Canada Law Journal.

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DIARY FOR DECEMBER.

15. Mon .....Christmas vacation in Supreme Ct. and Exchequer Ct. begin. Morrison, J., sworn in Ct. of Appeal, 1877.
18. Tues.....First Lower Canada Parliament met, 1792.
21. Sun.....*4th Sunday in Advent.*
22. Mon.....Shortest Day.
24. Wed.....Christmas vacation, H. C. J., begins.
25. Thur.....*Christmas Day.*
26. Fri.....Upper Canada made a Province, 1791.
27. Sat.....Spragge, V.-C., appointed Chancellor, 1879.
28. Sun.....*1st Sunday after Christmas.*
31. Wed.....Revised Statutes of Ontario came into force, 1877.

TORONTO, DECEMBER 20, 1884.

WE have delayed issuing the present number in order that we send with it the Index and Table of Cases, etc., for the past year. The usual sheet Almanac for the coming year will shortly be distributed amongst subscribers.

IT has been the custom in this country for some time past, sanctioned, as we conceive, by sufficient authority to prefix the title of "His Honour" to the word Judge in describing our County judges. It has been thought proper in England to issue a proclamation, published in the *St. James Gazette*, declaring the royal will and pleasure that the judges of the County Courts in England and Wales shall be known and addressed as "His Honour," and shall have precedence next after Knights Bachelor.

THE Canadian Bar has suffered a great loss in the death of Mr. James Bethune, Q.C. It was hardly known that he was seriously ill when his death was announced. He died on the 19th instant, in the forty-fifth year of his age. The universal expression of regret amongst his brethren of the profession found an immediate echo in the lay press. He was taken away in the prime of life, just as he had won for himself a name which will not soon be forgotten, whether we look upon him as a lawyer of talent and learning, as an honest politician, as a warm-hearted, genial friend, or a citizen of high honour and stainless reputation. He was a man of great simplicity of character; in his home-life loving and gentle. An earnest worker in the church to which he belonged, he carried his Christianity into his every-day life. He will be missed by all who knew him.

Mr. Bethune was born in Glengarry on the 7th July, 1840. He was called to the Bar in 1862, and elected a bencher in 1875. The early part of his professional life was spent in Cornwall where, for five years, he held the position of County Attorney. In 1872 he was elected to serve as member for Stormont in the Legislative Assembly, of which he was a useful, conscientious member. He was elected again in 1875, but his heart was in his profession, and his large and increasing counsel-business taxing to the utmost his industry and energy, he ceased during the past few years to take much part in politics.

SEDUCTION.

THE case of *McKersie* v. *McLean*, 6 Ont. R. 428, although one, from the circumstances disclosed in the evidence, not calculated to arouse any feeling of regret that it should have failed, is nevertheless a very striking illustration of the absurd condition of the law relating to actions for damages for the seduction of females. The person alleged to have been seduced was an

orphan, and the action was brought in the name of her grand-uncle who stood in *loco parentis*. The alleged seduction took place whilst the girl was employed as a servant at the house of defendant's brother-in-law. The court held that the only person who could bring the action was the defendant's brother-in-law; which is of course tantamount to saying, that, under such circumstances seduction may take place with impunity. It is high time that the form of action for seduction, as at present recognized by the law, should be abolished altogether, and instead of it, a right of action given directly to the party seduced; or else let it be made a criminal offence as it is in some other countries.

RECENT ENGLISH DECISIONS.

Proceeding with the November numbers of the *Law Reports*, the cases in 27 Ch. D. p. 1-361, next have to be examined.

Covenant—Lease—"Business."

The first case calling for notice is *Rolls* v. *Miller*, p. 71, wherein the Court of Appeal upheld Pearson, J., in holding that a charitable institution called a "Home for Working Girls," where the inmates were provided with board and lodging, was, whether any payment was taken, or not, a business within the meaning of a restrictive covenant in a lease whereby the lessee covenanted not to "exercise, or carry on, or permit . . . upon the premises hereby demised, any trade or business of any description whatsoever." The words of Pearson, J., at p. 78, may be quoted as, on the whole, expressing the opinion of all the judges, and as affording a useful criterion of what a "business" is, as to which there appears to be little authority. He says: "For every purpose for which I can see that the home is to be used, with the single exception of young women actually lodging and boarding there, they are purposes quite outside the ordinary domestic life of persons. The home is not to be replenished with guests, as the Solicitor-General said, in the ordinary way in which a person invites guests to his house. It is the public who are invited—so much of them as are young women of fifteen to twenty-five who want a home. They are invited to come and ask to be admitted, which is what your guest commonly does not do. They are to be received, not in the ordinary way in which a person receives his guests, but they bring a testimonial of respectability, and, of course, they bring proof of their want of accommodation. Under all these circumstances, I think it is absolutely diverse from and outside the domestic life of a home, and if I was to add anything to the unsuccessful attempt I formerly made to define "business," I should say that is a business which is carried on by any person in addition to, and diverse from, his ordinary domestic life, and this, to my mind, is something which is carried on by the society, not being ordinary domestic life at all, but being a business for which they solicit subscriptions, and which they carry on by means of these subscriptions.

Vendor and purchaser—Forfeiture of deposit.

The next case, *Howe* v. *Smith*, p. 89, is a very interesting decision of the Court of Appeal, affirming as it does, the right of a vendor of real estate, in the absence of express stipulation to the contrary, to retain the deposit paid by the purchaser, when the latter has, by his conduct, not only deprived himself of all right to specific performance, but also to damages, and has given the vendor the right to say that he has receded from, and repudiated the contract. It is not necessary here to do more than mention that in the contract in question the land was expressed to be sold "for the price of £12,500; £500 part thereof having been paid on the signing of this agreement as a deposit and in part

payment of the purchase-money." There was no further provision in the contract in reference to the deposit. Fry, L. J., at p. 100, says: "What is the meaning of this expression, 'a deposit, and in fact, payment of the purchase-money?' The authorities seem to leave the matter in some doubt. . . . These authorities appear to afford no certain light to answer the inquiry whether, in the absence of express stipulation, money paid as a deposit on the signing of a contract can be recovered by the payer if he has made such default in performance of his part as to have lost all right to performance by the other party of the contract, or damages for his own non-performance. Money paid as a deposit must, I conceive, be paid on some terms implied or expressed. In this case no terms are expressed, and we must therefore inquire what terms are to be implied. The terms most naturally to be implied appear to me in the case of money paid on the signing of a contract to be that in the event of the contract being performed it shall be brought into account, but if the contract is not performed by the payer it shall remain the property of the payee. It is not merely a part payment, but is then also an earnest to bind the bargain so entered into, and creates by the fear of its forfeiture a motive in the payer to perform the contract." In the same way, at p. 95, Cotton, L. J., says: "What is the deposit? The deposit, as I understand it, . . . is a guarantee that the contract shall be performed. If the sale goes on, of course, not only in accordance with the words of the contract, but in accordance with the intention of the parties in making the contract, it goes in part payment of the purchase-money for which it is deposited; but if, on the default of the purchaser the contract goes off, that is to say, if he repudiates the contract, then . . . he can have no right to recover the deposit."

SALE OF GOOD-WILL—RIGHT TO SOLICIT OLD CUSTOMERS.

The case of *Pearson* v. *Pearson*, p. 155, has next to be noticed, and is of much interest, inasmuch as it is a decision of the Court of Appeal over-ruling *Labouchere* v. *Dawson*, L. R. 13 Eq. 322, wherein Lord Romilly laid it down that the seller of a business, with its good-will, may, in the absence of any express agreement to the contrary, carry on the same business wherever he pleases, and solicit customers in any public manner, but that he must not apply to any of the old customers privately by letter, personally, or by traveller, asking them to continue their custom with him and not to deal with the vendees. The Court of Appeal now held that there is nothing in the sale of a good-will to prevent a man soliciting his old customers to deal with him. Thus Cotton, L. J., says, p. 157: "Lord Romilly rests his decision in *Labouchere* v. *Dawson* on the principle that a man cannot derogate from his own grant. But it is admitted that a person who has sold the good-will of his business may set up a similar business next door and say that he is the person who carried on the old business, yet such proceedings manifestly tend to prevent the old customers going to the old place. I cannot see where to draw the line; if he may by his acts invite the old customers to deal with him, and not with the purchaser, why may he not apply to them and ask them to do so? I think it would be wrong to put such a meaning on 'good-will,' as would give a right to such an injunction as has been granted in the present case." It is to be noticed, however, that Lindley, L. J., dissents from his colleagues. He says, p. 159: "It is true that *Labouchere* v. *Dawson* went beyond the preceding cases, but did it go beyond them so far as to be wrong? It went on the principle that a person who has sold the good-will of his business shall not

derogate from his own grant by doing what he can to destroy the good-will which he has sold. It is true that if this principle were logically carried out, it would prevent the vendor from carrying on the same sort of business as he has sold; and if the courts had held that he could not, I do not think that the decision could have been complained of. It startles a non-lawyer to be told that if he buys a business and its good-will the seller can immediately enter into competition with him next door. The courts, however, have held that this can be done; but I think that Lord Romilly was right in not applying this doctrine to a case where the vendor directly applies to his old customers to induce them to continue dealing with him instead of with the purchaser. Sir George Jessel and the Lord Justice Lush were of the same opinion, but I believe there are other judges besides my learned brothers who think the decision in *Labouchere* v. *Dawson* wrong."

Alimony—Inalienability of.

The next case of *In re Robinson*, p. 160, is to be noted on account of the opinions therein expressed as to alimony being inalienable. Baggallay, L. J., says: "In the ecclesiastical court it is the practice to vary or stop the payment of alimony according to the position or conduct of the wife, and if it were necessary to give an opinion on the question, I should be inclined to decide that alimony was not alienable." Lindley, L. J., says: "The question whether alimony is assignable has never been distinctly decided; but the nature of alimony has been often discussed, and there are cases which, in my opinion, tend to show that it is not alienable." Cotton, L. J., speaks with more positiveness. He says: "The very nature of alimony is inconsistent with its being capable of assignment. We are familiar with instances of allowances which are not alienable in the case of men, such as the half-pay of the officers in the army and navy, which are given them in order that they may maintain themselves in a sufficient position in life to enable them to be called out for future service if required. Although alimony is not the same thing, it is governed by the same principle. Alimony is an allowance which, having regard to the means of the husband and wife, the court thinks right to be paid for her maintenance from time to time, and the court may alter it or take it away whenever it pleases. It is not in the nature of property, but only money paid by the order of the court from time to time to provide for the maintenance of the wife. Therefore, it was not assignable by the wife. How far she might dispose of the arrears or of her savings is a different matter; here the question is whether she can deprive herself of the benefit of it by anticipation." We may mention that in our own courts, in the case of *Raffenstein* v. *Hooper*, 36 U. C. R. 295, it was decided in 1875 that a bond given to a trustee by a husband, and his surety to secure payment to the wife, in pursuance of a decree of the Court of Chancery, was not assignable by the trustee and the wife, such assignment being contrary to public policy, and tending to lessen the inducement to reconciliation.

Vendor and purchaser—Conditions of sale—Right to rescind.

At p. 172 is a case of *In re Dames and Wood*, which shows the position of a purchaser who has stipulated for the right to rescind a contract of sale, if the vendor makes requisition which he is unable or unwilling to comply with. The following extract from the judgment of Bacon, V.-C., shows the effect of the decision: "No doubt this is a case of some importance. A man has an estate to sell, and he takes care to stipulate in the contract that 'if the purchaser shall take any objection, or make any requisition as to the title, evi-

dence or commencement of title, conveyance or otherwise, which the vendor is unable or unwilling to remove or comply with, the vendor may, by notice in writing, rescind the contract; and then the vendor is to repay the deposit money and to retain the papers in his possession.' Now what is the meaning of being 'unable or unwilling' in the contemplation of the vendor? He knows it is possible that captious, unreasonable and minute requisitions may be tendered, and he protects himself on two grounds. He says:—'I may be unable or I may be unwilling.' He may wish to protect himself against being compelled to take the trouble, or to incur the expense of removing an objection. . . . The unwillingness is as much a part of the contract as the inability. The vendor, having reserved to himself the right of saying that he is unwilling, nobody has a right to inquire why he is unwilling. He says in effect, 'If I comply with your request I shall have to go here and there and find out the means of answering your requisition, and I am unwilling to take the trouble; therefore I protect myself by this condition.' That is the plain sense and meaning of the contract."

LETTERS OF ADMINISTRATION—SUPPRESSION OF WILL.

The next case requiring notice is *Boxall* v. *Boxall*, p. 220, wherein it was decided by Kay, J., that a grant of letters of administration obtained by suppressing a will containing no appointment of executors was not void *ab initio;* and accordingly a sale of leaseholds by an administratrix who had obtained a grant of administration under such circumstances to a purchaser who was ignorant of the suppression of the will, was upheld, although the grant was revoked after the sale. It is pointed out that the fact that no executors were appointed by the will makes all the difference, and distinguishes the case from *Abram* v. *Cunningham*, 2 Lev. 182, wherein it was decided that where administration was granted on concealment of a will which appointed executors, the grant was void from its commencement, and all acts performed by the administrator in that character were equally void, and could not be made good though the executor should afterwards appear and renounce. "In it," says Kay, J., "reliance was placed chiefly on the fact that the concealed will had appointed executors, who therefore had a right of property vested in them before probate, and this I gather was the ground of the decision."

INJUNCTION—INNOCENT INFRINGER—COSTS.

Of *Wittman* v. *Oppenheim*, p. 260, it may be worth while to note in passing that Pearson, J., there held that an infringer of a design registered under the Patents, Designs and Trade Marks Act, 1883, though he acted innocently without *mala fides*, or any intention of being dishonest, must nevertheless pay the costs of a motion for an injunction to restrain him from infringing, though the plaintiff had given him no notice of the infringement before serving him with the writ in the action. He says, p. 268:—"It is said that the plaintiffs issued their writ without notice to the defendant, and that the defendant, as soon as he had notice of the plaintiff's title, did his best to undo what he had done. But, at the same time, I cannot say that the plaintiffs were wrong in issuing their writ without notice, and after that the only offer which the defendant could properly make was to submit to an injunction and pay the costs."

LANDS CLAUSES ACT—PURCHASE OF LUNATIC'S LANDS.

Of *In re Tugwell*, p. 309, it may be briefly remarked that it decides, what the judge, Pearson, J., says would appear almost too plain for argument, were it not for a case of *ex parte Flamant*, 1 Sim. (N.S.) 260, that the Lands Clauses Consolidation Act, 1845, sec. 7, which corresponds to

our R. S. O. c. 165, sec. 13, does not authorize a person of unsound mind to sell land to a company or public body who have statutory power to take it; the section only authorizes the committee of a lunatic to sell.

Retirement of trustee—Appointment by continuing trustee.

In *In re Norris, Allen* v. *Norris*, p. 333, Pearson, J., decides the question—"Is it the case that, where there are two trustees, and one of them wishes to retire, the continuing trustee (*i.e.*, the trustee who intends to continue to be a trustee of the instrument) cannot appoint by himself, but must have the concurrence of the trustee who is actually retiring?" In the negative, he says, p. 339:—"With all respect to the judgment of Bacon, V.-C., in *In re Glenny and Hartley*, 25 Ch. D. 611, I cannot think that the words 'continuing trustee' in the ordinary form mean a trustee who is desirous of retiring and intending to retire *instanter*, because, as I recollect it, it used to go on to say, 'thereupon the trust premises shall be conveyed so that they may vest in the new trustees and the continuing trustee.' That shows that the 'continuing trustee,' in whom the trust premises are to rest jointly with the new trustee, cannot be the trustee who is then about to retire, but that the words 'continuing trustee' mean, not the retiring trustee, but the trustee who intends to remain a trustee of the instrument." A. H. F. L.

OUR ENGLISH LETTER.

(From our own Correspondent.)

The monotony of life in the London law courts has been relieved of late by two legal entertainments of such general interest that Mrs. Weldon and Mr. Bradlaugh sink into comparative insignificance.

And first of *Finney* v. *Garmoyle*. In spite of the rumours that nothing exciting was to be revealed in the course of this case the public flocked down to the law courts at an early hour, and, in the result, was by no means so disappointed as might have been expected. It is true that Lord Cairns' fickle son was away on the Continent, and that the case was settled out of court, but Mr. Charles Russell made a speech in which he gave a glowing account of the career of the Savoy actress, and the Attorney-General made a touching apology on behalf of Lord Garmoyle. The court, crowded to suffocation, had the further pleasure of hearing the colossal damages, £10,000 stated by these high authorities, and the assembly dispersed, not altogether displeased with its entertainment of the day. One of the natural results has been that the lay press has produced a variety of articles more or less profound upon the subject of breach of promise, and there can be no doubt that Sir Henry James's famous one-line Bill—"that actions for breach of promise of marriage be no longer maintained at law"—is proved by the popularity of Garmoyle's case to be, to say the least of it, premature. When the public unfeignedly rejoices that an injured woman has obtained £10,000 as a salve to her wounded feelings, the times are not quite ripe for the abolition of the form of action which gave the injured woman her remedy.

But the excitement concerning *Finney* v. *Garmoyle* was not a circumstance to that which attended the famous trial of *Adams* v. *Coleridge*. The facts of this case may be summarized exceedingly shortly. The Hon. Bernard Coleridge did not wish to see his sister married to Mr. Adams, and accordingly wrote his sister a letter containing a string of accusations against Mr. Adams, upon which this gentleman founded an action for libel. The defence was that the communication was privileged, and Mr. Justice Manisty ruled that, unless there was evidence of express malice, this defence must prevail. But

the jury were decidedly of opinion that there had been clear vindictiveness, and assessed the damages at £3,000; the verdict was reversed by the presiding judge who entered judgment for the defendant with costs.

This is a skeleton survey of the details of the case which has set the whole world talking about Mr. Justice Manisty in one tone, which tone is unfavourable to his Lordship. There is no doubt that he has opened himself to the imputation of partiality, and in fact, he has been accused of this failing in more than one quarter. Yet there is not on the whole English Bench a man more scrupulously impartial and laboriously painstaking than Mr. Justice Manisty, and there can be no doubt that he gave his ruling as calmly in the case of Lord Coleridge's son as if the libel had been published by a grocer's assistant. In ordinary cases, too, this practice of allowing the jury to give a verdict before deciding upon the question of privilege may be more or less commended in tending to put a stop to litigation, or rather, to curtail the proceedings in a suit once begun. But Mr. Justice Manisty erred in failing to see that the case was exceptional, and that it was a matter of essential importance to follow the ordinary rules with exceptional rigour. Nor, on the whole, was his conduct of the whole case entirely satisfactory. He was evidently extremely distressed at the character of the circumstances, and it is undoubtedly a sad thing to see the dirty linen of the Lord Chief Justice's family washed in public; but the linen was not, after all was said and done, very dirty, and there is a strong feeling that the presiding judge was not justified in flinging in open court at the plaintiff's head a suggestion that the case should be referred to a private person of eminence for settlement. Mr. Adams preferred the verdict of a jury, and the result shows that his judgment was prudent.

There is apparently a considerable prospect of a reform in the law so far as it affects sentences. For some time past all, except deep-dyed humanitarians, have been complaining that offences against the person are punished far too lightly, unless they are accompanied by robbery. The judges themselves deplore their inability to cope with ruffianism when it is not mercenary; and when assaults are followed by theft the application of the lash has become an almost invariable rule. In addition to this the press clamours that the judges ought to be endowed with a wider discretion in the assignment of punishment, and the public is of the same opinion.

The place amongst the Benchers of the Inner Temple, vacated by the death of Mr. Justice Watkin Williams, is filled by Mr. A. R. Jelf, Q.C., a man who has made for himself a considerable, if not a very great name as a lawyer, and who is also the best of company, which, from the Benchers' point of view, is naturally important. I am not aware that there is any other piece of personal news to be detailed, except that by the death of Judge Longfield the Irish Bar has suffered a loss for which it refuses to be comforted, even by the advent of Mr. Healy, M.P., who has just been called to the Irish Bar amid a flourish of rather small trumpets, any one of which would cost at least a dozen of champagne, if brought home to him at any English circuit mess.

London, November 29th.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

Osler, J. A.]

MACLAREN v. COMMERCIAL UNION ASS. COMPANY.

Fire insurance—Damage by removal of goods—Salvage.

The plaintiff's stock in trade was insured against loss by fire in the defendant Company. A fire occurred in an adjoining building, and the plaintiff's warehouse being in danger of destruction, he removed his stock which was thereby damaged, and some of it lost.

Held, that there was a loss covered by the policy, and no salvage to which the defendants were liable to contribute under the fifth statutory condition; which declares that in case of removal of the property to escape conflagration the Company will ratably contribute to the loss and expenses attending such act of salvage.

REGINA v. YOUNG.

Liquor License Act—Conviction by two magistrates—Onus of proving license—Imprisonment in default of distress—Selling liquor to Indian.

A conviction under R. S. O. cap. 181, for selling liquor without a license, purporting to be made by three magistrates, but signed by two only, was returned with a *certiorari*.

Held, if an objection at all, a ground for sending back the writ, that the third magistrate might sign the conviction, but not a ground for quashing it.

By R. S. O. cap. 181, sec. 85, where the act or omission complained of is one for which, if the defendant were not duly licensed, he would be liable to a penalty under the Act, the burden of proving that he is licensed is on the defendant:

Held, no objection to a conviction, that it did not show the defendant was not licensed.

A penalty of thirty days' imprisonment in default of sufficient distress for the fine imposed:

Held good under sections 51 and 59 of the Act.

That the offence was selling liquor to an Indian:

Held, no objection to a conviction under R. S. O. cap. 181; for, if so, the defendant was guilty of two offences, one under the latter Act and one under the Indian Act.

Beck, for motion.

CHANCERY DIVISION.

Boyd, C.] [Nov. 26.

LABATT v. CAMPBELL.

Will—Devise to charities—Mortmain—Failure of bequests—Incorporated synods—Power to hold in mortmain.

R. P. L., by his will, directed his executors by and out of the moneys which shall be received by them from the P. B. and M. Co. for or on account of the debt or sum of $35,000 owing and secured by mortgage by that company to me at the time of my decease, and of the interest, sums of which shall accrue after my decease; in the first place to pay the sum of $1,500 part thereof to the Bishop, for the time being, of Algoma, in Canada, to be invested by him in or upon any of the investments hereafter authorized with power for the Bishop of Algoma aforesaid, for the time being, from time to time to vary and transpose the investments thereof at his discretion for any other or others of the kind prescribed, and the income of such investments to be applied in and for the education and qualifying of John Eskinah, an Algoma Indian, at present of the Shingwauk Home, Sault Saint Marie, Algoma, aforesaid (heretofore supported by me), as and for a missionary in the Diocese of Algoma aforesaid, for and during and until such time as the Bishop of the said Diocese, for the time being, shall consider sufficiently qualified for such purpose, and upon and after the completion of such education and qualifying, to apply such income as aforesaid forever thereafter, from time to time, in and for the education and qualifying of some other person

to be nominated by such Bishop, for the time being, for a like purpose, and during such time as he shall think proper, but for which applications the trustees and executors shall not be responsible. And after payment of the aforesaid legacy I give and bequeath the following legacies to be paid out of the same fund or money, namely:—

To the Treasurer, for the time being, of the Algoma Mission in British America, the sum of $1,500, of Canadian currency, for the benefit of those Missions.

To the Treasurer, for the time being, of the Huron Missions in British America, the sum of $1,500, of the aforesaid currency, for the benefit of those Missions.

And to the Treasurer, for the time being, of the Ontario Mission in British America, the sum of $2,500, of the aforesaid currency, for the benefit of those Missions.

Held, that the bequest to the Bishop of Algoma for the benefit and education of John Eskinah and, others, was intended to set apart a fund which was to have perpetual continuance, and in which no individual was to have a personal right, and following *Gilland* v. *Taylor* L. R. 16 Eq. 584 such bequest was void.

Held, also, that the bequest to the Treasurer for the Algoma Missions was a charitable gift, and must fail because no person or body was empowered to hold it as against the Statute of Mortmain 9, Geo. 2, c. 36, in as much as there was no incorporation of Algoma for ecclesiastical or missionary purposes with such powers.

Held, also, that the bequest to the Treasurers of the Huron and Ontario Missions, respectively, were intended for the Missions sustained by the Incorporated Synods of the Dioceses of Huron and Ontario, and that by virtue of their Acts of Incorporation both the Dioceses were enabled to hold lands, etc., in mortmain, and that such bequests therefore did not fail either for uncertainty or because they could not be held by their respective defendants.

Lash, Q. C., and *J. Mayne Campbell*, for the Bishop of Algoma and A. H. Campbell.

Walkem, Q. C., for the Synod of Ontario.

Betts, tor the Synod of Huron.

Moss, Q. C., for the next of kin.

PRACTICE.

Rose, J.] [Dec. 5.

MACDONALD v. NORWICH UNION INS. CO.
CLARKSON v. FIRE INS. ASSOCIATION.

Examination in discovery—Rule 224, O. J. A.

One McLean was insured in the defendant companies and becoming unable to meet his engagements, he assigned the policy in the Norwich Union Ins. Co. to the plaintiff, Macdonald, a creditor, to secure his debt, and the policy in the Fire Ins. Association to the plaintiff, Clarkson, as trustee for the benefit of creditors. These actions were brought up on the policies by the assignees.

The order of the Master in Chambers for the examination of McLean for discovery, under Rule 224, O. J. A., as a person for whose immediate benefit the suits were being prosecuted, was affirmed on appeal.

Shepley, for the appeal.

Wallace Nesbitt, contra.

Rose J.] [Dec. 5.

KINNEAR v. BLUE.

Judgment against married woman—Rule 80. O. J. A.

A motion for judgment under Rule 80, O. J. A. against the defendant a married woman.

Held, that since 45 Vict. (O). c. 19, where there is uncontradicted evidence of separate trading, separate credit and separate estate of a married woman, and an uncontroverted liability for the debt sued for, judgment may properly be entered against the married woman under Rule 80, O. J. A., with execution against her separate estate only.

F. E. Hodgins, for the motion.

J. B. O'Brian, contra.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Powers of provincial legislatures to imprison with hard labor.—*Manitoba Law Journal*, July.

Married women.—*Ib.*, August.

Sir Edward Fry on punishment.—*Ib.*, October.

Injunction against criminal acts.—*American Law Review*, p. 599.

Liability of employer for the wrongful acts of persons serving him in the course of an independent employment.—*Ib.*, p 635.

Corporate taxation.—(Scope of legislative powers—Double taxation—Foreign corporations—Against whom corporate taxes are assessed—Upon what corporate taxes are assessed—Non-resident shareholders in domestic corporations and resident shareholders in foreign corporations—Need of uniform general system)—*Ib.*, p. 749.

Allowances for maintenance and education of infants.—*American Law Register*, August.

Railway insurance.—*Ib.*, September.

Possession by husband and wife, (The questions involved—Presumptions as to ownership—Delivery between husband and wife—Possessions when fraudulent).—*Ib.*, October.

Power of partners to withdraw at will from partnerships entered into for a definite period (Civil and foreign law—The English Rule—The American doctrine—Exceptions).—*Ib.*, November.

Injunctions to restrain slanderous statements.—*Ib.*

Remedies in cases of criminal contempt (The revision of contempt and proceedings—Collateral remedies).—*Criminal Law Magazine*, September.

Waiver of trial by jury in cases of felony.—*Ib.*

LATEST ADDITIONS TO OSGOODE HALL LIBRARY.

Wilson's Judicature Act, 4th edition, by M. D. Chalmers and M. Muir Mackenzie, London, 1883.

Treatise on the Law of Pledges, Including Collateral Securities, by Leonard A. Jones, Boston, 1883.

American edition of Browne on the Law of Carriers of Goods and Passengers by Land and Water, by H. G. Wood, New York, 1883.

Greenleaf on Evidence, 14th edition, by Simon Greenleaf Cromwell, Boston, 1883.

Parson on Contracts, 7th edition, by W. N. Kellen, Boston, 1883.

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A Summary of the Law of Patents for Useful Inventions, with forms, by W. E. Simonds, New York, 1883.

The Patentability of Inventions, by H. C. Merwin, Boston, 1883.

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The Law of Fraternities and Societies. A book of interest to Masons, Odd-Fellows, Red Men, Druids, etc., with special reference to their insurance feature, by A. J. Hirsehl, St. Louis, 1883.

A Treatise on the Law of Collateral Securities, as Applied to Negotiable, Quasi-negotiable, and Non-negotiable Choses in Action, by W. Colebrooke, Chicago, 1883.

Digest of Moak's English Reports, vols. 16 to 30 inclusive, with a list of Cases Reported, and Table of Cases Affirmed, Considered, Over-ruled or Revised, by J. Simmons; also a Digest of American Notes, by N. C. Moak, Albany, 1883.

Hunt's Law of Boundaries and Fences, etc., 3rd edition, by A. Brown, London, 1884.

Turner's Contract of Pawn, 2nd edition, by F. Turner, London, 1883.

Fisher on the Law of Mortgage, 4th edition, London, 1884.

Key and Elphinstone's Conveyancing, 2nd edition, by the original authors, London, 1883.

Analysis and Digest of the Decisions of Sir. G. Jessel, late M. R., with full notes, references and comments, and copious index, by A. P. Peter, London, 1883.

Seaborne's Law of Vendors and Purchasers, 3rd edition, London, 1884.

A Code of Contract Law Relating to Sales of Goods of the Value of £10 and Upwards; a handbook for the use of professional and business men, by H. J. Parrington, London, 1883.

The following notice has been posted up in Osgoode Hall, dated December 12th :—

By direction of the judges of the Chancery Division, the Clerk of Records and Writs is requested, in future to see that all preliminary proceedings are regular before setting a cause down: and to classify motions for judgment into undefended and defended ones.

Solicitors will, therefore, require, in setting down cases for judgment, for default of appearance, or pleading, to

1. File, with the Clerk of Records and Writs the writ of summons, affidavit of service of writ and statement of claim, affidavit of non-appearance, or no defence, proof of the allowance of the service of the writ, when that is necessary under Rule 45.

2. State in the *præcipe* whether undefended, or defended, or if partly defended, and partly undefended.

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