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WE are told by the *Central Law Journal* that it is estimated that the number of known murders committed in the United States during the last two years was 10,196, and that only 552 murderers suffered death for their crimes. These are startling figures; but following are some even more so, for of those 552 only 230 were executed in pursuance of the law, Judge Lynch being responsible for the others.

WE cannot pass over with merely an idle note the example set by the late Mr. T. B. P. Stewart, who was but a few months ago called to the Bar, and who by his will desired to leave no less a sum than twenty-one thousand dollars to aid students in the pursuit of a knowledge of that profession which he so much loved. The writer, who had the privilege of being with him throughout nearly all his university course, can speak of the true generosity of his nature. A poet of great promise and of no mean ability, Phillips Stewart was already looked upon as one who would soon have shone out as one of the brightest of Canada's sons.

WE have recently met with, in England, the painful sight of a judge who was hopelessly incapable of fulfilling his duties, but nevertheless determined to retain his seat on the bench. Such a scandal as a maladministration of justice —if the paradox be permitted—should not be tolerated any longer than is actually necessary to make a change, and if, at any time, it is found that the profession avoid, if possible, bringing a case of a somewhat complex nature before any particular judge for the reason that it is not believed that he will be able, either from mental decay, old age, or other infirmity, to fully grasp all the points in the case, it is surely time that all personal regard for an old friend should be merged in the feeling that it would be well for such an one, who has had many years of usefulness and has given many good decisions in his day, to retire to that rest which he has so well earned.

A DEPUTATION organized by Mr. W. Burton, one of the trustees of the Hamilton Law Association, and representing the various law associations throughout the Province, recently interviewed the Minister of Justice. The audience was very satisfactory in its results. Sir John Thompson, who manifested marked interest in the good work of the law associations and recognized their importance, graciously informed the deputation that in future the associations would be supplied free with the Supreme and Exchequer Court Reports, pamphlets on

criminal law, Statutes of Canada, Orders in Council, and the official *Gazette*, all of which will be of great value to the associations, in that the money hitherto spent on these books can now be applied in the purchase of reports so much needed. Even the libraries of the York and Hamilton Law Associations, large as they are, owing to the continued and untiring exertions of a few of the officers and to donations from friends, are, notwithstanding, still deficient in many respects, and it is to be hoped that the Government will see fit to grant the petition of the deputation for a sum of money to be given to the county judges for the purpose of being expended on works of criminal law to be placed upon the shelves of the libraries of the associations wherever they exist.

We think that those of the profession, and especially the junior members, who do not belong to our local law association, do not realize the store of legal literature that lies at their very doors; but there are a large number, and increasing, we are told, every day, who do not now find it necessary to make the longer journey to Osgoode Hall to look up a point of law when they can find all they want in the Court House library. We understand, too, that, in order to induce the junior members of the profession to join, any barrister or solicitor in the county may pay the annual fee of two dollars, which entitles him to the use of the library, with a right to vote at all general meetings. We would also refer to our remarks *ante* p. 45.

What we have said with regard to the libraries of the York and Hamilton Law Associations must *a fortiori* apply to those of the outside associations where, although the collection of books may not be so large, each additional subscription—and this applies to all associations—goes towards the purchase of new books, so that each member directly increases the value of the library. The old adage does not apply in this case, for with more members we have "the better cheer."

The law associations should not only feel indebted to the gentlemen who were instrumental in bringing this matter to the attention of the Government, but should, and no doubt will, appreciate the prompt action of the Minister of Justice in so readily complying with their request.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for March comprise (1892) 1 Q.B., pp. 273-384; (1892) P., pp. 69-95; (1892) 1 Ch., pp. 101-321; (1892) A.C., pp. 1-89.

PRACTICE—ATTACHMENT OF DEBT—GARNISHEE ORDER—TRUST FUND IN HANDS OF GARNISHEE—COUNTER-CLAIM OF GARNISHEE.

In *Stumore* v. *Campbell & Co.* (1892), 1 Q.B. 314, the Court of Appeal (Lord Esher, M.R., Lopes and Kay, L.JJ.) have decided that a garnishee who has a counter-claim against the judgment debtor, to whom he is indebted, cannot set that counter-claim up as a defence to the claim of the attaching creditor to attach the debt. In this case the garnishees were solicitors, in whose hands the judgment debtor had placed a sum of money for a specific purpose, which had

failed. They had counter-claims against the judgment debtor for costs for a larger amount than that deposited with them. They, therefore, contended that they were not indebted to the judgment debtor, and Smith, J., gave effect to their contention. But it being admitted that the garnishees, being trustees of the fund, could have no lien on it for costs, according to *Brandao* v. *Barnett*, 12 Cl. & F. 787, the Court of Appeal was of opinion that the existence of a mere right to bring a cross action for the costs could not prevent an attachment of the debt in their hands by another creditor. This decision is no doubt good law; at the same time, the conclusion of A. L. Smith, J., seems more consonant with natural justice.

PRACTICE—PLEADING—ACTION FOR RECOVERY OF LAND—CLAIM AS HEIR AT LAW—PARTICULARS.

Palmer v. *Palmer* (1892), 1 Q.B. 319, was an action of ejectment, in which the plaintiff claimed to be entitled as heir at law of Mary Ann Brown, who died intestate seized of the lands in question. On the application of the defendant for particulars, Denman and Cave, JJ., held that he was entitled to require from the plaintiff a statement of the links of relationship on which he relied as constituting him such heir.

PRACTICE—WRIT OF SUMMONS—SERVICE OUT OF THE JURISDICTION—ACTION FOR BREACH OF COVENANT TO REPAIR—CONTRACT AFFECTING LAND—ORD. XI., R. 1—(ONT. RULE 271).

Tassell v. *Hallen* (1892), 1 Q.B. 321, is another decision on a point of practice. The question was whether an action for breach of a covenant to repair contained in a lease of land within the jurisdiction is an action in which "a contract or liability" affecting land or hereditaments is sought to be enforced within the meaning of Ord. xi., r. 1 (*b*), (Ont. Rule 271 (*b*)), so that service of the writ out of the jurisdiction may be authorized. For the defendant it was contended that the action was one merely to recover money, and was within the case of *Agnew* v. *Usher*, 14 Q.B.D. 78, where it was held that an action for rent against the assignees of a lease, who alleged that the assignment was to secure a debt, was not to enforce a contract obligation or liability affecting land, but was a mere personal action to recover money. But the court (Lord Coleridge, C.J., and Collins, J.), though not impugning that case, considered that the decision in *Kaye* v. *Sutherland*, 20 Q.B.D. 147, was conclusive. There the plaintiff claimed a remedy in respect of tenant right, and also damages for breach of an agreement in a lease to pay tenant's right and tenant's compensation, and that was held to be an action to enforce a covenant affecting lands. The court also decided that the several clauses of the Rule are to be construed disjunctively; and if the cause of action can be brought as to a defendant within any one of them, service out of the jurisdiction on him may be authorized.

REFUSAL OF WITNESS TO SUBMIT TO EXAMINATION—CONTEMPT OF COURT—COMMITTAL FOR CONTEMPT—PRIVILEGE OF PARLIAMENT.

In re Armstrong (1892), 1 Q.B. 327, although a decision in bankruptcy, deserves to be noticed. A member of Parliament had been duly summoned to give evidence, and had attended, but on advice of his counsel had refused to be sworn

or to give evidence, on the ground of certain alleged irregularities in the proceedings. A motion was then made to commit him, upon the return of which privilege of Parliament was claimed. Vaughan Williams, J., was of opinion that the question turned upon whether the motion was to be regarded as one to punish the witness, or was merely in the nature of process for enforcing obedience to the order of the court. If the former, it would be punitive and a quasi criminal proceeding, against which no privilege could be claimed; but if the latter, it would be a merely civil process, against which the claim of privilege must be allowed; and he came to the conclusion that the case came under the latter category, and refused the motion with costs.

CONTRACT—SUM AGREED TO BE PAID TO THIRD PERSON—LIABILITY OF CONTRACTOR TO THIRD PERSON—USAGE OF TRADE—PRIVITY OF CONTRACT.

In *North* v. *Bassett* (1892), Q.B. 333, the plaintiff was a quantity surveyor who had been employed by an architect to take out the quantities for a building about to be erected. The defendant was a builder who tendered for the work upon the basis of a specification which provided that the fees of the plaintiff were to be paid to him out of the first certificate. The defendant had received the first instalment, but refused to pay the plaintiff's fees, for the recovery of which the action was brought. There was evidence that according to the usage of the trade it was customary for the builder, when a tender was accepted, to pay the quantity surveyor's fees, as was provided by the specifications. The assistant judge of the Mayor's Court had nonsuited the plaintiff on the ground of want of privity of contract between him and the defendant; but Mathew and A. L. Smith, JJ., granted a new trial, holding that the usuage was a reasonable one, and entitled the plaintiff to sue the defendant for the fees.

EMPLOYERS' LIABILITY ACT, 1880 (43 & 44 VICT., C. 42), S. 1, S-S. 1 (R.S.O., C. 141, S. 3, S-S. 1)—BUILDER PULLING DOWN WALL—"DEFECT IN THE CONDITION OF THE WORKS."

Brannagan v. *Robinson* (1892), 1 Q.B. 344, is one of a class of actions which figure somewhat frequently in the reports nowadays, namely, one by a workman against his employer to recover compensation for injuries received in the course of his employment. The defendant was a builder who employed the plaintiff in the work of taking down an old house. After the roof had been removed and part of the walls pulled down, the plaintiff, a laborer, was ordered to remove some of the débris of the roof which lay on the ground near one of the walls still standing. Owing to this wall not being shored up, it fell and injured the plaintiff. The plaintiff recovered judgment on the trial, and on appeal Lawrance and Wright, JJ., held that the dangerous condition of the wall was "a defect in the condition of the works connected with or used in the business" of the defendant within the meaning of s. 1, s-s. 1 (R.S.O., c. 141, s. 3, s-s. 1), and dismissed the appeal.

JUSTICES, WHEN DISQUALIFIED—BIAS—PECUNIARY INTEREST OF JUSTICE AS RATEPAYER.

In *The Queen* v. *Gaisford* (1892), 1 Q.B. 381, a motion was made for a certiorari to bring up and to quash an order made by justices on the ground that

one of the justices was disqualified from acting by reason of bias and interest. It appeared that a meeting had been called by a district surveyor to consider the obstruction of a highway by the defendant, who had deposited a heap of earth and manure thereon. A justice of the peace, who was also one of the ratepayers, moved a resolution calling on the defendant to remove the heap. The defendant not having done so, a summons was taken out against him for depositing it on the highway and for failing to remove it after notice. The justice who had moved the resolution sat with another justice and adjudicated on the summons, and they made an order directing the heap to be removed and sold, and the proceeds applied to the repair of the highway. Mathew and A. L. Smith, JJ., granted the motion, holding that the justice who had moved the resolution was disqualified, both on the ground that there was a reasonable suspicion of bias on his part, though there might not have been bias in fact; and also on the ground of his having, as a ratepayer, a pecuniary interest in the result of the summons.

PROBATE—TORN WILL—COPY—GRANT OF PROBATE.

In the goods of Leigh (1892), P. 82, one of the sons of the testator had applied for a copy of his will. After the copy had been made, he snatched the original out the hands of the person in whose custody it was and tore it into pieces. Most of the pieces were recovered and pasted together, but parts were missing. The court held that the contents of the missing portions might be supplied from the copy, and that probate should be granted of the remains of the original and the copy.

PROBATE—WILL—CONSTRUCTION—APPOINTMENT OF EXECUTORS—LEGITIMATE AND ILLEGITMATE NEPHEWS OF THE SAME NAME—EXTRINSIC EVIDENCE.

In the goods of Ashton (1892), P. 83, a testator by his will appointed four executors, one of whom was described as "my nephew G. A." It appeared that there were two persons of that name, both nephews—one legitimate, the other illegitimate. The testator also nominated as another of his executors "my nephew E. A.," and it appeared that he was his illegitimate grand-nephew, being the son of his illegitimate nephew. He also described as "my niece" a person who was his illegitimate niece. Under these circumstances, Jeune, J., held that as it appeared that the testator applied the terms "nephew" and "niece" indiscriminately to his legitimate and illegitimate relatives, extrinsic evidence was admissible to show that the illegitimate nephew G. A. and not the legitimate nephew was the person intended to be nominated executor.

PROBATE—WILL PROVED IN FOREIGN COUNTRY—PROBATE OF COPY.

In the goods of Lemme (1892), P. 89, the will of a testator had been proved in France and the original deposited with a notary who, according to French law, was forbidden to allow it to be removed from his custody. Under these circumstances, Jeune, J., granted probate of a copy of the will properly proved to be such until such time as the original should be brought in.

INTEREST—3 & 4 W. 4, c. 42, s. 28 (R.S.O., c. 44, s. 86)—MONEY PAYABLE ON A CONTINGENT EVENT—DEFAULT OF PERSON ENTITLED TO PAYMENT.

In *London, Chatham & Dover Ry.* v. *South-Eastern Ry.* (1892), 1 Ch. 120, by an agreement between the plaintiffs and defendants, moneys were payable from time to time within a certain time after the verification of accounts: and if the company entitled to receive payment failed to verify its accounts within a specified time, the payments on account were to cease until verification was made. The plaintiffs, who were entitled to payment, failed to verify their accounts as required owing to pressure of business; and there was besides a dispute between the parties as to the right of the plaintiffs to an account of certain traffic receipts of the defendants, upon which the balance payable to the plaintiffs would depend. The present action was brought claiming, among other things, a declaration that the plaintiffs were entitled to an account of the traffic receipts in dispute and for payment of the balance due. The plaintiffs were held entitled to the account of the traffic receipts, and the question then arose whether they were entitled to interest on the balances which would have been payable if the accounts had been duly verified, and the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.), overruling Kekewich, J., were of opinion that they were not entitled to interest either in the general account or in the account of the traffic receipts in dispute, as no certain time was fixed for payment, nor any demand for payment, or notice of claim of interest made within 3 & 4 W. 4, c. 4, s. 28 (R.S.O., c. 44, s. 86); and also because the plaintiffs themselves were in default in verifying the accounts, and could not therefore claim that they had been prevented by the defendants from ascertaining the balance due, and demanding payment and interest. In the judgment of Lindley, L.J., will be found a useful review of the cases on the subject of interest, and the principles on which it is allowed in equity.

COMPANY—WINDING UP—DIRECTORS, LIABILITY OF—DIVIDENDS PAID OUT OF CAPITAL—STATUTE OF LIMITATIONS—STALE DEMAND.

In re Sharpe (1892), 1 Ch. 154, was an action brought by a joint stock company, which was in liquidation, against the personal representatives of two deceased directors to recover from them moneys improperly paid out of the capital of the company as dividends when the company had made no profit. The company was incorporated in January, 1868, and never earned any profits, but, with the sanction of the directors, dividends were annually paid out of the capital from July, 1869, to July, 1878, contrary to the articles of association. The amount thus paid aggregated £4,500. The company was subsequently ordered to be wound up, and the present action was commenced by the liquidator on the 4th of June, 1889. The claim was resisted on the ground that it was barred by the Statute of Limitations, and, if not, that the claim was nevertheless a stale demand and would not be enforced in equity. The Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) agreed with North, J., that as the directors were in the position of trustees the Statute of Limitations (21 Jac. 1, c. 16) did not apply, and, the recent Statute of Limitations relating to trustees

(51 & 52 Vict.. c. 59) not applying, there was no statutory defence to the claim; neither did they consider that the equitable doctrine against enforcing stale demands could be successfully invoked, having regard to the fact that the action was being brought for the benefit of the creditors of the company, and that no prejudice to the defendants, by loss of evidence or otherwise, was shown to have resulted from the delay, and that the facts on which relief was claimed were undisputed.

CONTRACT—STIFLING PROSECUTION—IMPLIED CONDITION—COSTS—"DISCREDITABLE DEFENCE."

Jones v. *Merionethshire Permanent Building Society* (1892), 1 Ch. 173, we have already referred to, *ante* p. 97. The Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) unanimously affirmed the decision of Vaughan Williams, J. (1891), 2 Ch. 587, noted *ante* vol. 27, p. 491. In our former note it is suggested that the plaintiffs succeeded on the ground of pressure being proved; that was not quite correct. It appears there were cross actions by the company on the notes given by the plaintiffs, which were consolidated with the plaintiffs' action to set aside the notes and to compel their delivery up; and that in the course of the action the plaintiffs paid the amount claimed on the notes in order to get back the securities upon an undertaking of the defendants to refund the money if so ordered; and the Court of Appeal decided in favor of the plaintiffs, not on the ground that pressure had been proved, but that the notes were given upon an illegal agreement not to prosecute, which was a defence to the action on the notes, and therefore, under the consent order above referred to, the plaintiffs were entitled to have the money refunded, though but for that order they would not have been entitled to succeed. The illegal consideration, in short, was a defence to the cross action on the notes, though it would not, in the opinion of the majority of the court, without other evidence of pressure, have sustained the plaintiffs' action for the delivery up of the notes and other securities. We may add that although the Court of Appeal felt compelled on the ground of public policy to give effect to the plaintiffs' defence to the cross action on the notes, it nevertheless declared it to be "discreditable," and refused the plaintiffs any costs of the appeal, though they were successful. We may also observe that though Lindley and Fry, L.JJ., seem to be clear that an agreement not to prosecute is not evidence of pressure, yet Bowen, L.J., on the other hand, expressly declines to commit himself to that proposition.

MORTGAGE—CHOSE IN ACTION—INCUMBRANCE ON TRUST FUND BY CESTUI QUE TRUST—PRIORITY—NOTICE TO ONE OF SEVERAL TRUSTEES—DEATH OF TRUSTEE.

In re Wyatt, White v. *Ellis* (1892), 1 Ch. 188, is a case which illustrates the perils they incur who lend money to *cestuis que trustent* on the security of their beneficial interest in the trust estate. In this case there were two trustees of a will, S. and E. One of the *cestuis que trustent* was a woman who married and executed a marriage settlement, vesting her share in the trustees of the settlement. This settlement was communicated to S., but E. had no notice of it. Afterwards the woman and her husband proposed to mortgage her share. The intending mortgagees inquired of both trustees about incumbrances. S.

returned an evasive answer, and E. said he was not aware of any. Without making further inquiries, the mortgagees advanced their money and gave formal notice of their mortgage to both trustees. This action was brought to carry out the trusts of the will, whereupon a contest for priority arose between the trustees of the marriage settlement and the mortgagees, and the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.), affirming Stirling, J., held that the trustees of the settlement were entitled to priority. There was the further question raised on appeal, whether the notice given to S. died with him, and whether on E. becoming by S.'s death sole trustee his want of notice of the settlement would give the mortgagees priority; but the Court of Appeal held that the death of S. could not have that effect, inasmuch as at the time the mortgagees took their security there was a trustee in existence who had notice of the settlement, and from whom, by proper inquiry, they might have obtained information of it.

EXECUTOR—LEGATEE—SPECIFIC APPROPRIATION OF ASSETS TO PAYMENT OF LEGACY—INCOMPLETE TRANSACTION.

In re Lepine, Dowsett v. *Culver* (1892), 1 Ch. 210, the action was brought to compel a residuary legatee to whom an executor had handed over a mortgage in part payment of his share of the residue to account for it to the other residuary legatees, part of whose shares in the residue had subsequently been lost through misappropriation by the executor. The will directed the residue to be converted and divided into sixth shares, but contained no express provision authorizing the executor to divide the assets in specie, or appropriate any part thereof in payment or part payment of shares. One of the residuary legatees agreed with the executor to accept a mortgage for the £700 belonging to the estate as part satisfaction of his share of the residue, and the mortgage was accordingly handed over to him, but no formal transfer made of it. He received the interest on it for ten years prior to the action. The residue of what appeared to be his share was paid in cash. At the time of the transaction, the amount paid, including the mortgage, was no more than what then appeared to be the true amount due to him as his share of the residue. Owing to a subsequent misappropriation of the assets by the executor the other residuary legatees were unable to recover their full shares, and some of them brought the present action to compel the holder of the mortgage to account for it as being still a part of the outstanding assets of the estate. Kekewich, J., was of opinion that the plaintiffs were entitled to succeed, but the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) reversed his decision, holding that an executor may validly make such an agreement with a legatee, and that the mere fact that no formal transfer was executed of the mortgage could not defeat the right of the legatee to hold the security; and that when the transaction was fair and *bonâ fide* at the time it was entered into, it could not be afterwards impeached on the ground of a subsequent failure of assets.

CONFLICT OF LAW—COMPANY—UNPAID CAPITAL—DEBENTURES CHARGING UNPAID CAPITAL—NOTICE—PRIORITIES.

In re Queensland Mercantile Agency Co. (1892), 1 Ch. 220, is an appeal from the decision of North, J. (1891), 1 Ch. 536, noted *ante* vol. 27, p. 264. The question

was one of priority between debenture holders whose shares were a charge on the unpaid capital of a company and creditors of the company who had attached the unpaid calls due on shares held in Scotland by process in the Scotch Courts, which, under Scotch law, was entitled to priority over the debentures. The Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) agreed with North, J., that the law of Scotland, as regards the shares held in Scotland, must prevail.

POWER, RELEASE OF—TENANT FOR LIFE—POWER TO APPOINT AMONG CHILDREN—DEATH OF OBJECT OF POWER INTESTATE—RIGHT TO TRANSFER OF DECEASED CHILD'S SHARE.

In re Radcliffe, Radcliffe v. *Bewes* (1892), 1 Ch. 227, is a decision of the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.) upon an appeal from North, J. (1891), 2 Ch. 662, noted *ante* vol. 27, p. 528. The facts of the case are that the plaintiff was tenant for life under his marriage settlement of a fund over which he had also a power of appointment in favor of his children, and in default of appointment the fund was on his death to go to all the children equally, the shares of the children to be vested at twenty-one or marriage. The plaintiff had three sons; one died an infant, the other two attained twenty-one, but one of them died a bachelor and intestate. The plaintiff took out administration to the last-mentioned son's estate and executed a deed releasing his power of appointment, and he then claimed that the trustees should transfer one moiety of the trust fund to him absolutely. North, J., held that he was not entitled to this, and that the court should not assist him to put an end to the trust, but the Court of Appeal were of the opinion that the release of the power was valid, and that the father was entitled to the son's reversionary interest as his administrator; but inasmuch as he was entitled to his life interest and the son's reversion in different rights, there was no merger, and that so long as the life estate subsisted the fund ought to remain in the hands of the trustee; but they were also of opinion that if the father were to surrender his life estate in the moiety of the fund, then he would be entitled to have that moiety transferred, and upon his undertaking by his counsel so to do the trustee was ordered to transfer it.

BILLS OF EXCHANGE—SEIZURE AND SALE OF BILL OF EXCHANGE IN FOREIGN COUNTRY—INDORSER OF BILL WITH VALID TITLE UNDER FOREIGN LAW—RIGHTS OF PRIOR EQUITABLE HOLDER IN ENGLAND—CONFLICT OF LAWS—BILLS OF EXCHANGE ACT, 1882 (45 & 46, c. 61), s. 29, s-s. 2; s. 36, s-s. 2; s. 72, s-s. 2—(53 VICT., c. 33, s. 36, s-s. 2; s. 77, s-s. 2 (*b*) (D.)).

Alcock v. *Smith* (1892), 1 Ch. 238, is an interesting case on the law of bills of exchange, in which the relative rights of persons who had acquired title to bills of exchange under the law of a foreign country and persons who had a prior equitable title to the bills by the law of England had to be adjudicated upon. The bills of exchange in question were drawn and accepted by English firms and payable in England to the order of Anderson & Co., who in Norway indorsed them to Meyer's order, who indorsed them in blank and handed them to one Schiender as agent for Arthur Alcock and I. F. Alcock & Co., who resided in England (the latter firm being composed of Arthur Alcock and I. Foster Alcock). While the

bills of exchange were in Schiender's hands in Norway and still current, they were seized under a judgment recovered in Norway against I. F. Alcock alone, and after they had become due they were sold by auction under the execution to Meyer, who subsequently sold them in the ordinary course of business and *bonâ fide* to Kopman's bank. According to the law of the foreign country in which the sale of the bills of exchange took place the sale had the effect of conferring a valid title on the vendee, freed from all equities—that law not recognizing the English doctrine that the purchaser of an overdue bill takes only such title as the vendor had, nor any difference as to the negotiability of a bill before and after it is due. The contest was therefore between Arthur Alcock and I. F. Alcock & Co., the plaintiffs, and Kopman's bank, as to which of them, under the circumstances, had the better right to the bills. Romer, J., decided that the Bills of Exchange Act, s. 36, s-s. 2 (53 Vict., c. 33, s. 36, s-s. 2 (D.), which provides that where an overdue bill is negotiated, it "can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had," does not apply to transfers in a foreign country, but is only declaratory of the law where it is applicable; and that neither did s. 72, s-s. 2 (s. 71, s-s. 2 (*b*) of Dom. Act), which provides that "where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of England," apply to the case; and he held that as the effect of the transactions in Norway must be determined according to Norwegian law, and as according to that law Kopman's bank had acquired a valid title to the bills and their proceeds, freed from all equities, their title must therefore prevail over that of the plaintiffs, and this decision was affirmed by the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.).

Legal Scrap Book.

BEQUEST TO A CHURCH—THE BLACK GOWN.

Many ecclesiastical cases, both interesting and amusing, have come to us from England, and now that of *Wright* v. *Tugwell* (1892), 1 Ch. 95, establishes that a bequest to a church, subject to a condition that the black gown shall be worn in the pulpit, is valid. Low Church testators will appreciate this decision.

TOBACCO A DRINK.

The successful party in the case of *Baker* v. *Jacobs* (23 Atl. Rep. 588) treated the jury to cigars, and on this ground a new trial was granted, the court holding that tobacco is both a victual and a drink, and, therefore, came within the prohibitive words of the statute. In *Wiseheart* v. *Grose* (71 Ind. 260), however, an action to enforce a contract by a son to "victual, clothe, etc.," his father for life, in return for the use of his farm, the court refused to consider that whiskey and tobacco were included by either "victuals" or "clothes."

MISCONDUCT OF JUDGE AND REVERSAL OF VERDICT.

Among the judges in the State of Washington in the neighboring republic is one whose conduct on the bench is, as "Truthful James" says, "painful and free." In a criminal case, while the defendant was giving his evidence, His Honor whiled away his time by conspicuously reading a newspaper, and during the cross-examination of a witness for the prosecution, whose testimony it was important the defendant's counsel should break down, this "wise and upright judge" thought there was no objection to exchanging pleasant remarks and confectionery with the witness. The verdict was reversed.

SUNDAY COURTS.

It is reported by the *Indian Jurist* that a judicial officer at Monghyr, India, holds court on Sundays, with the result that many of the litigants are deprived of the services of their pleaders. It is a fact that in the High Court in India the lists are very much congested; and even if this be the case also in the magistrates' courts, there must be some other very cogent reason to justify legal tribunals in breaking the spirit, if not the letter of the law, and to excuse also the ill effect such a course will have upon the native subjects of the Queen-Empress.

RIGHTS OF RAILWAY PASSENGERS.

The London, Chatham & Dover Ry. Co. recently sued a passenger to recover the difference in fare between a second and a third class ticket. The passenger was found with the latter ticket in a second class carriage, but defended on the public grounds that the third class carriage was not fit to travel in. The court gave judgment for the plaintiffs, *but without costs.* Perhaps the learned judge had once travelled in a certain third class carriage running between London (Eng.) and Newhaven, where some wag, suffering from the leaky roof, had obliterated the initial letter "t" in the fourth word of the notice at the end of the carriage, which then read "wait until the rain stops."

LYNCH LAW.

Still another explanation of the origin of this term. A writer in *American Notes and Queries* derives it from Col. Chas. Lynch, a Whig officer during the war of the Revolution. The gallant colonel, who had a Whig's customary hatred of Tories, used to hold magistrate's court at Avoca, Virginia, where each prisoner, tied to a particular walnut tree, was confronted by his accusers, and allowed to testify on his own behalf. If found guilty he was given "forty stripes, save one," and made to shout "Liberty forever!" He probably wished it from the bottom of his heart. The writer states that at a later period the death penalty was inflicted but he at the same time asserts most positively that Col. Lynch never himself caused the death of a prisoner.

MANITOBA MATTERS.

The Prairie Province is to be congratulated in that no case arising out of a crime committed since last autumn's assizes has come up for trial in any one of the

three provincial districts. Unfortunately for the editor of the *Western Law Times* the civil list is in much the same circumstances, and he dolefully quotes *apropos* a line or two from "Through the Looking-glass": "No birds were flying overhead, there were no birds to fly"; which he renders into what he terms a paraphrase: "No suits shrewd counsel tried to win, there were no suits to try." If the judges of the Court of Queen's Bench would extend their circuit to Ontario, they would find an occupation in disposing of various non-jury remanets. According to the annual statement of the Law Society, $850.67 has already been spent in an attempt to strike off the rolls an attorney, who, however, still remains on. It might, perhaps, be thought he could have been left on for less money.

IMPRISONMENT FOR INSANITY.

A most remarkable bill has just been introduced into the New York Assembly. It provides that where a person tried on a criminal charge is acquitted on the ground of insanity the court may order him—if he has been tried for any crime but a capital one, or an attempt to commit felonious homicide—to be committed to an asylum until he becomes sane. So far so good, but the bill then goes on to provide that in the other cases above mentioned the court "*shall make* an order that the person so acquitted shall be confined in the state lunatic asylum for a period of *not less than ten* nor more than twenty years." When we consider the possibility of the person recovering at any time after he is confined, the outrage perpetrated upon the liberty of the subject is apparent, for an innocent man—because acquitted—and in his right mind, may be incarcerated for a period of, perhaps, nearly ten years. The evils which this bill is intended to meet are great, and the object of the promoter is praiseworthy; but is not this a case where the cure is far worse than the disease? Even if this bill should become law, it is more than doubtful if there is power in any legislature to order the imprisonment of any one simply because he was once insane.

OATHS OF WITNESSES.

During the hearing of a case *(Dehn* v. *Bially)* in the Liverpool County Court, it was stated that certain foreign Jews did not consider binding an oath taken on an English translation of the Pentateuch, and it was suggested that it be printed in Hebrew for the purpose of the court. Since it is the law of England (see Roscoe's Nisi Prius, 16th ed., p. 157, and cases there cited) that a witness shall be sworn by whatever means he declares to be binding on his conscience, it will be necessary for every court to keep a full library on hand, which must include Korans, the Old and New Testaments bound together and singly, and in several languages, Testaments with crosses on them, to say nothing of a saucer or two that may be cracked, with, perhaps, even a live Brahmin, in order that a Gentoo witness may with his hand touch the foot of that part of the live stock-in-trade of the comprehensive modern court room (see *Ormichund* v. *Barker*, 1 Atk. 21). These are difficulties that can be overcome, but a more serious one, for which no remedy has yet been found, lies in the very fact that a witness shall be sworn by that which *he declares* to be binding on his conscience. Supposing—

and it is not unreasonable to so suppose—that he declares a form of oath which is *not* binding on his conscience; then, without touching the question of perjury, the opposite party is at the same disadvantage as in the case of the witness who kissed his thumb believing that he was not then upon his oath.

WOMEN LAWYERS.

It is stated that there are twenty-one law firms in the United States composed solely of husbands and wives, and that there are nearly two hundred women in that country practising law. This is apart from the number who have taken up legal journalism, which they seem to find equally congenial. The reasons given by the Benchers of the Law Society of Upper Canada for refusing the application of a woman to be admitted into the Society were that neither the statutes nor the rules of the Society authorized it. It was, however, no doubt felt that a woman can find a more suitable place in life to fill than that of a counsel. During the session of the Legislative Assembly just closed, a Bill to admit women to practice was introduced in order to remove this disability. During its passage it was amended so as to leave the question to be dealt with by the Law Society. Whether, now that power has been given it, the Society will exercise its discretion and still exclude them remains to be seen.

A woman does not, as a rule, arrive at a conclusion by logical reasoning, but rather by a species of instinct, which, no matter how unerring, cannot assist others to arrive at the same conclusion. Her arguments would be after the fashion of the old nursery rhyme which used to run something like this:

> "The reason why I cannot tell; I do not love thee, Doctor Fell,
> But this alone I know full well, I do not love thee, Doctor Fell."

Her mind is not apparently formed so as to give logical reasons to support the conclusion she arrives at. There are those of the male sex who are built somewhat on the same model. The late Mr. Justice Morrison had, it is said, this class of mind, very generally right in his conclusions, but as often wrong in the process of reasoning which arrived at the result.

INSANITY OF MEMBERS OF PARLIAMENT.

The mental incapacity of one of the members of the British House of Commons has given rise to considerable discussion upon the practice and procedure in such a case. While the function of a member of Parliament is to make the law, and that of a judge but to interpret and administer it, the evil resulting from the incapability of the former is manifestly infinitesimal compared to that resulting from the incapacity of the latter. It may, however, be not without interest to glance at the historical aspect of the case. At one time there appears to have been no distinction made between curable and incurable insanity, either being thought a sufficient reason for the member's seat being vacated (Brooke's Abridgement, Pt. 2, under title "Parliament," para. 7). In the year 1566 a new writ was issued where a member was "reported" to be a lunatic (see also 23 Eliz., V. Parl. Hist., p. 47). In 1623 it was considered that a member with an

incurable disease ought to be "discharged." It was at one time thought that the impossibility of ascertaining the degree of infirmity under which a member labored and of pronouncing him incurable was a sufficient reason for not removing him, although to all appearances he might never be able to attend again; and it was also suggested that such a practice would enable members under that pretense to vacate their seats. By a reference, however, to *Mr. Alcock's case*, in the year 1811 (Hatsel's Precedents, Vol. 2, p. 35), we find that the uniform practice of Parliament is to enquire into the nature of the alleged malady and to grant or refuse a new writ according as the appointed committee (the Committee of Privileges) found the incapacity to be permanent or temporary (see also Jour. House of Com., Vol. 1., Feb. 14, 1609; 16 Com.'s Jour. 226, 265; Appendix 687, 1811; Cushing, p. 26). In Canada this question first came up in *Mr. Crooks' case*, where, in the absence of precedents of our own, reference was had to the English practice, in that in the absence of any statutory enactment the common political law governs as well in Canada as in England, and it was stated that insane persons are incapable of executing the trust of members. In the case last mentioned the case was referred to the Standing Committee on Privileges and Elections to report whether or not the disease was curable (Assembly Jour. Ont. Leg., Feb. 12 and 14, 1884), and this practice appears to be now established.

A. H. O'B.

Notes and Selections.

INJURIES FROM FRIGHT—NEGLIGENCE.—In *Ewing* v. *Pittsburg, etc., Ry. Co.*, 34 Central L.J. 236, it was held that where the claim alleged fright, without any allegation of bodily injury, there was no cause of action stated, the court refusing to enlarge the scope of accident cases.

BANK—DEPOSIT.—When a bank receives from a depositor a cheque drawn on itself by another person and gives the depositor credit therefor, it thereby pays the cheque and cannot afterwards deduct the amount from the depositor's account: *American, etc., Bank* v. *Gregg*, 28 N.E. Rep. 839.

CITATION OF AMERICAN DECISIONS.—"Although the decisions of the American Courts," said Lord Chief Justice Cockburn in *Scaramanga* v. *Stamp* (1880), 49 Law J. Rep. C.P. 674; L.R. 5 C.P. Div. at p. 303, "are, of course, not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own—entitle their decisions to the utmost respect and confidence on our part." This well-deserved compliment to the American judicature has been eclipsed by the Judicial Com-

mittee of the Privy Council in *Huntington* v. *Attrill* (1892), 8 Times L.R. 341. The question arose as to the proper test of whether or not an action is "penal" within the meaning of the well-known rule of private international law which prohibits one state from enforcing the penal law of another; and their lordships adopted "without hesitation" that prescribed by Mr. Justice Grey in *Wisconsin* v. *The Pelican Insurance Company* (127 U.S. 20 Davis, at p. 265): "The rule that the courts of no country execute the law of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violations of the statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties."—*Ib.*

Law of Slander.—It used to be a common reproach on the part of foreigners against English law that offences against property were punished with undue severity as compared with offences against the person. It might, perhaps, be urged with greater justice that our system has too little regard for honor or reputation where no material interests are involved. The decision of the Court of Appeal, on Tuesday, in the action of *Alexander* v. *Jenkins* discloses what many will consider the unsatisfactory condition of the law of slander. The plaintiff is a town councillor of Salisbury, and the slander alleged against the defendant was that he had said that the plaintiff was never sober and was not a fit man for the council, and that on the night of the election he was so drunk that he had to be carried home. Verdict and damages were entered for the plaintiff in the court below, but the Court of Appeal reversed that decision on the ground that allegations which would be actionably slanderous against a man in relation to an office of profit were not so when the office was one of mere honor or credit. Lord Herschell admitted that the distinction might be considered unsatisfactory, but held that it was clearly established by the authorities, and, if removed, could only properly be removed by the legislature. In the case of women and in the matter of chastity a step has already been taken in this direction by Mr. Milvain's Act of last session. It is doubtless undesirable to encourage actions for slander, but it is worthy of serious consideration whether this particular distinction might not advantageously be swept away. Offices of honor often constitute a man's career, and false imputations with respect to his fitness may inflict as heavy a blow upon his welfare and happiness as if they affected him in his material circumstances.—*Law Journal.*

Railway Unpunctuality.—The decisions of County Court judges may not be of binding authority in the High Court, but the judgments of such men as Judge Stonor contain such a wealth of learning that they repay perusal. His Honor has delivered judgment in a case interesting not only to the legal theorist or practitioner, but also to the ordinary layman who is wont to grumble at the unpunctuality of the railway companies. The case to which we refer is *The Great*

Western Railway Company v. *Lowenfeld* (*ante* p. 64). The plaintiff was a traveller in one of that company's trains to Teignmouth. At Swindon the trains are bound by contract between the company and the refreshment contractor to stop ten minutes, and on this particular occasion the defendant was informed by the servants of the company that the train would stop that time, but, as a matter of fact, it only stopped there seven minutes, and consequently the defendant was left behind. Being a wealthy man, he took a special train from Bristol to Teignmouth, for which he gave the stationmaster a cheque for £31 7s., which he afterwards stopped. The company sued him for this sum, and he counter-claimed for damages for his detention at Swindon and its consequences. The plaintiffs succeeded in their claim, but it was the counterclaim that called for special consideration. It was, in a case against the same railway company, decided in 1865 (*Hurst* v. *The Great Western Railway Company*, 34 Law J. Rep. C.P. 264; L.R. 19 C.B. 310) that they were not liable for the trains not arriving at the hour named in the time-table, their train-bills having given public notice that they did not guarantee the arrival or the departure of the trains at the times specified, and that they would not be liable for any delay that might occur. Public policy is certainly in favor of the decision of the Court of Common Pleas, as the state of the weather, and the lines, holiday crowding, and accidents must all affect the speed at which trains can go consistently with the safety of their passengers. In *M'Cartan* v. *The North-Eastern Railway Company*, 54 Law J. Rep. Q.B. 441, the County Court judge held that there was an implied contract that the railway company would use reasonable efforts to ensure punctuality, and that the company had not given a satisfactory explanation of the delay of thirty-seven minutes, through which the plaintiff missed a train on the Midland line running in connection with the North-Eastern. The defendants appealed, and Baron Huddleston and Mr. Justice Wills, sitting as a Divisional Court, reversed the decision of the County Court judge. On the outside of the company's time-table there was a notice stating, in effect, that they would not be liable for unpunctuality. The learned baron said, "We must look here at what is the contract; and the contract is to be collected from the ticket, the time-tables, and the conditions, and we must construe them with the best powers which we possess." The notice thus being part of the contract saved the company from any responsibility. *Le Blanche* v. *The London and North-Western Railway Company*, 45 Law J. Rep. C.P. 531; L.R. 1 C.P. Div. 286, is an instance of a passenger taking a special train from Leeds to Scarborough in consequence of his being brought to Leeds from Liverpool too late for the ordinary train for Scarborough, and then suing the company for the cost of it. The plaintiff won before the County Court judge and the Common Pleas Division, but the defendants prevailed in the Court of Appeal, who reversed the judgment of the court below, and directed that a new trial should be had, unless the plaintiff consented to the reduction of his damages to 1s. Lord Justice Mellish laid down a general rule than which Baron Cleasby said that he could suggest no better guide on the question of damage. It is this: "I think that any expenditure which, according to the ordinary habits of society, a person who is

delayed in his journey would naturally incur at his own cost if he had no company to look to, he ought to be allowed to incur at the cost of the company if he has been delayed through a breach of contract on the part of the company, but that it is unreasonable to allow a passenger to put the company to an expense to which he would not think of putting himself if he had no company to look to."

One of the more recent cases is that of *Woodgate* v. *The Great Western Railway Company*, 1 Times Rep. 133; 51 L.T. Rep. 826. There the plaintiff on Christmas Eve had taken a first-class ticket, on which was a reference to the regulations on the company's time-tables, from Paddington to Bridgnorth, the junction being at Hartlebury. The regulations referred to stated that the company would not be responsible for any delay, unless upon proof that it arose from the wilful misconduct of the company's servants, but that it was to be understood that the trains would not start from the various stations before the appointed time. The traffic was great, there was a fog, there was a stoppage, and the line was blocked. Under these circumstances the train reached Hartlebury too late for the junction train, and the plaintiff was sent on by a second-class carriage attached to a goods train, arriving at his destination about four hours late. The plaintiff then sued the company for damages, and obtained from Judge Stonor judgment for 10s. for his detention, and another 10s. for the delay and annoyance of his being sent on in a second-class carriage in a slow goods train. The company took the case to the Divisional Court, and Mr. Justice Hawkins and Mr. Justice Smith held that the County Court judge was wrong, as such an action as the one before them was precluded unless there was wilful misconduct, and of that there was no evidence.

In *The Great Western Railway Company* v. *Lowenfeld* His Honor was of opinion that the detained passenger was not entitled to have a special train at the company's expense just to join his friends earlier than he would otherwise be able to do, but gave him £2 as reasonable damages for the inconvenience of his detention, besides allowing him 17s. for the portion of his railway fare from Bristol to Teignmouth and 3s. for telegrams to his family. The company were allowed full costs, while only the costs of the counterclaim on the amount recovered were allowed to the defendant. Two good rules may be deduced from these cases for the guidance of passengers in regard to their legal rights: (1) Before taking proceedings, aggrieved passengers should see that the company have not contracted themselves out of liability for the unpunctuality in question; (2) before hiring any vehicle, or taking a special train, which it is intended to charge to the company, they should ask themselves if they would have hired or taken one if detained by their own default.

A good illustration of the second rule would be found in trying to imagine what the defendant in the recent case would have done if the train had started punctually after a ten-minutes' stop at Swindon, and he had been left behind in consequence of his own default. Would he have taken a special train?—*Law Journal.*

DIARY FOR APRIL.

1. Fri.....Prince Bismarck born, 1815.
3. Sun.....*5th Sunday in Lent.*
4. Mon.....County Court sittings for motions. Surrogate Court sits.
5. Tues....County Court sittings for trial, except in York. Canada discovered, 1499.
7. Thur.....Great fire in Toronto, 1847.
8. Fri.....Hudson Bay Company founded, 1669.
10. Sun.....*6th Sunday in Lent.* Palm Sunday.
11. Mon.....County Court non-jury sittings in York.
14. Thur.....Princess Beatrice born, 1857.
15. Fri.....Good Friday. President Lincoln assassinated, 1865.
17. Sun.....*Easter Sunday.*
18. Mon.....Easter Monday. Last day for call and admission notices. First newspaper in America, 1704.
19. Tues....Lord Beaconsfield died, 1881.
23. Sat.....St. George's Day.
24. Sun.....*1st Sunday after Easter.* Earl Cathcart, Governor-General, 1846.
25. Mon.....St. Mark.
27. Wed.....Toronto captured (Battle of York), 1813.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Feb. 27.

ELLIS *v.* CLEMENS.

Waters and watercourses—Riparian proprietors—User of stream—Reasonable user—Injury to plaintiff's land—Prescriptive right—Malice—Damages—Concurrent cause of injury.

The use by riparian proprietors of the waters of streams through whose lands they flow must be a reasonable use, and the proprietors so using the waters must restore them to their natural channel before they reach the lands of the proprietors below them.

The wrongs complained of by the plaintiff were that the defendant, in restoring the water used by him to its natural channel, did so at such times and in such a manner that the water froze as it was being restored, and formed a solid mass of ice, completely filling the natural channel, so that the water coming down flowed away from the channel and over the plaintiff's land, and injured the land and the crops thereon; and the evidence showed that the cause of the water freezing as it was being restored to its natural channel was the times at which and the manner in which the defendant so restored it, and was the natural result thereof; and it appears that the defendant was remonstrated with by the plaintiff and the effect of his so restoring the water pointed out to him, and the injury it caused, but he persisted in so restoring it, and expressed his intention to continue to so restore it.

Held, that the defendant's user of the water was unreasonable, and, as there was no proof to sanction a prescriptive right to restore the water at such times and in such manner, to the injury of the plaintiff, that he was liable to the plaintiff for the injury so caused; his conduct being wrongful, his persistence in it was malicious; and the injury to the plaintiff was an invasion of his rights, and imported damage, whether there was any actual damage or not.

Held, also, that even if there was a cause, for which the defendant was not responsible, concurrent with the wrongful acts complained of, and contributing to the injury sustained by the plaintiff, the defendant would still be answerable in damages for the injury sustained by the plaintiff by the wrongful acts complained of; but the plaintiff would only be entitled to recover such damages or such portion thereof as were caused by the wrongful acts complained of.

Judgment of STREET, J., 21 O.R. 227, affirmed.

W. R. Meredith, Q.C., and *E. P. Clement*, for the plaintiff.

Moss, Q.C., for the defendant.

GREEN *v.* MINNES.

Libel—Poster advertising account for sale—Justification.

The defendants M. & B., merchants, placed in the hands of the defendant A., a collector of debts, an account against the plaintiff Sarah G., wife of the plaintiff John G., for collection, well knowing the method of collection adopted by A., who, after a threatening letter to Sarah G., which did not evoke payment, caused to be posted up conspicuously in several parts of the city where the plaintiffs lived a yellow poster advertising a number of accounts for sale, among them being one against "Mrs. J. Green (the plaintiff), Princess street, dry goods bill, $59.35." The evidence showed that Sarah G. owed the defendants M. & B. $24.33 only.

Held, that the publication was libellous and could only be justified by showing its truth; and as the defendants had failed to show that Sarah G. was indebted in the sum mentioned in the poster, they were liable in damages.

Aylesworth, Q.C., for the plaintiffs.

John McIntyre, Q.C., for the defendants.

McKELVIN *v.* CITY OF LONDON.

Damages—Remoteness—Action for negligence—Obstruction in highway—Remedy over—R.S.O., c. 184, s. 531, s-s. 4.

The plaintiff was driving a horse and sleigh along a highway belonging to a city corporation when the runner of the sleigh came in contact with a large boulder, whereby both horse and sleigh were overturned. In endeavoring to raise his horse the plaintiff sustained a bodily injury, on account of which he sued the corporation for damages, alleging that his injury was due to their negligence.

Held, that the damages were not too remote.

Page v. *Town of Bucksport*, 64 Maine 51; and *Stickney* v. *Town of Maidstone*, 30 Vermont 738, applied and followed.

Held, also, that the person who placed the boulder on the highway and who had been added as a defendant under s. 531 of the Municipal Act, R.S.O., c. 184, was liable over to the corporation under s-s. 4.

Corporation of Vespra v. *Cook*, 26 C.P. 185, distinguished.

Balzer v. *Corporation of Gosfield South*, 17 O.R. 700, followed.

Hellmuth for the plaintiff.

W. R. Meredith, Q.C., for the defendants the City of London.

Gibbons, Q.C., for the defendant Colwell.

Chancery Division.

Full Court.] [March 29.

HALLIDAY *v.* HOGAN.

Principal and surety—Release of debtor—Consent of surety—Agreement of surety to remain liable.

Held, per BOYD, C., that the consent of the surety to the discharge of the principal debtor will have the effect of preventing such discharge operating to release the surety, and this sufficed for the determination of the law in this case.

Per MEREDITH, J.: The evidence showed that the sureties in this case not only intended but agreed to remain liable to the creditor, and therefore *cadit quæstio.*

Moss, Q.C., and *Coffee*, for the defendants.

Johnston, Q.C., and *O'Connor*, for the plaintiff.

HASSON *v.* WOOD.

Negligence—Accident—Liability of hotel-keeper to guest—Trap-door.

The plaintiff went into the defendant's hotel on Sunday as a customer. He had been there several times before. In passing through the building to go to the urinal he fell through an open trap-door, which had been left unguarded, and received injuries.

Held, that he was entitled to damages from the defendant.

Per BOYD, C.: The plaintiff, being a customer of the defendant, came to the defendant's place of business for the demand and supply of that which was for the mutual advantage of the parties, and so is to be treated not as a mere licensee, but as being in the premises by the invitation of the proprietors. That invitation is different in its legal consequences, as to safety while on the premises, from the merely hospitable invitation which arises between host and guest.

Bigelow, Q.C., for the plaintiff.

J. G. Holmes for the defendant.

FERGUSON, J.] [March 12.

IN THE MATTER OF THE SUN LITHOGRAPHING COMPANY.

Winding-up proceedings—Claim that a conveyance is a fraudulent preference—Master in Ordinary—Jurisdiction.

In the course of winding-up proceedings under R.S.C., c. 129, an order was made by the court under s. 77, s-s. 2, as amended by 52 Vict.,

c. 32, s. 20 (D.), referring all matters arising in the winding-up proceedings to the Master in Ordinary, and providing that he "do have (subject to appeal) as full and ample power as under the said statute and amending Act is conferred upon a judge of the High Court."

A claim being brought in before the Master for rent alleged to be due under a lease of certain buildings, a contention arose on behalf of the liquidator that the claimant was not and never had been the owner of the premises; that the conveyance to him under which he claimed to be such owner was really intended to secure him for certain moneys advanced, and was a fraudulent preference, and, further, that the alleged lease was never executed.

Held, that the Master had no jurisdiction to entertain and adjudicate upon this contention, and the liquidator should be left to proceed under s. 31 of R.S.C., c. 129, by way of action.

F. Arnoldi, Q.C., for C. Farquhar.

Kilmer for the liquidator.

BOYD, C.] [March 24.

REGINA EX REL. CHICK *v.* SMITH.

Municipal corporations — Town councillor — Qualification — Quo Warranto — 51 Vict., c. 28, s. 9.

Appeal from county judge of Essex, where one was nominated as councillor of the town of Windsor on Dec. 28th, 1891, being at that time possessed of a sufficient leasehold qualification, the term of which, however, expired on Feb. 1st, 1891, but before his election acquired another leasehold property of sufficient value.

Held, that he was duly qualified under R.S.O., 1887, c. 184, s. 73, as amended by 51 Vict., c. 28, s. 9, since the cesser of the term of the first leasehold amounted to an alienation by operation of law sufficient to come within the words of the statute.

Where the main object and intention of a statute are clear it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of law, except in the case of necessity, or the absolute intractability of the language used.

Hoyles, Q.C., for the appeal.

H. S. Osler, contra.

BOYD, C.] [March 26.

SMITH *v.* SPEARS.

Mortgage — Power of sale — Sale by way of exchange.

Held, that a mortgagee with power of sale under the Short Form mortgage can exercise the said power by way of exchange for other land instead of in the usual way by sale for money. This is only doing *per obliquum* what could be done *per directum*, and the words in the power of sale are to "sell and absolutely dispose of," which latter are appropriate to an exchange.

If a mortgagee is satisfied to take for payment of his debt the price of the land sold in money's worth or in other land, that is his own affair.

J. A. Macdonald for appeal.

Eddis, contra.

[March 28.

RE CENTRAL BANK.

LYE'S CLAIM.

Winding-up proceedings — Liquidator's commission — Allowance of commission on set-offs.

Held, that in fixing the liquidator's commission in winding-up proceedings of an insolvent bank, it is proper to take into consideration amounts adjusted or set off, but not actually received by the liquidators; and in this case a commission of 2¼ per cent. having been allowed on the gross amount of moneys actually collected, a further commission of 1¼ per cent. on a sum of $231,000, consisting of amounts adjusted or set off, was allowed.

So far as possible, the amount allowed as compensation to liquidators in such winding-up proceedings should be evenly spread over the whole period of the liquidation, so as to ensure vigilance and expedition at all stages of the liquidation, as well as a proper distribution among the liquidators, when more than one.

B. B. Osler, Q.C., and *A. C. Galt*, for the liquidator.

J. K. Kerr, Q.C., for the creditors.

Practice.

C.P. Div'l Court.] [Dec. 24.

REGINA *v.* CONNOLLY.

Criminal law — Hearing before magistrate — Refusal to admit evidence — Mandamus.

At the hearing of a criminal charge before a magistrate, evidence given before a special committee of the House of Commons and taken down by stenographers was tendered before the magistrate and refused by him.

Held, that the court had no power to grant a mandamus to the county judge directing him to receive such evidence.

Robinson, Q.C., *Osler*, Q.C., and *Hogg*, Q.C., for the motion.

Lash, Q.C., *A. Ferguson*, Q.C., and *Fitzpatrick*, Q.C., of the Quebec Bar, *contra*.

ROSE, J.] [Jan. 27.

MCGILL *v.* LICENSE COMMISSIONERS OF BRANTFORD.

License commissioners—Power to pass resolutions fixing hours for sale of liquor—R.S.O., c. 194, ss. 4, 32, 54—Notice of motion—Power to quash.

License commissioners appointed under R.S. O., c. 194, passed on 17th April a resolution providing that after 1st May following, in all places where intoxicating liquors are or may be sold by wholesale or retail, etc., no such sale or disposal of the same shall take place therein, etc., between the hours of 12 p.m. and 5 a.m., which was amended by substituting 11 p.m. for 12 p.m.

Held, that under s. 4, enabling the license commissioners to pass resolutions for regulating taverns and shops there was power to pass the resolutions here, and that such power was not interfered with by ss. 32 and 54, no by-laws on the subject having been passed by the municipality.

Quære: Whether there is power, on notice of motion, to quash resolutions of this kind.

Daniels v. *Municipal Council of Burford*, 10 U.C.R. 478; *Cæsar* v. *Municipality of Cartwright*, 12 U.C.R. 341, commented on.

DuVernet for the applicant.

Wilkes, Q.C., *contra*.

C.P. Div'l Court.] [Feb. 27.

REGINA *v.* STAPLETON.

Insurance—Accident—Fraternal societies—Insurance Act, R.S.O., c. 124, ss. 43, 49—Conviction.

The defendant, with the alleged object of starting in O——, Ontario, a branch of a society called the International Fraternal Alliance, having its head office in the United States, induced a number of persons to make application for membership therein, and to pay a joining fee of $5, which, in addition to certain alleged social benefits, entitled a member, on application therefor and on payment of certain fees, to pecuniary benefits, namely, a certificate entitling the member to a weekly payment in case of sickness or accident, and certain other sums in case of death or after a stated period. The defendant gave the applicants a receipt acknowledging the payment of the $5 for, as stated, the purposes mentioned in an agreement written thereunder, namely, to forward to the head office the application on signature thereof, and, if declined, to return amount paid; but, if accepted, the payer was constituted a member, etc., entitled to the full benefits of all social advantages, and thereafter might secure all the pecuniary benefits on application therefor.

Held, that the defendant was carrying on the business of accident insurance without having obtained the necessary license therefor, contrary to s. 49 of the Insurance Act, R.S.C., c. 124, and that no protection was afforded by s. 43, relating to fraternal, etc., societies, the scheme not being an insurance of the lives of the members exclusively, and a conviction of the defendant for carrying on such business was therefore affirmed.

Lount, Q.C., for the motion.

REGINA *v.* SOUTHWICK.

Liquor License Act — License commissioners taking part in trial—Evidence of—Taking seat on platform—Provision for distress in conviction and not in adjudication—Sale to lodger during prohibited hours.

At the trial of an offence under the Liquor License Act the bench at which the magistrate sat consisted of a desk on a raised platform at the end of the court room, and on the platform, some four feet distant from the desk, was a

chair for the use of the constable. During the trial the license commissioner, who was sitting at the counsel's table, went and sat in the constable's chair, and there was no evidence to show that he in any way improperly interfered in the trial.

Held, that the license commissioner could not be deemed, under the circumstances, to have been sitting on the bench and taking part in the trial, etc., contrary to s. 95 of the Act.

An objection that the adjudication did not provide for distress, while the conviction contained such a provision, was overruled, following *Regina* v. *Hartley*, 20 O.R. 481.

Held, also, that ss. 54 and 58 do not authorize the sale of liquor to a lodger in the licensee's house during prohibited hours. The most that can be said is that the sale to the lodger does not thereby make him an offender.

Du Vernet for the applicant.

Langton, Q.C., *contra*.

REGINA *v.* ELBORNE.

Liquor License Act—Sale by druggist without recording in a book—Nature of offence—Evidence—R.S.O., c. 194, ss. 49, 50, 52, 88.

The defendant was convicted for a breach of the Liquor License Act, R.S.O., c. 194, for that he "did unlawfully sell liquor without recording same as required by the License Act."

Held, ROSE, J., dissenting, that the offence was similar to that in which judgment had already been given (*ante* p. 59), and governed this case.

Per ROSE, J.: In the case in which judgment has been given the conviction was for a contravention of the general provisions of the Act contained in ss. 49 and 50, while here the conviction was for a breach of s. 52 itself, for a sale without recording, the penalty for which is provided for by s. 88.

G. W. Meyer for the applicant.

Langton, Q.C., *contra*.

VANSICKLE *v.* BOYD.

Capias—Affidavit, sufficiency of—Indorsement on writ of lien on land—Evidence of intent to defraud.

A motion to set aside the arrest under a capias in an action for breach of promise of marriage was based on grounds, amongst others, that no assent by the plaintiff to the defendant's alleged promise was shown, nor was her evidence corroborated; but the objections were held not to be tenable, as the affidavits sufficiently disclosed these matters.

The plaintiff's affidavit, on which the arrest was based, was headed in the proper style of cause, and proceeded: "I, Alberta Jane Boyd, the above-named plaintiff," her name being Alberta Jane Vansickle, and was signed "Berta J. Vansickle."

Held, that the affidavit was not a nullity, but the mistake was an irregularity merely, and the objection thereto should have been expressly taken in the notice of motion.

The writ in the action claimed a lien on a named 200 acres of land in Ontario. The defendant, in his affidavit in reply, stated that notwithstanding the indorsement on the writ, she had no knowledge of the defendant owning any land.

Held, that this constituted no ground to set aside the arrest.

The plaintiff in her affidavit, on which the arrest was based, stated that defendant, taking advantage of their engagement, had seduced her, and on discovering her condition, went to the United States, but subsequently returned to attend his father's funeral, and was then about to quit Canada with intent to defraud her, etc. The father also swore to the intent, while the defendant, though filing an affidavit, made no reference to his financial condition.

Held, that the alleged intent was sufficiently disclosed.

Furlong (of Hamilton) for the defendant.

Fitzgerald (of Hamilton), *contra*.

RE SCOTTISH, ONTARIO AND MANITOBA LAND COMPANY.

Overholding tenants—R.S.O., c. 144, s. 6—Motion to review finding of county judge—Proper court in which to move.

On a motion to the Divisional Court by way of appeal from the order of a judge in chambers discharging a motion purporting to be made under s. 6 of the Overholding Tenants Act, R.S.O., c. 144, to review the finding of the county judge in an overholding tenant matter, the court dismissed the appeal on the merits.

An application under s. 6 may be properly made in the Divisional Court, and, *semble*, it is the only court in which the motion can be made.

E. B. Brown for the motion.

Langton, Q.C., *contra*.

FERGUSON, J.] [March 19.

REGINA EX REL. MANGAN *v.* FLEMING.

Controverted municipal elections—Rule 1041—Notice of motion—Affidavits—Viva voce evidence—R.S.O., c. 4, s. 212—S. 188—Recognizance—Allowance of sureties—Appeal—Signatures to recognizance—Commissioner.

In a proceeding in the nature of *quo warranto* under the Municipal Act, it is necessary, upon the true construction of Rule 1041, for the relator to file the affidavits and material to be used in support of his motion before serving the notice of motion, even in a case where *viva voce* evidence is to be taken under s. 212 of R.S.O., c. 184; but the omission to file such affidavits and material does not constitute a good reason for setting aside the service of the notice of motion. The effect simply is that the relator cannot read affidavits or material not so filed in support of his motion; and mentioning an affidavit or other material in the notice of motion, when there is none such filed, does not vitiate the motion.

Where the judge of a County Court has allowed the relator's recognizance and the sureties as sufficient, pursuant to s. 188 of R.S.O., c. 184, a judge of the High Court cannot interfere upon an appeal.

There is no necessity for the signatures to the recognizance of the persons to be bound by it.

Although s. 188 directs that the recognizance shall be entered into before the judge or a commissioner for taking affidavits, a recognizance appearing on its face to have been entered into before a commissioner for taking bail is good; for all commissioners for taking bail are also commissioners for taking affidavits.

S. White for the relator.

Hoyles, Q.C., for the defendant.

BOYD, C.] [March 24.

TAYLOR *v.* WOOD.

Infant—Next friend—Retirement of—Terms—Direction to solicitors not to proceed—Staying proceedings — Costs — Solicitors proceeding after warning—Indemnity.

Upon application therefor the next friend of an infant plaintiff may be allowed to withdraw, and the court will upon such application impose such terms as the circumstances of the case and the welfare of the infant may require.

Solicitors began an action in the name of an infant as plaintiff by her mother as next friend, with the consent of the latter. After the action had been some time in progress the mother wrote a letter to the solicitors revoking the authority to use her name. The solicitors answered that proceedings would not be stayed unless she paid costs up to date, and that if she did not do so they would assume that she intended them to continue the action. She took no notice of this and they went on with some proceedings, whereupon the defendant, instructed by the mother, moved to dismiss the action on the ground that it was being prosecuted without authority, and asked for costs against the solicitors.

Held, that there was nothing to prevent the mother from renouncing her character of next friend; her direction to the solicitors not to proceed was to be treated very much as an application for leave to withdraw from the litigation, and had she made such an application it would have been granted unconditionally, subject to her remaining amenable to the jurisdiction of the court as to liability for costs theretofore incurred.

An order was made staying all proceedings in the name of the mother as next friend, thus leaving the action in abeyance, to be resumed if another next friend should offer, or to be continued when the plaintiff should attain majority.

As to costs,

Held, that the court reaches the solicitors of plaintiffs directly for the benefit of the defendant only where the plaintiff as client has a right to be recouped by the solicitor, and to the extent of that recoupment. The next friend in this case was liable to the solicitor for costs up to her letter, and the solicitor was liable to the next friend for costs subsequent thereto; and as the former costs exceeded the latter, and, as

between the next friend and the defendant, the former was liable for costs so long as she did not make a direct application against the solicitors, no order could be made in favor of the defendant; but the next friend was entitled to be indemnified by the solicitors for costs incurred after her letter.

Held, also, that it was competent for the defendant to move to stay the proceedings, although the normal practice is for the next friend to move.

Shilton for the defendant.

Moss, Q.C., and *F. A. Anglin*, for the plaintiff's solicitors.

DONAHUE *v.* JOHNSTON.

Discovery—Production of documents—Privilege—Letters.

Letters written by the defendant to a third person, who was a principal in the transactions out of which the action arose, and letters written by such third person to the defendant,

Held, privileged from production in the action, where it appeared that they were written after the plaintiff had threatened litigation, and in consequence of the advice of the defendant's solicitor, in the endeavor on the part of the defendant to obtain information for the purposes of the threatened litigation.

Walter Read for the plaintiff.

John MacGregor for the defendant.

FINKLE *v.* LUTZ.

Laches—Nine years' delay in prosecuting action—Leave to proceed—Terms.

An action by solicitors to recover the amount of a bill of costs was begun and the defendant appeared in February, 1883. No further step was taken until February, 1892, when the plaintiffs delivered a statement of claim. The plaintiffs' reason for the delay was that the defendant had no means to pay during the period of delay.

Upon motion by the defendant to dismiss and cross-motion by the plaintiffs to validate the delivery of the statement of claim,

Held, that the action should be allowed to proceed.

Terms imposed upon the plaintiffs.

H. S. Osler for the plaintiffs.

R. O. McCulloch for the defendant.

DUNNET *v.* HARRIS.

Summary judgment—Rule 739—Leave to defend—Making defence appear—Payment into court.

Where no defence has been made to appear upon a motion for judgment under Rule 739, the defendant will not be allowed to defend unconditionally.

In an action for the price of goods sold and delivered to a partnership, bought after the dissolution thereof, against the two members of the partnership, one of them set up as a defence upon a motion for judgment that upon the dissolution he retired and his co-partner agreed to continue the business and pay the debts, including that of the plaintiff's, and that the plaintiff had taken securities from the co-partner after the dissolution and given him time, and so had relieved the other; but all those who knew of the dealings negatived any such course of dealing, and showed that all that was done was with a reservation of rights against the retiring partner.

Held, that the latter could not succeed in the action unless the jury disbelieved all this evidence; and he should be allowed to defend only upon payment into court of the amount claimed.

Akers for the plaintiffs.

H. Cassels for the defendant A. D. Harris.

[March 25.

HARRISON *v.* HARRISON.

Partnership—Execution against individual partner—Sale of share.

Under an execution against an individual partner the sheriff can seize the partnership goods and sell the execution debtor's share, whatever may be the difficulties which arise thereafter, and the Judicature Act has made no difference in this respect.

W. R. Smyth for the plaintiff.

MR. WINCHESTER.] [March 26.

MCGILL *v.* MCDONELL.

Jury notice—Action to establish will, etc.—R.S.O., c. 44, s. 77—Notice of trial by defendant—Rule 654—Notice of motion for judgment.

An action for an injunction, and to establish a will, and for the construction of the will and

an account, is one that was peculiarly within the exclusive jurisdiction of the Court of Chancery prior to the Administration of Justice Act of 1873, and should, therefore, be tried without a jury, unless otherwise ordered, by virtue of s. 77 of the Judicature Act, R.S.O., c. 44; and a jury notice given in such an action will be struck out.

Re Lewis, Jackson v. *Scott*, 11 P.R. 107, followed.

Under Rule 654 the defendant has a right to give notice of trial for the next sittings of the court, and, if such notice is regular, the plaintiff cannot interfere with such right by giving notice for a more distant sittings.

It is the duty of a defendant setting a case down for trial to give notice of trial to all the other parties; and if some of them have not appeared, and it is necessary to give them notice of motion for judgment, such notice should be for the same time and place as the notice of trial.

Masten for the plaintiff.

Frank Denton for the defendant Robinson.

STREET, J.] [March 31.

MACK *v.* DOBIE.

Discovery—Examination of party—Rule 487—Examination to credit—Identity of plaintiff.

The examination of a party for discovery in the cause under Rule 487 must be confined to matters which are relevant to the questions raised by the pleadings; but a fair amount of latitude is to be allowed. Questions which go only to credit are not admissible.

In an action for a partnership account, where the defendant denied the partnership and set up that the plaintiff had been his servant under the same name as that in which he brought the action during the period of the alleged partnership,

Held, that it was not material to the issue that the plaintiff bore another name at a previous time, and the defendant could not examine him as to the details of his past life, long prior to the alleged partnership.

G. W. Marsh for the plaintiff.

M. G. Cameron for the defendant.

ERDMAN *v.* TOWN OF WALKERTON.

Evidence—Order for use of in future action—Bill to perpetuate testimony—Parties.

The court has no power in a pending action to make an order authorizing the use of evidence taken therein in a future action.

Bills to perpetuate testimony were maintainable, not by the parties to a pending action, but by persons possessing rights which could not be enforced at the time.

W. H. Blake for the plaintiff.

Douglas Armour for the defendants.

MEREDITH, J.] [April 1.

HOGABOOM *v.* LUNT.

HOGABOOM *v.* MCDONALD.

Notice of trial—Rule 654—"Next sitting of the court"—Assizes—Chancery sittings.

The plaintiff gave notice of trial for the Toronto Assizes, which were earlier than the Chancery Sittings, and the defendants gave notice of trial for the Chancery Sittings. The actions could properly have been tried at either. In consequence of the state of the Assize docket, it seemed probable that the actions would really be sooner tried if set down for the Chancery Sittings.

Held, that the Assizes was, and the Chancery Sittings was not, "the next sitting of the court," and the defendants were, therefore, not within their right under Rule 654 in giving notice of trial for the latter.

W. R. Smyth for the plaintiff.

W. H. Blake for the defendants.

ROBINS *v.* THE EMPIRE PRINTING AND PUBLISHING CO.

Evidence — Foreign commission — Application for—Material on—Good faith—Necessity for evidence—Expense—Delay—Admissions.

In an action for libel published in the defendants' newspaper, the plaintiff applied for the issue of a commission to take his own evidence and that of other witnesses in England, where he and they lived.

The plaintiff's affidavit stated only that the witnesses were material and necessary for him

on the trial of the action, and that he was advised and verily believed that he could not safely proceed to trial without their evidence.

Held, sufficient to entitle the plaintiff *prima facie* to a commission.

Smith v. *Greey*, 10 P.R. 531, commented on.

Every application for a commission must be made in good faith, and the evidence sought to be obtained must be such as to warrant a reasonable belief that it may be material and necessary for the purpose of justice; but it is safer where any injustice to other parties, in the way of delay or expense, or otherwise, can be provided against, to favour the granting rather than the refusing of the application.

The main considerations are a full and fair trial, and the saving of expense.

Under the circumstances of this case, the order for a commission to take the evidence of the plaintiff and his witnesses abroad was granted upon the plaintiff securing the defendants for their costs of the execution of the commission and undertaking to speed the proceedings and not delay the trial.

It was contended by the defendants that the evidence expected from the witnesses was unnecessary by reason of implied admissions in the statement of defence.

Held, that it was for the defendants to make the evidence unquestionably unnecessary, either by amending their pleadings so as to expressly make the admissions or by undertaking to do so at the trial.

George Bell for the plaintiff.

H. Cassels for the defendants.

[April 6.

STRUTHERS *v.* GREEN.

Costs—Scale of—Action transferred from County Court to High Court—Rule 1219 (4)—54 Vict., c. 14.

The provisions of Rule 1219 are applicable to an action transferred from a County Court to a High Court by virtue of 54 Vict., c. 14; and the costs of the proceedings after the transfer should be taxed upon the lower scale where the case falls within s-s. (4) of the Rule, by reason of the plaintiff seeking equitable relief and the subject-matter involved not exceeding $200.

Douglas Armour for the plaintiff.

Rowell for the defendants, the Molsons Bank.

Appointments to Office.

LOCAL MASTERS OF TITLES.

District of Algoma.

Henry Coulthard Hamilton, of the Town of Sault Saint Marie, in the District of Algoma, Esquire, Barrister-at-Law: to be Local Master of Titles for the said District of Algoma, in the room and stead of His Honor Judge McCrea, resigned.

CORONERS.

County of Hastings.

William Edward Sprague, of the City of Belleville, in the County of Hastings, M.D.: to be an Associate-Coroner in and for the said County of Hastings, in the room and stead of Benjamin S. Wilson, Esquire, M.D., deceased.

Archibald Dunn Walker, of the City of Belleville, in the County of Hastings, Esquire, M.D.: to be an Associate-Coroner within and for the said County of Hastings.

County of Middlesex.

Robert Ferguson, of the City of London, in the County of Middlesex, Esquire, M.D., to be an Associate-Coroner within and for the said County of Middlesex, in the room and stead of James M. Smith, Esquire, M.D., deceased.

County of Peel.

Arthur Thompson Emmerson, of the Village of Claude, in the County of Peel, Esquire, M.D.: to be an Associate-Coroner within and for the said County of Peel, in the room and stead of Duncan McFayden, Esquire, M.D., resigned.

County of Wellington.

Moffitt Forster, of the Town of Palmerston, in the County of Wellington, Esquire, M.D.: to be an Associate-Coroner in and for the said County of Wellington.

County of York.

William Ledmon Allen, of the City of Toronto, in the County of York, Esquire, M.D.: to be an Associate-Coroner within and for the said County of York.

POLICE MAGISTRATES.

District of Parry Sound.

William Henry Spencer, of the Township of Monck, in the District of Muskoka, Esquire: to be Police Magistrate in and for the said District and the territory embraced within the townships and municipalities in the District of Parry Sound lying east of the Northern Pacific Junction Railway, and through which the said railway passes in the said District of Parry Sound.

DIVISION COURT CLERKS.

District of Algoma.

M. Johnstone Patterson, of the Village of Webbwood, in the District of Algoma, Gentleman: to be Clerk of the Fourth Division Court of the said District of Algoma.

David Ballantyne, of the Village of Bruce Mines, in the District of Algoma, Gentleman, to be Clerk of the Second Division Court of the said District of Algoma, in the room and stead of R. E. Miller, resigned.

County of Carleton.

William Henderson, of the Village of Fallowfield, in the County of Carleton, Gentleman: to be Clerk of the Second Division Court of the said County of Carleton, in the room and stead of H. Reilly, resigned.

Daniel McLaurin, of the Village of Metcalfe, in the County of Carleton, Gentleman: to be Clerk of the Sixth Division Court of the said County of Carleton, in the room and stead of Ira Morgan, deceased.

County of Frontenac.

William John Robinson, of the City of Kingston, in the County of Frontenac, Gentleman: to be Clerk of the First Division Court of the said County of Frontenac, in the room and stead of William Robinson, resigned.

County of Huron.

William Campbell, of the Village of Blyth, in the County of Huron, Bailiff of the Twelfth Division Court of the said County of Huron: to be Clerk of the said Twelfth Division Court, in the room and stead of Myles Young, deceased.

County of Lambton.

John Webster, of the Village of Florence, in County of Lambton, Gentleman: to be Clerk of the Third Division Court of the said County of Lambton, in the room and stead of William Webster, resigned.

United Counties of Leeds and Grenville.

George Fairbairn, of the Village of Spencerville, in the County of Grenville, one of the United Counties of Leeds and Grenville, Gentleman: to be Clerk of the Tenth Division Court of the said United Counties of Leeds and Grenville, in the room and stead of Gideon Fairbairn, deceased.

County of Renfrew.

John Gorman, of the Village of Shamrock, in the County of Renfrew, Gentleman: to be Clerk of the Fifth Division Court of the said County of Renfrew, in the room and stead of John Barnard, resigned, such resignation and appointment to date from the fifteenth day of May next.

County of Simcoe.

Andrew McNamara, of the Village of Randolph, in the County of Simcoe, Gentleman: to be Clerk of the Ninth Division Court of the said County of Simcoe, in the room and stead of Harry Jennings, removed to another part of the country.

DIVISION COURT BAILIFFS.

District of Algoma.

William James Kirk, of the Village of Webbwood, in the District of Algoma: to be Bailiff of the Fourth Division Court of the said District of Algoma, in the room and stead of Matthew J. Scott, removed from the province.

John Knight, of the Village of Bruce Mines, in the District of Algoma, to be Bailiff of the Second Division Court of the said District of Algoma, in the room and stead of James Mills, resigned.

County of Carleton.

Patrick O'Connor, of the Village of Richmond, in the County of Carleton: to be Bailiff of the Second Division Court of the said County of Carleton, in the room and stead of John Reilly, resigned.

County of Grey.

James Sharp, the younger, of the Town of Owen Sound, in the County of Crey: to be Bailiff of the First Division Court of the said County of Grey, in the room and stead of Robert Edgar, resigned, such resignation and appointment, respectively, to take effect on and after the first day of July next.

County of Huron.

James Davis, of the Village of Blyth, in the County of Huron: to be Bailiff of the Twelfth Division Court of the said County of Huron, in the room and stead of William Campbell, promoted to the position of clerk of the said court.

United Counties of Leeds and Grenville.

Delorma Deacon, of the Village of Westport, in the County of Leeds, one of the United Counties of Leeds and Grenville: to be Bailiff of the Eighth Division Court of the United Counties of Leeds and Grenville, in the room and stead of W. S. Bilton, resigned.

District of Parry Sound.

Charles W. McKague, of the Village of Burk's Falls, in the District of Parry Sound: to be Bailiff of the Fourth Division Court of the said District of Parry Sound, in the room and stead of Walter H. Silvester, resigned.

County of Peterboro.

Thomas Laplante, of the Town of Peterboro, in the County of Peterboro: to be Bailiff of the First Division Court of the said County of Peterboro, in the room and stead of Joseph Griffin, deceased.

REGISTRARS OF DEEDS.

County of Stormont.

John Calvin Alguire, of the Town of Cornwall, in the County of Stormont, Esquire: to be Registrar of Deeds in and for the said County of Stormont, in the room and stead of John Copeland, Esquire, deceased.

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Addison (C.G.), The Law of Contracts, 9th ed., London, 1892.
Beauchamp (J.J.), The Jurisprudence of the Privy Council, Montreal, 1891.
Beven (Thos.), The Law of Negligence, London, 1889.
Buckley (H.B.), The Law of Joint Stock Companies, 6th ed., London, 1891.
Emden (Alf.), Complete Annual Digest for 1891, London, 1892.
Frost (R.), Letters Patent for Inventions, London, 1891.
Gorman (M.J.), County Court Practice of Ontario, Toronto, 1892.
Holmested (G.S.) and Langton (T.), Judicature Act of Ontario, 2nd copy, Toronto, 1890.
Howell (Alf.), Surrogate Court Rules of Ontario, Toronto, 1892.
Hudson (Alf.), The Law of Building and Engineering Contracts, London, 1891.
Lewin (T.), The Law of Trusts, 9th ed., London, 1891.
Lindley (Sir N.), Supplement to the Law of Companies. The Acts of 1890, London 1891.
The Revised Reports from 1785, edited by Sir Frederick Pollock, 3 vols., London, 1891-2.

Flotsam and Jetsam.

WE observe in the advertising columns of an exchange the card of a banker whose name is "Faile." We presume that his stability is assured, otherwise he would hardly have the temerity to hold himself out to the public with the same confidence as did the Boston firm of I. Ketchum & U. Cheatham.

THE defendant in a case which went against him rose up in the court-room and gave his opinion of the judgment, and was promptly fined $10 for contempt of court. He handed a $20 bill to the clerk, who returned it, stating that he had no change. "Never mind the other $10," was the retort, "I'll take it out in contempt."

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ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School, in some cases during two, and in others during three terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the school is a three years' course. The term or session commences on the fourth Monday in September, and ends on the first Monday in May, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk before being allowed to enter the School must present to the Principal a certificate of the Secretary of the Law Society, showing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practise in Ontario, are allowed, upon payment of the usual fee, to attend the lectures without admission to the Law Society.

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

2. All graduates who on June 25th, 1889, had entered upon the second year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the fourth year of their course as Students-at-Law or Articled Clerks.

Provision is made by Rules 164 *(g)* and 164 *(h)* for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above.

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles

may not have expired. In like manner, those who are required to attend during two terms must attend during those terms which end in the last two years respectively of their period of attendance in chambers or service, as the case may be.

Those students and clerks, not being graduates, who are required to attend the first year's lectures in the School, may do so at their own option, either in the first, second, or third year of their attendance in chambers or service under articles, upon notice to the Principal.

By a rule passed in October, 1891, students and clerks who have already been allowed their examination of the second year in the Law School, or their second intermediate examination, and under existing rules are required to attend the lectures of the third year of the Law School course during the school term of 1892-93, may elect to attend during the term of 1891-92 the lectures on such of the subjects of said third year as they may name in a written election to be delivered to the principal, provided the number of such lectures shall, in the opinion of the principal, reasonably approximate one-half of the whole number of lectures pertaining to the said third year, and may complete their attendance on lectures by attending in the remaining subjects during the term of 1892-3, presenting themselves for examination in all the subjects at the close of the last-mentioned term, and paying but one fee for both terms, such fee being payable before commencing attendance.

The course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

Friday of each week is devoted exclusively to moot courts, one for the second year students and another for the third year students. The first year students are required to attend, and may be allowed to take part in, one or other of these moot courts. They are presided over by the Principal or the Lecturer whose series of lectures is in progress at the time, and who states the case to be argued, and appoints two students on each side to argue it, of which notice is given at least one week before the day for argument. His decision is pronounced at the next moot court, if not given at the close of the argument.

At each lecture and moot court the roll is called, and the attendance of students carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series, delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal makes a special report upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. The moot courts take the place of lectures on Friday. Printed schedules showing the days and hours of all the lectures in the different subjects will be distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, students will be provided with room and the use of books for this purpose.

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the school course respectively.

Any student or clerk who under the Rules is exempt from attending the School in any one or more of the three years of the school course is at liberty, at his option, to pass the corresponding examination or examinations under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed

proper to continue the holding of examinations under the said Law Society Curriculum as heretofore. It has already been decided that the first intermediate examination under that curriculum shall not be continued after January, 1892, and after that time therefore all students and clerks must pass their first intermediate examination at the examinations and under the curriculum of the Law School, whether they are required to attend the lectures of the first year of the course or not. Due notice will be hereafter published of the discontinuance of the second intermediate and final examinations under the Law Society Curriculum.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

Students whose attendance upon lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations, either in all the subjects or in those subjects only in which they failed to obtain fifty-five per cent. of the marks obtainable in such subjects. Those entitled, and desiring, to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time of such examinations, of their intention to present themselves, stating whether they intend to do so in all the subjects, or in those only in which they failed to obtain fifty-five per cent. of the marks obtainable, mentioning the names of such subjects.

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

HONORS, SCHOLARSHIPS, AND MEDALS.

The Law School examinations at the close of the term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following:

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following:

Of the persons called with Honors the first three shall be entitled to medals on the following conditions:

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.
Deane's Principles of Conveyancing.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.

Equity.

Snell's Principles of Equity.

Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.
Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.
Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.

Personal Property.
Williams on Personal Property.

Contracts.
Leake on Contracts.

Torts.
Bigelow on Torts—English Edition.

Equity.
H. A. Smith's Principles of Equity.

Evidence.
Powell on Evidence.

Canadian Constitutional History and Law.
Bourinot's Manual of the Constitutional History of Canada.
O'Sullivan's Government in Canada.

Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.
Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.
Leake on Contracts.

Real Property.
Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.

Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.
Underhill on Trusts.
Kelleher on Specific Performance.
De Colyar on Guarantees.

Torts.
Pollock on Torts.
Smith on Negligence, 2nd ed.

Evidence.
Best on Evidence.

Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.
Westlake's Private International Law.

Construction and Operation of Statutes.
Hardcastle's construction and effect of Statutory Law.

Canadian Constitutional Law.
British North America Act and cases thereunder.

Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

THE LAW SOCIETY CURRICULUM*

Examiners: FRANK J. JOSEPH, LL.B.
A. W. AYTOUN-FINLAY, B.A.
M. G. CAMERON.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44; the Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

FOR CERTIFICATE OF FITNESS.

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

FOR CALL.

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

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

*The First Intermediate Examination under this Curriculum has been discontinued since January, 1892.