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THE recent case of *O'Hara* v. *Dougherty*, 25 O.R. 347, which was one for malicious prosecution, turns on the question whether the acquittal of the plaintiff on a charge of misdemeanour can be proved by the production of the original record signed by the judge of the County Court under the Speedy Trials Act (R.S.C., c. 175). The Divisional Court of the Chancery Division held that it could. We do not propose discussing the merits of the decision, about which, however, something might be said on the ground of public policy; but there is an observation at the close of the judgment of Meredith, J., in which he refers to C.S.U.C., c. 110, and remarks that it was repealed by 32 & 33 Vict., c. 36, and does not appear to have been re-enacted, concerning which we wish to say a word or two. C.S.U.C., c. 110, enabled a prisoner to obtain a copy of the indictment, and expressly provided that the copy so obtained should not be receivable in evidence in any action for malicious prosecution. It is true that this statute was purported to be repealed by 32 & 33 Vict., c. 36 (D.), and with the exception of the proviso above referred to its provisions were substantially re-enacted by 32 & 33 Vict., c. 29 (D.), and still appear in the Criminal Code as s. 654. A doubt has suggested itself to us, however, whether the proviso of C.S.U.C., c. 110, is not still the law of this Province, notwithstanding the supposed repeal, because the Dominion Parliament do not appear to have any jurisdiction to deal with the matter of that proviso, it being a question of procedure in a civil suit, and therefore, it seems to us, could not repeal it. C.S.U.C., c. 110, seems never to have been repealed by the Ontario Legislature. At any rate, the omission of the proviso from s. 654 of the Code is perfectly explicable on the ground we have suggested, and we do not see any reason

why the Provincial Legislature should not re-enact the proviso, or indeed some more effective provision, so as to afford some efficient protection to persons *bona fide* prosecuting others under the criminal law from being harassed with vexatious lawsuits for malicious prosecution.

HOLLENDER v. *FFOULKES.*

The full report of the above case (referred to *ante* p. 595) is now to hand (16 P.R. 175), and we find from the judgment of the Queen's Bench Divisional Court delivered by Street, J., that the effect of Rule 711 is thus referred to: "The effect of it clearly is to recognize, and therefore to legalize, the combination of a special indorsement for a liquidated amount with an indorsement of a claim for either or both of the other causes of action mentioned in it. Where, then, a writ is specially indorsed for a liquidated claim *only*, and the defendant fails to appear, the plaintiff proceeds to final judgment at once under Rule 705; where another claim is joined he proceeds under Rule 711"; but he goes on to say, "Rule 739 is, however, limited to cases where a writ is specially indorsed under Rule 245, and, as that Rule applies to cases where the claim is for a liquidated demand *only*, it appears to me that we are not justified in holding that Rule 739 can be made applicable to cases where there is a claim for a liquidated demand to one for unliquidated damages."

As we understand the line of reasoning of the judgment it is this: by virtue of Rules 245 and 711 it is possible to join in an indorsement on a writ any of the claims for liquidated demands mentioned in Rule 245, and also the claims mentioned in Rule 711, viz., for detention of goods and pecuniary damages, or either of them; but where the plaintiff has so indorsed his writ it is not possible for him to get speedy judgment under Rule 739 for even the liquidated demand, because the indorsement is not a special indorsement under Rule 245 by reason of its including other claims besides those enumerated in that Rule. This point seems now to be made quite clear by the recent decision of the Court of Appeal, affirming *Solmes* v. *Stafford*, 16 P.R. 78.

It seems to follow clearly from this decision that if to the claims which may be specially indorsed under Rule 245 there be added a claim for equitable relief, not only can the plaintiff not

recover judgment under Rule 739 for even the liquidated demand, in case the defendant appears, but that, in default of appearance, he could not, in such a case, sign final judgment, even for the liquidated demand, under Rule 705, because, according to *Hollender* v. *Ffoulkes*, that Rule can only apply to cases to which Rule 739 would apply if the defendant had appeared.

The result of the case seems to be this: Where to the liquidated demand the plaintiff has joined a claim for detention of goods, pecuniary damages, or either of them, he may, in default of appearance, obtain final judgment for the liquidated demand under Rule 711, and interlocutory judgment for the value of the goods and damages to be assessed; but, in case of an appearance, he cannot, in such a case, get a speedy judgment under Rule 739 for any part of his claim. He must proceed to judgment in the same way as is necessary when the claim is solely for unliquidated damages. And where to a liquidated demand the plaintiff adds a demand for equitable relief of any kind, the plaintiff must proceed to judgment in the same way as if the claim for equitable relief were his sole demand. In other words, in all such cases a statement of claim is necessary, and, to save time, should be served with the writ, and, in default of appearance, judgment must be moved for under Rule 748.

The effect of *Hollender* v. *Ffoulkes* is to overrule *Mackenzie* v. *Ross*, 14 P.R. 299; and *Hay* v. *Johnston*, 12 P.R. 596. *Huffman* v. *Doner*, 12 P.R. 492, was decided before the Consolidated Rules came into force, and, consequently, before Rule 711 was in operation, and anticipates the operation of that Rule. The procedure sanctioned by that case is now expressly authorized by Rule 711.

CONFLICTING DECISIONS OF THE HIGH COURT.

The two cases of *Stevens* v. *Grout*, 16 P.R. 210, and *McDermott* v. *Grout*, *ib.*, 215, illustrate what appears to us to be a somewhat anomalous state of affairs. Precisely the same point was presented for decision by the Divisional Courts of the Queen's Bench and Common Pleas Divisions, and they have deliberately seen fit to deliver conflicting decisions.

When the Courts of Queen's Bench, Common Pleas, and Chancery were separate and distinct courts, they, in several cases, came to different conclusions on the same point, and

though, even then, it was somewhat anomalous that courts of co-ordinate jurisdiction should solemnly decide the same point in different ways, yet we do not think they ever intentionally reached that stage of absurdity where the same court decided the same point in opposite ways. That is the stage to which we are carried under The Judicature Act, one of whose main objects is supposed to be the putting an end to this conflict of opinions, and to secure uniformity of decision by all branches of the court.

It appears to us that, in thus promulgating diametrically opposite judgments, the learned judges must have strangely forgotten that they are now supposed to be administering justice under The Judicature Act, and that they are no longer members of separate and independent courts, but are judges of one and the same court, and that that court is, not unnaturally, expected to speak with a harmonious, instead of an utterly discordant, voice.

We are not so foolish as to expect that The Judicature Act, or any other Act, will put an end to all judicial diversity of opinion, but we do think some way ought to be found for preventing mere questions of practice from being obscured and rendered difficult by conflicting decisions of the court itself. Such decisions, instead of assisting, serve only to darken counsel.

If it should be asked what remedy can be suggested, we would respectfully submit that, in a case of the kind in question, when the same point of practice is simultaneously before two or more Divisional Courts, and it is found that the judges composing these courts have reached opposite conclusions, it would be better, rather than that two conflicting judgments should be given, that one Division should follow the decision of the other, expressing its dissent if it please; or else that the point should be directed to be reargued before a Divisional Court composed of one of each of the differing courts and a third judge, and that the decision thus arrived at should govern. Or, in case a Divisional Court arrives at a different conclusion from that already given by another Divisional Court on the same or a precisely similar point, that it should hold itself bound by the first decision until it is reversed by the Court of Appeal, even though it dissents from that decision.

By the present unfortunate method, the judges are defeating what it was the express object of The Judicature Act to foster and promote, viz., uniformity of practice in all the Divisions of

the High Court. By the decisions we have referred to, they have laid down two different rules of practice on the identically same point, so that a suitor in the Queen's Bench Division must follow one method, a suitor in the Common Pleas Division another, and different one, and, for aught we can see, the suitor in the Chancery Division still another; for there is nothing to prevent the Divisional Court of that Division arriving at the conclusion that both of the other Divisions are wrong, and decreeing that some other mode of procedure is correct.

I may be said that the divergencies of opinion can be corrected by an appeal to the Court of Appeal, but to carry an appeal there on a simple point of practice is a rather expensive luxury, which not every suitor cares to indulge in, and it may be years before one can be found willing to adopt that method of settling the practice. In the meantime, in spite of the Judicature Act, two or more different methods of practice grow up in the same court, for we must never forget that all the Divisions are component parts of one and the same court.

If the judges of the High Court are not able to devise some method for preventing such absurd results, the legislature ought to step in and do it.

CURRENT ENGLISH CASES.

VENDOR AND PURCHASER—CONTRACT—LETTERS—REFERENCE TO FORMAL CONTRACT—SPECIFIC PERFORMANCE.

Jones v. *Daniel*, (1894) 2 Ch. 332, was an action for the specific performance of an alleged contract to purchase lands, in which the existence of a contract was denied. The facts on which the plaintiff relied were these: The defendant, after some negotiation, wrote to the plaintiff's solicitors as follows: "I may say, in respect of this property, the offer I made you of £1,450 is my fullest, and in the present unsatisfactory definition of the leases, etc., etc., it is more than its real value." The solicitors replied: "Mr. W. Jones has considered your offer of £1,450 for his reversionary interest in this property. He thinks it very low, but . . . accepts it, and we enclose contract for your signature. On receipt of this, signed by you across the stamp, and deposit, we will send you copy signed by him." The form of contract enclosed stipuated for a deposit of ten per cent. on the purchase money, and

for completion on the 24th of May next, and that vendor's title should commence with a conveyance dated in 1865. The defendant refused to sign the contract or pay the deposit. Subsequently, the plaintiff's solicitors wrote to the defendant: "Kindly let us know whether we shall send abstract of title to you or to a solicitor for you. At the same time, perhaps, you will send us deposit. In order to define time for delivery of abstract and for completion, the contract sent you had better, perhaps, be signed, though the correspondence is a sufficient contract." Romer, J., under these circumstances, held that there was no contract between the parties, and that the letters amounted merely to negotiations. He considered the case governed by *Crossley* v. *Maycock*, 18 Eq. 180, and that it was distinguishable from *Gibbins* v. *Board of Management N.E.M.A. District*, 11 Beav. 1, as it did not appear in that case that the contract enclosed by the vendors embodied any other or additional terms. This case is now reported 8 R., Oct. 147.

MUNICIPAL CORPORATION—FUNDS OF CORPORATION—MISAPPLICATION OF FUNDS—ULTRA VIRES—SUBSIDY TO COLLEGE—MAYOR'S SALARY, ADDITIONS TO.

Attorney-General v. *Cardiff*, (1894) 2 Ch. 337; 8 R. June 136, was a suit brought by the Attorney-General on the relation of certain ratepayers, claiming a declaration that certain expenditures authorized by the corporation of a municipality were *ultra vires* and illegal. By a special Act the corporation were empowered to contribute £10,000 towards the purchase of a site for a college, and a resolution was passed by the corporation that that sum should be paid on certain property being conveyed to the college authorities. The intended purchase remained in abeyance, and the college was carried on at other premises rented by the college council; and, subsequently, the municipal council passed a resolution authorizing the sum of £400, being the interest on the £10,000, to be added to the mayor's salary; this sum was then paid to the mayor, and by him handed over to the college council. The council also passed another resolution, authorizing the sum of £650 to be added to the mayor's salary, for the purpose of celebrating the marriage of the Duke of York. And the action was brought to test the validity of these two payments. The case was dealt with by Romer, J., as if the payments in question had been voted directly for the purpose for

which they were in fact intended, and not as additions to the mayor's salary, and on that footing he determined that the payment of interest on the £10,000 to the college was invalid, but that the appropriation for celebrating the royal wedding was valid. He deprecates the idea of corporations attempting to do by subterfuge what they cannot legally do directly.

COMPANY—WINDING UP—ABUSE OF PROCESS OF COURT—INJUNCTION.

In re A Company, (1894) 2 Ch. 349, Williams, J., holds that where a petition is presented ostensibly to wind up a company, but in reality for another purpose, such as putting pressure on the company, the court will, on the application of the company, restrain the applicant from prosecuting the petition by advertising it, and stay all proceedings upon it. In this case, on the facts disclosed in the petition, the petitioner appeared to have no *locus standi* to present the petition.

CARRIER—CONTRACT TO CARRY PASSENGER—TICKET—CONDITIONS ON TICKET—EVIDENCE.

Richardson v. *Rowntree*, (1894) A.C. 217; 6 R. Apl. 1, is one of that class of cases which appear to us rather hard to reconcile with common sense. The action was brought by a passenger against a steamship company to recover damages for personal injury received whilst travelling in one of the defendants' ships. The plaintiff purchased a ticket for a steerage passage, and on the ticket were the words: "It is mutually agreed, for the consideration aforesaid, that this ticket is issued and accepted upon the following conditions," one of the conditions being that the company was not to be liable for injuries to person or property of the passenger beyond $100. The jury found that the plaintiff knew there was writing or printing on the ticket, but that she did not know what it was, and that the defendants did not do what was reasonably sufficient to give her notice of the conditions, and they found a verdict for the plaintiff for £100. The House of Lords affirmed the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.), that there was evidence to warrant the finding of the jury, and that on the finding the plaintiff was entitled to judgment. Having regard to the nature of the contract, and the way, in the ordinary course of business, it is entered into, it seems to us to be imposing a most unreasonable

duty on carriers to require them to read and explain to illiterate passengers the special conditions which are printed on their tickets. While it might be a legitimate subject for legislation to restrain carriers from making special conditions, it nevertheless seems to us to be unreasonable, so long as the law professes to give them the privilege of thus limiting their liability, to attempt to take it away by holding that it can only be exercised under conditions which, from a business point of view, would practically be unworkable. The plaintiff in this case applied to the defendants' agent to be carried, and the agent agreed to carry the plaintiff in accordance with the conditions on the ticket, which was the only contract he was authorized to make, and yet the defendants are made liable as though there were no conditions on the ticket, because the plaintiff did not choose, or was unable, to read the contract! This is the law, but, as we have already said, it seems to offend against the dictates of common sense.

SHIP--SHIPOWNER--NEGLIGENCE--"SEAWORTHINESS"--MASTER AND SERVANT--COMMON EMPLOYMENT.

Hedley v. *Pinkey S.S. Co.*, (1894) A.C. 222; 6 R. Apl. 12, was an action brought against a steamship company by the administratrix of a deceased seaman who had been in the defendants' employ, under Lord Campbell's Act, to recover damages for the death of the seaman. It appeared that the bulwarks of the vessel generally were four feet high, except, opposite the hatchways, the permanent bulwarks were only two feet, but there were stanchions and rails to put into these apertures, so as to make the bulwarks at this point also four feet. The ship left port provided with these stanchions and rails, but, owing to the negligence of the captain, they were not put in place; a storm came on, and the seaman was swept overboard and drowned in consequence of the neglect. The House of Lords (Lords Herschell, L.C., Watson, and Macnaghten) affirmed the judgment of the Court of Appeal, (1892) 1 Q.B. 58, on the ground that the captain was a fellow-servant of the deceased seaman, and the doctrine of common employment applied; and also that the captain's neglect did not render the ship unseaworthy within the meaning of the Merchants' Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 5.

VERDICT—CONFLICT OF EVIDENCE—NEW TRIAL.

In *Brisbane* v. *Martin*, (1894) A.C. 249, the Judicial Committee (Lords Hobhouse, Ashbourne, Macnaghten, and Sir R. Crouch) reversed an order of the Supreme Court of Queensland. The action was brought to recover damages for the alleged negligent construction of a drain. The evidence at the trial was conflicting, and the Privy Council being of opinion that, viewing the whole of the evidence, the verdict was one which the jury could reasonably find, their verdict could not be disturbed.

Australian Newspaper Company v. *Bennett*, (1894) A. C. 284; 6 R. Sept. 36, is to the same effect. This was an action of libel. A verdict by a majority of four was found for the defendants. The Supreme Court of New South Wales set aside the verdict, and ordered a new trial, but the Judicial Committee (the Lord Chancellor, and Lords Watson, Hobhouse, Macnaghten, and Morris) reversed the order, on the same grounds as in the preceding case. It is interesting also to learn that in their lordships' opinion the use of the word "Ananias" as a sobriquet for a newspaper does not necessarily impute wilful and deliberate falsehood to the editor; whether it was so used, or merely extravagantly is a question for the jury.

REGISTERED MORTGAGE—PRIOR UNREGISTERED DEED—ACTUAL NOTICE—PRIORITY.

Sydney Suburban Building Association v. *Lyons*, (1894) A.C. 260; 6 R. Sept. 41, is a decision of the Judicial Committee of the Privy Council (Lords Watson, Macnaghten, Morris, and Sir R. Crouch) upon the effect of the Registry Acts of New South Wales. These Acts provide that prior registration shall confer priority over prior unregistered deeds, and do not, apparently, contain any exception where there is actual notice of the prior unregistered deeds, as does the Ontario Act. In this case the appellants made a loan on the security of the mortgage of an estate, having, at the time, notice that some parts of it had been sold, but they made no inquiry, and do not appear to have had any actual and specific knowledge of what parts had been previously sold, and the deeds for such parts were not registered. The Judicial Committee, in this state of facts, determined that the appellants had taken the mortgage on the whole estate *valent quantum*—subject to what it turned out to be, and could not be considered as *bona fide* purchasers as against the prior unregistered deeds, and were, therefore, not entitled to priority over them.

TRADE MARK—USER OF TRADE MARK—"MAIZENA"—PUBLICI JURIS.

National Starch Company v. *Munns Patent Maizena and Starch Company*, (1894) A.C. 275; 6 R. July 36, is the only remaining case necessary to be referred to here. The action was brought to restrain an alleged infringement of a trade mark. The appellants had registered in 1889 in New South Wales the word "Maizena," which they had invented in 1856, and registered and enforced in other countries, but had for a quarter of a century allowed the word to be used in New South Wales as a term descriptive of the article, and not of their manufacture thereof. The Judicial Committee of the Privy Council (Lords Watson, Ashbourne, Macnaghten, and Morris, and Sir R. Crouch), affirmed the decision of the Colonial Court that the word "Maizena" had, by user in New South Wales, become *publici juris*, and was, therefore, not registrable there as a trade mark in 1889; and though the respondents had applied the word to their goods, yet as it did not appear that either by their labels or packages they had in any way attempted to pass off their goods as those manufactured by the plaintiffs, but, on the contrary, stated the name of the maker and place of manufacture, and other necessary particulars, it was held that they could not be restrained on that ground from using the word "Maizena."

The Law Reports for August comprise (1894) 2 Q.B., pp. 385-555; (1894) P., pp. 225-256; and (1894) 2 Ch., pp. 377-477.

CRIMINAL LAW—EXTRADITION—ANARCHIST OUTRAGES—POLITICAL OFFENCE—ACCOMPLICE—EVIDENCE—ONE COMMITTAL FOR TWO OFFENCES.

In re Mennier, (1894) 2 Q.B. 415; 10 R. Oct. 255, a person who had been committed for extradition to France, on the charge of having committed anarchist outrages there by causing explosions at a café, and also at certain military barracks, applied for a *habeas corpus*, with a view to procuring his discharge, on the ground of want of evidence of identity of the prisoner with the person who had committed the outrages, and that the only evidence against the prisoner was the uncontradicted evidence of an accomplice; also because the two offences were included in the same committal; and also because the offence at the barracks was of a political character within the meaning of the Extradition Act, 1870 (33 & 34 Vict., c. 52), s. 3, s-s. 1, and the prisoner was,

therefore, not liable to be surrendered for that offence. Cave and Collins, JJ., before whom the writ was returnable, refused to discharge the prisoner, holding that, even though the only evidence were that of the accomplice (which was not the case), the prisoner was not necessarily entitled to a discharge on that ground, but that it was in the discretion of the magistrate, in such cases, to say whether or not there should be a committal, and that, in the present case, the discretion had been rightly exercised. As regards the question of identity, the court thought there were sufficient circumstances appearing in the case to leave no reasonable doubt. The inclusion of both charges in the committal was also held to be valid, and the outrage at the barracks was held not to come within the meaning of a "political offence." Such offences are those committed by one party in a state in order to carry out its objects as against another party, where there are two or more parties contending for the government of the country; but the outrages in question were held to be committed against the general body of citizens, and private citizens in particular.

PRACTICE—AMENDMENT—WRIT SERVED OUT OF JURISDICTION—INDORSEMENT OF CLAIM ON WRIT—ORD. XI.; ORD. XXVIII., RR. 1, 6 (ONT. RULES 271, 423, 429).

In *Holland* v. *Leslie*, (1894) 2 Q.B. 450; 10 R. July 313, after a defendant had appeared to a writ served out of the jurisdiction, the plaintiff discovered that in the indorsement of his claim, which was in respect of certain bills of exchange, he had made a mistake; this he applied for leave to amend, which was granted (see *ante* p. 628). The defendant appealed from the order, contending that there was no power to amend a writ served out of the jurisdiction, except on the terms of obtaining a new order for leave to re-serve the writ. The Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) were clear that such an amendment might properly be made so long as no cause of action was introduced by the amendment in respect to which leave to serve the writ out of the jurisdiction could not have been given.

INFANT—CONTRACT OF INFANT—EXONERATION OF EMPLOYER FROM LIABILITY.

Clements v. *London & North Western Railway*, (1894) 2 Q.B. 482; 9 R. Oct. 212, was an action to recover damages for injuries sustained by reason of the alleged negligence of the defendants

or their servant. The plaintiff also was a servant of the defendants, and was an infant at the time of entering their service. The defendants set up as a defence to the action that, at the time of entering their service, the plaintiff had agreed, in consideration of getting the benefit of an assurance fund against accidents, of which one-half was contributed by the defendants, and the rest by the workmen in their employ, that he would exonerate the defendants from all liability for any injury the plaintiff might sustain while in their service. It was contended that this contract was void, as not being for the benefit of the infant; but the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) affirmed the judgment of the County Court judge, that this contract was for the plaintiff's benefit, and was binding on him, in which respect the case differed from the recent case of *Flower* v. *London & North Western Ry. Co.*, (1894) 2 Q.B. 65 (*ante* p. 560).

INSURANCE—COLLISION—PROXIMATE CAUSE OF LOSS.

Reischer v. *Borwick*, (1894) 2 Q.B. 548; 9 R. Sept. 212, was an action on a marine policy of insurance, whereby a ship was insured against damage from collision with any object, but not against perils of the sea. The ship ran against a snag in the river, which caused a leak; the ship was anchored and the leak temporarily repaired, so that the ship was out of immediate danger. A tug was then sent to tow the ship to the nearest dock for repairs, but the effect of the motion of the ship through the water was to open the leak, and she began to sink, and was, in consequence, run aground and abandoned. The Court of Appeal (Lindley, Lopes, and Davey, L.JJ.) were of opinion that the collision was the proximate cause of the loss, and that it was covered by the policy, and the judgment of Kennedy, J., for the plaintiff was affirmed.

RESTRAINT OF TRADE—COVENANT—AGREEMENT BY VENDOR NOT TO "CARRY ON OR BE IN ANY WISE INTERESTED IN" ANY SIMILAR BUSINESS—HUSBAND AND WIFE—WIFE'S BUSINESS—INJUNCTION.

Smith v. *Hancock*, (1894) 2 Ch. 377; 7 R. June 80, which was an appeal from the decision of Kekewich, J., (1894) 1 Ch. 209 (see *ante* p. 209), in which the Court of Appeal (Lindley, Kay, and Smith, L.JJ.) affirmed the judgment appealed from; Kay, L.J., however, dissented. In the interest of fair dealing, the con-

clusion of the dissentient judge seems the preferable one. The defendant had covenanted with the plaintiff not to carry on or be otherwise interested in any similar business to that sold by him to the plaintiff. He had, nevertheless, busied himself in procuring a lease of premises for his nephew to carry on a similar business in his wife's name; he had introduced the nephew to wholesale dealers who had formerly supplied the defendant, and he had drawn up and distributed circulars advertising his wife's business. The majority of the Court of Appeal were of opinion that as it was clearly shown that the defendant had no proprietary or pecuniary interest in the wife's business, the acts above referred to did not constitute his being "interested in" the business within the meaning of the covenant. Kay, L.J., thought that they did, and that the defendant had committed a breach of both branches of the agreement, and had assisted to carry on and been interested in the wife's business contrary to the agreement.

COMPANY—DIRECTOR—IMPLIED AGREEMENT TO TAKE SHARES—ALLOTMENT.

In re Printing, Telegraph & Construction Company, (1894) 2 Ch. 392; 7 R. June 71, the articles of the company provided that the first directors should be allowed one month from the first general allotment of shares in which to acquire qualification shares, and that the office of director should be vacated if he failed to get the shares within the prescribed period, or if he sent in a written resignation. One Counnell signed the articles, and was appointed a first director. He attended several meetings, but never applied for his qualification shares. At the first general allotment, however, without his knowledge, the necessary qualification shares were allotted to him, and his name was placed on an allotment sheet signed by the chairman and secretary. Counnell occasionally attended meetings before the expiration of the month, but none afterwards. Shortly after the month expired the secretary requested him to sign an application for shares, which he refused to do, and tendered his resignation of the office of director. After his resignation and refusal to sign the application his name was put on the register of shareholders, and he now applied to have it removed, on the ground that he was not bound by the allotment. Stirling, J., granted the application, and the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) affirmed his decision.

COMPANY — WINDING-UP — CONTRIBUTORY — DIRECTOR — CONSENT TO ACT AS DIRECTOR—QUALIFICATION SHARES, AGREEMENT TO ACCEPT.

In re Hercynia Copper Company, (1894) 2 Ch. 403; 7 R. June 94, was an application in a winding-up proceeding to remove the name of the applicant from the list of contributories. The applicant had been named in the articles of the company as one of the original directors, and the articles provided that a director's qualification should be the holding of shares to the nominal amount of £250. The original articles had not been signed by the applicant, but it was proved that he had signed a prospectus of the company and a print of the articles, and had admitted in writing that he had consented to join the board. The articles provided that unless a director acquired his qualification shares within a month of his appointment he should "be deemed to have agreed to take the same." He subsequently refused to take the shares, and resigned his office as director; but Wright, J., and the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) were unanimous that he was properly placed on the list of contributories for shares to the amount of £250.

INFANT—MARRIAGE SETTLEMENT—CONFIRMATION OF DEED BY SETTLOR AFTER ATTAINING MAJORITY.

In re Hodson, Williams v. *Knight*, (1894) 2 Ch. 421; 8 R. July 174, a lady, while an infant, executed a marriage settlement. After attaining her majority, she executed a deed confirming the settlement, but this deed was not acknowledged under the Fines and Recoveries Act. Chitty, J., held that the ratification of a contract made in infancy is not in the nature of a new contract, and that therefore it was not necessary to its validity that it should be executed with the formalities of a new and original deed, and that the ratification was valid and binding, notwithstanding the coverture of the lady.

LESSOR AND LESSEE—ACCESS OF AIR—DEROGATION FROM GRANT—PAROL LICENSE—REVOCATION OF LICENSE WITHOUT NOTICE—INJUNCTION.

Aldin v. *Latimer*, (1894) 2 Ch. 437; 8 R. July 180, was an action by a lessee to restrain the lessor's assigns from building upon adjoining property so as to interfere with the access of air to the demised premises. The premises of the plaintiff had been leased for a timber yard, which business he had covenanted with the lessor he would carry on. After the making of the lease he had,

with the verbal consent of the lessor, at his own expense opened some ventilators in one of the demised buildings. At the time the lease was made the adjoining property, owned by the lessor, was for the most part open and unbuilt upon. The lessor having died, his reversion in the demised premises and also his estate in the adjoining premises had been purchased by the defendants, who had erected buildings on the latter which interfered with the free access of air to the plaintiff's timber yard, and hindered the drying of the timber, and he particularly complained that the ventilators above mentioned were obstructed. Chitty, J., while of opinion that the defendants had derogated from the grant of their predecessor in title by the erection of the buildings, yet was of opinion that the damage sustained by the plaintiff was not of a sufficiently serious nature as to warrant the granting of an injunction, and he directed an inquiry as to damages; and as to the obstruction of the ventilators, he was of opinion that what had taken place merely amounted to a parol license to construct the ventilators which was revocable, and therefore that the obstruction of the ventilators could not be restrained, but that the plaintiff was entitled to damages for the obstruction having been made without reasonable notice of the revocation of the license. How far this case would be of authority in Ontario, having regard to the Registry Act, is open to question. See, however, *Israel* v. *Leith*, 20 Ont. 361.

FUND IN COURT—STOP ORDER—PRIORITY.

In *Mack* v. *Postle*, (1894) 2 Chy. 449; 8 R. July 167, it was held by Stirling, J., that a subsequent chargee on a fund in court, without notice of a prior charge, will obtain priority over such prior charge by first obtaining a stop order against the fund.

COMPANY—WINDING UP—CONTRIBUTORIES—UNDERWRITING AGREEMENT.

In re Harvey's Oyster Co., (1894) 2 Ch. 474, was a winding-up proceeding in which certain persons who had been placed on the list of contributories applied to have their names removed. The applicants, it appeared, had made an agreement with one James Harvey, the promoter of the company, whereby they agreed, in consideration of a commission, at any time within three months, "if and when called upon by him," to subscribe or find responsible subscribers for "a certain number of shares in the company," and authorized Harvey, in the event of "their not sub-

scribing or finding responsible subscribers as above mentioned," to subscribe for the shares in their names, and to authorize the directors to allot the shares to them, and register their names as shareholders. No one ever called on any of the applicants to subscribe or find subscribers for any shares, but on April 27th, 1893, the shares were allotted to them, and they were entered on the register as shareholders. One of the applicants had by letter repudiated his liability to take shares, and the others had done so verbally. On July 31st, 1893, a winding-up order was made, and the liquidator placed the applicants on the list of contributories in respect of the shares which had been thus allotted to them. Williams, J., however, was of opinion that, as the applicants had never actually been called on to subscribe, or find subscribers for the shares, the condition precedent on which their liability depended had never been performed, and, therefore, that the applicants' names must be removed from the list.

The Law Reports for September comprise (1894) 2 Q.B., pp. 553-715; (1894) P., pp. 253-265; (1894) 2 Ch., pp. 478-633; and (1894) A.C., pp. 289-455.

MARRIED WOMAN—SEPARATE ESTATE—RESTRAINT AGAINST ANTICIPATION—EXECUTION LIMITED TO SEPARATE ESTATE—EQUITABLE EXECUTION—RECEIVER—SEQUESTRATION—MARRIED WOMEN'S PROPERTY ACT, 1882 (45 & 46 VICT., C. 75), S. 1, S-SS. 1, 2, 3, 4; S. 19—(R.S.O., C. 132, SS. 3, 20).

Hood Barrs v. *Catchcart*, (1894) 2 Q.B. 559; 7 R. Sept. 93; 9 R. Sept. 199, is an important deliverance of the Court of Appeal (Lord Esher, M.R., and Smith and Davey, L.JJ.) in reference to the Married Women's Property Act, 1882. In this case judgment had been recovered against the defendant, a married woman, execution being, in the usual terms, limited to her separate estate, and an order had been made appointing a receiver by way of equitable execution to receive the income of certain property to which the married woman was entitled for her life, subject to a restraint against anticipation. She applied to set aside the order, but the Divisional Court refused to set it aside; her appeal from that court, however, was successful, the Court of Appeal holding that the restraint against anticipation effectually prevented the income of the property to which it referred from being made available in execution, either by means of a receiver or of a sequestration, and that even the arrears

which had accrued after the recovery of the judgment could not be reached. The judgment of Kay, L.J., contains a useful review of the cases on this branch of the law.

MARRIED WOMAN—CONTRACT MADE BEFORE MARRIAGE—PERSONAL LIABILITY OF MARRIED WOMAN.

Robinson v. *Lynes*, (1894) 2 Q.B. 577, is another decision on the law relating to married women. In this case the action was brought against a married woman on a contract made by her before marriage. The writ was specially indorsed, and the plaintiff applied for a speedy judgment notwithstanding appearance. The only defence set up was that she had married since the date of the contract. The Divisional Court (Wills and Williams, JJ.) were of opinion that the Act of 1882 had not altered the law as to contracts made before marriage, and that notwithstanding the marriage the defendant remained personally liable for the debt, and the plaintiff was entitled to judgment against her personally in the ordinary form without any limitation of execution to her separate estate as in *Scott* v. *Morley*, 20 Q.B.D. 120.

WATERWORKS—NEGLIGENCE—STOP COCK IN SERVICE PIPE—OBSTRUCTION ON PAVEMENT OF STREET.

In *Chapman* v. *Fylde Waterworks Company*, (1894) 2 Q.B. 599; 9 R. Sept. 236, the plaintiff sued for damages for injuries sustained by reason of his having tripped over the cover of the guard box protecting a stop cock in a water service pipe between the main and the premises of a consumer. The box had been put down by the defendants at the request and expense of the consumer, and the lid or cover had got out of order and could not be repaired without breaking up the pavement, which the defendants alone were authorized to do. The Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.), without deciding whether the apparatus was the property of the defendants or the consumer at whose request it had been put down, nevertheless held that the defendants were guilty of negligence in not keeping it in repair, and liable to the plaintiff.

LIMITATIONS, STATUTE OF—AGREEMENT FOR LEASE, POSSESSION UNDER—EQUITABLE RIGHT TO POSSESSION—REAL PROPERTY LIMITATION ACT, 1833 (3 & 4 W. 4, C. 27), SS. 2, 7—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT., C. 57), SS. 1, 9—(R.S.O., C. 111, SS. 4, 5, S-SS. 7, 8).

Warren v. *Murray*, (1894) 2 Q.B. 648, is a decision of the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.),

affirming a judgment of Wills, J., which proceeds on the same principle as that enunciated in *Gray* v. *Richford*, 2 S.C.R. 431, that a person in possession of land under a rightful title cannot repudiate his rightful possession and say that it was tortious in order to acquire a title under the Statute of Limitations. This case develops the doctrine somewhat, for it determines that if the person in possession has a merely equitable title to possession for a term of years he cannot, during the currency of the term, no matter how long it may be, acquire a title to the fee. The facts of the case were that an agreement had been made by the defendant's predecessors in title with the plaintiff's predecessors in title, in the year 1790, whereby, on the erection of houses on the premises in question, the plaintiff's predecessors were to be entitled to a lease thereof for ninety-nine years at a peppercorn rent. The houses were built, and the plaintiff's predecessors went into possession and continued in possession thereof for ninety-nine years, but no lease was demanded or executed, or rent paid. At the expiration of the term the defendants, as owners of the reversion, entered and took possession. The present action was then brought by the plaintiff for trespass and to recover possession, on the ground that he and his predecessors in title had, by their long continuance in possession without any legal title, acquired a title in fee under the Statute of Limitations; that, no lease having been executed, they entered as tenants at will, and, under the section of the statute applicable to such tenancies (R.S.O., c. 111, s. 5, s-s. 7), the statute began to run in their favour at the expiration of a year from their original entry. But the Court of Appeal considered that the plaintiff's predecessors, being in under the agreement in question, had a valid equitable title to possession, and that at no period during the currency of the ninety-nine years could the defendants have dispossessed them, and that, therefore, the statute did not apply. Lord Esher, M.R., sums up his conclusion thus: "My judgment is that where, by the law, taking it as a whole, including equity, the person against whom the statute is vouched could not recover the land in question, the statute does not apply." As to the point raised as to it being a tenancy at will, he said that it applies to tenancies at will pure and simple, where there is no clog or difficulty such as arises out of an agreement like that in question here; and Kay, L.J., points

out that the effect of the agreement was to make the lessors implied trustees for the intended lessees, and, in that view, they would not be tenants at will (see R.S.O., c. 111, s. 5, s-s. 8).

BILL OF EXCHANGE—ALTERATION AFTER ACCEPTANCE—NEGLIGENCE—ESTOPPEL—BILLS OF EXCHANGE ACT, 1882 (45 & 46 VICT., c. 61), s. 64 (53 VICT., c. 33 (D.), s. 63).

In *Schofield* v. *Londesborough*, (1894) 2 Q.B. 660; 10 R. Sept. 297, the defendant had accepted a bill for £500 on a stamp sufficient to cover £4,000, but there was nothing else about the bill to make its acceptance a negligent act on the part of the acceptor. After the acceptance the bill was fraudulently raised to £3,500, and in that condition the plaintiff became the *bona fide* holder of it, and he claimed to recover the full amount of £3,500 from the defendant. Charles, J., held that the fact of the stamp on the bill being for a larger sum than was necessary was not such an act of negligence as made the defendant liable for the bill as altered, but, the alteration not being apparent, the bill was valid in the plaintiff's hands for £500 under the Bills of Exchange Act, s. 64 (53 Vict., c. 33, s. 63 (D.)), and, the defendant having paid £500 into court, the action was dismissed with costs.

ARBITRATION—ARBITRATOR—PROBABLE BIAS OF ARBITRATOR—STAYING ACTION—ARBITRATION ACT, 1889 (52 & 53 VICT., c. 49), s. 4—(R.S.O., c. 53, s. 38).

Eckersley v. *Mersey Docks*, (1894) 2 Q.B. 667, was an appeal from an order staying the proceedings in the action, on the ground that the parties had agreed to refer the matter in question to arbitration. The plaintiff contended, and this was the point on which the case turns, that the engineer of the defendants, to whom the matter in dispute had been agreed to be referred, would be probably biased, and, therefore, that the action should be allowed to proceed. Lord Esher characterized it as an attempt to apply to arbitrators the doctrine which is applied to judges, not only that they must not be biased, but that, even though it might be demonstrated that they were not biased, yet that they should not act judicially in any matter where people, even though unreasonably, would suspect them of being biased. In this case the arbitrator named by the parties was the defendants' engineer, under whose superintendence the work which was the subject of dispute had been performed. The only ground of

probable bias suggested being that he would have to decide on matters affecting the professional skill and competence of himself and his own son, the Court of Appeal (Lord Esher, M.R., and Lopes and Davey, L.JJ.) were of opinion that that was not sufficient reason for permitting the plaintiff to proceed with the action. (See, *infra*, *Ives* v. *Willans*.)

PRACTICE—PARTIES—NONJOINDER OF CO-CONTRACTORS AS DEFENDANTS—STAYING ACTION—ORD. XVI., R. 11 ONT. RULE 324).

Robinson v. *Gensel*, (1894) 2 Q.B. 685; 9 R. Sept. 209, was an action brought against one of several joint contractors, all of whom were within the jurisdiction of the court. The defendant originally sued obtained an order that the other joint contractors should be added as defendants, and that, in the meantime, proceedings should be stayed. They were accordingly added, one was served and the other was not, because he could not be found. Without serving him, the plaintiff proceeded with the action against the two who had been served, and an application was again made to stay it until the one who could not be found was served. The Divisional Court refused the application, and the Court of Appeal (Lord Esher, M.R., and Kay and Smith, L.JJ.) upheld their decision. In Ontario, probably, an order would, in such a case, be made for the substitutional service of the missing party.

PROBATE—FOREIGN WILL—PERSONS APPOINTED TO REALIZE PROPERTY IN ENGLAND.

In re Briesemann, (1894) P. 260; 6 R. Oct. 28, a German domiciled in Germany made a will, appointing certain persons in England to realize his estate in England, and pay over the proceeds to his executors in Germany. The court made a grant of administration to the persons so appointed, for the use and benefit of the executors in Germany.

ADMINISTRATION PENDENTE LITE, DURATION OF.

In *Wieland* v. *Bird*, (1894) P. 262, the President decided that the functions of an administrator *ad litem* came to an end with the pronouncing of a decree in favour of a will with executors, and it would seem that it is the same if there be no executors. A grant of probate is not necessary to put an end to his powers.

ADMINISTRATION—GRANT TO PERSONAL REPRESENTATIVE OF NEXT OF KIN.

In re Kinchella, (1894) P. 264; 6 R. Oct. 25, a person died intestate, leaving two daughters and a grandson. The daughters

both died, one of them intestate. The executrix of the other applied for probate to the mother's estate, without citing the grandson, who had not been heard of since 1875, when he had gone to Australia. The application was granted.

ARBITRATION— PRACTICE — STAYING ACTION — BIAS OF ARBITRATOR—ACTION EXTENDING TO MATTERS NOT COVERED BY SUBMISSION—ARBITRATION ACT, 1889 (52 & 53 VICT., C. 49), S. 4—(R.S.O., C. 53, S. 38).

Ives v. *Willans*, (1894) 2 Ch. 478; 7 R. July 79, is a case in which the other branch of the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) arrived at the same conclusion as was reached in *Eckersley* v. *Mersey Docks*, *supra*. An application was made to Kekewich, J., to stay the action, because the parties had agreed to refer the matter in dispute to arbitration. The motion was resisted on two grounds, viz., that a part of the relief claimed was not covered by the submission; and that the arbitrator was the defendants' own engineer, and would probably be biased. Kekewich, J., made the order staying the action, except as to the matters not covered by the submission. This order was affirmed. The court being of opinion that the fact that a small portion of the relief claimed was not within the submission was not in itself a sufficient reason for refusing to stay the action as to the principal part of the relief claimed, which was within the submission. Also, that as the plaintiffs had agreed to refer the matters to the defendants' engineer they must, before they could be relieved from that agreement, show, not merely that the arbitrator would be a judge of his own acts, but that he had been guilty of such misconduct as to make it probable that he would not act fairly.

WILL—CONSTRUCTION—SHIFTING CLAUSE—"POSSESSION OR RECEIPT OF RENTS AND PROFITS," MEANING OF.

Leslie v. *Rothes*, (1894) 2 Ch. 499, is one of those cases in which a will is construed so as to defeat what was most probably the real intention of the testator. By the will in question certain estate was devised to certain persons successively in tail, subject to a proviso that if any person for the time being entitled to the possession (had not that proviso been inserted) should be an infant, the trustees of the will should enter into the possession or receipts and profits of the estate, and manage the same, and pay the necessary outgoings, and apply such sum as they should think fit towards the

maintenance and education of the minor, and should apply the residue on the trusts declared of the residuary personal estate. And there was the further proviso, that if any person for the time being entitled to the possession or to the receipt of the rents and profits of the estate should succeed to the title of Earl of Rothes, then the estate should devolve on the person who would be entitled had the person who should so succeed died without issue. The defendant, while an infant, became tenant in tail, and the trustees, in accordance with the will, went into possession or receipt of the rents. While still an infant he succeeded to the title of the Earl of Rothes. Did the shifting clause take effect? was the question to be solved. Kekewich, J., held that it did not, because the defendant was not in possession or receipt of the rents and profits when he succeeded to the title, the trustees being the persons in possession. This judgment was affirmed by the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), who considered that, whatever the meaning of the testatrix might really have been, it was not so explicitly expressed as to enable the shifting clause to operate to the destruction of the prior gift.

PRACTICE — LUNATIC—JUDGMENT CREDITOR—EXECUTION—RECEIVER—MAINTENANCE OF LUNATIC—MAINTENANCE OF LUNATIC'S WIFE.

In re Winkle, (1894) 2 Ch. 519; 7 R. July 91, the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) determined that where a lunatic's property is under the control of the court, although the lunatic is entitled to maintenance out of his property in priority to his creditors, yet that rule does not extend to the maintenance of the lunatic's wife also, and that, subject to proper provision for his maintenance, his creditors are entitled to be paid. In this case, prior to the appointment of a receiver, the creditor had lodged an execution in the sheriff's hands against the lunatic, but that fact was held not to give the creditor priority as against the claim for maintenance of the lunatic himself.

VENDOR AND PURCHASER—CONDITIONS OF SALE—INTEREST ON PURCHASE MONEY—"WILFUL DEFAULT" OF VENDOR—DELAY—DEFECTIVE ABSTRACT.

In re Mayor of London & Tubbs, (1894) 2 Ch. 524; 7 R. July 101, a sale of land had taken place subject to a condition "that if from any cause whatever, other than the wilful default on the

part of the vendors, the purchase money should not be paid (by the day named) it should bear interest at 5 per cent." The vendors made a careless but *bona fide* mistake as to the origin of their title, and delivered a defective abstract. The date fixed for completion was June 24th, 1892, but partly owing to the above mistake the title was not finally accepted until September 29th; but the purchaser did not, in fact, complete until seven months afterwards, being unable sooner to raise the purchase money. He paid interest from September 29th until completion, and claimed to be relieved from the interest from June 24th to September 29th, on the ground of the "wilful default" of the vendors in having omitted to verify their title by proper investigation before selling. But the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), Kay, L.J., dissenting, were of opinion that the vendors had not been guilty of wilful default within the meaning of the condition. But the whole court were agreed on the facts that even assuming there had been such "wilful default" on the part of the vendor the non-completion on June 24th was really attributable to the purchaser's own voluntary delay in investigating the title and making requisitions, and his inability to find his purchase money, and therefore he was liable for interest from June 24th. The decision of Chitty, J., was therefore affirmed.

PRACTICE—MOTION FOR INJUNCTION BY DEFENDANT.

Carter v. *Fey*, (1894) 2 Ch. 541; 7 R. Aug. 132, settles a nice point of practice. The Court of Appeal (Lindley, Lopes, and Davey, L.JJ.), agreeing with Kekewich, J., that a defendant who has not filed a counterclaim cannot obtain an injunction against the plaintiff unless the relief sought by the injunction is incident to, or arises out of, the relief sought by the plaintiff; and that if a defendant desires any other relief before the time arrives for the delivery of a counterclaim he can only obtain it by a cross action. In this case the plaintiff claimed an injunction restraining the defendant from carrying on a certain business. The defendant, without filing a counterclaim, moved for an injunction to restrain the plaintiff from using the defendant's name on wagons, sign boards, etc., and the motion was refused, although both the plaintiff's and defendant's motions were based on covenants contained in the same deed.

DIARY FOR NOVEMBER.

1. Thursday.....All Saints' Day.
2. Friday.....John O'Connor, J., Q.B., died, 1887.
4. Sunday.....*24th Sunday after Trinity.*
5. Monday.....Sir John Colborne, Lieut.-Gov., U.C., 1838. Gunpowder Plot.
7. Wednesday...T. Galt, C.J. of C.P.D., 1887.
9. Friday.....Prince of Wales born, 1841.
11. Sunday.....*25th Sunday after Trinity.*
12. Monday.....J. H. Hagarty, 4th C.J. of C.P., 1868; W. B. Richards, 10th C.J. of Q.B., 1868.
13. Tuesday.....Court of Appeal sits. Adam Wilson, 5th C.J. of C.P., 1878; J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Wednesday....W. G. Falconbridge, J., Q.B.D., 1887.
15. Thursday.....M. C. Cameron, J., Q.B., 1878.
18. Sunday.....*26th Sunday after Trinity.*
19. Monday.....Michaelmas Term begins. J. D. Armour, 14th C.J. of Q.B.D., 1887.
20. Tuesday.....Convocation meets.
21. Wednesday....J. Elmsley, 2nd C.J. of Q.B., 1796.
23. Friday.....Convocation meets.
24. Saturday.....Battle of Fort Duquesne, 1758.
25. Sunday.....*27th Sunday after Trinity.* Marquis of Lorne, Gov.-Gen., 1878.
27. Tuesday.....Frontenac died at Quebec, 1698.
30. Friday.....Convocation meets. St. Andrew's. T. Moss, C.J. of Ap., 1877; W. P. R. Street, J., Q.B.D., and H. MacMahon, J., C.P.D., 1889.

Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [Oct. 29.

TORONTO RAILWAY COMPANY *v.* THE QUEEN.

Customs' duties—Importation of steel rails for street railways—Tariff Act, 50-51 Vict., c. 39, items 88 and 173—Interpretation.

This was a claim for return of moneys paid for customs.

The case was tried at Toronto on 19th and 20th of April last.

Oct. 29. Judgment was delivered by BURBIDGE, J.

(1) The word "railway" as used in (free) item 173 of the Tariff Act, 50-51 Vict., c. 39, does not include street railways.

(2) In construing a revenue Act regard should be had to the general fiscal policy of the country at the time the Act was passed. When that is a matter of history reference must be had to the sources of such history, which are not only to be found in the Acts of Parliament, but in the proceedings of Parliament, and in the debates and discussions which take place there and elsewhere. This is a different matter from construing a particular clause or provision of the Act by reference to the intention of the mover or promoter of it expressed

while the bill or the resolution on which it was founded was before the House which is not allowable.

Robinson, Q.C., *Osler*, Q.C., and *H. Symons* for the plaintiff.

F. E. Hodgins for the defendant.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

BOYD, C. [Oct. 13.

IN RE STEPHENS AND TOWNSHIP OF MOORE.

Municipal corporations—Drain constructed out of general funds—Maintenance and repair—Assessment of lands benefited—By-law—Petition—55 Vict., c. 42, ss. 569, 586—Complaints as to assessment—Court of Revision—Notice—Service—S. 571 (2)—Irregularities—Lands "to be benefited"—Policy of drainage legislation—Interference by court.

A township council has power under s. 586 (2) of the Consolidated Municipal Act, 55 Vict., c. 42, to maintain and repair a beneficial drain, originally constructed out of general funds, at the expense of the local territory benefited, by passing a by-law to that effect without a petition therefor.

And although such a by-law referred to lots "to be benefited," and so appeared to contemplate prospective advantages, it did not bring the work within the category of drains to be constructed under s. 569 of the Act.

Application to quash the by-law in question being made by several persons, who among them owned one of the lots assessed, alleging that they were not benefited by the original drain and could not be by its continuance and repair, and that the amount charged against their lot was not duly apportioned among them;

Held, that they should have applied to the Court of Revision for relief; and not having done so, and the work having all been done and the benefit of it enjoyed, this court would not interfere to declare the by-law invalid.

Held, also, having regard to s. 571 (2), that the applicants had sufficient notice of the by-law, service having been effected upon a grown-up person at the house where they all lived as members of one family.

Held, also, that upon this application the court would not inquire what other persons were not served who were not seeking relief, nor consider irregularities or errors in the assessment of such others.

It appeared on the face of the by-law that the drain in question was an old one, constructed out of general funds, and out of repair; and although the assessment was referred to as on the property "to be benefited," yet the same clause spoke of it as "upon the property benefited";

Held, that the by-law was not bad in its face.

In drainage matters the policy of the legislature is to leave the management largely in the hands of the localities, and the court should refrain from interference, unless there has been a manifest and indisputable excess of jurisdiction, or an undoubted disregard of personal rights.

M. Wilson, Q.C., for the applicants.

Lister, Q.C., for the township corporation.

Chancery Division.

Div'l Court.] [Oct. 13.

RE MOBERLY *v.* THE CORPORATION OF THE TOWN OF COLLINGWOOD.

Division Court—jurisdiction—Rent—Incorporeal hereditament—Title to.

The bare assertion of the defendant in a Division Court action under R.S.O., c. 51, s. 69, s-s. 4, that the title to any corporeal or incorporeal hereditament comes in question is not sufficient to oust the jurisdiction of the court. The judge has authority to enquire into so much of the case as is necessary to satisfy him on that point; and if there are disputed facts or a question as to the proper inference from undisputed facts that would be enough to raise the question of title, but if the facts can lead to only one conclusion, and that against the defendant, then there is no such *bona fide* dispute as to title as will oust the jurisdiction of the court.

In an action in the Division Court for rent on a covenant in a lease in which it was contended that the lease had been surrendered,

Held, (on an appeal to the Divisional Court, affirming ARMOUR, C.J., MEREDITH, J., dissenting) that there was jurisdiction.

Per MEREDITH, J.: There is no doubt that a *bona fide* defence against the plaintiffs' right to any rent due under the lease was raised, and as the rent reserved is an incorporeal hereditament the jurisdiction of the Division Court is expressly excluded.

W. H. P. Clement for the defendants' appeal.

J. Bicknell for the plaintiffs, *contra*.

Div'l Court.] [Oct. 13.

PIERCE *v.* CANADA PERMANENT LOAN AND SAVINGS CO.

Mortgage—Building loan—Further advances—Priority of subsequently registered mortgage—Registry Act—Notice.

After purchasing certain land under an agreement which provided that $2,000 of the purchase money was to be secured by mortgage subsequent to a building loan not exceeding $12,000, the purchaser executed a building mortgage to a loan company for $11,500, which was at once registered, but only part of the $11,500 was then advanced. The plaintiff, who had succeeded to the rights of the vendor under the above agreement, then registered her mortgage for $2,000, and claimed priority over subsequent advances made by the loan

company under their mortgage, but without actual notice of the plaintiff's mortgage, or of the terms of the agreement for the sale of the land:

Held, reversing the decision of FERGUSON, J., reported 24 O.R. 426 (ROBERTSON, J., *dissentiente*), that the plaintiff was not entitled to the priority claimed by her.

Per BOYD C.: The further advances were made upon a mortgage providing for such advances, and to secure which the legal estate had been conveyed, and equity as well as law protected the first mortgagee so advantageously placed, as against the subsequent mortgagee, even though registered, where notice has not, as a fact, been communicated to the first mortgagee respecting the subsequent instrument. The Registry Act did not apply because the company claimed interest in the lands under a prior mortgage, carrying the legal estate, and the fact that advances were made on the first mortgage subsequent to the registration of the second mortgage was not contemplated or covered by the statute, R.S.O., cap. 114, section 80.

Per MEREDITH, J.: It could not be that in the face of her agreement the plaintiff might at her whim bring the whole building scheme to nought at any stage of the work, causing, perhaps, a total loss of all that might then have been done, even if she had given actual notice of her mortgage to the loan company, and expressly claimed priority over subsequent advances made by them.

S. H. Blake, Q.C., and *Beverley Jones* for the Loan Company.

G. Bell for the plaintiff.

STREET, J.] [Oct. 25.

HENDERSON *v.* BANK OF HAMILTON.

Bank and banking—Special deposit—Wrongful refusal to pay out—Action—Damages—Costs.

The plaintiff, a clergyman, made a special deposit to the Savings Bank Department, subject to fifteen days' notice of withdrawal if required. He demanded his money; the defendants, however, refused to give it him, because he had been ordered in certain litigation with them to pay certain costs, which, however, had not been taxed. The plaintiff brought his action, and the defendants paid a certain sum into court which, they contended, represented the amount to the plaintiff's credit with interest.

Held, that the plaintiff was entitled to judgment for the whole amount to his credit, as the defendants could not retain the money to cover costs which had not been taxed, but not being a trader the plaintiff could recover no damages beyond interest on his money. However, as the amount paid into court was 20 cents less than the correct amount and the parties were on their strict rights, the plaintiff was entitled to full costs of the suit.

Held, also, that as the defendants had not based their refusal to pay the money on the absence of fifteen days' notice, which they had not required, they could not set up such absence of notice as a defence of the action.

Mabee for the plaintiff.

Idington, Q.C., for the defendants.

Common Pleas Division.

Div'l Court.] [June 23.

DISHER *v.* CLARRIS.

Undue influence—Payment procured by—Right to recover back—Fiduciary relationship.

Where, by reason of the confidential relationship existing between plaintiff and defendant, and the influence he was able to exert over her by his asserting a knowledge of matters which could be used to plaintiff's prejudice, and which at the trial he admitted had no existence, he was enabled to procure from plaintiff an excessive amount for services performed—and which was paid by plaintiff even after she had obtained independent advice—the plaintiff was held entitled to recover same back, less a reasonable amount for the services performed.

McCarthy, Q.C., for the plaintiff.

Wallace Nesbitt for the defendant.

Div'l Court.] [June 23.

CANADIAN PACIFIC R.W. CO. *v.* CORPORATION OF CHATHAM.

Municipal corporation—Contract—Ultra vires—Liability—By-law—Necessity for.

Under a by-law passed under the provisions of sections 569 and 576 of the Municipal Act, R.S.O., c. 184, a drain was built in the defendants' township, but which benefited lands in an adjoining township, and which therefore had been assessed for a portion of the cost thereof. After the drain was built it was found that an opening through the plaintiffs' embankment—which when the by-law was passed it was deemed would be sufficient to carry off the water brought down by the drain—was insufficient therefor, whereby the adjoining lands were flooded, and actions were threatened against the defendants. To prevent such actions and to enable the water to be carried off, an agreement was entered into between the plaintiffs and defendants, whereby the plaintiffs were to build, and defendants to pay the cost of, a culvert through the embankment sufficient to carry off the water. The culvert was built by defendants at the cost of over $200, and on its completion was accepted and used by defendants, who, however, refused, to pay for same on the ground that the agreement for its construction was *ultra vires*. No by-law had been passed authorizing the construction of the culvert, nor any of the proceedings required by sections 569-582 of the Municipal Act taken.

Held, by STREET, J., and affirmed by the Divisional Court, ROSE, J., dissenting, that the work in question was new work, and therefore did not come within s. 573, but came within s-ss. 1 and 3 of s. 583, and inasmuch as the cost exceeded $200 no liability could arise until the proceedings pointed out by s. 585 had been complied with, namely, the proceedings required by ss. 569-582; and as these had not been taken the agreement was invalid and could not be enforced.

The case of *Bernardin* v. *Corporation of North Dufferin*, 19 S.C.R. 611,

considered on the question of absence of a by-law where there is an executed contract.

Moss, Q.C., and *MacMurchy* for the plaintiffs.

M. Wilson, Q.C., and *Pegley*, Q.C., for the defendants.

Practice.

C.P. Div'l Court.] [June 23.

IN RE ANDERSON *v.* VANSTONE.

Arrest—Order to commit—County Court—"Process"—R.S.O., c. 70, s. 1—Habeas corpus.

An order made by the judge of the County Court in Chambers for the commitment to close custody of a party to an action in that court for default of attendance to be re-examined as a judgment debtor, pursuant to a former order, is "process" in an action, within the meaning of the exception in s. 1 of the Habeas Corpus Act, R.S.O., c. 70; and where such a party was confined under such an order, a writ of *habeas corpus* granted upon his complaint was quashed as having been improvidently issued.

Aylesworth, Q.C., for the plaintiffs.

J. P. Mabee for the defendant.

BOYD, C.] [Oct. 27.

IN RE MCLEOD.

Executors and administrators—Contention as to grant of administration—Surrogate Court—Removal into High Court—Disqualification of Surrogate judge—Administration quoad—Joint administration.

Upon an application by certain of the next of kin of an intestate, under s. 31 of the Surrogate Courts Act, R.S.O., c. 50, to remove from a Surrogate Court into the High Court a cause in which a contention arose as to the grant of administration, it appeared that the widow and a trust company had petitioned for joint administration of the estate, which was a large one; that the next of kin opposed the petition; that neither widow nor next of kin could unaided supply the necessary security; and that there were no creditors.

Held, that the jurisdiction to award grant, being of a discretionary kind, could be better exercised by the Surrogate judge, and the cause should not be removed.

The personal disqualification of a Surrogate judge to pass upon an application, by reason of his interest as a shareholder in a company applicant, is not a ground for removal to the High Court; for he can call in the aid of a neighbouring County judge.

Where the assets are separable, administration may be granted *quoad*, *i.e.*, to the widow as to one part, and to the next of kin as to another part, or there may be a joint grant to the widow and next of kin.

McCarthy, Q.C., *Guthrie*, Q.C., *W. Cassels*, Q.C., *W. Davidson*, and *W. M. Douglas*, for the next of kin.

Moss, Q.C., and *G. T. Blackstock* for the widow and Trusts Corporation of Ontario.

ROBERTSON, J.] [Oct. 27.

MCCLARY *v.* PLUNKETT.

Costs—Examinations for discovery—Rule 1177, rescission of—Rule 1384, effect of on pending actions—Order for costs—Trial judge.

By Rule 1384, Rule 1177 was rescinded, and a new Rule substituted providing that the costs of every interlocutory examination should be borne by the examining party, unless otherwise ordered.

In an action begun before the passing of the Rule, but tried and judgment given after the passing;

Held, that the new Rule applied, and the taxing officer had no power to tax to the successful plaintiff the costs of examining the defendants for discovery without an order therefor.

Application for such order should be made to the trial judge at the trial or immediately after judgment.

J. E. Jones for the plaintiff.

Waldron for the defendants.

Court of Appeal.] [Nov. 13.

BEATON *v.* GLOBE PRINTING CO.

Discovery—Rule 566, scope of—Examination of plaintiff before delivery of defence—Libel.

Rule 566 does not apply to examinations for discovery, and cannot be made available to authorize an examination not provided for by Rules 487-506.

Fisken v. *Chamberlain*, 9 P.R. 283, overruled.

But were that Rule applicable, it was not "necessary for the purposes of justice," in the circumstances of this action for libel, to make an order allowing the defendants to examine the plaintiff for discovery before delivering their statement of defence.

Decision of the Common Pleas Division, 15 P.R. 473, reversed.

Tate v. *Globe Printing Co.*, 11 P.R. 251, specially referred to.

Gourley v. *Plimsoll*, L.R. 8 C. P. 362, and *Zierenberg* v. *Labouchere*, (1893) 2 Q.B. 183, followed.

Lynch-Staunton for the appellant.

Osler, Q.C., and *H. M. Mowat* for the respondent.

Queen's Bench Division.

BOYD, C.] [Oct. 29.

ARGLES *v.* MCMATH.

Landlord and tenant—Fixtures—Lease—Short Forms Act—Covenants.

Under a lease pursuant to the Short Forms Act, containing covenants by the lessee to repair and to leave in good repair, he cannot, having regard to the extended meaning of the covenants, remove at the end of the term fixtures erected by him for the purposes of trade.

In the term "fixtures" are embraced gas-fittings, shelving, mirrors, window fixtures, outside awnings, and other articles, brought on the demised premises as independent personal chattels, but physically attached by nails or screws; but not carpets spread with tacks for the purpose of keeping them in place.

Shepley, Q.C., and *Donald* for the plaintiff.

William Macdonald for the defendant.

MANITOBA.

COURT OF QUEEN'S BENCH.

McMAIN *v.* OBEE.

TAYLOR, C. J.] [Oct. 8.

County and Division Courts—Jurisdiction—Unsettled account—Prohibition.

This was a motion by the defendant for a writ of prohibition to the County Court of Glenboro to stay proceedings in an action in which the plaintiff had a verdict for $320.54, on the ground that the County Court had no jurisdiction. The claim was upon a promissory note for $225, with interest at 8 per cent. from the date of the note, 22nd March, 1883. The note did not provide specially for any interest after maturity. The total amount of the principal and interest claimed exceeded $400, although credits were given for two payments of $50 each on account. The County Courts Act, R.S.M., c. 33, s. 66, as amended by chapter 4 of the statutes of 1894, provides that "no greater sum than $400 shall be recovered in any action for the balance of an unsettled account, nor shall any action for such balance be sustained where the unsettled account forming the subject-matter to be investigated in the whole exceeds $400."

Objection being made at the trial that the plaintiff's claim was for an unsettled account exceeding in the whole $400, the plaintiff abandoned the claim for eight per cent. interest, and only asked to recover six per cent. interest, thus bringing the amount of his claim within the jurisdiction of the court, and the learned judge allowed the claim to be so amended.

Held, that the plaintiff's claim was beyond the jurisdiction of the court, and that the judge could not amend it so as to bring it within his jurisdiction, and that a writ of prohibition should be granted.

Held, also, that where the proceedings show on their face that the court has no jurisdiction, the granting of a writ of prohibition is not a matter of discretion, but that the party is entitled to it as of right.

Farquharson v. *Morgan*, (1894) 1 Q.B. 552, followed.

Summons made absolute with costs.

Andrews for the plaintiff.

Clark for the defendant.

TAYLOR, C.J.] [Oct. 18

RE RURAL MUNICIPALITY OF MACDONALD.

Municipal law—Ultra vires resolutions of council—Ordinary or special meeting—By-law or resolutions.

In this case a ratepayer of the municipality applied by summons under s. 358 of the Manitoba Municipal Act to quash two resolutions of the council, one of which was passed to provide for payment of the expenses of counsel and witnesses in attendance upon a commissioner appointed by the Lieutenant-Governor in Council to inquire into the financial affairs of the corporation, and the other to authorize the employment of counsel and payment of other expenses in opposing a bill introduced into the legislature to dismember the municipality and to apportion its territory among the adjoining municipalities.

These resolutions had been passed at special meetings of the council, but the notices calling them did not in any way specify the business to be taken up as required by ss. 284 and 288 of the Act.

Held, that the first resolution was *ultra vires* of the council, but that the second might not be.

Held, also, that both resolutions should be quashed on the ground that the notices calling the meetings at which they were passed did not specify the business to be taken up.

Semble, that if the council had power to apply the funds of the municipality for any of the purposes dealt with in the resolutions, it should have proceeded by by-law.

J. R. Haney for the applicant.

Joseph Martin for the municipality.

THOMPSON *v.* DIDION.

TAYLOR, C.J.] [Oct. 18.

Set-off of costs against judgment—Solicitor's lien.

The plaintiffs, creditors of the defendant Edmund Didion, having brought this suit to set aside a judgment recovered against him by his wife, the co-defendant, as fraudulent and void, the bill was dismissed with costs. In settling the minutes of the decree the plaintiffs asked to have their judgment obtained after the filing of the bill set off *pro tanto* against the costs payable by them to Edmund Didion, who had defended separately from his wife. This was opposed by his solicitor on the ground that his costs were unpaid.

Held, that the solicitor's lien could not be interfered with in such a case, and the application was refused.

Webb v. *McArthur*, 4 Ch. Ch. 63, and *Collett* v. *Preston*, 15 Beav. 458, followed.

Semble, however, that when costs in a particular suit are payable to and by different parties to it there may be a set-off, and no question of the solicitor's lien will be entertained to prevent it.

Darby for the plaintiffs.

Baker and *Bradshaw* for the defendants.

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

WALTER BARWICK; JOHN HOSKIN, Q.C.; Z. A. LASH, Q.C.; C. MACDOUGALL, Q.C.; F. MACKELCAN, Q.C.; EDWARD MARTIN, Q.C.; W. R. RIDDELL; C. H. RITCHIE, Q.C.; C. ROBINSON, Q.C.; J. V. TEETZEL, Q.C.

THE LAW SCHOOL.

Principal, N. W. HOYLES, Q.C.

Lecturers: E. D. ARMOUR, Q.C.; A. H. MARSH, B.A., LL.B., Q.C.; JOHN KING, M.A., Q.C.; MCGREGOR YOUNG, B.A.

Examiners: A. C. GALT, B.A.; W. D. GWYNNE, B.A.; M. H. LUDWIG, LL.B.; J. H. MOSS, B.A.

ATTENDANCE AT THE LAW SCHOOL.

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

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

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

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

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

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

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

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

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

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

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

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. See new Rule 156 (*a*).

Under new Rules 156 (*b*) to 156 (*h*) inclusive, students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and thier attendance upon the third year's lectures between the fourth and fifth years of there attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lecture. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceeding year has been duly passed, and a student clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year;

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

On Fridays two moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court.

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

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

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. Printed schedules showiug the days and hours of all the lectures are distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subtects prescribed for or dealt with in the course upon which he is in attendance.

As far as practicable, students will be provided with room and the use of books for this purpose.

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

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

EXAMINATIONS.

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

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

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

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

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

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

HONORS, SCHOLARSHIPS, AND MEDALS.

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

An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

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

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

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

The medals offered at the final examinations of the Law School are the following:

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

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

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

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

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

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

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.—Smith on Contracts. Anson on Contracts.

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

Common Law.—Broom's Common Law. Kerr's Student's Blackstone, Bks. 1 & 3.

Equity.—Snell's Principles of Equity. Marsh's History of the Court of Chancery.

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

SECOND YEAR.

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

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

Personal Property.—Williams on Personal Property.

Contracts.—Leake on Contracts.

Torts.—Bigelow on Torts—English Edition.

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

Evidence.—Powell on Evidence.

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

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

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

THIRD YEAR.

Contracts.—Leake on Contracts.
Real Property.—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles.
Criminal Law.—Harris's Principles of Criminal Law. Criminal Statutes of Canada.
Equity.—Underhill on Trusts. Kelleher on Specific Performance. De Colyar on Guarantees.
Torts.—Pollock on Torts. Smith on Negligence, 2nd ed.
Evidence.—Best on Evidence.
Commercial Law.—Benjamin on Sales. Smith's Mercantile Law. Maclaren on Bills, Notes, and Cheques.
Private International Law.—Westlake's Private International Law.
Construction and Operation of Statutes.—Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.—Clement's Law of the Canadian Constitution.
Practice and Procedure.—Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

NOTE.—In the examinations of the second and third years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.

Notes and Selections.

THE practical effect of *Smith* v. *Hancock*, 7 R. June 80, is neatly and completely stated in Lord Justice Lindley's judgment: "Conveyancers will have to exercise their ingenuity in devising some method of stopping a wife with separate estate from carrying on a business in rivalry with a purchaser of a similar business from her husband. The agreement entered into in this case, to which the wife is not a party, does not cover such conduct, nor do the common forms at present in use." Doubtless the conveyancers will look to it.—*Law Quarterly*.

AMENITIES OF CROSS-EXAMINATION.—An eminent scientist, whose life in academic shades had not made him familiar with legal controversies, tells an interesting story of his experience under cross-examination a few years since. The terror of that ordeal which many people feel he was not entirely free from when called to the stand as an expert. But the cross-examination took an unexpected turn. The cross-examiner was one of the ablest lawyers of the Empire State, who proceeded to say that as he himself was not sufficiently skilled in the technical matters involved to know what questions to ask he would request the learned professor to say what questions he would propound to a witness in such a case. The surprised professor suggested

a question, whereupon the counsel requested him to answer his own question. The cross-examination continued on this novel plan, the witness alternately asking and then answering his own questions. It is safe to say the genial professor now believes that cross-examination is not necessarily a cross-harrowing of the witness, and that there is such a thing as a courteous cross-examiner.—*Case and Comment.*

SIMON MAGUS AND HIS FOLLOWERS.—The Supreme Court of Nebraska has recently rendered a decision embodied in a peculiar opinion, and arising on a peculiar state of facts. A law prohibits the practice of medicine without a certificate from the State Board of Health. One Ezra M. Buswell, who had never had a medical education, and had received no certificate, was accused of violating the law. He was a believer in "Christian science," and testimony was introduced to show that persons came to him afflicted with various infirmities. He would put his hands upon them and urge them to believe that they were cured, and after prayers and exhortations the afflicted persons would sometimes declare that they were cured, and depart satisfied with the treatment. The defendant did not deny that he had applied the principles of "Christian science" in treating sick persons, but defended himself on the ground that his doings were simply religious acts, and that no law could be passed interfering with the enjoyment of liberty in religious matters. The Supreme Court met the defendant on his own ground, and the opinion is largely made up from quotations from the Scriptures to show that the use of the power of healing by faith for money was even in Bible times condemned. Several verses are quoted from the eighth chapter of the Acts of the Apostles, in which Simon is rebuked for endeavouring to purchase the power of healing which the Apostle Peter possessed. The incident of the receiving of a reward by Gehazi from Naaman and his consequent punishment are quoted from the fifth chapter of the second book of Kings, and a reference is also made to the disapproval of Balaam's plan of profiting by the use of the divine power. It had been shown that the "Christian scientist" frequently received compensation for his treatment of a diseased person. The Supreme Court held that neither the pretence of worship nor the performance of any other duty should exonerate the defendant from the punishment attached to the violation of the law.—*Albany Law Journal.*

ERRATA.

Pp. 628, 629—For "Ont. Rules 309, 314," read "Ont. Rules 42[illegible], 439, 444," p. 633. For "Ont. Rules 618," read "Ont. Rules 880-881."