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It is gratifying to learn that our friends appreciate the new departure indicated by the portrait of the great lawyer and able advocate in our January number. Apart from its other spheres of usefulness, it is one of the aims of this journal to bring more closely together the members of the Bar in the various provinces of the Dominion. An effort in this direction has thus been initiated. It is needless to say that this entails considerable expense; but, unfortunately, legal periodicals in this country labour under the great disadvantage that the field open to them is necessarily so limited that no adequate monetary return is possible. We have not, however, allowed this insuperable difficulty to stand in the way of giving our readers a journal which we are quite willing to leave to the criticism of the profession in all English-speaking countries. We have, moreover, a natural pride in knowing that this, the pioneer legal journal of Canada, which has seen the decay and death of several competitors, is to-day in every way in a stronger position and wields a more powerful influence than at any time in its history, now extending over a period of over forty-four years.

The Osgoode Legal and Literary Society recently held their Bar dinner, which was a great success. The wise and courteous Treasurer of the Upper Canada Law Society and other leaders of the Bar were honoured guests. Mr. B. B. Osler, Q.C., made the speech of the evening, and it was worthy of the occasion and dealt with a matter well deserving the attention not only of the younger members of the Bar of Ontario, but of all the young men of the country whether of this or any other province. Such a speech shews that the leaders of the Bar are not mere lawyers but are able to take a broad and statesmanlike view of things, and are competent counsellors not only in matters of law, but in the broader field of our inter-provincial relations, and our duty as citizens of the Dominion. Other speeches were made, more or less witty and more or less wise, and an enjoyable evening was spent.

Reference was made by one of the speakers to the fact that articled clerks have for all practical purposes ceased to exist, and he threw the blame on the Law School. Another speaker thought the difficulty was owing to the introduction of shorthand writers and type-writing machines, and that the large "departmental" firms employ junior partners to do practice work, and concluded by saying that the Law School was turning out men better equipped than those of any other school. This latter remark may be true, but we doubt whether his explanation of the difficulty alluded to is the correct one, at least, it is only true to a limited extent. We are more inclined to agree with the first speaker. That the generality of barristers and solicitors turned out under the present system of education are not conversant with the practice of the Courts and are ignorant of how to "run an office" is an accepted fact. This is their misfortune, and partly, perhaps, their fault, but it is bad both for themselves and clients, and evidences a defect in the present educational system. Many think it would be well to abolish the Law School and save the great expense connected therewith. We should be glad to hear from our readers on this subject, so that it may be fully discussed, and, if possible, a remedy be found.

Speaking of the expenses of the Law Society calls to our mind the arrangement made by Convocation in February, 1896, in reference to supplying Supreme Courts reports to the profession free of charge. Previous to that date these reports had been sent to those members of the profession desiring to have them for the annual sum of $1.50 in addition to their certificate fees. We understand that about nine hundred took advantage of this, thereby shewing that only about one-half of the profession of Ontario cared to have these reports. It is, of course, theoretically desirable that every member of the profession should have all possible facilities for becoming familiar with the law of the land, and the intention of Convocation was praiseworthy. It may, however, be doubtful whether it is desirable or necessary to continue the expense of supplying reports to those who do not appreciate them. The practical result is that there are piles of uncut and unread volumes of Supreme Courts reports lumbering hundreds of offices throughout the country, and for sale at nominal prices. The cost of the Law Society of the Supreme Courts reports must be about

$2,500. Something like one-half of this might be saved if they were supplied only to those who really want them, and this saving might be applied, perhaps, in lessening the amount of fees payable by country practitioners, or in giving the Ontario statutes free of charge, or in some other way that might suggest itself. A saving would bring joy to the Finance Committee of the Law Society; but an increase to the surplus magnifies a danger of which they have received due notice.

A PHASE OF CRIMINAL EVIDENCE.

We think it would be well to draw attention to the desirability of some amendment in the law as to evidence of deceased or absent witnesses on the trial of criminal cases.

It is provided by sec. 687 of the Criminal Code that depositions taken by a Justice in a preliminary investigation may, in case of the death, illness or absence of the witness, be read as evidence on the trial of the case. This section, however, does not seem to apply to the case of a new trial. As our readers are aware, the Code provides (sec. 747.) that the Court may order a new trial under certain circumstances, and also empowers the Minister of Justice (sec. 748) to do the same, (as was recently done in the *Sternaman* case.) The recent case of *Reg.* v. *Hammond* might be referred to as shewing the awkward consequences that might have arisen if an important witness had died after the first trial, without some provision that his evidence given at the first trial could be read on a subsequent trial. As will be remembered, the jury disagreed at the first trial, and, after the second trial, the prisoner being convicted, the Court on a reserved case, ordered a new trial, and on the third trial the prisoner was again convicted. It might also, we think, be possible to put sec. 687 into a little better shape, as well as overcome the difficulty which has been spoken of.

By way of amendment and to bring the matter up for discussion, we would suggest the repeal of sec. 687, and in lieu thereof, provide something to the following effect:—

If upon the trial of an accused person such facts are proved upon the oath or affirmation of any credible witness that it can be reasonably inferred therefrom that any person whose deposition has been taken in the investigation or previous trial of any charge

before a judge or justice is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is proved that such deposition was taken in the presence of the person accused, and that he, his counsel or solicitor had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the Judge or Justice before whom the same purports to have been taken, or duly certified by a shorthand reporter acting as such at the investigation or previous trial, it shall be read as evidence on any trial of the accused person thereafter on the same charge, without further proof thereof, unless it is proved that such deposition was not in fact signed by the judge or justice purporting to have signed the same or certified by the reporter as aforesaid.

The matter being of considerable public importance, we have asked a few leading counsel of experience in such matters to express their views both as to the policy of some such change and as to the best way of effecting the object if desirable and shall hope to hear from them.

A POINT OF PRACTICE.

We think it may almost be regarded as an axiom that one method of practice is generally just as good as another, and that it is far better, as a rule, to put up with an imperfect rule of practice than to have an uncertain one. We are led to these reflections by the fact that, although the reported cases decide that where an appellant pays money into Court to abide the result of an appeal to the Court of Appeal, and his appeal is successful, and according to the judgment of the Appellate Court he is entitled to the money so paid in, then the Court should order it to be paid to him, and cannot properly retain it in Court to abide the result of a further appeal by the unsuccessful respondent, except upon the terms of the latter, giving security for any damages which the opposite party may sustain by its further detention.

This practice seems reasonable, and is founded on one decision of the House of Lords, viz., *Castrique* v. *Imrie*, Q. R. 4 H. L. 414; at least two decisions of the English Court of Appeal: *Atherton* v. *B. N. A. Co.*, L. R., 5 Chy. 720; *Hammill* v. *Lilly*, 19 Q. B. D. 83; one decision of the former Court of Chancery for Ontario, upon a re-hearing in *Lindsay* v. *Hurd*, 3 Chy. Ch. 16, besides decisions of the late Chancellor Spragge, in *Billington* v. *Provincial Ins. Co.*, 9

P. R. 67, and of Galt, C. J., in *Marsh* v. *Webb*, 15 P. R. 64, and of Ferguson, J., in *Macdonald* v. *Worthington*, 8 P. R. 554.

This rather respectable array of authorities it seems was all swept away, without even the stroke of a pen, by the Divisional Court of the Queen's Bench Division, (Armour, C. J., and Falconbridge, J., and Street, J.) in the unreported case of *Delap* v. *Charlebois*, before that Court on appeal from the Master in Chambers, in Oct., 1896, when the decision of the Court is said to have been that a respondent is entitled to have the money retained in Court pending his appeal, without himself giving any security for the damages his opponent may sustain by its detention; and this unreported case is, we understand, now considered by the Master in Chambers, to govern the practice. Of course on the principle we started with at the outset the rule laid down by Queen's Bench Divisional Court, in *Delap* v. *Charlebois*, may be just as good as the opposite rule laid down in all the other cases above referred to, though the reason for it may not be quite so obvious, but it is a little hard on practitioners that they should have to govern their proceedings by unreported decisions in manifest contradiction to the overwhelming weight of reported cases.

Why such a decision as *Delap* v. *Charlebois* was not reported, it is hard to say, possibly the learned reporter may have come to the conclusion that the case was so entirely contrary to the decisions of Judges of greater authority that it was best, in the interests of sound law, to consign it to the limbo of forgetfulness, but unfortunately those who happen by chance to have heard of the case are able to resuscitate it at will, to the discomfiture of their adversaries. But if *Delap* v *Charlebois*, could be considered definitely to overrule the decisions above referred to, and settle the practice, the matter would not be so bad; but though in time, the practice, as said to have been settled in that case, may come to be known and acquiesced in, still some litigious individual may at any time think proper to carry the question to another Divisional Court, when the respondent would probably be told by the Bench that *Delap* v. *Charlebois*, is of no authority, there must be some mistake about it, the cases above referred to could never have been cited to the Court, and if the Court really had intended to decide contrary to those decisions it would at least have delivered a considered judgment, that there must have been something peculiar about the case, and finally in deference to the opinion of the Privy

Council, expressed in *Trimble* v. *Hill*, 5 App. Cas., they would consider themselves bound to follow the decisions of the House of Lords and the English Court of Appeal, and would therefor allow the appeal with costs. Such is the practice of the law.

THE HUSBAND'S INTEREST IN THE ESTATE OF HIS INTESTATE WIFE.

Prior to the Statute of Distributions it was well settled that a husband might, in the character of administrator (and as to certain classes of property even without administration), possess himself of his intestate wife's whole personal property, including chattels real. Doubts arose as to whether the statute did not deprive him of this right. It was therefore enacted by sec. 24 of 29 Car. II., c. 3, that the Statute of Distributions should not be construed "to extend to the estates of femes covert that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same as they might have done before the making of the said Act." (See *Lamb* v. *Cleveland*, 19 S.C.R. 78, 83.) At the same time the husband was entitled to tenancy by the curtesy, that is a life estate in lands held by his wife in fee-simple or fee-tail. The four requisites of this estate were marriage, seizin of the wife, issue born alive and capable of inheriting, and the death of the wife: Leith & Sm. Bl. 136.

The above is a brief statement of the husband's interest in the estate of his intestate wife as the law stood in Ontario in 1859. Sec. 18 of 22 Vict., c. 34, which went into force on May 4th of that year, enacted: "The separate personal property of a married woman dying intestate shall be distributed in the same proportions between her husband and children as the personal property of a husband dying intestate is or shall be distributed between his wife and children; and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass or be distributed as if this Act had not been passed."

The words after the semicolon appear to be surplusage. In any event their effect is no greater than if it had been said, "This section is not to apply if there be no child or children living at the death of the wife so dying intestate." The section did not, of

course, affect the husband's right to tenancy by the curtesy; it applied only to such personalty as had been the wife's "separate personal property"; and it had no application at all unless some one or more of the wife's children survived her. The section was retained in the consolidations of 1859 and 1877, and, without any material change, it became sec. 20 of the Married Women's Property Act, 1884. This is the stage which legislation had reached when the Devolution of Estates Act was passed. The common law right of the husband to tenancy by the curtesy, and to the whole personal estate of the intestate wife, was affected only by this section, with the limited application pointed out. The state of the law at this time is important, and will be referred to a little later.

Sec. 5 of the Devolution of Estates Act, which went into force July 1st, 1886, was as follows: "The real and personal property of a married woman in respect of which she has died intestate, shall be distributed as follows: one-third to her husband if she leave issue, and one-half if she leave none; and subject thereto, shall go and devolve as if her husband had pre-deceased her."

The Act of 1859 had instituted a partial but very limited analogy between the distribution of the property of intestate wives and that of intestate husbands. Here we have (subject to the provisions of sub-sec. (3) of sec. 4, to be noted shortly) the completion of that analogy. Sec. 5 has its application whether issue is left or not, and standing by itself it is, as to personal property, the complete counterpart of secs. 5 and 6 of the first Statute of Distributions (22 & 23 Car. II., c. 10), sec 5 of which gives the wife one-third of the personal property of her intestate husband if he left issue, while sec. 6 gives her one-half if he left no issue. The next of kin also, who would in the latter case take the other moiety, would be ascertained in the same manner as in the case of an intestate husband. The subject-matter of sec. 5 of the Devolution of Estates Act is broader than and includes that of sec. 20 of the Act of 1884, but in the manner of its application it is in part almost identical with the earlier section and in part it applies to conditions which sec. 20 is carefully guarded from touching. I have said the later section is in part *almost* identical with the earlier, for it is to be noted that under the earlier section the husband's interest is limited to one-third only when the intestate wife is survived by a child or children: the later section makes the

limitation if the wife leaves "issue," a word which includes the representatives of children.

It remains to consider the effect of sub-sec. (3) of sec. 4 of the Devolution of Estates Act, which provides that "Any husband who, if this Act had not passed, would be entitled to an interest as tenant by the curtesy in any real estate of his wife, may by deed or instrument in writing executed within six calendar months after his wife's death, and attested by at least one witness, elect to take such interest in the real and personal property of his deceased wife as he would have taken if this Act had not passed, in which case the husband's interest *therein* shall be ascertained in all respects as if this Act had not passed, and he shall be entitled to no further interest under this Act." It is plain that when the husband can qualify as tenant by the curtesy, and exercises the option given him by this sub-section, the Act of 1886 is ousted and the interest of the husband in his wife's real and personal property will have to be ascertained as if the Devolution of Estates Act were wiped out of the statute book.

It is difficult to see the importance of the last twelve words of the sub-section, for there is not a word in the Act to increase the interest of a husband who prefers tenancy by the curtesy to a distributive share in the real estate. As to personal property the Devolution of Estates Act is entirely in prejudice of the husband, and cuts down his interest very materially. But if the intestate left any real estate in which the husband could before have claimed tenancy by the curtesy, it would appear that he can now, by exercising the option, entirely rid himself of the additional restrictions which by sec. 5 are put upon his share in the personal property. The sub-section says his interest in the "real and personal property" of his deceased wife is then to be ascertained in all respects as if the Devolution of Estates Act had not passed, and prior to that Act, as has been shown, his interest in the personal property was his common law right to enjoy the whole, limited as to separate property by sec. 20 of the Act of 1884, formerly sec. 18 of the Act of 1859, above quoted.

It will be convenient here to summarize the results reached, after which I shall give my reasons for thinking that legislation subsequent to 1886 has made no change in the law, and also try to justify some conclusions which perhaps have been assumed without giving sufficient reason :

1. Unless tenancy by the curtesy is taken, the husband takes, since July 1st, 1886, one-third of the whole estate, real and personal, separate or otherwise, if the wife leaves a child or children or the representatives of any such; and one-half of such real and personal property if no child or other descendant survives the wife.

2 If any part of the estate is real property in respect of which the husband can and does elect to take as tenant by the curtesy, then, in addition to that estate in all land of the wife subject to that estate, the husband becomes entitled to:

(*a*) All the personalty not the wife's separate personal property; also

(*b*) All her separate personal property if no child survived her; or

(*c*) In case the intestate wife was survived by any child or children, then one-third of her separate personal property.

Sec. 5 of the Devolution of Estates Act must, I think, be taken to have superseded, if it did not repeal, sec. 20 of the Married Women's Property Act, 1884. Although such a suggestion has been made, I cannot see on what principle "separate personal property" should not be thought to be included in the words "real and personal property." A married woman's separate property is surely the first class of property which would occur to one's mind as being included. It would have been less surprising if it had been argued that the words "the real and personal property of a married woman" in sec. 5 include nothing else but separate property, the other estate of a married woman not being in so full a sense her own property. It is to be observed that if sec. 5 did not include the separate personal property of married women, so that sec. 20 of the Act of 1884 still governed the distribution of that portion of the estate of intestate married women, the anomalous result would follow that the husband, as opposed to the issue and next of kin, would be more favoured in respect of separate property than of other personal estate.

I cannot think that such a suggestion would ever have been made, had it not so happened that sec. 20 was retained in the consolidation of 1887 as sec. 23 of chapter 132. The section may not have been retained as the result of an oversight, but for convenience of reference, for it still remained important, in view of the provisions of sub-sec. (3) of sec. 4; and it has been well said by a correspondent in this journal for October, 1893 (vol. 29,

p. 568) that under 50 Vict., c. 2, s. 9, wherever the provisions of the Revised Statutes are substituted for and are the same in effect as those of the Acts repealed, they shall be held to operate retrospectively as well as prospectively and *to have been passed upon the days upon which the repealed Acts came into effect.* This rids us entirely of any obligation to harmonize the two sections, for the Devolution of Estates Act, coming into effect later, would repeal the earlier section so far as there was any want of harmony, and the continued existence of the earlier section in the Revised Statutes concurrently with the later could make no difference in the fact of that repeal.

There would indeed seem to be no want of harmony at all, but a mere repetition and an addition, if it were not that in the earlier section the husband's interest is cut down only in favour of "children" while the later section cuts down his interest in favour of "issue." The word "children" cannot be extended to include grandchildren or other descendants of children (*Maund* v. *Mason* (1874) L.R. 9 Q.B. 254; Am. & Eng. Encycl. of Law, 2nd ed., vol. 5, 1083, 1085.) It will be seen that the concluding words of the section from the Married Women's Property Act as consolidated in 1887, "and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass and be distributed as if this Act had not passed," give us no reason for thinking that the words ought to have any but their ordinary signification. On the other hand, "the word 'issue' includes all remote descendants of the person whose issue is spoken of": per Romilly, M.R., in *Ross* v. *Ross*, 20 Beav. 649; Am. & Eng. Encycl. of Law, 1st ed. vol. 11, 870.

In 1897, by 60 Vict. c. 14, s. 33, sec. 23 of the Married Women's Property Act as consolidated in 1887 (originally sec. 18 of 22 Vict. c. 34 quoted above) was repealed, and by sec. 32 of the same Act a new section was substituted for sec. 5 of the Devolution of Estates Act. This new section in terms applies to "real and personal property whether separate or otherwise." There are also slight changes in the literary form of the section. Sec. 8 of chap 2 of the statutes of the same session (which went into force April 13th, 1897) enacted that "the repeal of any Act or part of an Act shall not be deemed to be or to involve a declaration that such Act, or the part thereof so repealed, was, or was considered by the Legislature to have been, previously in force." Sec. 9 reads, "The

amendment of any Act shall not be deemed to be or to involve a declaration that the law under such Act was, or was considered by the Legislature to have been, different from the law as it has become under such Act as so amended." And sec. 10, "The repeal or amendment of any Act shall not be deemed to be or to involve any declaration whatsoever as to the previous state of the law." Applying these sections to the amendment and repeal just noted it will be seen that the mere fact of the amendment and repeal furnishes no reason for thinking that the law was different before April 13th, 1897 from the law as it became on and after that date. I have already given my reasons for thinking that the law before was the same as it evidently is since the changes named.

Some curious results would seem to flow from the operation of sub-sec. (3) of sec. 4. Should an intestate married woman leave cash amounting to $30,000 and real property held in fee valued at $300, both her separate property, her children having died before her and grandchildren only remaining, then under sec. 5 the husband would retain only one-third of each class of property, value $10,100. By taking tenancy by the curtesy under sub-sec. (3) his interest in the whole property, real and personal, would have to be ascertained as if the Devolution of Estates Act had never passed, there would be nothing to limit his common law right to the whole personal property, for by supposition the wife left no child living at her death so as to bring the earlier statute into operation, and the existence of the $300 real estate enables the husband to become entitled to the whole $30,000 of personal property; the grandchildren would be remaindermen for the real estate after the life interest of the husband. A similar result would be reached even were children left surviving the wife, provided the personal estate had not been separate property. And again a like result if there were no issue of the wife surviving but only collateral relatives, and that whether the personal property were separate estate of the wife or not.

It is to be observed that estates tail are not subject to the Devolution of Estates Act, but only "Estates of inheritance in fee simple or limited to the heir as special occupant."

J. N. FISH.

Orangeville, Ont.

WIFE'S AUTHORITY TO CONTRACT FOR HUSBAND.

ANBY V. SCOTT.

(2 Smith's L.C. 433.)

Now love in a cot is a very good thing,
And love in a palace is better ;
For Cupid's rare crown makes any man King,
While Kings are made men by his fetter.
But the drama of life
With love in the plot,
And no blemish of strife,
Was not
The sweet lot
Of two people named Scott.

With madame's caprices by him ill-endured,
Their lack of *rapprochement* was crying ;
Faith, it seemed that their fortunes could only be cured
By one of them skipping or dying.
So a chivalrous friend
Was convinced that he ought
(Such evil to mend !)
To trot
With Dame Scott
To some halcyon spot.

They went ; and Sir Edward for twelve happy years
Lived a life both sedate and serene.
Then, vice having reaped less joyance than tears,
Dame Scott reappears on the scene.
But Sir Edward he proved
An obdurate Scott ;
Though once he had loved
He'd not,
By a jot,
E'er efface his wife's blot.

Woe's me ! but Dame Scott must have clothes to her back,
And Manby's rare silks suit her well ;
" Won't dear Mr. Manby supply her sore lack,
And send rude Sir Edward the bill ? "
Now that very morning
Mr. Manby had got
Formal warning
From Scott
That he'd not
Pay for any such shot.

But the goods were supplied ; and a suit next we see,
Testing rights of a wife in such cases.
Per Cur : "The defendant is surely Scot't)-free,
"For where is the agency basis ?
"The wife can't have credit
"Where husband says not—
"And he's said it !
"So Scott,
"Bid ye wot,
"Takes no scath from this plot."

—CHARLES MORSE.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

PRACTICE—NEW TRIAL—VERDICT.

Kerry v. *England* (1898) A.C. 742, was an appeal from the order of the Queen's Bench for Quebec, or Lower Canada, as it is still styled, granting a new trial. The action was brought by the plaintiff personally, and also as tutor for his minor son, to recover damages for the defendant having negligently caused or accelerated the death of the plaintiff's wife. The jury found that the death of the wife had been accelerated, but not to any appreciable extent, by her taking a dose of tartar emetic negligently supplied by the defendant, and also that the plaintiff had incurred no damage thereby, but that his minor child had incurred damage to the extent of $1,000. The Court below granted a new trial on the assumption that the findings were illogical and contradictory ; but the Judicial Committee of the Privy Council (Lords Herschell, Watson, Hobhouse, Davey and Sir H. Strong) held that this order was erroneous, and that on the findings the action must be dismissed, on the ground that the damages attributable to the defendants were on these findings inappreciable and irrecoverable. Their Lordships disagreed with the Court below as to the finding in favour of the son. They were of opinion that it merely amounted to a finding that he had sustained damage to the extent of $1,000 by the death of his mother, but not that the

damages were attributable to the defendant's act, which, according to the first part of the finding, was inappreciable as regards the hastening of the death of his mother.

TRUSTEE—STATUTORY POWERS OF INVESTMENT.

Perpetual Executors v. *Swan* (1898) A.C. 763, is a case which serves to show the strictness with which a trustee's powers of investment are limited. By the Victoria Companies Act, 1890, s. 384, trustee companies are empowered to employ bankers, and the question was whether that amounted to a power to invest trust moneys on deposit at interest with banks. The Judicial Committee of the Privy Council (Lords Macnaghten, Morris and James, and Sir H. Strong) agreed with the Colonial Court in holding that it did not authorize such investments.

MASTER AND SERVANT—SERVANT OF ONE PERSON HIRED BY ANOTHER TO DRIVE HIS CARRIAGE—NEGLIGENCE.

Jones v. *Scullard* (1898) 2 Q.B. 565, may be regarded as a case qualifying the rule laid down in the well-known cases of *Quarman* v. *Burnett*, 6 M. & W. 499, and *Laugher* v. *Pointer*, 5 B. & C. 547. In this case the defendant kept his own carriage and horse at a livery stable, and the keeper of the stable from time to time, as required, supplied the defendant with a servant to drive the carriage, who wore a livery supplied by the defendant; and through the negligence of this servant the horse dashed through the window of the plaintiff's shop and did damage, for which cause the action was brought. Lord Russell, C.J., who tried the case, gave judgment for the plaintiff, distinguishing the case from *Quarman* v. *Burnett*, on the ground that here the defendant was the owner of both the horse and carriage, and the servant became the defendant's servant *pro tem*, whereas in *Quarman* v. *Burnett* the whole equipage as well as the servant was hired, and the servant never became the servant of the person driven.

EMPLOYERS' LIABILITY ACT (43 AND 44 VICT., C. 42, S. 8—"WORKMAN"—PERSON EMPLOYED IN COAL MINE BY CONTRACTOR—LIABILITY OF MINE OWNER—WORKMEN'S COMPENSATION FOR INJURIES ACT (R.S.O., C. 160), S. 2 (3).

In *Marrow* v. *Flimby & B. M. Co.* (1898) 2 Q.B. 588, the plaintiff's action was brought under The Employers' Liability Act (43 & 44 Vict., c. 42) from which The Workmen's Compensation for Injuries Act (R.S.O., c. 160) is mainly derived, and the sole question discussed was whether the deceased, in respect of whose

death the action was brought, was in the employment of the defendant company. The definition of "workman" in the English Act is similar in its terms to that contained in the Ontario Act, s. 2 (3), under which it is necessary that the workman should be one who "has entered into, or works under, a contract with an employer." In the present case one Evans had "entered into a contract with the defendants who were mine owners to sink a shaft in the coal mine. By the contract Evans was to provide such men, called "sinkers," etc., as might be necessary for the work, and was to be paid a certain sum per fathom sunk. Evans accordingly employed the sinkers, of whom the deceased was one, Evans himself acting as "chargeman" in charge of the sinking operations. While engaged in the operation the deceased was killed by a block of wood falling on him, and the action was brought by his administratrix against the mine owners. Wills & Kennedy, JJ., held on an appeal from a County Court that there was no evidence that the deceased was a workman in the employment of the defendants, and therefore that the action would not lie under the Employers' Liability Act; and this opinion was sustained by the Court of Appeal (Smith, Rigby and Williams, L.JJ.).

WATER-COURSE—OBLIGATION OF OWNER OF WATER-COURSE TO REPAIR—EASEMENT—GRANT OF RIGHT TO TAKE WATER—DAMAGE BY FLOOD.

Buckley v. *Buckley* (1898) 2 Q.B. 608. This was an action to recover damages caused by the defendants' omission to repair the sluice gate of a private waterway, whereby the plaintiffs' premises were flooded. The waterway in question had been constructed by the defendants' predecessors in title, and passed through lands subsequently granted to the plaintiffs' predecessor in title to a mill of the defendants. The defendants' predecessors in title had granted to the plaintiffs the right to take water from the water-course in question; and the defendants sought to escape liability, first on the ground that the plaintiffs, by reason of the grant to use the water, had acquired an implied power themselves to repair the sluice gate in question, and that the damages were attributable to the plaintiffs' own neglect, and, second, that the plaintiffs' was the dominant tenement; and under *Pomfret* v. *Ricroft*, 1 Wm. Saund. 321, the plaintiffs were bound to do the necessary repairs. Bruce, J., who tried the action, gave judgment for the plaintiffs; and his judgment was affirmed by the Court of Appeal

(Smith, Rigby and Williams, L.JJ.), who determined that the grant of the right to use the water did not relieve the defendants from the previous obligation they were under to keep the waterway and sluice gate in proper repair, and that the doctrine of *Pomfret* v. *Ricroft*, that the owner of a servient tenement is under no obligation to the owner of the dominant tenement to execute repairs for his enjoyment of the easement, did not apply, so as to relieve the defendants from the liability as owners of the waterway from preventing it from falling into repair so as to occasion damage to the plaintiffs or any other persons.

CRIMINAL LAW—FUGITIVE OFFENDERS ACT, 1881, (44 & 45 VICT., C. 69)—POWER TO ADMIT TO BAIL.

In *The Queen* v. *Spilsbury* (1898) 2 Q.B. 615, a Divisional Court (Lord Russell, C.J., and Wright and Kennedy, JJ.) held that where a fugitive offender has been committed by a magistrate to prison under The Fugitive Offenders Act (44 & 45 Vict., c. 69), for having committed a crime to which Part I. of the Act applies, to await his return to the place where the offence was committed, the Queen's Bench has a discretion to admit the accused to bail until the time for his return. In this case they, however, considered the discretion to admit to bail ought not to be exercised, the offence charged being a riotous assault committed on a ship of a foreign sovereign.

INSURANCE—LOSS BY COLLISION—DETENTION DURING REPAIRS—DAMAGE—REMOTENESS.

Shelbourne v. *Law Investment Company* (1898) 2 Q.B. 626, is a case brought on a policy of insurance on a vessel against loss or damage which the insured should sustain, or become liable to others for, by reason of the collision of the vessel with any other vessel. The barge insured was injured by a collision, and the plaintiff, in addition to the cost of repairs, claimed also to recover damages for loss in consequence of the detention of the barge while undergoing repairs; but Kennedy, J., held that the claim for detention was not within the policy, the damages being too remote.

CRIMINAL LAW—COUNSELLING AN OFFENCE—EVIDENCE—(CRIM. CODE, S. 62).

In *Benford* v. *Sims* (1898) 2 Q.B. 641, it was held by Ridley and Channell, JJ., that where a person is accused under the Summary Jurisdiction Acts of unlawfully cruelly ill-treating a horse by causing it to be worked while in an unfit state, he may

be properly convicted, although the offence actually proved was that he had knowingly counselled the owner of the horse to cause the cruelty to be committed: see Crim. Code, s. 62, which would seem to warrant the like conclusion.

NEGOTIABLE INSTRUMENT—DEBENTURE PAYABLE TO BEARER—MERCANTILE USAGE.

Bechuanaland Co. v. *London Trading Bank* (1898) 2 Q.B. 658, was an action brought by the plaintiffs' company to recover the value of certain debentures which had been fraudulently pledged by the plaintiffs' secretary with the defendants. The debentures in question had been issued by a limited company, and were payable to bearer; but, by reason of conditions indorsed thereon, they were not promissory notes. They were kept in a safe, the key of which was entrusted to the secretary. The defendants received the debentures from the secretary in good faith, and it was proved in evidence that by the usage of the mercantile world, and on the Stock Exchange for many years, such debentures had been treated as negotiable instruments. The action was tried in the Commercial Court before Kennedy, J., who held that, although the plaintiff company was not estopped by its conduct in not registering the debentures from disputing the defendants' title, yet the defendants were entitled to the debentures as against the plaintiffs, on the ground that they were negotiable instruments transferable by delivery. In arriving at this conclusion the learned judge had to consider the case of *Crouch* v. *Credit Foncier*, L.R. 8 Q.B. 374, in which it was laid down by the Queen's Bench Division, that it is not possible by mere usage to impart the quality of negotiability to any instrument which by the general law is not recognized as such; but this case he considered had been in effect overruled by the later case of *Goodwin* v. *Robarts*, L.R. 10 Ex. 76, 337; 1 App. Cas. 476, in which it was held that instruments not originally negotiable according to the general law, might, by mercantile usage, though of comparatively recent date, acquire the character of negotiable instruments.

WILL—CONSTRUCTION—ADVANCEMENT CLAUSE—EXPECTANT OR PRESUMPTIVE SHARE—IMPOSSIBILITY OF ISSUE—WOMAN PAST CHILD-BEARING.

In re Hocking, Michell v. *Loe* (1898) 2 Ch, 567 is a case arising on the construction of a will. The testator had at the time of his will, two sisters, Amelia and Emma, of whom Emma was married and had children, and Amelia was unmarried. The testator directed

that in case Amelia should marry and have children, his estate should be divided between the children of the two sisters on the youngest child coming of age; but he made no disposition in the event of Amelia marrying and leaving no children. The testator, however, gave power to his trustees to make advancements out of the expectant, presumptive, or vested share of any child of his sister Emma. After the testator's death, Amelia married, but her husband had died, and she was now a widow fifty-four years of age, and the question raised was whether, in these circumstances, the trustees were in a position to exercise the power of advancement in favour of a child of Emma. Kekewich, J., came to the conclusion that the power was spent as soon as it was shown that Amelia was past child-bearing; but the Court of Appeal (Lindley, M. R. and Chitty and Collins, L.JJ.), dissented from this view, and held that the power was exercisable so long as Amelia lived, and that although the law, in favour of a living person, would act upon evidence that a woman owing to her age could have no child, yet it would not upon that ground deprive a living person of any benefit he was entitled to, and although they agreed that on the death of Amelia without having had a child, the testator's estate would be distributable as upon an intestacy, they, nevertheless, held that as long as Amelia lived the children of Emma had a presumptive share in the estate, and were entitled to the benefit of the advancement clause.

EJECTMENT—RECEIVER—DISCRETION—LEGAL TITLE JUD. ACT, 1873, S. 25, SUB-S. 8.—(ONT. JUD. ACT, S. 58 (9).)

In *John* v. *John* (1898) 2 Ch. 573, which was an action of ejectment, an application was made for the appointment of a receiver. The plaintiff claimed to recover under a legal title, and in support of the application it was shown that the defendant was a person of small means with a shadowy title, whereas the plaintiff's was, in the opinion of the Court, satisfactorily made out, subject to a point on the construction of a will, which the Court considered very unlikely to be decided against him. North, J., granted the application, and his order was sustained by the Court of Appeal (Lindley, M. R. and Chitty, and Collins, L.JJ.) In exercising the discretion the Court of Appeal considered that the rights of tenants ought to be considered, who if the defendant failed might be called on to pay their rents twice over, a fact which the Court thought had been overlooked in *Foxwell* v. *Van Grutten* (1897) 1 Ch. 64.

DEBTOR AND CREDITOR—ASSIGNMENT OF DEBT FOR WHICH DEBTOR HAS GIVEN A NEGOTIABLE INSTRUMENT—NOTICE OF ASSIGNMENT OF DEBT.

In *Bence* v. *Shearman* (1898) 2 Ch. 582, an appeal was had from Kekewich, J., on a simple question relating to the equitable assignment of a debt, in respect of which the debtor had previously given his creditor a negotiable instrument, viz., a cheque. Notice of the assignment was given to the debtor, while the creditor was still the holder of the cheque; under these circumstances Kekewich, J., held that there had been an effectual assignment of the debt, and that the debtor was bound by the notice, and the cheque given for the debt to the creditor having been subsequently paid the debtor was liable over again for the debt to the assignee. The Court of Appeal (Lindley, M. R. and Chitty and Collins, L.JJ.), were unable to agree with that view, holding that a debtor after giving his creditor a negotiable instrument for his debt, is not bound by any notice of an assignment subsequently received by him, even though the negotiable instrument is still in the hands of his creditor, and that in case the instrument he has given is a cheque, there is no duty on his part to stop payment thereof. In this case the debtor, at the suggestion of the assignee, did for a time stop payment of the cheque, and if the assignee had promptly taken the necessary steps to enforce his claim as against the assignor he might probably have succeeded, but he neglected his opportunity, and the direction to stop the cheque was recalled, and the cheque was paid, and the assignee lost his money.

TRUSTEE—EXECUTOR—BREACH OF TRUST—OUTSTANDING ESTATE, NEGLECT TO GET IN—DEBT SECURED BY NOTE—LIABILITY OF TRUSTEE.

In re Grindey, Clews v. *Grindey* (1898) 2 Ch. 593 we refer to, merely to draw attention to the need for enacting in Ontario the English Judicial Trustees Act, 1896 (59 & 60 Vict., c. 35). In this case a testator had given his real and personal property to trustees upon trust to maintain the same in the same order of investment as at his death, until one of his sons should attain 21. Part of the estate consisted of a debt of £166 due upon a promissory note payable on demand, the executors believing the debtor to be a man of substance, neither called in the debt, nor applied to the Court for directions. The testator died in 1892 and in 1894 the debtor died and his estate was found to be insolvent, and only paid a dividend of 2/6 on the pound. The action was brought to compel the executors and trustees to make good the loss thus sus-

tained. The Court (Kekewich, J.), came to the conclusion that having regard to the terms of the will the executors might reasonably have thought they were not bound to call in the debt, nor apply to the Court for directions, and having acted "honestly and reasonably" they were relieved from liability for the breach of trust under the Judicial Trustees Act, s. 3. The Court of Appeal (Lindley, M. R. and Chitty and Collins, L.JJ.), affirmed this decision. Under like circumstances in Ontario, in the absence of any similar legislative protection to the trustees, they would have had to make good the loss.

HIGHWAY—EXERCISE OF STATUTORY POWERS—LOWERING SURFACE OF STREET—DUTY OF HIGHWAY AUTHORITY AS TO PIPES RUNNING UNDER HIGHWAYS.

In *Southwork and V. W. Co.* v. *Wandsworth* (1898) 2 Ch. 603, the plaintiff, a water company, brought the action to compel the defendants, who in the exercise of certain statutory powers proposed to lower the surface of a street under which the plaintiffs' pipes were, to proportionately lower the plaintiffs' pipes, so as to protect them from frost. Under the statute under which the defendants were acting they were empowered to lower the pipes if necessary, but they contended that the surface of the street could be lowered without disturbing the pipes, though the effect would be to leave only a few inches of earth over them. Kekewich, J., held that the defendants were bound to lower the pipes as the plaintiffs claimed, but the Court of Appeal (Lindley, M. R. and Chitty and Collins, L.JJ.), reversed his decision, holding that as the defendants had done and proposed to do no injury to the plaintiffs' pipes by their operations on the surface, they were under no obligation to lower them, as the plaintiffs had no right to any particular thickness of soil over their pipes. The Court of Appeal considered that the plaintiffs' privilege of laying their pipes under the highway was subject to the risk of having the surface made higher or lower by the road authorities under their statutory powers.

STATUTORY POWERS—GAS COMPANY—NUISANCE.

In *Jordeson* v. *Sutton S. & D. Gas Co.* (1898) 2 Ch. 614, the plaintiff complained that the defendants in erecting buildings, under statutory powers enabling them to erect gas works, had caused a subsidence of the plaintiff's land and injured his buildings thereon, for which he claimed damages, and that the proposed buildings would obstruct his lights, to restrain which he claimed an injunction.

The defendants sought to escape liability on the ground that the the statute authorized them to build as they were doing, but North, J., was of opinion that the statute did not authorize them to build so as to create a nuisance to adjoining proprietors, and he gave judgment for the plaintiff for the damages occasioned by the subsidence, and enjoined the defendants also from interfering with the plaintiff's lights.

ARBITRATION—TIME FOR MAKING AWARD—UMPIRE—JURISDICTION—ARBITRATORS "CALLED ON TO ACT"—ARBITRATION ACT (52 & 53 VICT., C. 49)—R.S.O. c. 62, SCH. A (*c*)).

In *Baring-Gould* v. *Sharpington* (1898) 2 Ch. 633, the construction of one of the implied provisions in submissions to arbitration under the Arbitration Act, 1889, is discussed. By this clause it is provided, that "The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, * * *". (See the same provision in R.S.O. c. 62, sch. A, clause (*c*).)

The proceedings were instituted to enforce an award made by an umpire, and the question was raised whether the time for the arbitrators to make an award under the above clause had elapsed. One of the parties to the submission on 11th January, 1898, gave notice to the arbitrators to appoint an umpire. On 15th February following the arbitrators appointed an umpire, who made his award on the 30th April following. The plaintiff contended that the arbitrators were "called on to act" when they were required to appoint an umpire, and that the three months ran from 11th January, 1898, and that the arbitrators, having neglected to make an award within that time, the umpire had consequently jurisdiction to make the award. North, J., however, was of opinion that the time for the arbitrators to make an award had not elapsed, and that consequently the jurisdiction of the umpire to make an award had not arisen. The words, "called on to act" he considered meant called on to enter on the substantial business of the reference, and not merely to do some subsidiary act, such as to appoint an umpire. The motion to enforce the award consequently failed.

REPORTS AND NOTES OF CASES

Province of Ontario.

COURT OF APPEAL.

From Divisional Court.] SMITH *v.* BOYD. [Jan. 24.

Amendment—Pleadings—Trial—Partnership—Conspiracy—Account—Parties.

In an action for damages for a conspiracy in pursuance of which the defendants, as alleged, fraudulently withdrew moneys from the assets of a firm of which the plaintiff was a member:

Held, reversing the decision of a Divisional Court, (ante vol. 34, 165; 18 P.R. 76), that leave to amend by adding the assignee of the firm for the benefit of creditors as a party and by claiming an account of the moneys withdrawn by the defendants, was properly refused at the trial.

Delamere, Q.C., for the appellant. *DuVernet* and *H. L. Dunn*, for the respondent.

HIGH COURT OF JUSTICE.

Divisional Court.] RE SOULE. [Nov. 15, 1898.

Will—Survivorship—Children attaining 21 years—Death or marriage of widow—Shares vesting.

The testator by his will gave his residuary estate to his executors upon trust to make provision for the support and maintenance of his family and for their education until his youngest surviving child should attain twenty-one years of age, when it was to be divided by the executors, by their setting apart one-third thereof for his widow, during her widowship or until she remarried, and the remaining two-thirds to his surviving children in portions of four parts to the sons and three parts to the daughters; and after the death or re-marriage of his widow, the said one-third should be divided between his surviving children in the proportions aforesaid. The widow survived the testator, but died before the youngest child attained the said age of twenty-one years.

Held, that the words of survivorship referred to the period of distribution, namely, the youngest child attaining twenty-one years of age, and, therefore, only the children then living were entitled to share in the residue, and this applied as well to the shares to be taken by the children as to the share set apart for the widow.

A. G. F. Lawrence, for the executors. *G. G. S. Lindsey*, for the two adult children. *G. F. Heyd*, for the other adult children. *A. J. Boyd*, for the infant children.

Street, J.] [Dec. 3, 1898.

RE TOWN OF CORNWALL AND THE CORNWALL WATERWORKS CO.

Arbitration and award — Payment of amount of award into Court — Waterworks Company—Mortgagees—Bondholders.

Secs. 445 and 446 of the Municipal Act, R.S.O. (1897), c. 223, which authorizes the payment of money awarded, with interest and costs into Court, apply to awards made under the Gas and Waterworks Company's Act, R.S.O. (1897), c. 199; and where the amount so paid in was less than the amount properly payable in, the town corporation, who had paid the money in, were allowed to amend their order for payment in and to pay in the proper amount, but such payment was only to date from the obtaining of the amended order. There is no objection to such payment in that a controversy exists between the parties to the arbitration as to their respective rights thereunder; but mortgagees and bondholders, who had not been made parties to the arbitration, were not to be affected thereby.

The fact of the vice-president of a loan company, who were mortgagees in trust for the bondholders, writing a letter enclosing a draft to the waterworks company to enable the loan company to obtain the amount of the award and interest which had been paid into a bank by the town corporation to the joint credit of the Waterworks Company and the mortgagees, but the writing of which letter was never authorized by the bondholders, and was outside the powers conferred by the mortgage, and which was repudiated by the bondholders, was held not to constitute a waiver of the rights of the bondholders and mortgagees.

Bruce, Q.C., for mortgagees and bondholders. *Aylesworth*, Q.C., for the Waterworks Company. *Armour*, Q.C. for the town corporation.

Ferguson, J.] [Dec. 14, 1898.

TEW *v.* TORONTO LOAN AND SAVINGS COMPANY.

Landlord and tenant—Assignment for the benefit of creditors—Future rent —Preferential lien—Accelerating clause—R.S.O., 1897 C. 170, S. 34.

A lease under which the rent was payable quarterly in advance contained a provision that if the lessees should make an assignment for the benefit of creditors, the then current and next ensuing quarters' rent and the current year's taxes etc., should immediately become due and payable as rent in arrear, and recoverable as such.

Held, on the lessee making such an assignment, that the lessor was entitled to recover--in addition to a quarter's rent due and in arrear for the quarter proceeding the making of the assignment—the current quarter's rent, being the quarter during which the assignment was made, which was also due and in arrear, as well as a further quarter's rent, together with the taxes for the current year. *Langley* v. *Meir* (1898) 34 C.L.J. 467 ; *Lazier* v. *Henderson*, (1898) 29 O.R. 673, 34 C.L.J. 698 commented on.

C. D. Scott, for defendants, *D. W. Drumbell* for plaintiffs.

Armour, C.J.] HASLEM *v.* SCHNARR. [Dec. 28, 1898.

Liquor License Act—License—Granting of, by commissioners—Rescinding resolution—Discretion—Exercise of—Jurisdiction of Court—Mandamus—Notice of action.

An action for a mandamus to compel license inspectors and license commissioners to perform their respective duties and for damages as subsidiary relief is not within the terms of R.S.O. c. 88, and no notice of action is necessary.

In an action to enforce the issue of a license which by resolution of the commissioners has been granted to the plaintiff, but which resolution was afterwards rescinded in order to grant a license to a subsequent applicant when his hotel should be built and which was then granted to him.

Held, that the license commissioners appointed under the Liquor License Act have in the exercise of their functions a wide discretion, but it must be exercised judicially, and the Court has power to compel them to so exercise it, and that the commissioners were not acting judicially but unfairly and contrary to the spirit and interest of the Liquor License Act in rescinding their resolution granting the plaintiff a license in order to grant it to a subsequent applicant, but as the license had been issued to the subsequent applicant and the ordering of the issue of a license to the plaintiff would be ordering the issue of a license in excess of the number limited by law, no relief could be granted and the action was dismissed but without costs. See *Leeson* v. *The Board of License Commissioners of the County of Dufferin* (1890) 19 O.R. 67.

W. N. Ferguson, for the motion. *N. W. Rowell*, contra

Meredith, C.J., Rose, J. and MacMahon, J.] [Jan.

DORSEY *v.* DORSEY.

Husband and wife—Separate estate—Rights of husband renounced—Ante-nuptial agreement—Construction of—Reformation of.

Appeal from the judgment of Boyd, C., noted ante vol. 34, p. 419, dismissed with costs, Meredith, C.J. expressing the opinion that if the writing was not sufficient in form it should on the uncontradicted evidence be reformed so as to effectuate the intention of the parties.

W. H. Irving, for the appeal, *C. A. Ghent* contra.

Meredith, C.J., Rose, J., MacMahon, J.] [Jan. 7.

RE MCLATCHIE.

Executors and trustees—Forgery by co-trustee—Liability for.

L., an executor trustee, relying upon M., his co-executor trustee, a solicitor, to obtain investments of estate moneys, having had it reported by M. that he had made a loan on satisfactory security to C. R., joined him in signing a check on the estate bank account payable to the order of C.R. M. forged C. R.'s endorsement, obtained the money and absconded.

Held, (reversing the Master in Ordinary) that in taking the accounts of the estate, L. should not be charged with the loss.

G. C. S. Lindsey for appellant. *E. Coatsworth* for plaintiff and defendants Hutcheson and Medlar. *J. Moss* for the Cokerams.

Rose, J., MacMahon, J.] BOYD *v.* MORTIMER. [Jan. 20.

Bills and notes—Assignee for creditors carrying on business—Personal liability of—Assignee on note—Signature as agent—Bills of exchange Act, s. 26.

Action on four promissory notes, commencing "four months after date we promise to pay," and signed "Mortimer & Co., P. Larmouth, Assignee."

Larmouth, who was assignee for creditors of Mortimer & Co., book-binders, printers and stationers, was carrying on the business under a trust deed for the benefit of the creditors, and under his own sole management. The notes were given for goods supplied by the plaintiffs after Larmouth began so to carry on the business. Before taking the notes, the plaintiffs had refused to draw on Mortimer & Co., on the ground that Larmouth was the only person by whom a draft could be accepted. Larmouth had no authority under the trust deed to make notes or accept bills on behalf of Mortimer & Co.

Held, that under these circumstances, and in view of section 26 of the Bills of Exchange Act, Larmouth was personally liable on the notes.

George Kerr, for plaintiffs. *G. F. Henderson*, for defendants.

Armour, C. J., Falconbridge, J., Street, J.] [Jan. 25.

HAGEN *v.* CANADIAN PACIFIC R. W. CO.

County Court appeal — Divisional Court — Judgment of nonsuit — "Trial with a jury" — R.S.O. c. 55, s. 51, s.-s. (4).

Where, at the trial of an action in a County or District Court, the Judge, at the conclusion of the plaintiff's evidence, withdraws the case from the jury, and gives judgment dismissing the action, an appeal lies from such judgment to a Divisional Court of the High Court, for there has not been "a trial with a jury," within the meaning of s. 51, s.-s. (4), of the County Courts Act, R.S.O. c. 55.

Watson, Q.C., for the plaintiff. *D'Arcy Scott*, for the defendants.

Rose, J.] CREPEAU *v.* PACAUD. [Jan. 28.

Costs — Apportionment of — Several issues — Divided success.

In an action on a foreign judgment the defences were that the defendant was never served with the process of the foreign tribunal; that he never submitted to the foreign jurisdiction, to which he was not subject; and that the plaintiff's claim was barred by the Statute of limitations. The plaintiff, in reply to the last defence, set up a written acknowledgment. Judgment was given for the defendant upon the last defence. It being held that the acknowledgment was not sufficient to take the case out of the statute; but the other defences were not sustained in evidence, and the judgment pronounced was that the defendant should have the general costs of the action, and the plaintiff the costs of the issues upon which the defendant failed. The defendant moved before the trial judge to vary the disposition of costs.

J. H. Moss, for the defendant, cited *Lockhard* v. *Waugh*, ante vol. 32, 677, 17 P. R. 269, and *Jenkins* v. *Jackson* (1891) 1 Ch. 89.

F. A. Anglin, for the plaintiff, referred to *Blank* v. *Footman*, 39 Ch. D. 678; *Reinhardt* v. *Mentasti*, 42 Ch. D. 690; *Baines* v. *Warmsley*, 47 L. J. Ch. 473; *Neale* v. *Windsor*, 9 Gr. 261; Rules 1149, 1154, 1176.

ROSE, J., refused the motion.

Armour, C.J., Falconbridge, J., Street, J.] [Feb. 1.

FRANCHOT *v.* GENERAL SECURITIES CORPORATION.

Writ of summons — Service out of jurisdiction — Breach of contract within Ontario — Defective affidavit — Leave to supplement on appeal — Terms — Amendment — Costs — Undertaking.

The plaintiff, desiring to bring an action against an incorporated company having its head office outside of this Province, for breach of a contract, obtained, ex parte, from a local judge, an order for leave to issue a writ

of summons for service out of the jurisdiction. The particular breach upon which the plaintiff relied was not set out either in the affidavit upon which the order was granted, nor in the writ when issued, nor in the statement of claim which accompanied it when served on the company abroad, and, looking at the terms of the contract, which was made an exhibit to the affidavit, there were two possible breaches upon which the plaintiff might have relied, viz., the agreement of the defendants to pay a sum of money at a place in this Province, or their agreement to allot certain shares, which might have been performed outside the Province for all that was provided to the contrary.

Held, that if the former were the breach relied on, the action was properly brought in this Province; if the latter, it was not.

An order having been made by a Judge in Chambers setting aside the order of the local judge and the writ and service, the plaintiff appealed to a Divisional Court, which permitted him to file a further affidavit making out a prima facie case of a breach in this Province entitling him to sue here, and made a substantive order allowing the service, upon proper terms as to amendment and costs, and an undertaking by the plaintiff to shew at the trial a breach of the contract within Ontario, or be nonsuited.

Watson, Q.C., for plaintiff. *E. D. Armour*, Q.C., for defendants.

Armour, C.J., Falconbridge, J., Street, J.] [Feb. 2.

JOHNSTON *v.* ROGERS.

Contract—Correspondence—Quotation of prices—Acceptance.

The defendants, dealers in flour, wrote to the plaintiffs, bakers, that they wished to secure their patronage as customers, and quoting prices and terms for specified kinds of flour, adding a suggestion that the plaintiffs should "use the wire to order." The plaintiffs answered by telegram that they would take two cars "at your offer of yesterday."

The defendants did not deliver the flour, and the plaintiffs sued for damages for non-delivery.

Held, that there was no contract. *Harty* v. *Gooderham*, 31 U.C.R. 13, distinguished.

Hellmuth, for plaintiffs. *Hall* and *J. W. Payne*, for defendants.

Nova Scotia.

SUPREME COURT.

Full Court.] HALLETT *v.* ROBINSON. [Nov. 15, 1898.

Partnership in mining venture—Constituted by equal participation in profits and liability to loss—Wages—Rights of party hired by one partner to recover.

The defendants—R., a practical miner, and M., a medical practitioner—entered into an agreement with S., trustee for a mining company, to employ labour and to do certain work in connection with the development of a property owned by the company, in consideration of which R. and M. were to be entitled to three-fourths of the ore mined, and a one-tenth interest in the property itself. R. acted as superintendent of the mine and made up the pay rolls and paid wages. The accounts as between R. and M. were made up on the basis of and equal right to profits, and an equal liabitity to loss.

Held, that R. and M. were partners and that M. was jointly liable with R. to plaintiff, who was employed by R., to do certain work in connection with the mine.

Full Court.] IN RE ESTATE OF DAVID MORSE. [Dec. 3, 1898.

Probate Court decree set aside with costs as made without jurisdiction—Fund set apart and separated from assets of estate—Parties entitled to interest arising from, held not interested in estate.

By the third clause of his will, testator bequeathed to A.E.R. and C.C.M. the interest arising from certain sums of money; the principal moneys, on the death of A.E.R. and C.C.M., to be divided share and share alike among other children of testator. By a subsequent clause of the will a further sum of money was set apart, the interest arising from which was to be paid to testator's sons, J.A.M. and L.R.M., as compensation for their trouble in investing and taking care of the moneys to be invested for the purposes mentioned in the previous clause.

On the petition of A.E.R. and C.C.M. a citation was issued to the executors of D.M., requiring them to appear and settle the estate, and a decree was made by the judge of probate for the County of Annapolis against the executors and in favor of A.E.R. and C.C.M. for arrears of interest claimed to be due to them. The fund set apart for A.E.R. and C.C.M., prior to the proceedings in the Court of Probate, having been set apart and separated from the assets of the estate.

Held, setting aside the decree with costs, that the estate was not liable for any claim against or arising out of that fund; that neither of the claimaints was a creditor of or otherwise interested in the estate, and that the judge of probate had no authority to hold the enquiry or to make the decree appealed from.

J. J. Ritchie, Q.C., for appellants. *Ervin* and *Covert* for respondents.

Full Court.] THE QUEEN *v.* SMITH. [Dec. 3, 1898.

Criminal Law—Crim. Code ss. 596, 765—Power of County Court Judge to try summarily limited to cases where accused is committed to jail by magistrate.

Defendant, after preliminary enquiry before the stipendiary magistrate for the City of Halifax, was put upon her trial, but was admitted to bail, conditioned to appear at the next Court of Oyer and Terminer and General Jail Delivery, and surrender herself to the keeper of the jail and plead to such indictment as might be preferred against her by the grand jury. Before the meeting of the Supreme Criminal Court, defendant was surrendered by her surety, and while in jail was brought before the Judge of the County Court for District No. 1, and having elected to be tried by him was tried and convicted.

Held, following *The Queen* v. *Gibson*, 29 N.S.R. 4, that the Judge of the County Court had no jurisdiction to try the defendant and that the conviction must therefore be set aside.

Held, that the "committal to jail for trial" referred to in the Code, and which confers jurisdiction upon the judge of the County Court to try is a committal by the magistrate, and not a committal by order of the Judge of the County Court when the party is surrendered by his bail, the latter not being a committal for trial, but a committal for want of sureties to appear and take his trial.

Power for the prisoner. *Longley*, Q.C., Attorney-General, for the Crown.

Full Court.] MCKENZIE *v.* LEWIS. Dec. 3, 1898.

Livery stable keeper—Duty to warn customer of risks incident to road—Road over ice used as highway during winter months.

Plaintiff, a livery stable keeper, at Sydney, C.B., hired a horse and sleigh to defendant, a resident of Pictou, N.S., for the purpose of driving from Sydney to North Sydney and back. At the time at which the hiring took place the river and harbour between Sydney and North Sydney were frozen over, and were generally used by the travelling public as a highway. Plaintiff was aware that defendant intended to make use of the road over the ice and gave him directions as to the road he was to take. In returning after dark the horse and sleigh went through the ice and were lost.

Held, affirming the judgment of the County Court Judge in favour of

defendant with costs, and dismissing plaintiff's appeal with costs, that it was incumbent upon plaintiff to warn defendant of any circumstances which might render his journey dangerous, either going or returning, and that he must be taken to have contemplated the risks incident to the road, of which the accident that happened was one.

Rowlings for appellant. *W. E. Fulton* for respondent.

Province of Manitoba.

QUEEN'S BENCH.

Full Court.] REGINA *v.* PIKE. [Dec. 23, 1898.

Criminal Code, s. 89—Forcible entry—Reserved case.

Before Mr. Justice Killam the accused was tried on a charge of having unlawfully and injuriously, and with a strong hand, entered into a certain house and land then in the possession of one Catherine Phillips, in a manner likely to cause a breach of the peace. The judge found the facts as follows:—Catherine Phillips, being the tenant, and in actual peaceable occupation of a dwelling house in the City of Winnipeg, the accused opened the front door, which was unlocked, and entered the house contrary to the will of Miss Phillips, and in a manner likely to cause a breach of the peace; that the accused brought four other men with him into the house; that he and the other men then proceeded to take possession of and to remove from the house various articles of furniture and other chattels, not being fixtures, and forming no part of the realty, or of the leasehold interest of Phillips, or of any other interest in the said house or land; that at the time of such removal the accused, in good faith, believed himself to be the owner and entitled to the possession of said articles and chattels; that the accused and the men with him made the aforesaid entry solely with the intent and purpose of taking possession of and removing from the said premises the said articles and chattels, and not with intent to take possession of the said house or land, or of any part thereof, or of interfering with the possession or occupation of the said house and land by the said Phillips, save in so far as was necessary for the removal of said articles and chattels, that neither the accused nor any of the persons accompanying him did anything in the way of taking or attempting to take possession of the said house or land, or any part thereof, or of interfering with the possession of the same by Phillips, save by such taking as aforesaid of said articles and chattels.

Held, following Russell on Crimes, vol. I, p. 427, 4th ed.; Roscoe's Criminal Evidence, 7th ed. p. 491; and *Reg.* v. *Smyth*, 5 C. & P. 201, that the accused could not be convicted of a forcible entry under sec. 89 of the Criminal Code, which was not intended to create any new offence, or to make any change in the law as previously in force.

Ashbaugh, for the private prosecutor.

Full Court.] RITZ *v.* FROESE. [Dec. 23, 1898.

Sale of land under judgment—Pleading—Jurisdiction of the Court—Retroactive legislation—Irregularity or nullity.

Demurrer to the statement of claim in an action for possession of land. The plaintiffs alleged that an order of the Court had been made in March, 1896, for the sale of the interest of certain judgment debtors in the land to satisfy a judgment recovered in a County Court against them; that certain further proceedings had been taken under the order; that the plaintiffs had purchased the lands at the sale held in pursuance of the order, and that afterwards an order of the Court had been made vesting the land in the plaintiffs for all the estate, right, title and interest of the several persons formerly interested in the land. At the date of the orders relied on there was no legislation or rule of court enabling a Judge in Chambers to make such an order for sale under a County Court judgment, and the only mode of procedure was to commence an action to realize the lien on the land created by the registration of the certificate of the judgment; but by 60 Vict., c. 4, which came into force on 30th March, 1897, the following subsection was added to Rule 807 of the Queen's Bench Act, 1895:—"In the case of a County Court judgment an application may be made under Rule 803, or Rule 804, as the case may be. This amendment shall apply to orders and judgments heretofore made or entered, except in cases where such orders or judgments have been attacked before the passing of this amendment."

Defendant contended that the orders set forth in the statement of claim were manifestly made without jurisdiction, and were therefore altogether void, and that the amendment had not the effect of making them valid.

Held, per KILLAM and BAIN. JJ., that for anything that appeared in the statement of claim the order for sale may have been made in an action in this Court; that everything is to be intended in favour of the jurisdiction of a Superior Court: *Peacock* v. *Bell*, 1 Wm. Saund., 96; *Mayor of London* v. *Cox*, L.R. 2 H.L. 239; and that on that ground TAYLOR, C.J., was right in overruling the demurrer.

Held, also, per DUBUC, J., that the orders complained of having been made by a Court of competent jurisdiction were not absolutely void, but only irregular and voidable, and as long at they were standing could not be ignored or treated as nullities by any partiy affected by them who should have appealed against them, or applied to have them rescinded: *In re Padstow, &c., Association*, 20 Ch. D. 137; and that the amendment to the rules of court made by 60 Vict., c. 4, had the effect of validating the orders which had not been attacked in any way prior to its passing.

Tupper, Q. C., and *Phippen*, for plaintiff. *Ewart*, Q.C., for defendant.

Bain, J.] BENTLEY *v.* BENTLEY. [Dec. 30, 1898.

Contract—Injunction—Restraint of trade—Specific delivery of chattels—Specific performance of covenant.

The plaintiff had been carrying on, under the name of the "Berlin Portrait Co.," the business of making enlarged portraits in crayon from photographs, and on the first of July, 1897, the defendant entered into a written agreement with him to become his agent for the term therein specified to take orders for portrait work and frames, and he agreed to keep three agents, of whom he himself might be one, engaged in canvassing for orders for an average of six months at least, between the First of April and the Thirty-first of December in each year, while the agreement remained in force. The defendant and his agents canvassed for orders, obtaining a photograph in each case from which the portrait would be made, and directions for the portrait, which were generally noted on the back of the photograph. In June, 1898, differences arose between plaintiff and defendant, but the defendant and his men, using the sample portraits of the plaintiff, continued to canvass and take orders for the Berlin Portrait Co. until the 20th June. These orders, taken under the terms of the contract, and amounting to about $3,000, the defendant, in his statement of defence, expressed his willingness to hand over to the plaintiff; but he had not done so, and at the trial his counsel argued that the plaintiff was not entitled to have them delivered over. On the 20th June the defendant notified the plaintiff's solicitor that he had decided to rescind the agreement between them. In it the defendant had covenanted that he would act "as such agent of the plaintiff as aforesaid, and in accordance with the terms of this agreement." Also, "that he will sell no goods other than portraits and frames between the 1st day of April and the 31st day of December in each year without first obtaining the consent thereto" of the plaintiff, and that neither he nor his agents would handle anything in the picture or frame line other than those stated in the agreement during the currency thereof without first obtaining the permission of the plaintiff.

The plaintiff asked for an order for the delivery over to him of the orders for portraits taken by the defendant under the agreement between them, also for an injunction to prevent the defendant from carrying on, on his own account, the business of making portraits from photographs in competition with the plaintiff.

Held 1. The Court would not undertake to enforce specifically the defendant's covenant, that he would act as the agent of the plaintiff.

2. As to the covenant in the agreement not to "handle," etc., the language was too vague and uncertain to enable the Court to order an injunction against the defendant in terms of the covenant, also that the covenant itself was void, as being in undue restraint of trade, as there was no limitation of space.

3. The plaintiff was entitled to an order for the delivery over as asked for; and also to have an account taken of the dealings between himself and the defendant.

Further directions and costs reserved.

Culver, Q.C., and *Taylor*, for plaintiff. *Munson*, Q.C., for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.] ARTHUR *v.* NELSON. [Nov. 28, 1898.

Practice—Service of summons, to abridge time for setting down appeal, on solicitor who took out a taxation summons in same matter—Rule 30.

Appeal by plaintiff from an order of McColl, C. J., made 7th Nov., 1898, dismissing application to discharge order of Martin J., made 31st Oct., 1898, abridging the time for setting down defendants' appeal from judgment of Walkem J., delivered 1st Oct., quashing Nelson City Electric Light By-law. The ground of the application was want of proper service of the summons leading to the order of Martin, J. On 12th July, application was made to Walkem, J., under sec. 88 of the Municipal Clauses Act, for a rule to quash the above by-law. On that occasion an affidavit by Mr. Macdonald of Nelson, in which he stated that he was the solicitor for the applicant, was read. By some mistake the rule was not taken out in proper form, a Chamber summons of some kind being used. On the return day, objection was taken to the form of the summons, and Walkem, J., refused to deal with or hear the matter, until the rule had been issued in due form. An order dated 4th August, was taken out directing that the applicant should pay the costs of that "argument." The rule was then taken out, argued, and judgment given on 1st Oct., in favour of the applicant, but as no costs were to be taxed under the judgment, the proceedings thereunder were terminated at an early date.

In the meantime, however, the taxation of the costs under the order of Walkem, J., made 4th August, was being proceeded with, and an appeal was taken from the decision of the Registrar by means of a summons issued 18th August, by Mr. Duff, who in such summons described himself "solicitor for the applicant." The summons of 18th August had not been disposed of. The corporation desiring to make appli ation to abridge the time for appealing from the judgment of 1st October, served, Mr. Duff with the summons, and the Chief Justice made an order abridging the time. The plaintiff appealed on the ground that Rule 30 does not authorize the other side to treat the solicitor who took out a taxation summons in respect

of an order otherwise fully worked out as a solicitor who is retained by the client for the purpose of possible appeals.

Held, good service notwithstanding the fact that the solicitor's engagement with the client had terminated, and that he had so informed the party effecting the service.

Hunter, for appellant. *Sir Charles Hibbert Tupper*, Q.C., and *A. S. Potts*, for respondents.

Full Court.] RE ARTHUR AND THE CITY OF NELSON. [Dec. 23, 1898.

Municipal corporation—By-law to borrow money—Application to quash—Purchase of electric light plant—Mayor interested in company—R.S.B.C. 1897, c. 144, s. 50, s.-s. 12, and s. 68.

Appeal from judgment of Walkem, J., quashing Nelson City electric light loan by-law, providing for the borrowing of $40,000.00 by the city for the purpose of purchasing and taking over the plant and franchise of the Nelson Electric Light Company, Limited. The Mayor of Nelson was also the president and manager of the electric light company, and a large stockholder therein, he did not vote on the by-law, but absented himself from the council when it was voted on, and it appeared that he did not in any way use his influence to obtain its passage.

Held, on appeal to the full court (allowing the appeal) that a city by-law to borrow money for the purchase of an electric light plant belonging to a company is not invalid merely because the mayor was president of the company at the time of the passage of the by-law and of the completion of the contract.

A statement in a by-law that it shall come into force "on or after" a certain day is a sufficient compliance with sub-section 1 of section 68, R.S.B.C., 1897, cap. 144.

Semble, that the Court has power in any case to afford relief where it is shown that the council has not properly exercised its powers.

Semble, that a by-law may be quashed on grounds not specified in the rule. *Baird* v. *Almonte* (1877), 41 U.C.R., 415, considered.

Sir Charles Hibbert Tupper, Q.C., and *A. S. Potts*, for appellants. *Bodwell*, for respondent.

Full Court.] CONNELL *v.* MADDEN. [Jan. 9.

Mineral claim—Initial post in United States.

Appeal from decision of Walkem, J., noted ante, p. 248, dismissed with costs.

W. J. Taylor, for appellant. *Bodwell*, contra.

Full Court.] HADDEN *v.* HADDEN. [Jan. 9.

Foreign judgment for alimony—Action for arrears.

Action for $1,100.35, arrears of alimony and maintenance (with interest) adjudged to be paid by the defendant to the plaintiff by an order or judgment of the High Court of Justice in and for the Province of Ontario, dated 9th November, 1891, and the certificate of the Master made in pursuance of the said judgment and dated 22nd January, 1892. The judgment of the Ontario Court was a judgment by consent confirming an agreement made between the parties that the husband, the defendant, would pay $30.00 per month in respect of the maintenance of the wife and five children, and such additional sum as the Master should fix, also arrears of alimony, and maintenance, and that the plaintiff and defendant should abandon their respective pending appeals to the Divisional Court. At the trial, Bole, Local J., gave judgment in favour of the plaintiff and the defendant appealed on the grounds that a judgment for alimony is not a judgment for a debt, and it is not final and conclusive.

Held, by the full court, that an action lay on the judgment for the arrears of alimony and maintenance. *Nouvion* v. *Freeman* (1889) L. R. 15 App. Cas. 1, specially referred to.

Wilson, Q.C., and *Howay*, for appellant. *Dockrill*, for respondent.

LAW SOCIETY OF UPPER CANADA.

MICHAELMAS TERM, 1898.

TUESDAY, November 22nd, 1898.

Present: The Treasurer and Messrs. Aylesworth, Barwick, Bayly, Britton, Bruce, Edwards, Idington, Kerr, Martin, Riddell, Ritchie, Shepley, Strathy, Teetzel, Watson and Wilkes.

On reports from the Legal Education Committee, ordered that the following gentlemen be allowed their First Year examination:—C. H. Bradburn, F. L. Davidson, G. A. J. Fraser, N. G. Larmouth, W. S. West. That Mr. J. H. Addison be allowed his Second Year examination. That Mr. J. A. Supple be transferred on the books of the Society from the Matriculant to the Graduate Class. That Mr. G. H. Levy's and Mr. A. A. Miller's notices for call remain posted until Dec. 9th, and they be then called, provided no objection in the meantime appear. That on furnishing certain proofs of service Mr. L. M. Lyon's service be accepted. That Mr. F. M. Devine be called to the Bar and receive his certificate of fitness. That Mr. John C. MacMurchy be admitted as a student-at-law of the Graduate Class as of Trinity Term, 1898. That Mr. G. C. Hart's Third Year examination be allowed. That Mr. Arthur McEvoy on attending the latter portion of the Law School Session of 1898-1899 be allowed to write at the Easter examination. That the service under articles of Messrs. Thornburn and A. F. Kerby be allowed. That Mr. F. L. Smiley receive his certificate of fitness on proof of service to the first day of Hilary Term. That the following gentlemen be admitted as students-at-law as of Trinity

Term, 1898. Graduate Class—Messrs. G. R. Howitt and F. D. Woodworth. Matriculant Class—Messrs. A. S. Williams, H. R. Frost, J. H. Parker, F. Symington, J. H. Publow and R. H. McKay.

Ordered that the following gentlemen be called to the Bar:—R. L. MacKinnon (with Honors), H. Arrell, J. H. Campbell, A. E. Christian, J. M. Mowat, W. Thornburn, A. F. Kerby, G. H. Davy, G. G. Moncrieff and G. C. Hart, and that the same gentlemen and Messrs. H. H. Shaver and G. H. Levy do receive their certificates of fitness.

In answer to an application of the Osgoode Legal & Literary Society, the secretary was directed to inform the society that permission was granted to use the lunch room in which light refreshments were to be served, and the time of closing the Hall was extended to 1 o'clock on the occasion of their public debate and entertainment about to be held, but that this permission was granted on the distinct understanding that the leave so granted was for this occasion only and was no disaffirmance of the rules of Convocation set forth in the Minutes of the 5th Dec., 1891.

Ordered that Mr. William G. Wilson, solicitor of ten years' standing, be called to the Bar. That Mr. W. E. Stevens, a barrister of ten years' standing, receive his certificate of fitness.

There was laid on the table the schedule of the Law School examinations of the Second and Third years to be held before Christmas, 1898.

The following report was presented from the Reporting Committee:—

That Convocation having requested the Committee to consider what means, if any, can be taken to secure from the Supreme Court a proper system whereby causes before that Court should not be taken up either by surprise to Counsel or without a fair opportunity to be in attendance, in view of the long distances which Counsel have to travel in order to attend the Supreme Court, the letter of the 4th October, 1898 (a copy of which follows), was written to Sir Henry Strong by the Chairman. No answer to this letter has been received. The Chief Justice at the recent Term, while sitting at the hearing of the Quebec and Maritime lists, did not sit at the hearing of the Ontario cases which intervened between the Quebec and Maritime lists.

B. B. OSLER,
Chairman.

Dated 12th November, 1898.

[COPY OF LETTER REFERRED TO ABOVE.]

TORONTO, 4th Oct., 1898.

THE HON. SIR HENRY STRONG.
Chief Justice of Canada, Ottawa:

MY DEAR SIR HENRY,—The Benchers in Convocation last term appointed a Committee to communicate with you on behalf of the Bar, with reference to a feeling that exists in the minds of some of the members as to the management of the docket of the Supreme Court, and I have been named Chairman of that Committee. It was pointed out to the Benchers that after the days fixed for Supreme Court sittings it is impossibe for busy Counsel to take responsible work in other Courts until your sittings are over. Up to the last sittings there had been a margin of time allowed between the termination of the Quebec list and the commencement of that of Ontario, and it was said that all the Ontario Bar concerned suffered by reason of this allowance having been omitted at the last sittings of your Court. It has been submitted to the Benchers that to compel Counsel to be subject to call at the termination of the list of another Province is a

great hardship; it is, at all events, impossible for Ontario or Western Counsel to ascertain with any degree of certainty what time the list from Quebec is likely to take. The Committee has been asked to point out also that where Counsel do their very best to attend and fail to get down in time by reason of an unexpected break in the docket, or miscalculation of the time which earlier cases are likely to take, the public ought not to suffer, but that the Court ought to submit to some slight inconvenience now and then, rather than put suitors who are personally not at fault to inconvenience and expense. We have before us, in Osgoode Hall, the system of the Court of Appeal, where the Bar and the Registrar try to see that the Court is kept fully occupied, and at the same time some concession is made to the convenience of Counsel; and in that higher Court to which you belong I, personally, have found the greatest consideration (far greater, indeed, than that accorded in any Court in this country) is given to the members of the Bar. If there was such a state of affairs in Ottawa as we know to exist in Washington the pressure of arrears of business might well require the strictest rules; but your Court has always been able to dispose of its docket at a sitting of a reasonable length.

I know that I need only draw your attention, and, if need be, the attention of the other members of your Court, to the feeling of the Bar as accepted by the resolution of Convocation; and I would submit for your consideration the following suggestions which would tend to remedy the evils complained of:

1. That, having regard to the distance Counsel have to travel and the value of Counsel's time, a reasonable time should elapse after the termination of the Quebec list and the calling of Ontario cases, such time to be announced during the hearing of the Quebec list when its end is in sight.

2. That no case should be struck out or appeal dismissed for want of appearance, if another case is ready for argument, unless special circumstances call for a different order.

3. That some reasonable consideration should be had for members of the Bar in charge of cases before the Court; for example, a case being over unexpectedly late in the afternoon, it shall cease to be the practice of the Court to strike out the next case for non-appearance of Counsel.

It has been in the minds of some members of the Bar to seek a remedy for the alleged grievances either through the press or Parliament, but any such action was in the meantime thought unnecessary, confidence in the Court to set the matter up and dealing fairly by the public being the best answer to such suggestion.

I have the honour to be, etc.,

B. B. OSLER,

Chairman of the Committee of Convocation.

Ordered that a copy of the report and letter of the chairman be transmitted to the Minister of Justice respectfully drawing his attention thereto.

That the reports of the society be furnished to the compilers of the "Canadian Annual Digest" during its publication.

The following gentlemen were then introduced and called to the Bar:—Messrs. R. L. MacKinnon (with Honors), H. Arrell, A. E. Christian, J. H. Campbell, F. M. Devine, J. M. Mowat, A. F. Kerby, G. G. Moncrieff, G. G. Davy, G. C. Hart, W. G. Wilson.

Mr. Wilkes gave notice that at the next meeting of Convocation he would move:—That Rule 100, sec. 3 be amended by adding the words "and any retired county judge not resuming practice."

WEDNESDAY, 23rd, November, 1898.

Present: The Treasurer and Messrs. Douglas, Guthrie, Hoskin, Maclennan, Riddell, Shepley, Strathy and Watson.

Ordered that Mr. T. J. Murray be called to the Bar, and receive his certificate of fitness. He was then introduced, and called to the Bar.

A report was presented from the Discipline Committee upon the complaint of Mr. W. S. Wilson, against Messrs. U., E, and G., to the effect that the Committee was of opinion the complaint had not been established. The report was adopted.

A report was presented from the Discipline Committee upon the complaint of Mr. D. D. Reid against Mr. G., to the effect that the Committee, after hearing the solicitor for the complainants was of opinion no action should be taken till the complainants had taken such steps as they might be advised before the Courts. The report was adopted.

A report was presented from the Discipline Committee that the complaint of Mr. S. M. Barnes against Mr. ——— had not been established, and should be dismissed. The report was adopted.

A report from the Discipline Committee upon the complaint of Mr. E. W. Nelles against Mr. T. Ordered that the report be considered on Friday, 9th December, 1898 at 12 o'clock noon; that a copy of the report be served on Mr. T. and that he be informed by notice in writing served upon him that Convocation will take action on his case at the hour of 12 o'clock noon on that day, at which time he may attend and be heard by himself or by his Counsel, and that the Counsel for the complainant be be also notified of the hearing for the day fixed, and that he may attend. It was further ordered that a special call of the Bench be made for Friday the 9th day of Dec., 1898, at 12 o'clock noon, to take the said report into consideration.

The complaints of Mr. R. Hodge against Mr. ——— and Mr. D. Ferguson against Mr. ———, were read and referred to the Discipline Committee for investigation and report.

It was then moved by Mr. Strathy on behalf of Mr. Wilkes, that Rule 100, sec. 3, be amended by adding the words: "And any retired County Court Judge not resuming practice." The Rule was read a first time and ordered for a second reading on Friday 9th Dec., 1898.

9th December, 1898.

Present: The Treasurer, Messrs. Barwick, Bayly, Bell, Hon. S. H. Blake, Britton, Bruce, Gibbons, Guthrie, Hogg, Hoskin, Osler, Ritchie, Robinson and Teetzel.

A letter from the Minister of Justice was read acknowledging the receipt of the Reporting Committee's report presented to Convocation at its last meeting, relative to the hearing of causes before the Supreme Court, and stating that the Minister would give the subject due consideration.

Ordered that the letter of the President of the Carleton Law Association relative to a circular issued by Mr. A. E. F., be referred to the Discipline Committee for enquiry and report.

A letter was read from Mr. J. J. Poole, solicitor, of Comber, complaining that one Winceslaus Pielson, who was not a member of the legal profession, has been in the habit of preparing papers in Surrogate Court matters, contrary to Statute and Rules. The Secretary was directed to inform Mr. Poole, that a complaint should be made to the Judge of the Surrogate Court, and that the Judges of the Counties of Simcoe and York had at the instance of the Law Associations of those counties dealt with these matters satisfactorily.

The following report from the Editor-in-Chief, upon the work of reporting, was presented by the Reporting Committee: "The work of reporting is in a forward state. In the Court of Appeal, there are eleven cases unreported, one of October and ten of this month. In the High Court, Mr. Harman has two, one of September and one of October. Mr. Lefroy has five, two of October and three of this month. Mr. Boomer has seven, two of October and five of this month. Mr. Brown has also seven, five of October and two of this month. There are five practice cases unreported, one of April, mislaid in Court and only lately found, three of October and one of November."

Mr. S. S. Sharpe was then called to the Bar (with honors.) Mr. H. M. German was then called to the Bar.

Dr. Hoskin, from the Discipline Committee, moved the adoption of the report of that committee in the matter of the complaint of Emerson W. Nelles against Mr. Fergus J. Travers, barrister and solicitor, which had on 23rd November last been ordered to be taken into consideration to-day. The report of the committee was then read. It sets out at length the complaint, and concludes as follows: "5. From the facts brought out in the said investigation, your committee find that for valuable consideration by him received from the said Nelles he (Mr. Travers) undertook to induce Mitchell to forbear prosecuting Massey for a felony, supposed or alleged by the said Massey to have been committed, and are of opinion that the said Fergus J. Travers has been guilty of professional misconduct and conduct unbecoming a barrister and solicitor."

The secretary then reported that he had, pursuant to order, personally served Mr. Fergus J. Travers, the solicitor complained of, and also Mr. Vandervoort, counsel for the complainant, each with a copy of the report in question, and with a notice in writing informing them that action would be taken by Convocation on the complaint to-day, and that he had, on the 29th day of November last, issued notices to all Benchers of the meeting to-day, specially called for the purpose of taking such report into consideration.

Counsel for the respective parties being in attendance were called in, Mr. T. A. Hunt as counsel for Mr. Travers and Mr. M. P. Vandervoort as counsel for complainant. Mr. Hunt being asked whether Mr. Travers was in attendance, replied that he had advised Mr. Travers that it was unnecessary that he (Mr. Travers) should appear personally at this meeting of Convocation, and that he (Mr. Hunt) appeared for Mr. Travers. Mr. Hunt addressed Convocation on behalf of Mr. Travers. Mr. Vandervoort also addressed Convocation. Counsel then withdrew.

Dr. Hoskin, seconded by Mr. Bell, moved the adoption of the report.

Moved in amendment by Hon. S. H. Blake, seconded by Mr. Robinson, and carried: "That the said report be amended by striking out clause 5 thereof, and substituting in place thereof: 'That the said Fergus James Travers obtained improperly and by extortion the moneys and security referred to in the said petition, and has throughout the transaction in question been guilty of professional misconduct and conduct unbecoming a barrister and solicitor.'"

Ordered that the report as so amended be adopted.

Mr. Hunt, counsel for Mr. Travers, was then re-called and informed of the amendment so made. Upon being asked whether he had anything further to say on behalf of Mr. Travers, he stated that he had nothing more to add, but would leave the matter in the hands of Convocation. Counsel then withdrew.

Resolved unanimously—the following gentlemen, Benchers of the Law

Society, being then present and voting, viz.: The Treasurer, Messrs. Barwick, Bayly, Bell, Hon. S. H. Blake, Britton, Bruce, Gibbons, Guthrie, Hogg, Hoskin, Osler, Ritchie, Robinson and Teetzel—That Mr. Fergus James Travers be absolutely suspended for a period of seven years from the practice of the profession of a barrister and solicitor, that he is unworthy to practice as such solicitor, and that such suspension be communicated to the High Court pursuant to the statute in that behalf.

Resolved, that the secretary do forthwith give notice to the High Court of Justice for Ontario that the Benchers of the Law Society of Upper Canada in Convocation duly assembled had to-day adopted the report made after due enquiry by a committee of their number, known as the Discipline Committee, whereby Mr. Fergus James Travers had been found guilty of professional misconduct and conduct unbecoming a barrister and solicitor, that he is unworthy to practise as such solicitor, and thereupon the benchers in Convocation, as aforesaid, did suspend him, the said Fergus James Travers, from practising as barrister and solicitor for seven years, to take effect from December 9th, 1898.

On report of the Legal Education Committee, ordered that Mr. A. J. Kappele be called to the Bar (with honors); that Messrs. E. W. Jones and F. L. Smiley be called to the Bar; that Messrs. Kappele and Jones receive their certificates of fitness; that Messrs. G. H. Levy and A. A. Miller be called to the Bar; that Messrs. L. M. Lyon, E. Gillis and C. C. Hayne be called to the Bar and receive their certificates of fitness; and that Messrs. C. E. T. Fitzgerald and Kenneth Langdon be admitted as students-at-law of the Matriculant Class as of Trinity Term, 1898.

The following gentlemen were then introduced and called to the Bar: Messrs. A. J. Kappele (with honors), F. L. Smiley, W. Thornburn, C. C. Hayne, E. W. Jones, A. A. Miller and E. Gillis.

Flotsam and Jetsam.

A lawyer in court the other day, after a close cross-examination of a witness, an illiterate Irishwoman, in reference to the position of the doors and windows, etc., in her house, asked the following question: "And now, my good woman, tell the court how the stairs run in your house." To which the good woman replied: "How do the sthairs run? Shure, whin I'm oop sthairs they run down, and whin I'm down they run oop."—*Household Words.*

An excellent story was told by the LORD CHIEF JUSTICE in court on Saturday, shewing that a previously convicted prisoner must be wary when answering incidental questions from the Bench in giving his evidence before a jury. "I remember a case," said his Lordship, "in which a very innocent remark of my own elicited the fact of a previous conviction. A prisoner was addressing the jury, very effectively, as I thought, on his own behalf. But he spoke in a low voice, and, not hearing some part of his observations, I said, 'What did you say? What was your last sentence?'—'Six months, my Lord,' he replied."