THE

Canada Law Journal.

VOL. XXXI.

From January to December, 1895.

TORONTO:
THE BRYANT PRESS,
20 BAY STREET.

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VOL. XXXI. JANUARY 16, 1895. NO. 1

THE vacancy on the British Columbia Bench caused by the death of Chief Justice Begbie has not yet been filled. Not being politicians, we fail to see why there should be so much delay. It would seem the natural thing to promote Mr. Justice Crease to the vacant place; and, unless there are political exigencies to be met, or other reasons unknown to us in the east, his seniority and long service would entitle him to the honour.

THE *Canadian Law Times* appears to be somewhat aggrieved at our recent observations touching the supposed inconsistencies of the Judicial Committee of the Privy Council. Our contemporary forgets that it is not the sole offender, and that the Honourable Senator Scott, Q.C., also delivered himself regarding that high tribunal during the last session of Parliament in a way the reverse of complimentary. Our remarks were intended as a protest against what we venture to think was an ill-considered criticism: at least we think it must have seemed to some of its readers something very like an uncalled-for sneer; and though it now claims to have kept within legitimate bounds, we cannot but think that the Judicial Committee might not inaptly say in the words of the song—

> "'Tis all very well to dissemble your love,
> But why did you kick me downstairs?"

WE wish we had space to reproduce in our pages an article in the January number of the *Law Quarterly Review*, entitled "Examination and Cross-Examination," in which the writer treats in trenchant fashion of the various inconsistencies and absurdities in the law and practice affecting these subjects.

The conclusion he arrives at is that no branch of the law stands so much in need of codification as the law of evidence, a principal ground of complaint being that a long string of arbitrary rules takes the place of a systematic arrangement on scientific principles of statutory enactment and judicial decision; and that whilst there is much rough fairness in this branch of law, there is much that is anomalous and glaringly unfair. Various efforts have been made in this direction, but nothing definite has as yet come of them.

THE subject of the removal of snow from before houses in London, England, has recently been receiving attention at the hands of the Metropolitan police and some of the legal journals. It has been the habit of Englishmen to depict this country as a place of snow and ice, inhabited by fur-coated natives and polar bears, where people travel on snowshoes, their pastime being tobogganing and hunting deer. It would perhaps astonish them to be told, as the fact is, that, whilst they were recording deaths from cold in England, fighting snowstorms, and discussing how best to meet the assaults of Jack Frost, we had roses blooming out of doors in a garden in the capital of this province a few days before Christmas. We cannot pretend to have had any success in formulating any sensible snow by-law, but we certainly thank Providence that we live in such a favoured land as this sunny Ontario of ours.

A YEAR ago Sir Frederick Pollock made a new departure in law reporting, being at the head of the Council of Supervision of "The Reports," which have become a formidable rival of the Law Reports. The *Law Quarterly Review*, so ably conducted by that charming and learned writer, criticized somewhat severely various defects in the Law Reports, and justified the publication of the new series. Recently the news came that Sir Frederick had been appointed editor of the Law Reports, in the place of Mr. Hemming, Q.C., resigned. We rather expected to see some explanation of this move in the next issue of the *Law Quarterly;* but the only reference to it is a simple statement of the fact that this month he enters on his new duties, and that he cannot be expected to criticize in public the work for which he is now answerable to the profession. We are not in-

formed whether he has severed his connection with "The Reports," though we should suppose he could not well act with both.

THE *Law Journal* thus summarizes the law of England affecting married women: "A married woman may contract debts and a judgment may be given against her separate estate, which is quite unenforceable if she have no separate estate unrestrained from anticipation. She cannot be made bankrupt unless she be trading apart from her husband. Though rolling in wealth, she cannot be committed to prison under the Debtors' Act for non-payment of a judgment debt, even though it has been contracted for necessaries, and if by error a County Court judge commits her the creditor may have to pay the costs of the consequent prohibition. At one time a widow's property was absolutely secure against seizure for payment of her debts, but the recent Act changed the law on this point. No means exist, apparently, for getting round the almost absolutely impregnable position of the married woman, and attacks on it end only in piling up costs often exceeding the original debt. Does the spoilt child of the law demand anything more?"

THERE are some things in which the Province of Ontario is proud to take the lead, and to give suggestions to the profession in England. We are sorry, however, to see them following us in a matter not desirable to be imitated. In this instance they have followed the example of some of our Ministers of Justice in degrading the once honourable distinction of Queen's Counsel. At least the word "degradation" is the word used in some of the English newspapers, legal and lay, in reference to the last appointments, which are said to have caused much scoffing at the Bar. Of the seven appointed, two only are said to have even the slightest claim to the distinction; of the others, two are practically unknown, another is only known as a friend of the late Lord Coleridge, and another as having a brother a member of parliament, whilst another was only recently called to the Bar, is unknown to the world or even to his brethren as an advocate, and is said to be leaving the Bar to join in a publishing business. As a contemporary remarks, "the whole thing is really almost comic in its pitiful ridiculousness," and reflects no credit upon Lord Herschell.

PERIPATETIC COURTS.

With the commencement of the new year the provisions of the statute 57 Vict., c. 20, come into operation, whereby a weekly sitting of the High Court is to be held at London and Ottawa. We understand the business at the first sitting at London was *nil*.

This very ill-advised measure must, as we suggested, lead to an immense waste of judicial time, and an altogether unnecessary increase of expense in the administration of justice. In order to enable a judge to hold the sittings at these places, unless he consents to travel by night, which, we think, very few of the judges would be willing to do, and which they certainly cannot be expected to do, there will be a sacrifice of no less than three days, viz., a day going, a day for the sitting, and a day for the return journey, and as there are to be forty of these sittings at each place in the year, assuming that a judge of the High Court attends each of the sittings, it means that one hundred and sixty days of judicial time, or nearly one-half of the year, is to be annually wasted in travelling between Toronto and London, and Toronto and Ottawa. What arrangements, if any, have been made for paying the judge's expenses of these eighty trips we do not know; but assuming they are to receive the usual circuit allowance of $100, that means an increase of $8,000 in the expense of administering justice.

We print elsewhere the regulations made by the judges for carrying out this statute, and we may observe that the first of them is delightfully vague, as we learn from it that the sittings are to be held on Tuesday, "*or such other day and hour as the judge appointed to take the court may fix.*" Considering that the time for setting causes down to be heard at these sittings is regulated by the day on which they are to be held, and that day is not a fixed, but an altogether uncertain quantity, dependent apparently on the whim of the judge who is to hold the court, the extreme indefiniteness of this regulation is to be regretted. Possibly in practice Tuesday will be the normal day for holding these sittings, and if any other day is named cases will be adjourned. But supposing the judge should fix on Monday, and cases have been set down and notice of motion given for Tuesday, what will be the result? How can they be adjourned before the notice of

motion is returnable? Or, again, suppose the judge decides to hold the court on a Friday, are parties to be at liberty to set causes down up to and inclusive of Wednesday? These elastic regulations are all very well for the judges, but for the practitioner they are apt to prove pitfalls.

REPORTS AND REPORTING.

At no previous period in the history of English law has there ever been such an apparently inexhaustible demand for law reports as there is at the present day. It was hoped, when the Council of Law Reporting established the Law Reports that, by force of their superior excellence, they would drive all other competitors from the field; but this expectation was not realized. Some of the former court reporters secured positions, we believe, on the staff of the new enterprise, and most of the rest bowed before the force of the competition which they found themselves unable to withstand; but the reports published in connection with English legal periodicals were able to survive and flourish as rivals of the Law Reports, and the *Weekly Reporter*, the *Law Times*, and the *Law Journal* continue to this day. One would have thought that in this collection of reports the English practitioner would have found all that he could reasonably desire in the way of reports, to say nothing of the expense of paying for, the difficulty of finding house room for, and the labour of reading these duplicated, triplicated, and quadruplicated cases; so, to make the matter simpler, another competitor appeared, some little time since, upon the scene, which claims to excel all others, and to embrace within its yearly pages all the cases which it is necessary for the practitioner to be informed of. This series of reports, which is styled very emphatically "The Reports," was inaugurated under the auspices of Sir Frederick Pollock, and other well-known legal lights.

This scheme of reports is, as we have already explained, somewhat novel. Monthly parts are published of cases decided from time to time during the year, but these parts only serve a temporary purpose, and are not intended to be bound, and, at the end of each year, bound volumes are delivered to each subscriber, in which the cases previously published in the monthly parts, or such of them as are of permanent value, will be found,

with such revisions and emendations as may be necessary. Any mistakes which may have occurred in the monthly parts will thus be corrected, and the bound volume, it is supposed, will contain nothing but the pure and unadulterated cream of the reports. This scheme aims at giving better material, and at a cheaper rate, than the Law Reports. Certainly, if what the publishers of "The Reports" propose to do can be done without bankruptcy, it seems to follow that the Council of Law Reporting is charging altogether too much, and it is to be hoped that one result of the publication of these rival reports may be to bring down the price and improve the quality of the Law Reports. The new plan has many things to recommend it, and, so far, its promoters have succeeded in securing a very large and increasing subscription list.

We are by no means sure that the passion for reporting cases is always wisely directed. We presume that there is some principle which guides the selection of cases for the reports, but when we read some of the reports published we occasionally wonder what the principle can be. We have a sort of hazy idea that reports are cited to the courts because they are "authorities," that is, that they are, as the determination of the courts, to be regarded as precedents for the decision of future cases in which similar points arise, unless the reasoning on which they proceed can be shown to be clearly faulty. But can a case be said to be "an authority" in which you find an appellate court composed of four judges equally divided, and in which a decision of an inferior court is for that reason affirmed? Take, for instance, No. 3 of the current volume of the Ontario Appeal Reports. It contains a report of seventeen cases. In two cases, however, we find the appeal dismissed because the court was equally divided. Now, as to these cases, how could they be cited as "authorities"? What points of law do they authoritatively determine? And yet these cases occupy forty-five pages, or nearly one-fourth of the number. Such cases, if they have been reported in the court below, should no doubt be reported in appeal, but we think half a page to each would be an ample allowance.

If, as we believe, nothing should be reported at length which is not "an authority," then a material reduction might be made in the number of cases reported.

Again, we find cases reported at full length which merely follow previous decisions—would it not be sufficient to note such a case simply as having followed the prior case, if, indeed, it should be reported at all? What is the object of multiplying reports of decisions on the same point and agreeing with each other? A point arises on the construction of, say, a particular section of a statute, and Mr. Justice A. in the court of first instance construes it, and his decision is reported; what necessity is there, then, to go on and report half a dozen other cases in which other judges come the same conclusion? Why should not the decision of Mr. Justice A. be the "authority" for that construction, until his decision has been overruled by some higher tribunal, or differed from by some other judge of equal authority? There would be a considerable reduction in the number of cases reported if some such principle as this were adopted; but, then, the reports would contain a much larger proportion of meat, and much less sawdust.

CAN A COLONIAL LEGISLATURE AFFIX A CRIMINAL CHARACTER TO ACTS COMMITTED BEYOND ITS TERRITORIAL LIMITS?

There appears to be a strong tendency on the part of colonial legislatures to assert their power beyond their own territorial limits, and it becomes a matter of considerable importance to a resident of a colony to know whether or not the colonial legislature can pass laws regulating his conduct while in another country.

It seems clear that the Imperial Parliament, owing to the relation of sovereign to subject, is competent to enact anything not naturally impossible; and a British subject may be prohibited from doing some act in another country, and may suffer punishment upon conviction on his returning to English territory. If the jurisdiction of the colonial legislature extends beyond its own territorial limits, a resident of a colony might find himself in this unpleasant position, that he would be liable to be punished by the colonial as well as by the Imperial Parliament for the same act.

This question has come up squarely for consideration in two cases in our own courts, in connection with section 275 of the Criminal Code, formerly section 4 of R.S.C., c. 161, which enacts that the offence of bigamy is:

"(*a*) The act of a person who, being married, goes through a form of marriage with any other person *in any part of the world;* or

"(*b*) The act of a person who goes through a form of marriage *in any part of the world* with any person whom he or she knows to be married."

It is also enacted that "no person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage."

In the case of *Regina* v. *Brierly*, 14 O.R. 525, the Chancery Divisional Court came to the conclusion that this section was *intra vires* of the Parliament of Canada; whereas in the case of *Regina* v. *Plowman*, 30 C.L.J., 735 the Queen's Bench Divisional Court came to the conclusion that it was *ultra vires*.

In the Brierly case the Chancellor gave an elaborate judgment, in which he discusses the law, and holds that the right of the Dominion legislature to pass the enactment is not open to attack, and that in any case the courts have no right to nullify such an enactment. But, if there is no jurisdiction to pass the law, has it any force, and should it not be declared unconstitutional? For although the Imperial Parliament is competent to enact anything not naturally impossible, the same rule does not apply to the parliament of a colony, which has a written and limited jurisdiction. There is no such thing as a Canadian, Australian, or Indian subject. And the power of a colonial legislature being limited to its own territory, when a Canadian leaves the Dominion the Canadian jurisdiction over him ceases, for there is no relationship of sovereign and subject.

As the Queen's Bench Divisional Court gave no written judgment or reasons for their decision, and as very little attention has been paid to this branch of constitutional law by the text writers, it may be of interest to consider the authorities which justify the Queen's Bench Divisional Court in declining to follow the judgment of their brothers on the west side of the hall.

In 1861 an Act to give jurisdiction to Canadian magistrates in reference to certain offences committed in New Brunswick was disallowed upon the resport of the law officers of the Crown, who held that "such a change cannot be legally effected by an Act of the colonial legislature, the jurisdiction of which is confin .d within

the limits of the colony." (Journal of the Legislative Assembly of Canada, 1862, p. 101.)

In 1870 the question again came up in connection with an Act respecting perjury passed by the Dominion Parliament in 1869. In a despatch to the Governor-General the Colonial Secretary refers to section 3 as assuming to affix a criminal character to acts committed beyond the limits of the Dominion of Canada, and as being, as such, beyond the legislative power of the Canadian parliament.

In *Peak* v. *Shields*, 8 S.C.R. 579, the matter was touched upon in a general way. The present Chief Justice of the Supreme Court says at p. 596: "In the case of bigamy under the statute of James I., it was held that no indictment lay when the second marriage was solemnized out of the kingdom. . . . . It is said, it is true, that the Parliament of the United Kingdom may make laws binding British subjects without the limits of the British dominions, provided the intention of the legislation so to give an extra-territorial operation to the statute is apparent, either from express words or from necessary implication. But this is for the reason that the Parliament of the United Kingdom is a sovereign legislature, having unrestricted power over subjects owing allegiance to the Queen in all parts of the world. Can this, however, be said of a colonial legislature which is not in this sense sovereign, but derives its authority from the delegation of powers by Act of the Imperial Parliament? By the 91st section of the British North America Act, the Parliament of Canada is empowered to make laws for the peace, order, and good government of Canada. Does this warrant the enactment of statutes binding British subjects in respect of acts done without the territory of the Dominion, merely because they happened at the time to have a domicile in the Dominion? Or, are not such persons, like all other subjects of the Queen, liable to be affected by no legislation regulating their personal conduct without the limits of the Dominion, save such as may be enacted by the Imperial legislature, the Parliament of the United Kingdom? I think these weighty and important questions would arise and have to be determined, in the present case, if we found in the enactment under consideration . . . that it was the intention of the legislature to apply it to traders, domiciled inhabitants of Canada, making purchases without the Dominion. I

have been unable to find anything distinctly bearing on this question of constitutional power, but in Mr. Forsyth's work on Constitutional Law (Forsyth's Constitutional Law, p. 1[illegible]) he states that this identical point arose with reference to the power of the Indian legislature to pass laws binding on native subjects out of India, and came before the law officers of the Crown, and himself in 1867, . . . and they all, with the exception of the Advocate-General, Sir R. Phillimore, thought that, 'as the extent of the powers of the legislature of India depended upon the authority conferred upon it by Acts of Parliament,' it was unsafe to hold that the Indian legislature had power to pass such laws."

Although not called upon, as he said, to decide this question, yet Mr. Justice Strong did, in some sense, decide it by using the conclusion that such a law was *ultra vires* to strengthen the presumption that the law in question in this case was to be understood, in the absence of express language to the contrary, to be intended to be restricted in its operation to the Dominion.

Henry, J., at p. 600, says: "I cannot come to the conclusion that the legislature intended a party guilty of fraud in any other country . . . to be imprisoned here for fraud committed in some other country, and not against any subjects of the Dominion. . . . Further than that, I doubt that the constitutional rights of the Parliament would not go as far as to pass an Act, under the peculiar circumstances of this country, to punish a party for fraud committed outside of the Dominion."

Taschereau, J., at p. 600: "I doubt very much if the Parliament of Canada would have the power to legislate at all on the dealings or actions which have taken place outside of Canada."

But the highest authority on this question is the decision of the Judicial Committee of the Privy Council: *McLeod* v. *Attorney-General of New South Wales*, (1891) A.C. 455. In delivering the judgment of the court in this case, Lord Halsbury, L.C., says: "Upon the face of this record the offence is charged to have been committed in Missouri, in the United States of America, and it, therefore, appears to their lordships that it is manifestly shown, beyond all possibility of doubt, that the offence charged was an offence which, if committed at all, was committed in another country, beyond the jurisdiction of New South Wales. The result, as it appears to their lordships, must be that there

was no jurisdiction to try the alleged offender for this offence, and that this conviction should be set aside. Their lordships are of opinion that, if the wider construction had been applied to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the Bar, it would have been beyond the jurisdiction of the colony to enact such a law."

It would, therefore, appear that the weight of authority is against the decision of the Chancery Divisional Court in *Regina* v. *Brierly*, and that the question as to whether or not a colonial legislature can affix a criminal character to acts committed beyond its territorial limits must be answered in the negative.

CURRENT ENGLISH CASES.

The Law Reports for November comprise (1894) 2 Q.B., pp. 773-804; (1894) P., pp. 265-295; and (1894) 3 Ch., pp. 97-275.

CREMATION—INTERMENT OF ASHES OF A DECEASED PERSON

None of the cases in the Queen's Bench Division appear to call for any notice here, and only one in the Probate Division, viz., *In re Kerr*, (1894) P. 284, which we think it useful to notice for the observations of Dr. Tristram, the judge of the Consistory Court of London, on the practice of cremation, which appears of late years to be coming into favour in England as a means of disposing of the bodies of the dead. The application before him was for a faculty authorizing the applicant to have a niche made in the church wall to receive the urn containing the ashes of her deceased husband, whose body had been cremated, pursuant to his wishes. Dr. Tristram declares that: "The cremation of a dead body, though not contemplated, is not prohibited either by ecclesiastical or by statute law, nor yet by Common Law, unless it is done so as to amount to a public nuisance, or with a view to prevent a coroner's inquest being held upon it: *Regina* v. *Price*, 12 Q.B.D. 247." But he subsequently observes that, "as by Common Law, as well as by ecclesiastical law, any person (subject to certain exceptions) dying in England is entitled to Christian burial in the accustomed form in a consecrated burial ground belonging to his own parish, or to the parish in which he may have died, it is not competent to an executor or administrator, or to any other person on whom the law imposes

the duty of burying the deceased, by cremation to deprive him of that right, unless he has left written directions or expressed in his life a wish to be cremated." The result of the application was that leave to bury the urn containing the ashes under the floor of the church was granted.

COPYRIGHT—PICTURES—INFRINGEMENT OF COPYRIGHT—SKETCHES FROM TABLEAUX VIVANTS.

In *Hanfstaengl* v. *Empire Palace*, (1894) 3 Ch. 109; 7 R. Aug. 80, the Court of Appeal (Lindley, Lopes, and Davey, L.JJ.) has reversed the decision of Chitty, J., in 8 R. May 127, which we referred to vol. 30, p. 585, holding that a drawing of a *tableau vivant* is not necessarily an infringement of the copyright of the picture which the *tableau* is intended to represent. Whether it is so or not is a question of fact depending on the degree of resemblance between it and the copyrighted picture.

MARRIED WOMAN—SEPARATE ESTATE—RESTRAINT AGAINST ANTICIPATION—SEQUESTRATION—JUDGMENT AGAINST MARRIED WOMAN, ENFORCEMENT OF—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), S. 1—(R.S.O., C. 132, S. 3).

In re Lumley, (1894) 3 Ch. 135; 8 R. July 145; 7 R. Sept. 93, an order had been made against a married woman for payment of costs; she was tenant for life of certain real estate for her separate use. A sequestration had been granted to enforce payment of the costs, and the sequestrator applied for an order to compel the agent of the married woman, to whom the rents had been paid, to pay the sequestrator the rents received by him subsequent to the sequestration, to satisfy the costs, and for an injunction and other relief to which it is not necessary to refer. North, J., refused the motion, being of opinion that the restraint against anticipation effectually prevented the income from being reached in execution, both as regards future accruing instalments and instalments in arrear, even though the latter might have accrued after the order had been made and sequestration issued thereon, and this judgment the Court of Appeal (Lindley and Davey, L.JJ.) affirmed, holding the case governed by the previous decision of the other branch of the Court of Appeal in *Hood Barrs* v. *Cathcart*, (1894) 2 Q.B. 559, noted vol. 30, p. 678. We may observe that a statute has been passed in England (55 & 56 Vict., c. 63) enabling the court to direct costs ordered to be paid by a married woman to be paid out of her separate

property notwithstanding any restraint against anticipation; but this Act was held not to enable the court to vary any order made prior to its passing.

COMPANY—GENERAL MEETING—CHAIRMAN.

In *National Dwellings Society* v. *Sykes*, (1894) 3 Ch. 159, the power and duties of a chairman presiding at a general meeting of the shareholders of a company are discussed by Chitty, J., and his decision is useful, not only as defining the powers and duties of a chairman in this particular case, but as also furnishing a guide for determining the proper functions of the chairman of a meeting in all cases. He holds that it is his duty to preserve order, conduct the proceedings regularly, and to take care that the sense of the meeting is properly ascertained with regard to any question before it, but that he has no power arbitrarily to stop or adjourn the meeting of his own will; and if he purports to do so it is competent for the meeting to elect another chairman to proceed with the business before it.

INJUNCTION—NUISANCE—NOISE CAUSED BY TWO OR MORE PERSONS.

Lambton v. *Mellish*, (1894) 3 Ch. 163, was an action to restrain a nuisance caused by the noise made by an organ used by the proprietor of a merry-go-round on his premises. There was a similar action against another proprietor of another merry-go-round. One of the organs was much louder than the other, and could be heard at a much greater distance. Both organs were kept going from 10 a.m. to 6 or 7 p.m., and the noise was "maddening," as one might well believe. The defendant who used the less noisy organ thought that he was within his rights, and that no injunction should be granted against him; but Chitty, J., held that both defendants were responsible for the noise as a whole, so far as it constituted a nuisance to the plaintiff, and each must be restrained in respect of his own share in making the noise, and an interim injunction was granted in both actions.

PRACTICE—SERVICE—NOTICE OF MOTION FOR ATTACHMENT FOR NOT FILING ACCOUNTS—ORDS. XL., R. 2; LXVII., R. 4—(ONT. RULES 879, 1330).

In re Bassett, Bassett v. *Bassett*, (1894) 3 Ch. 179; 8 R. 132, North, J., refused to entertain a motion for an attachment against a defendant for not bringing in accounts upon a reference,

where the notice of the motion had not been served personally, but l.ed with the officer of the court, pursuant to Ord. lxvii., r. 4, (see Ont. Rule 1330), inasmuch as it appeared that the plaintiff knew where to find the defendant; and he held, therefore, that he should have been personally served.

COMPANY—DEBENTURES IN BLANK—EQUITABLE SECURITY.

In re Queensland Land Co., Davis v. *Martin*, (1894) 3 Ch. 181; 8 R. Sept. 136, was an action by a debenture-holder of a company to enforce payment of his security against the trustees of a deed executed for the security of the debenture-holders for the execution of the trusts of the deed. The Queensland Bank also claimed the benefit of the trusts of the deed, having advanced money on the security of certain debentures issued to them, but having the names of the obligees left blank. It was contended that these securities were void, and that the bank was not entitled to participate; but it was held by North, J., that, although the debentures so issued were void as legal securities, yet that the bank, having *bona fide* advanced their money on the faith of them, had in equity a valid claim to have legal debentures issued to them, and were therefore to be deemed equitable holders of debentures, and entitled to share with legal debenture-holders, and that this equity was entitled to prevail not only as against the company itself, but also as against legal debenture-holders. The case may be taken as an illustration of the well-known maxim, "Equity considers that to be done which ought to be done."

SOLICITOR—MORTGAGE—CONSTRUCTIVE TRUSTEE.

Brinsden v. *Williams*, (1894) 3 Ch. 185; 8 R. Oct. 142, ought to be comforting to solicitors, for had the case been otherwise decided their position would have been indeed a perilous one. A solicitor was employed by trustees to pay over certain trust moneys to a mortgagor upon the security of a mortgage, which was held to be a breach of trust. The solicitors were in no way called on to advise on, nor were they responsible for the sufficiency of the security, but had given the trustees to understand that the security might turn out an improper one for trust moneys; it was, nevertheless, sought to make them liable for the breach of the trust on the simple ground that they had acted as the agents of the trustees in paying the money over to the mortgagor. It is consoling to know that North, J., held that, under such circumstances, the solicitors were not liable.

CONTEMPT OF COURT—COMMITTAL.—PROCEEDINGS IN CAMERA—PUBLICATION OF PROCEEDINGS IN CAMERA—FRIVOLOUS APPLICATION TO COMMIT.—COSTS.

In re Martindale, (1894) 3 Ch. 193, two or three points on the law of contempt of court are decided. In the first place, North, J., decided that it is a contempt of court to publish in a newspaper an account of proceedings had before the court *in camera*, as thereby the very object of the court in so conducting proceedings is defeated; and that a newspaper is guilty of contempt where, in its report of such proceedings, it states that they were had *in camera*, or the publisher had reason to know that they were so had, and that both the person who supplied the information and also the publisher of it were equally liable. In this case, however, the circumstances were such as, in the opinion of the court, to be sufficiently punished by making the offending parties, who had not intentionally been contemptuous, and had apologized, pay the costs of the motion. But the learned judge also held that the publishers of other newspapers who published the proceedings, but without any information or knowledge that they had been conducted *in camera*, were not guilty of any contempt, and the motion as against such parties was dismissed with costs. This case is also reported 8 R. Dec. 207.

WILL—CONSTRUCTION—TRUST FOR BENEFIT AND ADVANCEMENT OF LEGATEE—DISCRETION OF TRUSTEE—LEGATEE.

In re Johnston, Mills v. *Johnston*, (1894) 3 Ch. 204; 8 R. Oct. 131, was a suit for the construction of a will. The point was a very simple one. The testator gave all his property to trustees, and directed that certain specified sums of money should be invested for the benefit of each of his sons as they, respectively, attained twenty-one, to be applied for their benefit and advancement, as the trustees should think fit: and the will stated that these several sums "should be judiciously invested, as they are intended for the advancement and promotion in life of the respective recipients." Some of the sons, having attained twenty-one, claimed to be absolutely entitled to their legacies. There was no gift-over, and no discretion was given to the trustees to apply the whole or a part of the sums in question for the benefit of the legatees, and the sole persons interested in the legacies were the respective legatees. Under the circumstances, Stirling, J., was of opinion that the legatees, as they attained twenty-one, were entitled to their legacies, freed from any discretion on the part of the trustees.

LEGACY CHARGED ON REVERSIONARY INTEREST IN LAND—"PRESENT RIGHT TO RECEIVE"—STATUTE OF LIMITATIONS—(37 & 38 VICT., C. 57), SS. 1, 2, 8—(R.S.O., C. 111, SS. 4, 23).

In re Owen, (1894) 3 Ch. 220; 8 R. Oct. 131, an interesting question arising upon the Statute of Limitations (37 & 38 Vict., c. 57), (see R.S.O., c. 111), is discussed by Stirling, J. The point in controversy was whether a legacy charged on a reversionary interest in land could be recovered after the lapse of twelve (in Ontario, ten) years next after a present right to receive the same had accrued, notwithstanding that the reversionary interest had not within that time fallen into possession. According to the view of Stirling, J., the question turned, to some extent, on the nature of the relief to which such a legatee was entitled in equity to enforce his charge. If he were entitled to a foreclosure, then that would be in the nature of a suit to recover land, and would not be barred until twelve (in Ontario, ten) years after the reversionary interest had fallen into possession; but if, as he held to be the case, the legatee's only remedy was a sale, then the case came within s. 8 (R.S.O., c. 111, s. 23), and the action must be brought within the period prescribed by that section, viz., within twelve (in Ontario, ten) years after a present right to receive the legacy accrued. Incidentally, the learned judge discusses the principles on which foreclosure is granted, from which it appears that that remedy is merely the removal of a bar to the enforcement of a legal title. The most usual instance is in the case of a legal mortgage which provides that unless the money secured be duly paid, the estate of the mortgagee shall become absolute. Here equity, notwithstanding the condition, gives the mortgagor a right of redemption, but if the money be not then paid the court refuses further to interfere and leaves the parties to their legal rights. But where there is simply a charge created and not a mortgage, nor an agreement for a mortgage, then the right of the parties having such a charge is a sale, and not a foreclosure. An equitable mortgagee by deposit of title deeds, though not having a legal title, is held entitled to a foreclosure, because the court treats the transaction as evidence of an agreement to create a legal mortgage. In the present case the right to receive the legacy having arisen in 1880, on the death of the testator's widow, it was held that the right to recover it was barred in 1892, no suit having been in the meantime brought to recover it, and this notwithstanding that the reversionary interest did not fall into possession until 1893.

PRACTICE—SERVICE OUT OF JURISDICTION—DEFENDANT OUT OF JURISDICTION JOINED AS A NECESSARY PARTY TO AN ACTION AGAINST A DEFENDANT WITHIN THE JURISDICTION—CONCURRENT WRIT—ORDS. VI., R. 1; XI., RR. 1 (G), 4—(ONT. RULES 236, 271 (G), S-S. 3).

Collins v. *North British and Mercantile Insurance Co.*, (1894) 3 Ch. 228 8 R. Sept. 128, was an action brought by the trustee in bankruptcy of one G. F. Wells against the defendants, the North British and Mercantile Insurance Co., as mortgagees of the interest of the bankrupt in his father's estate, which was vested in a trustee, and situated in Canada, for redemption; and also against the trustee for an account of the trust estate, and for an order on him to pay off the mortgage of his co-defendants out of what should be found due to Wells on the taking of the account, and for payment of the balance to the plaintiff. An application had been made to Kekewich, J., for leave to issue a concurrent writ for service in Canada on the trustee before the other defendants had been served. The application appears to have been inadvertently granted, and a concurrent writ was issued, but the copy served on the trustee was not marked "concurrent." The trustee applied to set aside the writ and the copy and service and the fiat authorizing its issue for irregularity, because the order for the concurrent writ was made before the other defendants had been served with the original writ, and because the copy writ served was not marked "concurrent." Kekewich, J., held both objections well taken; and he set aside the proceedings against the trustee, both on those grounds and on the main ground taken, viz., that the trustee was not a necessary party to the action against the insurance company, and that the leave to issue the writ had been improvidently granted. With regard to the necessity of first serving the defendants within the jurisdiction before applying for leave to serve a defendant out of the jurisdiction, on the ground that he is a necessary party, he thought *Yorkshire Tannery* v. *Eglinton Co.*, 54 L.J. Ch. 81, was to be followed, notwithstanding the doubt thrown upon it by Coleridge, C.J., in *Tassell* v. *Hallen*, (1892) 1 Q.B. 321.

ADMINISTRATION—MARSHALLING—ORDER OF ADMINISTRATION—EXONERATION OF LAND SPECIFICALLY DEVISED—GENERAL DIRECTION FOR PAYMENT OF DEBTS—STOCK SPECIFICALLY BEQUEATHED CHARGED BY TESTATOR IN HIS LIFETIME.

In re Butler, Le Bas v. *Herbert*, (1894) 3 Ch. 250; 8 R. Sept. 164, a testatrix had specifically bequeathed a sum of stock upon which she had made a charge in her lifetime. The general per-

sonal estate not specifically bequeathed was insufficient for the payment of debts, but there was a general direction in the will that the testatrix's debts should be paid. The question was raised by the legatee of the stock whether or not some portion of the charge on the stock should not be paid by the other specific legatees or devisees; but Kekewich, J., held that no part of the charge was payable by them, and that the legatee of the stock must take it *cum onere*. He decides the case on the presumed intention of the testatrix that the specific legatees and devisees were not to be defeated by throwing any part of the debts on the property bequeathed and devised to them, but he is compelled to admit that the decisions of Kay, J., *In re Bate*, 43 Ch.D. 600, and of Stirling, J., *In re* Stokes, 67 L.T. 223, create a doubt as to what really is the law on the point.

WILL—SPECIFIC DEVISE—INSUFFICIENT DESCRIPTION, SEVERAL DIFFERENT PROPERTIES ANSWERING DESCRIPTION—UNCERTAINTY—INTESTACY—ELECTION.

Asten v. *Asten*, (1894) 3 Ch. 260; 8 R. Sept. 156, was an action for the construction of a will whereby a testator devised "all that newly built house, being No. , Sudely Place"; as a matter of fact, the testator had four newly built houses in Sudely Place. Romer, J., held the gift failed for uncertainty, and that it was not a case in which the court, to avoid an intestacy, could give the devisee the option of electing which property he would take.

WILL—CHARITABLE BEQUEST—CONTINGENT GIFT TO A VOLUNTEER CORPS—UNCERTAINTY—PERPETUITY.

In re Stratheden, Alt v. *Stratheden*, (1894) 3 Ch. 265; 8. R. Sept. 175, Romer, J., held that where a testator bequeathed an annuity of £100 to a volunteer corps on the appointment of the next lieutenant-colonel that the gift was a charitable bequest, and void because it infringed the rule against perpetuities, because it was possible that the next lieutenant-colonel might not be appointed within a life or lives in being and twenty-one years after.

Reviews and Notices of Books.

Division Courts, popular information as to duties of Clerks and Bailiffs. A guide for Suitors and Solicitors. By W.H.Higgins. Toronto: Hart & Riddell. 1894.

The volume before us will doubtless be of assistance to Division Court clerks and bailiffs, containing, as it does, much valuable information concerning their duties and the interior economy of their offices. The Revised Division Court Rules, as certified by the judges, are given in full; but legal practitioners will not, we should suppose, have much need for the book, since some of the most important information contained in it, *e.g.*, the territorial limits of the Courts, the names and post-office addresses of the clerks, and the fees payable to clerks and bailiffs, can be found in such legal publications as *The Docket* and *The Ontario Docket*, which give that class of information to the profession, correcting from time to time, which is the important point.

It is not every one who is able to write or even compile a book; but when we find a volume emanating from one in the department of the Inspector of Division Courts, we would reasonably expect all the information it contains to be correct. We are, therefore, surprised to find that many clerical errors have escaped notice, and that the work was not corrected up to the date of issue, viz., November, 1894; for instance, we notice that Labour Day is not referred to among the legal holidays. There are also many mistakes in the names of the clerks, and the limits of the Division Courts. These things, however, are common in beginnings, and will be guarded against in a second edition.

A complete collection of Canadian cases taken on Appeal to the Judicial Committee of the Privy Council, and of reported cases carried to the Supreme Court of Canada, and the Courts of Appeal in Upper Canada and Ontario, up to March 1st, 1894, showing the judicial history of all such cases. By C. H. Masters, B.A., Barrister, Assistant Reporter of the Supreme Court of Canada. Toronto: The Carswell Co. (Ltd.), Law Publishers, etc., 1894.

As stated by the compiler, this collection of cases is intended to serve as an aid in the study of case law by enabling the lawyer examining any reported case to ascertain, by a single reference to the proper list, whether or not such case has been car-

ried to appeal, and, if it has, what has been the result of such appeal, and where it is reported. Take, for example, the case of *Attorney-General* v. *O'Reilly*, 26 Gr. 126. If the reader examines the cases in the court of Chancery carried to appeal, at page 14 of the book before us, he will see that this case was affirmed by the Court of Appeal (6 A.R. 576), and that the decision of the latter court was reversed by the Supreme Court (5 S.C. 538), but restored by the Privy Council (8A.C.767). If he first takes up the same case in the Court of Appeal, and turns to the appeals from that court to the Supreme Court, he will get the same information. So it will be seen that every court in which a reported case was decided has its own place, and appears, if at all, under its own title.

The information contained in this book might, of course, have been given in a different shape, and, for some purposes, more conveniently, but as it is it gives much interesting information, and enables one to form comparative statements of the relat ve numbers of cases reversed or upheld on appeal to the various courts.

We should be glad if the industrious and learned compiler were to make a collection of cases overruled, followed, etc., on the lines of Dale and Lehmann's book. This, however, would be a work of much time and labour, and "Canadian Appeals" will, in the meantime, be very useful.

Correspondence.

SLANG IN THE REPORTS.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—I notice that in the last number of the Practice Courts the expression "single court" appears, I believe, for the first time.

This appears to me to be a piece of slang, like "one-horse court," and out of place in the reports. The expression originated among common law practitioners to express what was, to them, the novelty of one judge discharging the functions of the court. Judges had been accustomed so to act for many years in the old Court of Chancery, but a court so constituted was never known there as "single court." If this kind of nomenclature goes on, we shall have "double courts" and "treble courts," etc.

The expression used in the Rules is "weekly sittings," and in the margin "weekly court." See Rule 1276.

"Single court" is not expressive, like some slang terms. It leaves one in doubt what it means; "one-horse court" is far better, if we must have slang. It is like "trial judge," which has largely superseded "the judge at the trial," for which it is not an apparent equivalent, for it might be inferred that it meant a judge who was himself on trial—a sort of apprentice judge.

I OBJECT.

November 30th, 1894.

Notes and Selections.

STATISTICS OF LITIGATION.—Perhaps the most striking fact quoted in Mr. John Macdonell's instructive "Statistics of Litigation" is that, while there were 75,458 writs issued in 1892 at the Central Office and the District Registries, the actual trials in Middlesex and London and at the Assizes were only 2,401. Here we have the automatic power of our law illustrated, and we may well be proud of it. It is not equally good hearing—at all events, to the lawyer—that thirty years ago there were 100,000 writs issued in the Queen's Bench to 45,000 to-day; nay, worse—only one person in 11,000 now goes to law, it seems, as against one in every 3,000 in 1823.

In those brave days our fathers
Stood boldly for their law;
They sued their writs, they filed their bills,
They chuckled at "a flaw."
They blenched not at the fluttering writ,
Neat pleas and coy replies,
They faced the attorney's bill of costs,
They d——d a compromise.

Now law is to the Briton
More hateful than a foe,
He quails before the dreaded writ,
He lets the judgment go;
And arbitrators bungle,
And honest law grows cold,
And actions thrive not as they throve
In the brave days of old.

—*Law Quarterly.*

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA

TRINITY TERM, 1894.

Monday, September 10th.

Present, between 10 and 11 a.m., the Treasurer, and Messrs. Moss, Riddell, and Shepley, and, in addition, after 11, Dr. Hoskin, and Messrs. Watson, Meredith, and Ritchie

Mr. Moss, from the same committee, reported on the result of the examinations at the end of the third year course in the Law School, Easter, 1894.

Ordered, that Mr. Gow be called with honours and do receive a silver medal.

Ordered, that the following do receive their certificates of fitness as solicitors: A. E. Garrett, J. K. MacLennan, J. G. Burnham, W. Gow, A. B Farnham, and W. Cunningham.

The Report of the Legal Education Committee on the result of the examination for call to the Bar and for certificates of fitness under the Law Society curriculum was received.

Mr. Moss, from the Legal Education Committee, reported on a number of cases of application for admission as students:

Mr. Moss further reported the following Rule, which was adopted:

Should a candidate at any examination, who has been reported by the examiners as having failed to pass, petition to have any of his answers to any examination paper reconsidered, and should he deposit with the Secretary the sum of five dollars for every examination paper the answers to which he desires reconsidered, the Secretary shall hand the petition to the senior examiner, and thereupon the answers shall be re-examined by the proper examiner in that behalf, and any alterations in marks shall be substituted for the former marks, and the result shall be certified to the Chairman of the Legal Education Committee.

If it appears that the candidate's rating has been so altered as to entitle him to be passed the committee shall report the same to Convocation, and in such case the amount deposited by such candidate shall be returned to him.

The amount deposited by a candidate who is not reported as having passed at such re-examination shall be paid to the examiners who re-examine his answers.

It was then ordered that a Special Committee, consisting of Messrs. Meredith, Moss, Watson, and Shepley, be appointed to draft a resolution with respect to the death of the late the Hon. Christopher Finlay Fraser.

The letter from Mr. R. T. Walkem, dated September 8th, 1894, to the Treasurer was read, and it was ordered that the subject-matter of the letter be referred to the Reporting and Finance Committees for consideration, and to report to Convocation.

The petition of Mr. F. N. Kennin, of Port Hope, solicitor, praying to be called to the Bar under the Act 57 Vict. was read and refused.

The petitions of Mr. John Crawford, Mr. J. G. Vansittart, and Mr. Ruddy for call to the Bar under Act of 57 Vict., were granted.

Mr. Ruddy was then called to the Bar.

The Special Committee appointed to draft a resolution on the death of Hon. C. F. Fraser p esented the following Report:

The Benchers of the Law Society desire to express the universal feeling of deep regret for the loss which they, as well as the public and the profession, have sustained by the death in August last of the late Honourable Christopher Finlay Fraser, a member of their body since Trinity Term, 1881, and one of Her Majesty's Counsel.

Mr. Fraser was called to the Bar in the year 1865, and was appointed a Queen's Counsel in the year 1876. He was a member of the Legislative Assembly of this Province continuously from the year 1872 until the present year.

He had occupied a position in the Executive Council of the Province from the year 1873, having been, since the year 1874, Commissioner of Public Works, and previously to that office Secretary of the Province.

Convocation orders this Report of his career and of its loss to be entered on the minutes of its proceedings, and orders that a copy of it, with the expression of Convocation's deep sympathy, be transmitted to Mrs. Fraser.

The Report was then adopted, and Convocation ordered accordingly.

Convocation ordered that a special call of the Bench be made for Friday, September 21st, for the purpose of electing a Bencher to fill the vacancy caused by the death of Hon. C. F. Fraser.

Mr. John Crawford was called to the Bar.

Tuesday, September 11th.

Present, between 10 and 11 a.m.: The Treasurer, and Messrs. Moss, Magee, Watson, Douglas, and E. Blake; and, in addition, after 11 a.m., Messrs. Martin, Barwick, McCarthy, Mackelcan, Meredith, and Guthrie.

Mr. Moss, from the Legal Education Committee, reported on the result of the Supplemental Examination for the third year held before this term.

Ordered, that the following gentlemen do receive their certificates of fitness: Messrs. W. A. Lewis, A. N. Middleton, J. S. McKay, G. H. Pettit, T. K. Allan, J. L. Crawford, U. M. Wilson, S. J. Cooley, J. T. Loftus, W. F. W. Lent, C. R. Webster.

The following gentlemen were then called to the Bar: Messrs. John Thomas Loftus, William Alexander Lewis, John Sutherland McKay, F. W. Hall, U. M. Wilson, D. I. Sicklesteel, Alfred Erskine Hoskin, George Hamilton Pettit, William John Porte, Charles Robert Webster, Archibald John MacKinnon, Alexander Edward Garrett, A. N. Middleton, W. F. W. Lent, J. L. Crawford, A. B. Cunningham, S. J. Cooley, J. K. Maclennan, James Graham Vansittart.

Mr. McCarthy moved that the consideration of the Report presented to Convocation on the 9th February, 1894, relating to trial by jury, which had been ordered for consideration 16th February, 1894, and then deferred for consideration to this day, be now postponed until Tuesday, the second day of Michaelmas Term next. Carried.

Mr. Watson moved that the committee appointed on 27th November, 1891, as to fusion and amalgamation of the courts, be continued, and requested to further consider the subject-matter of the earlier reports not dealt with by the judges in their Rules, and be requested to report thereon to Convocation. Carried.

Friday, September 14th.

Present: The Treasurer, and Messrs. Meredith, Idington, Hoskin, Strathy, Hon. E. Blake, Moss, Mackelcan, Lash, Bruce, Martin, Watson, S. H. Blake, Magee, Barwick, Robinson, Tervzel, Hardy, Osler, Ritchie, and Kerr.

Dr. Hoskin, from the Discipline Committee, reported in the matter of the complaint of John T. Pierce against Messrs. Schoff and Eastwood, which Report had been ordered for consideration to-day.

Dr. Hoskin then moved: That Convocation take the Report into consideration on Friday, the 21st September. That a copy of the Report be

sent to Mr. Schoff, and that he be informed that Convocation will take action on his case on that day, at which time he will be at liberty to attend, and be heard by himself or by his counsel. That a copy of this Report be sent to the complainant or his counsel, and that he be informed that it will be taken into consideration on that day; and that notice be issued for a call of the Bench on that day.

Ordered accordingly.

Mr. Martin then moved: That Convocation do proceed to the selection of a Principal of the Law School.

Mr. Osler moved in amendment: That Convocation do not now proceed to select a Principal, but that leave be given to introduce a Rule to amend Rule No. 50, in so far as to increase the Principal's salary from $4,000 to $5,000.

Yeas: Messrs. Osler, Meredith, Ritchie, Watson, Teetzel, Hoskin, S. H. Blake, Strathy, E. Blake, Robinson, and Mackelcan—11

Nays: Messrs. Martin, Idington, Kerr, Magee, Bruce, and Hardy—6.

Mr. Osler's amendment was carried.

Mr. Osler, pursuant to notice given, moved: That Rule No. 50 be amended by striking out the words "four thousand," and substituting therefor the words "five thousand." Carried.

The Rule was read a first time.

Mr. Osler then asked leave to move now that the amendment to the Rule be read a second and third time. Carried unanimously.

Mr. Osler then moved the second reading of the amending Rule.

Yeas: Messrs. Martin, Osler, Meredith, Watson, Ritchie, Teetzel, Bruce, Lash, S. H. Blake, Magee, Strathy, E. Blake, Robinson, and Mackelcan.

Nays: Messrs. Idington and Hardy.

Mr. Osler then moved the third reading of the amending Rule, which was carried on the same vote as the second reading.

It was then ordered that, when Convocation meets on Friday, 21st September, it will stand adjourned until Saturday, 13th October, on which day the Special Committee appointed last term in relation to alterations and improvement of East wing and Library extension will make a final Report, and ask Convocation to consider the same.

Ordered that Mr. D. T. Smith receive his certificate of fitness.

Messrs. W. P. Telford and D. T. Smith were then called to the Bar.

Ordered, that notice be published of the intention to make appointments on the reporting staff on the last day of Michaelmas Term ensuing, 1894.

Friday, September 21st.

Present: The Treasurer, and Messrs. Riddell, Watson, Moss, Ritchie, Hoskin, Barwick, Osler, Bruce, Shepley, Robinson, Hardy, Douglas, Guthrie, Aylesworth, Kerr, Meredith, and Lash.

Mr. Moss, from the Legal Education Committee, reported on a number of cases of application for admission.

Mr. Moss further reported on the result of the third year examination held in the Law School, Easter, 1894, and the supplemental examination, Trinity, 1894.

Ordered, that the following gentlemen do receive their certificates of fitness: Messrs. W. N. Tilley, W. H. B. Spotton, H. Z. C. Cockburn, and N. St. C. Gurd.

Mr. Moss, from the same committee, reported on the results of the first and second year's supplemental examination in the Law School.

Dr. Hoskin, on behalf of the Discipline Committee, moved the adoption of their Report on the complaint of Pierce against Messrs. Schoff and Eastwood solicitors, as follows:

(1) Your committee proceeded with the investigation in accordance with the practice in such matters.

(2) That on said investigation the petitioner was represented by counsel, Mr. Schoff was represented by counsel, and Mr. Eastwood appeared in person. The petitioner and Mr. Schoff were also present.

(3) That witnesses were examined and counsel and Mr. Eastwood heard by your committee.

(4) Your committee find, as to Mr. Eastwood, that no case has been made against him.

(5) As to Mr. Schoff, your committee find that he has been guilty of professional misconduct and conduct unbecoming a solicitor, and the committee recommend that he be called before Convocation, and that the Treasurer do reprimand him for his misconduct aforesaid.

(6) The committee send herewith, for the information of Convocation, the evidence, papers, and documents produced before them.

Mr. Schoff, in pursuance of the order in that behalf, then appeared in Convocation. The above Report was then read over to him. Mr. Schoff, having been asked whether he had any observation to make to Convocation, expressed his regret that he should have been guilty of what he now recognizes as a breach of professional duty, in acting for both borrower and lender without the knowledge of both parties, and in not communicating the fact that a portion of the money was applicable towards the payment of a debt due to himself by the borrower. Mr. Schoff then withdrew.

Mr. Meredith then moved, in amendment, as follows:

That the Report be amended by inserting therein the following findings: That Mr. Schoff made a loan for a client of his to another client, upon a second mortgage, without communicating to the lender that he was acting for the borrower, but not concealing the fact with any fraudulent intention; that a portion of the loan, amounting to nearly one-half, was, without the knowledge of the lender, applied in paying a debt due to Mr. Schoff and his firm by the borrower; and that Mr. Schoff was thereby guilty of conduct unbecoming a solicitor; and that, as so amended, the Report be adopted. Carried.

Mr. Schoff was then called in, and the resolution of Convocation amending the Report read to him. The Treasurer then reprimanded Mr. Schoff in accordance with the Report as adopted after the foregoing amendment.

Mr. Watson, from the Joint Committee composed of the Finance and Reporting Committees, reported as follows:

The Joint Committee to which was referred the question of printing and publication to the profession of the Rules of court hereafter promulgated beg to report that, having considered the matter, your committee is of opinion that the Rules, as promulgated in future, should be printed under the direction of the Law Society, for distribution to the members of the profession, and that the editor-in-chief and reporters should be directed to attend to such printing and publication, and that the distribution should be with the issue of the first number of the Reports after such publication, on separate fly-leaf, beginning with Rules promulgated after first September, 1894. And your committee is of opinion that the republication by the Society of all Rules since consolidation should be considered by Convocation.

Mr. Watson moved the adoption of the Report, and that it be referred back to the committee, with power to deal with the matter and act thereon without report.

Convocation then proceeded to the election of a Bencher in the room of the late Hon. C. F. Fraser.

Mr. Donald Ban Maclennan, Q.C., was then elected and appointed a member of the Journals and Printing Committee.

Mr. Osler, from the Reporting Committee, reported as follows:

That the committee is of opinion that, in view of the general reduction of the cost of publication, the contract for the publication of the Reports should be reconsidered, and the Secretary has been ordered to write Messrs. Rowsell & Hutchison accordingly, and ask them for their figures per volume of 750 pages, per edition of 2,000, for a term of three years.

The following gentlemen were then called to the Bar: W. N. Tilley (with honours and gold medal), B. M. Jones (with honours), W. H. B. Spotton, N. St. C. Gurd, H. Z. C. Cockburn, J. G. Hay, W. H. Cawthra, J. W. St. John, and W. A. F. Campbell.

By consent, consideration of the draft Rules reported by the Legal Education Committee, relating to the re-examination of papers of unsuccessful candidates, was deferred until next meeting.

The complaint of Mr. Kenny against Mr. K., a solicitor, was read. The matter was referred to the Discipline Committee for report as to whether a *prima facie* case was made out.

In the complaint of Mr. Barr against Mr. McC., a solicitor, a letter from Mr. W. J. H., solicitor, was read. The Secretary was directed to write the complainant that, the matter being the collection of a debt, was such as the Society could not entertain.

Convocation then adjourned to Saturday, 13th October, at 11 a.m.

DIARY FOR JANUARY.

1. Tuesday.....*New Year's Day.*
2. Wednesday...Heir and Devisee Sittings begin.
4. Friday.....Chief Justice Moss died, 1881.
6. Sunday .....*Epiphany.* Christmas vacation ends.
7. Monday.....Cail, last day for notice for Hilary Term.
8. Tuesday .....Court of Appeal sits.
12. Saturday.....Sir Charles Bagot, Gov.-Gen., 1842.
13. Sunday .....*1st Sunday after Epiphany.*
14. Monday.....Toronto Assizes, jury (civil) cases. 1st week, Meredith, C.J. Assizes (civil and criminal cases), at Hamilton (Robertson, J.); London (Meredith, J.); Ottawa (Boyd, C.). County Court and Surrogate Sittings.
20. Sunday.....*2nd Sunday after Epiphany,*
21. Monday.....Toronto Assizes, jury (civil) cases. 2nd week, Armour, C.J. Lord Bacon born, 1561.
23. Wednesday...William Pitt died, 1806.
26. Saturday.....Sir W. B. Richards died, aged 74, 1889.
27. Sunday .....*3rd Sunday after Epiphany.*
28. Monday.....Toronto Assizes, jury (civil) cases. 3rd week, Boyd, C.
31. Thursday.....Earl of Elgin, Gov.-Gen., 1847.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] IN RE HESS MANUFACTURING CO. [Oct. 9.
EDGAR *v.* SLOAN.

Winding-up Act—Contributory—Promoter of company—Sale of property to company by—Rescission.

Two brothers named H., being desirous of purchasing a site for erecting a building in which to carry on the manufacture of furniture, and not having the means to do so, applied to S., father-in-law of one of them, for aid in the undertaking. S. obtained from the owners a conveyance of said site, the consideration being the erection of the building and running of the factory within a certain time, or, failing that, the sum of $3,000. The building was erected within the limited time, and, a company having been formed, the manufacturing business was started. S. was one of the provisional directors of the company, having subscribed for shares to the amount of $7,500, and subsequently the son of S. and the two brothers were appointed directors, through whom S. transferred the property to the company, having previously mortgaged it for $7,000, it having cost $7,300, besides which some $5,000 had been expended on it, the money being supplied by the wives of the two brothers. On the property being transferred to the company, 360 shares of the capital stock of the value of $50 each were allotted to S., as fully paid-up shares, and to include his former subscription. 234 of these shares were afterwards transferred by S. to his son and daughter. The company having failed, the liquidator appointed under the Winding-up Act applied to the master to have S. placed on the list of contributories for the 360 shares. The Master complied with this request to the extent of 126 shares standing in the name of S. when the winding-up proceedings were commenced, holding that S. purchased the property as trustee for the company, and so gave no value for the shares assigned to him. This ruling was affirmed by the Divisional Court (23 O.R. 182), but reversed by the Court of Appeal (21 A.R. 66).

Held, affirming the decision of the Court of Appeal, that the circumstances disclosed in the proceedings showed that S. did not purchase the property as trustee for the company, but could have dealt with it as he chose, and, having conveyed it to the company as consideration for the shares allotted to him, such shares must be regarded as being fully paid up, the Master having no authority to enquire into the adequacy of the consideration.

Held, also, that S. was a promoter, and, as such, occupied a fiduciary relation to the company, and having sold his property to the company through the medium of a board of directors, who were not independent of him, the contract might have been rescinded if an action had been brought for that purpose.

A promoter who buys property for his company from a vendor who is to be paid by the company when formed, and by a secret arrangement with the vendor part of the price comes, when the agreement is carried out, into the promoter's hands, that is a secret profit which the latter cannot retain; and if any part of such secret profit consists of paid-up shares issued as consideration for the property so purchased, they may be treated, while held by the promoter, as unpaid shares for which the promoter is liable as a contributory.

Appeal dismissed with costs.

S. H. Blake, Q.C., and *Raney* for the appellant.

Moss, Q.C., and *Haverson* for the respondent.

Ontario.] [Oct. ,

ALEXANDER *v.* WATSON.

Construction of agreement—Guarantee.

A., a wholesale merchant, had been supplying goods to C. & Co., when, becoming doubtful as to their credit, he insisted on their account being reduced to $5,000 and security for further credit. W. was offered as security, and gave A. a guarantee in the form of a letter as follows:

"I understand that you are prepared to furnish C. & Co. with stock to the extent of $5,000 as a current account, but want a guarantee for any amount beyond that sum. In order not to impede their operation, I have consented to become responsible to you for any loss you may sustain in any amount upon your current account in excess of the said sum of $5,000, including your own credit of $5,000, unless sanctioned by a further guarantee."

A. then continued to supply C. & Co. with goods, and in an action by him on this guarantee,

Held, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that there could be no liability on this guarantee unless the indebtedness of C. & Co. to. A. should exceed the sum of $5,000; and, at the time of action brought, such indebtedness having been reduced by payments from C. & Co. and dividends from their insolvent estate to less than such sum, A. had no cause of action.

Appeal dismissed with costs.

Christopher Robinson, Q.C., and *Clarke*, Q.C., for the appellant.

Delamere, Q.C., and *English* for the respondent.

Ontario.] [Oct. 9.

TRENT VALLEY WOOLLEN MFG. CO. *v.* OELRICHS.

Sale of goods by sample—Right of inspection—Place of delivery—Sale through brokers—Agency.

C. & Co., brokers in New York, sent a sample of wool to the T. Mfg. Co., at Campbellford, in Canada, offering to procure for them certain lots at certain prices. After a number of telegrams and letters between the company and C. & Co. the offer was accepted by the former at the price named for wool "laid down in New York," and payment was to be made in six months from arrival of wool at New York, without interest. Bought and sold notes were respectively delivered to the company and the brokers, signed by the latter The wool having arrived, the company would only accept it subject to inspection when it reached their place of business in Canada, to which the seller would not agree, and it was finally sold to other parties, and an action brought against the company for the difference between the price realized on such sale and that agreed on with the brokers.

Held, affirming the decision of the Court of Appeal for Ontario (20 A.R. 673), that the brokers could be considered to have acted as agents of the company in making the contract, but, if not, the company, having never objected to the want of authority in the brokers, nor to the form of the contract, must be held to have acquiesced in the contract as valid and duly authorized.

Held, also, that, there being no special agreement to the contrary, the place for inspection of the wool by the buyer was New York, where the wool was to be delivered, and it made no difference that the company had previously bought wool from the same party who had sent it to Campbellford to be inspected.

Held, further, that the evidence of a usage of the trade as to inspection offered by the company was insufficient, such usage not being shown to have been universal, and so well known that the parties would be presumed to have had it in mind when making the contract, and to have dealt with each other in reference to it.

Appeal dismissed with costs.

Christopher Robinson, Q.C., and *Clute*, Q.C., for the appellants.

McCarthy, Q.C., for the respondents.

Quebec.] [Oct. 9.

BURY *v.* MURRAY.

Absolute transfer—Commencement of proof by writing—Oral evidence—When admissible—Articles 1233, 1234, C.C.—Prête-nom—Compensation—Defence—Taking advantage of one's own wrong.

Verbal evidence is inadmissible to contradict an absolute notarial transfer, even where there is a commencement of proof by writing not amounting to a full admission. Art. 1234, C.C.

A defendant cannot set up by way of compensation to a claim due to plaintiff a judgment (purchased subsequent to the date of the action) against one who is not a party to the cause, and for whom the plaintiff is alleged to be a *prête-nom*.

In an action to recover an amount received by the defendant for the plaintiff, the defendant pleaded, *inter alia*, that the action was premature, inasmuch as he had got the money irregularly from the Treasurer of the Province of Quebec on a report of distribution of the prothonotary before all the contestations to the report of collocation had been decided.

Held, affirming the judgment of the court below, that this defence was not open to the defendant, as it would be giving him the benefit of his own improper and illegal proceeding.

Appeal dismissed with costs.

Bernard, Q.C., and *Lafleur* for the appellant.

Martin for the respondent.

Quebec.] WEBSTER *v.* SHERBROOKE. [Oct. 11, 1894.

Appeal—Right of—Petition to quash by-law under s. 4389, R.S.P.Q.—R.S.C., c. 135, s. 24 (g).

Proceedings were commenced in the Superior Court by petition to quash a by-law passed by the corporation of the city of Sherbrooke under s. 4389, R.S.P.Q., which gives the right to petition the Superior Court to annul a municipal by-law. The judgment appealed from, reversing the judgment of the Superior Court, held that the by-law was *intra vires*.

On motion to quash,

Held, that the proceedings being in the interest of the public are equivalent to the motion or rule to quash of the English practice, and therefore the court had jurisdiction to entertain the appeal, under s-s. (*g*) of s. 24, c. 135, R.S.C. *Sherbrooke* v. *McManamy* (18 S.C.R. 594) and *Verchéres* v. *Varennes* (19 S.C.R. 356) distinguished.

Motion refused with costs.

Brown, Q.C., for motion.

Panneton, Q.C., *contra*.

Quebec.] MCKAY *v.* HINCHINBROOKE. [Oct. 13.

Appeal—Supreme and Exchequer Courts Act, R.S.C., c. 135, ss. 24 and 29—Costs.

Held, that a judgment in an action by a ratepayer contesting the validity of an homologated valuation roll (*a*) is not a judgment appealable to the Supreme Court of Canada under s. 24 (*g*) of the Supreme and Exchequer Courts Act; (*b*) and does not relate to future rights coming under s-s. (*b*) of s. 2 of the Supreme and Exchequer Courts Act.

Held, also, that as the valuation roll sought to be set aside in this case having been only homologated and not appealed against within the delay provided in Article 1061 (M.C.), the only matter in dispute between the parties was a mere matter of costs, and therefore the court would not entertain the appeal, following *Moir* v. *Corporation of the Village of Huntingdon* (19 S.C.R. 363).

Appeal dismissed with costs.

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

McLaren, Q.C., and *Laurendeau* for the respondents.

Quebec.] [Nov. 8.

LABERGE *v.* EQUITABLE LIFE ASSURANCE SOCIETY.

Appeal—Amount in dispute—54-55 Vict., c. 25, s. 3, s-s. 4.

By virtue of s-s. 4 of s. 3 of c. 25 of 54-55 Vict., in determining the amount in dispute in cases in appeal to the Supreme Court of Canada, the proper course is to look at the amount demanded by the statement of claim, even though the actual amount in controversy in the court appealed from was for less than $2,000, the plaintiff having obtained a judgment in the court of original jurisdiction for less than $2,000, and not having taken a cross-appeal upon the defendants appealing to the intermediate Court of Appeal. *Levi* v. *Reed* (6 S.C.R. 482) affirmed and followed; GWYNNE, J., dissenting.

Motion to quash refused with costs.

Laflamme for the appellant.

MacMaster, Q.C., for the respondents.

EXCHEQUER COURT OF CANADA.

TORONTO ADMIRALTY DISTRICT.

McDOUGALL, Local J.] "THE GRACE." [Dec. 20, 1894.

International law—Boundary line—Three-mile limit—Inland waters.

The case was tried at St. Catharines on Sept. 28, before His Honour Judge McDOUGALL, Local Judge of the Toronto Admiralty District.

It was shown that the steamship "Grace," a foreign fishing vessel, was on April 21st, 1894, seized on Lake Erie by a government cruiser for an alleged infraction of the Fishery Act. It was found by the court that the vessel when seized was more than three marine miles from the shore, but clearly north of the international boundary line between Canada and the United States.

Held, that the three marine miles limit which prevails upon the high seas is not applicable to inland waters, but that the position of the international boundary line governs. A foreign vessel fishing without a license upon the Canadian side of the boundary line, upon an inland lake, is subject to seizure and condemnation under the provisions of the Act respecting fishing by foreign vessels.

Eccles for the Crown.

German for the owners and claimants of the ship.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] NELLIGAN *v.* NELLIGAN. [Dec. 7.

Alimony—R.S.O., c. 44, s. 29—Restitution of conjugal rights—Cohabitation.

The provision found in R.S.O., c. 44, s. 29, giving jurisdiction to grant alimony to any wife whose husband lives separate from her without any sufficient

cause, and under circumstances which would entitle her by the law of England to a decree for restitution of conjugal rights, first became the law of this province on June 10th, 1857, at which time the jurisdiction over suits for the restitution of conjugal rights was exercisible by the Ecclesiastical Court in England. That court could interfere in the way of restitution only where matrimonial cohabitation was suspended, that is, where either party refused to live with the other without sufficient cause. To a suit for restitution of conjugal rights there was no bar or legal opposition, except cruelty or adultery on the part of the promoters; and the single duty which the court could enforce by its decree in such a suit was that of married persons living together.

And upon the evidence in this case the husband refused to live with his wife without sufficient cause, and she was, therefore, entitled to alimony.

Orde for the plaintiff.

Chrysler, Q.C., for the defendants.

Div'l Court.] [Dec. 7.

IN RE CUMMINGS AND COUNTY OF CARLETON.

Municipal corporations—Arbitration—Bridges—Approaches—Lands injuriously affected—Compensation—Prohibition—Liability—City and county—55 Vict., c. 42, ss. 391, 530, 532, 535.

Where a bridge over a river, which formed the boundary line between a city and a township, within a county, was erected by the councils of the city and county jointly, and in raising the approaches on the township side certain lands were injuriously affected, for which the owner claimed compensation;

Held, having regard to ss. 530, 532, and 535 of the Municipal Act, 55 Vict., c. 42, that the county, and the county alone, could be compelled to arbitration in respect of such compensation.

Pratt v. *City of Stratford*, 16 A.R. 5, followed.

Held, also, that s. 391 did not apply to permit an arbitration between the landowner and the city and county together, nor was such an arbitration otherwise provided for by law. Prohibition against proceeding with arbitration.

Decision of BOYD, C., 25 O.R. 607, reversed.

Moss, Q.C., for the city of Ottawa.

H. M. Mowat for the County of Carleton.

Chrysler, Q.C., and *W. M. Douglas* for Cummings.

Div'l Court.] [Dec. 19, 1894.

IN RE LONDON MUTUAL FIRE INSURANCE COMPANY OF CANADA *v.* MCFARLANE.

Prohibition—Division Court—Right to jury—Tort—Contract—Particulars of claim—R.S O., c. 51, ss. 94, 154.

In an action in a Division Court to recover $30, the plaintiffs set out their claim in the particulars annexed to the summons, stating that they had paid the defendants $30 for loss of goods insured against fire; that the defendants in their application covenanted that there was no other insurance on the property, and the policy issued was conditional on the truth of the statements in the application, but at the time of the application and the loss the property was covered by a policy in another company, which was then, and at the time

of the payment of the $30, unknown to the plaintiffs; that the plaintiffs' policy became null and void, and was no longer binding on them by reason of the prior insurance; that the defendants' falsely and fraudulently made a statutory declaration that there was no insurance on the property other than that of the plaintiffs, in full reliance upon which the plaintiffs paid the $30.

Held, having regard to s. 94 of the Division Courts Act, R.S.O., c. 51, that the nature of the action was to be determined by these particulars, and from them it appeared that it was in tort, and not in contract; and, as the sum sought to be recovered exceeded $20, either party was entitled under s. 154 to require a jury.

And the County Judge having set aside the defendants' notice requiring a jury, an order was made prohibiting him from proceeding in or trying the action.

W. E. Middleton for the plaintiffs.

W. H. Blake for the defendants.

Chancery Division.

Div'l Court.] THE QUEEN *v.* GILES. [Dec. 20, 1894.

Criminal case reserved—Statement of case by County Judge.

This was a case reserved by the judge of the County of Peel for the opinion of the Divisional Court of the Chancery Division.

The case was as follows:

"The defendant was tried before me in the above court on the 12th day of October and 9th day of November, 1894, upon a charge of keeping a disorderly house, to wit, a common betting house, in the village of Port Credit, in the said county, on the 25th day of July, 1894, within the meaning of ss. 197 and 198 of the Criminal Code, 1892. The facts appear by the evidence taken at the trial, and upon the commission issued herein; the whole of such evidence, with the exhibits, are attached, and form part of the case. Upon such evidence I convicted the defendant of the offence so charged, and reserved a case for the opinion of the Court of Appeal, being the Chancery Division of the High Court of Justice. The question for the opinion of the court is as follows: Having regard to the evidence and the provisions of the said sections, and also the provisions of s. 204 of the said Code, ought the defendant to have been convicted? My judgment herein is attached hereto for the information of the court."

The case came before the Chancellor and Ferguson and Meredith, JJ.

B. B. Osler, Q.C., for the defendant, moved for the judgment of the court on the case.

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

THE CHANCELLOR: I notice that the judge has not found the facts, and has not stated the question of law intended to be reserved for the opinion of this court. He refers to all the evidence adduced, which would necessitate our passing, not only upon the law, but also on the facts.

Osler, Q.C.: The case is framed in accordance with that in *Reg.* v. *Smiley*, 22 O.R. 686. The facts are not in dispute, and the question is really simply a question of law arising upon s. 204 of the Criminal Code.

MEREDITH, J., referred to *Reg.* v. *Lloyd*, 19 O.R. 352.

BOYD, C.: We cannot agree to proceed on this case. It must be remitted to the judge to be restated. The judge must find the facts and specify the question of law as to which he is in doubt and reserves for our judgment.

Case remitted to the judge of the County of Peel to be restated.

Practice.

Q.B. Div'l Court.] ADAMS *v.* ANNETT. [Dec. 19, 1894.

Arrest—Order for—Discharge—Costs—Terms—No action to be brought.

Where the defendant in his notice of motion to set aside an order for his arrest and for his discharge asked for costs, and an order was made in his favour with costs,

Held, that the judge making the order had power to impose the term that the defendant should be restrained from bringing any action.

Review of the English authorities.

Per FALCONBRIDGE, J.: Following *Scane* v. *Coffey*, 15 P.R. 112, the term should be imposed only where the plaintiff has been frank and open in his application for the order for arrest, and had reasonable grounds for the statements he laid before the judge.

C. J. Holman for the plaintiffs.

Aylesworth, Q.C., for the defendant.

C. P. Div'l Court.] [Dec. 21, 1894.

THOMPSON *v.* WILLIAMSON.

Security for costs—Action against justice of the peace—53 Vict., c. 23—Form of order—Time—Dismissal of action.

An order under 53 Vict., c. 23, for security for costs in an action against a justice of the peace should not limit a time within which security is to be given, nor provide for dismissal of the action in default; the order should be simply "that the plaintiff do give security for the costs of the defendant to be incurred in the action."

Walter Read for the plaintiffs.

C. W. Kerr for the defendant Williamson.

C.P. Div'l. Court.] [Dec. 21, 1894.

WEEGAR *v.* GRAND TRUNK R.W. CO.

Sheriff—Poundage—Allowance in lieu of—Seizure of goods—Withdrawal of man in possession before sale—Execution superseded—Rule 1233—Amount of allowance—Discretion.

A sheriff made a seizure under a *fi. fa.* against the goods of the defendants; but, learning that they were about to appeal, of his own motion, and for the purpose of saving expense to the parties, withdrew his officer in possession

and, the appeal having been subsequently brought, the execution was superseded. The appeal was dismissed, and the judgment debt and costs were afterwards settled by arrangement between the parties.

Held, that the sheriff had not so withdrawn from the seizure as to disentitle him to poundage or an allowance in lieu thereof, and that, notwithstanding the superseding of the execution, he was entitled, under Rule 1233, to such allowance, the words "from some other cause" in that Rule being wide enough to cover the case.

Brockville and Ottawa R.W. Co. v. *Canada Central R.W. Co.*, 7 P.R. 372, and *Morrison* v. *Taylor*, 8 P.R. 390, approved and followed.

The court will not interfere with the discretion exercised by the Master in fixing the amount of the allowance.

Langton, Q.C., for the sheriff of Toronto.

W. R. Smyth for the plaintiff.

D. Armour for the defendants.

DIVISION COURTS.

7th Div. Ct., North. and Durham.] [Dec. 13, 1894.

CHRISTIE *v.* CASEY. BROOMFIELD, GARNISHEE.

Division Courts—Attachment of debts—Accruing rent—Apportionment.

KETCHUM, J.J.: Rent accruing, but not yet payable, cannot be attached in the Division Courts.

In *Massie* v. *Toronto Printing Co.*, 12 P.R. 12, it was held that rent which had accrued by virtue of R.S.O., c. 136 (1877), (now c. 143 of R.S.O., 1887), up to date of the attaching order, could be attached under Rule 370 (now 935), by which debts "owing or accruing" are made attachable; but I think that decision conflicts with *Webb* v. *Stenton*, L.R. 11 Q.B.D. 518.

In the Division Courts, debts, to be attachable, must be "due or owing," and there must be a "debt," "*debitum in presenti*," though it may be "*solvendum in futuro*." Accruing rent is not such a debt; *per* CROMPTON, J., in *Jones* v. *Thompson*, E.B. & E. 63, as cited in *Webb* v. *Stenton*, at p. 523. The Act, R.S.O., c. 143, s. 2, does not make it such a debt, nor does it make it a debt "due or owing," but "accruing," *de die in diem*. See *In re United Club and Hotel Company*, W.N. 1889, page 67.

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.] [Nov. 3, 1894.

THE QUEEN *v.* KENNEDY.

Criminal law—Warrant of commitment—Jurisdiction of Indian agent—Indian Act, s. 117, 53 Vict., c. 29, s. 9 (D.), and 57-8 Vict., c. 32, s. 8 (D.).

The prisoner was confined in jail by virtue of a warrant of commitment signed by the Indian agent for Clandeboye Indian Agency, in Manitoba, issued pursuant to a conviction by said agent for an offence against the Indian Act. The warrant did not show where the offence had been committed, and it was stated that the conviction was equally defective.

On application of the prisoner for his release,

Held, that the warrant was bad in not showing that the agent had jurisdiction at the place where the offence was committed. By s. 8 of c. 32 of 57-8 Vict. (D.), substituted for s. 117 of the Indian Act, the agent would have jurisdiction all over Manitoba, but there is no ground for intendment that the offence was committed in Manitoba, when no place is specified. The learned judge, however, refused to order the discharge of the prisoner, but ordered the issue of a writ of *habeas corpus*.

McMeans for the prisoner.

Aikins, Q.C., for the Indian Department.

TAYLOR, C.J.] SMITH *v.* THE UNION BANK. [Dec. 4, 1894.

Interpleader—Ownership of crops grown on lands purchased from claimant on credit with stipulation that crops, when grown, should be the property of claimant—Execution intervening.

This was an interpleader issue to determine whether a quantity of grain seized under execution in a suit by the bank against one Chapman was the property of the plaintiff as against the bank. The grain was grown upon land purchased in 1890 by Chapman from Smith upon credit. The agreement contained the following clause:

"Provided that all grain and produce grown upon said premises shall be and remain the property of the party of the first part, and shall not be removed therefrom until the then current year's payment of principal money and interest shall have been made without the authority of the party of the first part."

Chapman was in default in payment of the instalments or purchase money, but he continued in possession of the land and raised the crops, which had been seized, himself supplying all the seed and work. A writ of execution was placed in the hands of the sheriff in May, 1893, and the seizure was made in September, 1894.

Held, following *Clifford* v. *Logan*, 9 M.R. 424, that when the crop in question came into existence the ownership of it was in Chapman, and the agreement at most gave Smith an equitable right to enter and take the crop when it came into existence, or to call for the execution of a formal and legal mortgage upon it; but when the crop came into existence in 1894, there being then in the hands of the sheriff an execution against Chapman at the suit of the bank, the crop was bound by it the instant it came into existence, and that the legal right of the bank under the execution took effect before the equitable right of Smith could be turned into a legal one. The equity maxim, *qui prior est tempore potior est jure*, applies only as between persons holding equitable interests which are in all other respects equal, when priority of time gives the better equity.

Verdict for the defendants.

A. D. Cameron for the plaintiff.

Ewart, Q.C., for the defendants.

The Full Court.] THE QUEEN *v.* EARL. [Dec. 15, 1894.

Crown case reserved — Mistrial — Juror not understanding the English language—Challenging a juror.

It appeared that, after the trial and conviction of the prisoner, his counsel discovered that one of the jurors understood the English language very imperfectly. He had not made this fact known to the court or the counsel engaged in the case, and he had not been challenged.

Prisoner's counsel then contended that there had been a mistrial, and that the conviction should be quashed and a new trial granted.

The judge reserved for the court the following question :

"Is the fact that one of the twelve jurors sworn to try the prisoner did not thoroughly understand the English language a sufficient ground for holding, under the circumstances, that there has been a mistrial?"

Held: (1) That the objection taken would not, in this province, be a ground of challenge of a juror, although a judge might, in his discretion, direct him to stand aside if the circumstances were drawn to his attention.

(2) That, even if it would have been a ground for challenge, it was too late after the juror had been sworn, and it makes no difference that the cause for challenge was not known at the time.

(3) That there was no mistrial, or any ground for granting a new trial.

The provisions of s. 746 of the Criminal Code, respecting the granting of a new trial, when it is imperative, and when discretionary, explained.

Question answered in the negative, and the conviction sustained.

Howell, Q.C., for the Crown.

Andrews for the prisoner.

BAIN, J.] [Dec. 11, 1894.

NORTHWEST COMMERCIAL TRAVELLERS' ASSOCIATION *v.* LONDON GUARANTEE CO.

Accident policy—Life insurance—Death by freezing.

This was an action to recover the amount of an accident policy issued by the defendants to C. F. Church as a member of the plaintiffs' association.

By the contract the defendants undertook to pay the insurance money within ninety days after sufficient proof that the assured "shall have sustained bodily injuries effected through external, violent, and accidental means within the intent and meaning of this contract and the conditions hereunto annexed, and that such injuries alone shall have occasioned death within ninety days from the happening thereof," with the further proviso that the insurance "shall not extend to death or disability caused by an injury of which there shall be no external and visible sign . . . nor to any case except when some injury effected as aforesaid is the proximate and sole cause of the disability or death ; and no claim shall be made under this policy when the death or disablement may have been caused in consequence of exposure to any obvious or unnecessary danger."

Mr. Church was frozen to death on the prairie near Fort McLeod on the 23rd of November, 1892. He was returning to that place from one of his trips, in company with a driver. While still about eight miles out, the wagon broke down. The weather had turned suddenly very cold and stormy, and, Mr.

Church being too cold and numb to walk, and unable to ride, it was agreed that he should remain where he was while the driver rode to McLeod for assistance. When assistance came they found him frozen to death.

Held, that the insured met his death as a result of an injury effected through external, violent, and accidental means within the meaning of the policy, and that the plaintiffs were entitled to recover.

Sinclair v. *Maritime Passengers Assurance Co.*, 7 Jur. N.S. 367, distinguished.

Howell, Q.C., and *Mulock*, Q.C., for the plaintiffs.

J. D. Cameron for the defendants.

REGULATIONS OF THE JUDGES OF THE HIGH COURT OF JUSTICE RESPECTING THE WEEKLY COURTS AT LONDON AND OTTAWA.

(1) The sittings of the weekly court at Ottawa and London under 57 Vict., c. 20, shall be held on Tuesday at 10 o'clock a.m. in each week, or on such other day or hour as the judge appointed to take such court may fix.

(2) Information shall be given to the registrar of the Chancery Division at Toronto by telegram on Saturday as to what business has been entered for the ensuing week.

J. A. BOYD.

January 12, 1895.

Obituary.

MR. WILLIAM EDWARD HALL.

Mr. William Edward Hall, the well-known writer upon international law, died on November 30th at his residence, Coker Court, in Somersetshire. At the unusually early age of seventeen he matriculated at University College Oxford, and on taking his B.A. degree in 1856 obtained a first class in the School of Law and History. He was called to the Bar at Lincoln's Inn in 1861, but preferred the study of history to the practice of the law. He had amassed materials and had formed plans for ambitious works upon such topics as the history of civilization and the history of the British colonies. He was a considerable linguist, and his place among amateur artistswas a very high one. He was also thoroughly acquainted with the history of art. He was an enthusiastic climber, and one of the earliest members of the Alpine Club. He devoted much attention to questions of strategy, and wrote a pamphlet on army organization. Soon after leaving college, he went out to sea, and, indeed, take part in, the Danish war, and in later years was under fire with the British forces in the neighborhood of Suakim. He was, however, most widely known for his masterly book upon "International Law," first published in 1880, of which a fourth edition is now in the press. He had before this written a treatise upon the "Rights and Duties of Neutrals," in 1874, and last year had produced a most useful treatise upon a difficult, because unsettled, department of the law of nations, which he describes as the "Foreign Powers and Jurisdiction of the British Crown."—*Law Journal.*