THE

Canada Law Journal.

VOL. XXXI. MAY 16, 1895. No. 9

A VALUED correspondent kindly sent us a copy of the judgment of the learned Junior Judge of the County of Elgin in the case of *Franklin* v. *Owen*. We regret that want of space prevents our giving it in full, for, although Mr. Justice Street took a different view of the law from that expressed by Judge Ermatinger, the judgment of the latter is a learned and valuable disquisition on the subject.

MR. JUSTICE STREET, in refusing the request to allow Mr. Wellman, of the New York Bar, to take part as counsel for the defence in the Hyams murder case, was not exercising a discretion or refusing an indulgence, but rather carrying out the law. So far as Ontario is concerned, the Law Society alone has the right to admit persons to practise at the Bar. This, as we understand it, is a matter of law, and not of custom, as the learned judge is reported to have called it. In the De Sousa case it was decided that an applicant for the privilege of appearing in our courts must go to the Law Society, inasmuch as the power to admit persons to practise at our Bar is taken away from the courts and given to the society, and it was, therefore, held that a person not admitted to practise by that body cannot be heard as counsel. (See 9 O.R. 39.) In the United States the judges seem to have the right to permit counsel from other countries to appear in the courts. The fact that this right has been most courteously granted to some members of our Bar naturally gives rise to some feelings of regret that our law precludes a distinguished member of the American Bar from fully participating in the defence of the prisoners in the *cause celebre* which is now occupying so much attention at the Toronto Assizes, but there was no other course to be taken.

DEMURRERS.

The case of *Hollender* v. *Fjoulkes*, 26 O.R. 61, strikes us as one of those curious judicial deliverances, whereby, under the pretence of interpreting a rule of court, the court has succeeded virtually, and to all intents and purposes, in reducing it to a nullity, and, we might almost say, rescinding it. Rule 1322 abolishes demurrers, but it now seems, according to this case, a pleading may be still pleaded which, though not a demurrer, is "equivalent to a demurrer," to use the language of the court, and which has all the legal incidents of a demurrer in so far as the party pleading it is deemed to admit the facts of the opposite party's pleading to which it is directed.

When the judges of the Queen's Bench Division agreed with the other judges of the Supreme Court of Judicature to abolish demurrers, it would be curious to know what particular benefit they thought was to be effected thereby, if, as it appears, though abolished in name, they intended that they were still to exist in substance.

We were under the impression that the abolition of the demurrer was due to the growing conviction that the attempt to decide questions of law merely upon the statement of facts disclosed in pleadings is not a satisfactory method, and that, by abolishing demurrers, the court designed that questions of law were to be determined, not upon the facts stated in the pleadings, but on the facts as they might be actually proved. And we should, therefore, have thought, apart from this decision, that any pleading raising a point of law is on the same footing as any other pleading, and subject to Rule 403, and, consequently, though it contain no denial of facts, would be held merely to amount to a submission that the facts stated, even if they were proved, would not afford a cause of action, or defence, as the case might be. But the court has decided otherwise, and a pleading raising a question of law must be taken to admit the facts on which the question arises, unless it also expressly denies them.

So long as the present decision remains unreversed, it will be needful, therefore, for practitioners desiring to raise a question of law in a pleading to be careful also to deny the facts on which the question of law arises, or, at all events, put the opposite party to the proof thereof, or he will be excluded, by an implied admission of their truth, from afterwards disputing them.

UNLICENSED PRACTITIONERS.

The above heading can be made to cover a great deal of ground, but we intend, at present, to confine our remarks under it to one particular point. A correspondent sends us a note-paper heading coming from a certain village in the West, which reads thus: "Office of——, Notary Public, Conveyancer, etc. Manager at ——for ——, Barristers, etc.," the offices of this firm being at a different place from that where the "manager" resides, and from which he dates his letters.

We have always thought that the establishment of "branch offices," as they are called, by a professional firm, in other places than that where the so-called head office is situated, is an objectionable proceeding, so long as the branch office is under the sole charge of an uncertificated practitioner. It has been sought to excuse it on the ground that this manager does not give advice, nor actually practise in his own name; that when advice is sought from him, he submits the case to his principals, and obtains from them the advice the client requires; and that this manager is merely a clerk in charge in the absence of the principals. Again, the fact that one of the firm makes periodical visits to the branch office is relied on as sufficient excuse for this practice.

We confess that neither on these nor on any other grounds do we see that there is anything which would warrant the propriety of such a practice. The object of it is, of course, the acquisition of clients. If the mountain won't come to Mahomet, Mahomet must go to the mountain.

Here we will be met with the plea that such a course saves the would-be client from the expense of a visit to the county town, or wherever the head office may be situate. If the business to be transacted always reached the principals, and if the client would in any case have gone to the head office, if the branch had not been available, this excuse might be allowed to pass. But does the manager of the branch office always act as a mere medium for the procuring and transfer of business to his principals? We have good reason to believe this is not so; but, on the contrary, the manager often considers himself competent to give the advice sought for, or to do the business required, without seeking the intervention of his principals. A would-be client, seeing the name of a well-known firm,

naturally expects that he will be doing business with that firm, and obtain all the benefits he hopes to obtain by selecting them as his legal advisers. He *may* do so, but has he any positive assurance that he will? Can he be certain that this manager will transmit his case to his principals, and, above all, in the shape and form that he received it?

Every professional man knows how difficult it is for a client, especially if he be tolerably ignorant, to state his case exactly as he intends it. How often he has to be called on to explain just what he means; and how necessary it is for the adviser to catechize his client, before he can come to a thorough understanding of the case. To this it may be answered that one of the firm regularly attends, at fixed times, to give advice to those requiring it. But can a person in need of such advice always wait for the, say, weekly advent of the adviser? Will he not, in an emergency, be sometimes almost compelled to take such advice as the manager can give, and which, not seldom, that manager thinks himself competent to give? A suit once commenced, all the steps in that suit must necessarily pass through the hands, and be subject to the revision of the principals; but there is a good deal of business in a lawyer's office which does not need to do so, and this, no doubt, the manager thinks himself quite equal to, without any communication with the head office.

Take the case of a sick man requiring his will to be made, and that in urgent haste, does the manager realize that in such a case, above all others, there is need of the intervention of some one who, by his legal education, understands the technical meaning of certain phrases, and the use of which, like a chisel in a child's hands, often works in the opposite way from that intended? No doubt as to ordinary conveyancing, such as drawing a deed, mortgage, lease, etc., any two-years' student is quite competent for it, and that as to this class of work the establishment of branch offices may be said to be excusable, as tending to prevent the employment of unlicensed conveyancers. Had Blackstone written in these days, he might have said, under the head of Rights of Persons, "The right to be treated by some one properly qualified to do so"; and, under the Rights of Things, "The right to insist on being handled by some one competent for that purpose."

Another minor point may be referred to. In these days when there are so many younger members of the profession seeking to make a living, it is, no doubt, uphill work to start in a place where a branch of a well-known firm has been already established. "Live and let l've" is an excellent motto, and we think that the practice we are now speaking of will be found, on a careful consideration of all the circumstances connected with it, to somewhat interfere with the carrying out of that principle.

CURRENT ENGLISH CASES.

PRACTICE—INDEMNITY, CLAIM FOR—THIRD PARTY PROCEDURE—DIRECTIONS—ORD. XVI., RR. 52, 55—(ONT. RULE 332).

Baxter v. *France*, (1895) 1 Q.B. 591; 14 R. Apl. 243, has been already referred to on a previous page (see *ante* p. 229). The present report is an appeal from a refusal of Day, J., to give directions for the trial of the question between the defendants, one of whom had been served by his co-defendant with a third party notice claiming indemnity. The Court of Appeal (Lord Esher, M.R., Lopes and Rigby, L.JJ.) upheld the decision of Day, J., on the ground that it was a case in which it was doubtful whether the defendant serving the notice was entitled to indemnity as claimed, and that it was not possible without another action to determine all the questions between the defendants. As we have already mentioned, the court holds that the mere refusal to give directions is equivalent to a dismissal of the third party from the action, and where such third party is an original defendant he simply continues to occupy that position. In reference to the third party procedure generally, Lord Esher, M.R., says: "The general scope of the third party procedure is to deal with cases where, by applying it, *all the disputes arising out of a transaction as between the plaintiff and the defendant, and between the defendant and a third party, can be tried and settled in the same action.* In a case where there will remain a dispute arising out of the transaction which cannot be tried in the same action, but must form the subject of another action, so that in the result there must be two actions, the judge will rightly exercise his discretion by declining to give directions."

SALE OF GOODS BY HIRER—BONA FIDE PURCHASER OF GOODS—CONVICTION OF HIRER FOR LARCENY—RESTITUTION OF STOLEN GOODS—(CR. CODE, S. 838)—HIRE AND PURCHASE AGREEMENT—CONVERSION—FACTORS ACT, 1889 (52 & 53 VICT., C. 45), S. 9.

In *Payne* v. *Wilson*, (1895) 1 Q.B. 653; 15 R. April 275, the plaintiff sought to recover possession of a piano which the defendant had purchased under the following circumstances: The piano in question had been let by the plaintiff to one Sullivan, under a hire and purchase agreement, by which the piano was to remain the property of the plaintiff until all the monthly instalments provided for by the agreement were paid. Before they had all been paid Sullivan sold the piano to the defendant, who bought it in good faith and without notice of any lien or other right of the plaintiff. Sullivan was subsequently convicted of larceny of the piano as a bailee, and the plaintiff applied for an order of restitution, which was refused, and thereupon sued the defendant for conversion of the piano. The Divisional Court (Pollock, B., and Grantham, J.) held that the plaintiff was not entitled to succeed. The English Factors Act, 1889, contains an express provision validating sales made by bailees under hire and purchase agreements to *bona fid* purchasers, but we do not appear to have any similar legislation in Ontario, and it may be doubtful whether under similar circumstances here a plaintiff would not be entitled to succeed. It is true that under the Cr. Code s. 838, an order for restitution of stolen property is not to be made "if it appears that the property stolen has been transferred to an innocent purchaser for value, who has acquired a lawful title thereto." But that does not affect the civil remedy apparently, and it leaves open the question whether "a lawful title" can be acquired from a bailee of goods.

JUDGE, ACTION AGAINST—ACT DONE IN EXERCISE OF JUDICIAL OFFICE—MALICE—COLONIAL COURT OF RECORD.

Anderson v. *Gorrie*, (1894) 1 Q.B. 668; 14 R. Feb. 283, is not an instance of very expeditious reporting. The case was determined in August last, and was reported as long ago as November 17 in *The Law Times*. The action was brought against three judges of the Supreme Court of a colony in respect of an act done by them in their judicial capacity. The jury found that one of the defendants had acted oppressively and maliciously to the prejudice of the plaintiff and in perversion of justice, and

assessed the damages against him at £500, but Lord Coleridge, C.J., who tried the case, directed judgment to be entered for the defendant on the ground that the action would not lie against a judge of a court of record for anything done by him in his judicial capacity, and the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) unanimously sustained his decision. Lord Esher points out that the rule of the common law forbidding such actions is one for the public interest, and is established in order to secure the independence of the judges, and to prevent their being harassed by vexatious actions. The only remedy against a judge abusing his office in a colony possessing representative government would appear to be, as in England, by securing his removal from office, which may be done on an address by both Houses of Parliament to the Crown, or in a Crown colony by petition to the governor of the colony, or, in default of his acting, then to the Colonial Secretary.

The cases in the Probate Division are all Admiralty cases, and do not seem to call for any notice here.

WILL—CONSTRUCTION—CONDITION IN GENERAL RESTRAINT OF MARRIAGE—GIFT OVER.

Morley v. *Rennoldson*, (1895) 1 Ch. 449; 12 R. April 128, is on the construction of a will. A testator who died in 1837 bequeathed his residuary personal estate to trustees, in trust for his daughter for her separate use for life, and after her death for the children, with a gift over, in default of children, to other persons. By a codicil, however, he stated that his will was that she should not marry, and, in case of her marriage or death, he directed the trustees to hold the residuary estate for the persons mentioned in the gift over in the will. The daughter married after the testator's death, and died in 1894, leaving six children, and the question was whether they or the persons named in the gift over were now entitled to the residuary estate. It had been determined by Wigram, V.C. (2 Hare 570), shortly after the daughter's marriage, that the condition being in general restraint of marriage was void as regards the daughter, and that she was entitled to the life interest bequeathed to her notwithstanding that condition. It was now claimed that the condition, though void as against the mother, was good as against her children. But Kekewich, J., came to the conclusion that the condition,

being void against the mother, was void as against the children who claimed through her. On appeal, it was argued that the effect of the codicil was to revoke the original gift, and to make a new one in favour of the appellants on the death or marriage of the testator's daughter. But it was contended by the respondents that the combined effect of the will and codicil was not to revoke the will, but to make the gift over take effect on death or marriage of the daughter, whichever of the two should first happen; and as the condition as to marriage was void, the subsequent death of the daughter was not within the condition, and, consequently, that the gift over did not take effect; and this view was adopted by the Court of Appeal (Lord Halsbury, and Lindley and Smith, L.JJ.).

QUASI-SEPARATION DEED—CONSTRUCTION—CONCUBINAGE—RE-COHABITATION.

In re Abdy, Rabbeth v. *Donaldson*, (1895) Ch. 455; 12 R. April, 123, an attempt was made to apply to a deed executed between a man and his mistress, providing for their separation, and the payment of an annuity to the latter during her life, the rule that applies to separation deeds between husband and wife, namely, that a subsequent re-cohabitation has the effect of putting an end to the covenant. Here the covenant was absolute, and provided for the payment to the woman of an annuity during her life, and, though the parties subsequently cohabited again, North, J., held that that fact did not put an end to the covenant, which was binding on the personal representative of the covenantor, who had died. The Court of Appeal (Lord Halsbury, and Lindley and Smith, L.JJ.) were of the same opinion.

PARTNERS—PARTNERSHIP BOOKS—RIGHT OF PARTNER TO MAKE EXTRACTS FROM BOOKS—PARTNERSHIP ACT, 1890 (53 & 54 VICT., C. 39), S. 24, S-S. 9.

In *Trego* v. *Hunt*, (1895) 1 Ch. 462; 12 R. Apl. 148, the plaintiffs, who were members of a firm of which the defendant was also a partner, moved for an injunction to restrain the defendant from using certain information he had obtained from the partnership books for any purpose except the business of the firm. The information in question was a list of the names and addresses of the customers of the firm, which the defendant intended, after the expiration of the partnership, to make use of for the purpose of carrying on a similar business in competition with the plaintiffs. Stirling, J., refused the injunction, holding that the defendant

was entitled to the information under the Partnership Act, 1890 (53 & 54 Vict. c. 24), s. 9, and, there being nothing in the partnership articles to the contrary, that he would be entitled to use this information as he intended. An appeal from his decision to the Court of Appeal (Lord Halsbury, Lindley and Smith, L.JJ.) was unsuccessful. We may add that the Partnership Act of 1890, which codifies the law of partnership, seems to be a piece of legislation which should be adopted in this Province.

TRUSTEE—CESTUI QUE TRUST—REVERSIONARY LEGATEE, RIGHT OF, TO INFORMATION AS TO INVESTMENT OF FUND—SOLICITOR AND CLIENT—COSTS, DISALLOWANCE OF.

In re Dartnall, Sawyer v. *Goddard*, (1895) 1 Ch. 474, the plaintiff, being beneficially entitled under a will to a one-ninth share of £900 expectant on the death of a tenant for life, applied to the trustees for particulars of the investments of the testator's estate. The estate was ample, but the trustees refused to give the required particulars, and, within three days of the receipt of their letter refusing, the plaintiff commenced the present proceedings. North, J., held that the application ought not to have been made, and that it was made with undue haste, and he dismissed the application with costs, and ordered the plaintiffs' solicitors to repay to the plaintiff the costs, she was ordered to pay the defendants. On appeal the Court of Appeal (Lord Halsbury, and Lindley and Smith, L.JJ.) took a different view of the matter. They thought that both parties were in the wrong, the defendants for having refused the information, and the plaintiff for acting precipitately in commencing the proceedings. The order of North, J., was, therefore, discharged, and the defendants were ordered to give the required information. But no order was made as to costs, except that the plaintiff's solicitors should be disallowed their costs as against their client, this latter direction being made under Ord. lxv., r. 11, of which there is no counterpart in Ontario, but see Ont. Rules 1195, 1215, under which a similar result might possibly be obtained.

CHARITY—ADMINISTRATION—CONTRACT—EXAMINATION—SCHOLARSHIP.

Rooke v. *Dawson*, (1895) 1 Ch. 480; 13 R. Mar. 73, was an action by a successful candidate at an examination against the trustees of a trust deed, which provided that a scholarship should be awarded to the pupil leaving a certain school who should pass

the best examination in subjects to be determined from time to time by the duly appointed examiners. The trustees announced an examination for 1894, which was held by a duly appointed examiner, and the plaintiff was the successful candidate. The announcement contained no offer or statement that the scholarship would be awarded to the pupil who passed the best examination. The trustees declined to award the scholarship, and the present action was to compel them to do so, and it became necessary for Chity, J., to determine whether the plaintiff's action was founded on contract, or whether it was merely an action to administer a charitable trust, as in the latter case the consent of the Charity Commissioners was necessary to the maintenance of the action. He decided that there was no contract.

FRIENDLY SOCIETY—DISSOLUTION OF SOCIETY BY DEATH OF MEMBERS—UNEXPENDED FUNDS OF EXTINCT FRIENDLY SOCIETY—CY-PRÈS—RESULTING TRUST.

Cunnack v. *Edwards*, (1895) 1 Ch. 489; 13 R. April 205, was an action to determine who was entitled to the surplus funds of an extinct friendly society, which had been formed for the purpose of providing annuities for the widows of its deceased members. One Edwards became an ordinary member in 1848, and remained a member until 1878, when he died a widower. He was the last surviving ordinary member. The last honorary member, who on joining had disclaimed all benefit of the society for his widow, died in 1879, and the last annuitant died in 1892, and a sum of £1,250 remained unexpended. The representatives of Edwards claimed this money, and the action was brought by the trustees of the fund to obtain the declaration of the court. The Attorney-General claimed that the fund was a charitable fund, and should be administered *cy-près*, but this claim was disallowed by Chitty, J. The contest was then between the representatives of Edwards and the representatives of the other deceased ordinary members of the society, and Chitty, J., held that there was a resulting trust of the surplus in favour of those who had been ordinary members, and that it was distributable among their representatives in the proportions respectively contributed by them, and, as there were several hundreds of these members, the chances seem to be that any effort to administer the fund would simply result in its entire consumption in costs.

WILL—CONSTRUCTION—REALTY AND PERSONALTY—LEGACIES CHARGED ON LAND—PRIMARY LIABILITY OF PERSONALTY FOR PAYMENT OF LEGACIES—MIXED FUND.

In re Boards, Knight v. *Knight*, (1895) 1 Ch. 499; 13 R. March 180, North, J., held that, where a testator bequeaths legacies, and then bequeaths the residue of his real and personal estate, the legacies are thereby charged on the real estate, or its proceeds, but they are still primarily payable out of the personal estate unless the testator expressly directs them to be paid out of the mixed fund, in which case they are paid ratably out of the realty and personalty; and he held that the dictum of Sir George Jessel, in *Gainsford* v. *Dunn*, 17 Eq. 405, to the effect that, without any such direction, the legacies would be payable ratably, is inconsistent with the decision of the Court of Appeals in *Elliott* v. *Dearsley*, 16 Ch.D. 322. It may be noted that, although R.S.O., c. 108, s. 4, provides that undisposed-of realty is to be distributed as personalty, and s. 7 that real and personal property comprised in any residuary devise or bequest shall, except so far as a contrary intention shall appear by the will, be applicable ratably, according to their respective values, in payment of debts, it says nothing with regard to legacies; and it is, therefore, probable that this case would be applicable to the administration of an estate under R.S.O., c. 108, and that, even under that Act, the personalty is still, *prima facie*, the primary fund for the payment of legacies.

HUSBAND AND WIFE—POST-NUPTIAL SETTLEMENT—WIFE, PURCHASER IN GOOD FAITH FOR VALUE—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), S. 3—(R.S.O., C. 132).

Mackintosh v. *Pogose*, (1895) 1 Ch. 505; 13 R. March 158, although a case arising in bankruptcy, is one that covers some interesting questions arising under the Married Women's Property Act. The facts were that a married woman, married in 1883, being then possessed of separate property, after the marriage allowed it to pass into her husband's hands, but not as a gift, nor as a loan for the purposes of his trade or business. The husband, having applied part of it to his own use, subsequently settled the residue, together with other property of his own, upon trusts under which he took a life interest, subject to a proviso for the cesser thereof in the event of his becoming bankrupt. The wife had no notice of any fraud or fraudulent intention on

his part. The husband having become bankrupt, his trustees in bankruptcy brought the present action to set aside the settlement. Stirling, J., held that to the extent of the wife's property received by the husband the settlement was valid, and that the Married Woman's Property Act, 1882 (45 & 46 Vict., c. 75), s. 3, which makes property received by the husband from his wife for the purpose of his trade or business assets of the husband's estate in favour of his creditors in bankruptcy did not apply to the moneys in question.

WILL—LEGACY IN SATISFACTION OF DEBT—DEBT DUE BY TESTATOR TO LEGATEE.

In re Horlock, Calham v. *Smith*, (1895) 1 Ch. 516; 13 R. Apl. 227, a testator who was indebted to the plaintiff in £300, payable within three months next after his death, by his will bequeathed a legacy to the plaintiff of £400, as to which no time of payment was fixed. The question was whether the legacy was a satisfaction of the debt. Following *Re Dowse*, 50 L.J.Ch. 585, Stirling, J., was of opinion that the legacy was not a satisfaction, because, while the debt was payable in three months from the death of the testator, no time was fixed for payment of the legacy. He, however, expressed disapproval of the rule laid down, though holding himself bound by it.

RAILWAY—TUNNEL—EXPROPRIATION—COMPENSATION.

In Farmer v. *Waterloo & C. Ry Co.*, (1895) 1 Ch. 527; 13 R. April 177, a railway empowered by charter to construct an underground railway, and for that purpose to appropriate "the subsoil and undersurface," subject, however, to the liability to make compensation, proceeded to bore through the subsoil of the plaintiff's land without giving him any notice to treat under the compensation clauses. This action was accordingly brought to restrain the company from proceeding with the work, and Kekewich, J., granted an injunction, holding that the company were taking not merely an easement, but land, and that they could not appropriate it except by way of purchase.

TRUSTEE AND CESTUI QUE TRUST—BREACH OF TRUST—EQUITY OF TRUSTEE TO HAVE BENEFICIARY'S INTEREST IMPOUNDED—MARRIED WOMAN—RESTRAINT ON ANTICIPATION—TRUSTEE ACT, 1893 (56 & 57 VICT., C. 53), S. 45—(54 VICT., C. 19, S. 11 (O.)).

Bolton v. *Curre*, (1895) 1 Ch. 544; 13 R. Feb. 186, was an action to compel the replacement of a certain trust fund, which

had been improperly disposed of by the trustees in breach of trust, but with the knowledge and consent of the beneficiaries. The fund in question consisted of two sums of £5,000 each, which had been brought into settlement by a husband and wife respectively, the £5,000 settled by the husband being settled on him for life, and after his death for his wife for life; and the £5,000 settled by the wife being settled on her for life without power of anticipation, and after her death for her husband for life, and after the death of the survivor both funds were directed to be held on trusts for the issue of the marriage. The husband having got into difficulties, the trustees, with the consent of husband and wife, lent the fund settled by the wife to the husband, but though the wife knew of and consented to this loan she did not know and was not informed that it would be a breach of trust. Pending the action the trustees had made good the fund, and they now claimed that the interest of both the husband and wife should be impounded to recoup them for the loss occasioned by the breach of trust. The husband had assigned his interest after the breach of trust, and the assignee had notice of the mortgage given by the husband to secure the moneys advanced to him by the trustees, and that such moneys were part of the trust funds. It was claimed that the trustees were not entitled to impound the husband's interest to the prejudice of the assignee. Romer, J., however, held that the equity of the trustees to impound the husband's interest was entitled to prevail over the claim of the assignee; and he held that the Trustee Act, 1893 (see 54 Vict., c. 19, s. 11 (O.)), although it leaves it in the discretion of the court to impound the share of a beneficiary or not, as in the circumstances it shall see fit, nevertheless does not do away with the law as it stood prior to the statute, and that the equity of trustees to impound the interest of a beneficiary still attaches to the fund prior to any order of the court, so as to affect an assignee of the beneficiary; but as regards the interest of the wife, who was restrained from anticipation, he held that it was the duty of the trustees to protect her against breaches of trust, and as they knowingly committed the breach of trust, even though at her request, he refused to remove the restraint on anticipation so that her life interest could be impounded to recoup them for any loss thus sustained. With regard to his decision in *Ricketts* v. *Ricketts*, 64 L.T. 263, the learned judge

says that it appears to have been misunderstood, and that he did not intend to, nor did he, lay down the rule that a trustee who knowingly commits a breach of trust could never have his beneficiary's interest impounded; but he intimates that where the interest sought to be impounded is subject to a restraint against anticipation, the fact that the trustee knowingly committed the breach of trust will be sufficient to prevent the court, in its discretion, from removing that restraint in order to enable the interest to be impounded for the trustees' benefit.

COPYRIGHT—SALE OF ELECTRO BLOCKS FOR PERSONAL USE—UNASSIGNABLE LICENSE—VERBAL LICENSE, EFFECT OF—COPYRIGHT ACT, 1842, (5 & 6 VICT., C. 45), S. 15—INJUNCTION.

Cooper v. *Stephens*, (1895) 1 Ch. 567, was an action which was brought to restrain the infringement of a copyright. The plaintiffs were owners of a copyright in books containing illustrations of carriages. They had for a money consideration sold some electro blocks of some illustrations to a customer in order that he might print the designs with other matter; there was no written agreement with reference to the use of the blocks. The defendants, with the permission of this customer, used these blocks for printing illustrations, which they (the defendants) published. Romer, J., held that the plaintiffs were entitled to an injunction restraining the defendants from so using the blocks.

PRINCIPAL AND SURETY—POWER TO DETERMINE LIABILITY OF GUARANTOR—DEATH OF GUARANTOR, NOTICE OF—"REPRESENTATIVES," MEANING OF.

In re Silvester, Midland Ry. Co. v. *Silvester*, (1895) 1 Ch. 573, a railway company, the plaintiff sued on a guaranty bond, which provided that the obligors or their "representatives" might at any time determine their liability by giving one month's notice in writing to the obligees. One of the obligors having died, his executors, who had no knowledge of the bond, gave notice to the obligees of their testator's death, but did not give any notice to determine the liability under the bond. The point in question, therefore, was whether or not the estate of the testator was liable for a claim, under the bond, which had arisen after the obligees had notice of his death. Romer, J., held that it was, and that the word "representatives" in the proviso for determining the liability under the bond included the obligees' personal represen-

tatives, and that the clause, therefore, meant that the liability of the representatives was to be determined only by their giving the specified notice.

Erratum.—On page 260, for 23 Gr. 133, read 22 Gr. 133.

Correspondence.

CANADA AND THE INTERNATIONAL CONVENTION AS TO INDUSTRIAL PROPERTY.

To the Editor of THE CANADA LAW JOURNAL :

On the 6th of June, 1884, the United Kingdom joined the convention, reserving the right to accede thereto on behalf of any colonies on due notice given, and by Orders in Council subsequently passed the provisions of the Patents, Designs, and Trade Marks Act, 1883 (Imp.), were made applicable to the following countries, viz.: Belgium, Brazil, Denmark, France, Guatemala, Italy, Holland, Norway, Portugal, Servia, Spain, Sweden, Switzerland, Tunis, the United States, New Zealand and Queensland, these seventeen countries, with the United Kingdom, comprising at present all the countries acceding to the convention. Two colonies, New Zealand (1890) and Queensland (1885), have availed themselves of the convention, while Canada, by a strange apathy, still remains excluded.

By the mere asking, the adhesion of Canada could be notified officially through the Imperial diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the other countries; and by Imperial Order in Council, the provisions of section 103 of the Imperial Patent Act would be made applicable to this country. To give effect to the articles of the convention in the courts, it may be necessary to pass a Dominion Act; legislation was deemed necessary both in England and in the United States; see *In re California Fig Syrup Co.*, 40 Ch.D. 620 (Eng.), and opinion of Attorney-General U.S., 47 O.G. 397.

The benefits obtainable, both by Canadian inventors and merchants, would be great. Legal remedies and protection would be accorded in all States of the Union. Rights of priority to one who has applied for a patent, trade mark, or design in

Canada, would exist for seven months in the case of patents, and four months in the case of trade marks, designs, etc., and within these periods no rights would be invalidated by publication of the invention, by another registration, by the importation of the article, by the working of it by a third party, or by the sale of a design or use of a trade mark. All goods bearing illegal trade marks would be seized on importation, etc. Trade marks duly registered in Canada would be admitted to protection in the form originally registered. Trade names would be protected without registration, whether forming part of a trade mark or not, etc.,

From the failure of our Government, since 1888, to apply to enter the convention, we know that a large number of foreign patents are annually obtained by residents in Canada, which are absolutely invalid, owing to the invention having been published or having reached Europe. The publication of the monthly Canadian Patent Office Record, which is sent to all the principal countries of Europe, alone suffices to render these foreign patents invalid, and in France and Germany even before it reaches these countries. And then there is great difficulty, delay, and expense, as we have experienced, in obtaining a British or foreign trade mark, which would not exist if we were parties to the Convention.

We have some legislation necessary to become parties to the Union, as far as trade marks are concerned; besides, our Trade Marks Act, the Merchandise Marks Offences Act of 1888 (Can.), 51 Vict., c. 41, was passed, evidently with the view of joining the Convention, for it relates to both Canadian trade marks as well as to those protected by law, either with or without registration, in any British possession or foreign state to which the provisions of section 103 of the Imperial Patents, Designs, and Trade Marks Act, 1883, apply.

Sections 443 to 455 of the Criminal Code of 1892 (Can.) re-enact, in slightly modified form, the main provisions of 51 Vict., c. 41, which is repealed, except sections 15, 16, 18, 22, and 23, and has the same reference to British and foreign trade marks; the evident intention was that Canada should, some time, join the Convention as to Industrial Property. 51 Vict., c. 41, is almost a verbatim copy of the Imperial Act.

Why should Canada in this matter (as well as in the matter of copyright) deliberately, year after year, adopt a policy of isolation, to the destruction of the interests of the inventors,

merchants, and designers of the country? There are annually about 725 Canadian inventors, and 375 parties who obtain trade marks and designs in Canada.

The obtaining of invalid foreign patents by Canadians is an evil which prompt action on the part of the Government, in joining the Convention, wouldtend to minimize, and, now that we have a Franco-Canadian treaty, and are seeking other foreign treaties, no time should be lost in protecting our merchants' interests.

Yours truly,

JOHN G. RIDOUT.

Toronto, May 11th.

[Legislation is apparently called for to give effect to the articles of the Convention. A short Dominion Act making the provisions of our Patent Act and Trade Mark and Design Act applicable to the subjects or citizens of the States of the Union, or aliens who are domiciled in the territories of any of these States and who possess commercial establishments therein, would seem to be necessary, and we should be glad to publish any suggestion which may occur to a reader.—ED. C.L.J.]

INTEREST REIPUBLICÆ UT SIT FINIS LITIUM.

MARRIOTT *v.* HAMPTON.

[7 T.R. 269 (A.D. 1797).]

(With apologies to the shades of Messrs. Durnford & East.)

'Tis strange that clothes perform so great a function
Through anthropology's progressive stages!
In sooth, they are but an embalming unction
To keep Man's manners for succeeding ages,
Whose antiquarians, *savants*, and sages
(Drear revellers in wreck, and rust and runes!)
Proudly expound them in most learned pages,
And trace his lineage back to grim baboons
By dint of Fashion's pranks with his best pantaloons.

And mention of these garments cuts me short
From prefatory chatter at my ease—
So fatal in things legal, where one ought
To boldly plunge at once *in medias res*—
For trowsers now I sing, and, if it please
My readers that a moral gain admittance,
'Twill be my aim to show how ill agrees
The law with laches, how youths on a pittance
Whene'er they pay a bill should keep its full acquittance.

Young Marriott was a dude, this I must own,
What time the goddess *Ton*, exiled from France,
Erected her gay shrine in London town
And led John Bull a very giddy dance.
Ye gallant's waistcoat's pied extravagance
Divided honours with his storied hat,
The *sansculottes* had set a style in pants
That sent knee-breeches to the owl and bat;
Faith, many a man with shrunken shank waxed glad thereat!

In the forefront of fashion Marriott hied
Him to his tailor—Hampton in the Strand—
And purchased trews whose lurid hues outvied
The dyeing triumphs of the Tyrian hand;
And, having ducats then at his command,
Paid for his trowsers like a little man,—
Full proud from the stunned tradesman to demand
Receipt therefor, a most prudential plan,—
Alack! he did not end what he so well began!

Flushed with high hopes of capturing the mall
By this new splendour of his nether man
Back doth he haste unto his lodgings small
And there his toilet makes in shortest span—
Pleased as a maid with beauty-patch and fan!
Then, careless wight, among his *billets-doux*
And piles of litter of a kindred clan,
The tailor's full receipted bill he threw—
'Twere meet that such a deed should reap a woeful rue!

Time passes on, and in the shocks of chance
Sartorial Hampton, meeting Fortune's frown,
Flies to his books and scans their drear expanse
Of debts full hoary and eke outlawed grown.
His saddened eye casts the long columns down,
And many a sigh the while his bosom racks,
Till Marriott's name in debit side is shown,
For trews late bought, and credit entry lacks!
Ah, now that tailor's mien of woe for Marriott smacks!

Eftsoons to the King's Bench our hero's haled,
There to defend a suit the tailor pressed
With hotter zeal than e'er his goose assailed
Suits of his patrons when on Fortune's breast
He basked serene. And now the debt's confessed—
But lo! when plea of payment is advanced,
Where is the proof defendant once possessed?
At Echo's answer "where?" he stands entranced,
And sees the fatal bill by trial costs enhanced!

* * * * * * * *

Fate's but a humorist, and Man her toy!
Our Marriott, anon, *sans* work of better kind,
In sorting missives that once brought him joy,
Haps on the bill the varlet Hampton signed
As paid in full, where it had long reclined!
Loud on Justitia for revenge he cried.
(She is not deaf, he thought, though she be blind!)
"My count, your lordships, cannot be denied;
It is for money had—the knave's both robbed and lied."

KENYON, C.J.: "Your case in sentiment
Is founded strong, but sadly lacks in law;
I am afraid of such a precedent.
'Twould ope too wide fell Litigation's maw
If parties knew that they to court might draw
Some proof which they, by laches, did omit,
And open suits adjudged. That were a flaw
Our system wots not—for, so it is writ,
'Interest reipub. ut finis litium sit!'"

And all the *puisne* judges did agree
(As well becometh brethren great and small)
That Marriott must go thence and learn to see
The moral of the words their Chief let fall,
Which, put in simple phrase, is plain to all:
(Perhaps I've said it in my second verse—
Yet, nathless, it is worthy a recall!)
That negligence in all things is a curse,
But negligence in lawsuits—well, there's no hing worse!

CHARLES MORSE.

Ottawa, Canada.

DIARY FOR MAY.

2. Thursday.....J. A. Boyd, 4th Chancellor, 1881. Battle of Cut Knife Creek, 1885.
3. Friday.....Ascension Day.
4. Saturday.....Wm. A. Henry, J. of Supreme Court, died, 1888.
5. Sunday.....*3rd Sunday after Easter.*
6. Monday.....Law School closes. Lord Brougham died, 1868, aged 90.
7. Tuesday.....Supreme Court of Canada sits.
12. Sunday.....*4th Sunday after Easter.* Battle of Batoche, 1885.
14. Tuesday.....Court of Appeal sits. County Court Jury and non-Jury Sittings in York.
18. Saturday.....Montreal founded, 1642.
19. Sunday.....*Rogation Sunday.*
20. Monday.....EASTER TERM begins. Q. B. and C. P. Div. Courts sit. Convocation meets.
21. Tuesday.....Confederation proclaimed, 1867.
22. Wednesday....Earl of Dufferin, Gov.-Gen., 1872.
23. Thursday.....Ascension Day.
24. Friday.....Queen's Birthday, born 1819. Convocation meets.
25. Saturday.....Princess Helena born, 1846.
26. Sunday.....*Sunday after Ascension.*
27. Monday.....Chan. Div'l Court sits. Habeas Corpus Act passed, 1679.
28. Tuesday.....Hon. G. A. Kirkpatrick, Lieut.-Gov. of Ontario, 1892.
29. Wednesday....Battle of Sackett's Harbour, 1813.
31. Friday.....Convocation meets.

Reports.

ASSESSMENT CASES.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES.

IN RE CALGARY GAS AND WATERWORKS CO.

Assessment—Gas and water pipes.

Held, that gas and water pipes and mains laid under the street are not liable to assessment as land or real estate.

[CALGARY, March 28.—SCOTT, J.

This is an appeal from the decision of the Court of Revision for the city of Calgary in respect of the assessment of the appellant's property for the year 1895.

It was admitted on the argument that the buildings and improvements which were assessed at $38,500 included the water pipes and mains of the appellant's waterworks system, which are laid under various streets of the city, and the evidence shows that there are about nine miles of pipes and mains so laid.

Muir, Q.C., for the appellants.

Sifton for the city of Calgary.

SCOTT, J.: If these pipes and mains are rateable property, and are properly rated upon the assessment roll, I would have no difficulty in arriving at the conclusion that the appellants' assessment should remain as amended by the Court of Revision. The appellants, however, contend that these pipes and

mains are not land or real estate within the meaning of the provisions relating to assessment contained in Ordinance No. 33 of 1893, entitled "An ordinance to incorporate the city of Calgary," and that therefore they are improperly assessed.

The interpretation clause at the end of the ordinance referred to provides that: "Unless otherwise declared or indicated by the context, whenever any of the following words occur in this ordinance the meaning hereinafter expressed shall attach to the same, namely, (2) The words 'land,' 'lands,' 'real estate,' 'real property,' respectively, include lands, tenements, hereditaments, and all rights thereto, and interests therein."

Section 31 of the ordinance referred to provides that "land," "real property," and "real estate," shall include all buildings and other things erected upon or affixed to the lands, and all machinery and other things so fixed to any building as to form part of the realty, and all mines, minerals, and quarries in and upon the same."

Section 31 is one of the sections of the ordinance collocated under the head of "assessment," and it therefore appears that, for the purposes of assessment, the meaning attached to the words "land," "real property," and "real estate," by the interpretation clause, is not applicable.

The words "buildings and other things erected upon or affixed to the lands, and all machinery and other things so fixed to any building as to form part of the realty, and all mines, minerals, and quarries in and upon the same," used in section 31, refer only to things which form part of "land" and "real estate," in the ordinary acceptation of those terms, and which would be included in those terms apart from the enactments. I, therefore, see no reason for the enactments other than to show the intention that all other things which are usually included in the terms "land" and "real estate" are not to be included therein, so far as the provisions relating to assessment are concerned. Now, the pipes and mains of the appellants laid under the streets of the city are not, in my view, things erected upon or affixed to the lands assessed to the appellants, nor machinery or things so fixed to any buildings thereon as to form part of the realty.

But it was admitted on the argument that the buildings and pumping machinery of the appellants' waterworks system are situated upon some portion of lots 26 to 32 in block 11 assessed to them, and it was contended on behalf of the respondents that, as it is by means of such pumping machinery that water is forced through the pipes and mains under the streets and thus furnished to the appellants' customers, such pipes and mains are an easement or something appurtenant to the lands on which the pumping machinery is situated and enjoyed therewith, and should be rated as part thereof.

In *Chelsea Waterworks* v. *Bowley*, 20 L.J. Rep. Q.B. 520, it was held that the right to lay pipes in the streets and use them for conveying water was an easement. In that case the waterworks company was assessed for the land occupied by the mains and pipes, and it was held that it was not liable for a land tax in respect of such occupation. Although it was held in this case that the right referred to was an easement, it was not shown or held to be an easement enjoyed with or appurtenant to any lands owned by the company.

In *Toronto Street Railway Co.* v. *Fleming*, 37 U.C.R. 116, the plaintiffs were assessed for portions of certain streets used by them for the purposes of their railway. It was held by the Court of Error and Appeal, following *Chelsea Waterworks Co.* v. *Bowley*, that the portion of the street so occupied by the company was not rateable as land. So far as I can gather from the report, the statute under which the decision was rendered appears to be analogous to s. 31.

In *Re St. Catharines and Welland Gas Light Co.*, 30 C.L.J. 205, it was held that gas mains laid by the company upon the public streets were chattels, or, at most, an easement, and in either event were not assessable as land.

In *Re Consumers Gas Co. Toronto*, 30 C.L.J. 157, it was held that gas mains laid upon the public streets were assessable as machinery forming an indivisible part of the gas company's plant, and appurtenant to the lands owned by them. In his judgment in this case McDOUGALL, Co.J., says, at p. 158: "This is not an assessment, in name, at any rate, upon the portion of the highway occupied by the mains themselves; and there is no legal difficulty that I can discern in levying and collecting the taxes based upon the whole assessment. A warrant directed against the company's property to realize the taxes could be executed upon the company's premises, and, in case sale should become necessary, their lands, buildings, plant, and machinery could be sold. Under such a sale the treasurer's deed of the whole property would, no doubt, pass to the purchaser the gas works and the fixed machinery, and would include the mains as part of the general plant."

I cannot accept this proposition, which appears to be the basis of his judgment, and, if I were called upon to do so, I would hold that, upon a sale for taxes under this assessment of the land upon which the appellants' pumping machinery is erected, the treasurer's deed would convey to the purchaser merely the land and the improvements thereon, and that no portion of the pipes and mains under the streets of the city would pass by the conveyance.

I see nothing to prevent the appellants erecting another pumping station on another parcel of land, and severing the connection between the present station and the street mains. Can it be contended that upon a sale for taxes of the present station under the assessment in question the purchaser would be entitled to the use of the street mains, and to prevent the user thereof by the appellants? I see no reason why the right to assess the street mains and pipes as part of the machinery and improvements upon the lands on which the pumping station is erected should not depend upon the question whether they would pass to the purchaser upon the sale of those lands for taxes.

Upon consideration of the provisions of the ordinance under which the assessment in question was made, and such authorities as I have been able to refer to, I can come to no other conclusion than that the pipes and mains laid under the streets are not liable to assessment as land or real estate.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Exchequer Court.] [Jan. 15

DEKUYPER *v.* VANDULKEN.
VANDULKEN *v.* DEKUYPER.

Trade mark—Jurisdiction of court to restrain infringement—Effect of—Rectification of register.

In the certificate of registration the plaintiffs' trade mark was described as consisting of "the representation of an anchor with the letters 'J.D.K. & Z.,' or the words 'John DeKuyper, Son & Co., Rotterdam,' as per the annexed drawings and application." In the application, the trade mark was claimed to consist of a device or representation of an anchor inclined from right to left, in combination with the letters "J.D.K. & Z.," or the words "John DeKuyper, etc., Rotterdam," which, it was stated, might be branded or stamped upon barrels, kegs, cases, boxes, capsules, casks, labels, and other packages containing geneva sold by plaintiff. It was also stated in the application that on bottles was to be affixed a printed label, a copy or *facsimile* of which was attached to the application, but there was no express claim of the label itself as a trade mark. This label was white and in the shape of a heart, with an ornamental border of the same shape, and on the label was printed the device or representation of the anchor, with the letters "J.D.K. & Z." and the words "John DeKuyper & Son, Rotterdam," and also the words "Genuine Hollands Geneva," which, it was admitted, were common to the trade.

The defendants' trade mark was, in the certificate of registration, described as consisting of an eagle, having at the feet "V.D.W. & Co.," above the eagle being written the words, "Finest Hollands Geneva"; on each side are the two faces of a medal, underneath on a scroll the name of the firm, "VanDulken, Weiland & Co.," and the word "Schiedam," and lastly, at the bottom, the two faces of a third medal, the whole on a label in the shape of a heart (*le tout sur une étiquette en forme de cœur*). The colour of the label was white.

Held, affirming the judgment of the Exchequer Court, that the label did not form an essential feature of the plaintiffs' trade mark as registered, but that, in view of the plaintiffs' prior use of the white heart-shaped label in Canada, the defendants' had no exclusive right to the use of the said label, and that the entry of registration of their trade mark should be so rectified as to make it clear that the heart-shaped label formed no part of such trade mark. TASCHEREAU and GWYNNE, JJ., dissenting on the ground that the white heart-shaped label with the scroll and its constituents was the trade mark which was protected by registration, and that defendants' trade mark was an infringement of such trade mark.

Appeal dismissed with costs.

Abbott, Q.C., and *Campbell* for the appellants.

Ferguson, Q.C., and *Merritt* for the respondents.

Quebec.] [Oct. 9, 1894.

HEREFORD RAILWAY CO. *v.* THE QUEEN.

51 & 52 Vict., c. 91, ss. 9, 14 (P.Q.)—Interpretation Act, s. 19, R.S.Q.—Railway subsidy—Discretionary power of Lieutenant-Governor in Council—Petition of right—Misappropriation of subsidy moneys by order in council.

Where money is granted by the legislature, and its application is prescribed in such a way as to confer a discretion upon the Crown, no trust is imposed enforceable against the Crown by petition of right.

The appellant railway company alleged by petition of right that by virtue of 51 & 52 Vict., c. 91, the Lieutenant-Governor in Council was authorized to grant 4,000 acres of land per mile for thirty miles of the Hereford railway; that by an order in council, dated 6th August, 1888, the land subsidy was converted into a money subsidy, the 9th section of said c. 91, 51 & 52 Vict., enacting that "it shall be lawful," etc., to convert; that the company completed the construction of their line of railway, relying upon the said subsidy and order in council, and built the railway in accordance with the Act 51 & 52 Vict. c. 91, and the provisions of the Railway Act of Canada, 51 Vict., c. 29, and they claimed to be entitled to the sum of $49,000, balance due on said subsidy The Crown demurred, on the ground that the statute was permissive only, and by exception pleaded, *inter alia*, that the money had been paid by order in council to the sub-contractors for work necessary for the construction of the road; that the president had by letter agreed to accept an additional subsidy on an extension of their line of railway to settle difficulties, and signed a receipt for the balance of $6,500 due on account of the first subsidy.

The petition of right was dismissed.

Held, that the statute and documents relied on did not create a liability on the part of the Crown to pay the money voted to the appellant company enforceable by petition of right, TASCHEREAU and SEDGEWICK, JJ., dissenting; but, assuming it did, the letter and receipt signed by the president of the company did not discharge the Crown from such obligation to pay the subsidy, and payment by the Crown of the sub-contractors' claim out of the subsidy money without the consent of the company was a misappropriation of the subsidy.

Appeal dismissed with costs.

Brown, Q.C., and *Stuart*, Q.C., for the appellants.

Drouin, Q.C., for the respondent.

Quebec.] [Jan. 15.

ANGUS *v.* THE UNION GAS AND OIL STOVE CO.

Patent of invention—Business agreement to manufacture under—Letter of guarantee—Failure of scheme—Liability of guarantor.

The chief object of an agreement between A. and B. was the profitable manufacture and sale of wares under a patent of invention issued to A., and, in consideration of advances by B. to the amount of $6,000, C. by a letter of guarantee "agreed to become a surety to B. for the repayment of the $6,000, if within twelve months from the date of the agreement it should transpire that, (if) for the reasons incorporated in said agreement, it should not be carried." On an

action brought by B. against C. for $6,000, it was proved at the trial that the manufacturing scheme broke down through defects of the invention.

Held, affirming the judgment of the court below, that C. was liable for the amount guaranteed by his letter.

Appeal dismissed with costs.

Martin and *Gilman* for the appellants.

Greenshields, Q.C., for the respondent.

Quebec.] [Jan. 15.

WEBSTER *v.* SHERBROOKE.

Quebec license laws—R. S. P. Q., Art. 297—City of Sherbrooke charter—55-56 Vict., c. 51, s. 55—Powers of taxation.

By virtue of the first clause of a by-law passed under 55-56 Vict., c. 51, an Act consolidating the charter of the city of Sherbrooke, the appellant was taxed five cents on the dollar on the annual value of the premises in which he carried on his occupation as a dealer in spirituous liquors, and in addition thereto, under clause three of the same by-law, was taxed a special tax of two hundred dollars also for the same occupation. The Act 55-56 Vict., c. 51, provides at the end of one of the subsections enumerating the kinds of taxes authorized to be imposed (subsection *g*): "The whole, however, subject to the provisions of the Quebec License Act," Art. 297, R.S.P.Q., which limits the powers of taxation for any municipal council of a city to $200.

Held, affirming the judgment of the court below, that the power granted by 55-56 Vict., c. 51, to impose the several taxes was independent and cumulative, and as the special tax did not exceed the sum of $200 the by-law was *intra vires*: TASCHEREAU and GWYNNE, JJ., dissenting.

Appeal dismissed with costs.

Panneton, Q.C., for the appellants.

Brown, Q.C., for the respondents.

Quebec.] [Jan. 15.

FERRIER *v.* TREPANN *et al.*

Building—Want of repair—Damages—Art. 1055, C.C.—Trustees, personal liability of—Executors—Arts. 921, 981a, C.C.

Decisions of provincial courts resting upon mere questions of procedure will not be interfered with on an appeal to the Superior Court of Canada, except under special circumstances.

Where parties are before the court *qua* executors and the same parties should also be summoned *qua* trustees, an amendment to that effect is sufficient without the issue of a new writ.

Dame A. T. sued J. F. and M. W. F. personally, as well as in their quality of testamentary executors and trustees of the will of the late J. F., claiming $4,000 damages for the death of her husband, who was killed by a window falling on him from the third story of a building, which formed part of the general estate of the late J. F., but which had been specifically bequeathed to one G.F.

and his children, for whom the said J.F. and M.W.F. were also trustees. The judgment of the courts below held the appellants liable as trustees, as well as in their capacity of executors of the general estate.

On appeal to the Supreme Court,

Held (affirming the judgment below), that the appellants were responsible for the damages resulting from their negligence in not keeping the building in repair, as well personally as in their quality of trustees (*d'héritiers fiduciaires*) for the benefit of G.F.'s children, Art. 1055, C.C., but were not liable as executors of the general estate.

Appeal dismissed with costs.

Saint-Pierre, Q.C., for the appellants.

Taylor for the respondent.

Quebec.] [Jan. 15

CALDWELL *v.* ACCIDENT INSURANCE CO.

Partnership—Registered declaration—Art. 1835, C.C.—Con. Stats. L.C., c. 1 s. 65—Oral evidence—Life policy.

In an action upon a life policy to recover the amount payable to the surviving partners upon the death of one of the partners, a notarial dissolution of the partnership, duly registered, as well as a declaration of a new partnership, of which the deceased was not a member and duly registered, as provided by Art. 1834, C.C., was set up as a defence to the action, and evidence was tendered to show that the deceased had continued to be a member up to the time of his death.

Held, affirming the judgment of the court below, that oral evidence to contradict such declaration was inadmissible, and that the action was properly dismissed.

Appeal dismissed with costs.

Abbott, Q.C., and *Geoffrion*, Q.C., for the appellant.

Cross, Q.C., for the respondents.

Quebec.] [Jan. 15.

HUNT *v.* TAPLIN.

Contract of sale—Contre lettre—Principal and agent—Construction of contract.

The sale of property in this case was controlled by a writing in the nature of a *contre lettre*, by which it was agreed as follows: "The vendor, in consideration of the sum of $2,940, makes and executes this day a clear and valid deed in favour of the purchaser of certain property (therein described), and the purchaser, for the term of three years, is to let the vendor have control of the said deeded property, to manage as well, safely, and properly as he would if the said property were his own, and bargain and sell the said property for the best price that can be had for the same, and pay the rent, interest, and purchase money when sold, and all the avails of the said property, to the purchaser to the amount of $2,940, and interest at the rate of eight per cent. per annum

from the date of these presents, and then the said purchaser shall re-deed to the vendor any part of the said property that may remain unsold after receiving the aforesaid amount and interest.'

The vendor was, at the time, indebted to the purchaser in the sum of $2,941. The two documents were registered. The vendor had other properties, and gave the purchaser a power of attorney to convey all his real estate in the same locality. The term of three years mentioned in the *contre lettre* was continued by mutual consent. The vendor subsequently paid amounts on account of his general indebtedness to the purchaser. It was only after the purchaser's death that the vendor claimed from the heirs of the purchaser the balance, above mentioned, of $1,470, as owing to him for the management of his properties.

Held, reversing the judgment of the Court of Queen's Bench, and restoring the judgment of the Superior Court, that the proper construction of the contract was to be gathered from both documents and dealings of the parties, and that, the property having been deeded merely as security, it was not an absolute sale, and that the plaintiff was not M. S.'s agent in respect of this property.

Held, also, that the only action the plaintiff had was the *actio mandata contraria*, with a tender of his *reddition de compte*.

Appeal allowed with costs.

Geoffrion, Q.C., and *Buchan* for the appellants.

H. B. Brown, Q.C., for the respondent.

Quebec.] [March 1.

ARPIN *v.* MERCHANTS BANK.

Appeal in matter of procedure—Art. 188, C.C.P.

A judgment of the Court of Queen's Bench for Lower Canada (appeal side) held that a *venditioni exponas* issued by the Superior Court of Montreal, to which court the record in a contestation of an opposition had been removed from the Superior Court of the district of Iberville, under Art. 188, C.C.P., was regular.

On an appeal to the Supreme Court of Canada,

Held, that on a question of practice such as this the court would not interfere, following the course of the Privy Council as laid down in the *Mayor of Montreal* v. *Brown* (2 App. Cas. 184).

Appeal dismissed with costs.

Lajoie for the appellant.

Campbell for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

STREET, J.] [April 18.

IN RE HODGINS AND THE CITY OF TORONTO.

Municipal corporation—Construction of sidewalk—"Desirable in the public interest"—Consolidated Municipal Act, 1892, s. 623 (b).

Held, that to consider and determine whether a sidewalk is desirable in the public interest within the meaning of s. 623 (*b*) of the Consolidated Municipal Act, 1892, is a judicial act, and before a municipal corporation reach a conclusion upon the point the persons to be affected should have notice and be permitted to show, if they can, that the proposed sidewalk is not desirable in the public interest; and where such notice had not been given, except by advertisement in the newspaper, which had not come to the attention of the applicant, who had been called upon to pay the assessment for such sidewalk, the by-law for the construction of it was quashed, so far as it purported to affect the property of the applicant.

The applicant in person.

Caswell for the city of Toronto.

Chancery Division.

ARMOUR, C.J.] [Jan. 8.

MCPHERSON *v.* IRVINE.

Jurisdiction of High Court of Justice to revoke letters of administration granted by Surrogate Court.

No jurisdiction exists in or has ever been conferred upon the High Court of Justice to revoke the grant, by a Surrogate Court, of letters of administration.

Irving, Q.C., and *Dyce Saunders* for the plaintiff.

S. H. Blake, Q.C., and *DuVernet* for the defendant.

Div'l Court.] [March 1.

REGINA *v.* GILES.

Betting—Keeping place therefor—Criminal Code, s. 197.

The defendant was in possession of and occupied a tent in a village, open to and frequented by the public to the number of fifty to one hundred per day, in which there was a telegraph wire to an incorporated race-track in the United States, where horse-racing and betting was legalized, and in which there was a

blackboard on which were the names of the horses, jockeys, etc., taking part in the race, with the track quotations, and, as the race was being run, an operator called off the progress thereof, giving the name of the winner, and of the second and third horses, and marked them on the board. Duplicate tickets were furnished at a wicket in the tent to applicants, which requested defendant to telegraph B, at the race-track, to place a certain amount of money on a horse named by an applicant at track quotations, and upon transmission thereof agreed to pay defendant ten cents, and that all liability on his part should cease, etc. On the tickets being handed in, one of them was stamped with date of its receipt, and returned to the applicant. The money so received was transmitted to B, and placed by him with bookmakers on the track, B paying defendant a percentage on the moneys received for him and ten cents on each application. B. had an agent in another part of the village whom he furnished with money to pay any winnings by remitting same to him, or giving him orders on defendant for stated sums.

Held, that the defendant was properly convicted, under ss. 197 and 198 of the Code, of keeping a common betting house.

J. R. Cartwright, Q.C., for the Crown.

Osler, Q.C., *Aylesworth*, Q.C., and *Murdoch*, for the defendant.

MACMAHON, J.] [March 19.

MCINTYRE *v.* FAUBERT.

Assignee for creditors—Sheriff—Sale of lands—Statute of Frauds—Sufficient memorandum—Signature of sheriff.

Action tried at Cornwall. The plaintiff, sheriff of the county, as assignee of an insolvent under R.S.O., c. 124, advertised the sale of the equity of redemption of certain lands of the insolvent, which were subject to encumbrances. He was represented at the sale by the deputy-sheriff, who verbally announced that the property was sold subject to the mortgages, and the defendant purchased for $10, which he paid. A receipt was given to the defendant for the $10, stating it to be "the purchase money on village lot four in Lancaster," being the lands in question, which receipt was signed by the deputy-sheriff. Afterwards the first mortgagees sold the land for about $500 less than what had been stated to be, at the sale, the amount of the encumbrances on it, and this action was brought, claiming the said deficiency as damages for breach of the alleged implied covenant of the defendant to pay off the encumbrances.

Held, that the above receipt was not a sufficient memorandum, within the Statute of Frauds, to bind the defendant. The sheriff selling as assignee was in a different position to that of a sheriff selling under an execution, who is the agent of both vendor and purchaser, and can sign a memorandum to bind a purchaser in the same way as an auctioneer can. But the signature of the sheriff as assignee is not sufficient.

Held, further, that the conditions and particulars, which did not set out the encumbrances, could not be added to by verbal declaration at the time of sale.

Stewart and *A. I. McDonell* for the plaintiff.

Maclennan, Q.C., for the defendant.

MEREDITH, C.J.] [April 1

TREVELYAN ET AL. *v.* MYERS.

Foreign judgment—Merger—Right to sue on original cause of action.

The recovery of a foreign judgment upon a covenant is not a merger of the covenant or the right to sue thereon, and the covenantee may, notwithstanding the recovery of the foreign judgment, sue upon and recover judgment upon the covenant in an Ontario court.

Walter Cassels, Q.C., and *W. H. Lockhart-Gordon* for the plaintiffs.

A. Monro Grier and *Orville M. Arnold* for the defendant.

OSLER, J.A., Weekly Court, London. [April 13.

TAYLOR *v.* REGIS.

Evidence—Corroboration—Two defendants in same interest—R.S.O., c. 61, s. 10—R.S.O., c. 1, s. 7, s-s. 24.

Where in an action by an executor of a deceased mortgagee against two mortgagors both the mortgagors deposed to certain payments made in the lifetime of the mortgagee, but which the plaintiff disputed,

Held, that the fact of both the mortgagors testifying to such payments did not constitute corroboration within the meaning of R.S.O., c. 61, s. 10.

Each mortgagor was an opposite or interested party in the same degree and of the same kind, and constituted together an opposite or interested party within the meaning of the section.

Elliott for the plaintiff.

Stewart for the defendant.

OSLER, J.A. Weekly Court, London. [April 21.

IN RE FLETCHER'S ESTATE.

Executors and administrators—Devolution of estates—Sale of infant's lands—R.S.O., c. 108, s. 8, s-s. 1—54 Vict., c. 18, s. 2 (O.).

The effect of 54 Vict., c. 18, s. 2 (O.), is to vest in executors and administrators, whether these are infants or not, the absolute discretion to sell the real estate for the purpose of paying the debts; and whether there are debts or not, for the purpose of the distribution of the estate among the persons beneficially entitled; provided that where infants are entitled, or where other heirs or devisees do not concur in the sale, and there are no debts, no such sale shall be valid as respects such infants or other heirs or devisees unless the sale is made with the approval of the official guardian. This amounts to an amendment of s. 8, s-s. 1, of the Devolution of Estates Act, R.S.O., c. 108, the approval of the official guardian being now required only in the case of a sale for the purpose of distribution simply, *i.e.*, where there are no debts, and where there also happen to be infants or non-concurring heirs or devisees.

Where, therefore, administrators in contracting to sell the lands in which infants were interested, under circumstances not requiring the consent of the

official guardian under the above first-mentioned enactment, nevertheless made the contract of sale subject to such approval being obtained, and, it was alleged, lost the sale by having, through negligence and delay, failed to obtain the official guardian's approval within the time required by the contract,

Held, that they were not liable to make good to the estate the deficiency resulting from a resale of the property afterwards, they having acted throughout with good faith and to the best of their judgment.

Under the above Acts executors and administrators are not in all respects in the same position as trustees for sale of the lands. Upon the latter is cast a duty to sell and dispose of them, upon the former a mere discretion to be exercised only for certain purposes and in certain events.

S. Leitch, *F. P. Betts*, and *T. Macbeth* for various parties.

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

BOYD, C.] [April 29.

LANCEFIELD *v.* ANGLO-CANADIAN PUBLISHING CO.

Copyright—Penalty—Printing Canadian copyright work abroad—Impressing thereon fact of Canadian copyright—R.S.C., c. 62, s. 33.

There is nothing in section 33 of the Copyright Act, R.S.C., c. 62, to prevent the owner of a Canadian copyright in respect to a musical composition having the work printed abroad, and inserting thereon the existence of such copyright before publishing the work in Canada.

It is not expressly declared in the Act that the continuance of the privilege of copyright depends on the printing as well as the publication of the composition in Canada.

That may be inferred from certain provisions in the Act, and it may be that such importations as these are not protected by the Act, but these matters were not raised in this case, which had to do simply with the penalty clause, section 33.

G. Lynch-Staunton for the plaintiff.

J. Bicknell and *H. D. Hulme* for the defendants.

Common Pleas Division.

STREET, J.] [April 26.

IN RE FRANKLIN *v.* OWEN.

Prohibition — Division Court — Jurisdiction — Garnishing claim—Primary debtor abroad—Garnishees—Place of carrying on business—Cause of action—57 Vict., c. 23, s. 12—Promissory notes—Dividing cause of action —Separate counts.

A motion by the primary debtor for prohibition to the Third Division Court in the County of Elgin.

The Junior Judge of the County Court of Elgin, in a considered judgment, held that the Third Division Court had jurisdiction in an action upon a joint and several promissory note for $300, made by the primary debtor

and her deceased husband, the primary creditor abandoning the excess over $200. Another action was brought in the same Division Court at the same time, by the same primary creditor against the same primary debtor and the same garnishees, upon a promissory note for more than $200, the primary creditor again abandoning the excess. Both notes were overdue at the time the actions were brought.

The Ancient Order of United Workmen, and Mr. D. Carder, their Grand Recorder, were made garnishees before judgment, it being sought to attach in their hands the moneys due to the primary debtor under a beneficiary certificate upon the life of her deceased husband.

The primary debtor resided in Portland, Oregon, at the time the action was brought, and the promissory notes sued on were signed by her in one division of the city of Toronto, and made payable in the other.

The actions were brought in the Third Division Court because the primary creditor alleged that the garnishees carried on business there within the meaning of s. 185 of the Division Courts Act, R.S.O., c. 51, and the County Court judge, in his judgment affirming the jurisdiction, so held.

The primary debtor being resident in a foreign country, no Division Court, as was admitted, would have had jurisdiction before the Act, 57 Vict., c. 23, s. 12, which was as follows: "When it is by the Division Courts Act provided that a claim may be entered, or an action brought, or that any person or persons may be sued in any Division Court, such action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of the Province of Ontario, and such action may be brought in the Division Court in which the cause of action arose," (*sic*) "and continued to completion in as full and effectual a manner as might have been the case if the defendant resided in the Province."

The primary debtor sought to prohibit further proceedings in the two actions, upon the following grounds: (1) That a Division Court had no jurisdiction over her, she residing in a foreign country; (2) that even if she was amenable to the jurisdiction of a Division Court this action was brought in the wrong court, and there was no court which would have jurisdiction, as the cause of action did not arise wholly within any one division; (3) that by bringing two separate actions the primary creditor had divided a cause of action, contrary to s. 77 of the Division Courts Act, R.S.O., c. 51.

Swabey for the primary debtor.

Kilmer for the primary creditor.

Totten, Q.C., for the garnishees.

STREET, J., as to the third ground urged, it is plain that in an action at law the two promissory notes would have been declared upon in two separate counts; and, therefore, applying the cases of *Re Clark* v. *Barber*, 26 O.R. 47, and *Re Ball* v. *Bell*, *ib.*, 123, there was no dividing of a single cause of action.

As to the other grounds of the motion, it seems to me that s. 12 of 57 Vict., c. 23, gives jurisdiction in a case where the defendant resides out of the Province only to the Division Court of the division in which the cause of action arose. To construe that section as it was construed by the learned judge in the Division Court, and as it is now contended by the primary creditor it

should be construed, would introduce anomalies not intended to be introduced. If that contention is correct, the words, "and such action may be brought in the Division Court in which the cause of action arose," are quite unnecessary. The enactment was not intended to apply to a garnishing plaint at all, or else it is not to be construed in the manner intended for by the primary creditor.

Order for prohibition with costs.

Practice.

MEREDITH, C.J.] [May 4.

ROBERTS *v.* DONOVAN.

Attachment—Contempt of court—Discharge—58 Vict., c. 13, s. 29—Terms.

After the enactment of s. 29 of 58 Vict., c. 13, which was assented to on April 16th, 1895, and after the defendant had been nearly five months in gaol under an attachment issued pursuant to an order committing him for contempt of court in disobedience of a judgment requiring him to cause a certain mortgage to be discharged, an order was made for his release upon the terms of his consenting to a judgment against him for the sum required to pay off the mortgage and all costs for which he was liable to the plaintiff, and upon his undertaking not to bring any action against any one on account of his arrest and imprisonment, such order to be without prejudice to any proceeding or the right of the plaintiff against any other person.

J. W. McCullough for the defendant, J. A. Donovan.

Moss, Q.C., for the plaintiff.

THIRD DIVISION COURT OF THE COUNTY OF PERTH.

WOODS, CO.J.] [April.

KENT *v.* SUTHERLAND.

Promissory note—Bills of Exchange Act, 1890—Need of presentation of promissory note before action.

This was an action on a promissory note for $46.40, dated January 27th, 1892, and payable at the Bank of Toronto, London.

Geo. McNab for the plaintiff.

Moscrip for the defendant.

WOODS, CO.J.: There is a point which was not raised at the trial, that is, as to the meaning of the Bills of Exchange Act, 1890, s. 86. There is room to argue that the maker is not liable until presentment has been made at the particular place where the note is made payable, that is, in this case the Bank of Toronto, London. Presentment was not proved (see last sentence of the first clause of s. 86 of the Bills of Exchange Act, 1890). Then, again, it may be contended that it is only a question of costs, as indicated in the third sentence in said first clause.

Until 1890 the matter both as to bills and notes was governed in this country for many years by R.S.C., c. 123, s. 16, taken from the old Con. Stat

U.C. In England, as to notes, the law was, and is, different. The cases are collected at p. 284, fifteenth edition of Byles on Bills. Our Code of 1890 very closely follows the English Code of 1882. The words of the clause relating to the presentation of bills of exchange are identical, but when it comes to promissory notes there is a marked departure. By the English Act, s. 87, "Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable."

In our s. 86 the words quoted are not to be found. The whole section is recast, but in such a manner as to leave apparently an open question whether the law remains as it was as to presentment of notes so far as the liability of the maker is concerned, suggesting a case for costs only in the discretion of the judge, or whether we are now supposed to be at one with the English law and authorities. As the point was not raised at the trial, and, as I suppose, in case of a nonsuit it would only be a matter of bringing another suit, and even now making presentation (if necessary), I do not think I ought to determine the point without full argument. I am told a Nova Scotia court has taken the view that presentation must precede action against a maker.

MANITOBA.

KILLAM, J.] [April 17.

GREY *v.* M. & N.W. RAILWAY COMPANY.

Sale of railway under mortgage—Jurisdiction where part of railway is outside of province.

This was a suit brought by the plaintiffs as first mortgagees in trust for bond-holders of the defendants' railway and appurtenances, asking for a sale of the property, and for the appointment of a receiver in the meantime. The plaintiffs' mortgage covered a section of the defendants' railway line extending from Portage la Prairie 180 miles in a northwesterly direction, and terminating at Langenburg, a point in the Northwest Territories, 9⅓ miles beyond the limits of Manitoba. The jurisdiction of the court to order a sale of this last-mentioned portion of the railway was disputed. The plaintiffs claimed, however, that the court could order a sale of the whole of the division, or, at any rate, of the portion of the railway within the province.

Held, that the court could not decree a sale of a section of the railway unless it were one proper to be cut off, and operated separately by a purchaser; but that, under the circumstances, the court has jurisdiction to decree a sale of the whole division, although part of it is in the Northwest Territories.

In order, however, to make a good title for that part to a purchaser, the decree should provide that proceedings for sale should conform to the terms of the power of sale in the plaintiff's mortgage.

Held, also, that it was not necessary to plead want of jurisdiction; but, if suggested by the evidence, the question would be considered, although not raised on the pleadings.

Held, also, that the court might take judicial notice of the provision in the Northwest Territories Act, R.S.C., c. 50, introducing the laws of England as they stood on the 15th of July, 1870, save as repealed, altered, varied, modified, or affected by subsequent legislation; but not of any alteration in those laws made by the Legislature in the Northwest Territories since the 18th of February, 1887, the date of the proclamation of the Governor-General, bringing into force the Act 49 Vict., c. 25, s. 32, by which the appellate jurisdiction of the Court of Queen's Bench of Manitoba in respect of the Northwest Territories was taken away.

Decree for receiver and sale of the mortgaged railway.

Ewart, Q.C., and *Wilson* for the plaintiffs.

Tupper, Q.C., and *Phippen* for the defendants.

KILLAM, J.] [April 27.

STOVER *v.* MARCHAND.

The Real Property Limitation Act applies to rights and causes of action which existed prior to the date of its coming into effect.

The short point decided in this case was whether the Real Property Limitation Act, R.S.M., c. 89, applies to rights and causes of action or suit which existed or accrued prior to the date when the Act commenced and took effect, namely, 1st January, 1885. The Act was passed in 1883.

The plaintiff's claim was for foreclosure of a mortgage of which the principal and interest fell due on the first day of January, 1884; no sum had been paid on account of principal and interest; and the mortgagor and his heirs continued in possession up to the time of the filing of the bill in March, 1894 Plaintiff's counsel contended that as the Act did not commence and take effect until the 1st of January, 1885, it did not apply to causes of action and rights which accrued before that date.

Held, on the authority of *Doe d. Bennett* v. *Turner*, 7 M. & W. 226, and *Doe d. Jukes* v. *Sumner*, 14 M. & W. 39, that the statute was intended to apply to all rights and causes of action whatever, whether they existed or accrued before or after the time of the Act coming into effect.

Patterson and *Baker* for the plaintiff.

Hough, Q.C., for Mrs. Marchand.

Wade for the infants.

Appointments to Office.

SHERIFFS.

County of Hastings.

George Frederick Hope, of the City of Belleville, Esquire, to be Sheriff for the County of Hastings.

CORONER.

District of Parry Sound.

John Robinson Stone, of the Town of Parry Sound, in the District of Parry Sound, Esquire, M.D., to be an Associate-Coroner within and for the said District of Parry Sound.

INSPECTOR OF REGISTRY OFFICES.

Donald Guthrie, of the City of Guelph, in the County of Wellington, Q.C., to be Inspector of Registry Offices for the Province of Ontario, in the stead of the Hon. C. F. Fraser, deceased.

LOCAL REGISTRARS, CLERKS DISTRICT COURTS, AND SURROGATE REGISTRARS.

District of Nipissing.

Thomas John Bourke, of the Town of North Bay, in the Provisional Judicial District of Nipissing, Esquire, to be Local Registrar of the High Court of Justice for Ontario, Clerk of the District Court, and Registrar of Surrogate in and for the said Provisional Judicial District of Nipissing.

CLERKS COUNTY COURTS AND SURROGATE REGISTRARS.

County of Bruce.

Matthew Goetz, of the Village of Formosa, in the County of Bruce Esquire, to be Clerk of the County Court and Registrar of Surrogate in and for the said County of Bruce.

DIVISION COURT CLERKS.

County of Bruce.

Joseph Lawson, of the Village of Chesley, in the County of Bruce, Gentleman, to be Clerk of the Twelfth Division Court, of the said County of Bruce, in the room and stead of John Alexander Baton, deceased.

County of Prince Edward.

George Hiram Crane, of the Village of Consecon, in the County of Prince Edward, Gentleman, to be Clerk of the Seventh Division Court of the said County of Prince Edward, in the room and stead of James M. Cadman, resigned.

County of Essex.

Arthur E. Milne, of the Town of Essex, in the County of Essex, Gentleman, to be Clerk, *pro tempore*, of the Eighth Division Court of the said County of Essex, in the room and stead of John Milne, resigned.

County of Norfolk.

Arthur P. Barrett, of the Village of Port Royal, in the County of Norfolk, Gentleman, to be Clerk of the Sixth Division Court of the said County of Norfolk, in the room and stead of Simon Pitt Mabee, deceased.

County of Wellington.

Joseph Driscoll, of the Village of Arthur, in the County of Wellington, Gentleman, to be Clerk of the Eighth Division Court of the said County of Wellington, in the room and stead of Daniel Driscoll, deceased.

DIVISION COURT BAILIFFS.

County of Bruce.

Dugald C. Cavin, of the Village of Port Elgin, in the County of Bruce, to be Bailiff of the Fifth Division Court of the said County of Bruce, in the room and stead of M. Hunter, resigned.

Flotsam and Jetsam.

LORD WESTBURY, says Serjeant Robinson, once remarked to Chief Justice Erle, after the latter's retirement, "I wish, Erle, you would sometimes come into the Privy Council and relieve me from my onerous duties there, for we can't get on without three, and there is no one else I can apply to." Erle said he would willingly come, but he was getting a little deaf, and was afraid that might interfere with his power of doing full justice.

"Not at all, my dear fellow," said Westbury. "Of my two usual colleagues, —— is as deaf as a post and hears nothing, —— is so stupid that he can understand nothing he hears, and yet we three together make an admirable court."

IT became the solemn duty of Justice —— to pass sentence on an aged man named George Bliss for stealing a hog:

"It is a shame that a man of your age should be giving his mind up to stealing. Do you know any reason why sentence should not be pronounced on you according to law?"

"Now, Judge," was the reply of the aged sinner Bliss, "this is getting to be a trifle monotonous. When I was only seventeen years old, I got three years, and the judge said I ought to be ashamed of myself for stealing at my age. When I was forty, I got five years, and that judge said it was a shame that a man in his very best years should steal. And now, when I am seventy years of age, here you come and tell me the same old story. Now, I would like to know what year of a man's life is the right one, according to your notion."—*The Green Bag.*

EXTRACTS FROM THE BLUE LAWS OF CONNECTICUT.

No Quaker, or dissenter from the established worship of this dominion, shall be allowed to give a vote for the electing of magistrates or any other officer.

No food or lodgings shall be offered to Quaker, Adamite, or heretic.

If any person turns Quaker, he shall be banished, and not suffered to return but on pain of death.

No priest shall abide in the dominion; he shall be banished, and suffer death on his return.

Priests may be seized by any one without a warrant.

No one to cross a river but an authorized ferryman.

No one shall run on the Sabbath day, or walk in his garden or elsewhere, except reverently to and from meeting.

No one shall travel, cook victuals, make beds, sweep house, cut hair, or shave, on the Sabbath day.

No woman shall kiss her children on Sabbath or fasting days.

The Sabbath shall begin at sunset on Saturday.

To pick an ear of corn growing in a neighbour's garden shall be deemed theft.

A person accused of trespass in the night shall be judged guilty, unless he clears himself by his oath.

When it appears that the accused has confederates, and he refuses to discover them, he may be racked.

None shall buy or sell lands without permission of the selectmen.

A drunkard shall have a master appointed by the selectmen, who are to bar him from the liberty of buying and selling.

Whoever publishes a lie to the prejudice of his neighbour shall be set in the stocks, or whipped ten stripes.

No minister shall keep a school.

Every ratable person who refuses to pay his proportion to support the minister of the town or parish shall be fined by the court 5ld., and 4ls. every quarter, until he or she pay the rate of the minister.

Men-stealers shall suffer death.

Whosoever wears clothes trimmed with gold, silver, or bone lace, above 1s. per yard, shall be presented by the grand jurors, and the selectmen shall tax the offender £300 estate.

A debtor in prison, swearing he has no estate, shall be let out and sold to make satisfaction.

Whosoever sets a fire in a woods, and it burns a house, shall suffer death; and the person suspected of this crime shall be imprisoned without benefit or bail.

Whosoever brings cards or dice into this dominion shall pay a fine of £5.

No one shall read Common Prayer Books, keep Christmas or set days, eat mince pies, dance or play cards, or play on any instrument of music, except the drum, trumpet, and Jew's harp.

No Gospel minister shall join people in marriage. The magistrate only shall join them, as he may do it with less scandal to Christ's church.

When parents refuse their children convenient marriages, the magistrates shall determine the point.

The selectmen, on finding children ignorant, may take them away from their parents and put them in better hands at the expense of their parents.

A man that strikes his wife shall pay a fine of £10.

A woman that strikes her husband shall be punished as the law directs.

A wife shall be deemed good evidence against her husband.

No man may court a maid in person or by letter without having first obtained consent of her parents: £5 penalty for the first offence; £10 for the second; and the third, imprisonment during the pleasure of the court.

Married persons must live together, or be imprisoned.