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THE vacancy caused by the death of Mr. Esten, the late Secretary and sub-Treasurer of the Law Society, has been filled by the appointment of Mr. Herbert Macbeth, Barrister, of London.

IN another column will be found a letter upon the decision of the Privy Council in the Manitoba school case in reply to some criticisms that have lately appeared. The communication is from an old and valued correspondent who has devoted much attention to this subject, and his letter should be read with interest.

THE devices of the unprofessional debt collector are sometimes ingenious, but occasionally rather disastrous in their results, "the engineer being hoist with his own petard." This was the case in *Green* v. *Minnes*, 22 O.R. 177, where a creditor having an account against a debtor which he was unable to collect in the ordinary way placed it in the hands of "The Canadian Collecting Co." This company, in order to coerce the debtor into payment, threatened (and subsequently carried out the threat) to advertise the debt for sale "on every bill board in the city." Happily, however, the amount advertised as due was larger than the amount of indebtedness the creditor was able to prove, and the publication was therefore held libellous, and the defendants were mulcted in $50 damages and full costs of the action.

THE last number of the *Indian Jurist* must, we think, have been written during the dog days, when life hangs heavy on the human breast. Adverting to a recent note in this journal which spoke in praise of a member of our Bar who left by will a sum of money to the Law School, our contemporary says: "We wonder how the generous donor's next-of-kin look upon him. The law ought to prevent these things being done." Our contemporary here opens a large question, viz., whether there should be any power at all of making testamentary disposition of property. So long, however, as this right is conceded by the law, the wishes of the testator seem, even from the high poetic Oriental standpoint, entitled to at least as much consideration as those of his next-of-kin. In the present case it is not *en evidence* that the testator had any next-of-kin, and we believe, indeed, that, if he had, they were very remote connections, so that our contemporary's solicitude is misplaced. We are somewhat surprised at a legal journal taking exception to a bequest intended to confer a lasting benefit on future generations of lawyers and litigants.

The same journal considers us ungallant because we said that a woman can find a more suitable place in life to fill than that of a counsel, and then instances the case of lady doctors; but that there is no analogy between these two cases a moment's reflection will make patent. We are then told that there is a fine opening for legal practitioners of the fair sex in India because "so many ignorant, incompetent women possess large estates," and "what some educated women can do for the bodies of their sisters, surely others may reasonably be expected to do for their properties." We in Canada have had no complaints that the rights of female litigants are neglected by male practitioners, but it appears to be otherwise in India.

A WORK of great magnitude and of greater importance is about to be issued in Europe by the International Criminal Law Association, at whose annual session, held at Christiania last year, it was resolved to publish a work on the comparative penal laws of the present day. The initiatory countries are Germany, France, Holland, and Switzerland, and the direction of the work is entrusted to Dr. Otto Von Liszt, Professor of Criminal Law at Halle, Germany. It is intended that the work shall treat of penal legislation in the different countries, penal science in general, crimes and misdemeanours. The first volume, which will form the basis of four others, will treat of the codes and statutes of the various countries, and the basis upon which the criminal laws of each country and its colonies rests. It will also sketch briefly the historical developments, and the system and tendency of the legislation. The first volume is divided into groups of countries, the first group being devoted to Great Britain and her colonies and the United States, and the succeeding groups include all the legislative states of Europe, Asia, Africa, and South America. In order that a work of this magnitude should be successful, it will require the support not only of the book-buying public, but also of all societies and libraries, legal and other, where this undertaking, of no passing interest, but of lasting importance, may be of service to all.

The science of penal law is, in Canada, almost in its infancy, very few of our legal minds having devoted much attention to it. Codification of the criminal law has long been the hope of some, but with few, and a few only, did the hope form itself into any tangible shape. Among these latter was Sir John Macdonald, the late Premier of Canada, who gave much consideration to criminal law, and had long looked forward to codification, as had also Judge (now Senator) Gowan, his life-long friend, who, in Sir John Macdonald's consolidations of and improvements in the criminal law, during the whole time he was Attorney-General and Minister of Justice, rendered his friendly services to him in the preparation of criminal law measures. The codification of the criminal law of Canada was first undertaken by the Macdonald Government, and after the late Premier's death was adopted by the Abbott Government and carried to a successful issue by the present able and energetic Minister of Justice; but it is no disparagement to Sir John Thompson's abilities to say that he could scarcely have expected to succeed if the ground had not been well prepared in the re-

visions, consolidations, and amendments carried out under the auspices of the late Premier. But to Sir John Thompson belongs the credit of placing on the statute book a criminal code for Canada, which will couple his name with the achievement of a great and important measure of criminal law reform.

A POINT of practice of some importance has been recently decided in the case of *Morse* v. *Lamb*, a report of which will be found on another page. Under the old practice in Chancery, in case a defendant made default in answering the plaintiff's bill of complaint, a practice prevailed enabling the plaintiff on præcipe "to note the bill *pro confesso*" as against such defendant, the result of which was to preclude the defendant from thereafter putting in any defence to the suit except by leave of the court, and the plaintiff was thereby relieved from the necessity of giving the defendant, as to whom a bill was so noted, any further notice as a preliminary to obtaining a decree; but the plaintiff was entitled to obtain judgment against a defendant as to whom the note *pro confesso* had been entered, as though he had confessed the truth of the allegations in the bill on which the plaintiff based his claim to relief.

The original Judicature Rules did away with this very useful procedure, and failed to substitute any other; but an amendment was made by the introduction of Rule 393, which enabled a plaintiff to close the pleadings as against a defendant who has made default in delivering a defence. But this Rule does not dispense with service of notice of motion for judgment on defendants as to whom the pleadings have been thus closed. And it will be noted that by the terms of Rule 393 its provisions are only applicable to cases where a statement of claim has been served. No provision is made for entering such a note where a defendant has been served with the writ in a mortgage action and has failed to appear. If the defendant were a sole defendant judgment could be entered against him, as of course on the indorsement on the writ; but if there happens to be other defendants, no provision is made by the Rules for closing the pleadings or otherwise preventing defendants in default for want of appearance from appearing pending the service of other defendants. This difficulty was accentuated in the case of *Morse* v. *Lamb*, to which we have referred, where there were 271 defendants, and where a great many of the defendants had made default in appearance, and where the serving of such defendants with a statement of claim would have involved a very great and unnecessary expense. The Chancellor has, we think, very happily solved the difficulty by making an order by *analogy* to the practice laid down in Rule 393, as he is empowered to do under Rule 3. By this order he has directed the pleadings to be noted as closed as against the non-appearing defendants, and has authorized the plaintiff, without further notice to them, to move for judgment against them when the action is ready for adjudication as against the other defendants.

This, however, seems a somewhat rough and ready way out of the difficulty; it still involves a motion in chambers to accomplish what should, and could, be equally well done as of course, provided a Rule were passed for that purpose.

We think what is really wanted is a revival, as regards actions where equitable relief is claimed, of the old *pro confesso* procedure of the former Court of Chancery. Rule 393 does not go far enough; it does not extend to cases where, on default of appearance, the plaintiff would be entitled to enter judgment against a defendant on præcipe if he were a sole defendant, without serving a statement of claim; and even in the cases to which it does apply, it does not dispense with service of notice of motion for judgment on the defendants against whom the pleadings have been noted as closed for default of defence.

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for July—*Continued.*)

CRIMINAL LAW—PRACTICE—APPEAL FROM SUMMARY CONVICTION—DEPOSIT IN LIEU OF RECOGNIZANCE—(R.S.C., c. 178, s. 77).

The Queen v. *Justices of Anglesey* (1892), 2 Q.B. 29, was an application for a mandamus to compel justices to hear an appeal from a summary conviction. Before notice of appeal had been given, the convicting justices had fixed the amount to be deposited by the appellant in lieu of his giving a recognizance (see R.S.C., c. 178, s. 77). Day and Charles, JJ., held that this was premature, as the justices were bound to have the notice of appeal before them in order that they might properly estimate the amount required to be deposited, and they therefore held that the Court of Sessions was right in refusing to hear the appeal, and dismissed the application. It may be noted that the English statute 42 & 43 Vict., c. 49, s. 31, s-ss. 2, 3, is not in precisely the same terms as R.S.C., c. 178, s. 77; but the principle on which the decision proceeds appears to be applicable to the construction of the latter Act.

DEFAMATION—LIBEL—REGISTER OF COUNTY COURT JUDGMENTS—TRADE PROTECTION SOCIETY.

In *Searles* v. *Scarlett* (1892), 2 Q.B. 56, the plaintiff sued for damages for an alleged libel published by the defendants, who were a trade protection society. The alleged libel consisted of an extract from a register of judgments recovered in the County Court against certain persons named, among whom was the plaintiff. The register was kept in pursuance of an Act of Parliament, and the defendants' publication of it was accompanied by a note that the statement was taken from a register of County Court judgments, but that no distinction was made in the register between actions for debt or damages or properly disputed cases, neither was it known which of the judgments remained unpaid, but it was probable that a large proportion of them had been settled or paid. The plaintiff alleged, by way of innuendo, that the statement meant that a judgment had been obtained against him which remained unsatisfied, and that he was insolvent and a person to whom credit ought not to be given. At the trial the plaintiff was nonsuited by Day, J., and on appeal the Court of Appeal (Lord Esher, M.R., and Lindley and Kay, L.JJ.) were agreed that the register being a public document its publication was privileged, and that, having regard to the note ap-

pended, the publication was not susceptible of the alleged innuendo. The presence of the note was held to distinguish the case from *Williams* v. *Smith*, 22 Q.B.D. 134 (noted *ante* vol. 25, p. 163), where the list of judgments had been published without any such qualifying statement.

CRIMINAL LAW—ATTMEPT TO DISCHARGE LOADED ARMS—EVIDENCE FOR THE JURY—24 & 25 VICT., C. 100, S. 18—(R.S.C., C. 162, S. 13).

The Queen v. *Duckworth* (1892), 2 Q.B. 83, was a prosecution for attempting to discharge loaded firearms at another person. The indictment was laid under 24 & 25 Vict., c. 100, s. 18 (R.S.C., c. 162, s. 13), which enacts that whosoever shall unlawfully or maliciously, "by drawing a trigger or in any other manner," attempt to discharge any kind of loaded arms at any person with intent to do grievous bodily harm shall be guilty of felony. At the trial it was proved that the prisoner drew from his pocket a loaded revolver and pointed it at his mother. His wrists were seized by bystanders as he was raising the pistol, and, after a struggle, it was taken from him. During the struggle his finger and thumb were seen fumbling about the revolver, which cocked automatically when the trigger was pulled. On a case stated by Lawrance, J., the court (Lord Coleridge, C.J., and Hawkins, Wills, Lawrance, and Wright, JJ.) were unanimously of opinion that the prisoner could, on the evidence, be properly convicted of an attempt to discharge the revolver within the meaning of the Act; and *Regina* v. *St. George*, 9 C. & P. 483, was overruled.

EMPLOYERS' LIABILITY ACT (43 & 44 VICT., C. 42), S. 1, S-S. 3 (53 VICT., C. 30, S. 3, S-S. 1 (O.))—MASTER AND SERVANT—"WAY," DEFECT IN.

Willetts v. *Watt* (1892), 2 Q.B. 92, is a decision under The Employers' Liability Act (55 Vict., c. 30 (O.)). In the workshop of the defendant, in which the plaintiff was employed, was a catch-pit covered by a lid. This lid was removed for a temporary purpose, and the plaintiff, while it was so removed, fell into the pit and was injured, in passing from one part of the shop to another in the course of business. The judge of the County Court who tried the action held that the defendants were liable. Hawkins and Wills, JJ., reversed his decision on the ground that the place where the plaintiff fell was not "a way" within the meaning of the Act, and the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.), although dissenting from them as to the place being "a way," nevertheless held that the defendants were not liable, on the ground that the temporary removal of the lid did not constitute a defect in the way. Lord Esher's definition of a "way" within the meaning of the Act is "the course which a workman would in ordinary circumstances take in order to go from one part of the shop where business is done to another part where business is done, when the business of his employer requires him to do so." All the judges in appeal were agreed that it is not necessary to constitute a "way" within the meaning of the Act that it should be marked out or defined by any particular boundaries.

SOLICITOR AND CLIENT—AGREEMENT TO PAY LUMP SUM—RETAINER OF COSTS OUT OF MONEYS OF CLIENT—PAYMENT OF COSTS—TAXATION OF COSTS.

In re West (1892), 2 Q.B. 102, was an application by the trustee of a bankrupt for the delivery of a bill of costs by a solicitor of the bankrupt under the following circumstances: The bankrupt, prior to his bankruptcy, had employed the solicitor to do certain work for him, and deposited with him a sum of money to be applied in payment of his costs. After the costs had been incurred, and without the delivery of any bill, the solicitor and the client came to an oral agreement and fixed the costs at a lump sum, which the solicitor retained out of the money deposited with him. The client then became bankrupt, and his trustee made application against the solicitor for a delivery of his bill of costs, which was resisted on the ground that the bill had been paid. Cave and Williams, JJ., held that as under the statute 33 & 34 Vict., c. 28, s. 4, any agreement between a solicitor and client fixing the amount of costs at a lump sum is invalid unless in writing signed by the solicitor and client, the solicitor could not rely on the oral agreement, and that the mere retainer of the costs out of the moneys in his hands did not amount to payment. Except on the latter point, this case would not be applicable in Ontario, as there is no statute in force here similar to 33 & 34 Vict., c. 28, and therefore nothing to prevent the making of an oral agreement fixing the amount of costs already incurred.

EVIDENCE—INFRINGEMENT OF COPYRIGHT ON PICTURE.

Lucas v. *Williams* (1892), 2 Q.B. 113, was an action brought to recover damages for the infringement of a copyright in a picture. At the trial the plaintiff did not produce the original picture, but gave evidence that he had seen it, and that an engraving which he produced was an exact copy of it, and that a photograph sold by the defendant was taken from the engraving. Collins, J., at the trial, held this evidence sufficient without production of the original picture, and the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) affirmed his decision. Such evidence they hold to be primary evidence, and, though the production of the original picture might be more satisfactory, yet that is an objection, as Lopes, L.J., points out, going merely to the value, and not the admissibility of the evidence.

LIQUOR LICENSE ACT—PERMITTING DRUNKENNESS ON PREMISES—(R.S.O., c. 194, s. 73).

In *Hope* v. *Warburton* (1892), 2 Q.B. 134, Day and Charles, JJ., held that it is not necessary in order to sustain a charge of permitting drunkenness on licensed premises (see R.S.O., c. 194, s. 73) to show that a drunken person was served with drink on the premises. By the English Act (35 & 36 Vict., c. 94, s. 18), we may observe, express power is given to a tavern-keeper to eject a drunken man, but we do not think any such provision exists in the Ontario Act.

ROYAL NAVY—RIGHT OF OFFICER TO RESIGN COMMISSION—DESERTION.

Hearson v. *Campbell* (1892), 2 Q.B. 144, was an action for false imprisonment. The facts of the case were that the plaintiff had accepted a commission in the

Royal Navy as an engineer, and, while attached to a ship, desired to resign in order to accept an appointment in China. The lords of the admiralty refused to consent to his resignation, and the plaintiff then obtained leave of absence for three months and left England for China, not intending to return. On his arrival at Singapore he was arrested and sent back to England as a deserter. He then obtained a *habeas corpus* and was discharged on the ground that he was not down on the books of one of Her Majesty's ships at the time of his quitting England, within the meaning of the Naval Discipline Act, 1866; and he then brought the present action against those responsible for his arrest. At the trial before Denman, J., the plaintiff was nonsuited, and on appeal the court (Lord Esher, M.R., and Fry and Lopes, L.JJ.) affirmed the nonsuit, holding that an officer of the navy cannot resign his commission without the permission of Her Majesty, and in doing so stated that they considered that the decision on the *habeas corpus* proceedings was erroneous.

LEGITIMACY, DECLARATION OF—CONTESTANT CONDEMNED IN COSTS OF PETITIONER—ATTORNEY-GENERAL, COSTS OF—LEGITIMACY DECLARATION ACT, 1858 (21 & 22 VICT., C. 93), SS. 4, 5, 11—(R.S.O., C. 113, S. 33).

Bain v. *Attorney-General* (1892), P. 217, was an application for a declaration of legitimacy (see R.S.O., c. 113, s. 33). The petitioner's father was cited and obtained leave to intervene, and gave evidence denying that the petitioner was his daughter. The court, however, decided on the evidence that the petitioner was his legitimate daughter, as claimed by her, and the only question was whether the father could be ordered to pay the petitioner's costs and also those of the Attorney-General. The president, not without doubt, held that he had jurisdiction to order the father to pay the costs of the petitioner, but he refused to make any order for costs in favor of the Crown.

PROBATE—WILL—EXECUTOR ACCORDING TO THE TENOR.

In the goods of Wilkinson (1892), P. 227, a testatrix having appointed two "trustees" of her will, probate was granted to them as being executors according to the tenor.

PROBATE—WILL—CODICIL—MISTAKE IN DATE.

In the goods of Gordon (1892), P. 228, a testatrix made a will in 1887, and afterwards, in 1889, she made another will by which she revoked all former wills. In 1891 she executed a codicil, but by mistake of the solicitor it was stated to be a codicil to her will of 1887. All parties consenting, probate was granted of the will of 1889 and codicil of 1891, omitting the reference to the will of 1887.

PROBATE—ADMINISTRATION—JOINT GRANT TO NEXT OF KIN AND ANOTHER PERSON.

In the goods of Walsh (1892), P. 230, an intestate died leaving a brother and nine nephews and nieces, the only persons entitled in distribution. Three of the nephews and nieces were in Australia; the other six consenting, the court granted administration to the brother and one of the nephews.

PRACTICE—MOTION FOR JUDGMENT IN DEFAULT OF DEFENCE—DISCRETION AS TO COSTS—COSTS—APPEAL—ORDERS XXVII., R. 11; LXV., R. 1 (ONT. RULES 727, 1170).

In *Young* v. *Thomas* (1892), 2 Ch. 134, the action had been heard on motion for judgment in default of defence before Kekewich, J., who considered the litigation oppressive, and, though granting the plaintiff relief, refused to give him any costs, but gave him leave to appeal on the question of costs. The Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) dismissed the appeal, holding that on a motion for judgment in default of defence the judge has, under Ord. lxv., r. 1 (Ont. Rule 1170), discretion to refuse costs; and unless he errs in principle, or from misapprehension of facts, the Court of Appeal will not interfere with his discretion.

VENDOR AND PURCHASER—DOUBTFUL TITLE.

In re New Land Development Association (1892), 2 Ch. 138, was an application, under the Vendors and Purchasers' Act, in which Chitty, J., acted on the well-settled principle that the court will not force a doubtful title on a purchaser. In this case, as the doubt in the title arose under the Bankruptcy Act, it is needless to refer to the case at greater length here, except to say that the decision of Chitty, J., was affirmed by the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.).

RESTRAINT OF TRADE—COVENANT NOT TO CARRY ON BUSINESS WITHOUT CONSENT OF EMPLOYER—CONSENT NOT TO BE WITHHELD TO ENGAGING IN ANY OTHER THAN A RIVAL BUSINESS.

In *Perls* v. *Saalfield* (1892), 2 Ch. 149, the plaintiff brought an action to restrain the defendant from carrying on business in violation of his covenant. The covenant was made with the plaintiff as defendant's employer, and provided that the defendant would not accept another situation or establish himself in any business within fifteen miles of London, without the written consent of the plaintiff, for a period of three years after leaving the plaintiff's service, but such consent was not to be withheld if it could be proved to the plaintiff's satisfaction that the situation sought or the business to be carried on was not for the same class of goods as those sold by the plaintiff. On a motion for an injunction it was held by Kekewich, J., that the clause providing that the plaintiff's consent should not be withheld unless the business to be carried on was of the same class as the plaintiff's indicated that the restrictive clause was intended to apply to all kinds of business whatsoever, and was therefore wider than was necessary for the plaintiff's protection, and consequently void as an unreasonable restraint of trade. This decision was affirmed by the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.).

COMPANY—WINDING UP—CONTRIBUTORY—DIRECTORS' QUALIFICATION SHARES—IMPLIED CONTRACT TO TAKE SHARES.

In re Anglo-Austrian Printing Union (1892), 2 Ch. 158, is a decision on a point of company law. By the articles of association of a company it was provided that the qualification of a director should be the holding of £1000 of shares; that a first director might act before acquiring his qualification, but should in any case acquire it within one month of his appointment, and unless he should

do so he should "be deemed to take the said shares from the company, and the same should be forthwith allotted to him accordingly." Sir Henry Isaacs was appointed a first director, and accepted the office and acted as such for more than a year, but he never applied for nor was allotted any shares, although there were at all times, down to the making of the order for winding up the company sufficient shares unallotted to have enabled the allotment to be made. Under these circumstances Sir Henry Isaacs was placed on the list of contributories for £1000 of shares, and he then applied to have his name removed; but Stirling, J., held that he was properly placed on the list, and the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) affirmed his decision.

LESSOR AND LESSEE—RELIEF AGAINST FORFEITURE—CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44 & 45 VICT., C. 41), S. 14 (R.S.O., C 143, S. 11, S-S. 2).

In *Rogers* v. *Rice* (1892), 2 Ch. 170, the Court of Appeal (Lord Coleridge, C.J., and Lindley and Kay, L.JJ.), affirming Kekewich, J., decided that a lessee cannot obtain relief under the Conveyancing and Property Act, 1881, s. 14 (R.S.O., c. 143, s. 11, s-s. 2), against a forfeiture or re-entry by lessor after the lessor has actually re-entered. That section only applies where the lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture, and does not extend to a case where he has actually recovered possession.

DEED—CONSTRUCTION—RULE IN SHELLEY'S CASE.

In *Evans* v. *Evans* (1892), 2 Ch. 173, the construction of a deed came in question, and the point in dispute was whether or not the rule in *Shelley's case* applied. Kekewich, J., held that it did, but the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) were of a contrary opinion. The deed in question limited the land to one Owen Evans for life without impeachment of waste, with an ultimate remainder over to the use "of such person or persons as at the decease of Owen Evans shall be his heir or heirs-at-law, and of the heirs and assigns of such persons." The Court of Appeal adopted the argument of the counsel for the appellants, that the test whether or not the rule applies is whether the word "heirs" is used to embrace all the descendants of the ancestor collectively, successively, and indefinitely, or whether it is used to designate a new root of descent. If it is used in the former sense, the rule applies; if in the latter, it does not. In the present case the limitation to the person who should be heir of Owen Evans at his death excluded, in effect, all other heirs of Owen Evans and made that particular person a new root of descent, and consequently the rule did not apply.

COMPANY—SALE OF PART OF UNDERTAKING—ACCRETION TO CAPITAL—CAPITAL OR PROFITS—DIVIDENDS.

In *Lubbock* v. *British Bank of South America* (1892), 2 Ch. 198, the defendant bank had sold part of its undertaking for £875,000. After deducting the paid-up capital of the bank, which amounted to £500,000, and certain incidental expenses, there remained a net balance of £205,000, and the question was whether this could be treated as profits and distributed as dividends, or whether it must be regarded as an accretion to capital. Chitty, J., was of opinion that it was profits, and distributable as dividends.

LEASE—FARM—COVENANT TO CULTIVATE—CONVERSION OF FARM INTO MARKET GARDEN BY LESSEE—WASTE.

In *Meux* v. *Cobley* (1892), 2 Ch. 253, the plaintiff, as lessor, claimed an injunction against the defendant, as his lessee, to restrain him from committing alleged waste on the demised premises. The property in question was a farm, and the defendant had covenanted to cultivate it "according to the best rules of husbandry." He had converted part of it into a market garden, and had erected glass houses for growing produce for the London market. Kekewich, J., was of opinion that this was no breach of the covenant, and as the change had not been injurious to the inheritance it was not actionable as waste, and he dismissed the action with costs.

TRUST—TRUSTEE DE SON TORT—PERSONS ASSISTING EXECUTRIX IN CARRYING ON TESTATOR'S BUSINESS IN BREACH OF TRUST.

In re Barney, Barney v. *Barney* (1892), 2 Ch. 265, an unsuccessful attempt was made to make the defendants, Mitchell and Appleford, liable for a breach of trust under the following circumstances: A testator left his property in trust for his wife and children, but left no directions for carrying on his business. The widow and executrix, acting on the advice of the above-named defendants, who were her deceased husband's friends, decided to carry on the business. A banking account was opened in her name, and the bankers were directed not to honour her cheques unless initialled by the defendants, Mitchell and Appleford. The testator's estate was applied in carrying on the business, and these defendants assisted her and initialled the cheques signed by her. There was no suggestion of any *malâ fides*. The business proved to be a losing concern, and the children of the testator brought this action to make the defendants Mitchell and Appleford accountable for the loss; but Kekewich, J., decided that the fact that the executrix could not draw any money from the bank without their concurrence did not give them such a control over the moneys from time to time drawn out as would make them liable therefor as trustees *de son tort*. And he also held that the defendants Mitchell and Appleford were not liable for moneys paid to themselves from time to time for goods supplied by them to the widow in the ordinary course of business; and, further, that although one of the defendants had become a trustee under a deed of arrangement under which all the property and effects used in the business were sold and the proceeds distributed among creditors, of whom he was one, that did not make him liable as constructive trustee for the plaintiffs.

RECEIVER—DAMAGES FOR DETENTION OF GOODS WHILE IN POSSESSION OF RECEIVER.

The Peruvian Guano Co. v. *Dreyfus* (1892), A.C. 166, is a case which has been a long time before the courts. The action was brought by the plaintiffs, claiming delivery of certain cargoes of guano to the plaintiffs, and an injunction restraining defendants from delivering them to any one else, and for the appointment of a receiver. The defendants, under a consent order, took possession of the cargoes "without prejudice to any question between the parties," and they

were to keep a separate account of the expenditures and receipts in respect of the cargoes. A receiver was subsequently appointed, to whom the defendants delivered the unsold cargoes and the proceeds of those which they had sold. At the hearing the plaintiffs were held entitled to the cargoes and to damages for the detention of the cargoes by the defendants. Two points arose, (1) whether the damages for detention could be claimed after the consent order, and, if so, then (2) whether they could be claimed after the appointment of the receiver? As to the first point, the House of Lords (Lords Watson, Bramwell, Macnaghten, and Field) held that the consent order did not convert an unlawful into a lawful detention, and therefore that damages were recoverable for the time the goods were held by defendants under that order; but as to the second point, they held that from the time the receiver was appointed the goods were in the possession of the court, and the defendants were not responsible for damages occasioned by the law's delay. The decisions of Kay, J., 42 Ch.D. 66, and of the Court of Appeal, 43 Ch.D. 216, were therefore varied.

BANKERS—NEGOTIABLE SECURITIES—DEPOSIT OF SECURITIES BY BROKER—HOLDER FOR VALUE, BONA FIDE—BROKER PLEDGING SECURITIES WITHOUT AUTHORITY.

In *The London Joint Stock Bank* v. *Simmons* (1892), A.C. 201, the House of Lords (Lord Halsbury, L.C., and Lords Watson, Herschell, Macnaghten, and Field) have reversed the decision of the Court of Appeal (1891), 1 Ch. 270 (noted *ante* vol. 27, p. 201), and the decision will be welcomed by the banking community with satisfaction. The facts of the case are sufficiently stated in our former note; it will therefore now suffice to state that a banker fraudulently pledged negotiable instruments in his hands belonging to his customers to a bank as a security for an advance to himself. The bank did not know and did not inquire whether the broker had authority to deal with them. The Court of Appeal held that the bank could not retain the securities as against the rightful owners, but the House of Lords has determined that, there being no circumstances to create suspicion, the bank had a good title, having taken the securities for value and in good faith.

CONFLICTING EQUITIES—LEGAL ESTATE—FRAUD—PRIORITY.

In *Taylor* v. *Russell* (1892), A.C. 244, the House of Lords (Lords Herschell, Macnaghten, and Watson) have affirmed the decision of the Court of Appeal (1891), 1 Ch. 8 (noted *ante* vol. 27, p. 71); the short point being as to which of two innocent parties who had been defrauded were to suffer loss under the following circumstances, viz.: Two mortgages were made of the equity of redemption, but each mortgagee supposed he was getting a legal mortgage. Each mortgage was for the full value of the estate, and the second mortgage was taken without notice of the first. On the second mortgagee discovering the existence of the first mortgage he procured the legal estate, which was outstanding in prior mortgagees, whose mortgage was satisfied to be conveyed to him, and by virtue of thus having acquired the legal estate he claimed to have priority over the first mortgage. A vigorous effort was made by counsel for the appellants to

induce the House of Lords to break through the technical rule on which the respondent relied, but without success. And although the law in such cases is, in Ontario, very materially modified by our system of registration of deeds, the case is nevertheless deserving of attention as illustrative of the maxim that where the equities are equal the law must prevail.

COMPANY—LIEN OF COMPANY ON MEMBER'S SHARES FOR INDEBTEDNESS OF MEMBER—WAIVER OF LIEN.

Bank of Africa v. *Salisbury Gold Mining Co.* (1892), A.C. 281, was a suit brought to compel the defendant company to register a transfer of certain shares from one Woolridge to the plaintiffs. By the articles of association of the plaintiff company, the company was entitled to a lien on the shares of members for the amount of their indebtedness to the company, and no member indebted to the company was entitled to transfer his shares without the consent of the directors. Woolridge was indebted to the plaintiff company, and he applied to the plaintiff company for time, and the indulgence was granted in consideration of his transferring to the company certain shares other than those in question, and authorizing the plaintiff company to sell them in default and apply the proceeds in payment on account of his liability. It was contended that this agreement operated as a waiver of the lien on the shares in question, which had been transferred by him to the plaintiffs. But the Judicial Committee of the Privy Council (Lords Watson, Hobhouse, Macnaghten, and Hannen, and Sir R. Couch), though conceding that the lien on the shares of a member might be waived by a subsequent agreement between the company and the shareholder, which was incompatible with the retention of the lien, were nevertheless of opinion that the agreement above referred to had not that effect. The appeal was therefore dismissed.

INSOLVENT—PAYMENT BY INSOLVENT TO CREDITOR—KNOWLEDGE OF CREDITOR OF INSOLVENCY OF DEBTOR.

In *National Bank of Australasia* v. *Morris* (1892), A.C. 287, the appeal was brought from a decision of the Supreme Court of New South Wales. By an Act of that colony, payments by an insolvent to a creditor who at the time of the payment has knowledge that the debtor is insolvent are invalid. The appellants received payment from an insolvent debtor, having knowledge of circumstances from which ordinary men of business would have concluded that their debtor was unable to meet his liability. The Judicial Committee of the Privy Council were of opinion that the payment was invalid and recoverable by the debtor's assignee, and dismissed the appeal.

BANKER—FRAUD BY AGENT OF CUSTOMER—OVERDRAFT BY OFFICER OF GOVERNMENT ON BANK—LIABILITY OF GOVERNMENT FOR OVERDRAFT BY ITS OFFICER.

The London Chartered Bank v. *McMillan* (1892), A.C. 292, presents a rather curious state of facts. By an agreement made by the colonial Government of New South Wales with the plaintiffs, it was arranged that an account should be opened with them by the Registrar-General of the colony, into which account he should pay, from day to day, the moneys collected by him, and that the Regis-

trar-General should from week to week pay over the amounts so deposited by cheques on their account in favour of the colonial treasurer. Moneys were from time to time sent to the plaintiffs' bank by the Registrar-General by the hands of his clerk, who fraudulently kept back part of the moneys and concealed the fraud by forging receipts from the bank for the proper amount. The Registrar-General drew cheques in favour of the colonial treasurer on the account, on the assumption that all the money had been properly paid into the account, which cheques were duly honoured. The result was that the account of the Registrar-General was largely overdrawn to the extent of the amounts fraudulently abstracted by the clerk of the Registrar-General; no notification having been sent to that officer by the bank that the account was being overdrawn. The present action was brought against the colonial treasurer for the amount thus overdrawn; but the Judicial Committee (Lords Watson, Hobhouse, Macnaghten, Morris, and Hannen, and Sir R. Couch) agreed with the Supreme Court of New South Wales in dismissing the action. Their lordships were unable to accede to the argument of counsel for the appellants that the moneys thus paid by way of overdraft were paid in mistake of fact, or could be regarded as had and received by the Government to the use of the bank. On the contrary, they held that they were moneys which the Registrar-General had in fact collected, and which the bank led the Government to believe had actually been deposited with them, and there was no authority, express or implied, from the Government to the bank to honour any cheques of the Registrar-General for any amount beyond what was actually deposited by him. We may observe that the liability of the Registrar-General for the overdraft was not in question.

Notes and Selections.

ELECTRIC WIRE—CONTRIBUTORY NEGLIGENCE.—Where a citizen of Cambridge, Massachusetts, thrust out of his way a "live" wire which lay on the sidewalk it was held by the Supreme Court of the State that he was not guilty of contributory negligence.

INSURANCE, ACCIDENT—EXTERNAL MARK OF INJURY.—Where an insurance policy stated that it did not cover injuries of which there was no visible external mark on the body, and the plaintiff's injury was a strain which was not externally visible for some time after the accident, it was held that he could recover. *Pennington* v. *Pacific, etc., Ins. Co.*, Sup. Court of Iowa, May 23, 1892.

WILL—EVIDENCE OF SOLICITOR.—It was held in *Doherty* v. *O'Callaghan* (Sup. Jud. Ct. Mass., June 27, 1892) that on the question whether or not an instrument presented for probate is the will of the testator, the attorney who prepared the instrument may testify to the directions given him by the testator.

It was contended that the communications were privileged and therefore inadmissible, but the court considered that this privilege no longer existed after the testator's death, and that the attorney should be allowed to testify as a matter of public policy.

LENGTHY JUDICIAL CAREERS.—In your reference to Lord Bramwell (Vol. 34, p. 485), you speak of his judicial career, etc., of thirty-six years, which brings to my mind a case which I believe has no parallel, at least in modern times. Brenton Halliburton was appointed to the Bench of the Supreme Court of Nova Scotia, now a part of Canada, January 10, 1807, and retained the seat until his death in July, 1860—fifty-three and a half years. On the 31st January, 1833, he was made chief justice of the same court, and was knighted late in his life. He was not at all related to Thomas C. Haliburton (Sam Slick), who sat on the same bench from 1st April, 1841, to August, 1856. Sir Brenton had two "l's" in his name; Thomas C. had only one. I think you will not find any other case of a judge sitting the same length as Sir Brenton in an English-speaking country. —*Correspondence in Central Law Journal.*

FIREWORKS—INJURY TO SPECTATORS.—In *Scanlon* v. *Wedger* (Mass. Sup. Jud. Ct., June 21) the defendant unlawfully set off fireworks in a public highway, and the plaintiffs, who had been attracted by the display and were lawfully in the highway, were injured by some of the fireworks. The majority of the court held that, as there was no negligence shown on the part of the defendant, and the plaintiffs being voluntary spectators, they must be presumed to have assented to a chance of personal injury and to have been willing to take any risk there might be, and the court drew a distinction between this case and that of an ordinary traveller merely passing along the highway. In a strong dissenting opinion, Morton and Knowlton, JJ., say that where the defendant was using the highway for a dangerous and unlawful purpose he is liable to the plaintiffs, who were lawfully upon the highway and shown to have been in the exercise of due care, and that only if the plaintiffs aided in the display and contributed by their own conduct to their injuries—which is not claimed—would they have been guilty of contributory negligence. It seems difficult to understand how the majority of the court came to the conclusion they did.

JUDICIAL ORIGINALITY.—In the very felicitous "Letter to Posterity" of Chief Justice Bleckley, of Georgia, printed in the *Green Bag* for February, 1892, occurs this passage: "My trouble is to become fully persuaded that I know. I seem not to have found the law out in a reliable way. I detect so many mistakes committed by others, and convict myself of error so often, that most of my conclusions on difficult questions are only provisional. I reconsider, revise, scrutinize, revise the scrutiny, and scrutinize the revision. But my faith in the ultimate efficiency of work is unbounded. The law is too often unknown, but is never

unknowable. I finally settle down, painful deliberation ceases, and I doubt no more until I am engaged in writing out the opinion of the court, when I discover perhaps that the thing is all wrong. My colleagues are called again into consultation; we reconsider the case, and decide it the other way. Then I am satisfied; for when I know the law is not on one side, it must be on the other."

The real difficulty is that the law is often apparently on both sides, and Chief Justice Bleckley's words may be taken as typically expressive of a dilemma which many times in the course of a year confronts both the advocate as well as the judge. In a State like New York, having many tribunals of co-ordinate jurisdiction, the accumulation of precedents on all subjects leads to most bewildering results. We have sometimes been inclined, when in a quizzical and paradoxical mood, to say that the greatest judges are those who cite fewest cases. Chief Justice Marshall is reported to have remarked that he had decided a certain case according to what he knew the law must be—"Brother Story will furnish the authorities." The saying has almost passed into a proverb that text-writers and law professors make poor judges. To this generalization of course many exceptions must be admitted, but the fact undoubtedly is that very useful instruction may be given, and many legal treatises of great practical merit have been written, by men with scarcely any of the original, analytical power which is indispensable for efficient judicial work.—*N.Y. Law Journal.*

Reviews and Notices of Books.

The Insurance Corporations Act, 1892, *with Practical Notes and Appendices: Appendix A, Subsidiary Acts, with annotations; Appendix B, Departmental Forms; Appendix C, Forms of Insurance Contracts.* By William Howard Hunter, B.A., Barrister-at-Law, with an introductory chapter by J. Howard Hunter, M.A., Barrister-at-Law, Inspector of Insurance and Registrar of Friendly Societies for the Province of Ontario. The Carswell Co. (Ltd.), Toronto, 1892.

A perusal of this work shows us that we cannot properly give a sketch of it without reviewing to some extent the Act to which it relates. Beginning with *Billington* v. *Provincial Insurance Co.* (1876), 24 Gr. 299, numerous judgments, both of our own courts and of the Privy Council, have left the Provincial enactments of full authority over contracts of insurance, fire, life, and accident, entered into within this Province. The constitution, in giving the Province exclusive jurisdiction over insurance contracts, also casts upon it the duty of such legislation and oversight as experience shows to be necessary. The experience of all legislatures throughout the British Empire and the United States abundantly proves that in contracts of insurance certain statutory restraints must be laid upon each of the parties to the contract. In Ontario the Legislature had, from time to time, dealt with various insurance and insuring corporations; *e.g.*,

by R.S.O., c. 167, certain statutory conditions form part of every contract of fire insurance. In the scheme of insurance law, the contracts of fraternal societies occupied an anomalous position. How far a society certificate was a contract of insurance, whether the society had the authority of law to undertake the contract, whether the beneficiary could recover by action—these and kindred questions were incapable of off-hand answers, but awaited, generally, the construction of the court. Indeed, it was not until the decision in *Swift* v. *The Provincial Provident*, 17 A.R. 66, that the status of an insurance corporation was awarded to a society incorporated under the Benevolent Societies Act (R.S.O., 1877, c. 167), and it was more than doubtful whether a similar status could have been acquired by a society incorporated under the same Act subsequent to the revision of 1887. It was therefore urgent that the powers and obligations of fraternal insurance societies should receive statutory definition.

The exclusive jurisdiction of the Province over the contract also necessitated a revision of the relation of licensees under the Dominion Act to the Province. The Parliament of Canada has the undoubted right to incorporate companies with insurance powers; equally clear is the right of the Legislature of Ontario to prescribe the terms and conditions under which such powers may be exercised within the Province, and it may be that the provisions of the Dominion legislation regarding the contract are *ultra vires*. Thus s. 22 of the Insurance Act of Canada prohibits unlicensed persons in the Provinces from exercising their civil rights in undertaking contracts of insurance, and any exercise of such civil rights by an unlicensed person is made punishable by fine and imprisonment. To effectuate this prohibition it is clear from the cases that Provincial legislation is necessary. The Insurance Corporations Act, 1892, is a comprehensive enactment to unify the law of Ontario relating to insurance. All insurance corporations transacting business in the Province are brought under the control of the Provincial department. After the first day of January next the right of any insurer whatever to undertake contracts of insurance, or in the nature of insurance, within the Province, is made to depend upon registry with the Provincial department. Continuance of registry depends upon compliance with the Ontario statute. This Act, therefore, makes an era in insurance law.

Mr. Hunter's edition of this difficult and but imperfectly understood, although comprehensive Act is a timely one, and the numerous and important sections have received careful consideration and a wealth of illustration. The author has not confined his work to annotations on the clauses, but has so fully dealt with his subject that the result is a compendious treatise on the present law of insurance in Ontario. The author is in the fortunate position of being able to know the *raison d'être* of many of the clauses of the new Act, and is entitled to great credit for the promptness with which his work has been brought out. We prefer to see the names of cases printed in italics, but the general get-up of the volume is good.

A Treatise on Power of Sale Under Mortgages of Realty, with Appendix of Statutes and Forms. By Alfred Taylour Hunter, LL.B., Barrister-at-Law. The Carswell Co. (Ltd.), Toronto, 1892.

In the land to the south of us law books have been written on almost every conceivable subdivision of the various branches of the law, but no really good work has yet been written upon the important subject treated of by the author of this work. We feel certain, therefore, that the profession will, and must, give a hearty welcome to this volume, treating, as it does, of the law and practice in connection with one of the most frequently recurring incidents in a solicitor's office. In such everyday matters as proceedings under power of sale are, it is surprising to find how much ignorance prevails even with regard to the elementary legal principles involved, and in what a reckless and perfunctory way these proceedings are often conducted. It seems strange that when such is the case we should have had, up to the present time, no text-book in what the author justly calls this "difficult and most important branch of real property law."

In discussing the question as to who are "assigns" of the mortgagor, and therefore entitled to notice of sale, the author comes to the conclusion that execution creditors of subsequent purchasers and mortgagees are not entitled to notice, although he admits that an argument might be built up against the position he takes from the judgment of Spragge, V.C., in *Larling* v. *Wilson*, 16 Gr., at p. 256. Mr. Leith, in his work, takes a similar position; but it has nevertheless been the practice among conveyancers to serve execution creditors of a purchaser from the mortgagor, and we think that this is a reasonable view of the case, and would be upheld should occasion arise; for we do not see why, when execution creditors of a *mortgagor* are entitled to notice as "assigns," that execution creditors of a *purchaser* from a mortgagor should not be entitled when the purchaser himself is.

The author seems to have overlooked R.S.O., c. 115, ss. 1-3, in that he does not mention that sale papers may be deposited in the proper registry office. This is a provision of which comparatively little use is made, and it seems all the more surprising that it should be so, seeing that sale papers become very valuable documents in a chain of title, and are often of the greatest importance to the owner of the land. Since the cost of deposit is so very small, it is worth considering whether it would not be advisable to compel this course to be taken, which is now but seldom resorted to except when there are conflicting demands for the custody of the sale papers. Referring to the cases of *Clark* v. *Harvey* 16 O.R. 159, and *Re Gilchrist* and *Island*, 11 O.R. 537, in which latter case the Chancellor, in an important judgment, discusses the question of how far an alteration in the wording of the Short Forms Act varies the construction of the long form, the author says, "It seems, on the whole, to be very unsafe to make any change in the interior of the clause—further than to make substitutions for the word 'mortgagee'; and if we are to abide by the view of Mr. Justice Street *(Clark* v. *Harvey)*, who instances a few alterations that might be made in some of the Short Form terms, only very insignificant internal qualifications are admissible by the statutory power."

The work contains, not merely law, but good practical suggestions upon the conduct of sales, making at once a handbook and a book of reference. Undoubtedly, there has been hitherto in this respect a *hiatus valde deflendus* in the legal library, and the author has been fortunate in his choice of a subject, which will at once engage the attention of every practitioner. We think, moreover, that those who are led by their interest in the subject to examine the volume will find much to reward the time they spend in perusal, which will be none the less pleasant in that the style is good and the sentences almost epigrammatic. The author has evidently taken great pains with his work, which is excellently done, and will recommend itself to the profession by its own merits.

Correspondence.

MANITOBA SCHOOL CASE.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—I have seen no article in THE LAW JOURNAL on the legal aspect of the questions resulting from the decision of the Judicial Committee of the Privy Council, read by Lord Macnaghten, declaring the validity of the Manitoba School Act, and reversing the unanimous decision of our Supreme Court, and contrary, I believe, to the opinion of our Minister of Justice and the expectation of our Government. Nor have I seen any such article in any of our public papers, except a startling letter from Mr. Edward Mahon in the Ottawa *Citizen* of the 16th of August last. In this Mr. Mahon says:

"The whole controversy turns upon the construction of section 22 of the Manitoba Act, 1870, passed when that province was entering into our present confederation. That section is as follows: 'In and for the province the Legislature (of Manitoba) may exclusively make laws in relation to education, subject and according to the following provisions: "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the Union."'

"Lord Macnaghten then proceeds to define what was meant by the word 'practice' in the above context. Here is what he says:

"'It is not, perhaps, very easy to define precisely the meaning of such an expression as "having a right or privilege by practice," but the object of the enactment is tolerably clear. Evidently the word "practice" is not to be construed as equivalent to custom having the force of law. Their lordships are convinced that it must have been the intention of the Legislature to preserve every legal right or privilege, and every benefit or advantage in the nature of a right or privilege, with respect to denominational schools which any class of persons practically enjoyed at the time of the Union.' Taking the above definition exactly as the judgment puts it, it is clearly and overwhelmingly decisive of the question.

"No controversy was raised on the facts as to the status of Roman Catholic separate schools at the time of the Union. All parties to the appeal admitted that in the undisputed evidence given in the case the Roman Catholics supported their own schools, and were not under obligation to and did not contribute to the support of any other schools. Surely, then, the conclusion is inevitable from Lord Macnaghten's own definition as applied to such a state of facts that the

Roman Catholics at the date of the Union had then a right or privilege '*by practice*' to support their own schools and be exempt from contributing towards the support of other schools.

"This would be a plain conclusion—so plain that any layman, however unskilled in questions of statutory construction, would have to reach it."

He then makes some by no means deferential remarks on the judgment, and, after saying that His Lordship simply begs the whole question, continues as follows :

"It is very noteworthy that although the facts admitted in the case disclosed that prior to the Union Catholics enjoyed the *privilege* of exemption from contributing to other schools, the judgment of the learned lord is remarkably reticent upon this point. This question of ante-Union exemption is scarcely dealt with at all ; yet this is the very privilege that was the substantial privilege at stake upon this appeal.

"In one passage he does indeed refer to it in this way ; speaking of the right of Catholics to denominational schools, he says :

"'Possibly this right, if it had been defined or recognized by positive enactment, might have had attached to it, as a necessary and appropriate incident, the right of exemption from any contribution under any circumstances to schools of a different denomination.'"

Now this last cited paragraph of the judgment explains the principle on which the decision rests. There was no positive enactment on the subject, and therefore there could be no legal privilege of exemption in favour of Catholics ; the arrangement for payments in support of the schools was purely voluntary and had no effect as law, and therefore there was no excess of jurisdiction in the omission of such exemption by the Manitoba Legislature.

It is certainly very probable that if there had been a positive enactment on the subject it would have contained the exemption, which would have been fair and reasonable, it being apparently wrong to compel Catholics to pay for the support of schools to which they cannot conscientiously send their children. I believe our Minister of Justice and his colleagues think it so ; but the Judicial Committee were judges and not arbitrators, and were therefore bound to abide by the strict rules of legal construction in applying the provisions of the British North America Act and the Dominion Manitoba Act to the case.

There is a provision in section 23 of the B.N.A. Act for an appeal to the Governor-General in Council in cases of this kind, and it is said an appeal has been made by the Catholics of Manitoba : but is it not questionable whether such appeal could be maintained in the face of the decision that the Manitoba School Act does not prejudicially affect any right or privilege which the Catholics of Manitoba had at the time of the Union ? W.

Ottawa, September 14th.

[The above letter was received a day too late to insert in our last issue.—ED. C.L.J.]

DIARY FOR OCTOBER.

1. Sat. .....Wm. D. Powell, 5th C.J. of Q.B., 1816. Meredith, Judge Chancery Division, 1890.
2. Sun.....*16th Sunday after Trinity.*
3. Mon.....London Assizes, Rose, J. County Court sittings for motions, except in York. Surrogate Court sittings.
4. Tues.....Criminal Assizes at Toronto, MacMahon, J. County Court non-jury sittings, except in York.
7. Fri.....Henry Alcock, 3rd C.J. of Q.B., 1802.
8. Sat.....Sir W. B. Richards, C.J., Supreme Court, 1875. R. A. Harrison, 11th C.J. of Q.B., 1875.
9. Sun.....*17th Sunday after Trinity.* De la Barre, Governor, 1682
10. Mon.....County Court sittings for motions in York. Surrogate Court sittings.
11. Tues.....Guy Carleton, Governor, 1774.
12. Wed.....America discovered, 1492. Battle of Queenston Heights, 1812.
15. Sat.....English law introduced into Upper Canada, 1791.
16. Sun.....*18th Sunday after Trinity.*
17. Mon.....County Court non-jury sittings in York. Burgoyne's surrender, 1777.
18 Tues.....Civil Assizes at Toronto, MacMahon, J.
23. Sun.....*19 h Sunday after Trinity.* Lord Lansdowne, Governor-General, 1883.
24. Mon.....Kingston Assizes, Armour, C.J. Last day for filing notices for call. Sir J. H. Craig, Governor-General, 1807.
25. Tues.....Supreme Court of Canada sits. Battle of Balaclava, 1854.
27. Thur.....C. S. Patterson, Judge of Supreme Court, 1888. Jas. Maclennan, Judge Court of Appeal, 1888.
29. Sat.....Battle of Fort Erie.
30. Sun.....*20th Sunday after Trinity.*
31. Mon.....All Hallow's Eve

Reports.

ONTARIO.

(Reported for THE CANADA LAW JOURNAL.)

MORSE *v.* LAMB.

Mortgage action—Foreclosure—Several defendants—Default of appearance—Noting pleadings closed—Rule 393.

In a foreclosure action where there are several defendants, and the writ of summons is indorsed as provided by Form 9, and some defendants make default in entering appearance, the plaintiff may, without serving such defendants with a statement of claim, by analogy to the practice laid down in Rule 393, obtain an order in Chambers to enter a note closing the pleadings as against the defendants so in default, and giving him leave to apply for judgment as against such defendants when the action is ripe for adjudication against the other parties.

[TORONTO, Sept 27, 1892.

This was an action of foreclosure. There were 271 defendants, some of whom had been served and had made default in appearance. The plaintiff's solicitor applied to the registrar of the Chancery Division to sign judgment against the non-appearing defendants. The writ of summons was indorsed as provided by Form 9. That officer ruled that judgment could not be signed without first discontinuing the action as against the defendants who had not been served, or as against whom the plaintiffs were not in a position to take judgment.

C. W. Kerr, for the plaintiffs: We should not be put to the expense of serving defendants who have not appeared with a statement of claim in order to be enabled to note the pleadings closed as to them under Rule 393. If the plaintiffs cannot get judgment now, they ought at least in some way to be able to prevent the defendants now in default from hereafter appearing, or putting in any defence. There are 271 defendants, and it will take a long time to get them all served. He referred to *Peel* v. *White*, 11 P.R. 177, and Rules 718, 704-6 and 3.

THE CHANCELLOR, after taking time to consider by analogy to the practice laid down by Rule 393, made an order directing the proper officer to note the pleadings closed as to the defendants who had not appeared, and directing that the action might be brought on for judgment as against such defendants without further notice when judgment should be sought in the action.

GENERAL SESSIONS, COUNTY OF SIMCOE.

(Reported for THE CANADA LAW JOURNAL.)

KING *v.* WEYMOUTH.

Summary conviction under by-law—Costs of certified copies of by-law—Power of municipality to restrict livery stables.

Where the costs awarded for breach of a town by-law included $1.50 for copies of by-laws,

Held, that this is not warranted by R.S.O., c. 78.

Held, also, that where a municipal corporation has received increased powers from the Legislature, a by-law cannot be properly amended unless the original by-law is re-enacted.

[BARRIE, July 23, 1892.

This is an appeal from the conviction of two magistrates sitting for the police magistrate of the town of Barrie for breach of a by-law regarding livery stables.

H. H. Strathy, Q.C., for the appellant.

Wallace Nesbitt for the respondent.

BOYS, J.J.: One objection to this conviction is that part of the costs awarded being the item

of $1.50 for certified copies of by-laws is not warranted by R.S.O., c. 78.

Another objection is that the by-law, being No. 274, was passed Sept. 15th, 1879, before the town council had power to prohibit livery stables in certain parts of the town, and that the amending by-law, No. 394, passed 5th February, 1892, after the power was given by 52 Vict., c. 36, cannot be read as re-enacting the whole of by-law No. 274 so as to make a conviction good under that by-law for an act which could not legally be prohibited when the first by-law was passed. There are other objections taken to this conviction, but I do not consider it necessary to refer to them now, since I think either of the two objections mentioned must prevail.

It seems a minute of the conviction was made at the time of the trial in the police court, which was signed by the two presiding magistrates. This stated the fine and the items of the costs, of which the item in dispute was not one; but afterwards the clerk added this item without informing the magistrates of what he had done, and the magistrates signed the formal conviction with this item in it. The clerk states that no attention was called to this addition, and that he cannot say whether the magistrates read over the conviction or not. If, however, the item was a legal one, possibly all that need now be done would be to amend the conviction; but under the decision in *Reg.* v. *Elliott*, 12 O.R. 524, I must consider in the language of ROSE, J., "the proceeding is not one of form, but of substance, and involves a principle," for I am of the opinion that the charge cannot legally be made. Item 12 of the schedule to R.S.O., c. 78, refers to copies of papers that have been used at the trial, and not to copies of papers which copies are to be used at the trial. If copies of the minutes taken at the trial, or of any other paper connected with it, other than those specially mentioned in previous items are wanted, then under this item 12 the magistrates can charge 10 cents per folio for the same. The Act relates to fees of the justices and their clerks, and cannot be construed to relate to the preparation of documents or copies of documents to be used as evidence on the trial, which would be work done by or for the prosecutor. The conviction must be quashed, then, on this ground if on no other.

But I consider the conviction is also bad under the other objection mentioned. Mr. Nesbitt's argument that the two by-laws must be read together as the latter by-law was ingenious and plausible, but I think the most that can be done is to read the earlier by-law as amended by the later one; and if the clause as it now reads is not justified by the state of the law as existing when the first by-law was passed and bears date, the amendment must fail to take effect. If we are to incorporate the whole of the first by-law into the later one simply because of the amending clause, and in effect so make a new by-law, we could, by amending an important by-law in some unimportant particular, obtain all the effect of a new enactment embodying recent powers without going through even a single reading of the new law complying at all with any of the formalities required to pass a by-law, except as regarded the one amended clause.

Conviction quashed without costs.

COUNTY COURT, COUNTY OF YORK.

(Reported for THE CANADA LAW JOURNAL.)

STOTT *v.* SPAIN.

Chattel mortgage — Distress for rent—Mortgaged goods property of wife—R.S.O., c. 143, s. 28.

Where a landlord distrained on and sold certain goods temporarily upon the tenant's premises, but belonging to his wife, who had mortgaged them to a third party,

***Held*, that this was not a case intended to be covered by R.S.O., c. 143, s. 28, and that such goods were exempt from seizure.**

(TORONTO, June 9, 1892.

The facts appear in the judgment.

John McGregor for the plaintiff.

Delamere, Q.C., for the defendant.

MCDOUGALL, CO.J.: In this case the plaintiff claims for the detention and conversion by the defendant of a team of horses and a wagon. These articles he claims by virtue of a chattel mortgage made by one Mrs. O'Rourke to him to secure the payment of a sum of money advanced by him to her some considerable time prior to the seizure of the above-mentioned articles by the defendant. James O'Rourke (husband of Mrs. O'Rourke, the mortgagor above named) was the tenant of the defendant of certain premises near West Toronto Junction

used by him as a market garden. His wife was, it is said, the tenant of certain other premises some distance from the property rented by the husband, and the husband and wife resided on the lands leased by the wife. The horses and wagon seized were usually kept on the wife's premises, being used by the couple in carrying on their business as market gardeners. Rent became in arrear in respect of the premises leased by O'Rourke in his own name, and the defendant by her bailiff seized the chattels in question on the lands demised to the husband, where they happened to temporarily be when the distress was made. The plaintiff, on becoming aware of the seizure, notified the bailiff that he claimed the horses and wagon as his (the plaintiff's) property under his chattel mortgage from Mrs. O'Rourke. No attention was paid to this claim, and the horses and wagon were sold to satisfy the defendant's claim for rent. Hence the action. At the trial the learned Junior Judge, at the conclusion of the plaintiff's case, thought that there was no cause of action, being of opinion that the articles in question were technically the property of the wife, or that the plaintiff as mortgagee could only claim through the wife, and the claim was therefore in effect the wife's claim. If this was the correct view the articles were, under c. 143, s. 28, not exempt from seizure for rent due by the husband. He dismissed the action with costs. This is an application to set aside that judgment and for a new trial.

I am of the opinion, upon consideration, that the decision of the learned judge was erroneous, and I am glad, after consultation with him, to be able to say that he is now of the like opinion; and we both agree that there should be a new trial. R.S.O., c. 143, s. 28, exempts from seizure for rent goods and chattels the property of any person except the tenant or person who is liable for the rent, although the same are found on the premises. Certain exceptions to this general rule then follow. Goods mortgaged by the tenant—he still having them in his possession on the demised premises—are declared to be liable to seizure for rent. So likewise are goods or chattels on the demised premises claimed by the wife, husband, daughter, son, etc. Goods the property of the wife, but subject to a mortgage made by her, are not stated to be liable; though goods owned by the husband and mortgaged by him are expressly declared to be so. This is a remedial statute, intended to mitigate the harshness of the common law, which allowed generally the seizure of everything found on the demised premises without regard to the question of ownership. A remedial act is to be so construed as most effectually to meet the beneficial end in view, and to prevent a failure of the remedy, and it is laid down that as a general rule it ought to be construed liberally. Here the object of the enactment was to prevent the seizure of the goods of third parties, being upon the demised premises, for rent due in respect of these premises; but it was thought proper to confine this to the goods of third parties outside of the members of the tenant's family and relations living with him, and also to allow the old liability to remain in respect of goods in the possession of the tenant, but claimed by third parties under a title derived by purchase, gift, transfer, assignment, or mortgage, etc., from the tenant himself. This latter branch of the rule was not extended to the goods of the members of the tenant's family where such goods purported to be *bonâ fide* mortgaged, transferred, or assigned by such members of his family to third persons. If the liability to seizure of goods mortgaged by the tenant had not been expressly stated, I have no doubt that a mortgagee of such goods under a *bonâ fide* mortgage could have successfully contested the landlord's right to distrain the same, and could have safely relied upon the general words in the beginning of the section to support his contention. I do not see upon what principle the words which constitute the exception in the case of the tenant himself only can be read into the part of the section defining the position of goods claimed by his wife. I think, therefore, that unless the *bonâ fides* of the mortgage of the goods in question here can be successfully attacked, the mortgagee of the wife is entitled to claim any goods covered by the mortgage, as being exempt from liability to seizure for rent due by the husband of the mortgagor. I have read the case of *Raymond* v. *Close*, reported in 25 C.L.J. 21, but I must respectfully express my dissent from the conclusion arrived at by the learned County Judge upon the facts of that case.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [June 28.

WILLIAMS *v.* TOWNSHIP OF RALEIGH.

Municipal corporation—Exercise of municipal powers—Municipal Act (R.S.O., 1887), c. 184, ss. 483, 569, 583, 586—Drainage of flooded lands—Lands injuriously affected—Remedy—Arbitration—Mandamus—Notice.

Certain lands in the township of Raleigh were drained by what were called the Raleigh Plains drain and Government drain No. 1. The ratepayers petitioned for further drainage under the Municipal Act (R.S.O., 1887, c. 184), and a surveyor was directed under s. 569 of the Act to examine the locality, make plans, and report as to how the drainage could be effected. In pursuance of his report the municipality caused a number of drains to be constructed leading into the Raleigh drain and Government drain No. 1, with the result that the additional volume of water proved too great for the capacity of the latter, which overflowed and flooded the adjoining lands of C., who brought an action for the damage thereby occasioned. The matter was referred to a County Court judge, who reported the facts in favour of C. and against the contentions of the municipality, and estimated the damages at $850. The Divisional Court affirmed this finding, and also ordered a mandamus to issue under s. 583 of the Act. The Court of Appeal reversed this decision, holding that the only remedy for the damage to C.'s land was by arbitration under the statute, and that he was not entitled to a mandamus.

Held, reversing the judgment of the Court of Appeal, that the right infringed by the municipality being a common law right, and not one created by the statute, C. was not deprived of his right of action by s. 483 of the Act, which provides for determination by arbitration of a claim for compensation for lands injuriously affected by the exercise of municipal powers.

Held, further, that the municipal council had a discretion to exercise in regard to the adoption, rejection, or modification of the report of a surveyor appointed under s. 569 to examine the locality and make plans, etc., and if the report is adopted the council is liable for the consequences following from any defect therein.

Held, also, that the council, by the manner in which the drainage work was executed, was guilty of a breach of the duty imposed on it by s. 583 of the Act to preserve, maintain, and keep in repair such work after its construction. The work having been constructed under s. 583 of the Act, C. was not entitled to a mandamus under that section to compel the municipality to make the necessary repairs to preserve and maintain the same, the notice required by that section not having been given. If the work had been done under s. 586, notice would not have been necessary.

Per STRONG and GWYNNE, JJ.: C. was not entitled to the statutory mandamus, but it could be granted under the Ont. Jud. Act (R.S.O., 1887, c. 44).

Held, also, that though s. 583 makes notice a necessary preliminary to the liability of the municipality to pecuniary damage suffered by a person whose land is injuriously affected by neglect or refusal to repair, the want of such notice did not divest C. of his right of action, nor affect the damages awarded to him.

Appeal allowed with costs, and judgment of FERGUSON, J., restored, except as to mandamus.

Robinson, Q.C., and *Douglas*, Q.C., for appellants.

Wilson, Q.C., for respondents.

Quebec.]

DOMINION SALVAGE & WRECKING COMPANY *v.* ATTORNEY-GENERAL.

Public company — Act of incorporation—Forfeiture of—44 Vict., c. 6 (D.)—Attorney-General of Canada—Information—R.S.C., c. 21, s. 4—Scire facias—Form of proceedings—Arts. 997, et seq., C.C.P.—Subscription to capital stock—Condition precedent.

The appellant company by its Act of incorporation (44 Vict., c. 61 (D.)) was authorized to carry on business provided $100,000 of its capital stock were subscribed for and thirty per cent. paid thereon within six months after the passing of the Act; and the Attorney-General of Canada having been informed that only $60,500 had been *bonâ fide* subscribed prior to the commencing of the operations of the company, the balance having been subscribed for by

one G. in trust, who subsequently surrendered a portion of it to the company, and that the thirty per cent. had not been truly and in fact paid thereon, sought at the instance of a relator by proceedings in the Superior Court for Lower Canada to have the company's charter set aside and declared forfeited.

Held, affirming the judgment of the court below:

(1) That this being a Dominion statutory charter, proceedings to set it aside were properly taken by the Attorney-General of Canada.

(2) That such proceedings taken by the Attorney-General of Canada under Arts. 997, *et seq.*, if in the form authorized by those articles, are sufficient and valid, though erroneously designated in the pleadings as a *scire facias*.

(3) That the *bonâ fide* subscription of $100,000 within six months of the date of the passing of the Act of incorporation and the payment of the 30 per cent. thereon were conditions precedent to the legal organization of the company with power to carry on business; and as these conditions had not been *bonâ fide* and in fact complied with within such six months, the Attorney-General of Canada was entitled to have the company's charter declared forfeited. GWYNNE, J., dissenting.

Appeal dismissed with costs.

Robinson, Q.C., *Macmaster*, Q.C., and *Goldstein* for appellants.

S. H. Blake, Q.C., and *Lajoie* for respondent.

RODIER *v.* LAPIERRE.

Appeal—Monthly allowance of $200—Amount in controversy—Annual rent—R.S.C., c. 139, s. 29 (b)—Jurisdiction.

B.R., under a will and an Act of the Legislature of the Province of Quebec (54 Vict., c. 96), claimed from A.L., as administratrix of the estate of Hon. C. S. Rodier, the sum of $200, being an instalment of the monthly allowance which A.L. was authorized to pay to each of the testator's daughters out of the revenues of his estate. The action was dismissed by the Court of Queen's Bench for Lower Canada; and on an appeal to the Supreme Court,

Held, that the amount in controversy being only $200, and there being no "such future rights" where the rights in future of B.R. might be bound within the meaning of these words in s. 29 (*b*) of the Supreme Exchequer Courts Act, the case was not appealable.

Annual rents in s-s. (*b*) of s. 29 of R.S.C., c. 139, mean ground rents, *rentes foncières*, and not an annuity or any other like charges or obligations.

Appeal quashed with costs.

Lash, Q.C., and *DeMartigny* for appellant.

Geoffrion, Q.C., and *Beaudin*, Q.C., for respondent.

DUBOIS *v.* CORPORATION DE STE. ROSE.

Appeal— Road repair — Municipal by-law— Validity of—Rights in future—Supreme and Exchequer Courts Act, s. 29 (b).

In an action brought by respondents for the recovery of the sum of $262.14 paid out by them for macadam work on a piece of road fronting the appellant's lands, the work of macadamizing the said road and keeping it in repair being imposed by a by-law of the municipal council of the respondents, the appellants pleaded the nullity of the by-law. On appeal to the Supreme Court of Canada from the judgment of the Court of Queen's Bench for Lower Canada (appeal side) dismissing the appellant's plea,

Held, that the appellant's rights in future as to the obligation to repair the road not being "future rights" within the meaning of s. 29 (*b*), the case was not appealable. *County of Verchères* v. *Village of Varennes* (19 S.C.R. 365) followed, and *Reburn* v. *Ste. Anne* (15 S.C.R. 92) overruled. GWYNNE, J., dissenting.

Appeal quashed with costs.

Bastien and *Fortin* for appellants.

Ouimet and *Emard* for respondents.

Nova Scotia.]

SYDNEY AND LOUISBURG R.W. CO. *v.* SWORD.

Dower—Defective title—Grant by Provincial Government of Dominion lands—Estoppel—Local Act.

S. brought an action to recover dower out of lands conveyed to defendant company through another company from her husband. Defendants pleaded that the lands were part of the navigable waters of Sydney harbour, and were granted to plaintiff's husband by the Government of Nova Scotia contrary to the provisions

of the B.N.A. Act, which vested such property in the Dominion Government. Plaintiff replied that having obtained title through her husband, defendants were estopped from denying that his title was valid. Defendants also relied on an Act of the Legislature of Nova Scotia passed in 1884, which enacted that the purchase and conveyance to the defendant company from their immediate grantors were absolutely ratified and confirmed, reserving to any person or persons the right to compensation only for any interest in or lien on the same.

Held, affirming the decision of the Supreme Court of Nova Scotia, STRONG and GWYNNE, JJ., dissenting, that the defendant company was estopped from saying that no title passed to plaintiff's husband by the grant from the Government of Nova Scotia, or from questioning his title thereunder.

Held, further, that the Act of 1884 did not affect plaintiff's claim. The statute was not pleaded; but if it was not necessary to plead it, it could not operate to vest in defendants' property belonging to the Dominion Government, which the property in question did.

Held, per PATTERSON, J., that though a paramount title might have been set up against both parties, it could not be asserted by the defendants.

Held, also, by the majority of the court, that the grant to plaintiff's husband was in fee simple, and he had such seizin that dower would attach.

Appeal dismissed with costs.

W. B. Ritchie for appellants.

Drysdale for respondents.

CUNNINGHAM *v.* COLLINS.

Mortgage — Foreclosure suit—Parties—Lessee of Mortgagor—Protection of rights—Practice.

In an action for foreclosure and realization of mortgage, the original defendants were the administrator, heirs-at-law, and certain devisees of the mortgagor; subsequent incumbrancers, namely, judgment creditors of some of the heirs, and the lessee of a part of the mortgaged property by lease from some of the heirs, not being joined. None of the defendants appeared, and an order was made foreclosing the equity of redemption and directing the lands to be sold unless the amount due on the mortgage was paid before the day fixed for the sale. The sale was to be advertised in a newspaper and by handbills, copies of said handbills to be mailed to each of the subsequent incumbrancers. By a subsequent order the property was to be sold in two separate lots; the Queen Hotel property, which was that under lease, to be sold first. By a further subsequent order, made on the day fixed for the sale on application of Mrs. S., the lessee of the Queen Hotel, it was ordered that upon payment into court by S. & K. of $37,019 further proceedings by plaintiff should be stayed until further order, and plaintiffs should assign to S. & K. the mortgages and lands free from incumbrance, and also the suit and all the benefit of the proceedings therein, plaintiffs to be paid their claim out of money so paid into court. This order was complied with.

On Dec. 26th, 1889, defendants moved to rescind the last-mentioned order. The motion was refused, and the order amended by a direction that Mary I. Sheraton, the lessee of the Queen Hotel, should be made a defendant to the action, and that S. & K. should be joined as plaintiffs and the stay of proceedings removed. The lessee, Mrs. Sheraton, then filed a statement of defence, setting out a lease of the hotel property from three of the mortgagor's heirs to her for five years, subject to renewal for a further term of five years, and that she had entered into possession and made large repairs and improvements.

On Jan. 4th, 1890, another order was made amending the order of sale by directing that the Queen Hotel property be sold subject to the rights of Mrs. Sheraton under the lease and subject to said lease.

From these orders of 26th Dec., 1889, and 4th Jan., 1890, defendants appealed to the Supreme Court of Nova Scotia sitting *in banc*, which court affirmed the former order, but set aside the latter. Both parties appealed to the Supreme Court of Canada.

Held, affirming the decision of the court below, that the order of 26th Dec., 1889, was a proper order. It stayed the proceedings at the instance of a person having a substantial interest in the equity of redemption of part of the mortgage lands, and if the proposed sale had been under a writ of *fi. fa.* an injunction might have been granted to restrain it; and it only stayed them on payment into court of the redemption money. As to the direction in the

order for assignment of the mortgages and property by the plaintiffs, the defendants have no *locus standi* to object; and as to the addition of parties defendants could not be prejudiced thereby. The order also removed the stay of proceedings, but the present appellants cannot take exception to that part of it, and the rights of subsequent incumbrancers who are not before the court cannot be prejudiced by what was done in their absence.

Held, further, reversing the decision of the court below, that the order of the 4th of January, 1890, was a proper order. Whatever rights the lessee had acquired under the lease she had acquired as a purchaser for valuable consideration of the equity of redemption *pro tanto*, and the court should endeavour to preserve those rights.

Appeal dismissed as to order of 26th Dec., 1889, and allowed as to order of 4th Jan., 1890.

Ross, Q.C., for appellant.

W. B. Ritchie for respondent.

British Columbia.]

CAMERON *v.* HARPER.

Executor—Action against—Legacy—Trust—Claim on assets—Charge on realty.

T.H. and his brother were partners in business, and the latter having died T.H. became by will his executor and residuary legatee. A legacy was left by the will to E.H., part of which was paid, and judgment recovered against the executor for the balance. T.H. having encumbered both his own share of the property and that devised to him, one of his creditors and a mortgagee of the property obtained judgment against him and procured the appointment of receivers of his estate. E. H. then brought an action to have it declared that his judgment for the balance of his legacy was a charge upon the monies in the receiver's hands in priority to the personal creditors of T.H.

Held, affirming the judgment of the court below, that it having been established that the monies held by the receivers were assets of the testator's or the proceeds thereof, E.H. was entitled to priority of payment though his judgment was registered after those of the other creditors.

Held, also, that the legacy of E.H. was a charge upon the realty of the testator, the residuary devise being of "the balance and remainder of the property and of any estate" of the testator, and the words "property" and "estate" being sufficient to pass realty. This charge upon realty operated against the mortgagees, who were shown to have had notice of the will.

Robinson, Q.C., for the appellants.

S. H. Blake, Q.C., for the respondents.

EXCHEQUER COURT OF CANADA

TORONTO ADMIRALTY DISTRICT.

(Noted for THE CANADA LAW JOURNAL.)

MCDOUGALL, LOCAL J.] [Sept. 1.

"THE JESSIE STEWART."

Jurisdiction—Action to recover seaman's wages less than $200—Agreement to sell vessel—Purchaser under agreement insolvent—Agreement not registered—Inland Waters Seaman's Act, s. 44.

Action brought for $83.60, seaman's wages. On a motion to dismiss the action it was shown that the registered owner, Joseph Adamson, had in the year 1887 sold the vessel to John Marks and Frederick Stoner, the latter a brother of the plaintiff, the agreement stipulating that the vessel was to remain in the name and under the control of Adamson until the full amount of the purchase money, interest, and charges shall have been paid; and in the event of the terms of the contract not being fulfilled Adamson was entitled to take possession, Marks and Stoner forfeiting absolutely all claims they might have on or to the ship or for moneys paid in respect to the contract. For some two or three years Marks and Stoner lived up to the terms of the agreement; but for over a year, and until immediately before the arrest of the vessel, they had neglected to perform certain duties imposed upon them, and Adamson took possession.

Held, that under these circumstances the property in the vessel had not passed to the vendors and that the agreement was not a bill of sale within the meaning of the Act, and therefore this court has no jurisdiction. Held, also, that if summary proceedings had been taken as provided by the Inland Waters Seaman's Act, a direction might have been made to provide for the realization of the plaintiff's

claim against the vessel, and she might have been tied up by the court, on his showing that the party with whom he made his hiring was insolvent.

Action dismissed with costs, which are fixed at $25, including disbursements, the court expressing the opinion that the plaintiff could enforce his maritime lien on the boat for his wages, as the party employing him was in an insolvent condition at the time of instituting action.

The following were referred to: R.S.C., c. 75, ss. 30, 34, and 35 (Inland Waters Seaman's Act); Merchants' Shipping Act of 1854, ss. 10, 19, 43, 55; *Meiklereid* v. *West*, 1 Q.B.D. 428; "*The Harriet*" (Lushington), 285; *The Yorkshire Railway Wagon Co.* v. *McClure*, 21 Chy.D. 309; *The North Central Wagon Co.* v. *The Manchester R.W. Co.*, 35 Chy.D. 191, affirmed in 13 App. Cas. 554; *Beckett* v. *Tower*, 1 Q.B. 1 (1891); Baron on Sales, pp. 12, 13, and 15; *Wood* v. *Bell*, 5 E. & B. 772.

R. G. Smyth for plaintiff.

Mulvey for owner intervening.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

FERGUSON, J.] [June 18.

REGGIN *v.* MANES.

Mechanics' lien—R.S.O., c. 126, s. 2, s-s. 3—Ib., s. 9—"Owner"—Computation of the ten per cent.

Certain builders, on February 13th, 1891, agreed with H. to construct a house for him on land then owned by them, and proceeded with the work accordingly for him, though no conveyance of the land was made to H. till May 23rd, 1891.

Held, that even though the agreement of February 13th, 1891, might not have been good in the face of a pleading setting up the Statute of Frauds, yet H. was the "owner" within the meaning of R.S.O., 2. 126, s. 2, s-s. 3, from that date.

The builders failed to complete the house, and H., who had already paid the contract price, had to expend $438 to finish the building.

Held, that in computing the ten per cent. under R.S.O., c. 126, s. 9, this sum of $438 must be deducted from the contract price of the building.

Geo. Kerr, jr., for the owner.

Moss, Q.C., for sub-contractors.

Hoyles, Q.C., for other lienholders.

Practice.

BOYD, C.] [June 29.

SPARKS *v.* PURDY.

Costs—Taxation—Allowing service of writ of summons out of the jurisdiction—Rule 274—Form 121—Mortgage action—Tenant in possession—Personal service on infant heirs of mortgagor—Rules 258, 259—Copies of writ of summons and of pleadings for brief—Rule 395.

Upon an appeal from the taxation of the plaintiff's costs of a mortgage action,

Held, (1) that where the plaintiff, before serving the writ of summons on defendants out of the jurisdiction, obtains an order shortening the time for appearance, he should include in it an order allowing the issue of the writ for service out of the jurisdiction, and should not have taxed to him the costs of a subsequent order allowing the service.

Rule 274 and Form 121 considered.

(2) In a mortgage action where possession is claimed, the writ of summons need not be served personally on the infant heirs of the mortgagor if they are not personally in possession.

Rules 258 and 259 considered.

(3) A writ of summons is a "pleading or other document" within the meaning of Rule 395, and more than four copies cannot be taxed.

(4) The provision of Rule 395 as to four copies covers all copies required during litigation, and extends to the copy of pleadings in the brief.

Middleton for the plaintiff.

F. W. Harcourt for the infant defendants.

OSLER, J.A.] [July 15.

KINNEAR *v.* ASPDEN.

Apportionment—Landlord and tenant—Rent—Mortgagor and mortgagee—Eviction—R.S.O., c. 143, s. 2, et seq.

Where demised property is sold by a prior mortgagee under power of sale, and the lease is thus determined between two gale days, the rent is apportionable, and the tenant is liable to pay rent up to the day of such determination.

Judgment of the Junior Judge of Simcoe affirmed.

Armour, Q.C., for the appellant.

Aylesworth, Q.C., and *F. J. Travers* for the respondent.

FERGUSON, J.] [Sept. 26.

IN RE HELPS' ESTATE.

Trustee under will—Security.

A new trustee appointed by the court in the stead of one appointed by will is not required to give security for the due performance of the trusts, etc.

Garrow, Q.C., for the petitioner.

J. Hoskin, Q.C., and *E. L. Dickinson* for the respondents.

BOYD, C.] [Sept. 27.

MORSE *v.* LAMB.

Mortgage action—Default of appearance—Noting pleadings closed—Rule 393.

By analogy to Rule 393, where, in a mortgage action for foreclosure or sale, some of the defendants do not appear to the writ of summons and others do appear, the officer may note the pleadings closed as against those who do not appear.

C. W. Kerr for the plaintiffs.

[Sept. 28.

CHARLEBOIS *v.* GREAT NORTH-WESTERN R.W. CO.

Judgment debtor—Company—Examination of officer—Rule 927—Scope of inquiry.

The object of the examination under Rule 923 of an officer of a body corporate, after judgment against it, is to discover assets of a company or to follow assets wrongfully disposed of, and within this limit a judgment creditor is entitled to full disclosure of the company's concerns, and as a consequence to have access to its books pertinent to that line of inquiry. The person examined is to facilitate the examination by procuring all information in the possession of the company which he himself has not as an officer of the company.

There is no right to examine as to dealings with stock which were had after it was fully paid up.

H. S. Osler for the plaintiff.

McMichael, Q.C., for the defendants.

Appointments to Office.

MASTER IN CHAMBERS.

Province of Ontario.

John Winchester, of the City of Toronto, in the County of York, Esquire, Barrister-at-Law, to be Master in Chambers, in the room and stead of Robert Gladstone Dalton, Esquire, deceased.

SHERIFFS.

County of Norfolk.

Joseph Jackson, of the Town of Simcoe, in the County of Norfolk, Esquire, to be Sheriff in and for the said County of Norfolk, in the room and stead of Edmund Deedes, Esquire, deceased.

CORONERS.

County of York.

David Abraham Nelles, of the Village of Thornhill, in the County of York, Esquire, M.D., to be an Associate-Coroner in and for the said County of York.

COUNTY ATTORNEYS.

County of Dufferin.

Walter John Lockwood McKay, of the Town of Orangeville, in the County of Dufferin, Esquire, Barrister-at-Law, to be County Crown Attorney and Clerk of the Peace in and for the said County of Dufferin, in the room and stead of Elgin Myers.

County of Prince Edward.

James Roland Brown, of the Town of Picton, in the County of Prince Edward, Esquire, Barrister-at-Law, to be County Crown Attorney

and Clerk of the Peace in and for the said County of Prince Edward, in the room and stead of Philip Low, Esquire, deceased.

County of York.

Herbert Hartley Dewart, of the City of Toronto, in the County of York, Esquire, Barrister-at-Law, to be County Crown Attorney in and for the said County of York, in the room and stead of George Washington Badgerow, Esquire, deceased.

POLICE MAGISTRATES.

Districts of Algoma and Nipissing.

William A. Quibbell, of the Town of Sault Sainte Marie, in the District of Algoma, Esquire, to be a Police Magistrate in and for the said District of Algoma, and also for the District of Nipissing, *pro tempore*, in the room and stead of Andrew McNaughton, Esquire, deceased.

Town of Lindsay.

Duncan John McIntyre, of the town of Lindsay in the County of Victoria, Esquire, to be Police Magistrate in and for the said Town of Lindsay, in the room and stead of Arthur O'Leary, Esquire, resigned.

District of Thunder Bay.

William Curry Dobie, of the Town of Port Arthur, Esquire, to be Police Magistrate for that part of the District of Thunder Bay lying between the easterly boundary of the said Town of Port Arthur produced northward, and a line drawn north and south through a point two miles west of Ridout Station on the Canadian Pacific Railway.

Districts of Thunder Bay and Rainy River.

Allan McDougall, of the Town of Fort William, in the District of Thunder Bay, Esquire, to be Police Magistrate in and for the said Town of Fort William and for such further part of the said District of Thunder Bay and of the District of Rainy River, respectively, as lies west of the westerly boundary line of the said Town of Fort William, produced northerly to a line drawn due east and west from the most northerly point of Ignace Station on the Canadian Pacific Railway and including the said Station.

Town of Toronto Junction.

Peter Ellis, of the Town of Toronto Junction, in the County of York, Esquire, to be Police Magistrate in and for the said Town of Toronto Junction, without salary.

INSPECTOR OF LEGAL OFFICES.

Province of Ontario.

James Fleming, of the Town of Brampton, Esquire, Barrister-at-Law, to be Inspector of the Offices of the Sheriffs, Local Masters, Deputy Registrars, Local Registrars of the High Court, Clerks of the Peace and County Crown Attorneys, and Registrars of the Surrogate Courts and Clerks of the County Courts (when the said two last-named offices are held by Deputy Registrars or Local Registrars of the High Court) in the respective Counties of the Province of Ontario, and such other officers connected with the administration of justice as the Lieutenant-Governor-in-Council may from time to time direct, in the room and stead of John Winchester, Esquire, appointed Master in Chambers.

DIVISION COURT CLERKS.

County of Waterloo.

James Duncan Webster, of the Village of Preston, in the County of Waterloo, Gentleman, to be Clerk of the Second Division Court of the said County of Waterloo, in the room and stead of Otto Klotz, deceased.

DIVISION COURT BAILIFFS.

County of Lanark.

James D. McInnis, of the Village of Lanark, in the County of Lanark, to be Bailiff of the Second Division Court of the said County of Lanark, in the room and stead of Robert Watt, resigned.

James Murray, of the Town of Smith's Falls, in the Connty of Lanark, to be Bailiff of the Fourth Division Court of the said County of Lanark, in the room and stead of Henry D. Chalmers, deceased.

Arthur H. Ellis, of the Village of Pakenham, in the County of Lanark, to be Bailiff of the Fifth Division Court of the said County of Lanark, in the room and stead of T. Somerton, resigned.

United Counties of Prescott and Russell.

Samuel Wright, of the Village of L'Orignal, in the County of Prescott, to be Bailiff of the First Division Court of the United Counties of Prescott and Russell, in the room and stead of Martin Costello, deceased.

Frederick Calvin Hersey, of the Village of Hawkesbury, in the County of Prescott, to be Bailiff of the Seventh Division Court of the United Counties of Prescott and Russell, in the room and stead of Martin Costello, deceased.

United Counties of Stormont, Dundas, and Glengarry.

Henry Anthony Conroy, of the Village of Maxville, in the County of Glengarry, to be Bailiff of the Twelfth Division Court of the United Counties of Stormont, Dundas, and Glengarry, in the room and stead of J. A. McDougall, resigned.

District of Thunder Bay.

James Alexander, of the Town of Port Arthur, in the District of Thunder Bay, to be Bailiff of the First Division Court of the said District of Thunder Bay, in the room and stead of John H. Woodside, resigned.

James Alexander, of the Town of Port Arthur, in the District of Thunder Bay, to be Bailiff of the Third Division Court of the said District of Thunder Bay, in the room and stead of J. T. Campbell, resigned.

LOCAL MASTERS OF TITLES.

County of Elgin.

James Henry Coyne, of the City of St. Thomas, in the County of Elgin, Esquire, to be Local Master of Titles in and for the said County of Elgin, including the said City of St. Thomas, the said appointment to take effect on and from the first day of October, 1892.

REGISTRARS OF SURROGATE COURTS.

United Counties of Stormont, Dundas, and Glengarry.

Helen MacDonald, of the Town of Cornwall, in the County of Stormont, one of the United Counties of Stormont, Dundas, and Glengarry, Spinster, to be Registrar of the Surrogate Court of the said United Counties of Stormont, Dundas, and Glengarry, in the room and stead of Alexander E. MacDonald, Esquire, deceased.

REGISTRARS OF DEEDS.

United Counties of Stormont, Dundas, and Glengarry.

Thomas McDonald, of the Village of Morrisburg, in the County of Dundas, one of the United Counties of Stormont, Dundas, and Glengarry, Esquire, to be Registrar of Deeds in and for the said County of Dundas, in the room and stead of Simon S. Cook, Esquire, deceased.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Montreal.

John Napier Fulton, of the City of Montreal, in the Province of Quebec, Esquire, to be a Commissioner for taking Affidavits within and for the City of Montreal, and not elsewhere, for use in the Courts of Ontario.

Francis William Radford, of the City of Montreal, in the Province of Quebec, Esquire, to be a Commissioner for taking Affidavits within and for the said City of Montreal, and not elsewhere, for use in the Courts of Ontario.

FISH AND GAME COMMISSIONERS.

George Alexander McCallum, of the Village of Dunnville, in the County of Haldimand, Doctor of Medicine (President of the Board);

John Harry Willmott, of the Village of Beaumaris, in the District of Muskoka, Esquire;

William B. Wells, of the Town of Chatham, in the County of Kent, Division Court Clerk;

Harvey Prentiss Dwight, of the City of Toronto, in the County of York, Manager;

Watson Gould Parish, of the Village of Athens, in the County of Leeds, Merchant; and

Alexander David Stewart, of the City of Hamilton, in the County of Wentworth, Esquire, to be Secretary of the said Board and Chief Fish and Game Warden, *pro tempore.*

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Flotsam and Jetsam.

IT is related by a Barrie paper that at the assizes in that town recently a rugged Irishman had just given his evidence in chief, and the opposing counsel, a former resident of the town and now living in Toronto, was about to open his fires of cross-examination. The learned and not a little dreaded Q.C. was slowly advancing toward the box, adjusting his gown and clearing his throat as he advanced. The witness, realizing what was in store for him, turned to the judge and said: "Yer honour, ivery worrd I have been sayin' is God's truth, an' if I say anything else when Mr. M—— is talkin' to me it will be a cursed lie."

HE TOOK HIS NUMBER WITH HIM.—Before a Court of Revision in Winnipeg on an application to strike a name off the list of voters, the evidence showed that the address of the voter in the original application was a vacant lot, indicating some fraudulent attempt to obtain the franchise. While the witness who had attempted to serve an order for attendance was being examined the party in question appeared, rather indignant at being called upon to defend his right to vote. Being asked how it was that he had given a wrong number, he denied the imputation, asserted that the number in question was on his house plainly to be seen, and that he had brought it with him from his last place of residence. After this revelation numerals were at a discount as evidence.