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THE bringing of an action for breach of promise of marriage against the executors of a deceased promisor is a novel experiment in litigation, which was recently undertaken in England in the case of *Finlay* v. *Chirney*, 84 L. T. 296. We are not surprised to learn that it proved unsuccessful. The Court of Appeal, however, held that if special damage to the personal estate of the plaintiff arises from the breach of such a promise, then in respect of such special damage an action would lie. As the *Law Times* remarks, the decision of the Court of Appeal dispels a popular illusion of long standing that the maxim *Actio personalis* applies exclusively to actions *ex delicto*, and not to actions *ex contractu*.

WE hasten to lay our respectful admiration before the judges of the newly constituted Queen's Bench Divisional Court for the marked conciseness of their judgments as contained in the current number of the Ontario Reports. Surely one of the most practical methods of lessening the burden which is thrown upon the shoulders of those lawyers who conscientiously endeavour to keep up with the current decisions, is that judges should make a point of condensing their judgments to the greatest possible extent. Many of the profession will feel grateful to the learned judges of the Queen's Bench Divisional Court for their having apparently studied conciseness in the recent judgments to which we allude. None will dispute that our present Chancellor is, to say the least, one of the ablest occupants of the bench at the present moment, and yet conciseness and shortness have always been among many of the distinguishing characteristics of his judgments. On the other hand, the prolixity and verbosity in which some of the other occupants of the Bench indulge may, we think, almost be called one of the banes of our profession.

DIVORCE—SEPARATION DE CORPS.

IT seems to be felt by many that the law on the subject of divorce is not exactly what it should be; that in Canada divorce is a luxury for the rich, not a legal remedy free to all; that justice, in this respect, will not even appear unless invoked with the "open sesame" of a well-filled purse. That may be, but the object of this paper is not to criticise the Dominion law or to suggest any improvements, but to call attention to the substitute that exists for divorce in one of the provinces of this legally dis-united country. We refer to the action *en séparation de corps* in the civil law of the Province of Quebec.

A judgment of this character does not give the consorts the right to marry again. Neither husband nor wife can contract a new marriage while both are

living. For those whose aim is to be freed from one marriage in order to contract another, there may be very little satisfaction in obtaining a judgment of this nature; but for a wife with a bad husband, or a husband with a bad wife, when real hardships exist, and when only a separation is desired, the remedy is satisfactory and complete. The conditions under which this action can be taken are:—

Firstly, and principally, adultery on the part of either of the consorts; as to the wife the offence has only to be proved, but on that of the husband it must also be shown that he keeps a concubine in the house, though the practice is not to insist on strict proof of the latter. If it be proved that the adultery of the husband was notorious, this is, generally speaking, sufficient.

Secondly, husband and wife may respectively demand separation on the ground of outrage, ill-usage, or grievous insult *(excis sévices et injures graves)*, committed by one toward the other. It is usually, as might well be imagined, the wife that urges this ground in an action against the husband, but there have not been wanting cases where a peaceful and law-abiding husband has had to take action against his better-half. In many cases this provision of the law is taken advantage of by wives who are subject to the ill-treatment of drunken husbands.

Thirdly, a wife may demand separation if her husband refuses to receive her and furnish her with necessaries of life. As will be seen, the causes are much the same as are usually urged to obtain a divorce in England or America.

Many French writers have laboured to prove the advantages of *séparation de corps* over divorce. It is c. ed by one eminent writer, "*Une institution d'ordre public qui se propose le bon o. re des familles le bon ordre de la société.*" It is possible, however, that they may have thought more of the dictates of their Church —the Roman Catholic hierarchy, as is well known, having always condemned divorce—than of the requirements of the community.

In the Province of Quebec, if the plaintiff is poor, permission may be obtained to proceed *in forma pauperis*, so that in this way the poorest may there obtain a practical divorce. Indeed, it is a sort of poor man's law; he may get relieved from a life of misery, but is not allowed to marry again. Another advantage is that the consorts may, after being separated, re-unite at any time and without any formalities. This has been strongly urged in its favour, "*Si vous n'admettez que la séparation de corps, le nombre des familles désunies sera comparativement restreint, et la société aura l'espoir de voir ces familles se reconstituer, et la paix et la tranquillité se rétablir entre les époux.*" This argument may not, however, have as much force with us as with the more versatile countrymen of the writer.

The object of this paper is simply to bring out these following points, which may be useful in the consideration of this important subject: (1) That such a law exists in the Province of Quebec; (2) That it is practically a divorce law; (3) That it is within the reach of the poorest. It is worth considering whether it would not be well to adopt some such law in the other provinces of the Dominion.

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THE FISHERIES TREATY.

By Article I. of the Convention of 1818, there was accorded to the inhabitants of the United States forever the liberty to take fish of every kind in common with British subjects, upon certain portions of the coasts of Newfoundland and Labrador, and on the shores of the Magdalen Islands, and there was further accorded to them the liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of the said coasts; then followed that portion of the said Convention which has given rise to all of the contentions and disputes which have passed into history under the name of the Fisheries Question; this clause was in the following words: "And the United States hereby *renounce forever* any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or *within three marine miles of any of the coasts, bays, creeks or harbours* of His Britannic Majesty's dominions in America, not included within the above mentioned limits; provided, however, that the American fishermen shall be admitted to enter such *bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water*, AND FOR NO OTHER PURPOSE WHATEVER. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

Quite apart from the provisions of this Convention, the inhabitants of the United States always had, and now have, in common with all other people of the world, the right to take fish upon the high sea, but this right is one which is of little practical importance unless it is accompanied by the privilege of using the adjoining coasts and territorial waters, for purposes of shelter and as a base of operations and supplies. It is the undoubted right of every nation, accorded to it by international law, to deny the use of its shores and territorial waters to all foreigners, although such a denial is, in this age, looked upon as an unfriendly act, and one which is sure to provoke retaliation upon the part of foreign nations. It follows, therefore, that whenever foreigners are privileged to use our shores or territorial waters, that privilege is accorded to them either under the provisions of some treaty, or by virtue of international comity and commercial usage, based as well upon such comity as upon the reciprocal advantages which flow from free commerial intercourse.

In view of the recent fisheries negotiations, had at Washington, and the resulting inchoate Treaty, it may be worth our while to indicate some of the chief contentions made with respect to the construction and operation of the Convention of 1818, and to point out how they are affected by the proposed Treaty.

Every nation has territorial jurisdiction over the waters washing its shores to the extent of three miles from those shores. It has long been a controverted question whether this three mile limit should follow the sinuosities of the coast and run parallel thereto, or whether a straight line should be extended from headland to headland and the three miles measured seaward at right angles thereto. The framers of the Convention of 1818 put this question beyond the reach of horest controversy, in so far as the three mile limit mentioned therein was con-

cerned, for American fishermen were thereby excluded from all territory lying within three miles of the coast, or lying within three miles of any bays, creeks, or harbours. By Article III. of the Treaty now in question, it is provided that "The three marine miles mentioned in Article I. of the Convention of October 20, 1818, shall be measured seaward from low water mark, but at every bay, creek, or harbour, not otherwise specially provided for in this Treaty, such three marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbour, in the part nearest the entrance *at the first point where the width does not exceed ten marine miles.*" The operation of this Article is somewhat limited by the provisions of Article IV., which latter Article enumerates about a dozen bays and sets special lines of delimitation applicable thereto, the effect of which is to include within our exclusive territorial jurisdiction a number of bays having a width at their mouths varying from fourteen to twenty-two miles. In this connection must also be noticed the provisions of Article V., which are as follows: "Nothing in this Treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbours, as cannot be reached from the sea without passing within *the three marine miles mentioned in Article I. of the Convention of October 20, 1818.*" This latter Article (V.) is unhappily framed, and it is not improbable that it will give rise to fresh controversies. It appears to have been inserted at the instance of the British Commissioners, and we are unable to conceive why they thought it necessary or expedient to ask for it. It has been suggested that its effect by implication is to open as common waters all such interior portions of bays, creeks, and harbours, as are over six miles wide, provided that such interior portion can be reached without passing within three miles from the shore. We do not think that this contention can prevail, for upon turning to Article III. we find that "*such three marine miles* shall be measured seaward from a straight line drawn across the bay, creek, or harbour, in the part nearest the entrance, at the first point where the width does not exceed ten marine miles." This clearly closes the mouths of all bays having a width at their mouths not exceeding ten miles, and no foreign ship is entitled without our permission to pass through our territorial waters. So also with regard to the bays enumerated in Article IV. That Article does not purport to set any new limit to our territorial waters, but purports rather to define the three mile limit mentioned in the Convention of 1818; the mouths, therefore, of such bays are closed on the lines indicated in Article IV., and the line of delimitation closing the mouths as well of the bays referred to in Article III., as of those enumerated in Article IV., purports to be drawn upon the three mile limit mentioned in Article I. of the Convention of 1818. The only grant by implication which can be inferred from the wording of Article V. is that the American fishermen shall have in common with British subjects the right to take fish in such interior portions of any bays, creeks, or harbours, as can be reached from the sea without passing within the three marine miles mentioned in Article I. of the Convention of 1818, and as we have pointed out, it is by the delimitation of these three marine miles that the mouths of all of our bays and harbours are closed. The headland doctrine has

to a certain extent been recognized and preserved in the Treaty in question, and as to all of our bays, whether twenty miles wide at their mouth in the enumerated cases, or ten miles wide in all other cases, the line of delimitation, being the three marine miles mentioned in the Convention of 1818, as construed by the present Treaty, has been made to coincide with a line drawn three miles seaward and parallel with the mouth of the bay, and the present Treaty defines where the mouth of each bay is.

Every just or even plausible cause of complaint which the Americans may have had, or may have thought they had, by reason of the literal construction put by the British authorities upon the provisions of the Convention of 1818, in connection with the reporting, entering and clearing of American fishing vessels, and the payment of dues by them when they enter Canadian ports or harbours, in the exercise of the privileges reserved to them by the Convention of 1818, has been completely removed by the fair and liberal provisions of Article X. of the Treaty in question, which reads as follows:—

"United States fishing vessels entering the bays or harbours referred to in Article I. of the Treaty, shall conform to harbour regulations common to them and to fishing vessels of Canada or of Newfoundland. They need not report, enter or clear, when putting into such bays or harbours for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water, except that any such vessel remaining more than twenty-four hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter or clear, and no vessel shall be excused thereby from giving due information to boarding officers.

They shall not be liable in any such bays or harbours for compulsory pilotage; nor when there for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water, shall they be liable for harbour dues, tonnage dues, buoy dues, light dues or other similar dues, but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of October 20, 1818."

It was felt by the Americans to be a grievance that whenever their fishing vessels were driven into a Canadian bay for shelter, or for the purpose of repairing damages, they should be compelled to formally report to a Canadian official at the nearest port of entry, no matter how far distant it might be, and should have to formally enter and clear from that port; and they further complained that whenever they exercised their treaty privilege of purchasing wood or obtaining water, they had to make a similar report, entry and clearance, although the nearest custom house where that could be done might be very many miles from where the wood or water was obtained, and that in all of these cases the American vessels, while exercising their treaty privileges, were subjected to various claims for dues which were both onerous and vexatious.

It has been objected that this Article gives the American fishermen an unfair advantage over the Canadian fishermen, as Canadian fishing vessels are subject to some of the restrictions which have been removed in so far as American

vessels are concerned. The position of Canadian vessels in this respect has been thus stated by the Canadian Minister of Marine and Fisheries: "Canadian fishing vessels are required to report, enter or clear when they put into Canadian ports or harbours for shelter or repairing damages, provided they require to communicate with the shore, or remain over twenty-four hours. When they merely run in and remain in at anchor for a few hours they are not required to report. All fishing vessels are exempt from sick mariners' dues; they have, however, the option of paying them, and securing the benefits of the fund. Harbour-master's dues are exacted at ports proclaimed under the Act from all vessels entering and discharging, or taking in cargoes, ballast, stores, wood and water. These would not therefore be legally required from Canadian fishing vessels in for shelter and repairs, and in practice are seldom exacted from any Canadian vessel. In Halifax, harbour-masters' dues are not paid by any vessels under twenty tons, nor by coasting vessels, which include fishing vessels. At Pictou and Sydney, harbour dues are, by Act of Parliament, exacted from all vessels over forty tons register. Whether in practice fishing vessels are exempt when over forty tons cannot be stated without correspondence with the harbour-masters of those ports. All vessels under eighty tons are exempted from compulsory pilotage dues by the general Act. Pilotage authorities have, in addition, the power to make other exemptions with consent of the Governor-in-Council, and have generally exempted fishing vessels. No tonnage, lighter, or buoy dues are collected in Canada."

The answer to any objection of the sort indicated is, that the law should be so amended as to put Canadian vessels in just as favourable a position as American vessels in this respect.

Article XI. of the proposed Treaty is worded as follows:—

"United States fishing vessels entering the ports, bays, or harbours of the eastern and northeastern coasts of Canada, or of the coasts of Newfoundland, *under stress of weather or other casualty*, may unload, reload, tranship or sell, *subject to customs laws and regulations*, all fish on board, when such unloading, transhipment or sale, is *made necessary as incidental to the repairs*, and may replenish outfits, provisions and supplies, damaged or lost by disaster, and *in case of death or sickness* shall be allowed all needful facilities, including the shipping of crews.

Licenses to purchase, in established ports of Canada or of Newfoundland, *for the homeward voyage*, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States fishing vessels in such ports promptly upon application and without charge, and such vessels, *having obtained licenses in the manner aforesaid*, shall also be accorded upon all occasions such facilities for the purchase of casual or needful provisions or supplies as are ordinarily granted to trading vessels, but such provisions or supplies shall not be obtained by barter nor purchased for resale or traffic."

We have italicised those words which will serve to show the Canadian contention as to the construction of this Article, but it will require no prophet to forsee that we have here the basis for future contentions and alleged grievances,

beside which the contentions and grievances under the Convention of 1818 will pale into puny insignificance. We have not at our command the space which would be required to point out what a fertile ground for the production of controversies this Article is fitted to be, but we are much at fault in our estimate of the dishonesty and perverse ingenuity of American fishermen, and the politicians who head them, if in the event of the Treaty becoming operative, a luxuriant crop is not speedily produced therefrom, unless, indeed that Article be accepted as a passage through which we can gracefully retire, and yield to our high-minded and generous cousins all that they desire. Our legal position under the Convention of 1818 was sure and firm. Under it American fishermen were allowed to enter our territorial waters for certain clearly specified purposes, and for those purposes only; under it we could accord to them any hospitality or privileges which we might desire to do, and when that hospitality and those privileges were abused, we could withdraw them. We are now about to give them a *permanent legal status* within our territorial waters, differing, among other things by reason of its irrevocability, from the commercial privileges which by custom are afforded to all friendly nations, and which commercial privileges, in so far as they relate to fishing vessels were expressly renounced by the Americans, under the Convention of 1818. We have no doubt that the British Commissioners did the very best they could to secure to Canada her rights, and to prevent her from being overreached. They doubtless had in view this desirable end, that a settlement should be arrived at which would prevent the possibility of all future grievances and misunderstandings, and if we could feel that that end had been attained, we should be heartily glad to see the Treaty ratified, and the fisheries question thereby forever laid at rest; but we are unable to set aside the belief that by giving the American fishermen the new and firmer foothold which the Treaty accords to them, we shall thereby facilitate the perpetration of fresh frauds, and furnish them with far better material than they formerly had, upon which to exercise their ingenuity in basing extravagant demands, and thereby creating fresh controversies for the employment and advantage of their professional agitators.

The American fishermen have always found it exceedingly inconvenient to carry on their fishing operations without having the benefit of certain privileges which were not secured to them by the Convention of 1818. The chief of these privileges are the right to purchase provisions, bait, ice, seines, lines, and other supplies and outfits, the right to land the fish caught by them, and send the same home by rail, and the right to fill vacancies in their crews by procuring Canadian sailors and fishermen. The Canadian fishermen, on the other hand, have found that without having the benefit of the American market they are unable to dispose of their fish, as their catch is more than sufficient to supply all the other markets open to them; but the American market has been practically closed to them by the duty which the Americans imposed upon the produce of the Canadian fisheries.

Article XV. of the proposed Treaty provides for the making of such reciprocal concessions as will secure to the fishermen of each country that which they

most desire. It is worded as follows: "Whenever the United States shall remove the duty from fish, oil, whale oil, seal oil, and fish of all kinds (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada and Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans, and other usual and necessary coverings containing the products above mentioned, the like products being the produce of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland; and upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects without duty being re-imposed thereon, the privilege of entering the ports, bays and harbours of the aforesaid coasts of Canada and Newfoundland shall be accorded to United States fishing vessels by licenses, free of charge, for the following purposes, namely:—

"'1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits.

"'2. Transhipment of catch for transport by any means of conveyance.

"'3. Shipping of crews.'

"Supplies shall not be obtained by barter, but bait may be so obtained. The like privileges shall be continued, or given to fishing vessels of Canada and of Newfoundland on the Atlantic coasts of the United States."

On the whole we think that the proposed Treaty would be a fair and satisfactory settlement, and, on the part of the Canadians, a generous settlement of the many difficulties surrounding the fisheries question, if the persons on whom that generosity is bestowed belonged to a class in which there could be reposed the slightest confidence that they would honestly endeavour to conform to the plain intent and meaning of the Treaty; but, taking into consideration all the surrounding facts, as they exist, we fear that the ratification of the Treaty will be followed by more trouble and complications than ever arose under the Convention of 1818.

A. H. M.

COMMENTS ON CURRENT ENGLISH DECISIONS.

THE Law Reports for March comprise 20 Q. B. D. pp. 297-442; 13 P. D. pp. 21-41; and 37 Chy. D. pp. 167-328.

CHATTEL MORTGAGE—PARTIAL INVALIDITY OF DEED.

In re Burdett, 20 Q. B. D. 310, is useful as showing that a chattel mortgage, though void as to some of the chattels thereby purported to be transferred, may nevertheless be good as to others. In this case a chattel mortgage, not in the statutory form, purported to assign "the several chattels and things specifically described" in a schedule thereto. The schedule comprised articles which were

personal chattels, and also a gas engine, which did not come within the definition of "personal chattels;" and it was held by the Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.) that though the deed was void as to the personal chattels for want of compliance with the Bills of Sale Act, 1882, it was nevertheless valid as to the gas engine. The Queen's Bench Divisional Court had considered that the case was governed by *Davis* v. *Rees*, 17 Q. B. D. 408, in which the Court of Appeal had held that when a bill of sale contained a covenant to pay, and an assignment of chattels personal, and of no other property, and was bad under the statute as an assignment, the covenant to pay was also avoided by the 9th section of the statute. But the Court of Appeal thought that case was distinguishable from the present, where other chattels were included.

ORDER DISMISSING ACTION FOR WANT OF PROSECUTION—"FINAL JUDGMENT."

In re Riddell, 20 Q. B. D. 318, although a bankruptcy case, is perhaps worth a brief notice. The question was whether an order dismissing an action with costs for want of prosecution was "a final judgment" within the meaning of the Bankruptcy Act, entitling the defendant to serve the plaintiff with a bankruptcy notice. Cave and Grantham, JJ., held it was not. Cave, J., said: "The order in question was made in a case which has not been fought, and in which there has been no adjudication whatever on the merits. No doubt the order is in the nature of a judgment, and cannot itself be re-opened, but it is no obstacle to a fresh claim by the respondent to the appellant's estates."

GARNISHEE—PAYMENT BY GARNISHEE UNDER VOID JUDGMENT.

The only point *In re Smith*, 20 Q. B. D. 321, necessary to be noticed is the fact that where, in pursuance of an order, a garnishee paid to a judgment creditor the debt which had been attached, and the judgment upon which the attaching order was issued, was afterwards declared void as against a trustee in bankruptcy by reason of the omission to file the order on which it was obtained, as required by a statute, the trustee in bankruptcy was held by the Court of Appeal entitled to recover the amount from the judgment creditor; but in the absence of fraud, the court held the payment by the garnishee was a good discharge to him, although the judgment on which the garnishee order was obtained was subsequently set aside, and this, notwithstanding the order for payment, gave the garnishee a period within which to make the payment, and he in fact made the payment before the time had elapsed.

PRACTICE—COSTS—TRIAL WITH JURY—CLAIM AND COUNTER-CLAIM.

In *Shrapnel* v. *Laing*, 20 Q. B. D. 334, the action was tried before a judge with a jury, and a verdict was entered by consent for £50 on the claim, and for the defendants for £80 on their counter-claim. Costs to be taxed according to the ordinary practice upon a trial by jury with such a result,—and the question was on this state of facts, to what costs each party was entitled. The Court of Appeal (Lord Esher, M.R., Fry and Lopes, LL.J.), affirming Pollock, B., held, that where an action is tried by a jury, and the defendant counter-claims in re-

spect of matters which could not be pleaded as set-off, and the plaintiff recovers on his claim, and the defendant on his counter-claim a sum exceeding that which the plaintiff recovers on his claim, the claim and counter-claim for the purposes of taxation of costs, should be treated as separate actions, and the costs in each taxed in favour of the successful party, subject to a deduction for costs of any issues in which he has not succeeded. And in such a case the court considered it immaterial on the question of taxation, whether the judgment is drawn up in form for the plaintiff for the sum recovered on his claim, and for the defendant for the sum recovered on the counter-claim, or, whether judgment is given for the defendant for the balance. In coming to this conclusion the court followed its decision in *Hewitt* v. *Bluner*, 3 Times L. R. 221, which Lord Esher stated was correctly reported.

HUSBAND AND WIFE—WIFE LIVING APART FROM HUSBAND—LIABILITY OF HUSBAND FOR NECESSARIES SUPPLIED TO WIFE—ADULTERY—CONNIVANCE BY HUSBAND.

In *Wilson* v. *Glossop*, 20 Q. B. D. 354, it is satisfactory to find that the Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.L.J.), have seen fit to affirm the judgment of the Queen's Bench Divisional Court, 19 Q. B. D. 379, noted *ante* vol. 23, p. 362. The action was brought for necessaries supplied to a wife who was living apart from her husband without means of support. The husband resisted the claim on the ground that his wife had committed adultery; but it being established that the husband had connived at the commission of the offence, it was held that it afforded no defence.

ARBITRATION—APPOINTMENT OF ARBITRATORS INVALID—AWARD—MAKING AWARD RULE OF COURT.

In re Gifford and Bury Town Council, 20 Q. B. D. 368, an application was made to a Divisional Court (A. L. Smith and Charles, JJ.) to make a submission to arbitration, and an award, a rule of court. The application was refused, because the arbitration was under an Act which required that the appointment of the arbitrators should be under the common seal of one of the parties, and under the hand of the other. The appointments so made were by the Act required to be delivered to the arbitrators, and then to be deemed a submission to arbitration by the parties making the same. One of the arbitrators, however, in this case, was appointed by one party under their common seal; but the other arbitrator was appointed by the other party, but not by writing under his hand. The arbitrators, so appointed, not being able to agree, appointed an umpire who made an award. The court held that the appointment of one of the arbitrators not being under the hand of the party appointing him, there was no valid submission to arbitration, that the appointment of the umpire, and the award, were consequently also invalid, and therefore neither the submission nor the award could be made a rule of court. In the course of their judgments the learned judges both draw attention to the difference of practice formerly prevailing at law and in equity on this subject; in the former it being the practice only to make a submission a rule of court, whereas in equity the practice was to make awards

orders of court: and they call attention to the remarks of Jessel, M.R., in *Jones* v. *Jones*, 14 Chy. D. 594-5, to the effect that the common law practice should be followed.

NEGLIGENCE—LIABILITY OF MASTER FOR INJURY CAUSED TO THIRD PERSONS—VOLENTI NON FIT INJURIA.

Thrussel v. *Handyside*, 20 Q. B. D. 359, was an action brought by a workman who was directed to work in a particular place, to recover damages against the employers of certain other workmen for injuries sustained owing to the latter workmen or their employers not having taken proper precautions. The plaintiff was employed as a carpenter to do work upon a building for his employers. Above him in the same building other workmen were employed by the defendants doing certain other work; this latter work was of a dangerous character, and injury was likely to result from pieces of iron falling on those below. The plaintiff was injured by a falling piece of iron. The jury found that the accident arose through the negligence of the defendants, in not taking proper precautions to protect those below—that there was no contributory negligence on the part of the plaintiff—and that the plaintiff did not voluntarily incur the risk. On a motion to set aside the verdict and enter a judgment for the defendant, Hawkins and Grantham, JJ., were of opinion that the verdict was correct, and dismissed the motion. The mere knowledge of the risk by the plaintiff, being held not to be a voluntary undertaking of the risk.

LANDLORD AND TENANT—"LEGAL NOTICE TO QUIT"—EJECTMENT.

Friend v. *Shaw*, 20 Q. B. D. 374, strikes us as being an exceedingly technical decision, and one that will hardly commend itself to common sense. The jurisdiction of a county court to entertain jurisdiction in ejectment between landlord and tenant was by statute confined to cases where the tenant's term and interest "shall have expired, or shall have been determined either by the landlord or the tenant by a legal notice to quit." The plaintiff let to the defendant a house for three years, at a monthly rent, subject to a provision for re-entry on non-payment of any part of the rent for twenty-one days. A month's rent having been in arrear for over twenty-one days, the plaintiff gave the defendant notice to quit at the end of the next month of the term for non-payment of rent. Wills and Grantham, JJ., overruled the judgment of the county court judge, and held that "a legal notice to quit" must be taken to mean the notice to quit required by law, and not one depending on the express stipulation of the parties. "Legal" is defined by the dictionaries to mean "permitted or authorized by law." The notice in question was "permitted or authorized by the law," and yet in the judgment of the court it was not "legal," which seems a rather paradoxical result.

CANAL—RIGHT TO SUPPORT—STATUTORY REMEDY—COMPENSATION.

Lancashire and Yorkshire Railway Co. v. *Knowles*, 20 Q. B. D. 391, is an instructive case, showing that where a statutory right is given, and a statutory remedy is provided for those injuriously affected by the exercise of that right the statutory remedy must be strictly pursued, and that when another course is

taken, resulting in injury to the work authorized by the Act, the person taking that course becomes liable in damages to the party injured. By an Act power was given to a company to make a canal, and it was provided that nothing therein contained should affect the right of the owners of land to the mines or minerals under the site of the proposed canal, and it should be lawful for the owners to work such mines, not thereby injuring the canal; and further, that if the owner or worker of any mine, should, in pursuing such mining near or under the canal, in the opinion of the company endanger the same, then it should be lawful for the company to treat and agree with the owner or worker of the mine, and in case of disagreement a jury was to be summoned to assess the amount such owner or worker ought to receive, on being restrained from working such mine; and on payment of such amount the further working of the mine was to be perpetually restrained within the limits for which such satisfaction should, by the jury, be declared to extend. The defendants gave the company notice that they were going to work a coal mine under the canal, and the company declined to pay any compensation to the defendants for leaving the coal. The defendants then went on with their mining and damaged the canal, and it was held by the Court of Appeal (Lord Esher, M.R., Fry and Bowen, L.JJ.) affirming a Divisional Court of the Queen's Bench (Mathew and Cave, JJ.), that the coal owner or worker had a right under the Act to require that compensation should be assessed by a jury, but had no right to work the coal to the injury of the canal, and was liable to the company for the damage so caused.

Correspondence.

THE PROPOSED LAW FACULTY.

TO THE EDITOR OF THE CANADA LAW JOURNAL:

Dear Sir,—"The unexpected always happens." An attentive reader of the proceedings of the Law Society would never imagine that there was any danger of the legal fraternity becoming too few to transact the business of the country, and that the wheels of the car of Justice were likely to go slowly from a dearth of practitioners ready and willing to roll the chariot along. Yet, such must be the case, for a joint committee of the Law Society and of the Senate of the University of Toronto, have devised a new and short road to the bar, and are anxious to lessen the difficulties in the way of would-be barristers and solicitors, so far as time and study are concerned.

The Benchers have kindly and wisely submitted to the County Law Associations, and the authorities of the Universities of the Province, this "Scheme for the establishment and maintenace of a Law Faculty." The learned joint committee call this a "proposal for the *advancement* of legal education," and yet

one of the main features of the scheme is to reduce the time of study required before one can enter the (once-learned) profession of the law from seven years, (as now demanded of those who desire a liberal education, and so go to a university first), or five years (as now required of those who only wish to know "the three R's." and law), to four years, or rather to two university years, and two years of grace, about thirty-six months in all.

We think the aim of all who have the welfare of the profession at heart should be to lengthen the time of study, and to increase the amount of knowledge required for admission into the ranks of practitioners; so vast is the field of legal knowledge, that a graduate trained to study can scarcely become acquainted with it in his three years' course, while the youth, fresh from the high school, who gives five years to it feels, when he looks at the "final" examination papers, how precious little he knows of the subjects.

Then, too, it is proposed "to swap horses" in crossing the narrow stream of four years; and half the time the student is to be fed by the *Alma mater* of Toronto, and half the time by the Law Society. We are told that infants fed upon milks from different cows are apt to have their digestive organs injured.

The scheme submitted is very meagre (the only thing perfectly clear is the "fees," these are touchingly alluded to in five of the eighteen paragraphs of the report). There is to be a "preliminary examination," under the authority of the University, but what the subjects are to be is not said. The University is to give instruction in jurisprudence, having regard to court law, constitutional law and history, and international law. Is it to teach these and nothing more to the aspirant for LL.B.? Or, are the classics, and the philosophies, and the ologies, so essential to a liberal education, to be also taught? How many doses a week of court law and international law is an infant student to take each week? Then, again, on what are the lectures of the Law Society to hold forth during the third and fourth years? Without information on these, and divers other points, how can any County Law Association pronounce definitely on the scheme proposed unless, indeed, the members can, Cuvier-like, construct the whole of an antediluvian monster whenever they are presented with a big toe.

We think, on general principles, that it is bad to try and lessen the numbers of those who are willing to take a course in arts before they study law, by holding out to them this easily won LL.B. We think, too, that the Law Society is old enough to stand alone, and rich enough to pay all professors and teachers it may need to instruct its youthful members; we deprecate the idea of its forming any alliance with any other teaching body, and we say that it should not lower its dignity by becoming the mere handmaid of Toronto University. If, however, the Benchers are getting old and weary of their duties, common justice demands that the same rights and privileges should be given to the other universities as are proposed to be bestowed upon Toronto University and that the last clause of the report should be "The Law Society *shall*, upon similar terms, enter into this scheme with any University in Ontario that may desire it."

BARRISTER.

Proceedings of Law Societies.

THE LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1888.

THE following is a *resumé* of the proceedings of Convocation during Hilary Term, 1888:—

The following gentlemen were called to the Bar during the above Term, *viz.*:—

February 6th.—Francis Alexander Anglin, with honours and awarded a silver medal; Francis Patrick Henry, William Howard Hearst, William Edward Sheridan Knowles, John Hood, George Ira Cochran, Edward Corrigan Emery, James Adam McLean, William Lyon Mackenzie Lindsey, John Williams Bennet, Jeffrey Ellery Hansford, Albert Edward Trow, John Henry Alfred Beattie, Thomas Hislop, Albert Edward Dixon, George William Ross, Clarence Russell Fitch, Colin Judson Atkinson.

February 7th.—Nicholas Ferrar Davidson, Arthur Edward Watts.

February 11th.—Hugh Guthrie, Charles Edgar Weeks, George Smith.

February 17th.—George Nelson Weekes, Francis Ambridge Drake.

The following gentlemen were granted Certificates of Fitness as Solicitors, *viz.*:—

November 22nd, 1887.—G. L. Lennox.

February 6th, 1888.—N. F. Davidson, F. A. Anglin, J. A. McLean, J. M. Mussen, A. Grant, A. E. Trow, W. W. Jones, W. L. M. Lindsey, F. A. Drake, H. Guthrie, H. A. Percival, C. R. Fitch, C. J. Atkinson, A. E. Dixon.

February 7th.—J. Hood, E. J. B. Duncan, W. J. Millicar.

February 11th.—F. P. Henry, J. Carson, E. C. Emery, W. H. Wallbridge.

February 17th.—A. E. Watts, G. N. Weekes.

The following gentlemen passed the Second Intermediate Examination, *viz.*:—

M. H. Ludwig, with honours and first scholarship; G. W. Littlejohn, with honours and second scholarship; W. S. McBrayne, with honours and third scholarship; and Messrs. S. H. Bradford and J. F. Gregory, with honours; E. O. Swartz, W. C. Mikel, E. E. A. Du Vernet, D. H. Chisholm, W. Pinkerton, H. B. Cronyn, O. Ritchie, E. P. McNeil, M. S. Mercer, F. B. Denton, A. E. Cole, F. Rohleder, G. D. Heyd, J. W. S. Corley, A. D. Scatcherd, A. E. Baker, A. S. Ellis, F. B. Geddes, D. A. Dunlap, C. D. Fripp, R. O. McCulloch, W. J. L. McKay.

The following gentlemen passed the First Intermediate Examination, *viz.*:—

A. W. Anglin, with honours and first scholarship; J. B. Holden, with honours and second scholarship, R. E. Gemmill, with honours and third scholarship; and Messrs. J. Agnew, A. J. Armstrong, W. L. E. Marsh, D. W. Baxter, D. R. McLean, C. E. Lyons, A. F. Wilson, G. A. Cameron, W. Carnew, H. Macdonald,

A. H. O'Brien, J. J. O'Meara, F. Harding, J. R. Layton, F. L. Webb, J. A. McIntosh, J. Porter, A. Crowe, F. W. Maclean, A. D. Crooks, A. Elliot, R. Barrie, W. H. Cavthra, W. Mackay, W. Yorke, J. F. Hare, D. Holmes, H. Jamieson, W. Kennedy.

The following candidates were admitted as Students-at-law, *viz.*:—

Graduates—M. Monaghan, E. G. Fitzgerald, C. J. Loewen.

Matriculants—W. D. Earngey, J. E. O'Connor, J. C. Quinn.

Juniors—J. Ballantyne, J. E. Varley, G. S. Morgan, J. R. Milne, D. B. Mulligan, L. Lafferty, A. J. Pepin, C. C. Fulford, P. F. Carscallen, W. H. Cairns.

Monday, 6th February.

Convocation met.

Present—Sir Adam Wilson, Kt., and Messrs. Ferguson, Foy, Hoskin, Irving, Kerr, Lash, Maclennan, McMichael, Morris, Murray and Osler.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read, approved and signed by the Chairman.

The Secretary read a letter from Mr. Audet, Registrar of the Court of Exchequer, requesting that Mr. Justice Burbidge be supplied with the Ontario Reports, Ontario Appeal, and Ontario Practice Reports, in the same manner as the Judges of the Supreme Court.

Ordered that the Reports be sent to Mr. Justice Burbidge.

Mr. Foy gave notice that he would to-morrow introduce a rule to amend rule 30, of section 12, by adding to the end of the first enumeration at the end thereof, the words, "and the Judge of the Court of Exchequer."

Mr. Moss, from the Committee on Legal Education, reported in the case of Thomas Browne, recommending that the filing in November last of the articles of February, 1883, be allowed *nunc pro tunc*, and in the case of E. M. Dennistoun, recommending that he be not allowed to take his solicitor examination in Easter Term next.

The report was adopted.

The letter of General Oliver, of the Military College at Kingston, was read, and the consideration of it deferred.

A letter from Professor Jones, of Trinity College, dated 3rd February, 1888, was read.

The Secretary was directed to acknowledge its receipt.

A letter from Mr. Elliot Traver was read, complaining that Mr. M. untruly held himself out to be a barrister.

The Secretary was directed to answer the letter, stating whether or not Mr. M. had been called to the Bar.

Letters from Mr. Walter Read, of the 23rd January, 1888, referring to unlicensed practitioners, were read.

Mr. Maclennan, from the Select Committee on Honours and Scholarships, presented their report, recommending that Mr. F. A. Anglin be called to the Bar with honours, and be awarded a silver medal; that Mr. A. W. Anglin be granted the First Scholarship of the First Intermediate Examination of one

hundred dollars; Mr. J. B. Holden, the Second Scholarship of sixty dollars, and Mr. R. E. Gemmill, the Third Scholarship of forty dollars; also, that Mr. M. H. Ludwig be granted the First Scholarship of the Second Intermediate Examination of one hundred dollars; Mr. G. W. Littlejohn, the Second Scholarship of sixty dollars, and Mr. W. S. McBrayne, the Third Scholarship of forty dollars; and that Mr. S. H. Bradford, and Mr. J. F. Gregory, be passed with honours.

The report was received, adopted, and it was ordered accordingly.

Mr. Kerr, from the Journals' Committee, reported that the seat of Mr. John Bell, Q.C., as a Bencher, is vacant.

Ordered, that the report be taken into consideration on Saturday next, and that the Secretary do give notice to Mr. Bell of the report, and of the time at which it is to be taken into consideration.

The Secretary reported that no other of the Members of Convocation has vacated his seat by absence.

Tuesday, 7th February.

Convocation met.

Present—Sir Adam Wilson, Kt., and Messrs. Blake (S. H.), Britton, Bruce, Ferguson, Foy, Guthrie, Hoskin, Irving, Kerr, Lash, Mackelcan, Maclennan, McCarthy, McMichael, Martin, Morris, Moss, Murray and Purdom.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The Secretary read the minutes of the last meeting of Convocation, which were approved.

Two letters from Mr. Walter Read, the Solicitor of the Society, were read upon the subject of the complaint of Mr. Miller against certain unlicensed practitioners, which was referred to him for report by order of Convocation of 27th December, 1887, and it appearing that it was a matter over which the Law Society has no control,

It is ordered that the Solicitor's letters be referred to the Committee on Discipline, with the view of determining whether it is desirable to apply to the Provincial Legislature on the subject.

The Secretary reported that the Parchment Roll of the Society, containing the names of the Students, Barristers, Benchers and Treasurers, was in process of completion.

Ordered, that Standing Orders 3 to 9, at page 62, of the new Consolidated Rules, be referred to the Committee on Journals and Printing, to report their opinion as to continuing the said Standing Orders in their present form, and as to what modification, if any, would be desirable.

Mr. Maclennan, from the Committee on Reporting, presented a report on the subject of the application of Mr. Vankoughnet, Reporter of the Queen's Bench, for leave of absence on account of illness.

The report was received, read, considered, adopted, and ordered accordingly.

Pursuant to notice given by Mr. Foy, it was moved, and—

Ordered, that section 12, paragraph 30, enumeration 1, be amended by adding at the end thereof "and the Judge of the Court of Exchequer."

By leave of Convocation it was then moved, and—

Ordered, that enumeration 4 of the same rule be amended by inserting the words, "and any retired Judge" after the word Judges.

The above amendments to 1 and 4 of rule 30, section 1 were then read a second and third time and passed; rule 8, section 1, being suspended by unanimous consent.

In pursuance of notice given by Mr. McCarthy, it was moved, and—

Ordered, that the resolution of Convocation passed on 1st September, 1884, relating to the portraits of Chief Justices, be rescinded.

Mr. G. F. Shepley was unanimously elected a Bencher, to fill the vacancy in Convocation caused by the resignation of Mr. Justice Falconbridge.

Ordered, that the portraits of the Chief Justices of the Queen's Bench and Common Pleas Divisions be painted and placed in Osgoode Hall, and that it be referred to a Committee consisting of Messrs. Blake, Bruce, Irving, McCarthy, and Maclennan, to report upon the artist to be selected as well as the size of the painting.

Mr. Martin presented the report from the County Libraries' Aid Committee, which was read.

Ordered, for immediate consideration and adopted.

Ordered, that Mr. Winchester be appointed Inspector of County Libraries for the current year, and that he be paid one hundred dollars upon the completion of his inspection and presentation of his report.

Ordered, that the sum of two hundred dollars be paid forthwith to the Norfolk Law Association in accordance with the recommendation in the report of the County Libraries' Aid Committee.

Mr. Maclennan gave notice that he would at the next meeting of Convocation move to amend rule 31, section 12, page 49, by inserting the words, "any Barrister at Law not in arrears in the payment of his Bar fees, and not entitled under rule 30," after the word "year" in the second line of the said rule 31.

Ordered, that the telegraph operator be granted two months' leave of absence on account of illness, and that an allowance of seventy-two dollars be made to defray necessary expenses, she undertaking to find a substitute during her absence from duty.

Saturday, 11th February.

Convocation met.

Present—Sir Alexander Campbell, K.C.M.G., and Messrs. Blake (S. H.), Ferguson, Foy, Irving, Kerr, Lash, McCarthy, Mackelcan, Maclennan, Morris, Moss, Murray, Robinson, Shepley, Smith.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of the last meeting were read and approved.

Mr. Moss presented the Report of the Committee to establish a Teaching Faculty in Law, which was read and ordered to be printed, and a copy sent to each Member of Convocation; and the report was ordered to be taken into consideration at the next meeting of Convocation, on Friday, 17th instant.

Mr. Murray presented the Report of the Finance Committee, accompanied by the Balance Sheet for 1887 and the Estimates for 1888:—

ABSTRACT OF BALANCE SHEET FOR 1887.

RECEIPTS.

Certificate and Term Fees	$19231 90	
Less Fees returned	36 60	
		$19195 30
Notice Fees		642 00
Attorneys' Examination Fees	7939 60	
Less Fees returned	970 00	
		6969 60
Students' Admission Fees	7450 00	
Less Fees returned	470 00	
		6980 00
Call Fees	10923 25	
Less Fees returned	2105 25	
		8818 00
Interest and Dividends		3304 20
SUNDRIES:—		
Fees on Petitions, Diplomas, etc.		105 00
Fines—Lending Library account		4 80
		$46018 90

EXPENDITURE.

REPORTING:—		
Salaries	$8725 00	
Printing	8496 97	
Notes for Law Journal	266 44	
Digests	1165 00	
	18653 41	
Less Reports sold	997 02	
		$17656 39
EXAMINATIONS:—		
Salaries	3200 00	
Scholarships	1160 00	
Printing, Stationery and Medals	396 22	
Examiners for Matriculation	302 00	
		5058 22
LIBRARY:—		
Books, Binding, and Repairs		5659 09
County Libraries' Aid		2647 00
GENERAL EXPENSES:—		
Salaries—		
Secretary and Librarian	2000 00	
Assistants	1400 00	
Housekeeper	511 25	
		3911 25
Lighting, Heating, Water, and Insurance—		
Gas	208 52	
Water	106 54	
Insurance	90 00	
Ontario Government—Steam Heating	850 00	
Fuel	260 43	
Repairs to Apparatus	32 67	
		1548 16

Grounds—		
Gardener and Assistant	$350 00	
Tools	2 90	
Cartage	3 00	
Labour—P. O'Brien	360 00	
Snow Clearing	61 72	
		$777 62
SUNDRIES:—		
Postage	64 85	
Advertising	109 85	
Stationery, Printing, etc.	276 82	
Law Costs	92 40	
Furniture	442 18	
Repairs (including O'Connor, $459.56—Tenant, $321.95)	850 14	
Grant to Legislative Committee—Expenses attendant upon drafting a consolidation of the procedure and practice in accordance with the views of the Profession, for submission to the Judges	2000 00	
Reception to Governor-General	139 40	
Draper Estate, for Judges' Picture	300 00	
Term and Committee Lunches (Meetings, 77)	1179 09	
Telephone Office	554 32	
Auditor	100 00	
Hardy (Chart), $100; Clarkson (Soap), $15.60	115 60	
Ellis (Clocks), $12; Resumé, $42	54 00	
O'Connor, $46.48; Tenant, $110.51	156 99	
Telegrams, $14.55; Ice, $48.00	62 55	
Stenographers, $85.90; Plan of Grounds, $21.50	107 40	
W. A. Reeve, $50; Miss Shaw, $57.50	107 50	
Dusting Books, $22.35; Mat, $11.55	33 90	
Guarantee Co., $20; G. M. Adam, $10	30 00	
Inspector	100 00	
Secretary's Expenses to Ottawa, re Library	8 05	
Postman, $5; Petty charges, $56.98	61 98	
		6947 02
		$44204 75
Balance		1814 15
		$46018 90

Audited and found correct.

(Signed) HENRY WM. EDDIS, *Auditor.*

Toronto, 27th January, 1888.

Mr. S. H. Blake's letter on the subject of Mr. F. A. Drake's inability to attend an oral examination for call after passing his written examination, in consequence of illness, was read, upon which it was ordered that under the special circumstances the oral examination should be waived, and he be at liberty to present himself for call.

Mr. Kerr moved that the report of the Journals and Printing Committee be taken into consideration pursuant to notice.

The Secretary reported that he had written to Mr. Bell, informing him that the Committee had reported that he had vacated his seat in Convocation by non-attendance for three consecutive terms, whereupon it was ordered that the Secretary do address Mr. Bell, and inform him that the Records show that he had not attended Convocation at any meeting held during the past three terms of Easter, Trinity, and Michaelmas, 1887; and that he be informed that Convocation will take the report of the Committee on Journals in his case into consideration, on Friday, 17th inst.; and further that the Secretary do ask Mr. Bell to specify the days of the Term on which he was present in Convocation on or since the first day of Easter Term, 1887.

Ordered, that Sir Adam Wilson, Kt., be placed on the Finance Committee in lieu of Mr. Justice Falconbridge, resigned; and that Mr. Shepley be placed on the Reporting Committee in place of Mr. Justice Falconbridge.

In pursuance of notice given by Mr. Maclennan, on the last day of Convocation,

Ordered, that rule 31, section 12, be amended by inserting the words, "any Barrister at Law not in arrears in the payment of his Bar fees and not entitled under rule 30" after the word "year," in the second line of the said rule 31; and a rule to that effect was read a first and second time, and by unanimous consent a third time, and was passed.

Ordered, that the four sets of the Law Reports Digest, from 1866 to 1880, be sold to any of the County Libraries which may apply for the same at ten dollars per set.

Ordered, in connection with the leave of absence recently granted to Mr. Vankoughnet, that an appropriation be made of $250 towards payment for the performance of his duty during his absence.

Friday, 17th February.

(Subject to confirmation at next meeting of Convocation.)

Convocation met.

Present—Messrs. Blake (S. H.), Bruce, Foy, Hoskin, Irving, Kerr, McCarthy, Mackelcan, McMichael, Martin, Meredith, Morris, Moss, Murray, Shepley.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

Ordered, that the County Libraries be supplied with one copy of the Triennial Digests of the Ontario Law Reports, free of charge.

The Secretary read the letter addressed by him to Mr. John Bell, in accordance with the directions of Convocation, and Mr. Bell's letter in reply thereto.

Ordered, that the report of the Committee as to Mr. Bell's attendance be referred back with instructions to reconsider the said matter, and to hear any evidence that Mr. Bell may desire to offer to show that his seat has not been vacated.

Ordered, that the consideration of the report of the Committee on a scheme for the establishment and maintenance of a Law Faculty be deferred until 14th

April next, at 11 a.m., and that the Committee to which was referred the said subject be re-appointed, and that Messrs. James Maclennan, Q.C., and H. W. M. Murray, be added as members thereof; and that such Committee be requested to consider further the matters before referred to it, and that the Committee request the authorities of the Universities in the Province of Ontario to make suggestions in writing upon the questions submitted to the Committee, and upon the report already submitted to Convocation, and to request the presence of representatives of such bodies at its meetings, and to report to Convocation the said matters on or before the 24th March next, by transmitting the same to the Secretary of the Society; and to have printed and sent to each member of Convocation a copy of such report, with any further suggestions and memoranda it may think proper; and that special call of the Bench be had for 11 o'clock on the 14th April next, to consider such report; and it is further ordered, that the Secretary transmit to every County Law Association a copy of the report of the Joint Committee appointed by the Law Society of Upper Canada and the Senate of the University of Toronto, dated 5th February, 1888, and also a copy of the above resolution, and request that the same be brought to the notice of the members of the Association.

Mr. Martin, from the County Libraries' Aid Committee, presented the report of the Committee, which was received, read and adopted.

Ordered, that the following payments be made, namely:—

To the	Middlesex Law Association,	. . .	$55 00
"	Hamilton " "	. . .	90 00
"	Carleton " "	. . .	660 00
"	Bruce " "	. . .	50 00

Mr. McCarthy, from the Special Committee appointed respecting the painting of the portraits of the Chief Justices, presented the report of the Committee, which was received, amended, and adopted.

Ordered, that Mr. Berthon be engaged to paint the said pictures.

Ordered, that it be referred to the said Special Committee to carry out the directions of Convocation in regard thereto.

Mr. Maclennan, from the Committee on Reporting, reported as follows:—

The Committee on Reporting beg leave to report that the work of reporting in all the divisions of the High Court, and in the Court of Appeal, and also the reporting of practice cases, is well up, and there are virtually no arrears.

The editor has applied for the appropriation of a small sum to enable him to pay some expenses in connection with the procurement of materials for reporting election cases, and particularly to obtain copies of important parts of testimony taken at election trials by the shorthand reporters.

The editor thinks that the expenses may, perhaps, amount to fifty dollars, and your Committee recommend that an appropriation be made for that purpose, of a sum not exceeding one hundred dollars.

The report was adopted, and it was ordered accordingly.

J. K. KERR, *Chairman Committee on Journals.*

DIARY FOR APRIL.

1. Sun.....*Easter Sunday.*
2. Mon....Easter Monday. C.C. York sit. for motions begin
3. Tues ...C.C. non-jury sittings, except York.
7. Sat. ....C.C. York sittings for motions end.
8. Sun.....*1st Sunday after Easter.*
14. Sat. ....Princess Beatrice born, 1857.
15. Sun.....*2nd Sunday after Easter.*
17. Tues....C.C. non-jury sittings in York.
22. Sun.....*3rd Sunday after Easter.*
23. Mon....St. George's day.
25. Wed....St. Mark.
29. Sun.....*4th Sunday after Easter.*

Reports.

COUNTY COURTS.

[Reported for the CANADA LAW JOURNAL.]

MCINTYRE *qui tam v.* HALL *et al.*

Action against Justices for non-return of conviction—Dominion and Provincial Acts—Statement of defence—Striking out—Order for penalty.

In an action against two Justices of the Peace to recover the penalty for failure to make return of a conviction.

Held, that the allegation in the statement of claim of the non-return, before the second Tuesday in December, of a conviction made by two Justices in October, showed that the action was brought under R. S. C. c. 178, s. 99, and not under R. S. O. c. 76 (1877), and the defendant had no reasonable ground to allege uncertainty in the claim.

Held, also, that to assert malice on the part of plaintiff in bringing the action was no defence, and that a petition for relief under 48 Vict. cap. 13, s. 16 (Ont.), could not be entertained, where the claim was under an Act of the Dominion Parliament. The statement of defence was therefore ordered to be struck out, and judgment entered for plaintiff with the costs of the motion.

[MACDONALD, Co. J., Brockville.

The defendants, as Justices of the Peace, had convicted one P. of assault, and imposed a fine with costs, on or about 10th October, 1887, but they failed to make a return of the conviction to the Clerk of the Peace, on or before the second Tuesday of December, 1887.

The writ of summons in this action was issued on the 18th January, 1888, to recover the penalty of $80 for failure to make a return of the conviction. The third paragraph of the statement of claim recited the facts of the conviction. The fourth paragraph set forth the failure to make a return. The second paragraph of the statement of defence set up that it was the duty of the Justices to make a return "forthwith," and that they had substantially complied with the provisions of the law in this behalf. The third paragraph asserted that the returns were made before this action was commenced, and that the plaintiff was actuated by malice.

Deacon, for the plaintiff, moved upon notice for an order striking out the defence set up in the second paragraph of the statement of defence, on the ground of its being an insufficient answer to the action and tending to prejudice, embarrass, and delay the fair trial of it; also for an order striking out the third paragraph, on the ground of its constituting no defence at all to the action; and upon said paragraphs being both struck out, for an order that the plaintiff be at liberty to sign final judgment in the cause upon the admissions of fact in the pleadings, for the amount claimed in the statement of claim and costs.

Wright, for French and Saunders, showed cause. He contended that the statement of claim is misleading and defective in not alleging whether it is under the Provincial or the Dominion statute that the action is brought, and in not stating under which statute it is brought. That the conviction before the Justices was made on the 10th of October, 1887; and the party convicted was ordered to pay fine and costs on the 10th November, 1887; that the return was filed on the 14th January, 1888, and the plaintiff did not issue his writ until 18th January, 1888; citing *O'Reilly qui tam* v. *Allen*, 11 U. C. B. R. 411, and urged that the court could and ought to stay proceedings in the cause, and applied for such to be done. That the defendants ought be relieved of the penality. He presented a petition asking for such relief, saying the same was put in under the provisions of the Ontario Act, 48 Vict. cap. 13, s. 16. He also cited *Dingway qui tam* v. *Avison*, 8 O. R. 357.

Deacon, for plaintiff, in reply cited *Atwood* v. *Rosser et al.*, 30 C. P. 628, and *Currie* v. *McCallister*, 16 C. L. J. 164.

MCDONALD, Co. J.—Both the Dominion and the Provincial Legislatures have made enactments in reference to the return of convictions by Justices of the Peace. In chapter 178 of the Revised Statutes of Canada and in and by the 99th section, it is enacted that "every Justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December, in each year,

make to the Clerk of the Peace or other proper officer of the court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants, which return shall include all convictions and other matters not included in some previous return, and that shall be in the form (V.) in the schedule to this Act. 2. If two or more Justices are present and join in the conviction, they shall make a joint return. And in and by the Revised Statutes of Ontario, 1877, chapter 76, provision was made that

"Every Justice of the Peace before whom any trial or hearing is had under any law giving jurisdiction in the premises, and who convicts and imposes any fine, forfeiture, penalty, or damages, shall make a return thereof and of the receipt and application by him of the money received from the person convicted, in writing, under the hand of such Justice, quarterly, on or before the second Tuesday in each of the months of March, June, September, and December in each year, to the Clerk of the Peace (and in the case of any convictions before two or more Justices, such Justices being present and joining therein, shall make an immediate return thereof), in the following form." (Here follows the form of return.)

It will be observed that the Ontario Act requires in the case of a conviction before two or more Justices that such Justices being present and joining therein shall make an immediate return thereof, while the Dominion Act does not make any distinction as between a conviction made by one, or two, or more Justices. Inasmuch as the plaintiff in the statement of claim alleges that the conviction (for the non-return of which he claims to recover a penalty from the defendants) was for an assault, and by virtue of Dominion legislation a Justice or Justices of the Peace are clothed with a summary jurisdiction in cases of assault, and inasmuch as he sues because the return was not made on or before the second Tuesday in December, 1887 (and not because it was not made immediately), I think it manifestly appears that he is suing under the Dominion Act, and that the defendants had not any reasonable cause to suppose otherwise. To such an action the statement of defence is not any answer whatever.

But if the action had been brought under the Provincial Statute, I do not think the answer of the defendants is good in law. In the second paragraph, they say it became their duty to make a return of the conviction "forthwith" (the Act says "an immediate return"), and that they complied substantially with the provisions of the law in that behalf. Clearly they should have stated that they had complied with such provisions, and it then would have been a matter for determination by the proper authority whether what they did was or was not a substantial compliance. Nor can I see that the fact of the return having been made before the action was commenced is any bar or answer to it, while the allegation that in commencing the proceedings the plaintiff was actuated by malicious motives is not a defence or answer to an action under either statute. (As a matter of fact it is not unreasonable to suppose that many *qui tam* actions are brought by parties influenced by just such motives.) Possibly, this allegation was inserted with a view of paving the way for the application which the defendants now make under 48 Vict. c. 13, s. 16, for relief from the penalty, but inasmuch as the present action is brought under the provisions of the Dominion Act, such application cannot be entertained.

The second and third paragraphs of the statement of defence must be struck out, and the plaintiff be permttted to sign judgment for the amount of the penalty as claimed, and the defendants must pay the costs of this application.

DIVISION COURTS.

[Reported for the CANADA LAW JOURNAL.]

FITZGERALD *v.* LANKIN.

Canada Temperance Act—Notice of Defence under Statute.

Where liquor was sold to the defendant in a Scott Act County to be resold there, notice to the plaintiff of the defence under the statute *held* to be necessary.

[ELLIOTT, Co. J., London.

The facts of the case appear in the judgment of

ELLIOTT, Co. J.—This is an action to recover the price of spirituous liquors sold to the defendant, who is an innkeeper in the county of Huron. The Canada Temperance Act,

popularly called the Scott Act, is in force in that county, and the defence set up is that the defendant intended to re-sell the liquor in that county, which was known to the plaintiffs, and that consequently the price cannot be recovered. The plantiffs object to the defendants setting up this defence under the statute, as he has not given notice of his intention to do so. The question, therefore, which I have to consider is, whether this notice is requisite.

By section 92 of the Division Courts Act it is enacted as follows: "In case the defendant desires to avail himself of the law of set-off, or of the Statute of Limitations, or of any other statute having force of law in Ontario, he shall, at least six days before the trial or hearing, give notice thereof in writing to the plaintiff, or leave the same for him at his usual place of abode, if within the division, or if living without the division, he shall deliver the same to the Clerk of the Division Court."

For the defendant it is argued that no notice is necessary, because this Temperace Act inflicts penalties for the infraction of its provisions, saying nothing about rendering the contract of sale invalid, that being a consequence superadded by the common law.

According to this argument this clause of the Division Courts Act only applies to the Statute of Limitations, the Statute of Frauds, or any other statute which bars the remedy, unless writing or some other preliminary proceeding is requisite, bearing directly upon the contract. This appears to me to be a narrow and restricted view of the words "or of any defence under any other statute having force of law in Ontario," and I am not able to bring myself to the conclusion that this contention is correct. It is said, suppose A sells goods to B, which A has received knowing them to have been stolen, must A in seeking to invalidate the sale give notice of the statute attaching criminal consequences to the knowing receiver of stolen goods? I answer, not necessarily. Because, independently of that statute, the sale is rendered invalid by the common law, because the transaction is against the public welfare.

Again, it is said, when the consideration of the contract is bribery at an election, or of goods procured by a smuggling transaction in fraud of the revenue, is a defendant obliged to give notice of the statute relating to bribery or of that inflicting penalties for smuggling in order to set up a defence in the Division Court? I answer in the negative. Because outside the statutes, in either case, a contract under such circumstances is vitiated by the Common Law as being against the public welfare. In all these, and similar instances, it is not necessary that in the Division Court notice of any statute should be given, because if no statute was in existence, such transactions would be invalid. But it is different with respect to the Canada Temperance Act. The sale of this liquor would be perfectly valid if it were not for that Act. Take it away, and nothing is left for the defendant on which to rest his defence.

The Division Courts Act allows defences of fraud, and various other defences to be set up without notice; and in this respect often puts the plaintiff to a disadvantage. Where there is a requirement of notice I think we ought not to lean to the restrictive side, if the cause of action is good and maintainable, but for a particular statute, I think notice of that statute should be given for the defence.

The operation of the Temperance Act is not universal in Ontario. It is confined to particular municipalities, and thus the question of locality is involved, and this circumstance adds to the desirability that the intention to set it up should be made known to the plaintiff.

The conclusion I arrive at is, that in the absence of notice, this defence is not admissible, and the judgment will be for the plaintiffs.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

CAUCHON *v.* LANGELIER.

Controverted Elections Act, c. 9, s. 50, R.S.C. —Judgment dismissing petition for want of prosecution non-appealable—Judgment refusing to set aside petition for want of prosecution non-appealable.

On the 23rd of April, 1887, an election petition was duly presented to set aside the election of the respondent as a member of the House of Commons for the Electoral District of Montmorency. The trial of the petition was fixed by order of a judge for the 22nd of

October, but was not proceeded with. On the 16th December application was made by respondent to the court to have the petition declared abandoned on the ground that six months had elapsed after the petition had been presented without the trial having been commenced, as provided in s. 32, c. 9, R.S.C. This application was granted by the court, and the election petition was dismissed. On appeal to the Supreme Court of Canada it was held (FOURNIER and HENRY, JJ., dissenting), that there was no provision in the Dominion Controverted Elections Act authorizing an appeal from such an order or judgment (R.S.C. c. 9, s. 50), and therefore the present appeal should be quashed, with costs, for want of jurisdiction.

Appeal quashed with costs.

Ferguson, for appellant.

McIntyre, for respondent.

In the L'Assomption Election Appeal, where the judgment appealed from was the decision of the judge refusing to set aside the election petition, on the ground that the trial had not been proceeded with within six months since the date of its presentation, and there was a subsequent judgment of the court setting aside the election on the admitted acts of corruption by agents, it was also held that the Supreme Court of Canada had no jurisdiction to entertain the appeal.

Prefontaine, for appellant.

Bisaillon, for respondent.

In the L'Islet Election Appeal, the appeal was quashed for the same reason as that given in the Montmorency case.

BENDER *v.* CARRIERE *et al.*

Executory contract—Non-fulfilment of—Action for price—Temporary exception—Incidental demand—Damages—Cross appeal.

In March, 1883, B contracted with C *et al.* for the delivery of an engine, in accordance with the Herreshoff system, to be placed in the yacht "Ninie," then in course of construction. The engine was built, placed in the yacht, and upon trial was found defective. On the 31st August C *et al.* took out a *saisie conservatoire* of the yacht "Ninie," and claimed $2,199.37 for the work and materials furnished. B petitioned to annul the attachment, and pleaded that the amount was not yet due, as C *et al.* had not performed their contract, and by incidental demand claimed a large amount. After various proceedings the *saisie conservatoire* was abandoned and the Court of Queen's Bench, on an appeal from a judgment of the Superior Court in favor of B, both on the principal action and incidental demand, ordered that experts be named to ascertain whether the engine was built in accordance with the contract, and report on the defects. A report was made by which it was declared that the contract of C *et al.* was not carried out, and that work and materials of the value of $225 were still necessary to complete the contract.

On motion to homologate the expert's report, the Superior Court was again called upon to adjudicate upon the merits of the demand in chief and of the incidental demand, and that Court held that as C *et al.* had not built an engine as covenanted by them, B's plea should be maintained, but as to the incidental demand, the Court held the evidence insufficient to warrant a judgment in favour of B. On appeal to the Court of Queen's Bench, that Court, taking into consideration the fact that the yacht "Ninie" had since the institution of the action been sold in another suit, at the instance of one of B's creditors, and purchased by C *et al.*, the proceeds being deposited in Court to be distributed amongst B's creditors, credited B with $225 necessary to complete the engine, allowed $750 damages on B's incidental demand, and gave judgment in favour of C *et al.* for the balance, viz., $1215.00 with costs.

The fact of the sale and purchase of the yacht subsequent to the institution of the action did not appear on the pleadings.

On appeal to the Supreme Court of Canada, and cross-appeal as to the amount allowed on incidental demand by the Court of Queen's Bench, it was

Held, reversing the judgment of the Court of Queen's Bench (SIR W. J. RITCHIE, C.J., and TASCHEREAU, J., dissenting), that as it was shown that at the time of the institution of C's action it was through faulty construction that the engine and machinery therewith connected could not work according to the Herreshoff system, on which system C *et al.* covenanted to build it, their action was premature.

Held, also, that the evidence in the case fully warranted the sum of $750 allowed by the Court of Queen's Bench on B's incidental demand, and therefore he was entitled to a judgment for that amount on said incidental demand with costs. TASCHEREAU, J., was of opinion on cross appeal that B's incidental demand should have been dismissed with costs.

Appeal allowed and cross appeal dismissed with costs.

Amyot, for appellant.

Bosse, Q.C., for respondents.

STEPHEN *v.* CHAUSSE.

Elevator - Negligence of employee - Liability of landlord - Damages - Art 1054 *C. C. - Vindictive damages - Misapplication of Term - Cross appeal, no notice of.*

On the 13th of April, 1883, C., an architect, who had his office on the third flat of a building, known as the "Ottawa Building," in the city of Montreal, in which the landlord had placed an elevator for the use of the tenants, desiring to go to his office, went towards the door of the elevator, and seeing it open, he advanced to enter, but in lieu of putting his foot on the floor of the elevator, which was not there, he fell into the cellar and was seriously injured. In an action brought by C. against R., the landlord, claiming $15,000 damages for the injury suffered and loss. It was proved at the trial that the boy, an employee of R., in charge of the elevator at the time of the accident, had left the elevator with the door open to go to his lunch, leaving no substitute in charge. It was shown also that C. had suffered seriously from the fracture to his skull, had been obliged to follow for many months an expensive medical treatment, and had become almost incapacitated for the exercise of his profession. C. had been in the habit of using the elevator during the absence of the boy. The trial judge awarded C. $5,000 damages, and on appeal to the Court of Queen's Bench (Appeal side) P. Q., that amount was reduced to $3,000, on the ground that C. was not entitled to vindictive damages.

On appeal to the Supreme Court of Canada,

Held, affirming the judgment of the court below, that R. was liable for the fault, negligence and carelessness of his employee. Art. 1054, C.C., and that the amount awarded was not unreasonable.

Held, also, in the opinion of the court, although the sum of $5,000 awarded in a case like the present could not be said to include vindictive damages, the judgment of the Superior Court could not be restored, there being no cross appeal.

Appeal dismissed with costs.

Carter, for appellant.

St. Pierre, for respondent.

MONTMAGNY CONTROVERTED ELECTION CASE.

CHOQUETTE *v.* LABERGE.

R. S. C. c. 9, s. 11 - Service of Election petition defective - Art. 57 *C. C. P. - Preliminary objection.*

The service of an election petition made in the Province of Quebec, at the defendant's law office situated on the ground floor of his residence, and having a separate entrance, by delivering a copy thereof to the defendant's law partner, who was not a member of, and did not belong to, the defendant's family, is not a service within s. 11, c. 9, Revised Statutes of Canada, and Art. 57 C. C. P., and a preliminary objection setting up such defective service was maintained and the election petition dismissed. GWYNNE, J., dissenting.

Belcourt, for appellant.

Belleau, for respondent.

QUEBEC COUNTY CONTROVERTED ELECTION CASE.

O'BRIEN *v.* SIR A. P. CARON.

Election petition - Judgment on motion to dismiss - Non-appealable - R. S. C. c. 9, s. 50.

The election petition in this case was presented on the 9th of April, 1887. On the 13th day of September, an application was made to a judge in Chambers to have the case fixed for trial, and the trial was fixed for the 31st of October, at Quebec, on which day it was continued by consent to the 19th day of December. On this last-mentioned day the

respondent moved the court to dismiss the petition on the ground that the petitioners had not proceeded to trial within six months from the presentation of the petition. On the 26th of December the Court, MR. JUSTICE CARON presiding, dismissed the election petition without costs. On appeal to the Supreme Court of Canada, it was

Held, FOURNIER and HENRY, JJ., dissenting, that the Supreme Court of Canada had no jurisdiction to entertain an appeal from said judgment. Montmagny Election case, decided this term, followed.

Per HENRY, J., affirming the judgment of MR. JUSTICE CARON, that as the petitioners had not made an application supported by affidavit to enlarge the time for the commencement of the trial, as provided in s. 33, c. 9, R. S. C., the election petition was properly dismissed.

Appeal quashed with costs.

Martin and *McDougall*, Q.C., for appellant.

Bosse, Q.C., for respondent.

[Feb. 29.

PROVIDENCE WASHINGTON INSURANCE CO. *v.* GEROW.

Voyage insured—Port on western coast of South America—Deviation.

A marine policy insured the ship "Minnie H. Gerow" for a voyage from Melbourne, Australia, to Valparaiso for orders, thence to a loading port on the western coast of South America, and thence to a port of discharge in the United Kingdom.

The ship went from Valparaiso to Lobos, an island from twenty-five to forty miles off the western coast of South America, and after sailing from there was lost. In an action on the policy

Held, (reversing the judgment of the court below) that, whether or not Lobos was a port on the western coast of South America within the meaning of the policy, was a fact to be determined by the jury, and the judge not having left it to the jury, a new trial was ordered on the ground of misdirection.

Straton, for the appellants.

Weldon, Q.C., and *C. A. Palmer*, for the respondents.

CITY OF MONTREAL *v.* LABELLE.

Damages—Art. 1056, *C. C.—Solatium—Cross appeal, no notice of.*

In an action of damages brought against the corporation of the city of Montreal by Z. L. *et al*, the descendant relations of L., who was killed while driving down St. Sulpice street, alleged to have been at the time of the accident in a bad state of repair, by being thrown from the sleigh on which he was seated, against the wall of a building, the learned judge, before whom the case was tried without a jury, granted Z. L. *et al.* $1,000 damages, on the ground that they were entitled to said sum by way of solatium for the bereavement suffered on account of the premature death of their father.

Held, reversing the judgments appealed from, that the judgment could not be affirmed on the ground of solatium, and as the respondents had not filed a cross appeal to sustain the verdict on the ground that there was a sufficient evidence of pecuniary loss for which compensation may be claimed, Z. L. *et al.'s* action must be dismissed with costs.

Canadian Pacific Railway Co. v. *Robinson*, 14 Can. S. C. R. 105, followed.

Appeal allowed with costs.

Mathieu, for appellants.

Stephens, for respondents.

[Feb. 28.

SNOWBALL *v.* RITCHIE.

Boundary—Dispute as to—Reference to Surveyors—Duties of surveyors under reference.

R., who held a license from the Government of New Brunswick to cut timber on certain Crown lands, claimed that S., licensee of the adjoining lot, was cutting timber on his grant, and he issued a writ of replevin for some 800 logs alleged to be so cut by S. The replevin suit was settled by an agreement between the parties to leave the matter to surveyors to establish the line between the two lots, the agreement providing that "the lines of the land held under said license (of R.) shall be surveyed and established by (naming the surveyors) and the stumps counted," etc.

Held, reversing the judgment of the court below, that under this agreement the survey-

ors were bound to make a formal survey, and could not take a line run by one of them at a former time as the said boundary line. Appeal allowed with costs.

Gregory, for the appellant.

Welden, Q.C., for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.] [Mar. 9.

STALKER *v.* TOWNSHIP OF DUNWICH.

Municipal Corporation—Pathmaster—Public duty—Private interest—R. S. O. (1877) *c.* 73, *s.* 1.—*Liability—Acquiescence by corporation—Compensation under Municipal Act—Assessment of Damages.*

A pathmaster is "an officer or person fulfilling a public duty" within the meaning of R. S. O. (1877) c. 73, s. 1, and for anything done by him in the performance of such public duty he is entitled to the protection of the statute; but where, professing to act as a public officer, he seeks to promote his private interest by some act, he disentitles himself to the protection of the statute, and may be proceeded against for such act as if he were a private individual.

And where a pathmaster of a township, in the course of his employment, so acted as to disentitle himself to the protection of the statute, and thereby causes damage to the plaintiff,

Held, that the township corporation, as well as the pathmaster was liable; and even if not originally so, the corporation made itself liable by sanctioning what was done, and refusing to amend it after notice.

Damage to land, arising from an overflow of water, caused by negligently diverting the water from its natural course without providing sufficient outlet, is not the subject of compensation under the Municipal Act, 1883.

Since the O. J. Act damages should be assessed up to the date of judgment.

W. R. Meredith, Q.C., for the plaintiff.

Lash, Q.C., and *Glenn*, for the defendants.

Full Court.] [Mar. 9.

REGINA *v.* BUSH.

Constitutional law—Appointment of magistrates by Lieutenant-Governor of Province—Powers of Provincial Legislature—B. N. A. Act, ss. 91, 92, 48 *Vict. c.* 17 (*O.*).

The Crown has the prerogative right to appoint justices of the peace within the Dominion of Canada and each of its Provinces, but it derogated from that right by assenting to the B. N. A. Act, which conferred upon either the Parliament of Canada or the Legislatures of the Provinces the power to pass laws providing for the appointment of justices of the peace. Such laws are in relation to the administration of justice, and upon the proper construction of ss. 91 and 92 of the B. N. A. Act, are exclusively within the power of the Provincial Legislatures, under s. 91, para. 14. Additional weight is given to the construction placed upon these sections by the Parliament of Canada having from time to time, since the B. N. A. Act, passed laws recognizing the right assumed by the Provincial Legislatures to pass such laws and the appointments made under them.

An order *nisi* to quash a conviction made by a police magistrate appointed by the Lieutenant-Governor of Ontario, under 48 Vict. c. 17 (O.), on the ground that such statute is *ultra vires*, was therefore discharged with costs.

A. H. Marsh, for the defendant.

Irving, Q.C., and *Moss*, Q.C., for the Attorney-General of Ontario.

Delamere, for the magistrate.

Chancery Division.

Boyd, C.] [Mar. 1.

IN THE MATTER OF THE UNION RANCH COMPANY.

This was a petition by certain shareholders of the above Company, praying a winding-up order under R. S. C. c. 129.

Held, that R. S. C. c. 129, like the Insolvent Act of 1875, which provided for the winding-up of incorporated companies, is intended to be put into operation at the instance of creditors only.

Dr. Snelling, for the petitioners.

Bain, Q.C., and *McGregor*, for the Company.

Boyd, C.] [Dec. 16, 1887.

Re THE CENTRAL BANK OF CANADA.

Winding-up Act, R. S. C. c. 129—Shareholders' and creditors' nominees for liquidators — Interested liquidators — Parties mostly concerned in realizing assets—Liquidators' compensation.

Under ss. 98 and 99 of the Winding-up Act, R. S. C. c. 129, meetings of shareholders and creditors respectively were held. The shareholders' meeting recommended the appointment of C., G. and S. as liquidators. The creditors' meeting recommended C., G. and H. On the application to the court for the appointment of three liquidators, it was not denied that it would be necessary to resort to the double liability of shareholders to satisfy the claims of creditors under R. S. C. c. 120, s. 70.

Held, that the choice of the creditors, they having the chief and immediate concern in realizing the assets, would be adopted by the court, and their nominees, C., G. and H., should be appointed.

As between H. and S. preference should be given to the former, because he was neither a creditor nor a shareholder, while S. was both, and so at a disadvantage, the general rule being that it is desirable that liquidators should be disinterested persons.

Sec. 28 of the Winding-up Act intends that the remuneration is not necessarily to be increased because three are to be paid instead of one. The recompense for services is usually a percentage based on the time occupied, work done, and responsibility imposed, and when fixed goes to the liquidator, and if more than one, is distributed amongst them.

Bain, Q.C., for the petitioning creditor.

Robinson, Q.C., and *S. H. Blake*, Q.C., for the bank.

Practice.

Rose, J.] [Feb. 24.

HARDY *v.* PICKARD.

Costs—Omission to order at Trial—Subsequent order—Rule 338.

The trial Judge reserved a judgment, and afterwards delivered a written judgment in the plaintiff's favour, but inadvertently omitted to make any order as to costs.

Held, that the case came within Rule 338, and that the Judge had power, even after an appeal to a Divisional Court which left his judgment undisturbed, to make an order as to costs.

Fricker v Hobson, 14 Chy. D. 542, followed.

R. A. Dickson, for the plaintiff.

W. T. Douglas, for the defendant.

Chy. Divisional Court.] [Feb. 27.

In re SMART, INFANTS.

Infants—Custody—Habeas corpus—Petition.

The order of FERGUSON, J., 12 P. R. 312, was affirmed with one variation, viz., the *habeas corpus* is to run concurrently with the petition directed to be filed, and to be disposed of with it.

J. Maclennan, Q.C., and *H. J. Scott*, Q.C., for David Smart.

S. H. Blake, Q.C., and *H. Cassels*, for Emily A. Smart.

Q. B. Divisional Court.] [Mar. 9.

BANK OF HAMILTON *v.* BAINE.

Absconding debtor — Successive applications for writ of attachment—Fact of prior application not disclosed—Cause of action—Particularity in stating.

An application was made to a County Judge for an order to issue a writ of attachment under the Absconding Debtors' Act; the judge did not finally determine against the application, but gave leave to renew it upon a further affidavit.

Held, that there was no reason why the application should not afterwards be made to another judge.

Semble, also, that where a judge refuses to grant an attachment, or an order to hold to bail, successive applications may be made to successive judges upon the same material, and an order granted by any one of them will be as valid as if it had been made by the first one; but in the case of a subsequent application upon the same, or different material, the judge should always be informed of every previous application; this, however, is more a matter of propriety than of legal right, and an omission to do so would not be a ground for setting aside the order, if the material warranted the granting of it.

Held, also, that the same particularity in stating the cause of action is not required when a judge has to make an order for a writ of attachment or to hold to bail, as was required in an affidavit to hold to bail when no order of a judge was required, nor as when personal liberty is involved.

McCarthy, Q.C., for the plaintiffs.

Aylesworth, for the defendant.

Court of Appeal.] [Mar. 8.

TEMPERANCE COLONIZATION SOCIETY *v.* EVANS *et al.*

Jury notice—Money demand—Equitable cause of action—Severing issues—Rule 256, *O.J.A.—Trial Judge—C. L. P. Act, s.* 255.

The order of the Chancery Divison, 12 P.P. 48, restoring the defendants' jury notice, which had been struck out, affirmed by this Court.

A. H. Marsh, for the appellants.

Hoyles, and *A. D. Cameron*, for the respondent.

Miscellaneous.

THE LAWYER AND HIS GARDEN.—Our old friend, James Vick, seedsman, of Rochester, N. Y., sends as usual his interesting catalogue for 1888. No recreation is better for a professional man than working in his garden, if he can afford to have one. At least so Chief Justice Draper thought, and he was as good a florist as he was a jurist. Whether he bought his seeds from James Vick we cannot say; but we do, and highly recommend them.

Law Society of Upper Canada.

CURRICULUM.

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

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

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

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

5. The Law Society Terms are as follows:—

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

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

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

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

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

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

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

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

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

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

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

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles must be served before Certificates of Fitness can be granted.

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

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

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

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

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

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

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

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

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

FEES.

Notice Fee	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM

For 1888, 1889, and 1890.

Students-at-Law.

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

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

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

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

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

ENGLISH.

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

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1888 } Souvestre, Un Philosophe sous le toits.
1890 }
1889 Lamartine, Christophe Colomb.

or NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics, and Somerville's Physical Geography; *or*, Pecks' Ganot's Popular Physics, and Somerville's Physical Geography.

Articled Clerks.

In the years 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

RULE *re* SERVICE OF ARTICLED CLERKS.

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

First Intermediate.

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

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

Second Intermediate.

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

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

For Certificate of Fitness.

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

For Call.

Blackstone, Vol. I., containing the Introduction and Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law, and Pleadings and Practice of the Courts.

Candidates for the Final Examination are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

Trinity Term, 1887.