under which the defendant was convicted, provided that "no transient trader or other person occupying a place of business in the town of M., for a temporary period less than one year, and whose name has not been duly entered on the assessment roll for the current year, shall offer goods, wares and merchandise for sale within the limits of the town of M. without, or until, he shall have first duly obtained a license for that purpose." The conviction was for that the defendant, being a transient trader, occupying a place of business in the town of M., did sell certain goods, wares, and merchandise, contrary to the by-law.

Held, that the by-law was sufficiently within the powers given by 42 Vict. c. 31, s. 22, to warrant the conviction; and that the words in the by-law "less than one year" were but a limitation of the words "temporary periods," used in the statute, and did not vitiate the by-law; But

Held, that the want of an allegation in the conviction that the defendant was a transient trader whose name had not been duly entered in the assessment roll for the current year, was fatal.

J. B. Clarke, for the defendant.
Aylesworth, for the complainant.

Street, J.] [June 20.

In re BRITISH CANADIAN L. & I. CO. AND RAY.

Vendor and purchaser—Power of sale in mortgage—Variations from Short Forms Act—Notice of sale to incumbrancers.

The vendors were selling land under the following power of sale contained in a mortgage made under the Short Forms Act: "Provided that the company (the mortgagees) on default of payment for two months may, without any notice, enter on and lease or sell the said lands." After more than two months' default the mortgagees entered, and after having done so made the contract for sale, having served notices of exercising the power of sale on some of the subsequent incumbrancers personally, and upon the solicitors of others.

Quære, whether the variations in the power from the statutory form prevented the Short Forms Act from applying.

Held, that if the Act were applicable the power of sale was properly exercised; if the Act were not applicable, then, taking the

words of the power in their strictest sense, the vendors have done all that the power required; and the fact that they did give notice to some of the subsequent incumbrancers did not oblige them to give notice to all.

R. Grant, for the vendors.

Middleton, for the purchaser.

Divisional Court.] [June 23.

STODDART *v.* WILSON.

Insolvency—Preference—Chattel mortgage to insolvent's wife—Application of wife's property to payment of creditors—R. S. O. (1887), c. 124.

W., being in insolvent circumstances and pressed by one of his creditors, G., procured his wife to convey her house and lot to G., who, by consent of Mrs. W., applied part of the purchase money in payment of W.'s debt to him, and paid the balance to W., who made a chattel mortgage on his stock-in-trade to his wife for the amount of the purchase money which she should have received.

Held, reversing the judgment of ROSE, J., at the trial, that the chattel mortgage was void as against W.'s creditors, under R. S. O. 1887), c. 124, and that it did not come within any of the exceptions in s. 3.

Per STREET, J., that the necessary preference of a particular creditor placed the transaction outside of the class which it was the intention of the legislature to protect.

Gibbons, for the plaintiff.

James Parkes, for the defendants.

Chancery Division.

Boyd, C.] [April 9.

LOCKING *et al. v.* HALSTEAD.

Vendor and Purchaser—Mortgage for costs—Sale under power—Title—Recovery of deposit.

Plaintiff was a purchaser at a sale held under a power of sale, in a $200 mortgage taken for costs only, $30 of which had been incurred at the date of the mortgage, and paid his deposit.

Before the purchase was completed, the mortgagee's right to sell, was raised as a question of title; but nothing was done to make same good, and no evidence was given to show any amount due for costs until the property was sold again under a prior mortgage.

Held, that the mortgage was a valid security for no more than $30, that the mortgagee should deal with the security, so as not to prejudice the mortgagor by a harsh and oppressive exercise of the power of sale, that the purchaser having notice would occupy no better position than the sole mortgagee, that a foreclosure for the full amount could not be upheld as against the application of the mortgagor to pay what was really eligible under the security, that the plaintiff was justified in refusing to complete the purchase, and was entitled to recover back his deposit paid.

Hoyles, for the appeal.

Bain, Q.C. and *Field*, contra.

Boyd, C.] [April 9.

TELFER *v.* JACOBS *et al.*

Easement—Right of way—User of—In connection with property to which it was appurtenant—In connection with adjoining property.

P., being the owner of a certain block of land, sold the southerly portion of it to the plaintiff, T., and granted therewith certain rights of way over his remaining portion, but reserved certain rights of way over the portion sold to himself and *his heirs* (this was by a subsequent deed extended to *his assigns*, which words were omitted by mistake), being the owner or owners, occupier or occupiers of the land he now owns immediately to the north of the land hereby conveyed, etc. Some time after the owner of an adjoining property to the west became the owner of a small portion of the land to the north of T.'s land, and to which the reserved right of way was appurtenant, and claimed that by virtue of such ownership he was entitled to a right of way to his adjoining property.

In an action by T. for an injunction to restrain him from using such right of way in connection with such adjoining property it was

Held, that the proper construction of the reservation of the right of way was to connect the use thereof with the beneficial enjoyment of the premises mentioned in the conveyances reserving the right of way, and that it was not intended to embrace a general right of user for all purposes; that there was a general right of user so far as the particular property was concerned which would be enjoyed by every part owner of that property, how small soever his parcel might be, but it did not follow that the user could be extended for the more commodious enjoyment of adjoining land belonging to one of the part owners of the particular property. The user of a right of way for the accommodation of other parcels than the specific one to which it was appurtenant was in excess of the right. The defendant's ownership of part of the land to which the easement was appurtenant gave them the right of way for any purposes connected with the enjoyment of that part of the property, but it conferred no right upon them to burden the lanes over which the right of way existed by using them in connection with the adjoining property to which the privilege was not annexed.

J. K. Kerr, Q.C., for the plaintiff.

James Maclennan, Q.C., for the defendant.

Ferguson, J.] [June 21.

Re THE TRUSTEES OF THE EAST PRESBYTERIAN CHURCH AND McKAY.

Vendor and purchaser—Sale of church property—Publication of notice—Weekly paper—Daily paper—R. S. O. (1887), c. 237, s. 13.

The trustees in selling some church property under R. S. O. (1887), c. 237, s. 13, advertised on the same day of the week for four successive weeks in a daily paper.

Held, not a sufficient compliance with the provision of the statute directing publication in a "weekly paper" to make a proper sale of the lands, and that the purchaser had good ground for refusing to accept the title offered.

Geo. Bell, for vendor.

T. P. Galt, for purchaser.

Practice.

Ferguson, J.] [June 1.

HOWE *et al. v.* CARLAW *et al.*

Will—Devise for maintenance—Expenses covered by devise—Estate charged therewith.

A testator by his will provided as follows: "I will and devise that my said executors and trustees shall comfortably provide for, and maintain and clothe my father and mother during their lifetime, and that the same shall be a charge upon my estate. The father and mother recently died, and during their last illness certain expenses were incurred for medical attendance, nurses, etc., and after their death, for funeral expenses, and English solicitor's fees, for endeavoring to collect the several accounts for same.

Held, that these expenses were covered by the provision for maintenance, and an order was made for their payment out of the testator's estate.

J. Hoskin, Q.C., for the plaintiffs.

Foy, Q.C., for the defendants.

Street, J.] [June 13.

LALLY *v.* LONGHURST.

Incumbrancers—Mortgage action—Postponement of incumbrance prior in time—Forum for trying question of priority.

C. recovered judgment against L., in 1882, and placed a *fi. fa.* lands in the sheriff's hands, which was ever since regularly renewed; in 1883, L. bought land from the plaintiff, and gave him back a mortgage for the purchase money. In this action for foreclosure, brought upon that mortgage, C., was added as a subsequent incumbrancer in the Master's office, after judgment.

Held, that the plaintiff was not entitled to have the question whether C.'s execution should be postponed to his mortgage determined in the Master's office, or upon motion, unless by consent; the execution being prior in point of time, the order adding C. should be set aside.

The plaintiff was also allowed, following *Glass v. Frackleton*, 10 Gr. 470, to set aside his judgment, add C. as a party, and amend so as to raise the question of priority.

Rykenhurst, for the plaintiff.

Hewson, for the defendant, Constable.

Rose, J.] [June 19.

REGINA *ex rel.* TAVERNER *v.* WILLSON.

Municipal elections—Addition of new territory to city—Disqualification of voters—R. S. O. (1887) *c.* 184, *ss.* 82, 89.

Where a city made additions to its territory, and thereby included within its corporate limits, a portion of an outlying township.

Held, that, regard being had to the provisions of the Municipal Act, R. S. O. (1887), c. 184, persons who, but for such action on the part of the city, would have been entitled to vote in the township, were thereby debarred from voting at the township municipal election next ensuing, notwithstanding that the nomination of candidates for such election took place before such addition; and notwithstanding the prohibition contained is s. 82, of the Act, to the raising of questions concerning the qualification of voters.

A. H. Marsh, for the relator.

Aylesworth, for the respondent.

ELECTION COURTS.

Boyd, C., and Osler, J. A.] [Dec. 12, 1887.

EAST NORTHUMBERLAND PROVINCIAL ELECTION—RICHMOND *v.* WILLOUGHBY.

Election—Agency—Bribery—Illegal Practices—Scheme for violating secrecy of ballot—Elections Act, R. S. O. (1877) *c.* 10, *ss.* 146, 159.

The respondent was nominated by a convention of the Conservative party, composed of fifty or seventy-five persons, among whom was R., who was well known as a prominent member of the party, and was on intimate terms with the respondent, both of them being physicians. R. was one of the persons nominated at the convention, but the choice fell on the respondent, who then made a speech of acceptance, in which he said he expected his friends to take an interest in the election and to work for him. R. made no systematic canvass, but he asked several people for their votes, was at various informal meetings of voters held in the interest of the respondent, and with the respondent visited the houses of several voters.

Held, that R. was an agent of the respondent.

F. D. was also at the convention which nominated the respondent, and he and W. D. were among the supporters of the respondent in a particular locality, who held meetings at which the voters' lists were discussed and arrangements were made for looking up doubtful voters.

Held, *per* BOYD, C., that these men were both to be regarded as agents of the respondent.

R. committed two clearly proved acts of bribery; F. D. and W. D. entered into a scheme for violating the secrecy of the election by inducing voters to exhibit their ballots, after they were marked, at a window; and the evidence developed at least two other acts of bribery, though not by agents, and some suspicious circumstances; but all these were without the knowledge or consent of the respondent. The vote polled was about 4,500, out of which there was a majority of fifty-one for the respondent.

Held, that the election was void because of the corrupt acts of R.; and in view of the conduct and details of the contest, the saving provisions of s. 159 of the Elections Act, R. S. O. (1877) c. 10, could not be applied.

Per BOYD, C.—The scheme for violating the secrecy of the ballot was an illegal act under s. 146, and had no little significance when taken in connection with the proved acts of bribery. In estimating the application of s. 159, it was impossible to leave out of sight the illegal practices under s. 146.

Lash, Q.C., and *W. R. Riddell*, for the petitioner.

McCarthy, Q.C., and *Ketchum*, for the respondent.

Appointments to Office.

SHERIFF.

York.

Joseph H. Widdifield, Newmarket.

REGISTRAR.

Haliburton.

E. C. Young, village of Haliburton, to be Registrar of Deeds for the provisional county of Haliburton, *vice* Fred Mooney, resigned.

POLICE MAGISTRATES.

Wellington.

W. H. Lowes, Maryborough, for the county of Wellington.

Algoma.

J. Gillies, Gillies' Hill, county of Bruce, for the District of Algoma.

Leeds.

J. A. Shaver, Newboro', for the village of Newboro, without salary.

BAILIFFS.

Grey.

George Brown, Meaford, Third Division Court, *vice* Andrew Watt, who has left the locality.

Dundas, Stormont and Glengarry.

Edward Barclay, Mountain, Seventh Division Court, of the united counties, *vice* Asa Redmond, resigned.

Law Society of Upper Canada.

EASTER TERM, 1888.

The following gentlement were called to the Bar during the above Term, *viz.: May 21st*, 1888.—John Gumaer Holmes, Arthur Stevenson, Robert Alexander Grant, Edward Albert Crease, Charles Horgan, James Richard Code, Archie Foster May, William Halloway Wallbridge, Gordon Hunter, Robert Richard Hall, William Carson Pettigrew McGovern, Ernest Solomon Wigle, Robert Maxwell Dennistoun, William Wallace Jones, Joseph Missett Musson, John Franklin Wills, Charles Howard Widdifield. *June 1st*—Robert Kimball Orr.

The following gentlemen were admitted as students-at-law, *viz.: Graduate Class*—C. L. Crassweller, R. B. Henderson, J. Hales, H. D. Leask, E. Pirie. *Matriculant Class*—J. H. Coburn, H. Lennox, R. L. Reid. *Junior Class*—G. F. Blair, C. L. Mills, W. Carney, H. J. Martin, J. B. Irwin, M. A. Brown, T. C. Gordon, W. T. J. Lee, E. Donald, J.W. Lewis, C. T. Sutherland, H. A. Stewart, A. F. H. Mills, F. W. Gladman, W. B. Bentley.

The following gentlemen were admitted as Students-at-law in the Graduate Class on the 26th day of June, their admission to date as of the first day of Easter Term, 1888 (Rule 6, Section IV.): T. O'Hagan, L. H. Bowerman, A. U. Bain, E. F. Blake, H. C. Boultbee, N. P. Buckingham, T. A. Gibson, T. M. Harrison, T. M. Higgins, W. F. Hull, J. E. Jones, S. King, H. Langford, R. McKay, E. Mortimer, G. Waldron, G. Wilkie.

CURRICULUM.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with Clause four of this curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the Subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be) on conforming with Clause four of this Curriculum, without any further examination by the Society.

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

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

5. The Law Society Terms are as follows:—

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

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

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

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

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. 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 in June of the same year.

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

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

11. The Solicitors' Examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

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

13. 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.

14. 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.

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

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. 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, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

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

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

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

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

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

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 1888, 1889, and 1890.

Students-at-Law.

1888.	Xenophon, Anabasis, B. I. Homer, Iliad, B. IV. Cæsar, B. G. I. (1-33.) Cicero, In Catilinam, I. Virgil, Æneid, B. I.
1889.	Xenophon, Anabasis, B. II. Homer, Iliad, B. IV. Cicero, In Catilinam, I. Virgil, Æneid, B. V. Cæsar, B. G. I. (1-33.)

1890. Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.
Cicero, 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 end of Quadratic Equations: Euclid, Bb. I. II., and III.

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:—
1888—Cowper, The Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1888 / 1890 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*, Pecks' Ganot's Popular Physics, and Somerville's Physical Geography.

Articled Clerks.

In the years 1888, 1889, 1890, 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 *re* SERVICE OF ARTICLED CLERKS.

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

First Intermediate.

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

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

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

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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 ... 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.

Trinity Term, 1887.