## DIARY FOR OCTOBER.

2. Sat. ..Prince Arthur visited Toronto.
3. Sun. ..Nineteenth Sunday after Trinity.
4. Mon...County Court Terms and sittings without jury (ex. York) begin.
8. Fri. ...Harrison, C. J., sworn in, 1875.
9. Sat. ..County Court Term ends. T. Moss sworn in Judge Court of Appeal, 1875.
10. Sun. ..Twentieth Sunday after Trinity.
11. Mon...County Court Term for York begins. Guy Carleton, Governor of Canada, 1774.
12. Tues...Lord Lyndhurst died, 1863.
13. Wed...Battle of Queenston, 1812.
16. Sat. ..County Court Term for York ends.
17. Sun. ..Twenty-first Sunday after Trinity.
21. Thur..Battle of Trafalgar, 1805.
23. Sat. ..Lord Monck, Governor-General, 1861.
24. Sun... Twenty-second Sunday after Trinity.
25. Mon...Battle of Balaclava, 1854.
26. Tues...Supreme Court sittings.
31. Sun. ..Twenty-third Sunday after Trinity. All Hallow Eve.

## CONTENTS.



Canada Law Journal.

*Toronto, October, 1880.*

We received some time ago a budget of papers from British Columbia, containing the report of a case which shows an unsatisfactory relationship between the Bench and some members of the Bar. It would not be worth while to discuss the rights and wrongs of the conflict, and it is impossible to form any accurate opinion on such matters from a newspaper report, but we trust that long before this their feelings may have become as pacific as their ocean.

In a late trade-mark-case, *Re Worthington and Co.'s Trade Mark*, 28 W. R. 747, Lord-Justice James, with somewhat questionable taste, referred to the device "which, we are told, happened to the signature of the great Lord Protector of this country—that the Oliver was getting to be written very large, and the Cromwell was getting to be written very small, so that Mr. Cromwell was disappearing in the *quasi*-royal Oliver."

A correspondent makes enquiries as to the new Digest. We are told that it will be finished in about two months' time. The first part of the Supplement, or Addenda, has already been issued, and shows that it includes all volumes now complete. The *modus operandi* has been to insert, under the title appearing in each number, all the cases published up to the time of its issue. The Addenda takes up the rest of the cases, and so brings the work down to a defined and to the latest period. It is a most laborious work, invaluable to the profession, and reflects the greatest credit upon the compilers.

The preference for common law over the doctrines of Equity survives very strongly in Bramwell, L.J., notwithstanding the provisions of the Judicature Act giving priority to the latter when they conflict with the decisions at law. *In Greaves* v. *Topfield*, 28 W. R. 845, he ends his judgment with these words, uttered more in sorrow than in anger, we suppose: "I do not know whether I have grasped the doctrines of equity correctly in this matter, but if I have, they seem to me to be—as a good many others of them are—the result of a disregard of general principles and general rules, in the endeavour to do justice more or less fantastically in certain particular cases."

---

Cases have come under the observations of most practitioners where very great carelessness has been exhibited by commissioners and others in the administration of oaths to, and in the attestation of the signatures of, illiterate persons. Very often a solicitor signs as witness to the execution of a conveyance by a marksman, and appends the information that the document was read over and explained. And very often this statement is illusory and untrue. A note of warning comes, in regard to such loose practices, from a late decision in England. In *Ex parte National Mercantile Bank*, 28 W. R. 848, it was intimated that should a solicitor attest that he had given an explanation of a bill of sale, when he had not, he might be liable to be struck off the roll.

---

The scheme for the additions to Osgoode Hall is assuming a definite shape, and only awaits the result of a conference between the Society and the Government as to the exact location of the new building before the work begins. This building is to be about eighty feet long by forty wide and fifty-six feet high, and is to be erected somewhere in the rear of the present easterly wing. It is to be devoted partly to a Convocation Hall, to be used also for examinations, sixty-five feet long, by forty wide and thirty-six feet high, whilst underneath there will be a dining-room, with lavatory and kitchen. There will be also rooms for examiners and students, and the two easterly rooms of the present wing will be made into one, and used as a sort of miscellaneous library. It is expected that the cost of the new building will be about $25,000.

---

Lord Justice Bramwell has lately been taking our English namesake to task for some comments on a letter in that journal, in which the writer took exception to certain remarks of the Lord Justice. It is, of course, quite competent for a Judge to uphold his views by letters to the press; but we doubt the expediency of so doing, even though he speaks through the columns of a legal journal. It tends to unseemliness. In the present case the learned Judge felt compelled to characterize the language of his critic as neither modest nor becoming. The editor of the *Law Journal* says, "there was no intentional disrespect," and adds as an excuse, "It is difficult for a writer to be always strictly modest and becoming without being flat." We think it would have been well if the editor had left this unsaid, and the Judge his letter unwritten.

---

## *THE DOMINION AND THE EMPIRE.*

*(Continued.)*

### II.

Colonial Governor, Colonial Parliament, whoever or whatever does an injustice or resolves on an unwisdom, he is the pernicious object, however parliamentary he be!—*Thomas Carlyle.*

Pursuant to the intention indicated at

the conclusion of our first article, we propose now to lay before our readers, in some detail, Mr. Todd's views, as contained in his recent work on *Parliamentary Government in the British Colonies*, of the actual position of the Sovereign in connection with parliamentary institutions in the mother country, and of the corresponding position and functions of a constitutional Governor in self-governing communities within the limits of the British Empire. The method we propose adopting in doing this may not be very ambitious, but is, as it appears to us, best calculated to be of service to our readers. We propose by collating passages from various portions of the book, to set forth in a more or less connected form, the leading points of Mr. Todd's constitutional doctrine.

At p. 430 occurs a passage which might be taken as the text on which all that large portion of the work which deals with the subject now under review, might be made to hang.

"The British Government is a limited monarchy, wherein the Sovereign has certain constitutional rights and a defined position.

"In the substantial reproduction in a British colony of the Imperial polity, the Governor must be regarded not merely as the representative of the Crown in matters of Imperial obligation, but as the embodiment of the monarchical element in the colonial system, and the source of all executive authority therein.

"Our colonial institutions, derived from and identical in principle with those of the mother country, are essentially monarchical, and whatsoever duties or rights appertain to the Crown in the one are equally appropriate and obligatory in the other. In the constitutional monarchy of Great Britain, there is no opportunity or justification for the exercise of personal government by prerogative. The Crown must always act through advisers, approved of Parliament, and their policy must always be in harmony with the sentiments of the majority in the popular chamber. With this important limitation, however, the British monarch occupies a position of authority and influence, and is a weighty factor in the direction of public affairs; exercising his high trust for the welfare of the people, and as the guardian of their political liberties."

Nor, as Mr. Todd points out (p. 28), does the importance of a correct appreciation of the true constitutional position of the Sovereign, or his representative, depend upon the greater or less control exercised by the Imperial Government over the colonies, or indeed upon the continuance of British connection at all.

"The gradual relaxation, by the mother country, of the tie of political dependence on the central authority of the empire, in respect of any British colony, or even the actual sundering of connection between them, does not necessarily involve the overthrow or abandonment of the system of Parliamentary Government which after the model of the parent state, has been tablished therein. That system might be suit ably retained, on account of its obvious advantages, long after the control of the mother country has been relaxed, or even withdrawn. . . . Even in the supposable case of the amicable separation of a colony from the parent state, the superior advantages of possessing institutions based upon the stable foundation of a limited monarchy, and similar in principle to those of England, would naturally induce the young community to retain, with as little alteration as possible, the most prominent features of a polity that has, for so many generations, preserved freedom without lawlessness to the British race."

We are reminded (p. 592) that:—

"In conferring 'responsible government' upon her colonies, it was the design of Great Britain to convey to them, as far as possible, a counterpart of her own institutions. By this system, it was intended that the vital elements of stability, impartiality, and an enlightened supervision over all public affairs should be secured as in the mother country, by the well-ordered supremacy of a constitutional Governor, responsible only to the Crown; whilst the freedom and intelligence of the people should be duly represented in the powers entrusted to an administration co-operating with the Crown in all acts of government, but likewise responsible to Parliament for the exercise of their authority."

And so, although the Governor of a colony is not a Viceroy, and unlimited sovereign authority is not delegated to him, yet (p. 33):—

"Pursuant to his Commissiou and the accompanying instructions, he becomes within the limits assigned to him the embodiment and expression of the monarchical element in the colonial polity, so far as that element can find a constitutional channel for its exercise under parliamentary government. The office of Governor is as much a constitutional part of the constitution in every colony, as is that of either of the other branches of the local legislature."

We are told (p. 3), that the three leading maxims of the British Constitution, in its modern form and developments, are: the personal irresponsibility of the King; the responsibility of his Ministers for all acts of the Crown; and the inquisitorial power and ultimate control of Parliament. What position then, what rightful authority or influence does such a system as this concede to the Sovereign, or to a colonial Governor? That the Sovereign has become a cipher in the State,—"a dumb and senseless idol," Mr. Todd emphatically denies.

"Such an assumption," he says (p. 4), "would transform the Queen's Cabinet Ministers into an oligarchy, exercising an uncontrolled power over the prerogatives of the Crown, and the administration of public affairs, upon the sole condition that they are to secure and retain a majority in the popular branch of the legislature, to approve their policy and to justify their continuance in office. . . . . It is not a true representation of the British Constitution, and should it ever unhappily prevail, would deprive us of one of the main securities upon which the liberties of England depend."

But if the Sovereign cannot be rightfully considered a mere ornamental appendage to the constitution—a view which we fully sympathise with Mr. Todd in indignantly repudiating—still less can a Governor be considered such. For a Governor holds a dual position. As pointed out by Mr. Herman Merivale, in a passage in his famous *Lectures on Colonization and Colonies*, quoted by Mr. Todd (p. 577), as regards the internal administration of his government, he is merely a constitutional sovereign acting hrough his advisers, but whenever any question is agitated touching the interests of the mother country his functions as an independent officer are called at once into play. And the same distinction is clearly pointed out by Mr. Todd (pp. 458-459), and by Lord Mulgrave in a despatch written by him when Lieutenant-Governor of Nova Scotia in 1860, and quoted by Mr. Todd at p. 537. The position, however, of a colonial Governor, is so strikingly set forth by Mr. Merivale in another part of his above-named work, and quoted by our author at p. 577, that we cannot refrain from giving it in full:

"Under responsible government a Governor becomes the image in little of a constitutional king, introducing measures to the legislature, conducting the executive, distributing patronage, in name only, while all these functions are in reality performed by his councillors. And it is a common supposition that his office is consequently become one of parade and sentiment only. There cannot be a greater error. The functions of a colonial Governor under responsible government are (occasionally) arduous and difficult in the extreme. Even in the domestic politics of the colony, his influence as a mediator between extreme parties and controller of extreme resolutions, as an independent and dispassionate adviser, is far from inconsiderable, however cautiously it may be exercised. But the really onerous part of his duty consists in watching that portion of colonial politics which touches on the connection with the mother country. Here he has to reconcile, as well as he can, his double function as Governor, responsible to the Crown, and as a constitutional head of an executive controlled by his advisers. He has to watch and control, as best he may, those attempted infringements of the recognised principles of the connection which carelessness or ignorance, or deliberate intention or mere love of popularity, may from time to time originate. And this duty of peculiar nicety, he must perform alone. . . . . His responsible Ministers may (and probably will) entertain views quite different from his own. And the temptation to surround himself with a *camarilla* of special advisers, distinct from these Ministers, is one which a governor must carefully resist. It may, therefore, be readily inferred, that to execute the office well requires no common abilites, and I must add that the occasion has called forth these abilities."

The lawful authority of the Crown in connection with parliamentary govern-

ment, Mr. Todd declares (p. 459) to be essential to the efficiency and stability of parliamentary institutions; and he enforces this remark in a striking manner by a reference to the American constitution. He says:—

"The framers of the American constitution deemed it necessary in the interest of the nation to entrust large powers to the President, including a right to veto the legislation of Congress, unless, upon reconsideration, two-thirds of both Houses should require the passing of a measure of which the President had disapproved.

"In view of the more extended powers which are practically confided to a parliamentary ministry able to command a majority in the popular chamber, it is evident that some restraint upon their actions is needful to counteract possible corruption or abuse. This restraint is afforded by the vigilant oversight of the sovereign or her representative."

And he goes on to remark that in a a British colony the representative of the Crown is usually a man of special qualifications for his exalted office.

But notwithstanding the importance of maintaining the lawful authority of the Sovereign, Mr. Todd warns us (p. 19) that:—

"Practically, ever since the commencement of the Reform movement, in 1830, the constitutional monarchy of England has been in danger, through the onward progress of democratic ideas, of being converted into a purely ministerial oligarchy; to the detriment not only of the personal rights of the Crown in the body politic, but also of those vital interests therein which are of national concern, and which it is the peculiar province of the sovereign to conserve."

And there is a further circumstance pointed out by Mr. Todd, besides the progress of democratic ideas, which renders it the more difficult for the proper constitutional value of the Crown to be appreciated. He remarks (p. 23) that—

"From the secrecy which properly enshrines the intercourse between the Crown and its advisers, it rarely happens that the opinions or conduct of the sovereign in governmental matters becomes known to the public at large. Accordingly, those functions of the Crown which are most beneficial in their operation are apt to be undervalued; because, whilst strictly constitutional, they are hidden from the public eye."

What these functions are, in the view of the author, we propose now to set out somewhat more specifically; and we would desire, if space allows, to add some remarks upon Imperial control over self-governing Colonies generally.

*(To be continued.)*

## *ENFORCEMENT OF MARRIED WOMAN'S CONTRACT REGARDING HER RIGHT TO DOWER.*

A new point in the law regarding married women has been decided by Vice-Chancellor Proudfoot in the case of *Loughead* v. *Stubbs*, 27 Grant, 387. But we are inclined to think that it was not so fully argued or so maturely considered in some respects as its importance demands. The husband was the owner of land, his wife having an inchoate right of dower therein, and he and she both entered into an agreement in writing to sell the land to the plaintiff for a price less than the amount of incumbrances. The excess of such incumbrances the husband was to pay and he was to convey in fee free of all liens or charges. The purchaser filed his bill against the husband alone, praying for specific performance, and the defendant demurred on the ground that his wife was a necessary party defendant. The date of the transaction was in February, 1880; the date of the marriage is not given. The Judge held, that as the husband did not alone contract to sell, but united with his wife in the agreement, it was a joint agreement to convey, and that all parties liable to convey must be joined; and that the husband should not be put to the risk of having to abate the purchase money, and therefore his wife should be a defendant. On these grounds the demurrer was allowed.

The Vice-Chancellor distinguished the case from *Van Norman* v. *Beaupré*, 5 Gr. 599, where the husband alone had made the agreement, and it was held, that if he could not procure his wife to join in the conveyance, he would have to suffer an abatement of the purchase money. This was indeed clearly laid down by Esten, V. C., in an earlier case of *Kendrew* v. *Shewan*, 4 Gr. 578, where it was held (as stated in the head note) if a party agrees to convey property he is bound to do so free from dower; or if the wife will not release her dower, then to convey subject thereto, with abatement of the purchase money.

But the question of the wife's competency to contract was that which seems to have been overlooked in the case of *Loughead* v. *Stubbs*. *Castle* v. *Wilkinson*, L. R. 5, Ch. 534, is much more in point than any of the cases cited in the report. There a husband and wife had agreed to sell the wife's estate. She refused to convey, and the purchaser filed his bill asking that the husband should convey and accept a reduced price. But this was refused and Lord Hatherley said, "on the face of the agreement the husband and wife intended to sell and the purchaser knew that he was contracting with them for the estate of the wife, and that he could only get what the wife was willing to convey." So in the case we are considering, the purchaser and the husband knew that the right to dower could be transferred only if the wife was willing to join in the conveyance. Could the Court, even if she were joined as a defendant, compel her to execute the conveyance? As the case stands it would suggest an affirmative answer.

No reference is made to the statutory law relating to married women, and it is impossible to say how far the attention of the Judge was directed to this aspect of the case. If the wife of the defendant was still under common law disabilities, it is clear that she could not bind herself by signing the agreement to convey her interest, and that specific performance could not be enforced against her. This is the law even if a married woman acts as a trustee in making the contract: *Avery* v. *Griffin*, L. R. 6 Eq. 606 (where she was a devisee in trust to sell the property).

But if the defendant's wife was within the scope of the enabling statutes then her inchoate right of dower can not be regarded as her separate estate nor was it such an estate or interest in possession as was contemplated by the Married Woman's Property Act of 1872. Upon these points the case in appeal of the *Standard Bank* v. *Boulton*, 3 App. R. 93, demands an attentive consideration. See also *Britton* v. *Knight*, 29 C. P. 567.

It may be argued, that since the Revised Statutes a different interpretation would be given to the clause of that Act which was under discussion and was there adjudicated upon by the Court of Appeal. For this reason, that whereas in the original Act the words "any married woman shall be liable on any contract made by her respecting her real estate, as if she were a *feme sole*," formed the concluding clause of the first section, the whole of which was in the form of a single sentence—these words are now isolated and appear in an independent section in Rev. Stat., cap. 125, sec. 19, p. 1167. The Chief Justice was evidently influenced by the collocation of the clause and thought that the expression "real estate" should receive the same construction (*i. e.* as meaning *separate* real estate) throughout the section. But having regard to 40 Vict., c. 6, s. 10 (Ont.), it is likely that no different holding would result from the severance of the clause from its former context.

The later English authorities indicate a growing disposition to extend the liabilities of married women, and no doubt

foreshadow legislative changes in that direction. Thus Vice-Chancellor Malins in an elaborate judgment in *Pike* v. *Fitz Gibbon*, 28 W. R. 667, decided that the written engagement of a married woman binds all separate estate belonging to her at the date of the judgment in the action, whether it belonged to her at the time of the engagement or was afterwards acquired; that it was immaterial whether or not she had any such estate at the time of the engagement; and moreover that such property was bound, even if it was originally subject to restraint on anticipation, provided that before the judgment the restraint had become inoperative by the death of husband. And the still later case of *Flower* v. *Buller*, 28 W. R. 948, extends the doctrine of *Pike* v. *Fitzgibbon*, and decides that a married woman may bind her separate estate *in expectancy* under a will by charging it in writing (her husband also joining) for advances made to the husband; and this although the estate in expectancy was one under the will of a living person. Some of the positions advanced by Denman, J., (who sat for Fry, J.) appear to be, but are not necessarily, at conflict with views enunciated in some parts of the judgments in *The Standard Bank* v. *Boulton*. But we are not aware of any authority going so far as the decision in *Loughead* v. *Stubbs*, touching the liability of a married woman on a contract respecting her real estate, or her interests in expectancy therein.

## *BENCH AND BAR.*

The question has been raised in England as to the propriety of a judge's son practising in his father's Court. The *Law Times* thus alludes to the subject:

"An incident in the Bristol County Court raises a question which, we think, is of the utmost moment to the Bench and the Bar. A son of the judge appeared as counsel before him, and the counsel on the other side declined to go on with the case, as we gather, on that ground alone. We think the judge was wrong in suggesting that this step could in any sense be an insult to him. It is in the highest degree inconvenient, in cases where a judge sits to try cases alone, that his son should practise before him. This view has been taken very strongly by Sir James Hannen. That it has not been taken by Sir R. Phillimore has caused much soreness and adverse comment. The ground upon which we agree with the objecting counsel at Bristol is, that it is quite impossible for a judge under such circumstances to escape the criticisms of suitors who arre defeated before him when opposed by his son. They may be unfair, but they will be made, and the consequences must be most prejudicial to the administration of the law. County Court judges are not just now so favourably regarded that they can allow their Courts to be made the means of advancing their relations, and they should discourage solicitors in their districts from retaining the services of those intimately connected. We do not agree that there is any analogy between practising in County Courts and at assizes. To say that a barrister should never appear in a court presided over by his father may be unreasonable. But we most emphatically condemn the practice of barristers adopting a court in which to practise over which their fathers do preside or may preside alone."

The English *Law Journal* takes similar ground:—

"There is, no doubt, an impression abroad that the judge is likely to turn a more favourable ear to the arguments of his son than to those of other advocates. In the United States the impression has taken so deep a hold that an attempt has actually been made to pronounce a father disqualified, on the ground of interest, to try a case in which his son is engaged. Such views of the situation are, it is needless to say, altogether without foundation. Judge's sons cannot be ostracised from the bar because their fathers were eminent lawyers before them. We do not for a moment believe that a single case on record has been decided in favour of a particular party because that party happened to be represented by the judge's son.

When so much is said, the subject however, is not exhausted. It is a great deal more likely that judges will take a sort of malicious pleasure in non-suiting their sons than put themselves out of the way to help a son's client over a stile. The very feeling that he may be supposed to be influenced will, in a refined nature, if it produces a bias at all, turn it against the object that it is expected to favour. Lord Blackburn once said that the Chief Justice, having tried and

convicted Orton, was more likely to be afterwards prejudiced in his favour than against him. There is in most natures much of the feeling of the schoolmaster who thrashed his son in the presence of the other pupils every morning to show his impartiality. It is not so much the actual influence that has to be dealt with as the appearance of influence. This appearance is not of sufficient importance to be taken into account in ordinary cases; but still, if a son attach himself constantly to the court of his father as a Queen's counsel, in equity attaches himself to a Vice-Chancellor, it must be admitted that an impropriety is committed.

The etiquette of the Bar on this and kindred subjects was originally clear enough; but of late years a loose practice has prevailed. Formerly, it was a strict rule that no son should join the circuit of which his father was a leader. This rule was infringed noticeably, some years ago, on the Norfolk Circuit; and it can no longer be said to be a strict rule. The subject now in question stands on much higher ground, as it deals, not merely with professional interests, but with possible influences in the court. The principle applicable to such cases is plain—namely, that no member of the Bar ought to put himself in such a situation that there is even the appearance of his obtaining business because he is supposed to exercise an undue influence over the court."

The *Albany Law Journal* says:—

"The difficulty in the case is four-fold: first, that the judge will always be presumed by the populace to lean in favour of his son; second, that the son will get business from the force of this presumption; third, that the judge will unconsciously be biassed in his favour; or fourth, that the judge will do his son's client injustice from the fear of such bias. However pure, the judge and his son will always stand in danger, We think it would be better for everybody that a judge should decline to hear a cause in which his son is counsel or attorney."

There seems a great unanimity on this subject in the legal press. The remarks above quoted seem to us to lay down the true principle. In this Province, the evil cannot exist to any extent in connection with practice in the Superior Courts. An occasional unpleasantness has, however, arisen in one or more of the county towns in Ontario, and a correspondent has recently called our attention to a case in point, to which it may hereafter be necessary to refer; but so far, there has been nothing of sufficient importance to draw general attention to the subject.

## *LAW SOCIETY.*

### Trinity Term, 44th Victoriæ.

The following is the *resumé* of the proceedings of the Benchers during this term, published by authority:

Monday, 23rd August, 1880.

Present:—The Treasurer, and Messrs. Crickmore, McMichael, Bethune, Pardee, Kerr, Irving, and Mackelcan.

The minutes of last meeting were read and approved.

The Report of the Examiners on the examination for Call was received and read.

The Report of the Secretary as to the Papers of the Candidates was read.

Ordered that Messrs. W. H. P. Clement, J. E. Lees, W. H. Biggar, R. W. Wilson, J. R. Brown, J. S. Hough, M. A. McHugh, J. J. Blake, W. G. Eakins, W. B. Ellison, S. C. Elliott, C. E. Hewson, and E. Morgan be called to the Bar.

The Report of the Examiners on the Examination of the Candidates for Certificates of Fitness was received and read.

The Report of the Secretary on the Papers of the Candidates was read.

Ordered that Messrs. W. H. Biggar, J. E. Lees, W. H. P. Clement, W. B. Ellison, S. C. Elliott, R. Miller, J. R. Brown, J. H. Scott, J. N. Muir, P. McPhillips, N. Gilbert, C. E. Freeman, J. B. O'Flynn, and H. W. Hall do receive their Certificates of Fitness.

Ordered that the cases of Messrs. Wilson, Gibson, Manning, and McNab be referred to the Legal Education Committee for report.

The Reports of the Examiners and Secretary on the First Intermediate Examination were received and read.

Ordered that the examinations of Messrs. Mahoney, Mulligan, Fraser, Canniff, Howard, Chapple, Reid, Johnston, Start, Anderson, Ruttan, Elliott, Foulds, Yarnold, McFadden, O'Meara, Monk, Murchison, Tho-

mas, Hamilton, Peterson, Hart, Holmes, Hammond, Daley, Wright, Martin, Culham, Kilgour, Barry, Rowe, be allowed them as students and articled clerks.

The Reports of the Examiners and Secretary on the Second Intermediate Examination were received and read.

Ordered that the examinations of Messrs. Beynon, Leonard, S. Wood, Mills, Russell, Adair, Haney, Snider, Knight, Smith, Gould, McCrimmon, Pringle, Lynch, McArdle, John Wood, Waddell, Lewis, Wilkes, Chisholm, Phillips, Howell, Sparham, Cooper, Dean, Sinclair, J. A. Wood, and T. G. Rothwell be allowed them as students and articled clerks.

The petition of Mr. Joshua Adams, praying for his call to the Bar under the rules in Special Cases, was received and read.

The Secretary reported that his papers were correct and his fees paid.

Mr. Bethune moved that Messrs. Crickmore, Kerr and Bethune be appointed a Committee to examine and report upon the papers of the candidates, and to conduct the examination under the rules.—Carried.

The petition of Mr. R. S. Gurd, praying for his call to the Bar under the rules in Special Cases, was received and read.

The Secretary reported that his papers were correct and his fees paid.

Mr. Bethune moved that Messrs. Crickmore, Kerr, and Bethune be appointed a Committee to examine and report upon the papers of the candidate, and to conduct examination under the rules.—Carried.

The petition of Mr. F. Beverly Robertson, praying to be admitted as an Attorney under the rules in Special Cases, was received and read.

Mr. Crickmore moved that the petition of Mr. Robertson be referred to the Legal Education Committee, to report as to his right to a Certificate of Fitness.—Carried.

Ordered that in case he be entitled he do pay the special fee under the rules as well as the ordinary fees.

The letter of Mr. Hutchison was received and read, announcing the dissolution of the partnership of Messrs. Rowsell & Hutchison, and asking for the continued patronage of the Society.

Ordered that the third reading of Mr. Robertson's rule be postponed until the 24th inst.

The Report of the Legal Education Committee on the Primary Examinations was received and read.

Ordered that the following gentlemen be entered on the books as Students-at-Law, namely :—

*Graduates.*

Edward L. Curry, B.A., Cam.; Wm. Armstrong Stratton, B.A., Toronto; George Smith, M.A., Toronto; Alex. Sutherland, B.A., Toronto; Joseph Burr Tyrrell, B.A., Toronto; William J. James, B.A., Toronto; Thomas H. Gilmour, B.A., Toronto; Thomas V. Badgeley, B.A., Albert; Henry Lawrence Inglis, B.A., Trinity; James Burdett, B.A., Trinity; George Robson Coldwell, B.A., Trinity; Harcourt I. Bull, B.A., McGill; Isaac Norton Marshall, B.A., Toronto; Wellington Jeffers Peck, B.A., Victoria; Alvin I. Moore, B.A., Toronto; William A. Dowler, B.A., Victoria.

*Matriculants.*

G. H. Jarvis, Toronto University; Edmund J. Bristol, Toronto University; W, K. McDougall, Toronto University; A. H. Coleman, Toronto University; Archibald McKellar, Toronto University; Stephen O'Brien, Albert College; Harry Earl Burdett, Albert College; John Andrew Forin, Albert College.

*Junior Class.*

Messrs. Horace F. Jell, R. J. Dowdall, D. S. Kendall, G. F. Bell, A. C. McDonnell, O. L. Spencer, S. D. Biggar, H. A. Fairchild, George Craig, James Armstrong, A. McFadyen, W. A. J. G. Macdonald, C. M. B. Lawrence, C. N. Shanly, A. C. Steele, Gueret Wall.

Ordered, that the following candidates be allowed their examination as Articled Clerks :—

Messrs. D. Duncan, T. T. Young, M. Wilkins.

The following gentlemen were called to the Bar, namely :—

Messrs. W. H. P. Clement, W. H. Biggar, R. W. Wilson, M. A. McHugh, J. J. Blake, W. B. Ellison, C. E. Hewson, E. Morgan.

Tuesday, August 24th, 1880.

Present : Messrs. Crickmore, Bethune, Kerr, Ferguson, Irving, Read, Mackelcan, McCarthy.

In the absence of the Treasurer, Mr. Irving was elected Chairman of Convocation.

The minutes of last meeting were read.

The Report of the Special Committee on the cases of Messrs. R. S. Gurd, and Joshua Adams, was received, considered and adopted.

Ordered, that they be called to the Bar.

The Secretary reported that Messrs. Edward Mahon and Patrick McPhillips, had completed their papers.

Ordered, that they be called to the Bar.

The Chairman of the Legal Education Committee reported, that Messrs. R. W. Wilson and A. H. Manning, had completed their papers.

Ordered, that they receive their certificates of fitness.

The following gentlemen were called to the Bar, namely :—

Messrs. J. R. Brown, J. E. Lees, Joshua Adams, R. S. Gurd, E. Mahon, P. McPhillips, S. C. Elliott, W. H. Biggar, and J. S. Hough.

The third reading of Mr. Robertson's amended rule was ordered for Friday in September next.

The petition of Mr. John Canavan, for call to the Bar, under the rules for special cases, was referred to a special committee consisting of Messrs. Crickmore, Read and Bethune.

The petition of Charles Edward Irvine, was referred to Legal Education Committee.

The Secretary having reported that Mr. A. H. Leith's papers had been completed.

Ordered, that he be called to the Bar.

The following gentlemen, namely :—Mr. A. H. Leith, and Mr. W. G. Eakins, were called to the Bar.

The Legal Education Committee reported that Mr. Allan McNab, might receive his certificate of fitness, on showing either that he was serving Mr. Biggar from the 4th of September, to the 12th of October, with the leave of Mr. Frost, or that Mr. Biggar was the town agent of Mr. Frost.

Ordered accordingly.

Saturday, August 28th, 1880.

Present : The Treasurer, and Messrs. Crickmore, Reid, Bethune, McCarthy.

The minutes of last meeting were read and approved.

The Report of the Special Committee on the examination and papers of Mr. John Canavan, was also read and adopted.

Ordered that Mr. Canavan be called to the Bar.

Mr. Canavan presented himself and was called accordingly.

The petition of Mr. W. H. Beatty, praying for call under the rules in special cases, was received, read and considered.

Mr. Read moved, that Messrs. Crickmore, Bethune and Kerr, be appointed a select Committee, to consider the petition, enquire into the regularity of the papers and conduct the examination of Mr. Beatty.

Convocation adjourned.

Friday, September 3rd, 1880.

Present : The Treasurer, and Messrs. Robertson, Irving, Henderson, Mackelcan, Read, Smith, Kerr, Ferguson, Crickmore, Bethune.

The minutes of last meeting were read and approved.

The Report of the Select Committee on the examination and papers of Mr. W. H. Beatty, who petitioned for call under the rules in special cases, was received, read and adopted.

Ordered that Mr. Beatty be called to the Bar.

Mr. Beatty presented himself, and was called accordingly.

The Secretary reported that Solomon G. McGill, who passed the second Intermediate Examination, but had by accident omitted to pay his fee and present his certificate, had now done so.

Ordered, that his examination be allowed as a Student and Articled Clerk.

The report of the Select Committee on the subject of Scholarships was received and read as follows :

REPORT.

The Select Committee appointed to consider and report a plan for establishing scholarships in connection with the Intermediate examinations with power to con-

sider the expediency of abolishing the special scholarships beg leave to report as follows :

1. The number of persons who passed the Primary Examinations during the five years 1875 to 1879 inclusive, was 715, making an average of 143 per annum, of these, many dropped off during the course, insomuch that the average number called and admitted is estimated by the Secretary to be about one-half of those who entered, but of course the average number pursuing the course in each year is greater than one-half of the entrants and may be estimated at 100 at least in each year.

2. The object to be obtained is as far as possible to encourage and promote systematic and thorough study of the subjects for Examination.

3. The special scholarships which have for some years been granted have failed to accomplish this object. The candidates for these scholarships have numbered for the five years mentioned, as follows :

1875—For first year, 3 ; for second year, 4 ; for third year, 1 ; for fourth year, 1.—Total, 9.

1876—For first year, 4 ; for second year, 11 ; for third year, 4 ; for fourth year, 1.—Total, 20.

1877—For first year, 3 ; for second year, 3 ; for third year, 4 ; for fourth year, 2.—Total, 12.

1878—For first year, 4 ; for second year, 7 ; for third year, 4 ; for fourth year, 3.—Total, 18.

1879—For first year, 14 ; for second year, 3 ; for third year, 5 ; for fourth year, 2.—Total, 24.

These numbers are wholly insignificant when compared with the total number of students and even when compared with the number of meritorious and hard-working students for each year.

The failure may be ascribed to two causes first the difficulty of finding time to prepare for the special work, and secondly the well understood superiority of some one competitor for the single scholarship available for the year.

4. The Committee are of opinion that the special scholarships should be abolished ; and that honours and also three scholarships should be established in connection with each intermediate examination, thus stimulating the student to greater exertion in mastering the ordinary work and by a variety of prizes encouraging numbers to compete.

5. Under the present system there is a first and second Intermediate examination during each of the four terms.

Those who obtain at least three-fourths of the marks on the papers are passed without an oral examination.

6. The Committee recommend as follows :

(1) That after the next Michaelmas Term (November, 1880) the special scholarships be abolished.

(2) That in each term after next Michaelmas term the persons who obtain at least three-fourths of the marks obtainable on the papers at either of the Intermediate Examinations be entitled to present themselves on the following day for a further written examination for honours on the same subjects embracing the same number of questions, with the same aggregate value of marks obtainable in each subject.

(3) That the persons obtaining at least three-fourths of the aggregate marks obtainable on the papers in both the pass and the honour examinations, and at least one-half of the aggregate marks obtainable on papers in each subject in both examinations be passed with honours, and that each person so passed receive a diploma certifying to the fact.

(4) That of the persons passed with honours the first be entitled to a Scholarship of $100 ; the second to a Scholarship of $60 ; and the third to a Scholarship of $40, and that each scholar receive a diploma certifying the fact.

7. The Committee would observe that the maximum expenditure involved in the proposed scheme is $1 600, being only $880 in excess of the present expenditure for special scholarships proposed to be abolished.

8. The Committee would further observe that the adoption of their proposals would render necessary some alteration in the periods fixed for the examinations, so as to give more time for their conduct, a change which they believe to be on other grounds

desirable, and they recommend that this subject be referred to the Committee on Legal Education to report next Term.

9. The Committee would recommend that any rule necessary to give effect to their plan should be adopted this Term, with a view to its early publication, so that ample time may be given to the students to prepare for the first examinations to be held under the new plan.

(Signed) Edward Blake.

The Report was ordered for immediate consideration.

Mr. Read moved, seconded by Mr. Mackelcan, that the Report be adopted. — Carried.

Mr. Mackelcan moved, in pursuance of the Report, as follows :—

That, in pursuance of the recommendation of the special Committee on Scholarships the following rule be adopted :—

1. That after next Michaelmas Term the special scholarships be abolished.

2. That in each Term, after next Michaelmas Term, the persons who obtained at least three-fourths of the marks obtainable on the papers at either of the Intermediate Examinations be entitled to present themselves on the following day for a further written examination for honours on the same subjects, embracing the same number of questions, with the same aggregate value of marks obtainable in each subject.

3. That the persons obtaining at least three-fourths of the aggregate marks obtainable in the papers, in both the Pass and the Honour Examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations, be passed with honours, and that each person so passed receive a diploma certifying to the fact.

4. That of the persons passed with honours, the first be entitled to a scholarship of $100, the second to a scholarship of $60, and the third to a scholarship of $40, and that each scholar receive a diploma certifying the fact.

The said rule was read a first and second time.

Mr. Mackelcan moved that Rule No. 8, as to Draft-Rules, be dispensed with, and that the rule be read a third time now.—Carried unanimously.

The rule was then read a third time and adopted.

The Report of the Legal Education Committee on the case of L. J. Smith in favour of his application to be admitted as a student-at-law ;

On the case of C. E. Irvine against the prayer of his petition ;

On the case of W. G. Eakins recommending that he receive his Certificate of Fitness.

On the case of Virgil Lee recommending that the prayer of the petition be granted and his service allowed ;

On the case of F. Beverly Robertson reporting that he is within the rules, and recommending that he receive his Certificate of Fitness on compliance with the requirements of convocation ;

On the case of Goodwin Gibson, recommending that he receive his Certificate of Fitness :—was received, read and adopted.

Ordered, that L. J. Smith be entered on the books as a student-at-law in the Matriculant class.

Ordered, that the prayer of C. E. Irvine's petition be refused.

Ordered, that W. G. Eakins receive his Certificate of Fitness.

Ordered, that the prayer of Virgil Lee be granted, and his service allowed.

Ordered, that F. B. Robertson receive his Certificate of Fitness on the payment of the proper fee in special cases.

Ordered, that Goodwin Gibson receive his Certificate of Fitness.

The petition of Frederick Wright, praying for call to the Bar under the rules in special cases, was received and read. Mr. Read moved that the petition be referred to a select committee, composed of Messrs. Read, Crickmore, and Bethune, to inquire into and report on the regularity of the papers, and to conduct the examination of Mr. Wright.—Carried.

The letter of Mr. J. G. Scott to the Secretary on the subject of the passage way to the Master's office was read.

The letter of Mr. W. Jones on the subject of the roof of the east wing of Osgoode Hall, was received and read.

Ordered that the letter be referred to the Finance Committee, with power to take steps for the proper roofing of the building.

The letter of Eudo Saunders as to a certificate of his having passed his examination as an articled clerk, was received and read.

Ordered that for the future all persons who have passed the examination as articled clerks, be entitled to receive a certificate to that effect, signed by the Secretary, on payment of a fee of one dollar.

Mr. Robertson moved the third reading of the proposed rules, read a first and second time last term, as follows :

1. That subsection 1 of section 4 of rule 2, under 39 Vic. cap. 31, section 1, be rescinded, from and after the last day of Michaelmas term next.

Mr. Henderson moved in amendment to strike out the words "Of Michaelmas term next," and to insert "of this Term" in lieu thereof.—Carried.

The rule as amended was read a third time, as follows :

1. That subsection 1 of section 4 of rule 2, under 39 Vic., cap. 31, section 1, be rescinded, from and after the last day of this term.

The rule as amended was adopted.

Mr. Robertson, by leave, withdrew the second rule proposed.

Mr. Storm, the architect, laid before Convocation plans to meet the objection raised by the Government Engineer.

Ordered that a representation be made to the Government, with a view to inducing them to accede to the original plan, and in case that be not agreed to, that the Committtee be authorized to proceed on the modified plan.

The Select Committee appointed to consider the papers and conduct the examination of Mr. Frederick Wright, presented their report, which was received and read.

Moved by Mr. Crickmore, that the report be considered forthwith.

Mr. Robertson moved in amendment that it be considered the first day of next term.

The amendment was lost. The report was ordered for immediate consideration.

Mr. Crickmore moved that the report be adopted.—Carried.

Mr. Wright was ordered to be called to the Bar, and attended, and was called accordingly.

Convocation adjourned.

## NOTES OF CASES

### IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

### *SUPREME COURT OF CANADA.*

June Sessions, 1880.

NORTH ONTARIO CONTROVERTED ELECTION.

Wheeler, *Appellant*, and Gibbs, *Respondent*.

*Promise to pay legal expenses, sub-sec* 3, *sec.* 92, *The Dominion Elections Act*, 1874.

Appeal from a judgment of Mr. Justice Armour, deciding that the appellant had been personally guilty of bribery within the meaning of sub.-sec. 3, sec. 92, of the Dominion Elections Act, 1874, "for having agreed and promised to pay the expenses of one Hurd, a voter and a professional speaker." It was admitted Hurd addressed meetings in the interest of appellant, and during the time of the election made no demand for expenses except on one occasion ; when, being unexpectedly without money, he asked for and received the sum of $1 50 for the purpose of paying the livery bill of his horse.

*Held*, that the weight of evidence showed that the appellant only promised to pay Hurd's travelling expenses, *if it were lega to do so*, and such a promise was not a breach of sub.-sec 3, of sec. 92, of the Dominion Elections Act, 1874.

The question, whether or not under the law, candidates may or may not legally employ and pay for the expenses and services of canvassers and speakers, the Chief-Justice said it was unnecessary to determine as the appellant had not paid Hurd's expenses.

*Hodgins*, Q.C., for appellant.

*Hector Cameron*, Q.C., and *McCarthy*, Q.C. for respondent.

SELKIRK CONTROVERTED ELECTION.

YOUNG, *Appellant*, and SMITH, *Respondent*.

*Dominion Election Act, sec. 98.*

*Held*, That the term "six next preceding sections," in the 98th sec. of The Dominion Controverted Elections Act, 1874, means the six sections preceding the 98th, and that the hiring of a team to convey voters to the polls, prohibited by the 96th section is a corrupt practice, and will void an election if an agent is proved to have intentionally hired a team for that purpose.

*Hector Cameron*, Q.C., for appellants.

*C. Robinson*, Q.C., and *Bethune*, Q.C. for respondent.

---

FARMER, *Appellant*, v. LIVINGSTONE, *Respondent*.

*Letters Patent—Parliamentary title—Equitable defence.*

Appeal from a judgment of the Court of Queen's Bench for the Province of Manitoba. The action was one of ejectment, to recover possession of S. W. of sec. 30, 6 Township, 4 Range Manitoba, from defendant who had applied for a homestead entry on the lot in question, and paid a fee of $10, but who was subsequently informed by the officers of the Crown that his application could not be recognised, therefore was refunded the $10 he had paid. The appellant, at the trial, put in, as proof of his title, Letters Patent under the great seal of Canada, granting the land in question to him in fee simple. At the trial, the defendant was allowed, against the objection of the plaintiff's counsel, to set up an equitable defence and to go into evidence for the purpose of attacking the plaintiff's patent as having been issued to him in error, and by improvidence and by fraud; and the Court of Queen's Bench in Manitoba

*Held*, that the defendant had established his right to have the said patent set aside, and that the defendant had become seized and possessed of a Parliamentary title to a homestead right.

On appeal to the Supreme Court this judgment was reversed, and it was

*Held*, that under the practice which prevailed in England in 1870, which practice was in force in Manitoba under 38 Vict. c. 12, sec. 1 (Man.), such defence could not be set up, and that the plaintiff was not bound to offer evidence in support of said Letters Patent, if they were not assailed by "action, bill or plaint," under 35 Vic. c. 23, sec. 69.

*Bethune*, Q.C., for appellant.

*J. A. Boyd*, Q. C., for respondent.

---

PARSONS, *Appellant;* and THE STANDARD FIRE INSURANCE COMPANY, *Respondents*.

*Insurance—Prior and subsequent Insurance.*

The question upon which the appeal was determined was whether or not the appellant being insured in the Western Insurance Company, to the extent of $2,000, which formed a portion of a sum of $8,000, further insurances mentioned in the Policy sued upon, having allowed the Western's Assurance Policy to expire, could insure for the same amount in the Queen's Insurance, without the consent of the respondent's company.

The policy had endorsed upon it the following conditions: "The company is not liable for loss, if there is any prior insurance in any other company, unless the company's assent appears herein, or is endorsed thereon, nor if any subsequent insurance is effected in any other company, unless, and until, the company assent thereto in writing signed by a duly authorized agent."

*Held*, on appeal, that as the policy on its face allowed additional insurance to the amount of $8,000 over and above the amount covered by the policy sued on, the condition as to subsequent insurance must be construed to point to *further* insurance beyond the amount so allowed, and not to a policy substituted for one of like amount allowed to lapse.

*D'Alton McCarthy*, Q. C., for appellants.

*Bethune*, Q. C., for respondents.

---

PETERKIN, *Appellant*, and MCFARLANE ET AL., *Respondents*.

*Discretionary power of Court of Appeal to allow amendments—Supreme Court will not interfere.*

The Court of Appeal for Ontario, on an appeal from a decree of SPRAGGE, C., who

had refused a defendant who admitted the plaintiff's right to redeem certain property, but alleged that he was a purchaser for value without notice, leave to amend in order that he might plead the Registry Act, *held*, htat the amendment should have been allowed, and that the Court would allow the amendment under the Administration of Justice Act, s. 50.

On appeal, the Supreme Court

*Held*, that the Legislature of Ontario having thought fit to invest all the Courts in the Province with a discretionary power in matters of amendment, this Court will not fetter that power by entertaining an appeal from an order of the Court of Appeal for Ontario, made in the exercise of such discretionary power.

*J. A. Boyd*, Q. C,, and *Atkinson*, for the appellants.

*Bethune*, Q. C., and *Skead*, for respondent.

---

McQueen, *Appellant;* and The Phœnix Mutual Ins. Company, *Respondents.*

*Insurance—Notice—Assent—Part of loss payable to creditors—Right of action.*

Appeal from a judgment of the Court of Appeal for Ontario.

On the 19th Nov., 1877, the defendant's agent issued to the plaintiff a thirty days' interim receipt, subjecting the insurance to the conditions of the defendants' printed form of policy then in use, the fourth condition being as follows: "If the property insured is assigned without a written permission endorsed thereon by an agent of the company duly authorized for such purpose, the policy shall thereby become void."

Before the expiration of the thirty days, and before the issue of a policy, plaintiff assigned to one McKenzie and others in trust for his creditors the insured property and notified the company's agent of the assignment, who assented thereto, and stated that no notice to the company was necessary as the policy would be made payable to the assignees. The policy was issued on the 12th Dec., 1877, and the loss, if any, was made payable to George McKenzie and others, *as creditors* of the plaintiff, as their interests might appear.

*Held*—On appeal, that the notice of the assignment to the defendants' agent, while the application was still under consideration and before the policy was issued was sufficient.

2. That the words "loss payable, if any, to George McKenzie," &c., operate to enable the defendant company in fulfilment of that covenant to pay the parties named; but as they had not paid them and the policy expressly stated the appellant to be the person with whom the contract was made, he alone could sue for a breach of that covenant.

*Attorney-General Mowat*, for appellant.

*Bethune*, Q.C., & *Foster*, for respondents.

---

Langlois v. Valin.

*Costs—Counsel arguing his own case—No counsel fee.*

Appeal from a ruling of the Registrar of the Supreme Court refusing counsel, who had argued his own case, the fee allowed to counsel by the tariff.

*Held*, that the Registrar's ruling was correct.

---

## *COURT OF APPEAL.*

---

C. P.] [Sept. 7.

May v. Standard Insurance Company.

*Fire insurance—Condition forfeiting policy for seizure of goods—Just and reasonable conditions.*

It was provided, by a special condition of a policy of insurance on certain goods, that if the insured property should be levied upon or taken into possession or custody under any legal process, or the title be disputed in any proceeding in law or equity, the policy should cease to be binding on the company.

After the insurance was effected an execution issued against the goods of the insured, under which the bailiff made a formal seizure of the goods covered by the policy. He did not place any one in possession or deprive the insured of their possession or

custody, and a day or two afterwards, upon a bond being given, the seizure was withdrawn.

*Held*, reversing the judgment of the Common Pleas, that this was not a seizure or taking into possession within the meaning of the condition; an actual and not merely a technical custody and possession being required to establish a breach thereof.

*Appeal allowed.*

---

Q. B.] [Sept. 7.

MADDEN v. COX ET AL.

*Bill of exchange—Drawn on President—Personal liability.*

By section 5 of 16 Vic. c. 241, power was given the Midland Railway Company to become parties to bills and notes, and it provided that any bill accepted by the president with the countersignature of the secretary, or any two of the directors, and under the authority of a majority of a quorum of the directors, should be binding on the company, and every bill accepted by the president as such, with such countersignature, shall be presumed to have been properly accepted for the company until the contrary be shown: that the seal shall be unnecessary, nor shall the president, &c., so accepting any bill, be individually liable.

A bill of exchange addressed "To the President, Midland Railway," was accepted in these words: "For the Midland Railway of Canada; accepted, H. Read, Secretary; Geo. A. Cox, President."

*Held*, per BURTON, J. A. and OSLER, J., affirming the judgment of the Court below, that the defendant Cox (who was admitted to be the president) was personally liable.

Per PATTERSON and MORRISON, JJ. A., that the defendant Cox was not so liable.

*J. K. Kerr*, Q.C., for the appellant.

*C. Robinson*, Q.C., for the respondent.

---

Q. B.] [Sept. 7.

MCINTYRE v. NATIONAL INSURANCE COMPANY.

*Insurance—Statutory conditions—Pleading.*

*Held*, affirming the judgment of the Queen's Bench, and following *Parsons* v. *The Citizens' Insurance Company*, that the policy must be read as containing no conditions binding on the assured.

*Held*, also, that there had been no breach of the condition.

*J. K. Kerr*, Q.C., for the appellant.

*McMahon*, Q.C., for the respondents.

*Appeal dismissed.*

---

Q. B.] [Sept. 7.

COSGRAVE v. BOYLE.

*Promissory note—Death of indorser—Notice of dishonour.*

The plaintiffs discounted a note endorsed to them by S. at a bank. S. subsequently died, leaving the defendant his executor, who proved the will before the note matured. The bank, who were not aware of the death of S., protested note for non-payment, and addressed notice of dishonour to S. at the place where the note was dated, as no other address had been given by S. The plaintiffs knew of the death of S. and three days before the maturity of the note, wrote to S's son, calling his attention to it.

*Held*, per BURTON and PATTERSON, J.J.A., that even if the notice was sufficient so far as the bank was concerned it did not enure to the plaintiffs' benefit.

Per MORRISON, J.A., and GALT, J., that the notice given by the bank was sufficient, and the plaintiffs were entitled to rely on it.

*Robinson*, Q.C., and *O'Sullivan*, for appellant.

*McMichael*, Q.C., for respondent.

---

C.C. Middlesex.] [Sept. 7.

HODGINS v. JOHNSTON.

*Chattel mortgage—Subsequent purchasers—R.S.O. c. 119, sec. 10.*

*Held*, affirming the judgment of the County Court, that the subsequent purchasers or mortgagees mentioned in the 10th section of the R.S.O. c. 119, are those who acquire rights after the expiration of a year from the time of filing.

*Meredith*, Q.C., for the appellant.

*Kerr*, Q.C., for the respondent.

*Appeal dismissed.*

Spragge, C.] [Sept. 7.

Georgian Bay v. Fisher.

*Action against owner of lost vessel—Limitation of liability—Right to restrain proceedings at law—17 & 18 Vict. chap. 104 (Imp.).*

The defendant, as administratrix of her husband, who lost his life by the foundering of a steamer belonging to the plaintiffs, called the *Waubuno*, on which he was a passenger, sued the plaintiffs to recover damages under R. S. O. c. 128.

The plaintiffs filed a bill under 17 & 18 Vict. chap. 104 (Imp.), to restrain the action. They also prayed that it might be determined by the Court whether they were liable for loss of life or merchandize, and if so for what amount, and who were entitled thereto.

*Held*, reversing the decree of Spragge, C., that the *Waubuno* was not a British ship, and therefore not within the limitation clauses of the above Act, but that even if it were, the plaintiffs were not entitled to an injunction, as they did not admit that they were answerable in damages to the extent mentioned in the Act, and bring into Court or offer to secure the amount for which they would be liable.

*Bethune*, Q.C., and *C. Moss* for appellant.

*McCarthy*, Q.C., and *Creelman* for respondents.

*Appeal allowed.*

---

Spragge, C.] [Sept. 7.

Campbell v. McDougall.

*Mortgage—Non-disclosure of unregistered agreement to postpone mortgage.*

The plaintiff being about to advance money to W. M. on property on which the defendant, J. M., had a prior mortgage, J. M. executed an agreement that the proposed mortgage to the plaintiff should have priority over his. This agreement was not registered, and ten years afterwards J. M. assigned his mortgage to the Quebec Bank to secure acceptances on which he was liable, and the assignment being registered superseded the agreement, the existence of which J. M. had not mentioned to the bank.

The plaintiff filed a bill against the executors of W. M., the Quebec Bank and J. M. for payment of the amount due, and in default that mortgaged premises should be sold and that J. M. might be ordered to make good any losses sustained by reason of J. M. having assigned his mortgage to the bank.

The evidence showed that the present value of the land was not worth enough to cover J. M.'s indebtedness to the bank.

*Held*, that the Court could not, under the circumstances, order a sale of the property in opposition to the wishes of the bank, at the instance of J. M., a subsequent incumbrancer, who did not ask to redeem; but that the plaintiff was entitled to a decree against J. M. for payment of the mortgage money, leaving J. M., when he had paid off the amount, to pursue whatever remedy might be available as between him and the bank for whatever surplus, the property may yield, the plaintiff in the meantime retaining his position as a subsequent incumbrancer.

*Held*, also, Blake, V.C., dissenting, that as the litigation was occasioned more by plaintiff's neglect to register the agreement than by J. M.'s omission to mention it, neither party were entitled to costs, either in this Court or the Court below.

---

C. C. Wellington.] [Sept. 10.

Mitchell v. Coffee.

*Execution—Seizure—Exemption from—Reaping machine.*

The defendant, as landlord, levied on a reaping machine on premises leased by him to the plaintiff, who there carried on the business of an hotel-keeper. It appeared that the machine belonged to one W., and had been left some six months before at the hotel by one R., W.'s agent for the sale of reaping machines, when he was stopping at the plaintiff's hotel. It was not shown that R. had ever been at the hotel since except perhaps on one occasion. The plaintiff was paid nothing for keeping the machine, nor did he assume any responsibility for its safety. At the trial it was sought to prove that it was essential to the plaintiff's business to keep as well as receive these machines in this

manner brought by his customers, but the evidence merely shewed that a refusal by a landlord to take charge of such goods would render his house less popular.

*Held*, reversing the decision of the Judge of the County Court, that the machine was not exempted from seizure.

*Ferguson*, Q.C., for the appellant.

*Dunbar*, for the respondent.

*Appeal allowed.*

---

Osler, J.] Sept. 7.

Cruickshank v. Corby.

*Arbitration—Verbal appointment of arbitrator.*

The plaintiff and the defendant agreed in writing to submit certain matters in dispute to an arbitrator, to be selected by a person named, who subsequently appointed the arbitrator verbally.

*Held*, per Patterson and Morrison, J. J. A., affirming the decision of Osler J., that it was not necessary for the appointment to be made in writing in order to make the submission a rule of court.

Per Burton and Armour, J. J. A. that the appointment not being in writing, it was a parol submission, and could not be made a rule of court.

*Robinson*, Q.C., for the appellant.

*E. Martin*, Q.C., for the respondent.

---

C.C. York.] [Sept. 10.

Douglas v. Grand Trunk Railway Co.

*Railway Co.—Obligation to fence—C. S. C., c. 66.*

The plaintiff sued the defendants for the loss of certain cattle which had escaped to their road by reason of the neglect of the company to fence, and were killed by their train.

It appeared that the plaintiff owned land on either side of the defendant's railway, but on the north the T. G. & B. R. Co. ran between his land and the railway.

*Held*, that there was no evidence that the cattle had reached the railway from the south side, and the fact that the T. G. & B. R. W. Co. had neglected to fence did not give the plaintiff, in respect of the occupation of their land by his cattle, the status of that company for the time as adjoining proprietors, so as to make the defendants liable—and a verdict was accordingly ordered to be entered for the plaintiff.

*McMichael*, Q.C., for the appellant.

*Hagel* for the respondent.

*Appeal allowed.*

---

Q. B.] [Sept. 20.

Cowley v. Dickson.

*Landlord and tenant—Covenant to deliver up possession on notice of sale.—False representation of sale—Action for.*

By a covenant contained in a lease of a farm from the defendant to the plaintiff, it was provided that upon receiving six month's notice from the lessor that he had sold the demised premises, and upon necessary compensation for all labour from which he had not received any return, the lessee would deliver up possession at the end of the six months, the compensation being first paid. The defendant served the plaintiff with a notice that he had sold, and required delivery in accordance with the agreement, in consequence of which the plaintiff desisted from operations for which he had made preparation, and rented another farm. Upon ascertaining that the notice was untrue, the plaintiff sued the defendant for false representation.

*Held*, reversing the judgment of the Queen's Bench, that the plaintiff was enabled to recover the damage sustained by him in consequence of the notice.

*Dunbar* for the appellant.

*Drew*, Q.C., for respondent.

*Appeal dismissed.*

---

C. C. York.] [Sept. 20.

McMullin v. Williams.

*Sale of piano—Receipt note—Parol evidence of warranty.*

The plaintiff sued the defendant for breach of warranty, upon the sale of a piano given by a salesman in the defendant's shop, that the instrument was sound and in good order.

The defendant signed the ordinary receipt note providing for payment of the

price, in which there was no mention of the warranty.

*Held*, that parol evidence of the warranty was admissible, as it appeared that the receipt note was not intended to be the evidence of the whole contract.

*Held*, also, that it was not necessary to prove that the salesman had authority to give the warranty.

*Rose* for the appellant.
*Delamere* for the respondent.

---

Armour, J.] [Sept. 20.

Corporation of County of Hastings v. Ponton.

*Registrar's fees—R. S. O. c.* 111.

This action was brought by the plaintiffs to recover from the defendant the registrar of the County of Hastings, the excess of fees mentioned in sections 99, 100, 102, 103 of the R. S. O. ch. 111.

The defendant demurred to the declaration on the ground that the sections above mentioned were *ultra vires* of the Local Legislature, as it imposed an indirect tax, and not a tax for raising a revenue for provincial purposes.

*Held*, affirming the judgment of Armour, J., that, if a tax at all, it was clearly a direct tax, and within the legislative jurisdiction of the Province.

*Held*, also, that having received the money in question under the above Act, the defendant could not deny that he received it for the purposes therein indicated.

*Bethune*, Q.C., for the appellant.
*McMichael*, Q.C., for the respondent.

*Appeal dismissed.*

---

Proudfoot, V. C.] [Sept. 25.

Williams v. Corley.

*Commission agent.*

*Held*, reversing the decree of Proudfoot, V. C., that the evidence clearly established that plaintiff was acting as a commission agent, in the purchase of the corn in question, and that the defendant was not therefore justified in refusing to accept it, because it was not in prime order on its arrival, as it appeared that it was purchased and shipped in good order.

*C. Moss*, for the appellant.
*Cassels*, for the respondent.

*Appeal allowed.*

---

C. C. Wellington.] Sept. 25.

Jenks v. Doran.

*Promissory note—Indorsement by payee of an insolvency—Right of innocent indorsee to recover.*

*Held*, reversing the decision of the County Court, that the plaintiff was not enabled to recover on a promissory note which had been indorsed to him by the payee for consideration, and *bona fide*, after the payee had been in insolvency, and the title to the note had passed to his assignee.

*Ferguson*, Q.C., for the appellant.
*Dunbar* for the respondent.

*Appeal allowed.*

---

Spragge, C.] [Sept. 25.

Greet v. Royal Insurance Co.—Greet v. Citizens' Insurance Co.

*Fire insurance—Omission to disclose threats—Prior insurance.*

In answer to the question put by one company in an application for insurance on a mill, "Have you any reason to believe that your property is in danger from incendiaries?" and by another company, "Have you any reason to suppose, &c.?" the owner, B., answered each in the negative.

The mill had been burnt some months previously and the origin of the fire was unknown. Threats had been made to B. by one R., an intemperate man, who was accustomed to indulge in threats to which no one paid much or any attention. An anonymous letter had also been received, threatening incendiarism. Persons supposed to be tramps had been seen about the mill, and B. had warned the watchman to be careful, and told him that he had received an anonymous letter.

*Held*, reversing the decree of Spragge, C., that the answers were such a misrepresentation as avoided the policy.

Spragge, C.] [Sept. 25

Dominion Loan Society v. Darling.

*Mortgage—Rectification of—Weight of Evidence.*

The plaintiffs sought a ratification of the description of the premises, covered by a mortgage executed to them, by including therein the water lots and dock property in front of the lots described in the mortgage. The plaintiffs relied wholly on parol evidence, while the documentary evidence was entirely in favour of the defendants.

*Held*, affirming the decree of Spragge, C., that no case was made for a reformation of the mortgage.

*Meredith*, Q.C. for the appellant.

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

*Appeal dismissed.*

---

C. C. Huron.] [Sept. 25.

Colbert v. Hicks.

*Malicious arrest—Reasonable and probable cause—Variance.*

The declaration alleged that the deposition was that the harness in question was stolen by the plaintiff, whereas it was proved that the statement in the information was qualified by the addition of the words "as he supposed."

*Held*, affirming the judgment of the County Court, no variance.

The defendant swore that the information was laid by him on the advice of the magistrate, and that he did not interfere in the issue of the warrant for the plaintiff's arrest; but the magistrate proved that the information contained the substance of the statements which the defendant made.

*Held*, that under these circumstances, as there was an absence of reasonable and probable cause, the defendant was liable.

*Ferguson*, Q.C., for appellant.

*H. Becher*, for the respondent.

*Appeal dismissed.*

---

C. C. York.] [Sept. 25.

Cooper v. Blacklock.

*Promissory note—Authority of agent to sign.*

Upon the insolvency of J. B., who carried on business under the name of Blacklock & Co., his wife purchased his estate from the assignee. The business was continued under the same name, and was entirely managed and controlled by J. B. for his wife, who empowered him by power of attorney to manage the business, and *inter alia* to make promissory notes on and about her said business.

Being pressed by a creditor for payment of a note, which he had given before his insolvency, and which was still undischarged, he gave him a note signed B. & Co., per pro. J. B.

Subsequently he was sued for the amount of this note, when he swore that it was his wife's note, and made with her authority, whereupon the holder sued the wife.

At the trial she swore that she had separate estate, and that she had purchased the estate with it, but on the advice of her counsel, she declined to give any information concerning it. She said that J. B. had no authority to give the note in question; but it appeared, that he frequently discussed his own affairs with her, and he would not swear that he did not tell her that he had given the note in question.

*Held*, affirming the judgment of the County Court, that notwithstanding the power of attorney, the real scope of J. B.'s agency could be ascertained from any admissible evidence, and that there was sufficient evidence to justify the finding of the judge that J. B. had authority to sign the note sued on.

*Ferguson*, Q.C., for appellant.

*McMichael*, Q.C., for respondent.

*Appeal dismissed.*

---

Greet v. Mercantile Ins. Co.

The question put by the company in this case was, "Is there any incendiary danger threatened or apprehended?" which was answered in the negative.

*Held*, affirming the decree of Spragge, C., that this was also a misrepresentation which avoided the policy.

*Held*, also, that the insurances were avoided by the non-disclosure of the insurance in the Phœnix Insurance Co., which, under the

circumstances set out in the judgment, was held to be a valid insurance.

*Bethune*, Q. C., and *C. Moss*, for the appellants, The Royal Insurance Co., and the respondents, Mercantile Insurance Co.

*Rae*, for the appellants, The Citizens' Insurance Co.

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

## *QUEEN'S BENCH.*

### IN BANCO.

Aug. 30.

FORAN v. MCINTYRE.

*Timber licenses—Rights acquired by Railway Company before Confederation over Crown lands—Assignees of Railway Company not liable for trespass thereon.*

*Held* (ARMOUR, J., dissenting), that the timber licenses, claimed by the plaintiff, as licensee of the Ontario Government, were subject to the right of the Canada Central Railway Company, acquired before Confederation, to construct their road across the Crown lands, over which the licenses in question extended, and that the defendants, assignees of the railway company, were, therefore, not liable in trespass for entering upon and cutting timber on the said limits in prosecution of the work of building the road of the said railway company.

*Bethune*, Q.C., for plaintiff.

*J. K. Kerr*, Q.C., *contra*.

QUEEN v. LUCIEN BARNES.

*Profanation of Lord's Day—Illegality of Sunday Concerts—Imp. Act 21 Geo. III., chap. 49.*

The Imp. Act 21 Geo. III., chap. 49, prohibiting amusements and entertainments on the Lord's Day, to which persons are admitted by the payment of money, or by tickets sold for money, is in force in Ontario, and an application to quash a conviction thereunder for keeping a disorderly house, known as the "Royal Opera House," opened and used for public entertainment on the Lord's Day, &c., was therefore refused.

*Held*, also, that the preamble of the Act reciting that it was intended to remedy mischiefs "in the Cities of London and Westminster" did not limit the enacting words, which were unrestricted and of general application to the whole kingdom.

*Held*, also, that the Act, as to its subject matter, being designed to promote Sabbath observance, is of general utility and application.

*Held*, also, that Imp. Statutes passed previously to the introduction of the Criminal Law of England into this country continue in force here, unless expressly repealed by Canadian Statutes, and the decision of this Court on the Mortmain Acts, in *Doe* d. *Anderson* v. *Todd*, 2 U. C. R. 82, disapproved.

*Fenton*, for Crown.

*McCarthy*, Q.C., and *Murphy*, *contra*.

IN THE MATTER OF THE GRAND JUNCTION RAILWAY COMPANY AND THE CORPORATION OF THE COUNTY OF PETERBOROUGH.

*Railway Company—By-law in aid of—Refusal to issue debentures—Mandamus.*

In December, 1870, defendants' council read twice a by-law, granting $75,000 in aid of plaintiffs' railway, on certain conditions, secured by 20-year debentures, with interest and sinking fund. The by-law was approved by the ratepayers, but the council refused to read it a third time or act upon it. By 34 Vict. c. 48, O., the Legislature made valid the by-law, as if it had been read a third time, and directed the issue of the debentures; and other Acts were passed by the Ontario Legisture bearing on the question. No debentures were ever issued or provision made for interest or sinking fund.

*Held*, on application for *mandamus* to compel defendants to issue the debentures, that, in the construction of all the statutes, the council were bound to issue the debentures to the trustees appointed by the Legislature; CAMERON, J., dissenting as to the sufficiency of the appointment of trustees.

*Held*, also, that the company had been duly kept alive by the operation of all the different statutes relating thereto.

*Blake*, Q.C., and *H. Cameron*, Q.C., for plaintiffs.

*Bethune*, Q.C., and *Edwards, contra.*

## VACATION COURT.

Osler, J.] [Aug. 28.

In Re Corporation of Township of York and Wilson.

*Arbitration and award—Submission—Appeal—R. S. O. ch. 50, s. 191.*

Where a submission to arbitration contained only the usual provision that the agreement might be made a rule of Court, and that the Court might be moved to set aside or refer back the award: *Held*, that this conferred no right of appeal under R. S. O. ch. 50, s. 191.

*J. K. Kerr*, Q.C., for plaintiffs.

*Bull, contra.*

## *CHANCERY.*

The Chancellor.] [Sept. 1.

Lowson v. Canada Farmers' Insurance Co.

*Fire Insurance—Mutual Insurance—Ultra Vires.*

By the statute incorporating an Insurance Company, which was authorized to carry on business on the mutual as well as the proprietary principle, it was enacted that "no mutual insurance shall be effected on . . nor on any kinds of mills, carpenters' or other shops, which, by reason of the trade or business followed, are rendered extra hazardous; machinery, breweries, distilleries, tanneries, or other property involved in similar or equal hazard." The Company, professing to act under their charter, granted a policy of insurance on a grist, carding and fulling mill, which were all in one building, and the position therein of the picker, it was alleged, rendered the risk extra hazardous. The structure was destroyed by fire. In a suit instituted to compel paymont of the insurance, the Company raised the defence of *ultra vires*, which the Court sustained, and dismissed the bill, but, under the circumstances, without costs, the Chancellor observing, "The point . . goes to the very root of the plaintiff's case, and makes it unnecessary for me to make any disposition of the points in the case. I should have been well pleased to have come to a different conclusion upon the question upon which I decide the case, for the defendants, the Insurance Co., in opposing the plaintiff's claim, are resisting upon inequitable grounds the payment of a just debt. I should not say this, if the evidence which was taken before myself did not lead me to that conclusion."

The Chancellor.] [Sept. 1.

Neill et al. v. Carroll.

*Mechanics' Lien Act—Lapse of time—Repairing property.*

The plaintiffs delivered and set up for the defendant a boiler and engine, supplied by themselves, in Sept., 1878, upon certain terms of credit, which expired on the 25th April, 1879, and registration of the lien was effected on the 23rd December, 1878, and a bill to enforce the lien was filed on the 31st May, 1879.

*Held*, that the effect of the delay in the institution of the suit was that the lien under the Act had ceased to exist, notwithstanding the plaintiffs had done some work upon the machinery late in December, 1878; the time within which the registration was to be effected was not to computed from the time such alterations were made, or the defects in the machinery remedied.

The Chancellor.] [Sept. 1.

Bell v. Lee.

*Will—Insane delusion—Will wholly inoperative.*

A testator, owing to his labouring under an insane delusion as to the legitimacy of one of his daughters, made no provision whatever for her, whilst he made some prosion for his other daughters.

*Held*, that this rendered the will wholly inoperative, not inoperative in part only—that is, as regards the daughter for whom no provision had been made.

The Chancellor.] [September 15.

GRIFFIN v. PATTERSON.

*Married woman—Separate estate—Liability for goods furnished.*

A married woman, married before 1859, possessed of property in her own right, conveyed to her in 1874, who was residing with her husband and children, was in the habit of obtaining on credit goods for the use of the family—some by herself, some by her children, none by the husband—and which it was shown were charged in an account headed in her name.

*Held*, not sufficient to raise an implied *assumpsit* by her to pay for the same; and in the absence of any express promise by her to pay for such goods, the seller was not entitled to recover their value against her.

---

THE ATLANTIC AND PACIFIC TELEGRAPH CO. v. THE DOMINION TELEGRAPH CO.

*Pleading—Demurrer—Parties.*

The rule of equity is, that if any person not made a party to the suit, be a necessary party in respect of any part of the relief prayed by the bill, it is ground of demurrer; where, therefore, a bill was filed against the Dominion Telegraph Company seeking to restrain that company from carrying out an agreement for the transfer of telegraphic messages to the American Union Telegraph Company, on the ground that such agreement was in contravention of an agreement previously entered into between plaintiffs' and defendants' companies for mutual exclusive connections and exchange of telegraphic business, without making the American Union Company a party: a demurrer for want of parties on that account was allowed with costs.

---

CAMPBELL v. ROBINSON.

*Mortgagor and mortgagee—Assignee of equity of redemption—Principal and surety—Covenant in mortgage.*

When a mortgagor, who has covenanted for payment of the mortgage debt, sells his equity of redemption subject to such mortgage, he becomes surety of the purchaser for the payment of such debt, and if the same is allowed to run into default he will be entitled to call upon his assignee to pay such debt.

G., the owner of real estate executed a mortgage to the plaintiff, and subsequently created a second mortgage in favour of one H., which he transferred to the plaintiff. Afterwards G. mortgaged the same lands to R. and D., and subsebuently assigned the equity of redemption to them, in which assignment the mortgage to the plaintiff and that to R. and D. were recited, but the intermediate one to H. was not, though the amount stated as due to the plaintiff was about the sum secured by both mortgages held by him. Default having been made, a bill was filed against G. upon his covenants and against his assignees R. and D., as the owners of the equity of redemption and entitled to redeem.

*Held*, that under these circumstances G. having claimed such relief by his answer, was entitled as against his co-defendants to an order for them to pay such sum as might be found due the plaintiff under his securities, and the suit having been rendered necessary by reason of the default of R. and D. in not paying the plaintiff, they were also bound to pay G. his costs of the suit.

---

## *COMMON LAW CHAMBERS.*

Osler, J.] [June.

IN RE DEAN v. CHAMBERLIN.

*Rule nisi — Enlargement — Lapse—Mandamus.*

Where a rule *nisi* in a County Court was ordered by the Judge to stand over until the next term:

*Held*, that it was not necessary to take out a rule to enlarge the rule *nisi* to prevent it from lapsing.

*Held*, that where a County Court Judge improperly refuses to hear the argument of a rule *nisi*, *mandamus* is the proper remedy.

*Watson*, for plaintiff.

*J. K. Kerr*, Q. C., for defendant.

Osler, J.]

Regina v. Stewart.

*Absconding debtor—Appearance—Debt, sufficient to support application for attachment—Crown suit.*

In an action at the suit of the Crown, an order was made for defendant's arrest as an absconding debtor. Service of the writ of attachment was accepted by his attorney, who entered an appearance to the writ:

*Held*, that this was a useless proceeding, and that the defendant should have put in special bail.

*Held*, on an application to set aside the writ, that any defect in the materials on which it was granted might be supplied by the affidavits used by the defendant on such application.

*Held* also, that the forfeiture of a recognizance to appear was a debt sufficient to support an application for an attachment under the Absconding Debtors' Act, R. S. O. ch. 68, and that such relief may be granted at the suit of the Crown; and this, when the defendant absconds to avoid being arrested for a felony.

*Aylesworth* for the Crown.

*Ewart* for defendant.

---

Armour, J.]

Bryan v. Mitchell.

*Ejectment—Equitable issue—Jury notice—R. S. O. ch. 50, sec. 257.*

In an action of ejectment where equitable issues are raised, issues must be tried without a jury under R. S. O. ch. 50, sec. 257.

*Holman* for plaintiff.

*J. Roaf* for defendant.

---

In re City of Toronto v. Scott.

Wilson, C. J.] [Sept. 10.

*Reference under Municipal Act, R. S. O., ch. 174, sec. 377—Award not made within a month—Enlarging time.*

The Court has power to enlarge the time for making an award, although the same has not been made "within one month after the appointment of the third arbitrator," as required by sec. 377, R. S. O., ch. 174.

*Ferguson*, Q. C., for applicant.

*J. K. Kerr*, Q. C., contra.

---

Wilson, C. J.] [Sept. 1.

In re Larkin v. Adams; Wanty v. Adams; Marney v. Adams.

*Mechanics' Lien Act—Costs—Prohibition.*

The defendants, owners of certain lands, applied for a writ of prohibition to the Judge of the First Division Court of the County of York to restrain further proceedings on an order made under the Mechanics' Lien Act by the said Judge, ordering the defendants to pay $5 in each suit, being the plaintiffs' costs of preparing and registering their respective liens against defendants' property.

*Held*, that such costs, being those of a proceeding taken for the security and advantage of the creditors, can only be recovered as against the owners of the property if given by special statutory enactment, and cannot be claimed under the provisions of the Mechanics' Lien Act.

*Morphy, Winchester & Morphy*, for plaintiffs.

*F. E. Hodgins*, for defendants.

## CORRESPONDENCE.

*Trial by Judge, without a Jury.*

*To the Editor of the* Law Journal.

Sir,—The profession has a grievance which I think it will do no harm to ventilate through your journal. It has grown out of the practice which dispenses with the trial of civil cases by jury, except when either of the parties gives notice of a desire to have a jury.

We know that when a case is tried before a jury at the Assizes—and they retire for the purpose of deliberating upon their verdict—if they cannot agree after a reasonable time has elapsed, the Court discharges them, and the plaintiff is at liberty to bring the case on for trial again at the next

Assizes ; but when a trial takes place before a Judge, without a jury, and he takes the case *en délibéré*—there appears to be nothing in the statute which requires the Judge to find a verdict within any stated time—he may do so the same day or on any future day—he should do so within a reasonable time after the trial, and within time for either party to move during the next ensuing term. I regret to say that this is not always done. My clients have suffered on two occasions under such circumstances, on both of which the Judge who tried the case allowed the matter to stand over until he apparently forgot the evidence, and at last, after being applied to again and again, endorsed a "*pro forma*" verdict—leaving the unfortunate to his choice either to submit, or to go to the expense of moving against that verdict, and *that after another Court had passed and gone.* Fortunately for litigants, as a general rule, our Judges dispose of the cases as they come before them with reasonable dispatch ; but it is to be regretted that there is at least one exception to this rule. Now what is the difficulty ? Is the Judge unable to agree with himself ? If this is the trouble, he had better be "*discharged,*" and allow plaintiff to bring the case on again for trial before another Judge, who, perhaps, will not see any reason for "*halting on the way.*" In this respect I submit that the statute should be amended so as to limit the time within which a Judge should find a verdict. It is a monstrous absurdity to allow a case to be locked up in the way in which it may now be.

Yours truly,

A BARRISTER.

September 2nd, 1880.

---

*To the Editor of the* LAW JOURNAL.

SIR,—A. and B. reside in Manitoba. A *there* becomes indebted to B. on contract. A.'s only estate lies in Ontario. By what, if any, proceeding, can B. reach this property to satisfy his debt.

Yours, &c.,

A SUBSCRIBER.

Invermay, Sept. 22, 1880.

## REVIEWS.

THE BILLS OF SALE AND CHATTEL MORTGAGE ACTS OF ONTARIO, by John A. Barron, Barrister-at-Law. Carswell & Co., Toronto, Ont., 1880.

The title page summarizes the contents of the volume as being a complete and exhaustive annotation of the Rev. Stat. Ont. cap. 119, and of the Mortgages and Sales of Personal Property Amendment Act, 1880, preceded by an introductory treatise on the law of bills of sale and chattel mortgages, and having appended chapters 66, 95, 98 and 118 of the Rev. Stat. Ont., and the Act 29 Vict. chap. 28 (Dom.), in so far as the same affect the law of bills of sale and chattel mortgages, with an appendix of forms.

The book is dedicated to the Hon. Vice-Chancellor Blake, whom the author thanks for glancing through the proof, and for his kind advice and friendly counsel. The preface and introduction are both peculiar in their length and fulness ; and, as a matter of convenience and book-making, we should have thought it would have been better to have given the same matter more in the shape of a treatise in connected chapters. The matter, however, is there, and well put together.

In the preface the earlier Acts are given in full. The reason for this is said to be that by a comparison of the statutes "the enquirer can conveniently satisfy himself of the adaptability of his references," and we agree with the author as to the usefulness of this, especially as he gives running reasons, supported by authorities, for the changes from time to time made in the law.

The introduction treats of matter constantly occurring in the course of practice, and prepares the reader for the annotation on the statutes relating to chattel mortgages, which forms the principal and most useful part of the work.

The notes on the first section of the Act alone occupy 37 pages, which gives some idea of the full treatment of the subject by the author.

We particularly notice under "goods and

chattels" the question as to goods "*in esse*" and "*in posse*," the distinctions in law given as to after-acquired goods, with and without a *novus actus*, and between the rules at law and in equity in regard to the subject-matter of mortgages and bills of sale. On this point we notice the opinion upheld that a mortgage of specific crops off specific land is good, although the crops be not in existence when the mortgage is executed (see *Howell* v. *Coupland*, L. R. 1 Q. B. D., 258; *McIlhargy* v. *Martin*, C. C. Dean, J.). Mr. Barron points out several inconsistencies in the Act, *e. g.*: To some instruments a witness is required to be a subscribing witness, to others he need not be. The omission in section 2 of the words "or of one of several of the mortgagees or of the agent of the mortgagee or mortgagees," and the inconsistency of the enactments in regard to the place of registry, particularly when renewing mortgages, which now, however, since Mr. Meredith's Act has become law, are chiefly overcome. To give a specimen of the work, we extract the author's remarks in reference to section 6, wherein the Statute provides for such instruments as the section covers being registered "as hereinafter provided:"

"It is worth while observing these words carefully. Mortgages within this section shall be valid and binding when *registered as hereinafter provided*. And there is nothing in the Act subsequent to this section in any way limiting the period within which mortgages under this section are to be filed. Section 1 limits a period within which mortgages under that section are to be filed, and section 5 limits a period within which bills of sale are to be filed. Unless mortgages under this section can be said to come within and to be included in the words 'every mortgage or conveyance intended to operate as a mortgage made in Ontario' found in section 1, it is quite clear that the Statute has fixed no period of time within which mortgages under this section are to be filed. There is no doubt that the entire statute must be resorted to in order to arrive at a conclusion as to what is required, but it seems to the author that the mortgages referred to in section 1 are so identified by the words contained therein and in section 2 relating to the affidavit of *bona fides*, that the legislature, whatever they may have meant, certainly did not contemplate a reference to mortgages under section 6 by the use of the words 'every mortgage or conveyance intended to operate as a mortgage,' &c. Indeed there can be little doubt of this, because sections 1 & 2 of the Act have their origin in 12 Vict. cap. 74, and 13 & 14 Vict. cap, 62, whereas section 6 of this Act was first enacted by the late Statute, 20 Vict. cap. 3."

Several Acts or parts of Acts akin to the subjects treated are appended, together with a collection of forms.

Mr. Barron has done his work well, and although we think that, in a second edition, he will find it desirable to make some slight changes in form and arrangement, we can congratulate him upon having given us a very useful and timely book on a subject of much importance to the practitioner.

---

Reports of the Supreme Court of British Columbia.

We are indebted to the courtesy of Mr. Justice Crease, who edits these Reports, for a copy of the first number, containing the judgment of the case of *The Queen* v. *McLean and others*, on an indictment for murder. Criticism is disarmed so far as the typographical appearance of the number is concerned by the plaintive statement that only one "galley" full of type was available, which had to be charged and discharged until the 125 pages were completed. No apology, however, is necessary so far as the work of the learned reporter is concerned, for he seems to have taken the greatest pains to give a full and, we doubt not, accurate report of this important case.

An Appendix gives a mass of correspondence in connection with the trial of this case. This reveals some singular legislation in the Province of British Columbia in relation to the Judicature Act. Not the least is this, that a bill was passed taking the whole regulation of the Courts, Chambers, Rules and Orders, forms and business generally out of the hands of the Judges and giving it to the Lieut.-Governor-in-Council —a most unheard of proceeding, which can only be characterized as silly. This absurdity was equalled by the Government bringing their Judicature Act into force after only two days' notice, and then making an Order in Council to the effect that the Rules in force in England under the

English Judicature Act should be the Rules and Orders under the British Columbia Judicature Act! The powers that be seem to have got their legal matters into a most lovely tangle, and Justice has not only her eyes bandaged, but her arms (and legs too, for that matter) tied up by a complication of Gordian knots.

## *FLOTSAM AND JETSAM.*

A LAW AGAINST WHISTLING.—In the "Statutes of the Streets," printed in 1598, it is ordered that "no man . . . shall whistle after the hour of nyne of the clock in the night," or "keep any rule whereby any such suddaine outcry be made in the still of the night, as making an affray or beating his wife or servant," etc.

WE have recently seen in one of our exchanges a communication advocating the fuller reporting of the arguments of counsel and the fuller statement of facts and pleadings. This would indeed be a step backward. That which renders some of our law reports abominable and costs lawyers a great deal of unnecessary outlay is this very padding. Law reports are designed to tell the profession what the courts have decided and their reasons for their decisions. They are not designed to instruct lawyers how to plead or argue. Anything more than a synopsis of the arguments, and a bare statement of what the pleadings were, is an imposition on the profession. Why should we be compelled to pay for page on page of tedious common-law pleadings and page on page of evidence? As to the statement of facts, if the court has made it, that is usually enough. If it is not complete, supplement it sufficiently; but do not make it all over again. To read the facts in the head note, then in the reporter's statement, and finally in the opinion of the court, is "damnable iteration," and as senseless as the reading of a hymn and then singing it, in church. By proper compression, the number of our annual reports could be reduced nearly one quarter.—*Albany Law Journal*

SERGEANT ARMSTRONG.—The late Richard Armstrong, Her Majesty's First Sergeant-at-Law, who died on the 26th August, was called to the inner Bar in January, 1854, was appointed Third Sergeant in 1861, and was also, in the latter year, elected a Bencher by the Honourable Society of the King's Inns. In 1866 he was promoted First Sergeant. A Liberal in politics, he was elected Member of Parliament for the Borough of Sligo in 1865, which constituency he continued to represent until the general election of 1868. It is said that Mr. Armstrong's latent talents were first discovered by the following incident: It happened at the Wexford Assizes that a little boy was indicted for the murder of a playfellow, and, being in humble life, his friends were without means of employing counsel for his defence. The proof of his guilt depended on circumstantial evidence, but so clear that there was no hope for the boy. He had the brogues that belonged to the murdered boy; he had a knife that was also his, and a ball with which they played. These articles were found with him directly after the murder. Chief Baron Pennefather assigned young Armstrong as counsel to defend the lad. Having read over the informations, he saw what a slender hope there was of saving the boy's life. So he applied that the trial might be postponed, and the judge assented. During the next assizes in Clonmel, he was one day caught in a shower of rain, and taking refuge in a bootmaker's shop the thought struck him to ask how one pair of boots could be distinguished from another made on the same last, and the bootmaker informed him that identification was impossible, except with regard to the boots on which he was in the habit of putting a private mark. Here was the argument against conviction. Then as to the knife, there were hundreds of the same kind sold by every pedler. When the assizes came round at Wexford he cross-examined the Crown witnesses with telling effect in reference to the identity of the brogues and the knife. But then there was the ball, and the mother of the murdered boy Moore, swore she herself made it, winding it round a piece of crumpled up brown paper. Surely this was conclusive. Young as he was, the little fellow at the bar saw the force of her evidence, and asked to see his counsel. Mr. Armstrong went to the side of the dock and the prisoner whispered in his ear—"I unwound the thread and put it on again on a cork to make the ball hop." At the close of the evidence for the Crown the case seemed proved to demonstration, insomuch that the prosecuting counsel left it in the hands of the judge and jury. But Mr. Armstrong rose, and with great power of analysis sifted the evidence, maintaining that the only real proof was that in reference to the ball—"My client's life hangs on a thread, and if it should happen that the thread is wound on paper, as the unfortunate mother of the youth who was murdered describes, then my case is lost. Let the ball be unwound, and to you, gentlemen of the jury, I commit my client's safety." The end of the thread was handed to the foreman, and amid breathless stillness it was unwound. At last down fell the cork, and a cheer in court proclaimed the safety of the prisoner, if not his innocence.—*Irish Law Times.*

# Law Society of Upper Canada.

OSGOODE HALL,

TRINITY TERM, 44TH VICTORIÆ.

During this Term, the following gentlemen were called to the Degree of Barrister-at-law.

FREDERICK WRIGHT.
EDWARD MORGAN.
WILLIAM HENRY BEATTY.
JOHN CANAVAN.
EDWARD MAHON.
ALEXANDER HENRY LEITH.
JOHN JOSEPH BLAKE.
CHARLES EDWARD HEWSON.
WILLIAM HODGINS BIGGAR.
WILLIAM HENRY POPE CLEMENT.
SKEFFINGTON CONNOR ELLIOTT.
PATRICK MCPHILLIPS.
WILLIAM BRUCE ELLISON.
JOHN STANLEY HOUGH.
MICHAEL ANDREW MCHUGH.
WILLIAM GEORGE EAKINS.
JAMES ROLAND BROWN.
RICHARD WORNALL WILSON.
JAMES EDWARD LEES.
JOSHUA ADAMS.
ROBERT SINCLAIR GURD.

(The names are placed in the order in which the Candidates entered the Society, and not in the order of merit.)

And the following gentlemen were admitted into the Society as Students-at-Law, namely :—

*Graduates.*

EDWARD LOCKYER CURRY.
WILLIAM ARMSTRONG STRATTON.
GEORGE SMITH.
ALEXANDER SUTHERLAND.
JOSEPH BURR TYRRELL.
WILLIAM JOYNT JAMES.
THOMAS HENRY GILMOUR.
THOMAS VINCENT BADGELEY.
HARRY LAWRENCE INGLES.
JAMES BURDETT.
GEORGE ROBSON COLDWELL.
HARCOURT JOHN BULL.
ISAAC NORTON MARSHALL.
WELLINGTON JEFFERS PECK.
ALVIN JOSHUA MOORE.
WILLIAM ARTHUR DOWLER.

*Matriculants.*

GEORGE HAMILTON JARVIS.
EDMUND JAMES BRISTOL.
W. K. MCDOUGALL.
ALFRED HENRY COLEMAN.
ARCHIBALD MCKELLAR.
STEPHEN O'BRIEN.
HARRY EARL BURDETT.
JOHN ANDREW FORIN.

*Junior Class.*

HORACE FALCONER TELL.
RICHARD J. DOWDALL.
DANIEL S. KENDALL.
GEORGE FREDERICK BELL.
ANGUS CLAUDE MCDONELL.
OLIPH LEIGH SPENCER.
SANDFORD DENNIS BIGGAR.
HARRY ANSON FAIRCHILD.
GEORGE CRAIG.
JAMES ARMSTRONG.
ARCHIBALD MCFADYEN.
WILLIAM ALFRED JOSEPH GORDON MCDONALD.
CHARLES MAIN BYGRAVE LAWRENCE.
COOTE NESBITT SHANLEY.
A. C. STEELE.
GUERET WALL.

And the following gentlemen passed the Preliminary Examinations for Articled Clerks :—

DAVID DUNCAN.
PETER YOUNG.
MATTHEW WILKINS.

By order of Convocation, the option to take German for the Primary Examination contained in the former Curriculum is continued up to and inclusive of next Michaelmas Term.

## RULES AS TO BOOKS AND SUBJECTS FOR EXAMINATIONS, AS VARIED IN HILARY TERM, 1880.

*Primary Examinations for Students and Articled Clerks.*

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as articled clerks or students-at-law shall give six weeks'