

Canada Law Journal.

VOL. XVIII.

DECEMBER 15, 1882.

No. 22.

DIARY FOR DECEMBER.

- 17. Sun... *3rd Sunday in Advent.* First Lower Canada Parliament met, 1792.
- 22. Fri... Shortest day.
- 24. Sun... *4th Sunday in Advent.* Christmas vacation in Court of Appeal and Chancery Division begins.
- 25. Mon... Christmas Day. Municipal Nominations.
- 26. Tue... U. C. made a Province, 1792.
- 27. Wed... Spragge, V.C., appointed Chancellor, 1879.
- 31. Sun... *1st Sunday after Christmas.* Rev. Stat. of Ontario came into force, 1877.

TORONTO, DEC. 15, 1882.

THE New York Court of Appeals has recently held, following the drift of the American cases, that the holder of a mortgage upon real estate, upon which there are unpaid taxes, is entitled to pay the same and add the amount to the mortgage debt on foreclosure, although the mortgage contains no provision allowing him to do so: *Albany L. J.*, Nov. 25. We do not remember any case on the point at this moment, but this has been for years the practice in Ontario.

HON. LEWIS WALLBRIDGE, Q.C., has been appointed Chief Justice of Manitoba in the room of the late Hon. Mr. Wood. The appointment will, we think, be favourably received. The desire of the profession there was to have a man from the Equity Bar as their presiding Judge, in view of the kind of litigation that prevails in that Province. But though they are disappointed in this, they will have in Mr. Wallbridge a sound lawyer and one of large experience in all branches of the law, most genial and courteous in his manner, and personally everything that the most fastidious could wish.

SWEARING by telephone has recently been

discussed in some of our exchanges. Whilst by a few the idea has been received with favour, as evidencing the progress of civilization and as a matter of convenience, there is not much fear of its coming into use in this country. Even the go-ahead Yankee finds unanswerable arguments against it. The *Albany Law Journal* says:—

“No one can be absolutely certain of the human voice thus communicated. A forged affidavit may be sent to the officer, and an impostor may swear to it by telephone, and a fraud may thus be perpetrated. If a photograph is inadmissible in evidence without proof of the accuracy of the process by the photographer, certainly we cannot repose upon the sound of the human voice communicated over a mile of wire. Even if the officer were acquainted with the voice there would be room for deception. Moreover, the form of taking an oath is thus subordinated to the laziness or convenience of the deponent in a manner quite uncongenial with good ideas of the sanctity and solemnity of oaths and the decorum of public justice.”

WE copy from an exchange the following table of statistics as to the causes of suicide, a crime which seems to be terribly on the increase. It was read recently by Dr. Clark Bell, as part of a lecture to the Medico-Legal Society of New York.

Causes of Suicide.	Male.	Female.
Grief caused by loss of parents, etc.	373	193
Grief caused by ingratitude of children.....	137	74
Grief caused by departure of children.....	20	20
Grief caused by separation of family	35	16
Forbidden love	938	627
Jealousy between married couples and between lovers.....	229	118
Grief at quitting a master or a house	53	24
Gambling	157	1
Laziness.....	76	4
Debauchery.....	1,569	233
Drunkenness.....	2,761	441

EDITORIAL ITEMS—RIVERS AND STREAMS.

He suggests as a preventive measure that there should be severe punishment of unsuccessful offenders, and that every effort should be made by the law and by the public to put additional force upon the moral sense of the community by making the crime more odious and detestable. We think if the figures prove anything, they prove that some effort directed against the last two items would be desirable.

It is a moot point who is the "meanest man on earth." But the defendant in *Reif v. Paige*, 13 N. W. Rep. 273 (U.S.), should not be overlooked in this connection. This gentleman's unhappy wife (except in as far as she was happy in leaving the defendant—we trust for a happier home) was in a building which was enveloped in flames. The husband, with great magnanimity and in a burst of uxorious enthusiasm, cried out, "I will give \$5,000 to any person who will bring the body of my wife from that building, dead or alive." A fireman, on the faith of the offer, and at the risk of his own life, rushed into the building and brought out the body. Whatever Mr. Paige might have thought his living wife worth, he thought better of his offer as to her dead body, and refused to pay the \$5,000, on the grounds: (1) That there was no formal acceptance of the defendant's offer; and (2) that as the latter was a paid official he had only done his duty—which we presume he thought to be a reward sufficient in itself. The Court thought differently, and very properly held that the fireman was not bound to give notice of acceptance of the offer as a condition precedent to recovery, nor was he bound to perform the service as a paid fireman, not being called upon in discharge of his duty to imperil his own life.

RIVERS AND STREAMS.

A careful perusal of the judgment of the Supreme Court in *McLaren v. Caldwell*, impresses one that the law as laid down in *Boale v. Dickson* is sound; and we shall be surprised if the last judgment on this vexed question is not upheld in England, should the case go there for further consideration. This perusal, however, tells us another thing, and that is, that a "new hand at the bellows" on our staff got hold of the wrong end of it in supposing that the legislation discussed in the case was the act we had occasion to criticize more than a year ago, and the consequent remarks in the item referred to are therefore inappropriate.

The subject of rivers and streams in connection with the lumbering interests has come up in another form, in the case of the *Parry Sound Lumbering Co. v. Ferris*, in which the junior Judge of the County of Simcoe (John A. Ardagh, Esq.) gave a judgment which carries conviction with it, and is a clear and exhaustive exposition of the law on the subject. It was published *in extenso* in our last number.

The plaintiffs applied for an order under the Act R. S. O. c. 114, to enable them to turn a lake, some fifteen miles distant from their mill, into a reservoir, for the purpose of improving their property. Evidence was given shewing that to grant the application would prove very injurious to those residing near the lake, and the jury had to determine the question: Would the erection of a dam at the outlet of the lake conduce to the public good?—the Act having directed that it was only in such event that an application of this character should be granted. It was chiefly to this point that the learned judge directed his attention. He shows that the course universally adopted by Legislatures, when passing Acts that may cause the expropriation of a man's property against his will, is to make all such expropriation depend on the answer to the question, "is it for the public good?"

HORSE CASES AND PERJURY—DELEGATION OF LEGISLATIVE POWER.

The rights of individuals to deal with their own property, and either sell or retain the same as they may choose, should be respected, and should only be invaded when the general good of the state requires it to be done.

HORSE CASES AND PERJURY.

There is no subject which engages the time of our Division Courts, or which awakens the interest of a large class of our rural population, more than suits respecting the sale or exchange of horses. There is, moreover, no more fruitful source of litigation and contradictory swearing, and frequent positive perjury, than is produced by suits for breaches of warranty in such cases.

It has been said that a barrel organ and a monkey on a memorable occasion drew away the major part of a largely attended political gathering, at which one of Canada's greatest statesmen was felicitating himself with the idea that the bucolic mind was intensely interested in his speech; and it is always the experience of our County Court Judges, that the trial of a horse case will ensure a considerable attendance of the washed and unwashed at the Division Court.

The struggle too frequently is one of statement against statement—oath against oath, with perjury on one side or the other, and probably a little on both. These trials are anything but conducive to the public good, in fact are essentially demoralizing—misrepresentation, cunning, falsehood, concealment, the most trivial and dishonest perversion of language, and the meaning of words, are all resorted to, by men otherwise reputed to be respectable, when a horse not sound—in wind or limb—or untrue, or tricky, or baulky, has to be disposed of for more than he is worth, or put upon some man who does not want him at all.

The state of the law of evidence affords the opportunity for both fraud and perjury on

this subject, and though it was the object and aim of the Statute of Frauds to prevent frauds and perjuries, we confess it has often proved a failure. Possibly some of the evils we have been considering might very well be made the subject of legislation and the law of evidence amended by the Parliament of the Province. It has been suggested by a correspondent that the law should be changed by giving no right of action except on a written warranty. Take away, it is said, the possibility of denial as respects a warranty, by requiring it to be in writing, or take away the right of action for its breach in case of warranty without writing, and the door would be at once closed to a fruitful source of litigation and demoralization.

It may be argued against this view, that a man purchasing a horse now can very well guard himself by insisting upon a written warranty, or by not making a bargain. This, however, docs not meet the case. The objects sought after are to prevent frauds and perjuries by closing the door to men who, purchasing without warranty, find that the animal is not what they expected, and becoming exasperated, bring actions, and then get into the witness box and swear that there was a warranty, and so produce a work of fiction not founded on fact. It is not only men who sell horses who commit perjury, but more often those who trade in these animals. The written warranty should define in black and white what the bargain is, and shut out all possibility of contradiction. The question of soundness or unsoundness, or other facts, would necessarily stand as they do now.

DELEGATION OF LEGISLATIVE POWER.

IN the case of *Regina v. Hodge*, 46 Q.B. 141, the power of a Provincial Legislature to delegate to local bodies authority, "first, of creating a *quasi* offence, and then of punishing it by fine and imprisonment," was denied—

DELEGATION OF LEGISLATIVE POWER.

Hagarty, C.J., holding that "it is a power that must be exercised by the Legislature alone."

From that decision the Attorney General, under the Act 44 Vict. c. 22, s. 17, appealed to the Court of Appeal; and the latter Court, by a unanimous judgment, (7 App. R 246), reversed the decision of the Queen's Bench, and affirmed the power of the Provincial Legislature to delegate to local bodies the authority to punish infractions of their by-laws or regulations by fine and imprisonment; but holding that in the case appealed the Legislature had not delegated any authority to create "new restrictions and limitations on individual liberty of action."

The delegation to local bodies of legislative power to make rules and regulations, and to provide punishment for the infraction of them, was conferred upon municipal bodies in England by the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76, s. 90, which empowered the council of each corporation to make by-laws for the good rule and government of the borough, etc., and to appoint by such by-laws, such fines as they should deem necessary for the prevention and suppression of offences—such fines not to exceed £5, and to be levied by distress, and in default of a sufficient distress the offender to be imprisoned for a term not exceeding one month.

In the United States, it has been held that although the proposition that the Legislature is alone competent to make laws is true; yet it is also settled that it is competent for a Legislature to delegate to municipal corporations the power to make by-laws and ordinances which shall have the force, in favor of the municipality and against persons bound thereby, of laws passed by the Legislature (1 Dillon Mun. Corp. 322). And further that municipal corporations have an implied power to proceed for the enforcement of their by-laws and ordinances by reasonable and proper fines against those who break them,—for

a by-law or ordinance without a penalty would be nugatory (1 Dillon 345).

This power to delegate to local bodies authority to prescribe rules and regulations appears to have been exercised by the former Legislature of Upper Canada from its first session in 1792. The Act 33 Geo. III. c. 2, provided that overseers of highways should be elected, who should determine upon the height and sufficiency of any fence or fences within their parish or township "conformably to any resolution agreed upon by the inhabitants" at the meeting of election. Again, 34 Geo. III. c. 8, authorized the inhabitant householders in every district, at their annual town meeting, to ascertain and determine, in what manner and at what periods, horned cattle, horses, etc., should be allowed to run at large, and to resolve that the same, or any part thereof, should be restrained from so doing; and that any such cattle, etc., found at large, contrary to the regulations of the town meeting, should be impounded until such fees as the Justices in Quarter Session should determine, should be paid to the pound-keeper.

But the most important exercise of this power to delegate legislative authority appears in the Acts which authorized the Commissioners of the Peace in various districts to establish markets for the sale of meat, butter, eggs, etc. Under these Acts the Commissioners were authorized to appoint the days and hours for such sales in such markets, and to make such orders and regulations relative thereto as they should deem expedient—adding this further power: "to impose such fines not exceeding 20s., for any offence committed against such rules and regulations, as to them in their discretion shall seem requisite and proper;" and providing that "if any person shall transgress the orders and regulations so made by the said Commissioners, such person shall, for every such transgression, forfeit the sum which in every such order rule and regulation shall be specified." The Acts delegating this legislative power are: 41 Geo.

DELEGATION OF LEGISLATIVE POWER.

III. c. 3; 54 Geo. III. c. 15; 57 Geo. III. c. 4; 59 Geo. III. c. 4; 2 Geo. IV. c. 15; 1 Wm. IV. c. 5, etc.

By other Acts the Magistrates in Quarter Sessions were authorized to make "prudential rules and regulations" respecting certain specified municipal matters, and also to prescribe such reasonable fines, within certain limits, as they might think proper, for every offence committed against their rules and regulations. (See 57 Geo. III. c. 3; 59 Geo. III. c. 5; 4 Geo. IV. c. 30; 7 Geo. IV. c. 12, etc.)

The Act 59 Geo. III. c. 2., authorized the Justices in Quarter Sessions to limit the number of inns and public houses in their districts, and to apportion the fees to be paid for a license according to the situation of the inn; and they were also authorized "to frame rules and regulations for the observance of the several innkeepers in their respective districts," which rules and regulations the said innkeepers were to be bound by their recognizances to abide by.

By other Acts Boards of Police were authorized to make rules, ordinances and by-laws, respecting municipal matters, "and to enforce the due observance thereof, by inflicting penalties on any person for the violation of any by-law or ordinance of the said corporation, not exceeding one pound ten shillings." (See 2 Wm. IV. c. 17; 3 Wm. IV. c. 16; 4 Wm. IV. c. 25, c. 26, c. 27; 6 Wm. IV. c. 14; 7 Wm. IV. c. 42, c. 44; 1 Vict. c. 27; 3 Vict. c. 31, etc.)

The Legislature of the late Province of Canada, at its first session in 1841, delegated large powers of legislation to the District Councils (4 & 5 Vict. c. 10), and authorized them to impose reasonable penalties in certain cases. These powers were greatly enlarged by 12 Vict. c. 81, 14 & 15 Vict. c. 109, 22 Vict. c. 99, and other Acts. Prior to Confederation the legislative power delegated to the Municipal Council of each county, township, city, town and village authorized them to legislate over a wide range of municipal subjects, and empowered them to

pass by-laws (29 & 30 Vict. c. 51): (1) "For inflicting reasonable fines and penalties not exceeding fifty dollars and costs, (a) upon any person for the non-performance of his duties who has been elected or appointed to any office in the corporation, and who has accepted such office and taken the oaths, and afterwards neglects the duties thereof; and (b) for breach of any of the by-laws of the corporation. (2) For inflicting reasonable punishment by imprisonment, with or without hard labour, either in a lock-up house in some town or village in the township, or in the county gaol or house of correction, for any period not exceeding twenty-one days, for breach of any by-laws of the Council, in case of non-payment of the fine inflicted for any such breach, and there being no distress found out of which such fine can be levied; except for breach of any by-law or by-laws in cities, and the suppression of houses of ill-fame, for which the imprisonment may be for any period not exceeding six months, in case of the non-payment of the costs and fines inflicted, and there being no sufficient distress as aforesaid."

These provisions were re-enacted by the Ontario Legislature in 36 Vict. c. 48, and R. S. O. c. 174. And by various Acts respecting tavern licenses, from the earliest passed in 1869, 32 Vict. c. 32, to R. S. O. c. 181, the local license authorities were empowered to pass by-laws or resolutions respecting the number and regulation of taverns, and "to attach penalties for the infraction thereof."

The Parliament of Canada has also delegated legislative authority to the Governor-General in Council in various matters; and in the Penitentiary Act, 31 Vict. c. 75, it has empowered the Directors of Penitentiaries "to make rules and regulations for the management, discipline and police of the penitentiaries, and for the duties and conduct of the wardens thereof, and of every other officer or class of officers or servants employed therein, and for the diet, clothing, maintenance, employment, instruction, discipline,

DELEGATION OF LEGISLATIVE POWER.

correction, punishment and reward of convicts imprisoned therein."

These references sufficiently illustrate the extent of the delegation of legislative power by the Imperial Parliament and Legislatures of Canada, since the establishment of colonial parliamentary government.

Few will deny to the Imperial Parliament, or even to the Parliament of Canada, the power to delegate legislative authority to subordinate bodies. But it is contended that although such power is within the legislative functions of the Imperial Parliament and the Parliament of Canada, it has not been expressly or impliedly conferred upon the Provincial Legislatures. If the power is not so conferred, then there is some reason to question the delegation of legislative authority to the municipalities by the Ontario Legislature.

Mr. Todd, in his work on "Parliamentary Government in the Colonies," says, (p. 367), "under their several constitutions, and pursuant to the 92nd section of the B. N. A. Act, these Local Legislatures possess powers of legislation as complete and absolute, within their exclusive jurisdiction, as those enjoyed by the Dominion Parliament, or even by the Parliament of the mother country, within the respective spheres."

Judicial opinion sustains this view. Draper, C.J., in *re Goodhue*, (19 Gr. 386), said: "Conceding to the fullest extent that the powers of the Legislature of Ontario are defined and limited by the B. N. A. Act, I conceive that, within those limitations, Acts passed in the mode described by that statute are, as to the Courts and people of this Province, supreme;" and Strong, V.C., added that where property and civil rights within the Province are affected, the Provincial Legislature has power to pass Acts "to the same unlimited extent that the Imperial Parliament has in the United Kingdom."

In *Regina v. Hodge*, (7 App. R. 246), Spragge, C.J., in referring to the distribution of legislative power, said: "I do not propose to attempt a definition of the powers con-

ferred by the Imperial Parliament by the B. N. A. Act, upon the Dominion Parliament and Provincial Legislatures respectively. They each derive their powers from the same source; and the power to make laws in relation to the several classes of subjects, legislation upon which is by the Imperial Act committed exclusively to the Provincial Legislatures, is as large and complete as it is in the classes of subjects committed, by enumeration of subjects, to the Dominion Parliament. The limits of the subjects is prescribed, but within those limits the authority to legislate is not limited." On the same point, Burton, J.A., said: "Reading the powers granted in section 92, with the exceptions where they occur in section 91 (of the B. N. A. Act) the Local Legislature is absolute and supreme over those subject matters, with as ample a power to legislate in respect of them as the Imperial Parliament, and without any possibility of interference by the Dominion Legislature."

* * * "It is true that the Imperial Parliament gave both to the Dominion and to the Provinces the constitutions under which we live; both limited in extent, but both giving representative institutions, and giving to the legislatures elected in the manner pointed out, plenary powers of legislation as large and ample as those of the Imperial Parliament itself. The Legislatures so elected have a delegated authority it is true, but it is of the same character as that of the Imperial Parliament, who are collectively the delegates of the whole people."

The Imperial decisions are consistent with these views. In *Phillips v. Eyre*, (L. R. 6 Q. B. 20,) Willes, J., said: "A confirmed Act of a Legislature lawfully constituted, whether in a settled or conquered colony, has, as to matters within its competence, the operation and force of sovereign legislation." And Lord Selborne, L.C., in defining the limited legislative powers of the Indian Legislature, in *Regina v. Burah*, (3 App. Case. 904,) said: "The Indian Legislature has powers expressly limited by the Act of the Imperial

RECORDS OF DEEDS, WHEN NOTICE, AND OF WHAT.

Parliament which created it, and it can of course do nothing beyond the limits which circumscribe those powers. But when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament; but has, and was intended to have, plenary powers of legislation, as large and of the same nature as those of Parliament itself."

Imperial legislation affecting colonial laws is in harmony with these views as to plenary powers of legislation. By the Imperial Act 28 & 29 Vict. c. 63, it is enacted that any colonial law which is repugnant to any Imperial Act extending to the colony, shall, to the extent of such repugnancy, but not otherwise, be void and inoperative; and repugnancy to the law of England shall not render such colonial law void or inoperative.

If the judicial interpretation of colonial legislative power is correct, then it logically follows that the Provincial Legislatures, within their limits, "have plenary powers of legislation as large, and of the same nature, as those of the Imperial Parliament itself." And as the B. N. A. Act gives them express power to establish municipal institutions, this delegation of legislative authority necessarily follows, as an incident to the exercise of that power.

We understand that the case of *Regina v Hodge* is to be appealed to the Privy Council as a test case on the right of Provincial Legislatures to delegate to local bodies legislative power to prescribe regulations and to attach penalties for their infraction. But in case there should be a difficulty in giving to the words authorizing the License Commissioners "to impose penalties," the wide interpretation claimed by the prosecution in this case, it would be judicious for the Legislature at its present session to adapt to the license law the express powers as to penalties and punishments given to municipalities by the Municipal Act.

T. H.

SELECTIONS.

RECORDS OF DEEDS, WHEN NOTICE, AND OF WHAT.

At common law no record was required of a deed; title was passed by the livery of seisin. By the statute of uses, deeds made under it were required to be enrolled. This enrolment is something distinct from the system of recording deeds universally adopted in the United States.* Enrolment is necessary to deeds under the English statute, but, as between parties, deeds of bargain and sales in the United States are generally good, although not recorded.†

Recording is, then, only necessary to give notice to third parties of the conveyance, and to preserve proof of it. As to notice to third persons, if actual notice exist, no record need be proved, but the deed is good as to such subsequent purchasers with notice.

What is actual notice is sometimes a matter of doubt. Whilst, in some States, the actual notice must be such as will prevent the grantee in a subsequent recorded deed from taking precedence of the grantee in a prior unrecorded one, on the ground that it would be fraud on the part of such grantee to purchase, attach or levy on the land to the prejudice of the first purchaser, generally whatever is sufficient to direct a prudent man's attention to the prior rights and equities of others, and enable him to ascertain them upon inquiry, will be sufficient to charge him with notice of such facts.‡ But it is less to the consideration of what is actual notice, than of what is the constructive notice arising from the record, and to what such notice extends, and whom it affects, and how it begins, and when, that the inquiry of this article is directed. And generally the notice is only of such things as appear properly by the record, so that if a deed be improperly recorded, it is not notice.§ And it is notice only of such things as appear by the record, and no others. Such is the ruling of Chancellor Kent in

* Martindale on Conveyancing, sec. 269.

† "In North Carolina, no conveyancing shall be good unless the same shall be registered in the county where the land shall lie within two years after the date of said deed." Laws 1876-7 chap. 23, sec. 1.

‡ Martindale on Conveyancing, sec. 281, and notes.

§ *Hainey v. Alberry*, 73 Mo. 427, and cases cited; *Dail v. Moore*, 51 Mo. 589; *Black v. Gregg*, 58 Mo. 565; *Stevens v. Hampton*, 46 Mo. 404; *Ryan v. Carr*, 46 Mo. 483; *Bishop v. Schneider*, 46 Mo. 472; Martindale on Conveyancing, sec. 271 and notes and cases cited.

RECORDS OF DEEDS, WHEN NOTICE AND OF WHAT.

Frost v. Beckman. * He held that the registry is notice of itself, and no more, and that the purchaser is not to be charged with notice of the contents of the mortgage any further than they may be contained in the registry. The purchaser is not bound to attend to the correctness of the register. It is the business of the mortgagee; and, if a mistake occurs to his prejudice, the consequences of it lie between him and the clerk, and not between him and the *bona fide* purchaser. "The registry is intended as the correct and sufficient source of information; and it would be a doctrine productive of immense mischief to oblige the purchaser to look at his peril to the contents of every mortgage, and be bound by them, when different from the contents as declared in the registry. The registry might prove only a snare to the purchaser, and no person could be safe in his purchase without hunting out and inspecting the original mortgage, a task of great toil and difficulty. I am satisfied that this was not the intention, as it certainly is not the sound policy of the statute." † This ruling has been generally followed. † In *Terrell v. Andrew County*, ‡ the court say, "it is contended here on behalf of the county that, according to our statute, when a person files with the recorder an instrument, it imparts notice of its real contents to all subsequent purchasers, regardless of any mistake that the recorder may commit in placing it on record." * * * * "According to the literal interpretation of the section, no notice is imparted till the instrument is actually placed on record, and then it relates back to the time of filing. It was, no doubt, the intention of the legislature to give a person filing an instrument or conveyance all the benefit of his diligence, and when he deposits the same with the recorder and has it placed on file, he has done all that he can do, and has complied with the requirements of the law. From that time it will give full notice to all subsequent purchasers and encumbrancers. A person in the examination of titles, first searches the records; and, if he finds nothing there, he looks to see if any instruments are filed and not recorded. If nothing is found, and he has no actual notice,

so far as he is concerned the land is unencumbered. If he finds a conveyance, he goes no further; he never institutes an inquiry to find whether the deed is correctly recorded, or the contents literally transcribed. Indeed, to attempt to prosecute such a search would be idle and nugatory. * * * * Hard and uncertain would be the fate of subsequent purchasers, if they could not rely upon the records, but must be made under the necessity, before they act, of tracing up the original deed to see that it is properly recorded. The statute says that when the deed is certified and recorded, it shall impart notice of the contents from the time of filing. Certainly, but this is to be understood in the sense that the deed is rightly recorded, and the contents correctly spread upon the record. It never was intended to impose upon the purchaser the burden of entering into a long and labourious search to find out whether the recorder had faithfully performed his duty."

This was a case where a mortgage for \$400 was recorded as one for \$200 only. It has been, however, held *contra*, that a party performs his duty by leaving his deed for record with the proper officer, and the mistake or faults of the officer do not affect his right.* In this case there was a strong suspicion that the record had been tampered with, and it was held that the certificate of the recorder was proof that the deed had been recorded. So in Alabama under a statute making a conveyance operative as a record from the time it was left for registration, held that a mortgage was a valid lien for the whole amount, though incorrectly recorded for a smaller sum. †

It is held that the record of a deed is notice, whether indexed or not. † In *Sawyer v. Adams*, the town clerk copied a deed delivered to him for record on a book which had ceased to be a book for recording for a number of years, and for the purpose of concealment and fraud, did not insert the names in the index. Held, the deed was not recorded. In *Bishop v. Schneider*, a distinction is drawn between this case and one where the deed was regularly spread upon the record, but simply not indexed; the Court quoting from

* 1 John. Ch. 288.

† *Sanger v. Craigne*, 10 Vt. 55; *Jennings v. Wood*, 20 Ohio, 261; *Shepherd v. Burkhalter*, 13 Ga. 443; *Terrell v. Andrew Co.*, 44 Mo. 309; *Chamberlain v. Bell*, 7 Cal. 292; *Miller v. Bradford*, 12 Iowa, 14; *Baldwin v. Marshall*, 2; *Humph. 116*; *Brydon v. Campbell*, 40 Md. 331; *Breed v. Conley*, 14 Iowa, 269; *Gwynn v. Turner*, 18 Iowa, 1; *Gilchrist v. Gough*, 63 Ind. 576; *Chamberlain v. Bell*, 7 Cal. 292; *Barnard v. Campen*, 29 Mich. 162; *Dignan v. McCollum*, 47 Mo. 372.

‡ *Supra*.

* *Merrick v. Wallace*, 19 Ill. 486.

† *Mims v. Mims*, 35 Ala. 23. See, also, *Dubose v. Young*, 10 Ala. 365; *Bank of Kentucky v. Hagan*, 2 A. K. Marsh, 306. † *Bishop v. Schneider*, 46 Mo. 472; *Chatham v. Bradford*, 50 Ga. 327; *Musgrove v. Bouser*, 5 Oreg. 313; *Board, etc. v. Babcock*, Id. 472; *Curtis v. Lyman*, 24 Vt. 358. But see *Speer v. Evans*, 47 Pa. St. 144; *Barney v. McCarty*, 15 Iowa, 582; *Whalley v. Small*, 25 Iowa, 188; *Sawyer v. Adams*, 8 Vt. 172.

RECORDS OF DEEDS, WHEN NOTICE, AND OF WHAT.

Curtis v. Lyman,* where it was held that the index was no part of the record, continues that "the proper office of the index is what its name imports—to point to the record—but that it forms and constitutes no part of the record. The statute states, without reserve or qualification, that when an instrument is filed with the recorder and transcribed on the record, it shall be considered as recorded from the time it was delivered. From that time forth it is constructive notice of what was actually copied. A subsequent section for the purpose of facilitating research, besides recording, devolves a separate, distinct and independent duty upon the recorder, and in the event of non-compliance with that duty, the party injured has his redress. The purchaser or grantee, when he has delivered his deed, and seen that it was correctly copied, has done all that the law requires of him for his protection; and if any other person is injured by the fault of the recorder in not making the proper index, he must pursue his remedy against that officer for the injury."

But, though the index is generally not considered part of the record, the entry-books required to be kept, on which the names of grantors (or mortgagors), grantees (or mortgagees), date of reception, description of land, etc., are entered, under statutes providing that an instrument shall be considered as recorded at the time so noted, are so considered, and the purchaser takes with notice of such things as are properly placed on said entry books.† In this case the name of the mortgagee was omitted from the record, but appeared on the entry-book. Held, "that this error did not defeat it as to subsequent purchasers, as the two books together supplied all necessary information." It is said in effect by the court, that the mortgage was recorded when noted in the entry-book, that some time must elapse between the entry and the actual copying of the instrument upon the record-book, and during such time the entry-book will constitute the record, not complete in itself, as not containing a particular description of the land, but directing the inquirer to the deed on file, the two together giving full information. They ask, when did it cease to be recorded? "Was it when a more complete record was attempted?" "No doubt the entry in the entry-book loses its importance when the instrument entered is

properly recorded, because from that time the completed record gives the fullest information, and it will be that to which the index will refer persons who are searching the records. But it will remain a record nevertheless, and it may have its importance in some cases. Every man who finds a mortgage recorded, is notified by the date of the record, that there is a record of certain particulars respecting the mortgage in the entry-book, which he can at once refer to; and if any of those particulars chance to be omitted in the record-book of mortgages, he understands where he can obtain information concerning them." The case is contrasted with that of *Jennings v. Wood*,* in which the name of the grantor was omitted in the record, for the opinion continues, "for means of tracing the conveyances are lost when you do not find in the index as grantor or mortgagor, the name of the party in whom the title appears to stand." The case of *Jennings v. Wood* was one in which a deed was recorded as that of Samuel Granger, when it should have been Lemuel. Held, no notice to purchasers as deed of Lemuel Granger. This case is not inconsistent with that of *Gilchrist v. Gough*,† where, under a statute of the same character with the Michigan statute, the record of a mortgage for \$5,000 was erroneously made as for \$500, but the entry-book correctly stated it as being one for \$5,000. It was held that the entry-book was notice only of such things as the statute in express terms required to be noted in it. Such entries were notice of the existence of the deed, its exact date of reception, of the parties thereto, grantors and grantees, and of the description of the lands to be affected thereby; but the fact that an entry must also be made of the volume and page where such deed or other instrument could be found of record, showed very clearly, the court thought, that it never was intended that the entry in the "entry-book" should be notice of the contents of such deed or instrument. They held, moreover, that actual knowledge of the mortgage being indexed as one for \$5,000, did not put a person on inquiry. So it may not conflict with *Terrell v. Andrew County*, for in that case a mortgage for \$400 was recorded as one for \$200; and further, the Missouri statute differs from that of Michigan and Indiana, the latter saying that "such instrument shall be

* 24 Vt. 338.

† *Simclair v. Stawson*, 11 C. L. J. 68.

* 20 Ohio, 261.

† 63 Ind. 576.

deemed as recorded at the time so noted ;" while the Missouri statute provides, "Every such instrument in writing, certified and recorded in the manner hereinbefore prescribed, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof," etc. The court, in *Terrell v. Andrew County*, saying that under it, it was the record that imparted notice which related back to the time of filing.

As to defects in deeds or their acknowledgment, in Missouri the court held in *McClurg v. Phillips*,* that an unsealed mortgage was properly recorded as an equitable mortgage.† So as to official seals, the record need not show any copy of the seal or scroll as indicating the officer's seal, the statement in the certificate raising the presumption that the seal was attached.‡ On the other hand, "a notary's certificate is not rendered invalid by reason of the mere fact that it purports to be executed under his 'hand and official signature,' and that his notarial seal is not mentioned therein, where the seal is attached to the certificate. And in such case, a copy taken from the recorder need not have the impress of the original seal ; that may be indicated by a scroll."§

In many of the States time is allowed parties to record their deeds, and if recorded within that time, they are valid as against purchasers after its date and before record. In such cases, the record may be considered notice from the date of the deed, or as relating back to the date of the deed. Is a party who actually sees an imperfectly acknowledged conveyance, affected with actual notice? In *Musick v. Barney*,|| it is said that it would be very strong, if not conclusive, evidence of such notice. So, if the party's agent or investigator saw such a deed, it should put him on inquiry, as affecting him with actual notice of such deed. —*Central Law Journal*.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

COUNTY COURT OF THE COUNTY OF VICTORIA.

BRADLEY V. BRADLEY.

Bills and notes—Double stamping—Effect of repeal of statute—45 Vict., cap. 1.

A promissory note void for want of stamps, at the time of the passing of 45 Vict. cap. 1, which repeals stamp duties, cannot be made good by affixing double stamps as theretofore allowable.

[Lindsay, Nov. 16, 1882.]

Action on two promissory notes dated 1st December, 1879, for \$250 and \$50 respectively, made by the defendant in favour of the plaintiff. The defendant pleaded want of stamps. The plaintiff replied, alleging double stamping since the passing of 45 Vict. cap. 1. To this reply the defendant demurred, the fourth ground being that, 45 Vict. cap. 1, repealing the Stamp Act took away the right to double stamp, and if the note was void at the time of passing of that Act there was now no authority to make it good.

On the argument the plaintiff asked leave, if the case should be decided against her, to amend, alleging that she was not aware of the defect in stamping until after passing of the Act, and contended that such a reply would be good.

G. H. Hopkins, for the demurrer.

D. J. McIntyre, contra.

HUDSPETH, Deputy Judge: It seems to me that the fourth ground of demurrer, if good, disposes of the matter, and that there is no necessity for considering the other grounds, some of which, no doubt, could be cured by amendments.

The action is brought to recover the amount of two promissory notes. The fourth paragraph of the statement of defence sets up the want of stamps. The second paragraph in the joinder and reply asserts that after the promissory notes were made the plaintiff paid double duty thereon by affixing to each of the said notes stamps to the amount thereof, and cancelling the same as required by the statute in that behalf made and provided. To this the defendant demurs. The fourth ground of demurrer being that 45 Vict. cap 1, repealing the Stamp Act took away the right to double stamp.

* 57 Mo. 214.

† See, too, *Parkinson v. Caplinger*, 65 Mo. 290.

‡ *Geary v. Kansas City*, 61 Mo. 378; *Griffin v. Sheffield*, 38 Miss. 359.

§ *Dale v. Wright*, 57 Mo. 110; *Clark v. Ryner*, 53 Mo. 380.

|| 49 Mo. 458.

Co. Ct.]

BRADLEY V. BRADLEY.

[Co. Ct.]

In *Sunter v. Ellison*, 9 B. & C. 752, Lord Tenterden, C. J., says:—"It has been long established that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed), as if it had never existed. That is the general rule, and we must not destroy that by indulging in conjectures as to the intention of the Legislature. We are, therefore, to look at the statute, 6 Geo. IV. c. 16, as if it were the first that had ever been passed on the subject, etc.; and so considering it we cannot possibly say that there was any sufficient trading to support the commission."

It is certainly very unfortunate that a statute of so much importance should have been framed with so little attention to the consequences of some of its provisions. It is said that the last will of a party is to be favourably construed, because the testator is *inops consilii*. That we cannot say of the Legislature, but we must say that it is "*magnas inter opes inops*."

In order to decide whether any particular transaction is affected by the repeal of the Act, it is necessary to ascertain whether the transaction in question was complete or incomplete at the time the Act was repealed. Now, if an Act gives a right to do anything, the act to be done, if duly commenced, but not completed, before the Act is repealed, must upon the repeal of the Act, be left in *statu quo*. Thus in *R. v. Maughan*, 8 A. & E. 496, a presentment as to the non repair of a highway had been made under 13 Geo. III. c. 78, s. 24, but before the case came on to be tried, the above-mentioned Act was repealed. Consequently no further proceedings could be taken. "If," said Lord Denman, C. J., "the question had related merely to the presentment, that no doubt is complete. But *dum loquimur*, we have lost the power of giving effect to anything that takes place under that proceeding." And Littledale, J., added, "I do not say that what is already done has become bad, but that no more can be done."

But if a right has once been acquired by virtue of some statute, it will not be taken away by the repeal of the statute under which it was acquired. "The law itself," says Baron Puffendorf, in his *Law of Nature and Nations* Bk. I C. 6, s. 6, "may be disannulled by the author, but the right acquired by virtue of that law whilst in force must still remain: for together with a law to take away all its precedent effects would be a

high piece of injustice." Thus in *Jacques v. Withey*, 1 H. Bl. 55, it appears that it being illegal by virtue of 22 Geo. III. c. 47, to insure tickets in a lottery, a contract for insuring lottery tickets was void, and that consequently any money that had been paid in pursuance of such a contract might be recovered back. After a contract of this kind had been entered into, and after money had been paid by the plaintiff to the defendant in pursuance of it, the Act of 22 Geo. III. c. 47, was repealed, consequently it was argued that as such contracts were no longer illegal, the money which had been paid before the repeal of the Act could not be recovered back in an action which had not been commenced until after the repeal of the Act. It was held, however, that a contract which was void by statute when made, could not be set up again by the repeal of the statute between the time of contracting and the commencement of the suit. "If," said Coleridge, J., in commenting on the case of *Hitchcock v. Wuy*, 6 A. & E. 947, "it had been originally a good contract, and a statute had been passed which made it void, and then that statute had been repealed, the contract would have been set up again. But here there was originally a void contract by virtue of a statute, and, therefore, it cannot be made valid by the repeal of that statute." See *Hardcastle on Statutory Law*, 217.

In this case the notes were invalid under the Stamp Acts, because they were not properly stamped. "It is true, as urged on behalf of the plaintiff, the owner might have stamped them by affixing double duty, when she first acquired the knowledge, if she had been in ignorance of the fact, but unfortunately she did not so stamp them, and the Act 45 Victoria, cap. 1, was passed repealing the Stamp Act, and rendering it impossible for her to make the notes valid.

The demurrer is, in my opinion, a complete answer to the action, and I give judgment thereon for the defendant with costs.

McIntyre & Stewart, solicitors for plaintiff.

Martin & Hopkins, solicitors for defendants.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

SEGSWORTH V. MERIDEN SILVER PLATING CO.
Interpleader issue—Chattel mortgage—Description of property—Pressure—Preference—R. S. O. c. 118—Costs.

R. being a creditor of A., applied to him to give security for his debt, and under threat of suing him procured from him a chattel mortgage on his stock in trade. Although R. knew A. to be in difficulties, and had also the means of learning that he was insolvent, it did not appear that he actually knew that it was insolvent when he obtained the mortgage.

Held, that the mortgage given under such circumstances was not a fraudulent preference within R. S. O. c. 118.

The goods and chattels were described in a chattel mortgage as follows:—Certain specific articles were first enumerated; the description then proceeded, "also the stock of gold and silver watches, jewelry, and electro silver plate which, at the date hereof, is in the possession of the mortgagor in his said store, and also all such stock of gold and silver watches, jewelry, and electro silver plate which the mortgagor may hereafter, during the currency of this indenture or of any renewal thereof, get, take and receive into his possession in his said store, either to replenish such stock or otherwise howsoever."

The evidence showed that the electro plated goods and watches were numbered, and might have been identified thereby. There was no evidence that any of the goods claimed by the mortgagee had been acquired by the mortgagor after the date of the mortgage.

Held, the description of the goods was sufficient.

Where a mortgagee claimed all the goods seized by a sheriff under execution, but it appeared, on the trial of an interpleader issue between the mortgagee and the execution creditor, that some of the goods seized, amounting to one-sixth of the total value, were not covered by the mortgage.

Semble, although the mortgagee would be entitled to the general costs of the issue, a deduc-

tion of one-sixth should be made in respect of the goods as to which he failed.

The Chancellor.]

[Dec. 1.

PETRIE V. HUNTER.

GUEST V. HUNTER.

Mechanics' lien—Contractor—Sub-contractor—Novation—Condition precedent—Architect's certificate.

Where a contractor for the building of a house makes default in carrying on the work, and in consequence the owner, acting under a clause in the contract to that effect, dismisses him, and agreed verbally with a sub-contractor, who had been employed by the contractor, that if the latter will go on and finish the work he, the owner, would pay him.

Held, that an agreement made with a sub-contractor, under such circumstances, is a new and independent contract, and is not a contract to answer for the debt, default or miscarriage of another within the Statute of Frauds, and is therefore valid and binding although not in writing. *Bond v. Treahy*, 37 U. C. Q. B. 360, distinguished.

Held, that from the making of such agreement the sub-contractor was entitled to a lien as a "contractor," and was no longer in the position of a sub-contractor.

Held, that the sub-contractor, acting under such an agreement, was not bound by clauses contained in the original contract with the dismissed contractor, providing for forfeiture, etc.

Held also, that the non-production of an architect's certificate approving of the work done, though required by the original contract with the dismissed contractor as a condition precedent to payment, even if it were binding on the sub-contractor under the new agreement, could not preclude the sub-contractor from recovering if the work was so done as morally to entitle the sub-contractor to such certificate, following *Lewis v. Hoare*, 44 L. T. N. S. 66.

Davidson Black, for plaintiffs in both actions.

J. Reeve, for defendant Hunter.

Chan Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

ATTORNEY-GENERAL V. MIDLAND RY. CO.

Ejectment by crown—Statute of Limitations—Pleading—Demurrer—Costs.

In an action by the Attorney-General upon the relation of the Bursar of Toronto University to recover possession of certain lands claimed to be vested in Her Majesty for the benefit of the University. The defendants pleaded, in their statement of defence, that the land in question had been, with the assent and permission of the University and the Bursar as agent, taken possession of by the defendants for the purposes of their railway in that behalf under the statutory powers enabling them to expropriate the land, and that they had since retained and then were in possession thereof, and submitting that the sole remedy of the plaintiff was to recover compensation; and also that the claim of the plaintiff was barred by the Statute of Limitations.

Held, on demurrer, that it was not necessary to set out specifically the Act under which the alleged expropriation took place, or the various proceedings connected therewith.

Held, also, that the Statute of Limitations was no bar to the action, although the action was brought by the Crown in its capacity as Royal Trustee of the land in question, and a demurrer to that part of the defence was allowed. *Reg. v. Williams*, 39 U. C. Q. B. 397, approved; *Attorney-General v. Magdaline College*, 6 H. L. C., distinguished.

Held, also, that in the case of a partial demurrer to a statement of defence, if any one or more paragraphs be demurred to, the Court may properly look at any other paragraph or paragraphs bearing on the same matter of defence, and if the whole taken together disclose a sufficient defence, the demurrer must be overruled.

Held, also, that when a pleading is ambiguous or uncertain the proper remedy is to apply in Chambers to strike out or amend the defective matter, and that a demurrer on that ground will not lie.

Held, also, that the demurrer being partly successful and partly unsuccessful, neither party should get costs.

J. Patterson, for plaintiff.

J. Bethune, Q.C., and *D. Black*, for defendants.

Ferguson, J.]

[Dec. 9.]

RE BINGHAM V. WRIGGLESWORTH.

Vendor and purchaser—Title—Statute of uses—Rule in Shelley's case.

Where by deed certain lands were limited as follows:—*Habendum* "unto the said party of the second part, his heirs, executors, administrators and assigns, upon the following trusts, that is to say, in trust for the sole and separate use of the party of the first part (the grantor) for his natural life, and after his decease in trust for the said party of the third part (the grantor's wife) for her natural life, and after her decease in trust for the heirs of the party of the first part forever. And in the event of the party of the first part surviving the party of the third part, then upon the further trust and confidence forthwith to convey and revest the said trust premises to and in the said party of the first part, his heirs, executors, administrators and assigns, for his and their own proper use and benefit forever. But should the said party of the third part survive the said party of the first part, then and in that event, and in the further event of the decease of the party of the third part, upon trust to convey, transfer and make over the said trust premises to such person or persons, and in such shares interests and proportions, and for such estates, and in such manner, and upon such considerations as the said party of the first part shall in and by his last will and testament order, designate and appoint. But in the event of the said party of the first part dying intestate, then in trust to sell and dispose of, by private sale or public auction, for the most money, or to convey, transfer and set over the said premises for his heirs, executors, administrators and assigns."

Held, the grantor was entitled to the fee subject to the life estate in favour of his wife.

Held, also, that the three parties to the deed could make a good conveyance to a purchaser of the fee simple in possession.

Ferguson, J.]

[Dec. 9.]

WILKINS V. McLEAN.

Pledge of mortgage—Account—Equity of redemption.

Where an indenture of mortgage belonging to a trust estate was deposited by the trustee with

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

a third party as security for an advance to the trustee, and the pledgee subsequently representing himself to be interested in the mortgaged estate, procured a conveyance of the equity of redemption, which he resold at a profit.

Held, that he was not bound to account to the pledgor for the profit so made.

Moss, Q.C., for plaintiff.

W. Cassels, for defendant.

Ferguson, J.]

WATSON V. KETCHUM.

[Dec. 9.]

Compromise of action—Lien—Arbitration—Condition precedent.

Where upon the trial of an action of ejectment, in the year 1875, an agreement was come to between the plaintiff and defendant in the following terms:—"It is agreed that a verdict be entered for plaintiff by consent, and verdict not to be enforced until defendant shall have been paid \$50 towards his costs, and the value of the improvements he has made and are now on the lands in question herein, the value of such improvements to be determined by the award of Peter McNab, Thomas Knight, and Robert Hewitt, or a majority of them. Award to be made in writing on or before the 1st day of June, 1875, or such further time as the arbitrators, or a majority of them, may appoint. Plaintiff agrees to pay said \$50 and amount so to be awarded to defendant, and defendant agrees therefore to execute a quit claim deed of said lots to plaintiffs, and give up possession, both parties to release each other from all further claims."

And the plaintiff in the action afterwards, without paying the \$50 or the the value of the improvements, signed judgment and recovered possession under a writ of *hab. fac. pos.* Both parties to the action of ejectment died.

No two of the arbitrators named could agree on the amount to be awarded as the value of improvements.

Held, in an action by the devisee of the deceased defendant in ejectment, against the devisee of the deceased plaintiff in ejectment, that the former was entitled to a lien on the land in question for the \$50 agreed to be paid, and also for the value of the improvements to be ascertained by the Master.

Held, also, that the attaining of the award of the arbitrators as to the value of the improvements was not a condition precedent to the right to recover therefor.

Ferguson, J.]

[Dec. 9.]

FOSTER V. STOKES.

School trustees—Election—Waiver—Retraction of waiver.

At an election of school trustees the plaintiffs received the highest number of votes. Objections were made to the validity of the election, but no legal proceedings were taken to set it aside; a meeting, however, was held by the School Board, at which the plaintiffs were present, at which the alleged irregularities in the election proceedings were discussed, and at which it was agreed, the plaintiffs concurring, that there should be a new election. A new election was accordingly ordered to take place; the plaintiffs offered themselves and solicited votes as candidates for election until the day before polling, when the twenty days for protesting the first election had expired, when they claimed to be elected by virtue of the first election. The second election proceeded and the defendants were elected.

Held, the first election had been waived by the plaintiffs, and they could not retract their waiver. Action to declare the second election void dismissed with costs.

Moss, Q.C., for the plaintiffs.

Blake, Q.C., and *R. Meredith*, for the defendants.

Ferguson J.]

[Dec. 9.]

SUMMERS V. SUMMERS.

Will—Devise of land not owned by testator—Construction of will—Reformation of will.

A testator devised to the plaintiff lot 14 in the 10th concession of Artemisia. The testator did not, and never had owned that lot; but he did own lot 21 in the 14th concession of Artemisia, which was not specifically devised by the will. The residuary devise was as follows: "And the balance of said estate that may remain after paying above bequests, to be paid to my

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div

relatives as my executors may think advisable, after paying them a fair remuneration for their time and expenses."

The plaintiffs claimed to have the clause in the will devising lot 14 "reformed," so as to express the alleged true intention of the testator, and made to read as a devise giving to the plaintiff J. S. the E. $\frac{1}{2}$, and to the plaintiff W. S. the W. $\frac{1}{2}$ of lot 21 in the 14th concession; or that the residuary clause might be construed to vest any undisposed of property absolutely in the executors, and that they might be authorized to convey lot 21 to the plaintiffs in equal proportions.

Held, that the plaintiffs were not entitled to either relief prayed.

Held also, that evidence of the testator's intention was not admissible.

Ferguson, J.]

[Dec. 9.

MCCLUNG V. MCCrackEN.

Specific performance—Contract by agent in his own name—Undisclosed principal—Husband and wife—Statute of frauds, sect. 4.

A husband offered his wife's land in exchange, in a letter addressed to the plaintiff's agents, in the following terms:—"I have had an examination made of the buildings on King street and regret it is of a very unfavourable character. The buildings were, I learn, once condemned, and had to be rebuilt; the tenants have always been of migratory character, never remaining long in them. Under these circumstances I do not feel disposed to entertain Mr. McClung's present offer. If he will assume my mortgage amounting to \$11,200, and pay me in cash \$3,750, I will assume his mortgage of \$5,000 on the easehold. This offer to remain open till to-morrow. I remain, yours truly,

Thomas McCracken.

Messrs. Pearson Bros.

Or I will sell him my south houses for \$11,500, \$6,000 cash, balance on mortgage to suit his convenience."

The plaintiff accepted the offer in the following terms:—

"— McCracken, Esquire,

"Your offer of this date for the exchange of my property on King street for your property on

St. George street, I will accept on your terms. Yours respectfully, Jno. McClung."

Held, that this was not sufficient contract in writing under the Statute of Frauds as against the wife.

The wife subsequently signed a conveyance of the land to the plaintiff, but the conveyance contained no recital of the alleged contract, was never delivered, and was produced at the trial from her custody.

Held, that the conveyance, under the circumstances, was an unfinished act, and could not be relied on by the plaintiff in support of the alleged contract of which specific performance was sought.

J. E. Rose, Q.C., and J. H. Macdonald, for plaintiff.

Jas. MacLennan, Q.C., and Drayton, for defendants.

Full Court.]

[Dec. 7.

BEATY V. BRYCE.

Appeal to Court of Appeal—Leave to appeal—O. J. A. ss. 33, 34.

When the amount involved in an interpleader issue was under \$500, but it was alleged that the decision of the Divisional Court desired to be appealed from affected the right to other property amounting to \$2,000.

Held, that this was not a sufficient ground for granting leave to appeal.

Full Court.]

[Dec. 7.

O'DONOHUE V. WHITTY.

Appeal to Court of Appeal—Leave to appeal—O. J. A. sects. 33, 34.

Where the construction of a statute is involved in a judgment sought to be appealed from,

Held, leave to appeal to the Court of Appeal should be granted although the amount involved be less than \$200.

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac. Cases]

Full Court.]

[Dec. 7.]

RUMOHR V. MARX.

Appeal to Divisional Court—Appeal after time elapsed—Mistake—Rule 522—Time for setting down.

Where a defendant's solicitor had notified the plaintiff's solicitor of his intention to appeal from a judgment to the Divisional Court, and gave instructions to his clerk to set the cause down, but the clerk, by mistake, supposing that the seven days mentioned in Rule 522 were not clear days, suffered the last day to pass without setting the cause down, and on applying the following day to set the cause down, found he was too late.

Held, that this was no ground for granting leave to set the cause down after the time had elapsed.

Held, also, that the seven days mentioned in Rule 522 are "clear days."

Full Court.]

[Dec. 7.]

HUGHES V. HUGHES.

Appeal—Discontinuance—Costs—Appeal bond—R. S. O. c. 38, sect. 41.

Where an appellant gave notice of discontinuance, and the respondent thereupon, without taking out any order dismissing the appeal, proceeded and taxed his costs, and then applied for and obtained an order for the delivery out of the appeal bond for suit.

Held, that the order for the delivery out of the bond was regular.

Semble, also, that no order for the payment of the respondent's costs was necessary as a condition precedent to suing on the bond.

[The above four cases will be reported in full in our next issue.—Ed. L. J.]

Full Court.]

[Dec. 9.]

FOLEY V. CANADA PERMANENT L. & S. CO.

Leave to set case down for appeal—Excuse for delay.

Moss, Q.C., for plaintiff, moved for leave to set cause down for hearing at the present sittings. The judgment sought to be appealed from was

delivered on the 22nd November last. The plaintiff's solicitor immediately applied for a copy of the judgment, but did not receive it until the 29th November, which was the last day for setting the cause down for the present sittings. There was therefore no time to consult either the plaintiff or counsel as to whether the judgment should be appealed from.

Leonard, for defendants, opposed the application. He referred to *International F. Co. v. City of Moscow Gas Co.*, L. R. 7, Ch. D. 241; *Craig v. Phillips*, *Ib.* 249; *McAndrew v. Barker*, *Ib.* 701; *Re Mansell*, *Ib.* 711; W. N. 1878, 227; W. N. 1879-6.

The Court held the delay sufficiently excused, and granted the leave asked on payment of costs.

PRACTICE CASES.

Ferguson, J.]

[Nov. 1.]

HUNTER V. WILCOCKSON.

Judgment on endorsement—Statement of claim.

Motion for judgment on the endorsement on the writ. The action was for the rectification of a deed, and for a declaration that the plaintiff was entitled to a right of way, and for an injunction restraining defendant from interfering therewith. The endorsement stated the relief claimed; the defendant did not appear within the time limited. He subsequently entered an appearance, but did not serve any notice thereof. Notice of the motion had been posted up in the office, as in case of non-appearance.

Bain, for plaintiff, claimed that he was entitled to judgment for the relief claimed by the endorsement, without delivering a statement of claim. That the plaintiff was not bound to deliver a statement of claim, unless the defendant required it.

Held, that a statement of claim must be filed.

Cameron, J.]

[Dec. 5.]

RE LINDSAY V. MORRISON.

Motion for prohibition.

This action was brought in the First Division Court of the County of York, for \$175 due the

plaintiff, as he alleged, under agreement, and sufficiently ascertained by the signature of the defendant. The defendant, however, brought the whole agreement into Court, and resisted the action on the ground that there was a breach of warranty of certain articles operated upon by he agreement for which the \$175 was part of the purchase money.

Rose, Q.C., for defendant, moved for prohibition on the ground that there is no jurisdiction to try a question of breach of warranty, where a sum of over \$100 is in dispute.

Aylesworth, contra.

CAMERON, J., granted a prohibition unless the parties agreed to remove the case by *certiorari* without costs.

Cameron, J.]

[Nov. 25.

FLEMING V. HALL.

Sheriff's fees—Poundage.

This was a motion to reduce the fees of the Sheriff of the County of Bruce, charged on the seizure in question.

The Master in Chambers held that the Sheriff was entitled for poundage as follows: If the amount realized by him is \$1000 or under, 6 per cent.; if the amount is over \$1,000 but under \$4,000, 6 per cent. on the first \$1,000 and 3 per cent on the balance; if the amount is \$4,000 or over, 6 per cent. on the first \$1,000, 3 per cent. on the excess up to \$4,000, and 1½ per cent. on the remainder.

On appeal, CAMERON, J., upheld the Master's ruling.

Clement for the motion.

Cassels, contra.

LAW STUDENTS' DEPARTMENT.

EXAMINATION PAPERS.

SECOND INTERMEDIATE.

Common Law.

1. What are the various modes of raising the defence of estoppel by deed?

2. What is the contract of an endorser and acceptor of a bill of exchange respectively?

3. Discuss very briefly how far parol evidence is admissible to (1) explain, (2) to vary a written contract?

4. A company formed for the purpose of mining for salt and dealing in salt, by a written document, not under seal, contract to supply A with a quantity of coal oil. The company subsequently refuse to carry out the contract. Are they liable? Explain the scope of a corporations power to bind themselves by such a document as above.

5. What is the gist of the action of trover and trespass *de bonis asportatis* respectively?

6. What evidence of false pretence must be shown to sustain an indictment for obtaining goods by false pretences?

7. Name some of the exclusive and some of the concurrent subjects over which the Local Legislatures of the Provinces have legislative power.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

Duress by threat of imprisonment of third person.—*Albany L. J.*, Nov. 25.

Slander—Imputation of crime.—*Ib.*, Dec. 2.

Our wives.—*Irish L. T.*, Nov. 11, 18.

Fraudulent agents.—*Justice of the Peace!*

Dedication.—*Central L. J.*, Dec. 1.

Parent and child.—*Ib.*

Estoppels against married women.—*Southern Law Review*, Oct., Nov.

The law in relation to crops.—*Ib.*

Negotiability of detached coupons.—*Ib.*

The purchase by corporations of their own capital stock.—*Ib.*

Disfranchisement from private corporations.—*Am. Law Reg.*, Nov.

Fugitives from justice—Some points of practice.—*Criminal Law Mag.*, Nov.

Criminal attempts.—*Irish Law Times.*, Nov. 25.

Tender of mortgage debt after day of payment.—*Central L. J.*, Nov. 24.

Limited partnership.—*Ib.*, Dec. 8.

Implied covenant of fitness on lease of real estate.—*Albany L. J.*, Dec. 9.

CORRESPONDENCE—FLOTSAM AND JETSAM.

CORRESPONDENCE.

Rights and Wrongs of the Profession.
To the Editor of the LAW JOURNAL.

SIR,—Like the old woman who had so many children that she did not know what to do—there is an enterprising firm of young lawyers in this town who have more students than clients, consequently they are not unfrequently driven to despair.

Knowing that a brother professional, also practising in Barrie, had received an application from a client for a loan, the aforesaid "E. F. of Y. L." in order to bring grist to the mill, and thereby encourage a spirit of industry amongst their clerks, (which of course was very enterprising) caused to be written to the brother professional's client the following letter, which, after having been corrected, revised, and signed by one of the members of the aforesaid "E. F. of Y. L.," was deposited in Her Majesty's post office, and in due course received by the client:

"BARRIE, Nov. 10th, 1882.

"_____, Esq., Vine, P.O.

"DEAR SIR,—Should you or any of your neighbours require or wish to borrow money upon mortgage security we are prepared to loan you the same at seven per cent. per annum,

"Yours truly, _____."

Comment upon this questionable letter is quite unnecessary.

Talking of unlicensed conveyancers, I understand that our post-master, who does all the conveyancing in this place, has just negotiated for the purchase (for cash too!) of a complete set of Upper Canada Reports from one of the unfortunate but respectable members of the bar who has had to succumb to the evils of cheap conveyancing. It is needless to say that even a more thriving and learned trade than before will now be carried on. The new advertisement will appear next week I presume.

Yours, etc.,

AN OLD SUBSCRIBER.

Barrie, Nov. 23, 1882.

FLOTSAM AND JETSAM.

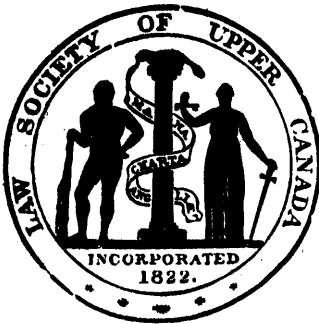
By the appointment of a "justice of the High Court" to succeed Vice-Chancellor Hall, Vice-Chancellor Bacon becomes the last of the Vice-Chancellors. The learned judge will be eighty-five years of age next February. He was called to the Bar fifty-five years ago, and has been on the bench fourteen years—a year less than the minimum service ordinarily allotted to judges.

The nomination of Mr. John Pearson, Q.C., to the judgeship of the Chancery Division, vacant by the resignation of Vice-Chancellor Hall, will meet with general approval. The Vice-Chancellor who now resigns made his reputation as a real property lawyer; his successor first became known as an equity draftsman—a subject having a closer bearing on the duties of a judge. Unless Mr. Pearson disappoints expectation, he will be a dignified and courteous, but firm judge—not so quick as to be hasty—and not so slow or discursive as to be unbusinesslike. He has been engaged in all the cases of importance in Mr. Justice Fry's Court and elsewhere, notably in *The United Telephone Company v. Harrison* decided last May. The confidence with which the opinion of Mr. Pearson has inspired solicitors while he was at the Bar may be transferred to the public when he is on the bench.

The arrest of Delany by M'Donnell, although probably only just in time to save Mr. Justice Lawson's life, was a little too soon in the interests of criminal justice. Apart from any charge of unlawfully carrying arms, it is a very nice question what criminal offence, if any, was committed. There was no "attempt to discharge arms with intent to murder" because the prisoner is not shown to have pointed the revolver or had his finger on the trigger; and, even if he had done so, but was prevented from pulling the trigger, the statutory offence would not, according to the ruling of Baron Parke in *Regina v. St. George*, have been committed. He was not guilty of "an assault with intent to commit a felony," because, although it is an assault to point a loaded pistol within range, it is no assault merely to put the hand on the butt of a pistol, even while in a threatening attitude. It may, however, be that a common law misdemeanour, punishable with imprisonment, was consummated. There is authority for saying that an intention to commit a felony, evidenced by an overt act, is itself a misdemeanour. Dogging the footsteps of an intended victim, and confronting him with a hand on a loaded pistol, may, in the opinion of a jury, be overt acts evidencing such intention. If not, being in possession of weapons with intent to commit murder, as evidenced by some overt act, would seem to require to be added to the criminal law of the country.—*Law Journal*.

LAW SOCIETY.

Law Society of Upper Canada.



OSGOODE HALL.

TRINITY TERM, 1882.

During this term the following gentlemen were called to the Bar, namely:—

Messrs. John Donald Cameron and Charles Walker Oliver, with honors; and Messrs. John Campbel, Ferrie Bown, Charles Joseph Leonard, Ernest Edward Kittson, Victor Alexander Robertson, Loftus Edwin Dancy, J. Hamilton Ingersoll, Henry Walter Hall, Robert Abercrombie Pringle, John Calvin Alguite, Frederick, Augustus Knapp, John A. Robinson and James Martin Ashton.

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

Graduates—Spencer Love, Francis Robert Latchford, John Alfred McAndrew, Henry Walter Mickle, Alfred Mitchell Lafferty, Charles True Glass, Arthur Eugene O'Meara, Angus McMurphy, Edward George Graham, Robert Hall Pringle, Smith Curtis, Willoughby Staples Brewster, John Frederick Grierson, Edward Kirwan C. Martin John Shilton, Christopher Robinson Boulton, Fenwick Williams Creelman, William Hume Blake, Francis Wolferstan Goodhue Thomas, William Morris, Alexander Clive Morris, David Fasken, James Baird, Frederick C. Wade, Geo. Sandfield Macdonald, George Goldwin Smith Lindsay, Alfred Herman Gross.

Matriculants—Joseph Stockwell Walker, George Ira Cochrane, D'Arcy DeLessart Grierson, Edward James Barrow Duncan, Francis Hall, John Franklin Wills, Henry Parker Thomas, William Francis Johnston, Thomas Atkins Wardell, William Howard Hearst, Norman McDonald, W. J. Millican, John McKay, Robert C. LeVisconte.

Juniors—Herbert Alfred Percival, John Healy Reeves, James S. Chalk, John Henry Alfred Beattie, Wesley Byron Lawson, Henry Newbolt Roberts, Frank Foley Lemieux, James Percy Moore, James Herbert Sinclair, George Herbert Dawson, Neil McCrimmon, John Young Murdoch, Gordon Joseph Leggatt, George Henry Hutchison, George Luther Lennox, Richard Alexander Bayley, Edward Albert Crease, Joseph H. Jack, John Williams Bennett, Malcolm McLean, William George Burns.

RULES.

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

Articled Clerks.

From	} Arithmetic. Euclid, Bb. I., II., and III. English Grammar and Composition. to English History Queen Anne to George III. Modern Geography, N. America and Europe. Elements of Book-keeping.
1882	
1885.	

In 1882, 1883, 1884, and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil at their option, which are appointed for Students-at-law in the same year.

Students-at-Law.

CLASSICS.

	} Xenophon, Anabasis, B. I. Homer, Iliad, B. VI. Cæsar, Bellum Britannicum, B. G. B. IV., c. 20-36, B. V. c. 8-23. Cicero, Pro Archia. Virgil, Æneid, B. II., vv. 1-317. Ovid, Heroides, Epistles, V. XIII.
1882.	
	} Xenophon, Anabasis, B. II. Homer, Iliad, B. VI. Cæsar, Bellum Britannicum. Cicero, Pro Archia. Virgil, Æneid, B. V., vv. 1-361. Ovid, Heroides, Epistles, V. XIII.
1883.	
	} Cicero, Cato Major. Virgil, Æneid, B. V., vv. 1-361. Ovid, Fasti, B. I., vv. 1-300. Xenophon, Anabasis, B. II. Homer, Iliad, B. IV. Xenophon, Anabasis, B. V. Homer, Iliad, B. IV.
1884.	
	} Cicero, Cato Major. Virgil, Æneid, B. I., vv. 1-304. Ovid, Fasti, B. I., vv. 1-300.
1885.	

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

Translation from English into Latin Prose.

MATHEMATICS.

Arithmetic; Algebra, to end of Quadratic Equations; Euclid, Bb. I., II. & III.

ENGLISH.

A paper on English Grammar.
Composition:

Critical Analysis of a selected Poem:—

1882—The Deserted Village.
The Task, B. III.

LAW SOCIETY.

- 1883—Marmion, with special reference to Cantos V. and VI.
- 1884—Elegy in a Contry Churchyard. The Traveller.
- 1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.

- | | | | | | | |
|------|---|----------------------|---|------|---|-------------------------------|
| 1883 | } | Emile de Bonnechose, | } | 1882 | } | Souvestre, Un |
| 1885 | | Lazare Hoche. | | 1884 | | philosophe
sous les toits. |

OR, NATURAL PHILOSOPHY.

Books—Arnett's Elements of Physics, 7th edition and Somerville's Physical Geography.

A student of any University in this Province who shall present a certificate of having passed within four years of his application an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articulated clerk (as the case may be) upon giving the prescribed notice, and paying the prescribed fee.

From and after January 1st, 1882, the following books and subjects will be examined on :

FIRST INTERMEDIATE.

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

SECOND INTERMEDIATE.

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

FOR CERTIFICATES OF FITNESS.

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

FOR CALL.

Blackstone, vol. 1, containing the Introduction and Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills; the Statute Law and Pleadings and Practice of the Courts.

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

The Law Society Terms begin as follows:—

- Hilary Term, first Monday in February.
- Easter Term, third Monday in May.
- Trinity Term, first Monday after 21st August.
- Michaelmas Term, third Monday in November.
- The Primary Examinations for Students-at-law and Articled Clerks will begin on the second Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.
- Graduates and Matriculants of Universities will present their Diplomas or Certificates at 11 a.m. on the second Thursday before these Terms.
- The First Intermediate and Solicitor Examinations will begin on the Tuesday before Term at 9 a.m.
- The Second Intermediate and the Barristers Examinations will begin on the Thursday before Term at 9 a.m.

The First Intermediate Examination must be passed in the Third Year, and the Second Intermediate Examination in the Second Year before the Final Examination, and one year must elapse between each Examination, and between the Second Intermediate and the Final, except under special circumstances.

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

Articles and assignments must be filed within three months from date of execution, otherwise term of service will date from date of filing.

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

Candidates for Call to the Bar must give notice signed by a Bencher during the preceding term, and deposit fees and papers fourteen days before term.

Candidates for Certificate of Fitness are required to deposit fees and papers on or before the third Saturday before term.

FEES.

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

A Guide to Legal & Ornamental
PENMANSHIP

In a series of Progressive Exercises, from

Lithographed Plates,

Designed for the use of Law Students and others, with Introduction and practical directions. Sent free on receipt of

PRICE - 50 CENTS.

J. RORDANS & CO.,

Law Stationers and Lithographers,

88 King St. East, Toronto.

TABLE OF REFERENCE

TO CASES NOTED AND REPORTED IN THIS VOLUME WHICH ILLUSTRATE THE PRACTICE
UNDER THE ONTARIO JUDICATURE ACT.

This table furnishes an easy means of reference to the English and Canadian cases bearing on the present practice of our Courts, which have been noted and reported in the "Notes of Cases" and "English Practice Cases" in the LAW JOURNAL in this volume. The first column indicates the number of the section or rule which is illustrated by a particular case (the rules being designated throughout by their marginal numbers), and the second column indicates the page in which the case in question is to be found.

Rule	PAGE.	Rule	PAGE.
2	57	362	371
7	161	374	101
40	119,	375	101
42	243	376	217
45	99, 136,	385	60
57	119	404	203
78	99	406	59, 326
80	106, 242,	414	55, 240
90	141	420	166
92	78	422	203
94	276	425	203
95	19	427	55, 76
97	325	428	136, 243, 261, 325, 342
98	179	439	56
99	179	440	224
100	119	442	223
103	18	443	98
107	217	462	55
108	56, 136	471	342
111	56	484	20, 43
127	40, 80,	490	203
128	53, 142, 236,	494	342
131	59	501	120
133	80	522	444
144	383	523	342
149	204	Section 3	101
152	204	4	402
157	60	9	101, 160
158	425	9, sub-secs. 2, 3	342
159	425	12	40, 342
164	60	16	40
176	261	16, sub-sec. 4	75, 136, 204, 217
178	204	16, sub-sec. 8	80, 204, 362
189	18	29	342
190	343	32	57, 136, 160, 342
217	18	33	342, 426, 443
218	18	34	443
221	118	35	342
224	402	36	218, 329, 342
235	44	37	100
255	427	38	42
269	427	39	43, 342
274	54	43	421
285	14, 180,	45	402
317	54	47	180, 261, 329
318	205	48	303, 329
322	261	52	342
323	14	77	78, 79
324	74, 77	87	43
339	279	Gen. Order 16	80
343	79, 80	26	18
346	119, 235	33	424
365	326	44	343
370	100		

INDEX.

- Accounts,
taking of by Official referee, 180.
- Accretion,
Soil washed away and restored, 82.
- Act of God,
Property wrongfully replevied destroyed by,
409.
- Administration,
foreign assets, costs, 67.
order for refused, application too soon, 99.
deficiency of assets, secured creditors, 121.
conduct of proceedings, receiver, 130.
of insolvent estate, 231.
cases within G. O. 638 and 639, 241, 242.
disposition of costs, general principles, 252,
282.
default of executor, costs, 423.
see Trustee—Will.
- Adoption,
promise to make will in favor of child, 177,
328.
- Agent—*see* Principal and agent.
- Agreement,
compromise of action—lien—improvements,
442.
- Alimony,
interim, time to apply for, 265.
particulars of acts complained of, 426.
- American Law Magazine.*
notice of, 250.
- American Law Register,
notice of, 105.
- Annuity,
construction of devise, 157.
- Anson's Law of Contracts,
review of, 21.
- Appeal,
none from Judge to Divisional Court, 10, 100.
time to, O. J. A. sec. 38—R. S. O. ch. 38,
sec. 46, 42.
cross appeals, costs, 43.
leave to appeal from master's order, 55.
interpleader as to \$500, other property
up to \$2000 affected, 443.
when construction of statute involved,
443.
after time elapsed, mistake, 444.
excuse for delay, 444.
from order of judge of Q.B.(P.Q.), juris-
diction, 423.
mistake as to time, offer to expedite, costs,
26.
security for costs of, application for return
of, 76.
- Appeal—*Continued.*
fresh evidence for Appellate Court not al-
lowed, 212.
on weight of evidence, 422.
absence of evidence, practice, 213.
from judge's order, practice as to hearing,
218.
further evidence on refused, 236.
intermediate—jurisdiction, 313, 329, 341.
jurisdiction of Divisional Court, 313, 329, 341.
bond in, use of "and" for "or," 329.
discontinuance, costs, 444.
delay in filing—delay out of court, 426.
see Appeal, Court of—Division Court.
- Appeal, Court of,
making certificate of judgment of, an order
of High Court, 56.
orders of, setting aside awards, costs, 281.
reviewing order of Judge under O. J. A. sec.
48, 303.
power of amendment by, 396.
- Apprentice,
contract with, place where to be performed,
114.
- Arbitration,
O. J. Act, jurisdiction as to order for wit-
nesses, 102.
award not necessary to make Rule of Court,
113.
requisites of notice of motion to set
aside, 113.
evidence taken in absence of parties, 279.
costs—"in any action," 232.
when order acts severable to rest of
award, 279.
- Arrest,
solicitor may arrest for costs due to client,
399.
- Articles of interest in contemporary journals—
84, 103, 147, 207, 227, 291, 312, 372, 428, 445.
- Assembly,
lawful, but unlawful consequences, 397.
- Assignment f. b. o. c.,
partnership or separate creditors, 383.
- Attachment,
motion for, must be on notice, 326.
- Attachment of debts,
trust money, right of c. q. t., 101.
absence of suggestion by garnishee, 101.
of equitable claim, money in hand of receiv-
er, 166.
debt must be absolute not conditional, 217.
- Auction sale—*see* Vendor and purchaser.

- Australian Law Times*, notice of, 189.
- Award—*see* Arbitration.
- Bailor and bailee, bailee disputing title, *jus tertii*, 130.
- Banking, bank account, lien of bank, 81.
cheque, delay in presentment of, 153.
duty of drawer as to stopping, 213.
when placed to credit of account by bank, 213.
- Bench and Bar, the "uncertificated" doing business in Surrogate Courts, 62.
limiting time for argument of counsel, 86.
junior counsel not to take a position in conflict with senior, 144.
witty sayings by Jessel, M.R., 210, 270, 394.
Judge adjourning court over race day, 250.
overruling prior decisions, 379.
- Bills of Lading, excess in quantity named, custom, 278.
recent recisions on, 410.
- Bill of Sale, consideration not truly stated, 131.
- Bills and Notes, notice of dishonor, married woman, 12.
duty of notary as to, 384.
alteration by joint maker, 60.
endorsement in blank, 60.
principal and surety, insolvent maker, 60.
agreement as to liability, 61.
fictitious payee, 81.
re-endorsement, circuity of action, 111.
bill accepted, but not signed by drawer, 339.
restricted negotiability, 370.
mutilation, innocent holder, 370.
consideration, threatening prosecution for felony, 377.
unstamped note taken in lieu of another, 384.
double stamping, effect of repeal of Stamp Act, 438.
see Limitations, Statute of.
- Blackstone's Commentaries by Ewell, Notice of, 428.
- Boarding house, evidence as to, 365.
- Bond—*see* Appeal—Constable—Municipal law—Replevin—School trustees.
- Bribery, punishment of, in England, 2.
- Bramwell, Sir George, raised to the Peerage, 45, 85.
- British Columbia, administration of justice in, discussed, 26, 127, 127, 151.
correspondence thereon, 167, 181, 224, 244, 265, 389.
recent general orders of Supreme Court, 168.
- British North America Act, distribution of legislative power, 196.
vesting of railway and other public works, 198.
- British North America Act *Continued.*
proposed amendment to, by Mr. Mercier, 210.
power of Provincial Legislature to impose hard labour, 275.
delegation of powers under, 275.
proceedings of Governor in Council, 314.
- Building Society, mortgage to officers without seal of Co., 75.
position of, in Australia, 189.
- Carrier, special condition as to liability, 396.
- Charitable society, expulsion of member, 327.
- Chattels, logs mingled and indistinguishable, right of owners, 239.
- Chattel Mortgage, prior advances, pressure, 96.
sale under, without renewal, interpleader, 97.
setting up new title, 97.
refiling after sale of goods, 166.
affidavit by agent, 166.
defective, effect of, 241.
by trustees of church, evidences of fraud, 275.
registration, Sunday last of five days, 367.
obtained under pressure, 96, 440.
description of goods, 440.
see Bill of Sale.
- Cheque—*see* Banking.
- Children, the value of, discussed, 315.
adoption—*see* Adoption.
- Chose in Action, action by assignee—set off—R. S. O., c. 116, ss. 7 and 10, 40.
- Club, sale of liquor by—"retail"—license, 230.
- Colonies, Tarring on law relating to, 406.
- Commission, agent acting for both parties, 60.
to guardian in partition suit, amount, 243.
condition precedent not fulfilled, 396.
- Commissioner for Administering Oaths, Inconvenience of being limited to county, 63.
- Commission to take evidence, evidence not used, costs, 13.
foreign, return of, 424.
- Computation of time, appearance—execution—Sunday, 76, 143.
meaning of "forthwith," 132.
"clear days" under Rule 522, 444.
- Company, winding up, 41 Vict. cap. 5, 337.
carrying on business contemplated, 338.
practice, costs, 380.
see Deceit—guarantee.
- Compromise, *see* Agreement.
- Consolidation, of cross actions, 362.
- Constable, breach of duty, bond, 61.

- Constitutional Law,
law school lecturers, by Mr. Hodgins, 4.
the Governor-General in Council, 314.
see British Columbia, British North America Act.
- Contempt of Court.
Justice of Peace no power to commit for, 61.
- Contracts,
Anson on, review of, 21.
damages, warehousing goods, 49.
illegal, recovery of money paid, 49.
construction, arbitration, 120.
recitals, 174.
pleading, 177.
time of the essence, 365.
condition precedent, 369.
"unauthorised" but not illegal, 130, 395.
with illegal association, 130, 395.
breach of notarial, representations of Crown, 138.
impossibility of performance, 366.
rescission of, misrepresentation, 174.
see Agreement—Specific Performance—Vendor and Purchaser.
- Conveyancers,
law as to, in Manitoba and Australia, 86.
- Conveyancing,
proposed Act to simplify, 65.
O'Sullivan's Manual of, 122.
- Conviction,
quashing, jurisdiction, 10.
certiorari, recognizance, 120.
power of sessions as to amendment, 277.
return of—*see* Justice of the Peace.
- Copyright,
Mr. Dawson's pamphlet on law of, 404.
- Corporation,
liability of, for acts of officer, 238.
Directors, validity of proceedings when no proper quorum, 298.
ratification of action of, 298.
see Guarantee—Joint Stock Co.
- Costs,
when defendants sever, 3.
mutual mistake of parties, 13.
guarantee by solicitor, execution, 14.
taxation—practice under rule 439 and R. S. O., c. 130, s. 49, 56.
solicitor and client—refund, 75.
retainer, 97.
order for payment, 143.
Rule 442, special items, 423.
appeal, bill of over \$200 reduced to \$200, 426.
settlement to deprive solicitor of, 56.
certificate of judgment by Court of Appeal, 98, 243.
of incumbrancers, 112.
third party, appeal, 136.
security for—29, 30 Vict., cap. 42, 76.
payment out, appeal, 121.
misstatement by plaintiff of his residence, 166.
discretion of Court as to, extends to future proceedings, 325.
- Costs—*Continued.*
when nonsuit on some issues, 261.
judgment ambiguous as to, procedure, 261.
interlocutory proceedings, stay till payment, 377.
of the day, none under O. J. A., 425.
see Administration—Arbitration—Married Woman—Solicitor—Trustee.
- Contemporary Journals—*see* Articles of Interest in.
- Counsel fees,
right of action for, 218.
- Counterclaim,
hypothetical case, 14.
not connected with subject matter, 75.
practice, summons or notice, 203.
new tariff required, 391.
- County Court,
Practice in, since Judicature Act, 62.
Exercise of discretion in amendments, 145.
Practice—Summons or notice, 203.
New tariff required.
- County Court Judges,
appointment and removal of, rights of local legislatures, 63, 74.
misconduct, impeachment, commission of enquiry, 74.
- Covenant,
construction of, 156.
running with land, assignee with notice, 175.
- "Criminal Cause,"
interpretation of words, 20, 43.
- Criminal Law,
assault, evidence of defendant, 10.
right of municipality to pass by-law inflicting imprisonment with hard labor, 61.
compounding felony, mortgage given for, void, 81.
meaning of "maliciously," 114.
proposed alteration of, as to appeals in England, 149.
case reserved as to selection of jurors, proper remedy, 239.
statistics of, for 1880, 260.
see Larceny—Murder.
- Creditor's Suit.
injunction restraining action, 100.
- Crown,
no legal redress for wrong against, 219.
contract with, liability, 271.
see Public works—Statute of Limitations.
- Cy-pres, doctrine of,
charitable bequest, 67.
- Cruelty to animals,
killing trespassers, 102.
- Covenant,
construction of, 156.
running with land, assignee with notice, 175.
- Damages,
warehousing goods, contract, 49.
remoteness, rules as to, discussed, 51, 114.
loss on resale, 232.
extent of—obstructions, 93.
future—lateral support, 96.

- Damages—*Continued.*
 measure of—breach of contract, 229.
 principal and agent, 395.
 valuation of—condition precedent to action
 for, 396.
- Day, Mr. Justice,
 appointment of, 249.
- Deceit,
 fraudulent prospectus of company, 319.
- Deeds, construction of,
 recital, covenant, 68.
 life lease, exception, 94.
 fee subject to life estate, rule in Shelley's
 case, 441.
- Delegation,
 of legislative power considered, 431.
- Demurrer,
 general, when allowable, 343.
- Description,
 sufficiency of name, 302.
- Dismissal of Action,
 for want of prosecution, case struck out by
 consent, notice of trial, 427.
- Discovery,
 action on marine policy, ship's papers, 118.
 shorthand notes, privilege, 233.
 action to recover lands, 383.
see Vendor and purchaser.
- Distress,
 damage feasant, illegal sale, 365.
see Mortgage.
- Distribution, Statutes of,
 intestacy, collaterals, 121.
- Ditches and Watercourses,
 duty of fence viewers, jurisdiction, descrip-
 tion of premises, 15.
- Division Courts,
 jurisdiction, interest, "ascertained by sig-
 nature," etc., 40.
 title to land, separate estate of married
 woman, 40.
 action for rent and taxes, 48.
 process has no effect outside Ontario,
 371.
ieri facias and "warrant of execution" are
 the same, 76.
 security for costs may be ordered, 371.
 appeal, practice, 98.
 review of inspector's report for 1880, 150.
 judgment debtor, means and ability to pay,
 390.
 irregular application for new trial, 425.
 prohibition unless agreement to remove, 445.
- Divisional Court—*see* Appeal.
- Drainage—*see* Municipal Law.
- Drinks, drinkers and drinking,
 review of Mr. Roger's book on, 102.
- Duress,
 threat of suicide by husband to wife, 60.
- Easement,
 requires registration in Nova Scotia, 162.
see Light—Party wall—Riparian proprietor.
- Ejectment,
 proof of title, possession, evidence, 41.
 writ may issue from any county, 403.
- Elections, (Parliamentary)
 certificate to witness, "criminal cause," 43.
 refusal to give conclusive, 50
 recount, irregularities by D. R. O. as to
 ballots, 304, 324.
 written ballots used, 304.
 ballots numbered by D. R. O. 309.
 ballots marked by coloured pencil, 324.
 irregular marking of ballots, 324.
 jurisdiction of High Court, petitions in
 wrong court, 349, 400.
 interference of Provincial Government in,
 400.
 requirements of petition, 400.
- Equity of Redemption,
 statute of limitations, parties, 263.
- Estate tail,
 bar of, by mortgage, reconveyance to
 mortgagor, 221.
- Estoppel,
 by lapse of time, partners, 108.
 doctrine of, not to be extended, 396.
- Evidence,
 corroboration, extent of, required by Act, 11.
de bene esse in old suit, 155.
 examination of witness, pending motion, 180.
 proof of order in council, 401.
see Appeal.
- Examination,
 of parties, at what stage allowable, 166.
 of documents, prolonged, meaning of, 303.
 of infants, R. S. O. cap. 40, 371.
 of plaintiff's daughter in seduction case, 402.
 before appearance, 403.
 of witness, pending motion, 180.
- Execution,
 issued in bad faith, 14.
 when to issue after appeal, 43.
 equitable, 265.
 mortgage of real estate, 344.
- Executor,
 liability of one for acts of another, 74.
 compensation, risk, 262.
 devastavit, laches, 379.
see Commission.
- Extradition Treaty,
 to what extent forgery within, 313.
 promptness of U. S. authorities under, 353.
 forgery. Ashburton treaty, 402.
- False Representation—*see* Misrepresentation.
- Fence Viewer's Act—*see* Ditches and Water-
 courses.
- Fireman,
 not bound to imperil his life tho' paid for
 services, 430.
- Fisheries Act,
 licence to fish, riparian proprietors, 220.
- Fitzgerald, Mr. Justice,
 appointment as Lord of Appeal, 229.
- Fixtures,
 mortgage, machinery, 10.
 counters in store, 344.
- Forgery,
 false entries in official books, uttering, 402.

- Foreclosure,**
 payment by tenant to mortgagee, stat. of limitations, 7, 257.
 practice, no order allowing service necessary, 99.
 opening, innocent purchaser, 387.
- Foreign Judgment,**
 cause of action, jurisdiction, 22 Vict., c. 5, s. 58, 41.
- Foreign State,**
 devise of government of, 273.
- Frauds, Statute of.**
 Promise to pay debt of another, 366.
- Fraudulent Conveyance,**
 setting aside, 142.
 13 Eliz., cap. 5—consideration, 381, 384.
- Fraudulent Preference,**
 defending one suit and not another, 13.
 cognovit, pressure, 240.
 remedy, delaying creditors, 241.
 mortgagor and mortgagee, costs, 367.
see insolvency.
- Fraudulent Representations,**
 claim for damages for, stat. of limitations, 154.
- Friendly Society,**
 unauthorized loan, 130.
- Garnishee—** *see* Attachment of Debts.
- Gift,**
 fiduciary relation, between parties, 296.
- Goodwill of Business,**
 dissolution of partnership, 173.
- Grant, Construction of.**
 to A. & B., to the use of A. & B., &c., as joint tenants, &c., 344.
- Guarantee,**
 default in payment of note, 10.
 of void debt of Co. by Directors, 215.
 not under seal, R. S. O., cap. 121, 263.
- Guiteau,**
 scenes at trial of, 2, 105.
 Judge Cox's charge, 65.
- Hall, V. C.,**
 resignation of, 353.
- Harbours,**
 public, foreshore, 161.
- Holker, Sir John,**
 appointed Lord Justice, 45.
 death of, 209.
- Hotel,**
 appointment of receiver, 89.
- Horse Cases and Perjury—**431.
- Husband and Wife,**
 administration by wife, loan to second husband, 55.
 separate equitable estate of wife, 140.
 conveyance from wife to husband, 206.
 post nuptial settlement, when invalid, 240.
 gift by husband during coverture, 345.
see Statute of Frauds.
- Imprisonment with hard labour,**
 right of municipality to pass by-law for, 61, 431.
- Improvements,**
 compensation for, bad survey, 344.
 under mistake of title after litigation begun, 142.
- Incorporated Law Society Calendar,** 314.
- Incumbrancers,**
 writ to settle priorities, appeal, costs, 160.
- Indecent assault,**
 subsequent conduct, evidence, 139.
- Index Reporter,**
 notice of, 123.
- Indictment,** *see* Information.
- Infant,**
 making ward of Court, practice, 214.
 gift by, refusal to set aside, 252.
 mortgage, ratification, 423.
- Information,**
in rem—onus probandi, 93.
 difference between, and indictment, 153.
- Injunction,**
 undertaking by plaintiff, practice, 74.
- Insanity,**
 as a ground of defence in criminal cases, 45.
 the Guiteau case, 1, 65.
- Insolvency,**
 presence of debtor at creditors' meeting, 71.
 composition and discharge, Acts in favour of debtor, 71.
 construction of sect. 136 of Act of 1875, 74.
 practising attorney dealing in lands, 75.
 assignment to delaying not defraud creditors, 139.
 mortgage in contemplation of, preference, 146.
 pleading, trader, 161.
 seduction, a "debt due as damages for a personal wrong," 221.
 surplus after payment in full, 282.
 undue preference, pressure, 347, 364, 369, 385, 440.
 discharge, setting aside order of, 280.
 concealment of assets, 384.
 withholding information, defective books, 386.
- Interest,**
 principles as to allowance of, considered, 294.
see Division Court—Mortgage—Solicitor.
- International Law,**
 private, general maritime law, 53.
 foreign administration, 387.
 the bombardment of Alexandria, 299.
 foreign marriage and divorce, 423.
- Interpleader,**
 no appeal from order as to costs of, 57.
 chattel mortgage execution, 75.
 "execution creditors," meaning of, 76.
 summary decision, no appeal, 362.
 claimant not appearing, judge's decision final, 366.
- Interrogatories,**
 when answers to be given, 44.

- Insurance (Accident,
voluntary exposure to risk, 385.
- Insurance (Life,
forfeiture by non payment, 81.
warranty, adding pleas, 142.
lapsed policy, unpaid cheque, 145.
incomplete policy—delivery—escrow, 228.
- Insurance (Fire,
no statutory conditions—wilful negligence, 94
vendor and purchaser, subrogation, 296.
payment of premium, waiver, 327.
statutory conditions, 345.
power of manager of company to compromise claim, 345.
see Subrogation—Vendor and Purchaser.
- Insurance (Marine,
free from capture or seizure, 154.
measure of underwriter's liability, 395.
discovery, ship's papers, 118.
- Irregularity,
motion against, grounds must appear, 403.
- Joint Stock Company,
subscription for stock, notice of call, 12.
calls on stock, allotment, vesting of shares, 53.
winding up—contributories, 91, 92.
policy holders, 113.
set off not allowable, 135.
simple contract creditor of, cannot have receiver appointed, 117.
illegally issued stock, shareholder, 146.
misrepresentation in prospectus, 176.
fraudulent prospectus, deceit, 319.
- Judgment,
before appearance, Rule 324 O. J. O., 74.
when plaintiff barred by, from bringing another action, 74.
motion for, on default of appearance, 59, 424.
service of notice of, 59.
endorsement, statement of claim, 424, 444.
under rule, 80, 371.
by default in action begun in local office, 99.
final, on defence and counter claim, 261.
- Judicature Act (England,
jurisdiction in probate cases, 118.
canon of construction of rules, 235.
- jurors,
selection of, *see* Criminal Law.
- Jury, Trial by,
in chancery, when allowed, 403.
transfer of cause to obtain, 402.
- Justice of the Peace,
minute of proceedings by, what sufficient, 230.
disqualification from bias, 234.
return of conviction, when to be made, 283.
right of Provincial Legislature to appoint, 401.
- Larceny,
money demanded by menaces, 135.
- Landlord and Tenant,
lease, renewal, condition precedent, 7.
- Landlord and Tenant—*Continued.*
alternative remedies for breach of covenant in, 231.
short form—covenant not statutory, 274.
for life, proviso for re-entry, 274.
evidence of surrender, 276.
covenant to keep up fences, removal, 277
dangerous place, negligence, 376.
“necessary repairs” by tenant, 379.
see Distress.
- Lash, Z. A.,
resignation of, as Deputy Minister of Justice, 126.
- Law Journal (England),
value of reports of, 169.
- Law List (Kordan's),
notice of, 372.
- Lateral Support,
founded on prescription, 31, 157.
artificial, removal, future damages, 96.
liability of employer or contractor, 157.
- Law Reports,
Digest of, 1866 to 1880, 209.
- Law Society,
proceedings of Mich. Term, 1881,
miscellaneous business, 35 *et seq.*
Report of Legal Education Com., 36.
“ “ Building Committee, 36.
“ “ Committee on Printing, 36.
proceedings of Hilary Term, 1882.
miscellaneous business, 199 *et seq.*
Report of Finance Committee, 200.
proceedings of Easter Term, 1882.
miscellaneous business, 255 *et seq.*
fees for shorthand notes, 258.
Report on Law School, 259.
“ as to English barristers, 260.
proceedings of Trinity Term, 1882.
miscellaneous business, 356 *et seq.*
Report of Reporting Committee, 361.
- Law Student's Department,
examination questions, 84, 331, 445.
office hours for students, 122.
lectures by Mr. McDougall, 315.
defects and advantages of present law course discussed, 244, 249, 334, 349.
examination days in November, 388.
library for students, defects, 427.
- Lease—*see* Landlord and Tenant.
- Legislative power,
delegation of, considered, 431.
- Leith, Mr.,
notice of his real property work, 393.
- Lefroy, Mr.,
appointment of, as Chancery reporter, 210.
- Libel,
conduct tending to injure reputation, etc., indictable, 61.
telegraph, liability of company, special damage, 164.
bad character of plaintiff, how this affects his rights, 232.
rumours to same effect before libel, 232.
- Limitations, Statute of,
executor claiming as creditor, 11.

- Limitations, Statute of—Continued.**
 payment on account, 12.
 right of one person through action of another, 89.
 wild lot defined by blazed line, delay in locating, 139.
 boundary—possession, 140.
 setting aside fraudulent conveyance, 142.
 foreclosure or sale, a proceeding under R. S. O., c. 108, s. 4, 143.
 claim for damages for fraudulent representations, 154.
 mortgage—insolvency, 206, 207.
 acknowledgement, tenants in common, 212.
 estoppel, 367.
 special devise, position of executors, 273.
 partial possession, 275.
 bill maturing Dec. 1, 1875, writ issued Dec. 1, 1881, 277.
 foreclosure by mortgagee not in possession, 340.
 fraud—judicature act, 375.
 tenant of equitable tenant for life *v.* remainderman, 384.
 trustee and cestui que trust, 386.
 action by Crown against R. W. Co., 440.
see Foreclosure—Mortgage.
- Light,**
 evidence as to enjoyment for 20 years, 214.
 easement, R. S. O., cap. 108, sec. 36, 214.
- Liquor,**
 sale after notice not to sell, 364.
- Lodger,**
 or under tenant, distress, 170.
- Lush, L. J.,**
 death of, 1
 review of his life, 72
- Maritime Court,**
 jurisdiction, action *in rem* under Lord Campbell's Act, 273.
 power of court to deal with mortgages 285.
see Ships and Shipping, 285.
- Maintenance,**
 beyond provision in will, 158.
- Malicious prosecution,**
 meaning of terms "reasonable and probable cause" and "malice," 134, 277.
 setting criminal law in motion, evidence, 279.
- Mandamus,**
nisi, procedure in impeaching return to, 45.
- Manitoba,**
 curious mistake in Statutes of, 149.
 bill to admit Ontario lawyers to practice in, 235.
 proposal to publish legal journal in, 293.
 disallowance of railway charters, 409.
- Marriage,**
 bill to legalize, with deceased wife's sister, 149.
 singular contract of, 169.
 foreign, and divorce, alimony, 423.
- Marriage Settlement,**
 covenant by infant wife, 89.
 post nuptial, consideration, insolvency, 145.
see Trustee.
- Married Woman,**
 promissory note, notice of dishonor, 12.
 separate business, personal liability, 54.
 no order against for goods supplied during coverture, 160.
 cultivating her own land, crops, execution *v.* husband, 166.
 suing separately, security for costs, 325.
 new property act in England, 330.
 contract as to separate estate, 388, 404.
see Division Courts.
- Master and Servant,**
 restraining servant from using knowledge of master's business, 60.
 negligence, unusual machinery, 60.
 specially dangerous machinery, 81.
 foreman when not a fellow servant, 81.
 extraordinary risks, 82.
- Master, Local,**
 powers of, reference, 329.
- Master in Chambers,**
 jurisdiction—witness—master's office, 14.
 leave to appeal from, 55.
 power to commit for non-production, 166.
 power to transfer actions, 180.
- Master in Ordinary,**
 jurisdiction—examination of witnesses, 14.
 decree erroneous—stay of proceedings, 15.
- Mechanic's Lien,**
 covers foreman in a mine, 60.
 extent of right, parties, priority, 369.
 contractor and sub-contractor, 440.
 condition precedent, architect's certificate, 440.
- Minute of Proceedings—see** Justice of the Peace.
- Misrepresentation—see** Contract—Fraudulent Representation—Principal and Surety—Specific Performance.
- Vendor and Purchaser.**
- Mortgage,**
 Statute of Limitation express trust, 8.
 fixtures, machinery, 10.
 consolidation of, 30.
 deposit of title deeds with bank, 30.
 distress clause in mortgages, suggestion, 44
 effect of, tenancy at will, 400.
 interest not reserved on, 58.
 "without interest if paid when due," 58.
 mortgagee in possession, 70.
 agreement to postpone, non-registration, priority, 92.
 equity of redemption, merger, 94.
 indemnity, 165.
 by company, right of distress after winding up, 108.
 computation of interest when successive mortgages, 113.
 when mortgagee by claiming whole money bound to accept, 142.
 right of mortgagee to growing crops, 143.
 action to declare void, delivering up deeds, 160.
 purchase of part of mortgaged estate, 165.
 sale under, bill of costs of sale, subsequent incumbrances, 221.

- Mortgage—Continued.**
 service of notice, alternative mode, 326.
 paying off, interest in advance, mortgagee
 proving claim, 222.
 proviso for increased interest on default, 241.
 payment—transfer—trespass, 277
 consolidation, 254.
 unpaid taxes may be added to mortgage
 debt, 429.
 pledgee of—account—redemption, 441.
see Fixtures — Foreclosure — Fraudulent
 Preference—Redemption.
- Mortmain Act,**
 charitable bequest payable out of impure
 personalty, 131.
- Municipal Law,**
 arbitration between city and county, 11.
 disclaimer by alderman, when to be made,
 42.
 drainage by-law, withdrawal of petition, 53.
 alteration in work petitioned for, 53.
 rate—award, 278.
 ultra vires, mandatory injunction, 346.
 defective streets, notice to corporation, 61.
 overflow from sewer, liability, 95.
 treasurer's bond, extent of liability, 176.
 municipality may take mortgage on land, 223.
 by-law to open road.
 extending limits of town, arbitration, 368.
 award against township, 368.
quo warranto, setting aside, appeal, 385.
see Criminal Law—Taxes.
- Murder,**
 meaning of "deliberate," 61.
 dying declaration, evidence, 102.
- Mutual Insurance Company,**
 default in payment of shares, 11.
- Navigable Stream—see** Riparian Proprietor.
- Negligence,**
 master and servant—*see* Master and Servant.
 injury caused by railway fires, 60, 141.
 overflow from sewers, liability of corpora-
 tion, 93.
 throwing down lighted match, fire, 144.
 contributory, railway accident, 364.
 action by intestate's administrator for injury
 from, 377.
 liability of stranger for defective article, 397.
see Public Works.
- Negroes,**
 foolish prejudices as to, 250.
- New Trial,**
 verdict against evidence, 135.
- Nuisance,**
 rights of reversioner, noise, 133.
- O'Brien, Mr. Justice,**
 death of, 84.
- Official Referee,**
 taking accounts, report, 180.
- Oaths, (religious)**
 Abolition of, in France, 333.
- Ontario Judicature Act,**
 mode of working by judges, 270.
see Appeal—County Court—Elections—Judi-
 cature Act (England)—Master in Chan-
 cery—Practice.
- Ontario Legislature,**
 review of legislature, 106.
- Osgoode Hall,**
 opening of Convocation Hall, 1, 65, 82.
 petty pilfering at, 354.
- Osgoode Hall Library,**
 latest additions to, 103, 267, 291, 351.
 changes in, 126.
- Osgoode Literary and Legal Society,**
 notice of meeting, 147.
- Overholding Tenants Act,**
 forfeiture of lease, 10.
- Ownership,**
 evidence of, 30.
- Parent and Child,**
 adoption, promise to make will, 177, 328.
- Parliamentary Printing,**
 construction of contract, 271.
- Party Wall,**
 changing, easement, 179.
- Particulars—see** Alimony.
- Parties,**
 demurrer for want of, 18.
 trustees, 19.
 next of kin, executors, 178.
- Partition,**
 application for, made too soon, 99.
 heir-at-law to share of proceeds of, conver-
 sion, 158.
 Infants—parties—practice, 224.
- Partnership,**
 subscription for stock, notice of call, 12.
 real estate purchased with funds of, 82.
 estoppel by lapse of time of partner claim-
 ing share, 108.
 sharing profit and loss, 109.
 restricting rights of one partner, 110.
 action against firm, service on one, judg-
 ment, 119.
 dissolution, good will, 173.
 sale of property by one partner, evidence,
 206.
 judgment cannot be entered against one who
 has not appeared, 235.
 accounts—costs, 263.
 articles of, construction, 385.
see Solicitor.
- Patent Law,**
 proposed changes in, in England, 1.
 prior use of patent in colony, 156.
 slander of title, damages, 213.
 invention already in use, 276.
 re-issue of patent, evidence, 347.
 action for infringement, venue, 371.
 should not be tried by jury, 402.
- Payment into Court,**
 defence of non liability, taking out money, 18.
- Pearson, Mr. Justice,**
 appointment of, 373.

- Per autre vie*, Estate by,
analogy of fee simple governs, 92.
- Personal Representative,
dispensing with, practice, 172.
- Physician,
fiduciary relation with patient, gift, 296.
- Powers,
of appointment,
construction, wills act, 72.
appointment of portions before required,
215.
of sale,
to trustees of settlement, duration of, 254.
in mortgage, under value, 339.
- Petition of Right,
right of action, for counsel fees, 218.
no legal redress for a wrong against Crown,
219.
right of fisheries, 219.
see Crown.
- Pleading—*see* Practice.
- Policeman,
dissertation on the duties of, 411.
- Post Cards,
proposed reply cards, 393.
- Poundage—*see* Sheriff.
- Practice,
consent order, mistake of parties, 12
proceeding by *capias* not affected by O.J.A., 40.
statement of defence, Rule 128, 53.
trial by Judge, rehearing, jurisdiction of
Divisional Court, 54.
statement of claim, amendment of, partial
demurrer, 55.
enlargement of time for delivery, 243.
bringing in third party, notice, 57.
motion for judgment in default of appear-
ance, 59, 424.
service of notice of motion, 59.
endorsement on writ, statement of claim,
424, 444.
devolution of cause of action, continuance
of suit, 60.
pleading, amendment, opening up judgment,
98.
service of notices, 143.
counter claim and set off in reply, 204.
facts not stated in defence, 236.
ejectment by Crown, partial demurrer,
ambiguity, 441.
change of reference as *master ill*, 121
service out of jurisdiction, 136, 243.
adding parties, 141.
reference to *Master*, proper subjects for, 144.
appeal from order made on default of ap-
pearance, 155.
defendant wrongly described as to locality, 161
power of court to vary its orders, 203.
notice of trial after release of action, 240.
endorsement of writ, agreement to sell lands,
242.
joinder of parties, 276.
motion to vary report of official assignee, 261.
final judgment on defence and counter claim,
261.
- Practice—*Continued.*
consolidation of cross actions, 362.
special endorsement, motion for judgment
under Rule 80, 371.
exclusive jurisdiction of Chancery, jury
notice, 402.
transfer of cause for jury or to speed, 402.
see Appeal—Arbitration—Counter-claim—
County Courts—Creditor's Suit—Demur-
rer—Discovery—Examination—Judg-
ment—Partnership—Parties—Replevin—
Sale under Decree—Statement of Claim
—Summons, Writ of.
- Prescription,
acknowledgment of title, improvements in
lieu of rent, 276.
see Lateral Support—Reversion.
- Pressure, *see* Chattel Mortgage—Insolvency.
- Principal and Agent,
agent acting for both parties, 60.
bank agent, 263.
agent to sell, does not include exchanging,
365.
measure of damages, 395.
contract by agent in his own name, 443.
see Commission—Lateral Support.
- Principal and Surety,
notice—evidence, 40.
discharge owing to false representation, 139.
right of surety to co-surety's security, 140.
one partner taking place of firm, giving
time, 143.
varying contract, 165.
transfer of securities on payment by prin-
cipal, 253.
bond to school board, construction, mis-
take, 348.
- Priority in Equity,
innocent purchasers, 90.
suit to settle, incumbrancer, 160.
- Privy Council,
recent Canadian cases before, 159.
- Prize Fight,
aiders and abettors, 234.
- Probate,
when granted or refused, some curious
cases, 111.
amendment of, when granted, 198.
- Production of Documents,
extent of right and liability, 50.
- Protest, *see* Bills and Notes.
- Proxy, *see* Public Meeting.
- Public Meeting,
right to demand poll an attribute of, 232.
proxies, demanding poll, 338.
- Public Works,
liability of Crown for negligence of em-
ployees, 219.
- Queen's Counsel,
appointments in Province of Quebec, 84.
- Railways,
sale by trustees, powers, 69.
detention of freight, liability, 114.
acquiring land for special purpose, specific
performance, 144.

- Railways—*Continued.*
 Ry. Co. to be judges of amount required, 252.
 requisites of affidavit as to, 252.
 failure to give signal, collision, evidence, 278.
 assessment of their lands discussed, 288.
 right to land, forfeiture thereof, 302.
 rights of municipality as to location of, on roads, 328.
 lands "injuriously affected" by, 354.
 point of commencement, meaning of "from," 368.
 expropriating public or private lands, 368.
 pleading, setting out acts, 441.
 accommodation works, 381.
 superfluous lands, 383.
- Receiver,
 not entitled to conduct of proceedings, 130.
see Administration—Joint Stock Company.
- Recovery of Land, *see* Ejectment.
- Redemption,
 dismissal of and reinstating bill, rights of purchaser, 403.
see Trustee.
- Registry Laws,
 easement in Nova Scotia, notice, 162.
 records of lands, when notice and of what, 435.
- Replevin,
 O. J. A. does not apply to, 42.
 except as to notice of trial, 43.
custodia legis, goods under seizure, 81.
 bond in, proceedings stayed, 139.
 possession as against wrong doer, 239.
- Representation,
 by loan company, collateral contract, 146.
- Reporters,
 changes at Osgoode Hall, 86.
 uniform system of indexing and digesting, 86.
 objectionable comments of public press as to, 353.
- Revivor,
 when in discretion of Court, 343.
- Reversion,
 meaning of in Prescription Act, 112.
- Right of Entry,
 sale of, 378.
- Right of Way,
 extent of right, 92.
 of necessity, "premises," 262.
- Riparian Proprietor,
 reservation, easement, 12.
 right to reasonable use of water, 96.
 navigable streams, rights of owners on, 102.
- Rivers, *see* Riparian Proprietor—Streams Act.
- Salvation Army,
 not liable for unlawful consequences of lawful assembly, 397.
- Sale under decree,
 deposit paid, default, resale, application for refused, 425.
- Sale of Goods,
 waiver of condition, 39.
- Sale of Goods—*Continued.*
 acceptance, waiver of objections, 277.
 fraudulent purchase, disaffirming sale, 367.
- Satisfaction,
 evidence of award and satisfaction, 356.
- Scholarships—*see* Law Student's Department.
- School Trustees,
 bond to by Sec'y-Treasurer, surety, 348.
 action of, must be by meeting, 365.
 election, waiver, retraction of waiver, 442.
- Security for Costs—*see* Costs—Division Courts.
- Seduction,
 present state of law and suggested improvement, 151.
see Insolvency.
- Separation Deed,
 specific performance of, 109.
- Sequestration,
 when may issue under O. J. A., 279.
 service out of jurisdiction, 279.
 chose in action not liable under, 279.
- Sheriff,
 poundage on execution against lands, 41.
 allowances by Master, 445.
 obstruction of, in discharge of duty, 140.
- Ships and Shipping,
 sale of shares in vessel, surety, 140.
 dismissal of master, also part owner, 163.
 collision, mutual negligence, 272.
 warranty of vessel, breach, loss, 277.
 suit for wages, part due over 90 days from petition, 285.
 covenant by master and part owner against overdue wages, 285.
 meaning of "seaman," mode of hiring, 285.
 proceeding *in rem*, mortgage intervening, 287.
 hiring of seaman by part owners one of whom master, 287.
- Slander,
 privileged communication, character, 110.
 repetition—privilege, 278.
- Smith, Sir Montague,
 retirement of, 45.
- Solicitors,
 dealing in lands, not subject to Insolvent Act, 75.
 improper conduct, suspension, 81.
 tariff of conveyancing fees, 82.
 interest on costs, 98.
 liability of unqualified practitioner, 135.
 right of agent to retain money collected for, 153.
 fraud of co-partner, 171.
 agreement between, as to suit, 179.
 power to settle suit, 180.
 entrusted with money to invest, misappropriation, 299.
 right to costs, 55.
 taxation of costs—*see* Costs.
 solicitor lending money to client, 70, 112.
 criminal law, privilege, client's papers, 82.
 negligence, sale under power, 326.
 number of solicitors in England, 313.
- Specific Performance,
 doubtful title, 68.

Specific Performance—*Continued.*

- separation deed, 109.
- sale of lands, misrepresentation, 171.
- form of order for, 196.
- rehearing after decree for, 196.
- misjoinder of parties, 387.
- Statement of Claim,
 - omission of date of writ, 371.
 - filing and delivery of, time, 402.
- Statutes (construction and interpretation),
 - power given under two acts, 53.
 - insertion of provisoes, 194.
 - "from time to time," 194.
 - "or" for "and," 231.
 - working hardship but imperative, 235.
- Statute Labour,
 - commutation tax on non-resident land, 142.
- Statute of Frauds,
 - sufficiency of description of parties, 178.
 - defects of, when applied to horse cases, 431.
 - contract by husband as to wife's property, 443.
 - see* Vendor and Purchaser.
- Stock Brokers,
 - treatise on law of, by Biddle, 227.
- Streams Act,
 - result of *McLaren v. Caldwell*, 409, 430.
- Subrogation,
 - vendor and purchaser, fire insurance, 296.
 - by insurers to rights of mortgagee, 264, 345, 373.
- Suez Canal,
 - the legal position of, 398.
- Suicide,
 - statistics and causes of, 429.
- Sunday Laws,
 - works of necessity, 190.
- Summary Conviction,
 - jurisdiction, distress, 10.
- Summons, Writ of,
 - issue of, not judicial act, fraction of time, 115.
- Supreme Court,
 - some points as to, discussed, 88.
 - rules of March 5, 115.
 - appeal, judgment on demurrer not a final judgment, 138.
 - changes in tariff, 247.
 - hours during which offices open, 249.
 - appeal to, from Court of Appeal, special leave, 421.
 - leave to file uncertified case, 421.
 - extension of time granted, 421.
 - no appeal from Q. B. (P.Q.), when, 422.
- Tavern Licenses,
 - In P. Q., 14 George III, cap. 85, s. 5, (Imp.) 237.
- Tavern Keeper,
 - sale of liquor after notice not to sell, 364.
- Taxation, *see* Costs.
- Taxes,
 - exemption from, probationer of Presbyterian church, 322.
- Taxes, Sale for
 - invalid assessment, bad description, 141.

Taxes, Sale for—*Continued.*

- purchase by township clerk voidable, 141.
- unpatented lands, subsequent Crown grant, 142.
- Taxing Masters,
 - remarks of Brett, L.J., as to, 45.
- Temperance Act,
 - different offences in one information bad, 401.
- Terms Notice,
 - not necessary under O. J. A., 180.
- Three Rivers,
 - tavern licenses in, 237.
- Time,
 - fraction of, judicial acts, 115.
 - see* Computation.
- Tolls,
 - bridge company, reasonableness, 144.
 - timber slides, petition of right, 220.
- Trade Mark,
 - tendency to deceive, 66.
 - trade name of firm, 102.
 - infringement, imitation, 237.
 - law of, some points in, 339.
- Trespass,
 - fresh trespasses—license, 162.
- Trover,
 - sale—lien—Insolvent Act 1875, 163.
- Trustee,
 - parties in redemption suit, 19.
 - desirability of having official trustees, 26.
 - severance of funds for investment, 35.
 - marriage settlement, 54.
 - trust in favour of volunteer, 113.
 - equitable titles, legal estate, priority, 154.
 - restraint on anticipation, 156.
 - administration account, 178.
 - liberty to bid at sale, 274.
 - breach of trust, stale demand, 322.
 - costs of, discretion of Court, 342.
 - proceedings under Trustee Relief Act, appeal, 342.
 - tendency of modern decisions, 381.
- Ultra Vires*,
 - selection of jurors, 31-32 Vict. cap. 29 D., 239.
- Undue Influence,
 - independent advice, when necessary, 145.
- Unlicensed Conveyancers,
 - some advertisements of, 372.
 - correspondence of profession as to, 62, 389.
 - encroachment by, in England, 409.
 - see* Surrogate Courts.
- Vacation, Long,
 - suggestion of Law Society as to, 38.
 - notice as to business in, 270.
- Vendor and Purchaser,
 - auction sale, Statute of Frauds, 9.
 - production of deeds, equitable mortgage, 30.
 - false representation, adding parties, 41.
 - fraud of agent, position of vendor, 82.
 - innocent purchaser, equitable priorities, 90.
 - sale *en bloc*, deficiency, 93.
 - possession, 95.

- Vendor and Purchaser—*Continued.*
 application under V. and P. Act, parties, 97.
 purchaser not bound to accept vesting order, 97.
 depreciation pending investigation of title, 97.
 mock auction to perfect agreement, 102, 211.
 payment into Court to stop interest, costs, 211.
 mistake in contract, specific performance of part, 132.
 sale of possessory title, 133.
 lease, performance of covenants, 170.
 contract to sell, insurance by vendor, 178.
 description, Statute of Frauds, 321.
 conditions of sale, leasehold, 195.
 restrictive covenant, evidence, 205.
 parties, discovery from one as against others, 211.
 contract by agent in his own name, undisclosed principal, 443.
see Deeds—Construction of—Specific Performance—Statute of Frauds—Subrogation.
- Vessel, *see* Ships and Shipping
- Voluntary Deed.
 application by grantor to set aside, 109.
 undue influence, independent advice, 145.
- Wallbridge, Hon. Lewis,
 appointmeat as C. J. of Manitoba, 429.
- Warranty,
 implied, as to quality of chattel, 51.
- Water Privileges,
 application under R. S. O., c. 114, refused as not conducive to public good, 413, 430.
- Wicksteed, G. W.,
 classified table of statutes, by, 125.
- Will,
 solicitor to trust estate named by testator, 216.
 administration, accounts, 95.
 conduct of executors making them trustees, 273.
 rectifying mistakes in, 301.
 promise to make, discussed, 334.
 power of sale, purchase from executor, 370.
 acknowledgement of signature, 378.
 invalid devise, possession, statute of limitations, 401.
 no trustees of fund, administration, 402.
 reformation of, evidence of intention inadmissible. 443.
see Probate.
- Wills, Construction of,
 "survivor," 6, 133.
 uncertainty, duty of Court, 6, 257.
 "in case of death" of devisee, 13.
 gift to class, remoteness, 70.
 power of appointment, 72.
 executory devise, 88.
 lapsed legacy, 91.
- Wills, Construction of—*Continued.*
 "final division" of estate, 92.
 after acquired property, 96.
 power of sale with executor's consent, 96.
 estate upon condition, 102.
 disposition of residue, 110.
 legacy reducible by testator's debts, 121.
 "second cousins," 133.
 annuities, perpetuities, 157, 172.
 remoteness, condition, annuity, 172.
 from and after decease of wife, vesting, 198.
 when doctrine of election applicable, 267.
 bequest of shares in partnership, 213.
 next of kin, by virtue of statute of distributions, 214.
 absolute interest, gift over on death, 215.
 vesting, "worldly estate," 221.
 executory interest, 222.
 gift over, contingency, 223.
 gift over in case of death, 231.
 "issue and their heirs," 234.
 legacy absolute or conditional, 273.
 mistake, "forty" for "four hundred," 318.
 double portion, satisfaction, 320.
 revocation by general words, 322.
 devise to son by father, predeceasing him leaving issue, 253.
 precatory trusts, 355.
 gift of maintenance, 370.
 charge on land, 370.
 cross limitations, implication, 382.
 charities, mixed fund.
 power of sale, power to mortgage, 424.
 "legal heirs," mixed devise, 426.
 devise of land not owned by testator, 442.
- Winchester, John,
 appointment as Registrar of Q. B., 353.
- Witness,
 examination, Master's office, 14.
 Con. Stat. Can. c. 70, sec. 8, certificate, fees on second trial, 39.
 refusal to attend, when allowable, 131
see Evidence.
- Women,
 may act as arbitrators, 61.
- Wood, Hon. Mr. Justice,
 death of, 353.
- Words, Construction of,
 "criminal cause," 20, 43.
 "execution creditors," 76.
 "from time to time," 194.
 "in any action," 232.
 "maliciously," 114.
 malice, 134, 277.
 "reasonable and probable cause," 134 277
 "premises," 262.
see Wills, Construction of,
- Young's Admiralty Decisions,
 notice of, 428.