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DIARY FOR NOVEMBER.

16. Fri.. .. Wilson, J., Q.B., and Gwynne, J., C.P., 1868.
18. Sun.... *Twenty-sixth Sunday after Trinity.* Hagarty, C. J., sworn in C. J. of Q. B., Wilson, J., sworn in C. J. of C. P., 1878.
21. Wed. .. Princess Royal born, 1840.
25. Sun.... *Twenty-seventh Sunday after Trinity.* Lord Lorne, Gov.-General of Canada, 1878.
27. Tue.... Cameron, J., sworn in Q. B., 1878.
30. Fri .... Moss, J., appointed C. J. of Appeal, 1877.

TORONTO, NOV. 15, 1883.

An addition has been made to the existing aids to practice in the Notes of Practice Cases just published by Messrs. Lefroy and Cassels, as to which we will merely say that we hope that the largeness of its utility compared to that of other works on practice, will prove to be in inverse proportion to the smallness of its dimensions.

We are indebted to Mr. Fenton, the Crown Attorney of the County of York, for the report of the Sunday shaving case, which excited a good deal of interest at the time, but which for some reason or another, has never found its way into the regular reports. This judgment appeared in one of the daily papers, but it is desirable that it should be preserved for the use of the profession in some more permanent and accessible place. We therefore make no apology for reprinting it even at this late date.

There is no objection to complaints being made as to anything that may be defective in the arrangements at Osgoode Hall, or such other matters affecting the profession as are under the control of the Benchers; but it is only fair that such complaints should first be made to that body, either directly or at least through the medium of a legal journal. We presume the Benchers would be glad to remedy any evil in their power; but should they fail or refuse to do so it would then be time enough to publish the grievance in the daily papers. The members of the Law Society are, as it were, members of a legal club. It would be looked upon as an outrage if a member of a social club rushed into print whenever he thought something was wrongly done. A letter recently published in a daily paper, on a trivial matter at Osgoode Hall, is the text for these remarks, which are also of more general application.

We publish in our present number an article which we think will be read with interest, and perhaps provoke some discussion on the relation between leading and junior counsel in connection with the conduct of the argument of a case. It will be remembered that in the *International Bridge Co.* v. *Canada Southern Ry. Co.*, 7 App. 228, Spragge, C., said:—"We think that junior counsel are not at liberty to take positions in argument which conflict with the positions taken by their senior counsel." This, however, was the *dictum* of the Chancellor alone, and, though the other judges of appeal did not consider it necessary to revert to the point, it does not necessarily follow that they would, had it been of material importance, have concurred in it. The junior counsel in the case had, as a matter of fact, been heard, and therefore the question was not important to the actual decision of the case. When the case was brought up before the Privy Council mention

was made of this *dictum*, and some discussion as to its propriety took place. It is owing to the courtesy of Mr. A. J. Cattanach that we are able to give our readers the information contained in our article.

JUNIOR COUNSEL.

In *International Bridge Co.* v. *Canada Southern Ry. Co.*, 7 O. A. R. 226, it was laid down that "junior counsel are not at liberty to take positions in arguments which conflict with the positions taken by their leaders."

The case under consideration involved the right of a plaintiff corporation to collect tolls for the use of a bridge under a certain Act. The senior counsel for the defendants, in opening the defence, conceded the right to collect tolls as incidental to the powers of of the Corporation, but contended that the tolls must be reasonable. The junior counsel being of opinion that the power was not incidental, and having obtained the leave of his leader to argue the point, contended that there was not even a limited power of collecting tolls as the power was not expressly given, and that therefore the plaintiff corporation was not entitled to collect any tolls under the Act in question.

The learned Chief Justice of Ontario, while denying the right of junior counsel to argue the point, permitted him to proceed owing to the importance of the case; but in delivering the judgment of the Court, expressed his disapproval of the course taken, and held that it was not open to junior counsel to take such a course.

The case was carried to the Privy Council, and in the course of his argument there Mr. Horace Davey, Q.C., called in question the practice as thus laid down. It was unnecessary to argue the point as it did not affect any of the issues involved in the case; but from the remarks made by Mr. Davey, and the response of the Lord Chancellor, it appears that no such rule as that referred to by the Chief Justice of Ontario is recognized in England. It also appears from the stenographic report, that no mention was made in the Privy Council of the fact that junior counsel had been permitted by his leader to take the course under review, so that the conclusion to be gathered from the remarks of Mr. Davey and the Lord Chancellor does not appear to depend on whether counsel had or had not previously arranged between themselves as to the mode of conducting the argument. In their view apparently the Court cannot refuse to listen to junior counsel simply because he differs from his leader on a point in the case. We have been favoured with the stenographer's notes of what took place on this point. They are as follows:

Mr. Horace Davey—. . . . In the suit in which the railway company are plaintiffs, and the bridge company defendants, the same points are raised as in this suit, and the two were argued together. Mr. Crooks conceded—the leading counsel for the present appellants—"That it was incident to the corporate powers of the bridge company to require payment of tolls from Railway companies for the use of the bridge, and to fix the amount of tolls to be paid for such user. This, indeed, was denied by his junior counsel, Mr. Cattanach"—then there are some observations on Mr. Cattanach which are hardly well founded.

The Lord Chancellor - It would require some argument before I accede to the proposition that junior counsel are not at liberty to take points which their leader has not taken.

Mr. Davey—I have known junior counsel in this country, I think, who have taken that course.

It is difficult to understand why junior counsel should be fettered and held strictly to the line taken by his leader by the Court. The case can easily be imagined of there being an irreconcilable difference of opinion between counsel engaged in a case as to the best mode of conducting it, and of there being an evenly balanced question of law upon which the members of the Court itself might differ. Why in such a case should the Court interfere to prevent the case from

being argued in more than one way. Must one of the counsel withdraw simply because the Court will only hear a partial statement of their views? Surely the parties most interested in success can be trusted to look after their own interests; and, as the object of the Court is to get at the rights of the case, what objection can there be to hear all that can be said about the case?

RECENT ENGLISH DECISIONS.

Continuing to review the cases in the September numbers of the Law Reports, the next case in the September number of the Q. B. D. is the much discussed one of *Chamberlain* v. *Boyd*, p. 407.

DEFAMATION—SLANDER—REMOTENESS OF DAMAGE.

It will be remembered that two brothers of Mr. Chamberlain, a member of the present English ministry, were rejected on their standing as candidates for the Reform Club in London. At the time of their rejection the power of electing new members was in the hands of the members of the club. It was afterwards proposed to transfer the power of election of members to the committee of the club, but this proposed alteration of the regulations of the club was not carried. One of the rejected Chamberlains now brought this action against a member of the club, seeking damages against him, and setting out in his claim that by reason of certain defamatory statements "the defendant induced, or contributed to inducing a majority of the members of the club to retain the regulations under which the plaintiff had been rejected, and thereby prevented the plaintiff *from again seeking to be elected to the said club.* The plaintiff thus lost the advantage which he would have derived from again becoming a candidate, with the chance of being elected. And the plaintiff suffered in his reputation and credit." The defendant demurred, and the Court of Appeal unanimously sustained the demurrer on two grounds: (1) because no damage was alleged in respect of which the law allows an action to be brought; (2) because the alleged damage was not the natural and probable result of the words complained of. As to the first point Lord Coleridge, C.J., observes that "the damage alleged is unsubstantial and shadowy, and is in truth incapable of being estimated in money; and where words spoken, as in the present case, are not actionable in themselves, they can become actionable only when they have been followed by pecuniary or temporal damage." And as to the second point the opinions of the Law Lords in *Lynch* v. *Knight*, 9 H.L.C. 577, are cited with approval. While on the case generally Bowen, L.J., speaks as follows, at p. 416:—"Putting the case in the strongest manner for the plaintiff it only comes to this —that the refusal to alter the regulations kept him, the plaintiff, in a position in which an election might or might not result in his being chosen a member. But that appears to me to leave the damage too remote, and to place it beyond the line which the law has wisely drawn. The risk of temporal loss is not the same as temporal loss; the risk of suffering injury is not the same as to suffer injury. If it were otherwise the limitation which the law imposes on liability to actions for words spoken would be entirely done away with, because the party defamed could always urge that he had lost the chance of an advantage, or had run the risk of an injury. But the 'chance' of an advantage is not the same as the advantage, and the risk of an injury is not the same as an injury."

ACTION FOR MALICIOUS PROSECUTION—ONUS OF PROOF

The next case to be noticed is that of *Abrath* v. *North Eastern Ry. Co.*, p. 440, a case concerning the *onus* of proof in actions for malicious prosecution. The point of the case is somewhat difficult to grasp at first, and the head-note is not very lucid. The gist of the case may perhaps be shown as follows:— First, it is laid down by Brett, M.R., p. 448, "The points which it is necessary for the

plaintiff to substantiate (*i. e.* in an action for malicious prosecution) in order to make out his claim, are not really in doubt; they have been decided over and over again, and have been decided for more than two hundred years; it is not enough for the plaintiff to show, in order to support the claim which he has made, that he was innocent of the charge upon which he was tried; he has to show that the prosecution was instituted against him by the defendants without any reasonable or probable cause, and with a malicious intention in the mind of the defendant, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact. It has been decided over and over again that all these points must be established by the plaintiff, and that the burden of each of them lies upon the plaintiff." This language is reiterated later on by Bowen, L.J., at p. 455. Then these propositions being laid down to start with, the point of the present decision of the Court of Appeal appears from the words of Brett, M.R., when he says:—"Now it seems to me that whenever a claim or defence consists of several necessary parts, he on whom the burden of proof of the whole rests, has also on him the burden of proof of each of these necessary parts. The burden of proof lies on the plaintiff to show that there was an absence of reasonable and probable cause; *if in order to show the absence of reasonable and probable cause there are minor questions which it is necessary to determine, it seems to me that the burden of proving each of these minor questions lies upon the plaintiff just as much as the burden of proving the whole does.*" Now this was the case in the action before the court. The innocence of the plaintiff, in respect of the matter for which, as he alleged, he had been maliciously prosecuted, was established, but in order to decide the question of whether the prosecutors had reasonable and probable cause for commencing the proceedings complained of, the judge found it necessary to ask the jury to find whether the prosecutors had taken reasonable care to inform themselves of the true state of the case, and whether they honestly believed the case which they laid before the magistrates, before whom they had prosecuted the present plaintiff. The present decision establishes that the burden of proof as to these minor questions was on the plaintiff, as well as the burden of proof as to the larger questions to which they were subsidiary. In the language of Brett, M.R., "The burden of proof of satisfying a jury that there was a want of reasonable care, lies upon the plaintiff, because the proof of that want of reasonable care is a necessary part of the larger question, of which the burden of proof lies upon him, namely, that there was a want of reasonable and probable cause to institute the prosecution."

WHAT IS MISDIRECTION?

There is another passage in the judgment of the M. R. which it seems desirable to notice here. At p. 453 he observes:—It is no misdirection not to tell the jury everything which might have been told them; there is no misdirection unless the judge has told them something wrong, or unless what he has told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must show that something wrong was said, or that something was said which would make wrong that which was left to be understood."

INNOCENCE PRIMA FACIE EVIDENCE OF WANT OF REASONABLE AND PROBABLE CAUSE.

Again in the judgment of Bowen, L.J., there is a passage which it would be departing from the scheme of these articles not to notice. He says, at p. 462:—"Something has been said about innocence being proof, *prima facie*, of want of reasonable and probable cause. I do not think it is. When mere innocence wears that aspect it is because the fact of innocence involves with it other circumstances which show that there was the want of reasonable and probable

cause; as, for example, when the prosecutor must know whether the story which he is telling against the man whom he is prosecuting, is false or true . . . except in cases of that kind it never is true that mere innocence is proof of want of reasonable and probable cause. It must be innocence accompanied by such circumstances as raise the presumption that there was a want of reasonable and probable cause."

In the September number of the P. D., being 8 P. D. p. 149-178, there are one or two short cases to be noticed.

PROBATE—MISTAKE—INCONSISTENT ATTESTATION CLAUSE.

The first is *In the goods of Atkinson*, p. 165. Here it appeared that in an attestation clause of a third codicil of a will, it was stated by mistake that the first codicil was cancelled. The attestation clause in question was as follows:—"Signed by the said (testatrix), as a third codicil to her will, by which the first codicil is cancelled in the presence of us both present at the same time, who, in her presence, at her request, and in presence of each other, herewith subscribe our names as witnesses." Sir J. Hannen held that an attestation clause forms no part of a codicil, and that therefore the first codicil must be admitted to probate. He says:— "It is immaterial that the attestation clause is written by the testatrix, and whether written by her or anybody else it is only an interpretation put upon the codicil which the testatrix was then about to execute, and forms no part of the codicil."

PROBATE OF WILL ABROAD.

In the next case, *In the goods of Miller*, p. 167, the president declares it to be the practice of the court to require that codicils must be proved in the court from which probate of the will has been obtained; so that, if a will has been proved abroad, probate of the codicils, if any, must be granted by the court which granted probate of the will."

REVOCATION OF WILL—REVOCATION OF CODICIL.

In *In the goods of Bleckley*, p. 169, T. M. B. having executed a codicil at the foot of his will, cut off his signature to the will; and upon proof that he thereby intended to revoke the codicil, the court held that the codicil was also revoked.

WILL—CAPACITY.

Lastly, *Parker* v. *Felgate*, p. 171, is a case of importance, but again the head-note does not seem very satisfactory. The case decides that if a testatrix has given instructions for her will, and it is prepared in accordance with them, the will will be valid though at the time of execution she merely recollects that she has given instructions, and understands that she is executing the will for which she had given instructions, but does not remember and understand what the instructions were, and is not capable of understanding each clause of the will if put to her. Sir J. Hannen says:—"The law applicable to the case is this: if a person has given instructions to a solicitor to make a will, and the solicitor prepares it in accordance with those instructions, all that is necessary to make it a good will, if executed by the testator, is that he should be able to think thus far, 'I gave my solicitor instructions to prepare a will, making a certain disposition of my property; I have no doubt that he has given effect to my intention, and I accept the document which is put before me, as carrying it out.'"

A.H.F.L.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

HIGH COURT OF JUSTICE—COMMON PLEAS DIVISION.

REGINA V. TAYLOR.

Lord's Day Act, Con. Stat. U. C. cap. 104—Shaving.

The defendant, a barber, was convicted before a Justice of the Peace for exercising the worldly labor and work of his ordinary calling by shaving customers for hire at his shop on Sunday, contrary to the Lord's Day Act, Con. Stat. U. C. cap. 104. Upon *certiorari* motion was made to quash the conviction on the ground that shaving was an act of necessity within the exception of the Act.

Held, (1) that a barber is a workman within the Act; (2) that shaving by a barber in the ordinary cause of his business is a violation of the statute, and not a work of necessity or charity.

Philips v. *Innes*, 4 Cl. & F. 234, approved.

Quære, whether a barber in an hotel or boarding-house might not, by arrangement with the keeper, be deemed a servant, to do the work of shaving guests or the family on Sunday.

[February 18, 1882.

The defendant, A. P. Taylor, a barber, was convicted before Thomas Carr, a Justice of the Peace, for having exercised the worldly labour and work of his ordinary calling by shaving customers for hire at his shop in Yorkville, on Sunday, and fined $2 and costs. The conviction and evidence having been removed by *certiorari* into the Common Pleas Divisional Court, a motion was made to quash the conviction before WILSON, C.J., which was referred to full court.

Ritchie, for defendant.—The shaving of customers by a barber is a work of necessity within the meaning of the exception in the Lord's Day Act.

Fenton, County Crown Attorney, contra, relied on *Philips* v. *Innes*, 4 Cl. & F. 234.

WILSON, C. J.: The statute in question (C. S. U. C. ch. 104), is as follows: "It shall not be lawful for any merchant. tradesmen, artificer, mechanic, workman, laborer, or other person whatsoever on the Lord's Day to sell or publicly show forth, or expose or offer for sale, or to purchase any goods, chattels or other personal property, or any real estate whatsoever, or to do or exercise any worldy labor business or work of his ordinary calling (conveying travellers or Her Majesty's mail by land or by water, selling drugs and medicines, and other works of necessity, and works of charity, only excepted).

The defendant is, in my opinion, a workman—one of the class of persons named in the statute. The act of shaving he is charged to have performed as a barber is an act that was done by him in the ordinary course of his business as a barber, and it was done on the Lord's Day, and was not a work of necessity or charity. It was that kind of worldly labor which the statute expressly forbids being done on that day.

The case of *Philips* v. *Innes* 4 Cl. & F. 234, applies very closely to this case, because the House of Lords declared the business of shaving by a barber on Sunday was not "a work of necessity or mercy," which is the language of the Scotch Law. In that case the master was attempting to compel his apprentice to serve in the shop on Sundays till about 10 a.m., and to shave the customers of his master, who frequented the barber's shop on that day for the purpose of being shaved, and the decision was reversing the judgment of the Scotch Court, that the apprentice could not be required to do that which was unlawful to do on such a day.

It has been decided in England that a baker or cook may supply his customers with their meals prepared by such baker or cook at his usual place of business upon Sunday, because many persons have not the means of doing such work themselves, and it is of necessity that they must eat.

There is a great difference between such a business as that and carrying on the work of shaving. The business of a barber, I presume, could, while it was associated with that of surgery, have been carried on on Sunday. These two very dissimilar professions were united by the 32 Henry VIII. ch. 42, but were severed by 18 George II. ch. 15, because "the barbers belonging to the corporation have for many years been engaged in a business foreign to and independent of the practice of surgery"—a very satisfactory reason. Since then the barber is nothing more than a workman, one who performs mere manual labor, and he cannot lawfully exercise his calling on Sunday any more than any other workman may.

I do not say that a barber connected with an hotel or boarding house may not, by arrangement with the hotel or boarding house keeper, follow his ordinary calling on Sunday in such hotel or boarding house, and be considered in the light of a servant kept in a private family to do the family work of a barber on Sunday as well as upon other days.

In this case we cannot do otherwise than discharge the motion, but without costs.

GALT, J., concurred.

OSLER, J.—I feel bound by the decision of the House of Lords in the case of *Philips* v. *Innes*, 4 Cl. & F. 234. In my judgment the cases of a baker and a barber are not distinguishable. I question very much the expediency of prohibiting barbers from carrying on their business on the first day of the week.

Motion dismissed.

MASTER'S OFFICE.

CLARK v. UNION FIRE INS. CO.

Insurance — Provincial companies — B. N. A. Act—Foreign contracts—Lex loci contractus.

A company incorporated by a Provincial Legislature for the business of insurance, possesses the same attributes and franchises within the jurisdiction creating it as a company incorporated by the Imperial or Dominion Parliament, and may enter into contracts outside the Province, wherever such contracts are recognized by comity or otherwise.

The term "Provincial objects," in the B. N. A. Act, refers to local objects within a Province, in contradistinction to objects which are common to all the Provinces in their collective or dominion quality.

The legislative enactments of a country have no binding force *propria vigore* in another country; and a legislature cannot authorize corporations created by it to carry on business in a foreign country. Where, however, a legislature assumes so to do, such authority is only a legislative sanction to the agreement of the corporators to transact their business at home and abroad.

A contract executed in Toronto and delivered to the contractee in New York is governed by the laws of Ontario.

So a contract signed and sealed in blank in Toronto, and sent to an agent in New York to be filled up and delivered to the contractee there, is a contract made in Ontario by relation to the signing and sealing there.

Where no place of payment of a policy of insurance is mentioned in the policy it must be assumed that the place of payment is where the head office of the insurance company is situated.

[Mr. HODGINS, Q.C.—Oct. 30.

The facts of the case fully appear in the judgment.

Falconbridge, for claimant.

W. A. Foster, for plaintiff.

A. C. Galt, for defendant.

The MASTER IN ORDINARY :—This is a claim brought in by the Export Lumber Company of New York against the defendants, a Fire Insurance Company incorporated by the Legislature of Ontario, 39 Vict. c. 93. The policy is dated 5th August, 1880, and was delivered to the claimants on the 7th or 8th, and the fire occurred on the 10th of the same month. On the 11th the claimants tendered a cheque for the premium, which was immediately returned by the defendants.

The principal defences are that the defendants being a Provincial company have only limited powers, and could not make contracts in foreign countries, and that the premium not having been paid or tendered until after the loss occurred, the policy is void.

In arguing that the contract was *ultra vires* it was contended that as the B. N. A. Act (s. 92 subs. 11) empowered the Provincial legislatures to incorporate companies with "Provincial objects," this corporation could have no existence, and therefore no power to contract, outside this Province ; and in any event that not having obtained legislative sanction authorizing contracts of insurance outside the Province, this contract was void.

The substantial objection is against the legislative jurisdiction of the Provincial legislature ; for it was contended that a corporation created by it has not the *status* nor capacity to contract outside of provincial jurisdiction which a Dominion corporation possesses. There is no warrant for this contention. There is nothing in the B. N. A. Act, nor in the classes of subjects within their legislative authority, which would place these legislatures outside the definition given by writers on this subject :—"The colonial legislatures, with the restrictions necessarily arising from their dependency on Great Britain, are sovereign within the limits of their respective territories :" 1 Story's Const § 171. "The legislative bodies in the dependencies of the Crown have *sub modo* the same powers of legislation as their prototype in England, subject, however, to the final negative of the sovereign :" 1 Broom's Com. 122.

The term "incorporation of companies with Provincial objects" in the B. N. A. Act, (s. 92, subs. 11) defines the classes of corporations within the legislative authority of the Provinces; and its meaning must be gathered from analogous clauses empowering them to make laws in relation to "local works and undertakings," (subs. 10), and "matters of a merely local or private nature in the Province," (subs. 16), and under which it is obvious the legislatures may incorporate companies for like purposes. The term must be read to mean "local objects," in contradistinction to objects common to the Provinces in their collective or dominion quality, which are within Dominion jurisdiction.

The power to incorporate companies is incidental to a sovereignty, though such power may be delegated: "The king, it is said, may grant to a subject the power of erecting corporations, but it is really the king that erects, and the subject is but the instrument:" 1 Bl. Com. 473. Corporations may be erected by charter or by "Act of Parliament, of which the Royal assent is a necessary ingredient:" *Ibid.*

This assent of the Crown in connection with the Acts of th incial Legislatures has been questioned; and some warrant for this appears in the *obiter dicta* of some learned judges who say that Her Majesty forms no constituent part of the Provincial Legislatures as she does of the Dominion Parliament. This denial of the legislative prerogative of the Crown in Provincial legislation, touches the validity of all Provincial Acts since confederation, since the usual form of the Provincial statutes is "Her Majesty, by and with the advice, etc., enacts." "The legislative power," says Lord Hale, "is lodged in the king, with the assent of the Houses of Parliament:" 1 Hale's Juris. Ho. Lds. 406. "The making of statutes is by the king, with the assent of parliament:" 1 Whitelock's King's Writ, 406. "The king has the prerogative of giving his assent to such bills as his subjects legally convened present to him—that is, of giving them the force and sanction of a law:" Bacon's Abr. Tit. Prerog. 489. See also 4 Co. Inst. 24.

This is but the common law on the legislative prerogatives of the Crown. A reference to the Imperial Acts, which gave legislative institutions to this Province prior to the B. N. A. Act, will show that the Provincial laws of Upper Canada were to be made by "His Majesty, his heirs and successors," (31 Geo. III. c. 31), and of Canada by "Her Majesty, her heirs or successors," (3 & 4 Vict. c. 35), by and with the advice and consent of the other legislative bodies; and the clauses of these Imperial Acts relating to the legislative prerogative of the Crown in this Province have not been repealed, but, on the contrary, are continued by s. 129 of the B. N. A. Act.

The question, however, appears to have been determined in 1876 by the Judicial Committee of the Privy Council, in *Theberge* v. *Laudry*, L. R. 2 App. Cas. 102,—which is binding on all our courts,—where Lord Cairns, L.C., referring to an Act of one of the Provincial legislatures then under review, held that it was an Act which had been assented to by the Crown, and to which the Crown therefore was a party: p. 108.

The B. N. A. Act created two separate and independent governments, with enumerated and therefore limited parliamentary powers. These dual governments take the place of and exercise the legislative and executive powers previously vested in one government; and although both exist within the same territorial limits, their powers are separate and distinct, and they ac separately and independently of each other within their respective spheres. This view has been affirmed in our Provincial Courts. The case of *Re Goodhue*, 19 Gr. 366, decides that there is no limitation imposed on the Provincial legislatures as regards the extent to which they may affect private rights and matters of a merely local and private nature in the Province; and that as to such objects they can pass laws to the same unlimited extent that the Imperial Parliament may in the United Kingdom: p. 452. In *Reg.* v. *Hodge*, 7 App. R. 246, it was shown that the Dominion and Provincial legislatures derive their powers from the same source; and that "the power to make laws in relation to the several classes of subjects committed exclusively to the Provincial legislatures, is as large and complete as it is in the classes of subjects committed to the Dominion Parliament. The limits of the subjects of jurisdiction are prescribed, but within those limits, the authority to legislate is not limited:" p. 251.

These cases show that both the Dominion and the Provincial legislatures have plenary powers of legislation to the extent necessary for the efficient exercise of the exclusive legislative authority of each; and that they are therefore

sovereignties within the definitions given in 1 Story's Const. 171, *Phillips* v. *Eyre*, L. R. 6 Q.B. 20, and *Reg.* v. *Burah*, L. R. 3 App. Cas. 904. Each has authority to create corporations; and therefore a company incorporated by a Provincial legislature has for the purposes of its business the same attributes, franchises and powers within the jurisdiction creating it, as a company incorporated by the Imperial or the Dominion Parliament, and may transact its business outside the Province wherever, by comity or otherwise, its contracts may be recognized.

The power to transact insurance business outside the Provincial jurisdiction creating such corporations, is regulated in Canada by the Act 40 Vict. c. 42, s. 28, which provides that companies incorporated by a Provincial legislature for carrying on the business of insurance within a Province, may, under certain conditions, transact such business throughout Canada. And the case of *Citizens Ins. Co.* v. *Parsons*, L.R. 7 App. Cas. 115, defines the jurisdiction of the Provincial legislatures over Dominion companies.

As to the objection that these defendants have not obtained power in their Act of incorporation to transact insurance business in foreign countries, it may be answered that no legislature can confer upon corporations created by it the right to carry on business outside its territory. The legislative enactments of a country have no binding force *propria vigore* in other territorial sovereignties. Where, however, a legislature assumes to authorize its corporations to carry on business in foreign countries, such authority is no more than a legislative sanction of an agreement amongst the corporators that their business may be carried on abroad as well as at home. It has been held by one of the Federal Courts of the United States that it is not competent for a State legislature to enact that its citizens shall not make such contracts as they please in respect of their business outside of the State: *Lamb* v. *Bowser*, 7 Biss. Cir. Ct. 315. Where there is no express provision in the charter o a corporation limiting its ordinary business to af particular place or territory, no such limitation can be implied: Morawitz on Corp. 502. And there is nothing in our law to prevent a corporation created here carrying on its business both at home and abroad in the same manner as an individual or a co-partnership engaged in a similar enterprise. The contract here sued upon appears to have been within the corporate powers of these defendants; and the cases show that such a contract would be recognized as valid in a foreign country.

Corporations are defined to be mere artificial bodies—invisible and intangible—local inhabitants of the places of their creation; yet they are "persons" for certain purposes in contemplation of law, and as such are permitted by the comity of nations to make contracts in other states than the one creating them, and which would be valid if made in such state by natural persons not resident therein: *Bard* v. *Poole*, 12 N. Y. 495. Natural persons through the intervention of agents are continually making contracts in countries in which they do not reside; and there can be no objection to the capacity of an artificial person, by its agent making a contract within the scope of its limited powers in a country in which it does not reside. By the law of comity among nations a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts. "The public and well-known and long-continued usages of trade, and general acquiescence of states, all concur in proving the truth of this proposition:" *Bank of Augusta* v. *Earle* 13 Pet. 519 This comity is recognized in England; and a foreign corporation may carry on trade in London and be treated as if a resident there: *Newby* v. *Colt's Patent Firearms Co.*, L.R. 7 Q.B. 293. Similarly a foreign corporation may make contracts and carry on business in Ontario: *Howe Machine Co.* v. *Walker*, 35 U. C. R. 37. The locality of the forum determines whether a corporation is "foreign" or not, Thus a company incorporated by the Imperial Parliament for the purpose of building a railway in Scotland is a foreign corporation in England: *Mackereth* v. *Glasgow, etc., Ry. Co.*, L. R. 8 Ex. 149; although Scotland is not a foreign country to England: *Re Orr Ewing*, 22 Ch. D. 465. So an Irish railway company incorporated by the same Parliament is a foreign corpor..ion in England, and may be compelled to give security for costs: *Kilkenny, etc., Ry. Co.* v. *Fielder*, 6 Exch. 81. And the Bank of Montreal is a foreign corporation in Upper Canada, (now Ontario): *Bank of Montreal* v. *Bethune*, 4 O.S. 341.

The defence raised by the non-payment of the premium brings up the question of the *lex loci contractus*, or whether the contract was made in

Ontario or New York. This point was only slightly argued; but it is important, for by it must be determined the question of the defendants' liability. The pleadings raise the issue that a blank form of contract was sent by the defendants from Toronto to their agent in New York, with authority to make a contract and fill up the blanks in New York; but there is no evidence in support of this allegation. The only evidence in respect of this particular contract is that it was received from the defendants' agent in New York on the 7th or 8th August, and that on the 11th August the claimant's cheque for the premium, payable to the order of the defendants, was handed to the defendants' agent, and by him transmitted to the defendants at Toronto, who returned the same to the claimants on the 17th August, with a letter repudiating the liability.

The right of the claimants depends upon the question by what law the contract is to be governed. This question is usually one of the intention of the parties; but in the absence of any indication of that intention, or of any special circumstances which would show that another place was to govern, it will ordinarily be held that the law of the place where the final assent is given by the party to whom the proposition is made, or where the company has been incorporated, will govern, especially if that be the place where the money is to be paid. But if no place is named for the payment of the money, or if the contract may be performed anywhere, then the law of the place where the contract was entered into; and this may further depend upon a consideration of the powers of the agent.

In *Parken* v. *Royal Exchange Assurance Co.*, 8 Sess. Cas. (Scot. 1846) 363, where an agent received an application for assurance, and forwarded it to the head office in London, and in due time received back a policy which he delivered to the insured at Edinburgh, and received from him the premium; it was held that the contract was made in England, and that it had no analogy to an order sent to London for goods to be delivered by the London house in Scotland. The court laid stress on this: that though no place of payment was in terms provided, England was in law that place. So in *Ruse* v. *Mutual Benefit Life Ins. Co.*, 23 N. Y. 516. In that case the contract was made between the plaintiff and an agent of the company in the State of Georgia. The plaintiff was a resident of that State; the defendants were incorporated and had their head office in New Jersey. The action was brought in one of the New York courts; and it was held that as no place of payment was mentioned it must be assumed that the payment was to be made in New Jersey, where the principal office of the company was situated, and that the contract must be governed by the law of the State of New Jersey. See also *McGivern* v. *James*, 33 U. C. R. 203.

Here the contract appears to have been executed in Toronto; and although no place of payment is mentioned it must be held that the payment of the insurance money, and therefore the performance of the contract, was to take place in Toronto. And there is nothing in the contract or in the evidence to show that its validity depended upon any special circumstances, or act to be done by the defendants' agent, which would bring it under the law of New York. This and the act of the claimants in making their cheque for the amount of the premium payable to the defendants and not to the agent are matters which affect the consideration of the question by what law the contract is to be governed. For these reasons it must be held that the contract in question is governed by the law of Ontario; and by that law the non-payment of the premium renders the contract incomplete; and this is a good defence to an action on a policy of insurance: *Walker* v. *Provincial Ins. Co.*, 7 Gr. 137, 8 Gr. 217, s. c. 5 U.C.L.J. 162.

After intimating to the parties my opinion as above, Mr. Falconbridge applied for leave to give further evidence to show that the policy in this case had been signed and sealed in blank by the defendants in Toronto, and forwarded to their agent in New York to be filled up and delivered to the claimants. This application was opposed by the defendants, but I stated I would consider whether such evidence if given would bring the contract under the law of New York. I think it would not. The agent in New York when filling up the blanks, was giving no greater validity to the contract than a clerk doing the same act in the head office; and such agent's act could only have relation to the act of the defendants in signing and sealing the policy in Toronto. The act of the claimants in making their cheque payable directly to the defendants and not to their agent also shows what was their view

of the authority of the agent. But analogous cases respecting bills of exchange sustain this view. In *Snarth* v. *Mingay*, 1 M. & Sel. 87, a firm resident in Ireland signed, endorsed, and stamped four copperplate impressions of bills of exchange, dated from a place in Ireland, leaving blanks for dates, sums, times of payment and names of drawees, and transmitted them to their agent in London. The agent filled up the blanks and negotiated the bills. In an action for the recovery of the amounts of the bills it was contended that not having English stamps on them they were void; but the court held that they were to be considered bills of exchange made in Ireland by relation from the time of the signing and endorsing there, as if they had been drawn in all particulars with the firm's hand, and that they were governed by the law of that country; Bayley, J., observing that "the act which pledged the credit of the firm was their signature in Ireland."

So in *Lanning* v. *Ralson*, 23 Penn. 137, a merchant in Pennsylvania drew a bill of exchange, leaving blank the time for payment, and the names of payee and acceptor. The bill was sent to England to an agent of the drawer, who filled in the blanks and negotiated the bill with a bank there. The court held that the contract was made in Pennsylvania and was governed by the law of that State; Lewis, J., remarking that when the London bankers became holders of the bill "it bore the dress of a bill of exchange drawn in Pennsylvania." See also *Crutchly* v. *Mann*, 5 Taunt. 529; *Trimbey* v. *Vignier*, 1 Bing. N. C. 151.

CHANCERY DIVISION—PRACTICE.

Re Brown, Brown v. Brown.

Administration—Commission in lieu of taxed costs—Chy. Ord. 643.

The commission in lieu of taxed costs under Ord. 643 is to be calculated on the gross amount accounted for by the accounting party, and not merely on the net amount found in his hands on the footing of the accounts.

[Proudfoot, J.—Oct. 24.

This was an action for administration. By the report of the Master at Cornwall it appeared that the personal representative had received $2,451.17, and had properly expended $1,625.97, leaving a balance of $825.20 in her hands.

The Master had fixed the commission in lieu of taxed costs, under Chy. Ord. 643, at the sum of $188.53. The usual order was made for distribution in accordance with the report, but on an application for cheques being made to the Accountant, that officer doubted whether the Master had not erred in awarding the commission on $2,451.17, instead of on the $825.20, which he thought was "the amount realized in the suit," and by direction of the Chancellor he stayed the issuing of the cheques until the matter could again be mentioned to Proudfoot, J., by whom the order for distribution had been made.

The matter now came on accordingly. The following counsel appeared, viz.:

N. W. Hoyles, for adult defendant.

J. Hoskin, Q.C., for the infant defendants.

Proudfoot, J.—This matter has been mentioned to me by the Accountant, who referred me to the case of *Re McColl, McColl* v. *McColl*, 8 P. R. 480. I at first thought that the case was governed by that decision, but on further consideration I do not think that it is, and that the Master has properly allowed the commission on the gross amount accounted for in this action.

COUNTY JUDGE'S CRIMINAL COURT OF THE COUNTY OF ELGIN.

Regina v Topp.

Evidence—Abandonment and exposure whereby life is endangered—32-33 Vict. ch. 20, sec. 26.

The defendant was accused of abandoning and exposing her child of fourteen months old whereby its life was endangered. The child was left on the doorstep of her brother-in-law's house, about 8 o'clock p.m. This house was near a public street. The accused alleged that her brother-in-law was the father of the child. The evening was chilly but the child was properly clad, and its health did not seem to have been injured.

[St. Thomas, Oct. 30.

Emma Topp was accused, under the foregoing statute, for that she did abandon and expose a certain child being under the age of two years, whereby the life of such child was endangered. It was proved that she was the mother of the child, about fourteen months old, which she left on the doorstep of her brother-in-law's dwelling about eight o'clock in the evening, when the weather was rather chilly. She had previously alleged that he had seduced her, and that the

child was the offspring of that intercourse. The other facts appear in the judgment. On the proof of these facts at the trial it was objected for the prisoner that there was no evidence to go to a jury that the life of the child was *endangered*, and that there was no abandonment and no exposure of the child within the meaning of the statute.

The learned judge reserved judgment until the 30th October, 1883, on which day he delivered the following judgment :—

Hughes, Co. J.—The defendant is accused of an offence under the Act respecting offences against the person, and it is alleged that she "did unlawfully abandon and expose a certain child, then being under the age of two years, whereby the life of the child was endangered."

The Imperial Statute 24-25 Vict. cap. 100, s. 27, and our Dominion statute are in effect the same, although not identical in the verbal expression of the law.

The 26th section of our statute enacts that "whosoever unlawfully abandons or exposes any child under the age of two years, whereby the life of such child is endangered, or the health of such child has been or is likely to be permanently injured, is guilty of a misdemeanor, and shall be liable to be imprisoned in the penitentiary, etc."

It is not alleged that by the act of the defendant, nor is it proved that the health of the child has been or is likely to be permanently injured. On the contrary, a perfectly healthy child is brought before the Court, which is proved to be the illegitimate offspring of the defendant, under two years of age, and which she endeavored to get the person whom she alleges to be its father, to take into his family and support, because of her own inability to maintain it any longer. After a fruitless effort to persuade him to take the child and provide for it, she left it on the door-step of his dwelling-house, near a public street or highway, at an hour in the evening when and where it would be almost certain to be found immediately, and taken care of. It was not left unclothed or entirely uncared for, for it had clothes and socks, but only one shoe on one of its feet; it had also a cape or cloak wrapped around it, which kept it from cold, and it is not shown that it took cold or suffered in health in any respect, although the evening was chilly. There is no doubt whatever that her act was an abandoning and exposing the child, but there is a total absence of proof that the health of the child suffered, much less that its life was endangered by this act. It is not like any of those cases of which we read, where the child has been left in a secret place, where it is not likely to be found for some hours; or where it has been packed up in a hamper or basket, and either left at a door-step in an inclement season of the year, at an hour when all the inmates of the house are in bed, and it is not likely that people on the street will be passing to hear its cries, or that it has been sent away to a distant place by railway or other public mode of conveyance. I think if the child were left in such a situation from which there was a reasonable expectation that it would be taken in and cared for by some one else, and that its health and life were not thereby endangered, the offence is not complete.

The case *Queen* v. *Falkingham*, reported in 1 L. R. C. C. R. 222, was very different in its complexion from the present; for there a very delicate infant, only five weeks old, put up in a hamper, wrapped up in a shawl and packed with shavings and cotton wool, was taken four or five miles to a booking office of a railway station, were the hamper was handed to a clerk with directions to be very careful of it, and to send it to "G." by the next train, which would leave in ten minutes. Nothing was said to the clerk about the contents of the hamper, which was addressed to "Mr. Carr's, Northoutgate, Gisbro—with care, to be delivered immediately," at which address the father of the child was then living. The hamper was carried by the ordinary passenger train from M. to G. at 7.45 p.m., and arrived at G. at 8.15 p.m. At 8.40 p.m. the hamper was delivered at its address. The child died three weeks after from causes not attributed to the conduct of the accused. The prisoner's counsel objected, upon these facts proven, that there was no evidence to go to the jury that the life of the child was endangered, and that there was no abandonment and no exposure of the child within the meaning of the statute. The objections were over-ruled and the case left to the jury, who found the accused guilty. On a case reserved, the question was whether or not the accused was rightly convicted. The Court were of opinion that the conviction should be affirmed. Doubtless the Court were moved to

the conclusion reached from the peculiar circumstances of the case, although no reasons whatever were given for the judgment. They expressed the opinion that "under the circumstances," and as that was "the first case of the kind under the statute, that a lenient punishment ought to be inflicted." It has to be observed also with reference to that case, that no counsel appeared on the 13th November, 1869, when it should have been argued; that the Court, consisting of Kelly, C. B., Martin, B., and Blackburn, Lush, and Brett, JJ., reserved it for the consideration of the fifteen judges. On the 22nd January, 1870, counsel appeared to argue the case for the prosecution, but was not heard, as the Court, thinking that no counsel appeared, had already considered the case, and a majority of them had arrived at a conclusion in favour of the prosecution. The sending that infant in the hamper on that journey, totally unattended and uncared for, when the turning the hamper upon its end might have caused the whole of its weight to rest on its head; or the being carried with other parcels or hampers might have suffocated it for want of air, or other causes injurious to health, could only be regarded as endangering the life of the child.

I cannot say that the life of the child in this case was endangered, especially when I do not see that its health suffered. When a person leaves a child at the door of its putative father, *where it is likely, or almost certain, to be taken into the house immediately*, it would be too much to say that if death ensued it would be murder in the person who left it there. The probability there would be so great (almost amounting to a certainty) that the child would be found and taken care of, that malice *prepense*—the essential ingredient in an accusation for murder—could not be presumed. If, on the other hand, it were left in an unfrequented place, such as an abandoned or distant shed or stable or barn, the inference would be at once drawn that the party left it there in order that it might die.

Here the child was exposed near a public street, on the doorstep of a house, and at an hour when it would almost sure to be seen, and its cries heard, at an hour when and place where persons not only might pass, but were frequently passing. I think, therefore, a jury, if trying this case, might very fairly find that the important constituent in the offence alleged in this indictment is wanting—which is, that the life of the child was endangered—especially in view of the fact that its *health* did not suffer in the least. Had it been alleged that its health was likely to have been permanently injured the case might have been different; but even that would be doubtful. The defendant is acquitted.

(See judgment of Coltman, J., in *Regina* v. *Walters*, 1 Car. & Mar. 170.)

RECENT ENGLISH PRACTICE CASES.

VIVIAN V. LITTLE.

Production—Inspection of documents.

[L. R. 11 Q. B. D. 370.

In an action of trespass to land brought against the committee of a lunatic whose title-deeds are in the custody of the court having jurisdiction in lunacy, an order on the defendant for inspection of the documents ought not to be made, as they are not in his possession or control.

IN RE BRADFORD, THURSBY AND FARISTS.

Imp. Jud. Act, 1873, sec. 49—Ont. Jud. Act, sec. 32.

Costs—Order on solicitor personally to pay—Appeal.

[L. R 11 Q. B. D. 373.

An order that the costs of an application at Chambers on behalf of a client shall be paid by his solicitor personally, is within the above section, and therefore not subject to any appeal except by leave.

LOPES, J.—It is said that this is not a true construction of sec. 49 (Ont. sec. 32), and that the Legislature intended to deal only with costs as between party and party. I cannot put such a limited construction on the words.

POLLOCK, B.—The Master had power to make the order as to costs, for he had the same power as a Judge in Chambers, and a Judge in Chambers has the same power as the Court, and the Court has power to exercise its jurisdiction over its officers, and to order that costs shall be paid by them personally . . . I have no doubt that the present is a case in which the discretion of the Master and of the learned

Judge was exercised under the general principle by which the question of costs and the distribution of costs is by law left to the discretion of the Court, and, therefore, that in this case there is no appeal.

MUNSTER v. RAILTON & CO.

Imp. O. 12, r. 12, O. 42, r. 8—Ont. rr. 57, 346.

Action against partners in firm name—Amendment of judgment.

[C. A., L. R. 11 Q. B. D. 435.

The plaintiff issued a writ against the firm of R. & Co., R. only appeared to the writ, and the plaintiff delivered statement of claim against "R., sued as R. & Co." Issue having been joined, the case proceeded to trial, when a verdict for the plaintiff was taken by consent, and judgment signed against "R., sued as R. & Co." The plaintiff having subsequently discovered that C. had been a member of the firm of R. & Co., applied for an order to amend the judgment by making it in accordance with the writ, a judgment against the firm of R. & Co.

Held, that the amendment ought not to be allowed, for the plaintiff, although he acted in ignorance of the facts, must be taken to have elected to sue R. alone, and was concluded by the form of the proceedings subsequent to the appearance.

Judgment of the Queen's Bench Division (L. R. 10 Q. B. D. 475) reversed.

Per BOWEN, L. J.—The plaintiff's proper course would have been to apply to set aside all proceedings subsequent to the action, when he departed from the ordinary mode of prosecuting an action against a firm; but he has not asked for this, and instead of it he asks that the judgment may be amended without amending the pleadings. I think that we should be defeating the substantial forms of justice if we were to accede to this application.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

[Oct. 27.

RE DONOVAN—WILSON v. BEATTY, AND HALDEN v. BEATTY.

Solicitor and client—Administrator ad litem—Order to refund costs.

The order of Proudfoot J.(29 Gr. 280) reversed on appeal [Spragge, C. J. O., dissenting,] the court being of opinion that the taxations of the bills of costs referred to in the petitions, and all the other proceedings in reference thereto, having been taken in the absence of the solicitor, he could not be bound thereby, and the order under which the money had been directed to be repaid by Donovan was set aside with costs.

The appellant (Donovan) in person.

Maclennan, Q. C., *Moss*, Q. C., *O'Donohue*, Q. C., and *Morphy* for the respondents.

Foy, for the plaintiff Wilson, in the Court below.

[Oct. 27

RE WEST SIMCOE ELECTION.

Corrupt practices—Acts of agents.

One H., a tavern-keeper within the electoral division had been appointed a delegate to the convention at which he attended, and at which the respondent P. had been nominated as a candidate for the constituency, when P. addressed the convention, calling upon his supporters to use their best exertions in securing his return.

On election day H., whose house was distant about a mile from a polling booth, was proved to have kept his bar open during the hours of polling, and treated a voter, whom he called into the tavern on passing :

Held, [BURTON, J. A., dissenting] that this was such a corrupt practice of an agent as voided the election.

Bethune, Q.C., *S. H. Blake*, Q.C., *Lount*, Q.C. and *Johnson* for the appellant.

McCarthy, Q. C., for the respondent (the petitioner.)

QUEEN'S BENCH DIVISION.

Regina v. McElligott.

Conviction—Assault—Stopping carriage.

A conviction for standing in front of the horses and carriage driven by V. in a hostile manner, and thereby forcibly detaining the said V. in the public highway against his will, was

Held, bad in stating the detention as a conclusion and not as parcel of the charge.

Farmer v. Tribune Printing Co.

Libel—Newspaper—Justification.

To a statement of claim charging the defendants with publishing of the plaintiff that he had seduced B. P., whereby &c., the defendants pleaded that the article was published bona fide and without malice, and for the public benefi and in the usual course of business as journalists, and was a correct, fair and honest report of proceedings of public interest.

Held, bad on demurrer.

CHANCERY DIVISION.

Hagarty, C. J.] [Oct. 23

Graham v. Ross.

Mortgage—Covenant—Forfeiture.

Defendant gave a mortgage to the plaintiff in which he covenanted to pay the mortgage money in equal annual instalments, and also to build a good log house on the land mortgaged within one year from the date of the mortgage, and there was a proviso that on breach of this covenant the mortgage should immediately become due and payable.

No default occurred in payment of the mortgage money, but the log house was not built within the year as covenanted.

Held, that the plaintiff was entitled to insist on a forfeiture of the extended terms of payment in consequence of the breach of covenant as to the erection of the house, and to judgment for redemption or foreclosure.

Relief is given against forfeitures for non-payment of rent, and in certain cases for neglecting to insure, but no case appears in which default like the present has been relieved against.

Semble, that it is now clear in this Province that equity will not relieve against a proviso in a mortgage that on default of payment of a part of the debt the whole shall become due.

Osler, J.] [Nov. 2.

Ferris v. Ferris.

Action for alimony—Desertion—Pleading.

Action for alimony. In his defence the defendant alleged "that prior to the commencement of this suit, and still, he refuses to support the plaintiff by reason of her having committed, as in fact she did, adultery with M." It appeared at the trial that the plaintiff, on being charged by the defendant with adultery, and ordered to go away, left his house, after having been forbidden to do so. At the trial, also, the defendant persisted in the charge of adultery, but failed to prove it, and indeed offered no evidence of it.

Held, that these statements in the defendant's defence, taken in connection with these facts, must be treated as sufficient proof of desertion on his part, and he must be taken to have dispensed with the necessity of the plaintiff making an offer to return.

Proudfoot, J.] [Nov. 7.

Armstrong v. Forster.

Insolvent Act of 1875—Bond of official assignee—Official assignee subsequently made creditors' assignee.

Held, on demurrer to the statement of defence in this action, that where an official assignee has given a bond as such, with sureties, pursuant to the Insolvent Act of 1875 and the amending acts, and the creditors have duly appointed the same individual to be creditors' assignee, under sec. 29 of the said Insolvent Act of 1875, but have not required him to give security as such creditors' assignee, the sureties under the bond given by him as official assignee, remained liable for his dealings with the estate, and were not discharged by virtue of such appointment as creditors' assignee.

The appointment by the creditors cast no additional or increased risk upon the sureties beyond what they would have incurred without the appointment. The official assignee, in case of no appointment by the creditors, has all the powers of a creditors' assignee, and is liable to be removed by the creditors. He did not owe a divided duty, nor was he subject to another's control. The appointment by the creditors made no change in these respects, and it must have been in the contemplation of the sureties that he might have the whole administration of the estate ; and it does not matter whether he performed that duty under the one or the other appointment.

Gibbons for the demurrer.

Jacob, contra.

Proudfoot, J.] [Nov. 7.

MCFARREN V. JOHNSON.

Specific performance — Contract contained in letters—" Coming to accept."

Action for specific performance of an alleged contract for the purchase of land.

On May 30th, 1883, the plaintiff wrote, offering to give $1500 for the land in question, which contained frontage of about 50 feet.

On June 19th the defendant replied that he was willing to take the $1500 for 35 feet of the frontage. On June 25th the defendant telegraphed : "Coming Monday to accept $1500. Waiting immediate reply."

On same day plaintiff telegraphed, " Come at once."

Held, that the above did not constitute a completed contract for the sale of the 50 feet frontage for $1500. It was ambiguous which proposal of $1500 the telegram from the defendant of June 25th referred to, and the words " waiting immediate reply" seemed to shew the reference was to the offer made by himself. But apart from this, the words " coming to accept " did not show an acceptance ; it only showed an intention to do something.

McMichael, Q.C., for the plaintiff.

Rose, Q.C., for the defendant.

Proudfoot, J.] [Nov. 14.

RE LEA AND THE ONTARIO AND QUEBEC RY. CO.

Dominion Railway Act, 1879—Appeal from award—Constitutional law—Jurisdiction—Changing petition into action—Practice—R. S. O. c. 165.

This was a petition by way of appeal from the award of arbitrators appointed under the Dominion Railway Act, 1879. The submission had not been made a rule of court. No special mode is provided under the said Dominion Railway Act for appealing from such an award.

Held, under these circumstances, that the only mode of impeaching the award was by an action to set it aside, or to make the submission a rule of court and then move to set it aside, and the petition must be dismissed, though without costs.

The appeal given by R. S. O. c. 165, s. 20, ss. 19, only applies to railways over which the Provincial Legislature has jurisdiction, and is not available in such a case as this ; and it is not correct to say that an appeal from an award of this nature is simply a matter of procedure in a civil matter, and so within the powers of the Local Legislature under B. N. A. Act, s. 92, and that R. S. O. c. 165, s. 20, ss. 19, gives a summary appeal applicable to all cases of awards under the Railway Acts, whether of the Dominion or the Province, R. S. O. c. 165, all its provisions are expressly limited to railways under local jurisdiction, and assuming that the appeal in such cases as the present is a matter of procedure, and within the jurisdiction of the local legislature, the power to legislate upon it has not been exercised so as to apply to any other than local roads.

Semble, the Court has no power to turn such a petition as the present into an action.

Rose, Q.C., for the petition.

Cameron, Q.C., contra.

PRACTICE.

Wilson, C. J. C. P. D.] [Oct. 10.

MORTON V. GRAND TRUNK RY. CO.

Cost—Entry and record—Clerk's fees.

Held, on appeal from the taxing office at Toronto, that Clerks of Assize, when the trial of

a case is postponed from one Assize to another by order of Judge at Assize, have no right to levy the fee for certifying record and the entry and jury fees over again, the former payment holding good.

The D. C. C. at St. Thomas, as Clerk of Assize, had done this and had afterwards allowed the amount to the plaintiff, who had been successful in the action on the taxation of his costs. On revision, the taxing officer at Toronto taxed the amount off, and this decision was upheld on appeal by Wilson, C. J.

In this case an order had been made by the Master in Chambers, on an application to postpone the trial, when the trial was coming on for the second time, that the case should be entered at the foot of the list, in order that the plaintiff might be examined, but it was here held that that did not necessitate a re-entry of the case, and that the case once entered remained entered on the list until it was tried, struck out or withdrawn.

Dickson for appeal.

Aylesworth, contra.

Wilson, C. J.] [Oct. 26.

KERSTEMAN V. MCLELLAN.

Capias—Foreign residence of defendant—Temporary return to jurisdiction.

Motion to set aside the writ of *capias* and all proceedings &c., or to discharge the defendant from custody on the ground that the defendant was, at the time of his arrest, domiciled in and a resident of the state of Michigan, U. S., and was within the jurisdiction of this Court for a a temporary purpose only.

The defendant (a British subject) absconded from this Province with the intention of defrauding his creditors in July, 1882, and after having gone to the United States took means to become a citizen of that country, but returned to this Province more than once for a temporary purpose, and on one of these occasions was arrested under the *capias* issued in this action.

Held, that it is of no moment where the domicile of a person may be, or to what country he is bound by allegiance as a subject or citizen, if he come to this Province, and reside here, and contract debts, and is about to quit the country (that is in fact to change his residence to a foreign country, even although that country be his place of domicile) with the intent to defraud his creditors, he is subject to the law of arrest as it prevails in that Province.

Held, that taking steps to become a citizen of a foreign country may change the domicile but not the residence.

Held, that a defendant cannot rely on a change of residence to a foreign country so as to avoid the law of arrest, to which he was subject in this Province at the time he incurred the debt upon which the action is brought, when that change of residence has been effected by a fraudulent flight to avoid arrest.

Bain, Gordon & Shepley, for the defendant.

S. G. Wood, for the plaintiff.

BOOK REVIEW.

A PRACTICAL TREATISE ON THE LAW OF ABSCONDING DEBTORS, as administered in the Province of Ontario, with a large number of Forms of proceedings that will be found useful and convenient in the practical application of the Absconding Debtor's Act, by James Shaw Sinclair, Q. C., Judge of the County Court, and Local Judge of the High Court of Justice, Toronto: Carswell & Co., publishers.

We have received a copy of the above work with a feeling of pleasure at a useful addition to the rapidly increasing number of our text books. These annotated editions of our Statutes are a very valuable form of legal literature, not only on account of their individual merits, but also because successive consolidations of the statutes, and the fact that we do not at present possess any tabulated index to cases illustrating the very enactments of our Statute law, render it by no means easy to hunt up the cases bearing on any special section which may be under investigation. The present work is admirably printed and arranged, and the learned author alleges, as we see no reason to doubt, that he has endeavored to collect and bring before the reader not only every reported case in our own courts, but also many American decisions under similar statutes. We also notice a great number of references to English decisions. In his Preface his Honor points out that the Absconding Debtor's Act may be said to be *redivivus*, by reason of the repeal of the Insolvent Acts in 1880, for that "it is the only statute we have, under which an equal distribution of a debtor's property may in certain

cases be obtained." A very little enquiry at Osgoode Hall shows that the Absconding Debtor's Act is now, as one practitioner expressed it, "in full blast," though if the reasoning in the preface be correct the Act will soon be less used, as there is every prospect of a new insolvency law next session.

THE LAW AND PRACTICE relating to the administration of the estates of deceased persons by the Chancery Division of the High Court of Justice. By Walker and Elgood. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1883.

This book was planned and commenced by Mr. Walker as a companion volume to his "Compendium of the law of Executors and Administrators," and completed by Mr. Elgood. It is a very useful and handy book of the practice on the subject. It does not strike us so much as a book for students, but for practical purposes it will be of much value even in this country. The index is good and the table of case elaborate.

CORRESPONDENCE.

To the Editor of the LAW JOURNAL.

SIR,—I notice the following language in the report of Lord Coleridge's speech at New York on the 11th ult.: "I am one of those who never have shrunk, and do not now shrink from calling themselves Radicals. I am one who, although I admire heartily Mr. Gladstone and support him to the best of my ability, yet find myself more commonly in agreement in political matters with Mr. Bright than with any other living politician."

I have heard surprise expressed by several at these remarks. It is generally supposed that when a man goes on the Bench he leaves politics behind him. It does not seem to me desirable that a judge should have, or at all events appear to have any political views. If he has it is generally thought that he should keep his views to himself. There may be some difference between the position of the Chief Justice of England and any other Judge in this respect, but in principle I can see none. The above remarks seem to me likely to be mischievous and should not pass unchallenged.

Yours, &c.,

BARRISTER.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

The presumption of knowledge.—*Albany L.J.*, July 19.

Common words and phrases—(Printed and published—Left unoccupied—Connected with the use and operation of the railway—At—Commodities—Common schools—Saloon—Law—On.)—*Ib.* July 21.

(Side—Spirituous liquors—Capital—Author—Gulf of Mexico—Furniture.)—*Ib.* Sept. 8.

(Front of one acre—Fraud—Spirituous liquors—Used with a view to profit.)—*Ib.*

Element of iutention in conversion.—*Ib.* Aug. 11.

Dissection and resurrection.—*Ib.*

Oral license to plow land.—*Ib.* Aug. 25.

Abatement of public nuisance—Dwelling house.—*Ib.* Sept. 29.

Action for malicious prosecution of a mere suit.—*Ib.* Oct. 20.

Slander and special damage.—*Justice of the Peace.*

The measure of interest—(Conflict of laws—Rate after maturity—Rate after judgment—Interest upon interest—Loss and suspension of interest—Change of law.)—*Central L.J.* Aug. 17.

Survival of assignment of actions.—*Ib.* May 24.

Stipulation to pay exchange in negotiable paper.—*Ib.*

Garnisheement—Funds in the hands of an administrator.—*Ib.* Aug. 31.

Conditions in conveyances.—*Ib.* Sept. 7.

Liability of joint promisors as affected by payment made by some of them.—*Ib.* Sept. 14.

Corporations—Power of expulsion.—*Ib.*

Chattel mortgage—Stock in trade—Right of mortgagee to sell and re-invest under the mortgage.—*Ib.* Sept. 21.

Stipulation in a note to pay attorney's fee—Control of court over.—*Ib.* Sept. 28—Oct. 12.

Imputable negligence.—*Ib.*

Assignment of bills and notes by delivery—Liability of transferor when same fictitious, forged or altered.—*Ib.* Oct. 12.

The third party under the new rules.—*London L.J.*, Aug. 11.

The effect of the new rules upon libel and slander.—*Ib.* Sept. 1

Construction of a statute by reference to the proceedings in parliament.—*Ib.* Sept. 15.

Cases on the Womens property Act.—*Law Times.*

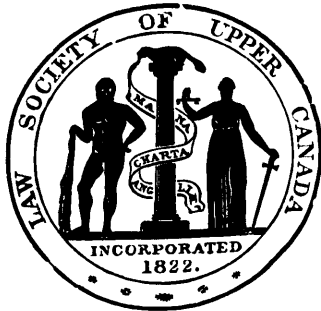
Assaults on constables in execution of their duty.—*Ib.*

The right to the custody of children.—*Irish Law Times*, Aug. 11 *et seq.*

The burial laws.—*Times.*

Subsidence of land.—*Justice of the Peace.*

Law Society of Upper Canada.



OSGOODE HALL.

TRINITY TERM, 1883.

During this term the following gentlemen were entered on the books of the Society as students-at-law, namely :—

Graduates—John Murray Clarke, Robert Urquhart Macpherson, George Somerville Wilgress, George Henry Kilmer, Robert Charles Donald, Arthur Freeman Lobb, John Joseph Walsh, Francis Edmund O'Flynn, John Hampden Burnham, William Smith Ormiston, Lyman Lee, John Samuel Campbell, Alfred David Creasor, Henry Smith Osler, Charles Perley Smith, Herbert Hartley Dewart, Duncan Ontario Cameron, Wellington Bartley Willoughby, Alexander Lillie Smith, William Chambers, Edward Cornelius Stanbury Huycke, William Hope Dean, Allan McNabb Denovan, Alexander Fraser, William Ernest Thompson, Alfred Buell Cameron.

Matriculants—Alexander James Boyd, John Wm. Mealy Robert Sullivan Moss, Arnold Morphy, Thos. R. Ferguson, Robert James McLaughlin, William Henry Campbell, Malcolm Wright.

Junior Class—Wentworth Green, Frank Langster, Daniel Frederick McMartin, Frank Reid, Jonathan Porter, William Woodburn Osborne, George Frederick Bradfield, Charles Downing Fripp, Robert Franklyn Lyle, William Charles Fitzgerald, William Edward Fitzgerald, John Wesly Blair, Alexander Duncan Dickson, William George Munroe, Edward Henderson Ridley, Alexander Purdom, George Chesly Hart, William Henry Lake, Robert Ruddy.

The following gentlemen were called to the Bar, namely :—Messrs. Hugh Archibald McLean, William John Martin, Harry Thorpe Canniff, Henry Carleton Monk, David Haskett Tennent, Robert Peel Echlin, Charles Henderson, Alexander John Snow, Robert Taylor, Frank Howard King, William Armstrong Stratton, Robert Kinross Cowan, Thomas Parker, Daniel K. Cunningham, David Mills.

On and after Monday, October 1st, lectures will be delivered in the Law School as follows: -Senior class, Mondays and Tuesdays. Junior class, Thursdays and Fridays of each week, at 8.45 a.m.

Special Notice. —No candidate for call or certificate of fitness who shall have omitted to leave his petitions and all his papers with the secretary complete on or before the third Saturday preceding the term, as by rules required, shall be called or admitted, except after report upon a petition by him presented, praying special relief on special grounds.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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

Articled Clerks.

From 1883 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

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

Students-at-Law.

CLASSICS.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical Analysis of a selected Poem :—

1883 —Marmion, with special reference to Canto V. and VI.

1884—Elegy in a Country Churchyard.
The Traveller.

Law Society.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

History and Geography.

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

Optional subjects instead of Greek:—

French.

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

1883 / 1885	Emile de Bonnechose, Lazare Hoche.	1884	Souvestre, Un philosophe sous les toits.

Or, Natural Philosophy.

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

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

From and after January 1st, 1883, the following books and subjects will be examined on :

First Intermediate.

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

Three Scholarships can be competed for in connection with this intermediate.

Second Intermediate.

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

Three Scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

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

For Call.

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

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

The Law Society Terms begin as follows :—

Hilary Term, first Monday in February.
Easter Term, third Monday in May.
Trinity Term, first Monday in September.
Michælmas Term, third Monday in November.

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

Graduates and Matriculants of Universities will present their Diplomas or Certificates at 11 a.m. on the third Thursday before these Terms.

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

The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. ; the Solicitors Examination on the Tuesday, and the Barristers on the Wednesday before Term.

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

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

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

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

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

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

Fees.

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

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