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THE position of Treasurer of the Law Society of Upper Canada, left vacant by the Hon. Edward Blake's removal to the Imperial arena, has been filled by the appointment of Mr. Æmilius Irving, Q.C. No better appointment could have been made. Mr. Irving has given much time and attention to the business of the Society, and is thoroughly familiar with its many details. We congratulate him on his promotion to a position honourable in itself, and which has been graced by the incumbency of such eminent men as the Hon. Robert Baldwin, Sir James Macaulay, Hon. Edward Blake, and others.

ONE of our exchanges remarks: "It is singular that the Judicature Acts, of which the aim was the fusion of law and equity, and which have succeeded in promoting that absolute conflict between the two systems which used to be the most striking anomaly of our jurisprudence, have, from some points of view, made the cleavage between the two branches of the profession wider than it used to be in former times. Before that doubtful reform, the transfer of counsel practising on one side to the bench on the other was much more frequent than it has been during the last seventeen or eighteen years." It is very remarkable how, even in this country, there is the same clinging to old prejudices.

THE *Law Journal* tells us that "the new rule prohibiting the Attorney and Solicitor-General from taking private practice has obviously had a most detrimental effect upon the incomes of their

clerks. Accordingly, the government has compensated these gentlemen for their loss by providing Sir Charles Russell with £250 a year for his 'personal clerk,' and by making the Solicitor-General an allowance of £200 for a similar purpose. The law officers' clerks will, we understand, continue to receive fees in connection with the contentious business in which the law officers are engaged, but their financial position will not be so good as it was under the old *régime*." This is very nice for the clerks, and there seems to be plenty of money in England.

THE legal profession in Madras are considering the formation of a law institute or society. Mr. Bhashyam Aiyangar, in an address to the graduates at a recent convocation, as we learn from the *Madras Law Journal*, proposes to form an association composed of representatives of all the three branches of the profession—advocates, attorneys, and vakils (agents). "The object is to maintain a high standard of professional conduct, bring its influence to bear upon every member of the profession, and enable him to seek for and obtain advice as to the rule of professional conduct which should govern and guide him in a matter of some difficulty. The duty of the proposed association will be to bring to the notice of the court cases of professional misconduct, and also to report to the court on cases which, as a rule, should in the first instance be referred to it for investigation." We can not speak with any exactitude of the position of a "vakil," but presume the word indicates a class of native agents or pettifoggers. The writer says that "if the idea of combining the three branches of the profession to form an association of the kind should be found to be practicable, we think there are many things to recommend such a course. The advocates and attorneys have always acted together in questions affecting the profession, but the same relations have not always existed between them both and the vakils. Their professional interests have, for one reason or another, been sometimes regarded as mutually antagonistic, and their opinions on questions in connection with the profession or with the administration of justice have often differed. We do not mean to suggest that this state of things is bound to continue; and it is quite possible for them to act in union in many matters even at present. We hope they may be able to find that their

interests, after all, in many matters are identical, and we trust that there is sufficient mutual sympathy to make formation of a joint legal institute feasible."

These remarks may, perhaps, be suggestive in regard to the state of things in this country, at least to the extent of endeavouring to bring under some control and supervision the vast army of irresponsible unlicensed conveyancers and Division Court agents, who not only feed on professional pastures, but do so to the detriment of the public they profess to accommodate.

THE SUCCESSION DUTY ACT, 1892.

The effects of the Succession Duty Act, 1892, passed by the Ontario Legislature at its last session, and which is in force as respects the estates of persons dying on or after the 1st July, 1892, are just beginning to be felt.

As the Act is the first of its kind ever passed in this Province, some discussion of its origin, and of its principles and practice, may be of assistance both to the Registrars of the various Surrogate Courts, to whom the duty of enforcing it has been entrusted, and to members of the profession who are called upon to interpret its provisions. No case under the Act has yet come before the courts, all matters in dispute having been so far settled by reference to the solicitor to the Treasury of the Province, who seems disposed to give the Act a very liberal construction. There being no guiding decisions, the Act itself must, therefore, be criticized, its defects pointed out, and passages which will doubtless hereafter be interpreted by the court, and, if necessary, amended, must be given what appears to be their most correct construction from the language employed.

In preparing the Ontario Act, it is quite evident that the draftsman had before him, first, an Act of the State of New York, which was approved by the Governor on the 30th April, 1892, and came into force on the 1st of May, 1892, entitled "An Act in Relation to Taxable Transfers of Property"; and, second, an Act of the State of Pennsylvania, approved on the 6th May, 1887, and entitled "An Act to Provide for the Better Collection of Collateral Inheritance Taxes"; and, in addition to these, it is probable that he also looked for guidance to the English Act of 16 & 17 Vict., c. 51, entitled "An Act for Grant-

ing to Her Majesty Duties on Succession to Property." It was from these American statutes, however, that the model of our Act was obtained, and it will be, therefore, in a great measure to American cases and to American authors (see Dos Passos on "Succession Duties in the United States") that we must look for light on the many cases which will, no doubt, arise in the future.

After a preliminary apology to the people of the Province for the passage of the Act, in the form of a recital that its objects are really charitable, the first section states that "it shall go into effect as respects the estates of persons dying on or after the 1st July, 1892."

Under this section the following case has been submitted to the solicitor to the Treasury and to the Deputy Attorney-General: C.W.S., domiciled in Ontario, died on the 13th March, 1893, and his estate in Ontario was proved at $14,000 over and above debts. On the 17th August, 1888, the deceased made his last will, bequeathing forty shares of stock in a loan company to two persons, "strangers in blood," under the 4th section of this Act, and who both survived him. Subsequently, on the 1st January, 1891, C.W.S. executed an irrevocable declaration of trust, whereby he declared himself, his executors, and administrators to be trustees of fifty shares of said stock, upon trust to receive and take the dividends during his life, and upon his death to transfer the said shares to one of the said parties, "strangers in blood" as aforesaid, absolutely.

It was decided that the shares embraced in the trust were not subject to duty; and although no reasons were given for the decision, it was no doubt on the ground that the Act is not retrospective, and that the declaration of trust being irrevocable, and made before the passage of the Act, prevented the shares settled from forming part of the estate, as it appears undoubted that such a voluntary transfer to take effect in possession after the death of C.W.S., if made after the Act came into effect, would be subject to duty under the 4th subsection of s. 4. The shares bequeathed by the will were, however, held to be liable to duty, as C.W.S. died after the Act came into force. The "estates of persons" referred to in this section would consist of the property as defined in the 2nd section, *i.e.*, "real and personal property of every description, and every estate or interest therein capable of being devised or

bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives."

In the New York Act above referred to the terms "estate" and "property" are used synonymously, and refer, not to the tenure of the property devised, bequeathed, or succeeded to, as it is suggested is the meaning of the word "property" in the 2nd section of our Act, but to the actual property itself passing to those not exempted from the provisions of the Act. However, in the English Act before mentioned, the term "real property" is defined by reference to the tenure of the party holding it; so that the intention probably was to follow the English and not the American precedent, and to define the word as used in our Act by reference to the tenure.

After thus defining what "property" shall mean, the 3rd section of the Act specifies certain cases in which the Act shall not apply. This section will be referred to later on. The all-important section of the Act, however, and the one most difficult of interpretation, is the 4th section, dealing with the property which shall be subject to duty. This section reads as follows: (4) Save as aforesaid, all property situate within this Province, where the deceased person owning or entitled thereto was domiciled in Ontario at the time of his death; or had been so domiciled in Ontario within five years previous thereto; passing either by will or intestacy, or any interest therein or income therefrom which shall be voluntarily transferred by deed, grant, or gift made in contemplation of the death of the grantor or bargainor, or made or intended to take effect, in possession or enjoyment after such death, to any person in trust or otherwise, *or by reason whereof any person shall become beneficially entitled in possession, or expectancy, to any property or the income thereof*, shall be subject to a succession duty to be paid for the use of the Province, over and above the fees provided by the Surrogate Courts Act."

In order to assist the reader in interpreting this section, it will be best to place before him the material used in its construction viz., the 1st sections of the New York and Pennsylvania Acts referred to, and possibly the 2nd section of the English Act, although it is doubtful whether the latter section was made use of. The first section of the New York Act is as follows:

"A tax shall be . . . imposed upon the transfer of any property, real or personal, . . . or of any interest therein or

income therefrom, in trust or otherwise, to persons or corporations not exempt, etc., . . . in the following cases:

"(1) and (2) Where the transfer is by will or intestacy.

"(3) When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within the state, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect, in possession or enjoyment, at or after such death.

"*Such tax shall also be imposed when* any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or income thereof by any such transfer, whether made *before or after the passage of this Act.*"

The 1st section of the Pennsylvania statute reads:

"All estates, real, personal, and mixed, of every kind whatsoever, situated within this state . . . passing from any person who may die seized or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons . . . in trust or otherwise . . . shall be subject to a tax," etc.

It will be seen therefore, at a glance, that the first part of the 4th section of our Act is borrowed from the Pennsylvania Act, and the latter portion from the New York Act.

What appears to be the most difficult clause in this section upon which to put a construction in accordance with the spirit of the Act is: "Or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof"; and it will therefore be dealt with first.

By reference to the last clause of the New York Act, recited above, it will be seen from whence this clause was obtained. The words "such tax shall also be imposed when" have been struck out, and "or by reason whereof" have been substituted. It is, however, plain that the clause was intended in the New York statute *only to make the section retrospective;* but by an apparent misconception of the draftsman, it was added to s. 4 of our Act in an entirely different sense.

A writer in the *Canadian Law Times*, in commenting on the Act, has endeavoured to reconcile this clause by placing it in con-

tradistinction to "to any person in trust or otherwise," thereby making the one refer only to property devolving *in trust* and the other to property passing *beneficially*. But while this may give a plausible meaning to the whole section, and may appear to reconcile all difficulties, it may be doubted whether the words used will bear out his construction. According to his interpretation, the word "otherwise" should be taken to mean "in any other fiduciary relation," but it is doubtful if the word can be used in that sense. The usual definition of "otherwise" is "in a different manner," and it is submitted that the clause is intended to read as though it were "to any person in trust or beneficially." This is certainly the meaning of the word in the Act from which it is taken, and in the Pennsylvania Act.

If this be correct, it renders the clause under discussion superfluous (at least in this connection), and the conjunction "or" must be used in the alternative to some other portion of the section. From the strict meaning of the words used, and by observing the manner in which the section was framed, it would appear that this portion of the section must be read as follows: "Any interest therein or income therefrom which shall be voluntarily transferred to any person in trust or otherwise (*i.e.*, beneficially) by deed, grant, or gift (which shall be), made in contemplation of the death of the grantor or bargainor, or (which shall be) made or intended to take effect in possession or enjoyment after such death, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof," shall be subject, etc. The alternative thus being between a "deed, grant, or gift, made in contemplation of death," or intended to take effect in possession after death, "or by reason whereof any person shall become beneficially entitled," etc. It will be noted that the words "to any person in trust or otherwise" have been transposed, and placed after the verb "transferred," in the position they occupy in the New York Act, and which seems to be their logical position.

This construction, it must be admitted, is directly opposed to the whole spirit of the Act, which by its title refers to "successions," or, in other words, to transfers of property by death or having some relation to death. But any other accurate interpretation has been looked for in vain, although it may be that to prevent the consequences of what the Legislature never antici-

pated the courts might put a different meaning upon the word "otherwise," and so hold that the construction first mentioned in the *Law Times* was correct. However, if this reasoning is followed to a conclusion, the section will be found to read as follows: "Save as aforesaid any interest therein (*i.e.*, in property in Ontario, etc.) or income therefrom which shall be voluntarily transferred to any person in trust or otherwise by deed, grant, or gift, . . . by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be subject to a succession duty," etc. To put it shortly, all voluntary transfers of property, whenever made, would thus be subject to duty collectable on the death of the transferor, unless exempted by the 3rd section, and provided the estate fell within any of the subsections of s. 4.

It is not necessary to trace out the effects of this construction of the section, but simply to point out the ambiguity (apparently, as was said before, arising from a misconception on the part of the framer of the Act), in order that it may be explained or amended. In the meantime, parties claiming under voluntary transfers from wealthy donors will be in doubt as to whether or not they may be called upon, on the death of their benefactor, to pay tribute to the Treasury. It is submitted also that the section would be more intelligible if it were amended so as to read: "Save as aforesaid, all property situate within this Province, or any interest therein or income therefrom, where the deceased person, etc., . . . passing either by will or intestacy, or which shall be voluntarily transferred, shall be subject to succession duty," etc.

R. A. Bayly.

(To be continued.)

CURRENT ENGLISH CASES.

The Law Reports for May comprise (1893) 1 Q.B., pp. 521-648; (1892) P., pp. 85-137; and (1893) 1 Ch., pp. 617-758.

STATUTE OF FRAUDS—CONTRACT FOR INTEREST IN LAND—DEBENTURES.

Driver v. *Broad*, (1893) 1 Q.B. 539, was an action for breach of a verbal contract to purchase certain debentures of a joint stock company of which the plaintiff was the owner. The debentures in question were a charge upon all the property of the c mpany

present and future, and at the time of the contract the company was possessed of certain leasehold property. The defendant pleaded that the contract was a contract for an interest in land within s. 4 of the Statute of Frauds, and was void because it was not in writing. Mathew, J., held this to be a good defence, and dismissed the action.

PRACTICE—EQUITABLE EXECUTION—RECEIVER—FUTURE EARNINGS OF DEBTOR—JUDICATURE ACT, 1873 (36 & 37 VICT., C. 66), S. 25, S-S. 8—(ONT. JUD. ACT, S. 53, S-S. 8).

In *Holmes* v. *Millage*, (1893) 1 Q.B. 551, a judgment creditor sought by means of the appointment of a receiver to make the future earnings of the judgment debtor available for the satisfaction of his debt. Day and Collins, JJ., granted the order for a receiver; but the Court of Appeal (Lindley and Bowen, L.JJ.) set aside the order, on the ground that no jurisdiction to appoint a receiver to receive the future personal earnings of a debtor existed either at law or in equity before the Judicature Act, and none had been conferred by, or since, that Act. The equitable right to grant a receiver by way of equitable execution existed only where there was a legal right, and the existence of the legal right was essential to the exercise of the jurisdiction; and Lindley, L.J., who delivered the judgment of the court, declares that the principles on which receivers were granted prior to the Judicature Act (1873), s. 25, s-s. 8 (Ont. Jud. Act, s. 53, s-s. 8), have not been changed by that Act.

PRACTICE—SECURITY FOR COSTS OF COUNTERCLAIM—COUNTERCLAIM AMOUNTING TO A DEFENCE.

In *Neck* v. *Taylor*, (1893) 1 Q.B. 560, the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.) affirmed the order of a Divisional Court (Lord Coleridge and Collins, J.), refusing to direct security for costs to be given by a defendant resident out of the jurisdiction in respect of his counterclaim, which arose out of the same transaction as the plaintiff's action, and was in substance, though not technically, a defence to the action. The Court of Appeal held that there was a discretion in such cases to refuse to order security, and that it had been rightly exercised.

PRACTICE—COSTS, DISCRETION OF COURT AS TO—"GOOD CAUSE"—PLAINTIFF SUCCESSFUL—ITEM OF DAMAGE ON WHICH DEFENDANT SUCCESSFUL—ORDER IX., R. 1 (ONT. RULE 1170).

In *Forster* v. *Farquhar*, (1893) 1 Q.B. 564, the question of what is "good cause" for depriving a successful plaintiff of costs in a jury action came up for consideration again under a somewhat new aspect. The action was brought to recover damages for breach of a contract to put the drainage of a house in good condition, and the plaintiff claimed as special damages certain items in respect of expenses incurred by him in consequence of an illness which broke out in his family, and due, as alleged, to the defective drainage. The claim was made *bonâ fide*, and was based on the opinion of the plaintiff's medical man that the illness was due to the defective drainage. The jury gave a verdict for the plaintiff, but found that the illness was not due to the defective drainage. Under these circumstances, the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) held that Cave, J., was right in ordering that the plaintiff, though successful in the action, should pay to the defendant the costs occasioned by that part of the claim for damages as to which the plaintiff was unsuccessful.

PRACTICE—EMBARRASSING PLEADING—STRIKING OUT PLEADING.

Rassam v. *Budge*, (1893) 1 Q.B. 571, was an action for defamation. The statement of claim set out the defamatory words alleged to have been spoken by the defendant of the plaintiff. The defendant pleaded that he "did say the following words," setting out his own version of what he had said, which differed materially from the plaintiff's version, and then alleged that the words spoken by the defendant were true in substance and in fact, and were spoken on a privileged occasion. The plaintiff applied to strike out this part of the defence as embarrassing. The Divisional Court (Lord Coleridge, C.J., and A. L. Smith, L.J.) made the order, overruling Kennedy, J., who had refused to strike out the defence.

PRACTICE—SERVICE OUT OF JURISDICTION—CO-DEFENDANT WITHIN THE JURISDICTION.

In *Witted* v. *Galbraith*, (1893) 1 Q.B. 577, the Court of Appeal (Lindley and Kay, L.JJ.) have reversed the decision of the Divisional Court, (1893) 1 Q.B. 431 (noted *ante* p. 284). It will be

remembered that the action was brought under Lord Campbell's Act to recover damages for the death of the plaintiff's husband, who was killed whilst unloading a ship. The plaintiff had joined as defendants the shipbrokers, carrying on business in London, and also claimed to join as defendants the shipowners, who carried on business in Glasgow, as being necessary parties to an action brought against persons within the jurisdiction within the meaning of Ord. xi., r. 1 (*g*) (Ont. Rule 271 (*g*)); but the Court of Appeal was of opinion that no *prima facie* cause of action had been shown as against the person served within the jurisdiction, and therefore the case was not within the Rule. As Lindley, L.J., puts it: "I come to the conclusion that the brokers have been brought into the action simply to enable the plaintiff to bring the other defendants within the jurisdiction. It is not a *bona fide* case of an action properly brought against a person who has been served within the jurisdiction."

LANDLORD AND TENANT—LEASE—RE-ENTRY FOR FORFEITURE—RELIEF AGAINST FORFEITURE—PARTIES—C.L.P. ACT, 1860 (23 & 24 VICT., C. 126), S. 1—(R.S.O., C. 143, S. 20).

Hare v. Elms, (1893) 1 Q.B. 604, was an application by a mortgagee of a lease to be relieved from a forfeiture of the lease for non-payment of rent. The landlord had recovered judgment in ejectment against the tenants in possession, and the mortgagees of an under-lessee now applied, under the provisions of the C.L.P. Act, 1860, s. 1, to be relieved from the forfeiture. The application was resisted on the ground that the lessee had not been notified of the application. The Divisional Court (Day and Collins, JJ.) held the objection was well taken, because it was, in effect, sought to restore the lease, and reimpose a burden on the lessee, as to which he was entitled to be heard.

MASTER AND SERVANT—NEGLIGENCE—SERVANT LENT FOR PARTICULAR SERVICE—MASTER PARTING WITH CONTROL OF SERVANT—HIRER OF SERVANT OF ANOTHER, LIABILITY OF, FOR NEGLIGENCE OF SERVANT.

Donovan v. *Laing, Wharton & Down Construction Syndicate*, (1893) 1 Q.B. 629, was an action brought against a master for the negligence of a servant under the following circumstances: The defendants contracted to furnish to a firm of wharfingers engaged in unloading a ship a crane, and a man to take charge of, and to work it. The man in charge of the crane was under

the orders of the firm and their servants as to the working of the crane, and the defendants had no control in the matter. The plaintiff was a servant of the wharfingers, and was injured through the negligence of the man in charge of the crane. Pollock, B., who tried the action, dismissed it on the ground that the man in charge of the crane was for the purpose of a particular service, in which he was engaged—the servant of the wharfingers; and the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) affirmed his decision. We may observe, *en passant*, that this seems to have been the case which gave rise to the "Cock-fight" recorded in the pages of our contemporary, the English *Law Times*, of March 11th last, p. 439.

DIVORCE—FOREIGN LAW—DOMICIL—ENGLISH MARRIAGE—AMERICAN DIVORCE.

Green v. *Green*, (1893) P. 89, although a divorce case, deserves a brief notice, inasmuch as the validity of an American divorce came in question. The husband was an Englishman, domiciled in England: the wife was an American citizen of Pennsylvania: the marriage took place in England. After some months' cohabitation in England the wife went to Philadelphia, partly, as she alleged, to visit her mother, who was ill, and partly to be present at her sister's marriage. She refused to return, and, after repeated attempts to induce her husband to consent to an amicable separation, she commenced proceedings for divorce in the Court of Common Pleas in Philadelphia, alleging cruelty. By the statute law of Pennsylvania, the court had jurisdiction over all matrimonial causes when it could be shown by any wife that she was formerly a citizen of the commonwealth, and that, having intermarried with a citizen of any other state, she had been forced to abandon the domicil of her husband by reason of his cruelty and adultery, and had been domiciled within the state for a whole year prior to the commencement of the suit. The husband was personally served with process, but did not appear, and the court of Philadelphia pronounced a decree of divorce. The wife subsequently went through the form of marriage with another man, with whom she was living as his wife. The court (Barnes, J.) held the American divorce invalid, on the ground that the American court had no jurisdiction to dissolve the marriage of a British subject domiciled in England, and who had never submitted himself to the jurisdiction of that court.

PROBATE—DISAPPEARANCE OF EXECUTOR NAMED IN WILL.

In the goods of Crawshay, (1893) P. 108, the executor named in the will had, before the death of the testator, left England under an assumed name, having sold all his effects; his whereabouts were unknown, and there was reason to believe that he did not intend to return. Under these circumstances, administration with the will annexed was granted to testator's widow, who was the sole beneficiary, without requiring the executor to be cited.

JOINT STOCK COMPANY—TRANSFER OF SHARES—REFUSAL OF DIRECTORS TO REGISTER TRANSFEREE—CERTIFICATE ISSUED TO TRANSFEROR — ESTOPPEL — DAMAGES, MEASURE OF.

In re Ottos Kopje Diamond Mines, (1893) 1 Ch. 618, two or three points of company law are discussed. This was a summary application, under the provisions of the Companies Act, to compel a company to rectify the register by registering the applicant as transferee of certain shares. The shares in question had been purchased by the applicant *bona fide* from one Gardner on the faith of a certificate issued by the company to Gardner, certifying him to be the owner of the shares. After the shares had been transferred to the applicant, the directors of the company, suspecting that there was something wrong in the issue of the certificate to Gardner, refused to register the transfer to the applicant. The Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) agreed with Stirling, J., that although the certificate granted to Gardner did not amount to a warranty of title on which the applicant could sue the company at common law, nevertheless estopped the company from disputing his right to be registered as transferee of the shares therein mentioned; also that the applicant's right of action arose on the refusal of the company to perform the duty of registering the transferee, who had shown a title which the company was estopped from disputing; and, thirdly, that the measure of damages for which the company was liable was the value of the shares at the time of the company's refusal to register the transferee.

COVENANT IN RESTRAINT OF TRADE—GENERAL RESTRAINT—PARTIAL RESTRAINT—TRADE SECRET—MONOPOLY—PUBLIC POLICY—INJUNCTION.

In *Maxim-Nordenfelt Guns Co.* v. *Nordenfelt*, (1893) 1 Ch. 630, will be found a very elaborate discussion of the law relating to covenants in restraint of trade, its origin, the principles on which

it is founded, and the various phases of its development. The circumstances which gave rise to the case were as follows: The defendant, being interested in several businesses, including that of a manufacturer of guns and ammunition, sold the latter business, with several patents for invention, to a limited company in 1886, whose business was in 1888 taken over by the plaintiffs, another limited company; and the plaintiff company had entered into an agreement with the defendant, whereby he was to act as their managing director at a fixed salary, the defendant, who was then 46 years of age, covenanting that he would not, during the twenty-five years from the date of the incorporation of the company, if it should so long carry on business, engage, except on behalf of the company, either directly or indirectly, in the trade or business of a manufacturer of guns or ammunition, or in any business competing or liable to compete in any way with the plaintiffs' business; but other businesses in which the defendant was interested were excepted from the restriction. Under this agreement the defendant acted as managing director of the plaintiff company until 1890, when he ceased to be such director, and he afterwards joined a rival gun and ammunition company. The present action was brought for an injunction to restrain the defendant from so acting. Romer, J., held that the restriction was unreasonable, and therefore void; but the Court of Appeal (Lindley, Bowen, and Smith, L.JJ.) unanimously reversed his decision. That court held that the covenant was severable, and as far as it related to the manufacture of guns and ammunition was valid, though unlimited as to space, because the covenant was part of a transaction for securing for an English company the inventions and business of a foreigner, and therefore tended to encourage trade in England: and the covenant, as restricted to the manufacture of guns and ammunition, was not wider than was reasonably necessary for the protection of the interests of the covenantee. After an elaborate review of the authorities, Bowen, L.J., thus sums up the result of them: "General restraints, or, in other words, restraints wholly unlimited in area, are not, as a rule, permitted by the law, although the rule admits of exceptions. Partial restraints, or, in other words, restraints which only involve a limit of places at which, of persons with whom, or of modes in which, the trade is to be carried on, are valid when made for a good consideration, and where they do not extend further than is necessary for the reasonable

protection of the covenantee. A limit in time does not, by itself, convert a general restraint into a partial one; 'that which the law does not allow is not to be tolerated because it is to last for a short time only.' In considering, however, the reasonableness of a partial restraint, the time for which it is to be imposed may be a material element to consider."

TREASURE TROVE—CORONER—INQUEST—INQUIRY AS TO TITLE.

Attorney-General v. *Moore*, (1893) 1 Ch. 676, was a suit brought on behalf of the Crown to restrain a coroner from parting with the possession of treasure trove. The treasure trove in question had been delivered by the finders to the coroner, who had proceeded to hold an inquest upon it. At this inquest the jury found that the articles in question were treasure trove, but a claim was put in by the lord of the manor under a deed of grant of royalties dated in 1620, executed by James I. to a predecessor in title of the claimant. Upon the question of title the jury failed to agree, and were bound over by the coroner to the next assizes, when Day, J., discharged them. Thereupon the coroner proposed to hold another inquest, and the present suit was then commenced, it being contended on the part of the Crown that the coroner had no jurisdiction to enquire into the title, and that, in any case, any finding of the jury would not be conclusive, and the title would have to be tried in the High Court, and, in the meantime, the plaintiff claimed an injunction to prevent the coroner parting with the possession of the articles. The coroner having given an undertaking to this effect, no order was made. Subsequently the coroner proceeded with another inquest, and the jury found that the lord of the manor was entitled; but, notwithstanding the verdict, the claimant withdrew his claim, and the articles were ultimately handed over to the Lords of the Treasury under the order of the court.

PRACTICE—DISCOVERY—EXAMINATION OF WITNESSES WITH A VIEW TO PROCEEDINGS BY TRUSTEES—PRIVILEGED DOCUMENTS.

In Learoyd v. *Halifax Joint Stock Company*, (1893) 1 Ch. 686, Stirling, J., held that an examination of witnesses taken under the provisions of the Bankruptcy Act upon the application of the trustee in bankruptcy, and with the view of enabling his solicitor

to advise him whether an action should be brought in reference to the bankrupt's estate, was held to be a privileged document, and one that the trustee was not bound to produce.

COMPANY—WINDING UP—DEBENTURES CHARGING UNCALLED CAPITAL—DEBENTURE-HOLDERS' ACTION—MAKING CALLS—(R.S.C., C. 129, S. 49).

In *Fowler* v. *Broad's Patent Night Light Co.*, (1893) 1 Ch. 724, Williams, J., decided that where a company has been ordered to be wound up any calls required to be made for the purpose of liquidating the debts of the company must be made by the liquidator in the winding-up proceedings, and that the court has no power to order calls to be made either by a receiver or the liquidator in an action brought by debenture-holders to realize their securities, even though the debentures are made a charge on the uncalled capital of the company. In short, that the power of the directors to make calls is at end when a winding-up order is made, and the only power then to make calls is under the provisions of the Winding-up Act (see R.S.C., c. 129, s. 49).

COMPANY—WINDING UP—SHAREHOLDERS APPLYING FOR WINDING UP—"JUST AND EQUITABLE"—ULTRA VIRES—ISSUING SHARES AT A DISCOUNT—COMPANIES ACT, 1862 (25 & 26 VICT., C. 89), S. 79, S-S. 5—(52 VICT., C. 32, SS. 4, 5 (D.)).

In re Pioneers of Mashonaland Syndicate, (1893) 1 Ch. 731, was an application by a fully paid-up shareholder of a joint stock company for a winding-up order against the company, on the ground that the company had issued over 10,000 shares at a discount. The petitioner contended that the only way in which the holders of these shares could be made to pay up in full was by means of proceedings under the Winding-up Act, and therefore that it was "just and equitable," within the meaning of the Act (see 52 Vict., c. 32, s. 4 (*e*) (D.)), that the winding-up order should be made. Williams, J., however, was of opinion that where a company issues shares at a discount neither the company nor any shareholder has any right to compel payment of the difference between the amount paid for such shares and the full amount thereof, but that only creditors of the company have that right. He therefore thought the applicant was not damnified by the act complained of, and therefore that it was not "just and equitable" to make the order, and he dismissed the petition with costs.

UNDUE INFLUENCE—CONFIDENTIAL RELATIONSHIP—GIFT INTER VIVOS—FRAUD—LIABILITY OF THIRD PERSONS TO REFUND MONEY WHICH HAS BEEN OBTAINED BY FRAUD.

Morley v. *Loughnan*, (1893) 1 Ch. 736, is one of those cases which exhibits in a marked way a bad phase of humanity. The action was brought by the executors of a deceased person to recover about £140,000, which the principal defendant, Loughnan, had managed to procure from the deceased during his lifetime by gifts from time to time. The deceased was a person of a weak constitution, and subject to epileptic fits. He was of a morbid temperament, and easily influenced. He was entitled to a fortune of £170,000, nearly the whole of which found its way into the hands of Loughnan. Loughnan had been at first engaged as a travelling companion to the deceased, and in the course of the intimacy thus formed managed to acquire great ascendency over the mind of the deceased. Loughnan was a man of no means, and was said to belong to a sect of religionists, "one of whose main tenets is to give everything to the Lord." Henry Morley, the deceased, became a convert to the sect and went to reside with Loughnan, and, as the evidence showed, submitted himself to Loughnan's control, and from time to time drew from the business in which his fortune was invested large sums from the capital of his fortune, which almost immediately afterwards were transferred to Loughnan's bank account. On the last occasion, when he drew about £50,000, he (Morley) wrote that it was for the purpose of "helping in a substantial way such objects as I am led to consider need support, and thus in a feeble way be enabled to realize that I am doing the will of Him that 'loved me, and gave himself for me' (Luke. 18: 29, 30). Neither my friend with whom I am living, nor my relations, have need of money, and I am, therefore, all the more happy in taking this step": but no sooner had the money been received by Morley than it was paid over to the friend with whom he was living, who had "no need of money." There were various other elements in the case which indicated a clear effort on the part of Loughnan to "cover up his tracks," and prevent evidence being forthcoming whereby the destination of the money could be traced. It further appeared that, with the exception of some trifling sums spent on charity, and £20,000 which he had given to two of his brothers and £4,700 he had given to his brother-in-law, the whole of the

rest of the money had been applied to Loughnan's own purposes. It is almost needless to say that Wright, J., found no difficulty in ordering the defendant, Loughnan, to disgorge his ill-gotten gains, both on the ground of the money having been obtained by undue influence, and also on the ground of the confidential relationship existing between the deceased and Loughnan; and he also held that his co-defendants to whom he had generously handed over part of the plunder were bound to refund it.

Notes and Selections.

PURCHASE SUBJECT TO ENCUMBRANCE.—It appears to be reasonable that a vendor selling an estate subject to a mortgage, and in consequence receiving a smaller price than would otherwise be paid, should be indemnified by the purchaser from all claims in respect of the mortgage. A covenant to this effect is, of course, usually and properly inserted in conveyance of estates in mortgage. If, however, this covenant is omitted, and the rents and profits proving insufficient to pay the interest, a claim in respect of the interest upon the mortgage is made upon the vendor, his rights to indemnity appear up to the time of the decision mentioned below to have depended upon a dictum of Lord Eldon, L.C., in the case of *Waring* v. *Ward* (5 Ves. 670: 7 Ves. 332), repeated in several standard text-books. The point has recently been expressly decided in favour of the vendor's right to indemnity in the case of *Adair* v. *Carden* in the current number L.R. Ir. 469.—*Law Gazette.*

RETIREMENT OF JUDGES.—The *Law Gazette* has periodical references to the propriety of aged and infirm judges giving up work which they are unable to perform. Some time ago a writer in that journal thus referred to two County Court judges, one of whom has since resigned: "England seems just now to be groaning under the weight of grand old men. On the 6th instant His Honour Judge Bayley, the judge of the Westminster County Court, attained the patriarchal age of ninety. He was appointed in 1849. The *Law Times* observes that his honour's health is good, but his retirement would not be resented by the profession.

The *Law Gazette* declares: 'It is notorious that he is now absolutely, both mentally and physically, incapable of his duties. Justice is daily travestied at his court, and suitors disgusted to such an extent that the scandal demands the immediate attention of the Lord Chancellor. It is an outrage on the public that Judge Bayley should be permitted to remain even a day longer on the bench, and we would earnestly urge on the lay press the pressing necessity for joining us in our demand for the removal of this senile and incompetent judge.' It is said, too, that Judge Abdy is not unfit through age, but ill-health has so impaired his intellectual qualifications that he is no longer fitted to be entrusted with the arduous duties of a County Court judge." The same journal delights at a fling at Chief Justice Coleridge: "Those members of the Bar who are everlastingly raising the question of Lord Coleridge's retirement are disquieting themselves in vain. If they will take the trouble to think, they will remember that Cockburn died in 1880, and that consequently his successor will not have earned his full pension as the Lord Chief Justice of England until 1895. Is it reasonable to expect his lordship to resign before he has earned his full pension? I think not. But, reasonable or unreasonable, the expectation is certainly doomed to disappointment. Whatever other changes may take place before 1895—and I think that all the present occupants of the bench are animated by a determination to die rather than retire—it is morally certain that Lord Coleridge will continue to preside over the Queen's Bench Division and (occasionally) over the Appeal Court until the latter end of 1895, when his lordship will have attained the respectable age of 75. He will then be a year younger than the Master of the Rolls is at the present moment." Another writer takes his lordship to task for being absent from court without leave, so to speak. If the learned judge occupied a somewhat less exalted position, it would probably be said of him, with some show of reason, that he was "above his business."

CRIMINAL TRIAL—EVIDENCE—LETTERS OBTAINED BY DETECTIVE.—One point in the case of *Siebert* v. *People*, 32 N.E. Rep., decided by the Supreme Court of Illinois, is of special interest. It is held that the fact that letters were taken from defendant's room by a detective without authority of law and without

any warrant or order of court does not render them inadmissible in evidence for the prosecution. The introduction of the letters in evidence was objected to on the ground that they were obtained by unlawful seizure, in violation of the rights of the defendant Siebert; and reliance was placed on the case of *Boyd* v. *U.S.*, 116 U.S. 616, 6 Sup. Ct. Rep. 524. The court conceded that the letters might have been obtained by artifice and perhaps unlawfully, yet they did not find it necessary to enter upon an elaborate discussion of the admissibility of the evidence, as they had recently had occasion to go over the same question in *Gindrat* v. *People*, 27 N.E. Rep. 1085, the decision in which settles the question involved here. After citing several cases, it is said in the above case: "We think that the case last cited, as well as the present case, are clearly distinguishable from *Boyd* v. *U.S.* In the latter case the unconstitutional and erroneous order, process, and procedure of the trial court compelled the complainants to produce evidence against themselves, and such order, process, and procedure were also held to be tantamount to an unreasonable search and seizure; while here, and in other cases cited, the question of illegality was raised collaterally, and the court exercised no compulsion whatever, to produce evidence from the defendants, and neither made orders nor issued process authorizing or purporting to authorize a search of the premises, or a seizure of property or papers, but simply admitted evidence which was offered, without stopping to inquire whether possession of it had been obtained lawfully or unlawfully. Courts, in the administration of criminal law, are not accustomed to be over-sensitive in regard to the sources from which evidence comes, and will avail themselves of all evidence that is competent or pertinent, and not subversive of some constitutional or legal right." In Greenl. Ev. (Redf. Ed.), s. 254, it is said: "Though papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they are offered, or otherwise unlawfully obtained, this is no valid objection to their admissibility if they are pertinent to the issue. The court will not take notice how they are obtained—whether lawfully or unlawfully; nor will it form an issue to determine that question."—*Central Law Journal.*

Correspondence.

INJUNCTIONS.

To the Editor of THE CANADA LAW JOURNAL:

DEAR SIR,—The last paragraph of the letter of "D.J.H.," published *ante* page 297, is not, I think, supported by the cases cited by him. The County Courts and Division Courts have no jurisdiction except in personal actions. If the cause of action is one which was enforceable only in the Court of Chancery prior to the fusion of law and equity, those courts have no jurisdiction over the same. See *Whidden* v. *Jackson* 18 A.R. 439; *Foster* v. *Reeves* (1892), 2 Q.B. 255.

The right which the courts have, according to the cases cited by your correspondent, to grant injunctions, etc., is merely exercisible where such remedy is applicable to a common law cause of action. The courts must first have jurisdiction over the subject-matter of the action; *e.g.*, an action for damages for nuisance or trespass. If the plaintiff succeeds, then if, as part of the remedy, the High Court would, in a similar case, grant an injunction restraining a repetition or continuance of the wrongful act for which damages are awarded, the County Courts and Division Courts have power to give the same remedy.

In *Martin* v. *Bannister*, 4 Q.B.D., page 213, Kelly, C.B., put the point concisely, as follows: "In the present case there was a cause of action for a nuisance and judgment for the plaintiff thereon, and as incidental to that it is essential that the court should have power to grant an injunction."

Yours truly,

JAMES BICKNELL.

Hamilton, May 12, 1893.

Reviews and Notices of Books.

The Workmen's Compensation for Injuries Act, 1892, and the Revised Statutes of Ontario (1887), *c.* 135, *commonly known as Lord Campbell's Act*, with copious notes. By George Smith Holmested, of Osgoode Hall, Barrister-at-Law, Toronto.

The late Lord Bramwell could never see any injustice in the doctrine of "common employment," and he was a judge, one of whose judicial qualities was strong common sense. However, whether just or unjust, the common law on the subject was intelligible: it was logical to say that a servant had, for his wages, parted with any rights which he would have had in respect of injuries caused by the negligence of any one in the employment of his master. We are living, however, in times of social upheaval, and one of the signs of it is that of continual pressure by the "workingman" for class legislation. Whether he really has benefited by what he has obtained in that way is doubtful; it is equally so whether class legislation of any kind benefits those for whom it is intended. Some people are unkind enough to say that the lawyers get all the benefit.

We are led to these remarks by the publication of Mr. Holmested's valuable annotation of the Workmen's Compensation for Injuries Act, 1892. The Employers' Liability Act, 1880, of the Imperial Parliament, was, in effect, re-enacted by the Ontario Legislature in 1886; but, although more than once amending Acts were introduced into the English House, they have, as yet, failed to become law there. The Ontario Legislature, however, taking up one of the English amending Acts passed it into law in 1891, and last year consolidated the two Acts.

This year the same Legislature has "gone back" on its record, by excluding farmers from the provisions of the Act—why, it is difficult to conceive. Farmers nowadays largely use agricultural implements, and should not be exempt from any liability imposed on other employers of labour

We have said that the doctrine of "common employment" is intelligible. We wish we could say the same of the legislation, which has, among other matters, altered it: it is, on the contrary, in many ways obscure. Of the principal Act, it has been said that it has resulted in a "singularly intricate and clumsy

state of things" (Pollock on Torts, 2nd ed., p. 94), and, in our opinion, the amending Act has not remedied the matter.

Mr. Holmested has taken the Act section by section, and, in addition to a running commentary on the various clauses, has diligently collected and summarized all the cases which are very much scattered through the reports in England, Scotland, and in some of the States where there is similar legislation. To the Act he has added and noted Lord Campbell's Act, which, in cases of fatal injury, is intimately connected with the Workmen's Act. The result is a very valuable work on an intricate subject, alike really useful to the profession, and to that large class, the employers of labour.

LAW SOCIETY OF UPPER CANADA.

The following gentlemen have just been appointed lecturers of the Law School: A. H. Marsh, Q.C. (re-appointed), E. Douglas Armour, Q.C. (re-appointed), John King, Q.C., and J. McG. Young, B.A., Barrister-at-Law.

DIARY FOR JUNE.

1. Thursday....Chy. Div. H.C.J. sits. Corpus Christi. First Parliament in Toronto, 1797.
2. Friday.....Convocation meets.
3. Satu. day....Easter Term ends.
4. Sunday.....*1st Sunday after Trinity.* Lord Eldon born, 1751.
6. Tuesday.....Sir John A. Macdonald died, 1891.
8. Thursday....First Parliament at Ottawa, 1866.
11. Sunday.....*2nd Sunday after Trinity.* Lord Stanley Gov.-Gen., 1888.
12. Monday.....County Court sittings for motions in York.
13. Tuesday.....County Court sittings for trial, except in York.
15. Thursday....Magna Charta signed, 1215.
18. Sunday.....*3rd Sunday after Trinity.*
20. Tuesday.....Accession of Queen Victoria.
21. Wednesday..Proclamation of Queen Victoria. Longest day.
24. Saturday....Midsummer day.
25. Sunday.....*4th Sunday after Trinity.* Sir M. C. Cameron died, 1887.
27. Tuesday.....Convocation meets.
28. Wednesday..Coronation of Queen Victoria, 1838.

Reports.

WINDING-UP ACT.

(Reported for THE CANADA LAW JOURNAL.)

IN RE THE COSMOPOLITAN LIFE ASSOCIATION. MOWAT'S CASE.

Life association—Benevolent society—License—General meeting—Organization—Lapse of charter—Policy-holders not shareholders—Winding up—Contributory.

The Cosmopolitan Life Association was incorporated on 10th of May, 1883, under the Act respecting Benevolent, Provident, and other Societies, R.S.O., 1877, c. 167 (re-consolidated in R.S.O., 1887, c. 172).

Held, that this association being formed to insure the lives of its members only was legally incorporated under the above Act, and that no license was necessary for the transaction of its business.

Swift v. *The Provincial Provident*, 17 A.R. 66, followed.

Held, also, that such an association is liable to be wound up under the provisions of the Winding-up Act, R.S.O., c. 183.

The declaration of incorporation contained a clause directing the first five trustees to forthwith call a general meeting of all the members of the association, but no such meeting was called for about seven years.

Held, this provision was directory only, and that the charter did not lapse for non-user.

The declaration of incorporation named the five corporators the first trustees of the association, and declared that the number of trustees should be five until otherwise altered by the by-laws of the association. The organization was effected by three only of the original trustees.

Semble, that the association practically became dissolved.

The by-laws of the association provided that a member was to be an individual over eighteen and under fifty-one years of age, in good health, record of temperate habits, and of good moral character. This person must obtain a policy of membership to take effect on payment of admission premium in advance.

Held, that such policy-holders would in no sense be shareholders, and were not liable to calls, or to be asked to contribute to pay debts or liabilities.

In re Great Britain Life, 16 Chy. Div. 246, followed.

The application to wind up the association was made by a person alleged to be a duly elected member of the company.

Held, that even if the applicant were a duly elected member, numbers of associations incorporated under the Benevolent Societies Act, where there is no stock or share capital, are not liable as partners, and are not, therefore, liable to be called upon to pay debts of the company; therefore the applicant could not be a contributory within the meaning of the Winding-up Act, and the order obtained upon his application must be vacated and set aside with costs.

[TORONTO, Feb. 9, 1893.

This was an application to settle the list of contributories in the matter of the Cosmopolitan Life Association, sought to be wound up under the provisions of the Ontario Winding-up Act, R.S.O., c. 183.

Shepley, Q.C., appeared for the association and liquidator.

Walker, Q.C., *McCarthy*, Q.C., and other counsel, for the various persons sought to be made contributories.

MCDOUGALL, Co.J.: This company was incorporated under the provisions of the Act respecting Benevolent, Provident, and other Societies, R.S.O., 1877, c. 167, re-consolidated in 1887 as c. 172. It was incorporated originally as an equitable, mutual provident society on the 16th May, 1883; and on the 3rd July, 1890, the above name was changed, under the provisions of R.S.O., c. 172, to that of the Cosmopolitan Life Association. The original incorporators were Edmund A. Sparling, George W. Badgerow, Thomas C. Irving, Henry Graham, and Eugene Baker. The objects of the association, as set out in their original declaration made for the purpose of incorporation, was "to associate and continue together upon various classifications, to be regulated by by-laws, persons who become members of the society, and who contribute to a common fund to aid and support the families of deceased members, and for personal benefit in case of permanent disability, and also for the distribution of the accumulations of the society, after providing for the expense thereof, among the members at the time and in the manner regulated by by-laws."

No by-laws were filed, and none existed until long after the date of the original letters of incorporation. The five corporators were named the first trustees or managing officers, and they were to hold office until their successors were appointed. They were directed by the terms of the charter to forthwith call a general meeting of all members of the society at Toronto, at which meeting their successors were directed to be appointed; and the annual meeting was directed to be held yearly on the third Thursday of May in each year, the first of such meetings to be held on the third Thursday in May, 1884. At these annual meetings the trustees were to be re-elected. The trustees were empowered to make by-laws, rules and regulations for the government of the society, provided such by-laws or rules were submitted for approval and confirmation at the next annual meeting of the society, or some special meeting called for that purpose. The by-laws made by the trustees were to remain and be in force until repealed or disallowed by vote of the members of the society.

There appears to have been nothing done whatever under these letters of incorporation for more than six years. No annual meetings were held, and no successors to the trustees were elected. On June 21st, 1890, three of the five

trustees (Messrs. Badgerow, Irving, and Graham) met for organization. The meeting in question was a meeting of the trustees, called by notice, for the purpose, stated in the notice, of electing trustees, and of considering and approving by-laws for the society. At this meeting of trustees certain persons were proposed as members, and on motion were declared to be elected. After the election of members the trustees proceeded to elect the five new members as trustees of the association for the succeeding year, and then adjourned the meeting until the 24th of June, 1890. At the adjourned meeting on the 24th of June a number of by-laws were passed. Those present at the meeting were the three old trustees, and the five new trustees elected on June 21st. The by-laws in question, as adopted, provided rules and regulations for carrying on the business of the association; specified the qualification of membership; named the officers and their duties; and directed that the affairs of the association should be managed by a board of twenty-one directors or more. They also fixed the the date (section 8) of the annual meeting, which was to take place on the third Thursday in January in each year; and at this annual meeting it was enacted that the election of officers should take place.

On the 22nd of December, 1890, in spite or in the face of the by-laws, a meeting was called for the election of members, trustees, and auditors, and for the election of president, vice-president, secretary, treasurer, medical director, and solicitor. At this meeting the only persons present were the same eight gentlemen as had met on the previous 24th of June, and who had passed the by-laws, one of which by-laws had definitely fixed the qualifications and conditions under which a person could become a member of the association. Yet at this meeting, before proceeding to the immediate business of electing officers and the board of directors in succession to the trustees, a motion was made proposing the names of some sixty-six persons as members of the association, and these were declared to be elected. Subsequently, there was elected a board of directors of sixty-six persons, and various officers were also, on motion, declared to be elected or appointed. Nothing more of any importance appears to have been done by the association looking towards the commencing of business, beyond changing its name to the Cosmopolitan Life Association, and the authorizing a committee to make arrangements to commence operations, etc. On the same 22nd December a resolution was passed to open a bank account, and the executive committee were given authority to overdraw to the extent of $2000. In April 1892, certain proceedings, which I held to be beyond my jurisdiction, were taken under the Winding-up Act; and then on the 18th May, 1892, a fresh application was made to this court by J. B. Carlile, as an alleged contributory for a winding-up order, which order was granted. The present application arises upon proceedings under the last-mentioned winding-up order.

Now, let us go back and examine these various steps taken towards organization, and scrutinize them carefully with a view to determine their legality. It will be first observed that in the charter there is no provision determining the qualification of a member, or stating how many trustees should constitute a quorum. It says that the object of the society is to associate and continue together, under various classifications to be regulated by by-laws, persons who

become members and contribute to the common fund, etc. The society had no shares or capital ; no stock or money was subscribed ; and at the period of the issue of the charter no common fund yet existed to which any one contributed. It was clear that the charter was only an outline or skeleton of the corporation, and that it was contemplated that the five charter members, who were also entered as the first trustees, should pass by-laws regulating the classification, qualifications, and conditions under which persons might become members. The trustees were expressly given the power to pass such by-laws ; and any by-laws, as passed by them, the charter declared were to remain in force till disallowed by the members of the society at the annual or special meeting. The charter also directed the trustees to forthwith call a meeting of the members to elect their successors ; but nothing was done under the charter till the meeting of the 21st of June, 1890. At this meeting, as we have seen, five persons were proposed as members, and declared to be elected.

It may, perhaps, be argued that at this date there were no qualifications prescribed for membership, and as the persons so elected for members afterwards acted as members that would be sufficient to constitute them members ; and for the sake of argument I propose to concede this point. But what was the next step? The election of the five new members as trustees for the succeeding year, as it is stated in the resolution. Now, the meeting in question was not the annual meeting ; it was not a special general meeting of the members called for the purpose ; it was simply a meeting of trustees called as such ; and therefore, so far as the three out of the five charter trustees—as I shall call them—attempted to elect their successors, the proceeding was irregular and void. Again, if it be conceded that the meeting of the 21st of June, 1890, had power to elect members, though not to appoint trustees, the adjourned meeting, at which three charter members were present, has, as trustees, it may be argued, the power to pass by-laws fixing the qualification of membership, and generally providing rules and regulations for carrying on the business of the association. If they legally passed these by-laws, thenceforward persons only could become members who complied with the conditions and requirements prescribed by these by-laws. By the by-laws adopted on the 24th June, 1890, section 8, annual meetings were to be held on the third Tuesday in January in each year for the election of officers. Section 9 directed that the affairs of the company should be controlled by a board, composed of twenty-one, or more, directors. Now, in the face of these by-laws, this so-called meeting for the election of members and trustees, etc., was held on the 22nd of December, 1890. There was no vacancy, so far as appears, among the trustees at the time. On the previous 21st of June five trustees had nominally been elected for the ensuing year, and after their election by-laws were passed altering the date fixed in the charter for holding the meeting till the third Tuesday in January, and also declaring that the election of officers should take place at that date. In spite of these plain directions, and without any amendment of their by-laws upon the point, the meeting of the members was called for the 22nd of December, 1890, for the purpose above described, and, as we have seen, the first thing the meeting did was to attempt to elect sixty-six gentlemen as members of the association. Now, this was a pur-

pose nowhere authorized by the by-laws. The only person who could become a member was an individual over eighteen and under fifty-one years of age, in good health, record of temperate habits, and good moral character; and this person must obtain a policy of membership, and no policy was to take effect till the admission premium and annual dues should be paid in advance (ss. 2 and 3 of by-laws); and this application must have been approved by the medical director (s. 18). The directors, twenty-one or more, were to be elected from the members of the association. It is clear that the sixty-six persons elected members were not applicants for policies. Indeed, it was stated in argument that most of them had been applied to to allow their names to be used merely to boom the prospects and importance of the association, and so secure *bonâ fide* members.

This society being a mutual benefit society, and the admission of members being regulated by by-laws at the date of the meeting, I am of opinion that there was no power to elect or appoint any persons members of their association save persons coming within the meaning and requirements of these by-laws, and that the resolution of the 22nd of December, 1890, purporting to elect these sixty-six persons members of the association, was void and *ultra vires*. I am further of opinion that the meeting in question, by reason of the association by-laws, or by the charter, was not authorized to elect directors or officers, and that resolutions upon these points were also irregular and void. In order that a resolution come to at any meeting, whether of directors or shareholders, may have any legal effect, it is necessary that the meeting should be duly convened: Lindley, 305. In order that a meeting may be duly convened, it is necessary that it be convened (1) by those who have the right to convene it, 2) at the proper time, (3) at the proper place, and (4) by a proper notice: Lindley, 305.

I propose now to consider a few of the objections taken to the regularity and legality of the proceedings by counsel representing the different persons sought to be made contributories.

(1) It was argued that the charter of the association was void because it purports to organize a society to carry on a trade or business forbidden, or not allowed, by the Benevolent Societies Act

Swift v. *The Provincial Provident*, 17 A.R. 66, seems to dispose of this point by holding that an association organized to insure the lives of its members only, upon the mutual principle, is not an association to carry on a trade or business. Insurance of this kind, and confined in this way to their own members, was held to be a provident and benevolent purpose, and not to be a trade or business within the meaning of the exception of the Benevolent Societies Act.

(2) The objection was taken that if the business of the society was legal, they could not do business without a license. This objection is, however, met by the decision in *Swift* v. *Provident*, in the judgment of Mr. Justice Maclennan, who holds that a license was not required in these cases. (See R.S.O., 1887, c. 167, s. 3, s-s. 2.)

(3) It was urged that the charter had lapsed by non-user, the association not having been organized from the date of the charter until June, 1890. I am

of opinion that this clause in the charter—as to the date of holding the first annual meeting—is directory only, and that the original trustees held office till their successors were legally appointed.

(4) It was urged that the organization, being effected by three out of five trustees, was void and irregular. This is certainly a formidable objection, and requires consideration. The charter incorporates five named gentlemen and their associates. It names the five corporators as the first trustees of the company. It enacts that the number of trustees, or managing officers of the association, shall be five until otherwise altered by the by-laws of the society. The charter nowhere names a quorum, or enacts that any less number than the five trustees can do any act which should be binding on the company. It is, therefore, imperative. Assuming that the direction to hold the annual meeting in May, 1884, and subsequent years be only directory, and the clause in the charter declaring that the trustees were to hold office till their successors were appointed aids this construction, still the five trustees must meet to perform such an important act as the election of members ; and if any one of the trustees had died or refused to act or attend the meeting, it would seem that the association practically became dissolved—unless, indeed, a general meeting could be called, and the remaining trustees, acting as members at a general meeting, met, in the absence of by-laws on the subject, elected other persons members, and then reconstituted their board. Mr. Shepley, upon this point, argued that the meeting of the 21st of June, 1890, was a general meeting ; but the notice which is set out in the minutes plainly says that it was simply a meeting of trustees. (See Lindley, 157 ; *Re Alma Spinning Company, Bottomley's Case*, 16 Chy. Div. 681 ; *Kirk* v. *Bell*, 16 Q.B. 290 ; *Garden Gully Co.*, 1 App. Cas. 39.)

If, then, the proceedings of this meeting were void so far as electing members was concerned, the proceedings of the adjourned meeting, 24th June, 1890, were equally ineffectual, and the by-laws were not legally adopted, though it appears from the minutes that three out of the five trustees were present at such adjourned meeting. The sixty-six gentlemen whose names were submitted for membership were not legally elected, and did not therefore become members of the association ; and, if not members, are not liable to be made contributories. This association was incorporated for the professed object of insuring the lives of its members, and its members only. The by-laws, which they purported to pass, confined the membership to persons who were applicants for policies, and whose risks had been accepted. The contract contemplated with the policy-holders was that they should pay their premiums annually. Out of these premiums so paid the current expenses of the society—remuneration to officers, wages, etc.—were to be paid by a board of management ; and out of the surplus the policies were to be paid as they became claims ; and any surplus of the surplus, after making the foregoing payments, was to be divided upon certain terms amongst the policy-holders. There was, of course, no obligation upon the policy-holder to continue paying his premium. If he chose he could drop his policy ; and in case the company became insolvent or unable to carry on, and had to be wound up, the only assets would be the funds in the hands of the company, and any property acquired by the company. The policy-holders

would in no sense be shareholders, and were not liable to calls, or to be asked to contribute to pay debts or liabilities. (*In re Great Britain Life*, 15 Ch. Div. 246.)

I am further of opinion that the association is liable to be wound up under the provisions of the Winding-up Act, R.S.O., 183, being a corporation formed under the authority of an Act of the Province of Ontario; and that the insuring of the lives of their members was within the powers of the company, being contemplated in their charter, and therefore not within the prohibition of 53 Vict., c. 39, s. 9.

That being the case, are the members of such an association, not organized with any share capital, liable to be called upon to contribute anything for the payment of creditors? In other words, are they to be treated simply as members of a co-partnership, and so liable to an unlimited extent individually? I cannot adopt this view. It was never the intention of the legislature, in my opinion, in providing a simple and cheap method of incorporation for societies under the Benevolent and Provident Societies Act, to confer only the empty favour of a corporate name, and leaving an unlimited liability to members of those societies. I am of opinion that members of these societies are not personally liable for the corporate debts. The creditors, in giving credit to corporations of this character, must satisfy themselves that their debtors possess assets out of which they can realize their debts, but such creditors cannot look to the individual members for contributions for the purpose of securing satisfaction of their claims. This view, independently of the other questions, determines the status of the petitioner, J. B. Carlile. Mr. Carlile was one of those five persons whom the three trustees attempted to make a member of the association on the 21st June, 1890. Whether the trustees had such a power or not, it is unimportant to determine; for if there is no recourse against a member of the association, such member is not a contributory within the meaning of the Winding-up Act. Equally so if he was not legally elected a member; for if not a member, he could not be a contributory. If J. B. Carlile was not a contributory, he could not make an application for the winding-up of the association under s. 5, R.S.O., 183.

Upon these conclusions, I must hold that the winding-up order was improperly issued, and ought to be set aside, and, as a consequence, the present proceedings must fall to the ground; and I see no reason why the order should not be set aside, with costs of all parties who appeared on this motion against the petitioner.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [May 22.

IN RE HANNA *v.* COULSON.

Prohibition—Division Court—After-judgment summons — Garnishee—"Defendant"—R.S.O., c. 51, s. 235.

The word "defendant" as used in s. 235, *et seq.*, of the Division Courts Act, R.S.O., c. 51, means the person sued in the action, and does not include a garnishee.

Prohibition to a Division Court granted where the primary creditors, having obtained judgment against the garnishee, issued an after-judgment summons against him.

Aylesworth, Q.C., for the primary creditors.

Stoabey for the garnishee.

GALT, C.J.] [April 29.

IN RE ROBINSON AND CITY OF ST. THOMAS.

Municipal corporations—By-law—Exclusive privilege granted to telephone company—Monopoly—Municipal Act, 55 Vict., c. 42, s. 286.

A by-law passed by a city council ratified an agreement between the city and a telephone company, providing that no other person, firm, or company should, for five years, have any license or permission to use any of the public streets, etc., of the city for the purpose of carrying on any telephone business.

Held, that this by-law was in contravention of s. 286 of the Municipal Act, 55 Vict., c. 42, and was *ultra vires* of the council; and it was quashed accordingly.

Hellmuth for the applicant.

C. McDougall, Q.C., for the city corporation.

S. G. Wood for the Bell Telephone Co.

Chancery Division.

Div'l Court.] [April 22.

THE ONTARIO INVESTMENT ASSOCIATION *v.* LEYS.

Company—Joint stock—Acceptance of shares—Object of—Unpaid calls—Liability of acceptor.

The defendant accepted shares in the plaintiff association at the request of the president and managing director for the purpose of attending a meeting of shareholders and forming a quorum, and gave him a power of attorney to

re-transfer the shares after the meeting. No re-transfer was made, and the defendant remained in ignorance of the shares standing in his name until the association became financially embarrassed, when an action was brought against him for calls which were unpaid on the shares.

Held (reversing the judgment of MACMAHON, J.), that he was a shareholder, and as such was liable.

Meredith, Q.C., for the appeal.

Purdom, contra.

Div'l Court.] [May 10.

VIVIAN *v.* THE CORPORATION OF THE TOWNSHIP OF MCKIM.

Assessment—Appeal against—Court of Revision—Notice of sitting—R.S.O., c. 193, s. 64, s-s. 9—Appeal to county judges.

A party complaining against his own assessment is not entitled to notice from the clerk under R.S.O., c. 193, s. 64, s-s. 9.

The proper remedy of a party dissatisfied with the decision of the Court of Revision is by an appeal to the County Judge, not by way of an action to recover back taxes collected under the assessment.

Aylesworth, Q.C., for the plaintiffs.

C. E. K. Cross for the defendants.

BOYD, C.] [April 13.

REID *v.* WILSON.

Indian lands—Mortgage before patent—Priorities.

This was a mortgage action in which a contest arose in the Master's office as to priorities under the following circumstances. One Porter, holder of a timber license and option of purchase of certain Indian lands from the Indian Department, assigned his rights to McGuire and Secord, who, in 1888, executed a mortgage upon them to the plaintiff. The plaintiff registered his mortgage in the county registry office, but neither it nor the assignment from Porter to McGuire and Secord were recorded in the Indian Department.

The defendant Wilson had obtained a patent of the lands from the Indian Department, making title under an assignment from Porter to McGuire, and McGuire to himself, which assignments were duly recorded in the Indian Department.

No actual notice of the plaintiff's mortgage was proved against Wilson, who, however, did not give value for his assignment from McGuire.

Held, that Wilson was entitled to priority over the plaintiff's mortgage to the extent of the money which he had expended in procuring the patent for to this extent he was a *bona fide* purchaser for value, and the registration in the county office did not avail as notice to him of it.

Masson, Q.C., for the plaintiff.

Rykert, Q.C., for the defendant.

Special case.]

FERGUSON, J.] [May 2.

IN RE EATON.

Life insurance—Insurance for benefit of wife—Death of beneficiary—Lapse.

John Eaton insured his life, the policy being made payable "to his wife Sarah, her executors, administrators, or assigns."

The wife Sarah died before the testator, who himself died in 1892.

Held, that the provision in the payment for the policy to her, her executors, etc., became void on her death in the lifetime of the testator, and the insurance money was personal estate of John Eaton.

The words "executors, administrators, or assigns" used in the policy made no difference, and the policy was one under R.S.O., c. 136, s. 1, for securing to wives and children the benefit of life insurance, and under s. 9, the person entitled under it having died in the lifetime of the insured, the insurance money formed part of the estate of the latter.

W. H. Blake for the administratrix of John Eaton.

Shepley, Q.C., for the administrator *ad litem* of the estate of John Eaton.

BOYD, C.] [May 5.

COCK v. BELSHAW.

Mechanic's lien—"Prior mortgage"—R.S.O., c. 120, s. 5, s-s. 3.

Held, that "prior mortgage" in s. 5, s-s. 3, of the Mechanics' Lien Act means the existing in fact before the lien arises, though not necessarily prior in point of registration.

If, however, improvements are put on the land after the mortgage, the increase of value derived therefrom is to be saved for the mechanic who improves as against the prior mortgage by virtue of the Act.

But in this case, where under the mortgage advances were to be made from time to time as the work progressed, and the mortgage was registered, and such further advances were made before a lien was registered.

Held, that as the mortgage was registered each payment attracted to itself the advantage of the Registry Act, so as to gain priority over the concurrent unregistered lien.

Hoyles, Q.C., for the Freehold Loan & Savings Company.

Jarvis for the plaintiff.

Hills for George Phillips, a lienholder.

BOYD, C.] [May 8.

MCCALLUM v. RIDDELL.

Will—Construction—Gift to firm—Condition rendered impossible of performance by act of God—Lapse.

A testator bequeathed as follows: "I direct that as soon as conveniently may be after my decease a partnership be formed by my two sons, Peter and Charles, under the name of 'P. McCallum & Bro.'; in which partnership and firm my two sons shall be equal partners in every particular, and sharing equally in the profits of the same. To the said firm, so to be formed, I give and bequeath," etc.

One of the sons died before the testator, so that it was impossible that the firm should be formed.

Held, that the bequest lapsed, and s. 36 of the Wills Act did not apply to prevent such lapse.

Bain, Q.C., and *J. W. Kerr* for the plaintiffs.

J. H. Nesbitt for the executors of the testator.

Moss, Q.C., for the executors of the deceased sons.

C. J. Holman for the legatee.

Practice.

Chancery Div'l Court.] [April 22.

GILDERSLEEVE *v.* BALFOUR.

Parties—Nominal corporation—Corporators—Partners — Contract—Joint liability—Application to add co-partners—Rule 324—Representatives of partners—Discretion.

In the case of a nominal corporation which has no legal status as such, the ostensible corporators are partners ; and their liability as partners on the contracts of the company is a joint, and not a joint and several, liability.

Where some, but not all, of the co-contractors are sued in an action, they are entitled of right to have all the others within the jurisdiciion added as defendants ; and, the plea of abatement having been abolished, the method of exception is by prompt application to the court under Rule 324.

As to the representatives of deceased or insolvent partners, there is a discretion to add or not.

Arnoldi, Q.C., and *Bristol* for the plaintiff.

Bruce, Q.C., and *L. G. McCarthy* for the defendants Leggatt and Ross.

BOYD, C.] [May 2.

WEISER *v.* HEINTZMAN.

Discovery—Action for defamation—Examination of defendant—Privilege—Criminating answers.

In an action of libel and slander, the plaintiff complained that the defendant had communicated to several persons the contents of a letter received from another person, in which the plaintiff was accused of larceny, etc. Upon an examination of the defendant for discovery, he refused to say whether he had received any letter from the person named, or to answer any questions in relation to such letter or its contents, giving as a reason that it might criminate him to do so.

Held, that the reason given was sufficient to privilege the defendant from answering ; and although it was not the receipt of the letter, but the publication, that would make the offence, that he was entitled to object to the line of inquiry at the outset.

Semble, that s. 5 of the Dominion statute of 1893, respecting witnesses and evidence, will, when it comes into force, supersede the privilege now existing in cases of this kind.

Tytler for the plaintiff.

Kilmer for the defendant.

BOYD, C.] [MAY 3.

IN RE SOLICITORS.

Solicitor and client—Taxation of costs—Præcipe order—Application of third party—Account between solicitor and client—Rule 1220

All *ex parte* orders are *periculo petentis*.

And where the defendants in a certain action had agreed with the plaintiff to pay the costs of the solicitors, and, being furnished with a bill of such costs, obtained on *præcipe* an order for the taxation thereof, which order was drawn up as an order to tax upon an application by the client, and directed that the taxing officer should take account of all sums of money received by the solicitors for or on account of the applicants, such order was vacated with costs.

Held, that the defendants were to be regarded as third persons liable to pay, and were entitled to an order for taxation; but they should have disclosed all the facts and applied for a special order; and the plaintiff should have been made a party to the proceeding under Rule 1229, for the purpose of taking an account between him and the solicitors.

A. G. Murray for the applicants.

J. G. McCarthy for the solicitors.

BOYD, C.] [May 4.

FRELBORN *v.* VANDUSEN.

Reference—R.S.O., c. 44, s. 101—Report—Confirmation—Rules 848, 849—Trustee—Will—Remuneration.

The statute and rules applicable to references should not and need not be so read as to produce the result of two distinct lines of practice in reference to reports of masters and referees.

The well-settled procedure in the case of the ordinary report is extended to the statutory reports of referees under s. 101 of the Ontario Judicature Act, R.S.O., c. 44.

And a motion to vary a report upon a reference under that section, although made at the same time as a motion for judgment on the report, cannot be entertained unless made within the time limited by Rules 848 and 849.

Raymond v. Little, 13 P.R. 364, not followed.

Semble, that the limitation of a will as to the amount to be paid for the services of the original trustees under it does not apply to a trustee afterwards appointed by the court at the instance of the *cestui que trust*.

Williams v. Roy, 9 O.R. 534, distinguished.

W. H. Blake for the plaintiffs.

Hoyles, Q.C., for the defendant.

BOYD, C.] [May 11.

IN RE CAMERON, MASON & CAMERON.

Executors and administrators—Advertisement for creditors—R.S.O., c. 110, s. 36—Ontario Gazette.

Publication in the *Ontario Gazette* of an advertisement for creditors, pursuant to R.S.O., c. 110, s. 36, is not necessary to release executors from liability for payments made by them.

Watson, Q.C., for Sarah Cameron.

J. W. Kerr for Jennie Edington.

W. R. Riddell for the executors.

C. W. Kerr for the executrix.

Q.B. Div'l Court.] [May 16.

TALBOT v. POOLE.

Costs—Taxation—Appeal to Divisional Court—Counsel fees—Discretion of taxing officer—Travelling expenses—Rule 1172—"Taxable costs of defence."

An appeal lies to a Divisional Court from an order from a Judge in Chambers upon appeal from a certificate of taxation of costs.

The discretion of a taxing officer as to the amount of counsel fees will not be interfered with upon appeal.

A plaintiff who is entitled only to Division Court costs of an action can tax as part of such costs his travelling expenses from England to attend the trial, if he is a necessary and material witness.

The words "taxable costs of defence" used in Rule 1172 do not mean costs as between solicitor and client.

G. W. Marsh for the plaintiff.

Middleton for the defendant.

Div'l Court.] [May 18

BALDWIN v. MCGUIRE.

Jury notice—Equitable issue—O.J. Act, R.S.O., c. 44, s. 77—Rules 677, 678.

Where equitable issues are raised in a common law action, a jury notice is irregular under the Ontario Judicature Act, R.S.O., c. 44, s. 77, and Rules 677 and 678, and will be struck out.

E. D. Armour, Q.C., for the plaintiffs.

C. Millar for the defendant.

MEREDITH, J.] [May 18.

LEE v. MIMICO REAL ESTATE CO.

Staying proceedings—Motion—Court or chambers.

A motion by the defendants in an action to stay proceedings therein after satisfaction of the plaintiff's claims should be made in chambers, not in court.

Where such a motion was made in court, it was enlarged into chambers, and costs were ordered against the applicants.

Du Vernet for the plaintiff.

F. C. Cooke for the defendants.

ROSE, J.] [May, 1893.

IN RE SOLICITORS.

Costs—Solicitor and client taxation—Interlocutory costs—Set-off.

In the course of a proceeding for the taxation, at the instance of the client, of the solicitors' bills of costs, there were several interlocutory applications and appeals by the solicitors, which were dismissed with costs, to be paid by the solicitors forthwith.

Held, that the solicitors were not entitled to have these costs set-off against the amount of costs alleged to be due to them upon the bills then being taxed.

S. R. Clarke for the solicitors.

G. G. Mills for the client.

MANITOBA.

TAYLOR, C.J.] [Jan. 16.

STOBART *v.* AXFORD.

Garnishee—Trust moneys—Onus of proof—Trust account in bank—Costs of bank.

The defendant resided at Glenboro, and had been carrying on business with his brother. The plaintiffs recovered a judgment against the firm. Defendant was also a County Court clerk and acted as agent for two insurance companies and two loan companies, in connection with which employments he had opened an account in the Imperial Bank at Winnipeg, which was styled "Frederick Axford, Trust." Plaintiffs garnisheed the bank, and applied to have the money paid over to them. The bank disclaimed any interest in the fund, but suggested that it was not the money of the defendant, but of persons for whom he held it in trust.

Held, (1) The account having been opened as a trust account, the fact that the defendant drew out moneys for his own purposes, or to repay other trust moneys received by him before the opening of the account which had been improperly used, could not deprive the other trust moneys lying to the credit of the account of their trust character.

(2) Unless the money was money with which the debtor could deal as his own, it could not be garnished: *Campbell* v. *Gemmell*, 6 W.R. 35; *Re General Hort. Co.*, 32 Ch.D. 512; *Badeley* v. *The Consol. Bank*, 38 Ch.D. 238.

(3) Where the account is a mixed one the onus is on the party seeking to attack it to show that the money is the debtor's, with which he can deal; and in the absence of proof that the account or so much of it is his, the money will be treated as all trust money: *Ex parte Kingston*, L.R. 6 Ch. 632.

(4) The fact that he did not deposit the identical money received but cashed local cheques at Glenboro with it, and deposited such cheques to the credit of the trust account in Winnipeg, did not alter the character of the account.

(5) In the absence of clear evidence that the balance to the credit of the account did not consist of trust moneys, it should be held to be so: *Ex parte Cooke*, 4 ChD. 123; *Re Hallett*, 13 Ch.D. 696; and *Hancock* v. *Smith*, 41 Ch.D. 456; *Re Monkman & Gordon*, 3 M.R. 145, 254 distinguished.

Motion refused, with costs to be set off against plaintiffs' judgment. The bank, properly, did not appear after the motion had been referred to a judge: it had to appear in the first instance, and should be allowed $5 for such appearance.

Howell, Q.C., for the motion.

Ewart, Q.C., *contra*.

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Dymond (A.M.), Municipal Index, Toronto, 1893.
Fisher (W.H.), Patent Cases, vol. 1, Cincinnati, 1873.
Hazell's Annual Cyclopædia, 1886-1892, London.
Holmested (G.S.), The Workmen's Compensation for Injuries Act, 1892, Toronto, 1893.
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Tristram (Chancellor), Consistory Judgments, 1872-1890, London, 1893.
Von Krafft (E.R.), Psychopathia Sexualis, translated from 7th German edition, Philadelphia and London, 1893.
Walker (T.A.), International Law, London, 1893.
Warvelle (G.W.), Abstracts and Examinations of Title to Real Property, 2nd edition, Chicago, 1892.

American statutes:

Arkansas Statutes, Digest of, by W. W. Mansfield, Little Rock, 1884.
Colorado Session Laws, Colorado Springs, 1891.
Kansas Session Laws, Topeka, 1891.
Kentucky, General Statutes of, 1888, Louisville, 1887.
Louisiana Session Laws, New Orleans, 1890-1892.
Missouri Session Laws, Jefferson City, 1891-1892.
Nevada, Statutes of, Carson City, 1887-1891.
United States Statutes at Large, Vols. 10, 20, and 21, Boston and Washington, 1855-1881.
Virginia, Code of, Richmond, 1887.
Virginia, Acts of, Richmond, 1887-1892.
West Virginia, Code of, 3rd edition, Charleston, 1891.