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DIARY FOR MAY.

1. Tues. . . Supreme Court Session begins. Primary Examination.
2. Wed. . . . Primary Examination. J. A. Boyd appointed Chancellor, 1881.
3. Thurs. . . Ascension Day.
4. Fri. . . . . Napoleon Bonaparte died, 1821.
6. Sun. . . . *First Sunday after Ascension.*
8. Tues. . . Co. Ct. Sitt. for York begin. Ct. of App. sitt. begin. First Intermediate Examination.
9. Wed. . . First Intermediate Examination.
10. Thurs. . . Second Intermediate Examination.
11. Fri. . . . . Second Intermediate Examination.
13. Sun. . . . *Whit Sunday.*
15. Tues. . . Examination for Certificate of Fitness.

TORONTO, MAY 1, 1883.

WE call the special attention of solicitors and the taxing officers to the note of the decision in *Gage* v. *Canada Publishing Co.*, in our present number.

WE are indebted to the courtesy of Mr. Bruce, the Registrar of the Maritime Court, for the important judgment in the case of the tug *Royal*, which we publish in another place.

WE are quite sure that the *Legal News* is sincere in thinking that *Grant* v. *Beaudry* has received sufficient attention. It has been driven to admit that its article abusing one of the Judges of the Supreme Court for overruling a judgment of the Queen's Bench of Quebec, was written by Mr. Justice Ramsay, a Judge of the latter Court. We have done our duty in exposing this most objectionable proceeding. and so leave it.

MR. C. P. BUTT, Q. C., M. P. for Southampton, has been appointed to succeed Sir Robt. Phillimore as Judge of the Probate, Divorce and Admiralty Division. Sir Wm. B. Brett succeeds the late lamented Sir George Jessel as Master of the Rolls, and is the first Lord Justice who has taken that position. Mr. Justice Fry takes the seat thus vacated by Lord Justice Brett. Mr. Justice North has been transferred to the Chancery Division, and Mr. Archibald Levin Smith has been raised to the Bench, taking his place.

WE have received through Messrs. Rowsell & Hutchison, a copy of Sir James F. Stephen's very valuable "History of the Criminal Law of England," recently published by Messrs. Macmillan & Co. Sir James Stephen's fame as a writer on all matters of criminal law has for long been so well established, that the high commendation that this his latest work has received from critics on every side is matter for no surprise. We trust in a future issue to be able to give our readers some more extended notice of the contents of the book, which will doubtless be read by all students of Criminal Law and general jurisprudence.

WE understand Chief Justice Wilson took occasion recently to protest against the unseemly practice of barristers putting on their robes in open Court. We think the learned Chief Justice did well in thus objecting to the Courts being turned into robing rooms. It is not only juniors who are offenders in this respect. We have ourselves seen a learned member of the inner bar, whose profound respect for the Bench is beyond question, yet heedlessly enter Court while in

session, take up a prominent position in front of the Bench, turn his back on the Judges, and proceed to array himself in his robes. Such a proceeding would in many quarters have met with a severe rebuke, and we are inclined to think a Court errs on the side of leniency in allowing it to pass altogether unnoticed.

While on the subject of etiquette, we may remark that we have sometimes been tempted to think that when a Judge comes into Court, and bows politely to the assembled bar, the least the bar can do is politely to return the salutation. The trouble is that the practice of the learned judges is not uniform, and the salutation from the Bench is indistinguishable from the mere bending of the body necessary for the purpose of assuming a sitting posture.

ONE of the earliest acts of the new Master of the Rolls as the President of the Court of Appeal, has been to overrule a decision of his predecessor the late Sir George Jessel. In the case of *Vavasseur* v. *Krupp*, 15 Chy. D. 474, that learned Judge held that if the plaintiff discontinue an action, the defendant who has pleaded a counter claim, cannot proceed with the action in order to enforce the counter claim. In *Gathercole* v. *Smith*, 7 Q. B. D. 626, it was held that no judgment could be given for the defendant, on a counter claim which could not be set off against the plaintiff's claim, even though it was established in evidence. Bramwell, L.J., however, expressed a strong dissenting opinion, and considered that in such a case an independent judgment should be given for the defendant. The Court of Appeal in England have recently in the case of *McGowan* v. *Middleton*, (*Law Times*, 14th April, p. 438,) expressly overruled *Vavasseur* v. *Krupp*, and we presume that *Gathercole* v. *Smith* is also incidentally affected by the decision. *Vavasseur* v. *Krupp* was opposed to the opinions expressed in the earlier decisions of *Stooke* v. *Taylor*, 5 Q. B. D. 569; 43 L. T. 200; and *Winterfield* v. *Brodnum*, 3 Q. B. D. 324, 326; 38 L. T. 250; and was also questioned by Fry, J., in *Beddall* v. *Maitland*, 17 Ch. D. 174; 44 L. T. 248. We certainly think that the decision of the Court of Appeal in *McGowan* v. *Middleton*, more correctly accords with the spirit and intention of the Judicature Act than either *Vavasseur* v. *Krupp*, or *Gathercole* v. *Smith*,. It is not difficult to see that very serious injustice might result to a defendant who after he has been at the trouble and cost of establishing a counter claim, nevertheless, at the end of the litigation fails to recover a judgment for what he has proved himself entitled to, or who is driven to commence proceedings *de novo*, merely because the plaintiff chooses to discontinue the action. As the Master of the Rolls indicates, the fundamental intention of the Judicature Act is that when two parties are once before the Court, all matters in controversy between them are, as far as possible, to be finally determined.

THE TORRENS SYSTEM OF LAND TRANSFER.

THIS system is now in force in the five Australian Colonies, and in New Zealand. The English Act of 1874 is based upon it, and the Irish Landed Estate Courts issue absolute certificates of title similar to those issued under the Torrens system, from which time the title become practically indefeasible.

The Torrens System has been in force in South Australia since 1858, and has proved a complete success. "Indefeasibility of title has been practically secured" is the report of the Attorney-General to the Colonial Secretary in 1870, and such is the general report from all those Colonies.

The advantage of the Torrens system is that it is a register of *owners*, not of *titles*. Land is brought under the Act in a somewhat similar manner to that in which titles are

quieted in Ontario, but with less "red tape." When quieted a certificate is issued to the owner, which is as good as a Patent from the Crown. When the owner wants to sell, he fills out a short transfer, and hands it with the certificate to the purchaser, who takes it to the Registry Office, and surrenders the old certificate, registers the transfer, and receives a new certificate that he is the owner.

Mortgages and leases are effected in the same short and easy style. All the ordinary covenants are implied, and there is a statutory power of sale implied in every mortgage.

As "accidents will arise in the best regulated families," in order to make provision that no person may lose anything by the mistakes of officers in passing defective titles, there has been established in Australia an assurance fund. This fund arises from a charge of one-fifth of one per cent. of the value of land brought under the Act in the first instance, and a succession duty of a like amount. The assurance funds in 1870 in the several colonies amounted to about $100,000, and the claims had been merely nominal.

One difficulty which presents itself to most lawyers is how the certificate of title is to be adjusted when a testator leaves a complicated will. In Ontario until the law of descent is altered to correspond with law of personal property, as it is in New South Wales, it will be necessary for the person claiming under the will to produce the certificate of title of the testator, and the will. The will is then referred to the Land Commissioners, who certify who is entitled under the will. A *fiat* of a Superior Court Judge is then got confirming such finding when the certificate is issued. The devise may be to a woman for her life, with remainder to children in fee, subject to the payment of legacies. When an intending purchaser sees the certificate, he knows exactly what charges there are against the property, and exactly who is entitled to sell. In more complicated cases, the rights of persons claiming the certificate would have to be established by the Court. Instead of the present practice of putting a will on registry, and getting innumerable different opinions as to its construction, and leaving it a festering sore and perplexity to conveyancers for years, every question of ownership is settled before a man's title can be recorded.

I will conclude this brief sketch by a short extract from a report of one of the Australian Registrars to show his opinion of the advantages of the system :—

"This Colony having now been settled for nearly 67 years, the titles to property are in many cases long and intricate, and not a few of these have passed through this office. "No great trouble, however, has arisen in dealing with them, and the result of my experience on this point is, that so long as a title is *really sound*, its length or complication is of no great moment, and presents no serious difficulty. I may add that it is precisely in these cases, where a bulky pile of deeds, liable to loss, and utterly unintelligible to the vulgar, entailing lengthy abstracts of title, and heavy law charges upon everyone dealing with the property, are exchanged for a simple certificate of title, that the greatest sense of relief is experienced by the landowner. The ease and expedition with which mortgages, transfers, leases, etc., are effected, constitute one of the greatest advantages of the system. Instead of the slow process of inquiry into the title of the mortgagor or vendor carried on by lawyers, under the old method of conveyancing, instead of the inevitable delay and expense occasioned by furnishing abstracts of title, and by the preparation of long and costly deeds, the whole transaction under the new system can be completed in a few minutes without the aid of legal advice, and at the very trifling expense of the registration fees ; in fact, it is an every day occurrence for parties to come to the office, sign the proper forms filled up by the clerk according to their instructions, pay over the purchase money, or the amount lent, there and then at the counter, and walk off with the business completed. It is almost needless to point out what an

important advantage this combination of speed and cheapness must be to land holders of all classes. Nor are the means of releasing or assigning mortgages less simple, a mere short endorsement on the instrument in either case effecting the desired object in a few minutes. The process of foreclosing upon default is also simple, speedy and effectual. Leases are registered with the same facility, usual and ordinary covenants being condensed by the use of abbreviated terms prescribed by the Act, special agreements only being set forth in full."

BEVERLEY JONES.

SELECTIONS.

PULLMAN CAR CO. LIABILITY.

The recent decision of the Supreme Court of Illinois in *Nevin* v. *Pullman Palace Car Co.*, has been pretty generally announced with quite a flourish of trumpets, by the lay press, (and, indeed, several law journals have fallen into the same error), as settling the disputed question as to whether sleeping car companies are common carriers and liable as such. We have not yet seen a full report of the decision, but judging from the headnote of Mr. Freeman, the reporter of the court, and the newspaper accounts which we have seen, the court decides nothing of the kind; but simply that the business of running sleepers has become a social necessity, and that there is upon the company an obligation to furnish accommodations to those who desire them, similar to that imposed upon common carriers, ferrymen and inn-keepers. The court is quoted as saying: "When, therefore, a passenger who, under the rules of the company, is entitled to a berth, for the usual fare, and to whom no personal objection attaches, enters the company's sleeping-car at the proper time for the purpose of procuring accommodation, and in an orderly and respectful manner applies for a berth, offering or tendering the customary price therefor, the company is bound to furnish it; provided it has a vacant one at its disposal. For a breach of any of these implied duties, the court holds the company clearly liable." This is a very different thing from imposing upon them the multitudinous and onerous obligations and liabilities of common carriers, proper. Thus it is more than doubtful whether any court would regard this decision as conflicting with the doctrine established in *Pullman Palace Car Co.* v. *Smith*, 73 Ill. 360; *Diehl* v. *Woodruff*, 10 Cent. L. J. 66, and *Blum* v. *Southern Palace Car Co.*, 3 Cent. L. J. 591, that the sleeping car companies are not liable for baggage of passengers stolen or lost while in the car, either as common carriers or innkeepers, but simply for the use of reasonable care and diligence; that is, they are in no sense insurers, but simply bailees for hire. This view of the law is supported by reason as well as authority. There is no sort of analogy of circumstances by which these "flying nondescripts," as Judge Thomson calls them in his work on Carriers of Passengers, p. 531, can be regarded as inns We know of no better summary for the reasons for regarding them as distinct, than that contained in the charge to the jury of Judge Brown, of the Western District of Tennessee, in the case of *Blum* v. *Southern Pullman Palace Car Co.* 3 Cent. L. J. 592. The substance of the reasons there stated is briefly: 1. The peculiar construction of sleeping cars is such as to render it almost impossible, even with the most careful watch, to prevent the occupants of berths from being plundered by occupants of adjoining sections. 2. The innkeeper is compensated for his extraordinary liability by a lien upon the goods of his guest for the price of entertainment. The sleeping car company has no such lien. 3. The innkeeper must receive every guest who applies for entertainment. The sleeping car company receives only first-class passengers traveling on that particular road, and it has not yet been decided that it is bound to receive those. [This, however, is the very point, and the only one, settled by *Nevin* v. *Pullman Palace Car Co.*, so far as we have been able to learn.—Ed. *Cent. L. J.*] 4. The innkeeper is bound to furnish food as well as lodging, and receive and care for the goods of his guest, and his liability is unrestricted in amount. The sleeping-car furnishes no food, but a bed only, and receives no luggage or goods. 5. An inn is an imperative necessity to a traveller. The sleeping car is a luxury, and the traveller by rail is not obliged to avail himself of it. 6. The innkeeper has absolute control over his premises and may exclude every one but his

servants and guests. The sleeping car is obliged to admit the employees of the train to collect fares and control its movement. 7. The sleeping car cannot even protect its guests, for the conductor of the train has the right to put them off for non-payment of fare or violation of its rules and regulations.

Still less can the sleeping car company be considered a common carrier, for the actual contract of carriage is made with the railroad company.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

IN THE SURROGATE COURT OF THE COUNTY OF ONTARIO.

IN THE GOODS OF M. G. SULLIVAN.

Danger of loss of goods—Appointment of curator until grant of administration.

Where a proper case is made out, shewing danger of the intestate's goods being made away with, the Court has the power to appoint a curator of the chattels, until such time as letters of administration can be obtained in due course.

[Whitby, April, 1883.

N. F. Paterson applied for an order under the circumstances set out in an affidavit which he filed.

It appeared from the affidavit, that the widow and next of kin of the deceased were unwilling to act, that one Barker, a creditor, had taken steps to apply for letters of administration, but that the papers were not complete, although in course of preparation. That creditors and others were removing, or attempting to remove, goods of the intestate, and that, unless some order be made by the Court to secure them until formal letters were granted, there was danger of loss to the estate.

DARTNELL, J.J.—On consideration, I think this application should be granted. Before the establishment of the Court of Probate in England, in 1857, the personal estate and effects of a deceased vested in the ordinary, who in most cases was the bishop of the diocese. The 19th section of the English Probate Court Amendment of 1858 Act, 21-22 Vict. cap. 95, enacts that "from and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Judge of the Court of Probate for the time being in the same manner and to the same extent as heretofore they vested in the ordinary."

The Surrogate Courts established in Upper Canada in 1859, are the successors of the Court of Probate established in 1793 by 33 Geo. III. c. 8, and the practice of these Courts, where not otherwise provided for, "shall, so far as circumstances of the case will admit, be according to the practice in Her Majesty's Court of Probate in England as it stood on the 5th day of Decem- 1859:" (R. S. O. c. 46, sec. 32).

No property vests in an administrator until appointed by the Court, and then only by virtue of his being an officer of that Court. "A stranger may be appointed, *ad colligendum bona defuncti*," to do what is necessary for the preservation of the property, and to the safe keeping of the same, to abide the directions of the Court: *In the goods of Randell*, 2 Add. 232.

I think an order may go in these terms, appointing Mr. Barker a curator of the property until letters of administration be granted. He is sworn to be a creditor of the estate, and that he is the party by whom application will be promptly made for a grant of letters to him, which will be unopposed by the next of kin.

Order accordingly.

QUEBEC.

VICE ADMIRALTY COURT.

IN RE TUG "ROYAL."

Master's wages—Jurisdiction—Disbursements—Costs

In a suit of the master of a steam tug against the owner for wages and disbursements.

Held, (1) That a Vice-Admiralty Court cannot under "The Vice-Admiralty Court Act, 1863," exercise its jurisdiction so as to give effect to an agreement between the owner and master of a vessel,

where the duties to be performed are miscellaneous and not incident to the situation of a master.

(2) That by the Dominion Statute, "The Seamen's Act, 1873," the jurisdiction of this Court as respects vessels registered in the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia being restricted to claims for master's and seamen's wages over $200, the 189th and 191st sections of the Imperial Merchant Shipping Act, 1854, were so far repealed as to reduce £50 sterling, to $200.

(3) That the "Vice-Admiralty Court Act, 1863," has not in any other way affected or repealed the 189th and 191st sections of the "Merchant Shipping Act, 1854."

(4) That in a suit for ship's disbursements brought by the master who became liable upon condition that if the owner did not pay them he would, there must be a demand on the owner before suit.

(5) Where a master sues for ship's disbursements, without first presenting his accounts he cannot recover costs.

[QUEBEC, April 6, 1883.

The facts fully appear in the judgment of Hon. G. OKILL STUART, J.—This is a suit of Pierre Raphael Baron, who was master of the steam tug *Royal*, a vessel registered in this Province, and owned by Helena Maria Kelly, wife of John Griffin Burns, against that vessel for wages as master, for work, and by reason of liabilities for necessaries, on the following statement :—

For the season of navigation in 1880 (1st May to 22nd November), less one month, wages at $45 a month, $258 ; less $151 paid on account	$107	00
For the season of 1881, at $45, $307.50 ; less $283.50 on account	24	00
For part of the season 1882 (1st May to 15th July)	111	50
1882, July—18 cords of firewood purchased at Batiscan	40	50
8 tons of coal purchased at Sorel	50	00
Duchesneau, blacksmith	13	62
Boy, "	7	00
	$353	62

The libel states the services of the promoter as master, for the seasons of 1880-1, and part of 1882, and continues to allege that he acted as pilot, agent, carpenter, and performed numerous other duties.

There is a plea to the jurisdiction to which the respondent excepts, upon the ground that the promoter was not engaged as master but as an agent for the tug *Royal* and the tug *Challenger*, to secure employment for these vessels, at $45 a month. That he discharged this duty for the *Royal* until the 16th of August, 1880, and for the rest of that season he was employed for the *Challenger*, for which it is admitted that there is a balance of $68 due to him. For the season of 1881, it is alleged that the *Royal* was chartered by the Quebec and Levis Tow Boat Company, and that by them the promoter was paid in full $40 a month, and as respects the season of 1882, the promoter acted as master at $40 a month, on account of which he has received $46, leaving due to him, $24.60.

The jurisdiction is not excepted to as respects the liabilities, for what were really disbursements and not necessaries, as stated in the libel. If they were the latter, this Court could not award them owing to the residence of the parties in the same locality. The respondent denies her liability for the disbursements, and has pleaded that the promoter has not paid them.

There can be no doubt that the agreement was for the promoter to act as sub-agent for the tugs, and as master or pilot when and if required. Indeed, it so appears from the evidence of the promoter. In the season of 1880, until the 14th of August from the 9th May, he discharged his duty under the agreement for the *Royal*. He then became master of the *Challenger* for a month or more. One Joseph Flamand had been master of the *Royal* until the 24th September. He then left her ; the promoter took his place as master for about two weeks, when her pilot, Dubuc, was appointed, and so continued through the rest of the season. The exclusive duty as master for the period he so served, would entitle the promoter to $22.50 as master's wages.

For the season of 1881, the agreement was continued, but the *Royal* being under charter to a company, they would not give the promoter more than $40 a month, which he took under protest. The additional $5 a month he would be entitled to under the renewal or continuation of the agreement of the previous year, making $24, but not as master, for during this season it appears that he acted as carpenter, as painter, painting the tug himself, and as watchman. Having been paid for the entire season by the company, except the $24, it is impossible to say that this was master's wages. It would thus

necessarily be classed with the $68, making $92 for miscellaneous work. The agreement does not appear to have been continued for the season of 1882, but the promoter acted as master until the 15th July, when he was discharged by Burns, for which period there appears to be a balance of wages amounting to $24.60. This, with the sum due for wages alone in 1880, viz., $22.50, would make a sum of $47.10. The question now is can this Court assume jurisdiction, 1st, to enforce the contract, and 2nd, to allow the wages earned as master.

The only authority under which it can be pretended that this Court has jurisdiction with reference to the agreement, is the Imperial Statute, "The Vice-Admiralty Court Act, 1863," 26 Vict. c. 24, s. 10, sub-sec. 2, by which it is enacted that the matters among others in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follows:—"Claims for master's wages, and for his disbursements on account of the ship." By the same statute, the jurisdiction is made to extend to "claims in respect of towage." In a case which came before this Court in 1865 (*British Lion*, 2 S. V. A. R., p. 114), it was said by Mr. Black that he had great doubt as to the power of this Court to enforce an agreement to employ a particular tug, either for a definite or indefinite quantity of work. No doubt the Court can under the statute 26 Vict. c. 24 (the Vice-Admiralty Act, 1863), enforce the payment of reasonable towage, but it does not seem that it has power to enforce an agreement to employ a particular tug either for a definite or an indefinite quantity of work; and Dr. Lushington in the case of the *Martha* (Vernon Lush R. 314. See the *City of Petersburg*, 2 S. V. A. R. 343), held the same opinion under the 3rd and 4th Vict., c. 65, s. 6, giving similar jurisdiction to the High Court of Admiralty. The same reasoning applies, perhaps, with additional force to the agreement now under consideration, upon which remuneration is asked for a sub-agency not incident to the duties of a master of a vessel, but one comprising duties analogous to those of a *commissaire;* and, most assuredly, the terms of the statute, "claims for master's wages," cannot cover those of a runner for a tug boat, or for the miscellaneous offices which the promoter promised to perform. I therefore can exercise no jurisdiction so as to award the $92, evidently due to the promoter.

The second question, as to the allowance of the $47.10 due the promoter for wages that have been earned by him as master, is to be determined by the enactments of two statutes, "The Merchant Shipping Act, 1854," ss. 189, 191, and that of the Dominion known as "The Seamen's Act, 1873," 36 Vict. c. 129, ss. 56, 59. By the former, no suit for the recovery of master's wages under the sum of £50 sterling, shall be instituted by or on behalf of a master or seaman in any court of Vice-Admiralty. By the latter, the sum of £50 is reduced to $200 as respects vessels registered in the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia. The Parliament of the Dominion was vested with exclusive legislative powers in all matters classed under "navigation and shipping," by virtue of the British North America Act, 1867. The Seaman's Act, 1873, was passed by it, and after a reservation for the Royal Assent, it came into force on the 27th March, 1874. By it the 189th and 191st sections of the Merchant Shipping Act, 1854, were so far repealed as to reduce £50 sterling to $200, as I have said with reference to vessels registered in the four Provinces I have named. The 189th and the 191st sections remained in full force as respects all other vessels which had been made subject to them, and have been invariably carried into effect as respects them. These enactments have had a most salutary effect, and remedied grievances of which the shipping interests had great reason to complain, particularly at this port, where suits without foundation for seamen's wages, the levying of blackmail, and in aid of the crimping business, were continually resorted to. Effect was given to these enactments in the case of the *Margaret Stevenson*, 2 S. V. A. R. 192, determined by this Court in 1873. I observe that this decision has been questioned by a Court which, although it is one of a limited jurisdiction, still as an opinion expressed by it, if correct, would unsettle the law in a most important particular, I shall advert to it: (The tug *Robb*, Mar. Court, Ontario, 17 C. L. J. 67). It is stated that the two sections of the Merchant Shipping Act, 1854 (180th, 191st), are not to be read in connection with the Vice-Admiralty Court Act, 1863, leaving it to be inferred that the latter repealed the former. If such were the case, an efficient safeguard to British shipping frequenting not only this port, but all the ports of Her Majesty's dominions. would be removed.

The Merchant Shipping Act, 1854, by its two sections limits, except in certain cases, the Vice-Admiralty jurisdiction to master's and seamen's wages to cases over £50 sterling; and because it is said in the Vice-Admiralty Court Act, 1863, while enumerating the cases of jurisdiction, that the Vice-Admiralty Courts shall have jurisdiction in respect of claims for their wages, it repeals by inference or implications these 189th and 191st sections. As no mention of the first statute is made in the second, the latter would rather be confirmatory of it, the affirming of that which existed before. The former statute is not even referred to in the latter. "A later Act of Parliament has never been construed to repeal a prior Act, unless there be a contrariety or repugnancy in them, or at least some notice taken of the former Act, so as to indicate an intention in the law given to repeal it, and the law does not favour a repeal by implication unless the repugnance be quite plain, and a subsequent Act which can be reconciled with a former Act, shall not be a repeal of it: (Dw. on Stat., and cases cited p. 674). Of this supposed, implied, or inferential repeal, a recent writer has taken notice: (Machlachan on Shipping, p. 253. Adverting to the Admiralty Court Act, 1861, 2 S. V. A. R. App. 248; Boyd's Merchant Shipping Laws, pp. 161, 456), in which a like jurisdiction is conferred on the High Court of Admiralty over "any claim" for Masters' wages, provided that if in any such case the plaintiff do not recover £50, he shall not be entitled to costs, he has observed: —"It has been said that this sectlon is repealed by the provision of the Admiralty Court Act, 1861, because the language of it is 'any claim': but whereas the one statute affirmatively gives jurisdiction, and the other negatively, within certain limits, debars the suitor from the Court, there seems to be no contradiction between them, such as would otherwise imply the repeal of the earlier statute." Additional jurisdiction in other matters was to be given by the new Act, and in a list of the whole claims for masters' wages were necessarily repeated, leaving them standing as before. Then there is the Imperial Statute; the Merchant Shipping Act, 1873, the second section of which has enacted, that it is to be construed as one with the Merchant Shipping Act, 1854, and the acts amending the same, which might be cited collectively as the Merchant Shipping Act, 1854 to 1873. The 33rd section repeals several sections of the Merchant Shipping Act, 1854, but not the 189th or 191st sections, which is evidence that the Legislature did not intend to repeal these sections by the Vice-Admiralty Court Act, 1864, but advisedly left them in full force.

I have, therefore, not the slightest hesitation in deciding that the two sections of the Merchant Shipping Act, 1854, have not been repealed by implication or inference, and that I must give effect to them, except in so far as they have been modified by the Dominion Statute, the Seamen's Act, 1873, with respect to vessels registered in the Provinces referred to; and as the sums earned by the promoter and master's wages do not amount to $200, I cannot assume jurisdiction so as to award them.

There remain to be disposed of the claims for disbursements. Their amounts have been already stated. The last for $7 may be discarded, as the promoter does not appear at the time (March, 1872), to have been then employed as master; in fact, the navigation could not then have been open. As respects the remaining three accounts: the first is for firewood sold by one Edouard Alain, on the 29th June, at Batiscan, when the *Royal* was towing a raft, and required fuel; the promoter then gave an order on Burns for the price, $40.50, payable to *Alain*, and the promoter endorsed it. Alain has testified "that in taking the signature of the promoter on the order, he intended to hold him responsible for the price, if he was not paid by Burns." The suit was brought on the 19th of July, 1882, and the draft was paid by Burns on the 22nd of the same month. The second account is for coal sold at Sorel, by one Ernest Rondeau, the day before the purchase of the firewood; the account was made out against the steamer *Royal* for $50; at the foot the promoter wrote the word "correct," and signed his name to it. Rondeau at the same time asked the name of the owner, the promoter said Burns, the reply was, "I don't know him; I will give the coal to you, but you must be responsible;" and then the promoter said, "It is all right, if he does not pay you I will." Rondeau being in Quebec on the 15th September last, 1882, Burns paid him the amount. The third account is for work and materials furnished by one Decheneau, at Quebec, to whom the promoter said, "If Burns does not pay you I will." The account was made out on the 22nd July, 1882, and at the expiration of a fortnight Burns paid it.

The respondent has contended that these amounts cannot be recovered because the promoter did not pay them. It was so held by Dr. Lushington: (The *Chieftain*, Br. & Lush. 104 H.; the *Edwin*, 281); but the rule was relaxed by Sir Robert Phillimore, in the case of the *Feronia*, 2 Ad. & E. p. 65, in which he said: "I cannot but think that in this and other cases, referring to Dr. Lushington's decisions, an attempt has been made to strain those judgments beyond what the learned judge intended. My reasons for that opinion were fully stated by me in a recent case, that of the *Red Rose*. I shall allow the items, but I shall accompany them with a recommendation that no order for the payment thereof be made until the master has deposited in the Registry, vouchers for the payment, or given satisfactory evidence that the accounts have been paid. I would readily so decree in this case, if it were not for several obstacles. The evidence establishes that the promoter did not assume a direct liability to pay the accounts, and it was conditional upon the agent of the tug not paying them; and until such time as the respondent, or her agent, was placed *in mora* upon the presentment of the draft and the accounts, and a refusal or neglect to pay established, liability by the promoter could not attach to him. These precautions were not taken, and I think they should have been. But there is another impediment in the way of a judgment in favour of the promoter. In the case of the *Fleur de Lis* it was held that a master suing for wages and disbursements, is bound to furnish accounts before beginning his suit; if he do not, he will not be entitled to his costs. The language of Dr. Lushington in the case is: "The master was bound by practice and justice to furnish accounts before bringing his suit; he might have had the amount claimed without suit; he is therefore not entitled to his costs:" (1 A. & E. 49.) If the accounts sued upon, with the proper vouchers, that is, the accounts which have been referred to, had been presented to the respondent or her agent, Burns, before this suit was brought, and a default to pay the three accounts established, I should have rendered a judgment in favour of the promoter for the amount if not paid, and if paid after action was brought, for the costs. The promoter quarreled with Burns when discharged. He seems to have acted without due premeditation in bringing this suit, a step taken in haste, most unfortunately, to be repented of at leisure, as I find myself compelled to dismiss the case with costs.

Andrews, Caron, Andrews and *Pentland*, for promoter.

M. A. Hearn, for respondent.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

ELECTION APPEALS.

QUEEN'S COUNTY P. E. I. ELECTION PETITION.

[March Session, 1883.

JENKINS v. BRECKEN.

Election Petition—Ballots—Secreting—37 Vict. ch. 9, ss. 43, 45, 55 and 80—41 Vict. ch. 6, ss. 5, 6 and 10—Effect of neglect of duty by a deputy returning officer—37 Vict. ch. 10, ss. 64 and 65—Recriminatory case.

In ballot papers containing the names of four candidates, the following ballots were held valid:—

(1) Ballots containing two crosses, one on the line above the first name, and one on the line above second name, valid for the first two named candidates.

(2) Ballots containing two crosses, one on the line above the first name, and one on the line dividing the second and third compartments, valid for the first named candidate.

(3) Ballots containing properly made crosses in two of the compartments of the ballot paper, with a slight lead pencil stroke in another compartment.

(4) Ballots marked in the proper compartment, thus: **Y**

The following ballots were held invalid:—

(1) Ballots with a cross in the right place on the back of the ballot paper, instead of on the printed side.

(2) Ballots marked with an *x* instead of a cross.

On a recount before the County Court Judge, the appellant, who had a minority of votes according to the return of the Returning Officer, was declared elected, all the ballots cast at three polling districts (in which the appellant had polled 331 votes, and the respondent 345), having been struck out, on the ground that the Deputy Returning Officer had neglected to place his initials upon the back of the ballot.

On appeal to the Supreme Court of P. E. Island, it was proved that the Deputy Returning Officer had placed his initials on the counterfoil before giving the ballot paper to the voter, and afterwards, previous to his putting the ballots in the ballot box, had detached and destroyed the counterfoil, and that the ballots used were the same as those he had supplied to the voters, and Mr. Justice PETERS held that the ballots of the said three polls ought to be counted, and did count them.

Thereupon J., appealed to the Supreme Court of Canada, and it was

Held [affirming the judgment of Mr. Justice PETERS], that in the present case the Deputy Returning Officers having had the means of identifying the ballot papers as being those supplied by them to the voters, and the neglect of the Deputy Returning Officer to put their initials on the back of these ballot papers, not having affected the result of the election, or caused substantial injustice, did not invalidate the election. The decision in the *Monck* election case (Hodgins Elec. Cases, p. 725), commented on and approved of.

In this case, the appellant, claimed under sec. 66 of 37 Vict., ch. 10, that if he was not entitled to the seat, the election should be declared void, on the ground of irregularities in the conduct of the election generally, and filed no counter-petition, and did not otherwise comply with the provisions of 37 Vict. ch. 10, the Dominion Controverted Elections Act.

Held, that section 66 of 37 Vict, ch. 10, only applies to cases of recriminatory charges, and not to a case where neither of the parties or their agents are charged with doing any wrongful act.

Quære, whether the County Judge can object to the validity of a ballot paper, when no objection had been made to the same by the candidate or his agent, or an elector, in accordance with the provisions of sect. 56, 37 Vict. ch. 10, at the time of the counting of the votes by the Deputy Returning Officer.

Appeal dismissed with costs.

Hector Cameron, Q.C., for appellant.
Lash, Q.C., for respondent.

DICKIE v. WOODWORTH.

Election petition—Rule or order under 37 Vict. ch. 10, sec. 9, non appealable—42 Vict. ch. 39, sec. 10.

On August 16th, 1882, upon the *ex parte* application of the solicitor for petitioner, RIGBY, J., granted an order extending for twenty days the time for the service of the petition, and of the notice of presentation thereof, and of the security having been deposited, and the copy of the receipt for said security.

On the 25th August, 1882, the respondent obtained from RIGBY, J., a rule *nisi* to set aside the order of the 16th August.

On the 27th September, 1882, this rule *nisi* was made absolute, with costs, on the ground that the order of the 16th August was improvidently granted, and without sufficient cause shown.

On the 30th September, 1882, on the application of the petitioner, supported by affidavits, RIGBY, J., made another order extending to the 15th October then next, the time for service of notice of presentation of petition, and of security, with a copy of petition.

On the 16th of October, 1882, RIGBY, J., granted a rule *nisi* (returnable before the Supreme Court at Halifax), to set aside the petition, the presentation thereof, the order made on the 30th September, preceding the service of petition, etc , and all further proceedings.

On the 15th January, 1883, this rule *nisi* was made absolute, without costs, by the Supreme Court of Nova Scotia, on the principal ground that the affidavits on which the *ex parte* order of the 30th September was granted, disclosed no facts unknown to petitioner, when the order of 16th August was obtained. The petitioner thereupon appealed to the Supreme Court of Canada.

Held, [FOURNIER and HENRY, JJ., dissenting], that the rule appealed from was not a judgment. rule or order, or decision from which

an appeal would lie, under sec. 10 of the Supreme Court Amendment Act of 1879.

Appeal quashed with costs.

H. McD. Henry, Q.C., for appellant.
Hector Cameron, Q.C., for respondent.

COURT OF APPEAL.

From C. P.] [March 24.

QUINLAN v. THE UNION FIRE INSURANCE CO.

Interest given on appeal.

The 43rd section of the Court of Appeal Act, which enables the Court "when on an appeal against a judgment in any action personal, the Court of Appeal gives judgment for the respondent, interest shall be allowed by the Court for such time as execution has been delayed by the appeal," does not apply to a case where the judgment of the Court below is in favour of the defendant, and which is reversed on appeal. In such case the Court in reversing the judgment, gave liberty to the appellant, the plaintiff in the Court below, to move to be at liberty to enter judgment as directed by this Court, *nunc pro tunc*, whereby he would be entitled to recover interest on the amount of the verdict rendered in his favour.

When upon the argument of an appeal, the respondent omitted to point out in what respect the replications of the plaintiff were demurrable, the Court refused to wade through the mass of pleading which had been filed in the Court below, to find it out for themselves; and being of opinion, in the absence of argument, that the pleading was good, affirmed the judgment of the Court below upon such pleading.

The unnecessary and improper length of pleadings remarked upon.

Bethune, Q.C., and *J. B. Dixon*, for the appeal.

McCarthy, Q.C., and *A. C. Galt*, contra.

From C. C. Hastings.]

DUNFORD v. DUNFORD.

Interpleader—Sale of chattels - Change of possession.

G. had recovered a judgment against his father for costs in an action instituted by the latter, and upon the execution issued thereon, seized a horse as the property of the father in the possession of the plaintiff A., another son. It was shown that several years before, the father had agreed to convey his farm to A. and another brother W., both of whom assumed possession and control of the property before any conveyance was executed, and so continued in possession, the father continuing to reside on the place with the two sons, part of the consideration for the conveyance being that they should support him. The sons also bought the chattel property from their father, the horse in question having been purchased by A. for $50, and which he kept upon the premises, as he had always done, using him in the work of the farm, and occasionally working for others with him for hire, the father sometimes using him for his own purposes. On this state of facts, the Judge of the County Court of Hastings in an interpleader issue, left the question of property to the jury, who on being polled, found a verdict for A. The Court being of opinion that the claim of G. having arisen long after the alleged sale of the chattels, it would require a preponderance of evidence in favor of G., to induce the Court to interfere with the finding of the jury (but which did not exist), refused to disturb the conclusion of the judge as to the finding of the jury, and dismissed an appeal with costs.

J. K. Kerr, Q.C., and *Skinner*, for the appeal.
Clute, contra.

From Q.B.]

IN RE HIGH SCHOOL BOARD OF DISTRICT NO. 4 OF STORMONT, DUNDAS AND GLENGARRY AND TOWNSHIP OF WINCHESTER.

High school district—Separation of part—Liability to contribute—Money demanded before separation.

The decision of the Court of Queen's Bench (45 U. C. R. 460), reversed on appeal.

Bethune, Q.C., for appeal.
McCarthy, Q.C., contra.

From Q. B.]

MAW v. TOWNSHIPS OF KING AND ALBION.

Negligence—Contributory negligence.

A portion of a highway which the defendants were bound to keep in repair had a trench running across it caused by water escaping from a

culvert, and was allowed so to continue out of repair for a month. The deceased while lawfully travelling along the road, attempted to cross such trench in a waggon, from which he was thrown and killed. In an action for damages, it was alleged by the defendants that deceased at the time of the accident was intoxicated, and thus contributed to the accident. The judge before whom the action was tried, left it to the jury to say whether the deceased had so contributed to the accident, that but for want of reasonable care it would not have occurred. The jury answered this in the negative, and rendered a verdict in favour of the plaintiff.

Held, [affirming the decision of the Court of Q. B., who refused a rule *nisi* to enter a nonsuit], that the question of contributory negligence was one proper to be left to the jury.

C. Robinson, Q.C., and *Shepley*, for appeal.

G. H. Watson, contra.

From Q. B.]

MURRAY v. MCCALLUM.

Married Woman's Act—Separate property—Separate trading.

In order that the property of a married woman, who carries on a business for herself may be protected from executions against her husband, it is not necessary that she should live separate and apart from her husband, or that the business should be carried on in a house other than that in which the husband and his wife reside.

The plaintiff who was possessed of a sum of money (about $300), felt dissatisfied with her husband's management of his business, his goods having been sold under execution for debt whilst residing on a rented farm, the sale not realizing sufficient to pay the arrears of rent and his debts; leaving, in fact, unpaid the debt for which the defendant in the present action had obtained execution. The husband had literally no means, and the plaintiff resolved to start hotel keeping, and agreed to give her husband $15 a month for his services as bar-keeper, the duties of which he discharged, and lived with her in the hotel. It was shown by the evidence, that whilst thus engaged, she had had two partners in carrying on the hotel business. The defendant seized the goods in the hotel, and in an interpleader issue, a verdict was rendered in favour of the plaintiff, which the Court in banco refused to set aside. On appeal to this Court,

Held [per SPRAGGE, C.J., and CAMERON, J.], that the facts showed the plaintiff to have had a separate trade within the Act, the husband not having the control of the business, but being hired for a particular duty.

Per BURTON, J. A.—It was not intended that there should be an inquiry under the Act as to the *bona fides* of such transactions; but that the fact of the husband's interference with the concurrence of the wife, deprived it at once of its separate character.

Per BURTON and PATTERSON, JJ.A.—That the interference of the husband with the business, as shown by the evidence, was such in reality as to prevent its being treated as the separate business of the plaintiff.

McCarthy, Q.C., and *Laidlaw*, for the appeal.

Bethune, Q.C., and *Morrison*, contra.

From C. P.]

HALE v. KENNEDY.

Appeal—Practice.

The Judge at *nisi prius* found a verdict in favor of the defendants, which the Divisional Court of the Common Pleas Division, in banco, reversed, and either determination was supported by the evidence according to the manner in which the facts were viewed and treated. This Court therefore refused to reverse the judgment of the Divisional Court, as it could not be said with certainty that it was wrong.

C. Robinson, Q.C., and *Burrit*, for the appeal.

Bethune, Q.C., and *Deacon*, Q.C., contra.

From C. P.]

OLIVER v. NEWHOUSE.

Landlord and tenant—Execution—Chattel Mortgage.

An appeal from the judgment of the Common Pleas (32 C. P. 91), allowed.

Per SPRAGGE, C. J.—That there was nothing upon which an execution against the goods of the son could operate from the time the tenancy was concluded; and that the Chattel Mortgage

Act could not apply, as there was not any sale by the son to his father, the goods reverting to the father when the tenancy ceased. But if it was a seal, there was an immediate delivery, and an actual and continued change of possession within the words of the statute.

McCarthy, Q.C., and *Milligan*, for appeal.
C. Robinson, Q.C., and *McFadden*, contra.

From C. P.]

SILBY v. DUNNVILLE.

Municipal corporation—Contract not under seal.

The judgment of the Court of Common Pleas (31 C. P. 301), affirmed on appeal.

McCarthy, Q.C., and Nesbitt, for the appellant.

Bethune, Q.C., and *Bruce*, for the respondent.

COMMON PLEAS DIVISION.

Osler, J.]

LEITCH v. MCLELLAN.

Dower—Life estate—Husband and wife—Estate by entirety — Survivorship—Right to set up breach of covenant.

Where a husband died entitled to the reversion in fee in certain lands expectant on a life estate therein,

Held, that dower could not be claimed thereout, in that the husband had never been seized during coverture of inheritance or possession.

A lease for life to a husband and wife makes them tenants of the entirety, so that the whole accrues to the survivor.

The demandant who was a stranger to the estate, was held not entitled to set up that there had been a forfeiture of the life lease by non-payment or other breach of covenant.

Jacobs, for the demandant.
Guthrie, Q.C., and *Watt*, for the defendant.

CHANCERY DIVISION.

Proudfoot, J.] [April 11.

MCCLENEGHAN v. GREY.

Demurrer—Temporalities Act—Demurrer for want of parties—Rule 189.

Demurrer. The action was brought by M. and H., wardens of St. Paul's Church, at Woodstock, on behalf of themselves and all the other members of the congregation of the said church, against the defendants, the executors of one W.

The statement of claim stated the will of W., made April, 1876, appointing the defendants her executors, and giving and bequeathing unto the incumbent of St. Paul's Church, for the time being, certain funds to be used for the use and relief of the poor of the said church, to be dispensed by the said incumbent. It then alleged that the defendants refused to permit the incumbent to dispense the funds, and were misapplying them; and claimed to have the estate administered, and to have a declaration that the incumbent was entitled to distribute the funds.

The defendant demurred on the grounds (i.) that the defendants had no title to maintain the action; (ii.) that the proper person to require the defendants to account was the incumbent, and no reason was shown why he was not a party.

Demurrer allowed for:—

(i.) Even if the incumbent was a member of the congregation, in whose behalf the plaintiff sued, which could not be assumed, yet the bequest was not to the congregation, but to the incumbent, whose position was certainly different to that of the churchwardens and the other members of the congregation.

(ii.) The Temporalities Act did not empower the churchwardens to sue for a bequest such as this, which was not to the church generally, but only to a particular class—the poor of the church.

(iii.) This was not to be, considered properly, a demurrer for want of parties. It was a demurrer for a matter of substance — that the plaintiffs had no right of action.

Clowes v. *Hilliard*, L. R. 4 Ch. D. 413; and *New Westminster Brewing Co.* v. *Hannah*, 24 W. R. 899, followed; *Werderman* v. *Societe Generale D'electricite*, L. R. 19 Ch. D. 246, distinguished.

C. Moss, Q.C., for the demurrer.
S. H. Blake, Q.C., contra.

Boyd, C.] [April 25.

SMITH v. THE MIDLAND RY. CO.

Sale of railway lands for taxes—Statute of Limitations in regard to tax sales—Validity of tax sale—R. S. O. c. 18, ss. 105, 141, 109, 110, 115.

The lands of railways may be sold for taxes. Under the Assessment Act, R. S. O. c. 180, sect. 105, accrued taxes are made a special lien on the land, having preference over any claim, lien, privilege, or encumbrance of any party except the Crown, and in view of the English decisions there is no impropriety in giving effect to the statutory lien for unpaid taxes, by means of a sale of the land.

The Statute of Limitations does not begin to run against a tax purchaser until the period for redemption has expired. There is a qualified ownership during the year for redemption, to protect the property from spoliation and waste, under R. S. O. c. 180, s. 141, but the estate is not vested in the purchaser till the execution of the deed.

It appears to be the intention of the Assessment Act not to vitiate a tax sale on account of the default of subordinate officers in observing statutory reqqirements. Therefore, where it appeared that, as far as the county treasurer was concerned, all the steps taken by him in regard to the sale of certain lands for taxes, were regular, and authorized by R. S. O. 180, although it was not clear, on the evidence, whether the county clerk and the assessor had or had not properly complied with the requirements of ss. 109 and 110 of the said Act, but it appeared that the sale had taken place for taxes actually in arrear for the required length of time, followed by a tax deed thereafter, which had not been questioned within two years.

Held, the sale and deed were not afterwards impeachable for the default (if there was default) of the subordinate local officers in carrying out the special provisions of the said Act.

Sect. 115 of the said R. S. O. c. 180, imposing penalties upon defaulting clerks and assessors who fail to carry out the statutory directions regarding the list of lands liable to be sold, affords suggestive evidence that this is the remedy intended by the legislature, and not the avoiding of the tax sale and deed, at all events, after the two years. (See sect. 131).

Ferguson, J.] [April 26.

MERCHANTS BANK v. MOFFATT.

Deeds executed under mistake.

Where it appeared that the defendant, a man of education and well acquainted with commercial business, had executed a certain agreement and bond to pay certain sums of money in certain events, to the plaintiffs; that this agreement and bond had been executed by him under a misunderstanding as to their effect, and relying on misrepresentations made to him as to this, not by the plaintiffs, but by one of those who had joined with him in executing the said document, and without having read over the said documents, or taken any legal advice hereon; but that the plaintiffs had not, either by themselves or any agent, made any representations to the defendant as to the effect or contents of the said documents.

Held, after a review of the authorities, the defendant was bound by the said documents according to their tenor and purport.

C. Robinson, Q.C., and *J. Smith*, for the plaintiffs.

D. McCarthy, Q.C., and *Ferguson*, for the defendants.

PRACTICE CASES.

Osler, J.] [Jan. 3.

MAITLAND v. GLOBE PRINTING CO.

Examination—Corporate company—Officer of—R. S. O. ch. 50.

Held, that the sub-editor or assistant editor of the defendants was an officer of the Company examinable for the purpose of discovery, under R. S. O. ch. 50, sec. —.

C. Millar, for the plaintiff.

Aylesworth, for the defendants.

Proudfoot, J.] [April 9.

GAGE v. CANADA PUBLISHING CO.

Tariff—Taxable costs.

Appeal by the plaintiff from the ruling of one of the taxing officers on four points :—

1. That charges should have been allowed for obtaining copies of shorthand evidence for use at the argument which took place, owing to an unavoidable postponement, three months after the examination of the greater portion of the witnesses.

2. That $1.00 instead of 50 cents should have been allowed for the copy of the writ of summons deposited with the clerk who issued the writ.

3. That a fee of $1.00 should have been allowed on all præcipe orders.

4. That a fee of $2.00 should have been allowed to counsel for attending to read the written judgment handed out by the Judge and not delivered in open Court.

Held (after consultation with BOYD, C.), the appeal should be allowed on all four points.

S. H. Blake, Q.C., for the appeal.

W. Davidson and *W. Barwick*, contra.

Hagarty, C.J.] [April 11.

KING v. MOYER.

Taxation of costs—Action by solicitor—Taxable fees—Agency.

The plaintiff as solicitor obtained a verdict for damages and costs in an action for libel in which although another solicitor appeared as acting for him in all the pleadings and proceedings in the suit, he actually did the work and carried on the suit himself. Full fees, except instruction, were allowed him on taxation. On appeal, HAGARTY, C.J., upheld the taxing officer's ruling.

Clement, for the appeal.

Aylesworth, contra.

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BUILDING ASSOCIATIONS :—
The Law of Building Associations, being a treatise upon the principles of law applicable to Mutual and Co-operative building Societies, etc. By G. A. Enlich. F. D. Linn & Co., Jersey City, 1882.

MARRIED WOMEN :—
A treatise on the law of Contracts of married women. By J. F. Kelly. F. D. Linn & Co.

JUDICIAL CRITICISMS AND CITATIONS :—
A table of American and English cases which have been affirmed, applied, commented on, compared, changed by statute, denied, disapproved, distinguished, doubted, explained, followed, limited, modified, not followed, opposed, overruled, questioned, reconciled, reversed, or otherwise criticised, etc. By Stewart Rapalje, and R. L. Lawrence. F. D. Linn & Co.

PRIVATE CORPORATIONS :—
A treatise on the law of Private Corporations other than charitable. By Victor Morawetz. Little, Brown & Co., Boston, 1882.

FRAUDULENT CONVEYANCES :—
A treatise upon Conveyances made by debtors to defraud creditors, containing references to all cases both English and American. By Orlando F. Bump. 3rd edition. Cushings & Baily, Baltimore.

COMMENTARY :—
Commentaries on the Written Laws and their interpretation. By J. P. Bishop. Little, Brown & Co., Boston.

PROPERTY :—
Principles of the Law of Real Property, intended as a first book for the use of students in conveyancing. By Williams. Adapted to the laws in force in Ontario, by A. Leith, Esq.

TORTS :—
Law lectures on Torts and Negligence, delivered to the law students of Toronto by J. E. McDougall, Esq., By J. P. Mabee. Rowsell & Hutchison.

APPELLATE PROCEEDINGS :—
The Law of Appellate proceedings in relation to Review, Error, Appeal, and other reliefs upon final judgments. By F. W. Powell. T. & J. W. Johnson & Co., Philadelphia.

TRIAL OF TITLES TO LAND :—
A treatise on the principles and practice governing the Title to Land, including ejectment, trespass to try title, writs of entry, statutory remedies for the recovery of real property, together with the resulting claims for mesne profits and improvements, etc. By Sedgewick and Wait. Baker, Voorhis & Co.

DAMAGES :—
A treatise on the Law of Damages, embracing an elementary exposition of the law, and also its application to particular subjects of Contracts and Torts. By J. G. Sutherland.

COMMISSION :—
The Law of Commission. By Edward J. Hill.

CONQUEST OF CANADA :—
History of the Campaign for the Conquest of Canada, in 1776, from the death of Montgomery to the retreat of the British Army under Sir Guy Carleton. By C. H. Jones.

VOLUNTARY ASSIGNMENTS :—
A treatise on the law and practice of Voluntary Assignments, for the benefit of creditors. Adapted to the laws of the various States. By A. M. Burrill. G. S. Diossy.

COMMENTARIES :—
Commentaries on American Law. By James Kent. Vols. 1 to 4 incl. By O. W. Holmes. G. S. Diossy.

INSURANCE :—
Principles of the Law of Insurance, adapted to the Civil code of the State of California. By Wm. Barber. Sumner, Whitney & Co., California.

CORPORATIONS :—
A treatise on the law of private corporations. By J. K. Angell and Samuel Ames. Revised, etc., by Jno. Lathrop, of the Boston bar.

FLOTSAM AND JETSAM.

BARON MARTIN.—The following stories of Baron Martin have been sent to us : On his last circuit in Kent, he tried an action for breach of promise of marriage. The pleadings having been opened, and the leading counsel having addressed the jury, the junior counsel proceeded to examine the plaintiff : "When did you make the defendant's acquaintance?" "Was he introduced to your family?" and so on. The baron waited a few minutes without taking a note, and, probably guessing, rather than hearing, the usual introductory questions and answers which were proceeding, at length broke in thus : "Well, well, Mr. S.! I dare say all your questions are very proper; but listen to me young woman. Now, did this young man promise to marry you?" "Yes, my lord, he did." "Has he married you?" "No, my lord, he has not." "Has he refused to marry you?" "Yes, my lord, he has." "There, Mr. S.!" addressing the counsel, "what do you want more? that is your case, is it not?" It was the case; and, on the strength of it, and the baron's address to the jury, the plaintiff obtained a good verdict. On his last circuit at Lewes, a man who had been a partner in a firm at Brighton had been committed for trial for stealing partnership money. In charging the grand jury, the baron told them to throw out the bill; "for," said he, "who ever heard of a man stealing his own money. It cannot be, gentlemen." The clerk of arraigns rose to show the judge the Act of Parliament, which make the stealing of partnership money a felony. "Never mind the Act of Parliament, Mr Avory, take it away—take it away—whoever drew that Act knew nothing whatever about the law!" Another correspondent recalls an incident, in a case tried at Guildhall, in which Chief Baron Pollock was the judge, Mr. Martin counsel for the Crown, and Sir Frederick Thesiger for the defendant. In the course of the case Sir F. Thesiger rose and, with great warmth, declared that it was impossible for counsel to do his duty fairly to his client when in that Court and opposed to Mr. Martin. The incident did not disturb the harmony of the relations between Martin and Thesiger.—*Law Journal.*

JUSTICE EAST AND WEST.—"I hate to live in a new country," said Jones, "where there is no law." "Yer betyer," chimed in Thompson. "Law is the only thing that keeps us out of everlasting chaos." "Yes, indeed," said a legal gentleman present. "It is the bulwark of the poor man's liberty, the shield which the strong arm of justice throws over the weak, the solace and the balsam of the unfortunate and wronged, the——" "Oh, stop'er," remarked the man with one eye. "I won't have it that way. Law is a boss invention for rascals of all grades. Give me a country where there is no law, and I can take care of myself every time. Now, for instance, when I lived in Ohio I got a dose of law that I will never forget I was in partnership with a man named Butler, and one morning we found our cashier missing with $3,000. He had dragged the safe and put out. Well, I started after him and caught him in Chicago, where he was splurging around on the money. I got him arrested, and there was an examination. Well, all the facts were brought out, and the defence moved that the case be dismissed, as the prosecution did not make out a case in the name of the firm, and that if there was a firm the co-partnership had not been shown by any evidence before the court. To my astonishment the court said the plea was O.K., and dismissed the case. Before I could realise what was up the thief had walked off. Well, I followed him to St. Louis, and there I tackled him again. I sent for my

partner, and we made a complete case, going for him in the name of the Commonwealth and Smith, Butler & Co. Well, the lawyer for the defence claimed that the money being taken from a private drawer in the safe, was my money exclusively, and that my partner had nothing to do with it; that the case should be prosecuted by me individually, and not by the firm. The old bloke who sat on the bench wiped his spectacles, grunted around awhile, and dismissed the case. Away goes the man again. Then I got another hitch on him, and tried to convict him of theft, but the court held that he should be charged with embezzlement. Some years after that I tackled him again, and they let him go. Statutes of limitation, you see. Well, I concluded to give it up, and I did. But just about four years afterwards, I was down to Colorado, and a man pointed to another and said: 'That fellow has just made a hundred thousand in a mining swindle.' I looked, and it was my old cashier. I followed him to the hotel, and nailed him in his room with the money. 'Now,' I says, 'Billy, do you recognise your old boss?' and of course he did. Says I, 'Bill, I want that three thousand you stole from me, with the interest and all legal and travelling expenses.' 'Ah! you do,' says he. 'Didn't the courts decide that——' 'Curse the courts,' says I, putting a six-shooter a foot long under his nose. 'This is the sort of a legal document that I'm travellin' on now. This is the complaint, warrant, indictment, judge, jury, verdict, and sentence all combined, and the firm of Colt & Co., New Haven, are my attorneys in this case. When they speak they talk straight to the point of your mug, you bloody larceny thief. The jury of six, of which I am foreman, is liable to be discharged at any moment. No technicality or statute of limitations here, and a stay of proceedings won't last over four seconds; I wan $10,000 to square my bill, or I'll blow your blasted brains out.' Well, he passed over the money right away, and said he hoped ther'd be no hard feelings. Now, there's some Colorado law for you, and it's the kind for me? Eh, boys?' And the crowd with one accord, concurred in the cheapness and efficacy of the plan by which a man can carry his court on his hip, instead of appealing to the blind goddess in Chicago and St. Louis.—*Burlington Hawkeye.*

THE CRIMINAL APPEAL BILL.—In charging the grand jury at the Kent and Sussex assizes, Mr. Justice Williams said that it was a proposal which would create a real revolution in the administration of the criminal law of the country. It would give a general appeal on matters of law and matters of fact in criminal cases; and, speaking for himself, it seemed to him that the time had arrived when a change in this direction had become inevitable. He regretted that a distinction should be made in the case of murder. There was no doubt a reason for it, but he believed miscarriage more likely to occur in almost every other case than in murder, and in some almost as serious He was unable to understand why in the case of murder there should be an absolute right of appeal, and that in all other cases an appeal should be subject to the laws of the tribunal before whom the criminal was tried; but he believed that this would only be temporary, as when once the law was changed this must inevitably follow. He also regretted that there should not be an appeal against sentences, and he should have been glad to see a central authority established to lay down rules and privileges for the guidance of individual judges in these matters.—*Law Journal.*

NOTES OF CASES IN PROVINCE OF QUEBEC—SUPERIOR COURT, MONTREAL.

(From *Legal News.*)

LE PRINCIPAL DE L'ECOLE NORMALE JACQUES-CARTIER V. POISSANT.

Normal School—Pupil—Penalty for refusal to teach.

The father of a pupil of the Jacques-Cartier Normal School will not be liable to repay the amount of a bursary granted to his son, unless it be shown that the son was put in default and refused to teach.

CORCORAN V. THE MONTREAL ABATTOIR COMPANY.

Obligation with a term—Insolvency—C.C. 1092.

Held, that a company ceasing to meet its ordinary payments as they become due, though its nominal assets may be equal to its liabilities, will be deemed insolvent; and cannot claim the benefit of the term upon a promissory note not yet due.

DICKISON V. NORMANDEAU.

Promissory note—Insufficient stamps—Effect of the Act repealing the Stamp Acts.

The right of the holder in good faith to apply to the Court for leave to affix the required amount of stamps to a note on which suit is pending, is not affected (as to a note made before the repeal of the duty) by the Act 45 Vict. c. 1, repealing the Stamp duties.

We are indebted to the courtesy of the compiler for a copy of an Index to the treaties, agreements, Imperial despatches and Orders-in-Council, and proclamations, regulations and Orders-in-Council of the Government of Canada, prepared according to the order of the House of Commons, by Messrs. F. B. Hayes and R. J. Wicksteed, Law Department.

Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 1883.

During this term the following gentlemen were called to the Bar, namely :—

William Renwick Riddel, Gold Medalist, with honours ; Louis Franklin Heyd, William Burgess (the younger), John Joseph O'Meara, Charles Coursolles McCaul, James Henry, Frederick William Gearing, James Albert Keyes, James Gamble Wallace, Harry Dallas Helmcken, Albert John Wedd McMichael, Hugh D. Sinclair, Christopher William Thompson, Walter Allan Geddes, James Thompson, John William Binkley, Richard Scougall Cassels.

The following gentlemen were admitted into the Society as Students-at-Law, namely :—

Graduates—Joseph Nason, Henry Wissler, Robert Kimball Orr, Henry James Wright.

Matriculant—William H. Wallbridge.

Juniors—Joseph Turndale Kirkland, William James Sinclair, Francis P. Henry, Michael Francis Harrington, Thomas Browne, Charles Albert Blanchet, John Hood, Jaffery Ellery Hansford, Albert Edward Trow, Ralph Robb Bruce, Edwin Henry Jackes, William Herbert Bentley, Arthur Edward Watts.

Articled Clerk—William Sutherland Turnbull passed his examination as an articled clerk.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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

Articled Clerks.

From 1882 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

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

Students-at-Law.

CLASSICS.

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

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

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical Analysis of a selected Poem :—

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

1884—Elegy in a Country Churchyard.
The Traveller.

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

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

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

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

OR, NATURAL PHILOSOPHY.

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

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

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

FIRST INTERMEDIATE.

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

SECOND INTERMEDIATE.

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

FOR CERTIFICATES OF FITNESS.

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

FOR CALL.

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

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

The Law Society Terms begin as follows:—

Hilary Term, first Monday in February.
Easter Term, third Monday in May.
Trinity Term, first Monday after 21st August.
Michælmas Term, third Monday in November.

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

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

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

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

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

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

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

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

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

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

FEES.

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