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We learn that when the report of the Committee on Unlicensed Conveyancers was submitted to Convocation at its last half-yearly meeting, the chairman presented, at the same time, a number of resolutions received from various law associations, and letters received from members of the profession throughout the Province, the general tenor of which was a strong protest against the existing state of affairs; but the proposed remedies, where any were suggested, widely differed. It also appeared that many members of the profession considered that the adoption of the committee's report might give these conveyancers a status that they do not now possess, and that it was questionable whether this would be of any actual advantage to the profession or give the relief that is sought. The members of the committee present on the occasion referred to, believing that none of the suggestions received by the committee were practicable, requested that the discussion of the report might stand over until the last day of next term, when it is thought that some disposition of it will be made. The matter is one of much more difficulty than is generally supposed by the profession; and Convocation, while fully alive to its importance, especially to country practitioners, is, in the interest of the profession, compelled to move slowly, and to consider some aspects of the question that probably have not occurred to many members of the profession, before whose notice the subject in its various bearings has not been brought.

WHEN we read such cases as *Pollard* v. *Harragin*, 65 L.T. N.S. 4, we are apt to think that it is a very fortunate thing for the colonial subjects of Her Majesty that an appeal lies from all colonial courts to the Judicial Committee of the Privy Council. In the calm and dispassionate atmosphere of that tribunal, litigants have often to seek for that justice which every colonial court open to them persistently denies. In the same way we sometimes feel the benefit of our own Supreme Court where judges are free from local influences and prejudices, which, unknown to themselves, often warp the better judgment of judges in Provincial Courts.

The plaintiff in this action was a member of the bar, and his action was brought against a stipendiary magistrate of Trinidad to recover damages for wrongful arrest. The cause of action arose out of a prosecution in which the plaintiff was professionally engaged before the defendant. While the plaintiff was in the middle of the cross-examination of an important witness, the defendant, without any explanation, adjourned the court. The plaintiff protested, and

was by defendant's orders taken into custody and ejected from the court. Having subsequently refused to apologize, the defendant refused him audience.

The defendant set up a plea of "not guilty by statute," the plaintiff demurred to the defence, and the demurrer was overruled; the judge who overruled it then insisted, in spite of the plaintiff's protests, on the action being brought on for trial within three days, which practically prevented him getting ready for trial, and precluded any possibility of the action being tried on the merits. On the action being called on for trial, the cause not having been entered nor any notice of trial given, the judge who made the order tried the case and gave judgment for the defendant. The full court of three judges was subsequently applied to, but refused to give the plaintiff any relief, and refused leave to appeal to the Privy Council. The latter tribunal, however, not only granted leave to appeal, but set aside the judgment and made the respondent pay the costs. It is a great pity that the judges who were responsible could not also have been ordered to pay the costs of what appears to have been throughout a very high-handed attempt to deny a suitor justice. After all, judges are only human. Occasionally they lose their heads, and (of course unconsciously) drag in the blind goddess to prevent supposed danger to their craft.

AN attempt was made in *Attorney-General* v. *The Niagara Falls Wesley Park & C.T. Co.*, 18 Ont. App. 453, to restrain by injunction a tramway company from operating its road on Sunday. The company was incorporated under R.S.O., c. 171, with authority to build and operate (on all days except Sundays) a street railway in the town of Niagara Falls. The Court of Appeal held that the action could not be maintained, Maclennan, J.A., dissenting. The interference of the court appears to have been sought principally on the ground that the act of the company, besides being unauthorized by their charter, was also a violation of the Lord's Day Act. The relator being a Methodist minister, Burton, J.A., took occasion to observe: "Human nature does not seem to have changed much in 1800 years, but it is really painful to find in this nineteenth century any one, and especially a person assuming to be a teacher of religion, grudging the enjoyment of a number of poor people and their families, who avail themselves of perhaps the only day open to them, to visit and enjoy one of Nature's grandest works, because in order to do so they have to travel a few miles by train or other vehicle. It would seem almost incredible had we not the witness's admission in his evidence." This is pretty hard on the reverend relator, and he has some reason to quarrel with its justice, seeing that the diversions which the learned judge considers so innocent and laudable are plainly intended to be made unlawful acts by the Lord's Day Act (R.S.O., c. 203), a measure for which the whole community is responsible, and which must be taken to express the sense of the majority of the people of this Province so long as it remains unrepealed on the statute-book.

As a matter of law, there are not a few who will agree, as we do, with the views expressed by Mr. Justice Maclennan, who alone of the judges of his court

seemed to grasp the situation. The Chief Justice, in our view, missed the chief point of the case, and discussed only a technical side issue; whilst the mind of Mr. Justice Burton seems to have been too fully occupied with the thought that a "teacher of religion" should endeavor to uphold the sanctity of the Lord's Day and thereby deprive certain pleasure seekers of a Sunday ride to Niagara Falls. Judges have, and ought to have, wide scope for comment on men and things in cases brought before them; but does not the learned judge exceed the fair limits of judicial criticism when he imputes unworthy motives to a litigant who was not only presumably seeking to enforce what he believed to be, and what is, the law, but was therein proceeding with the sanction and support of the Attorney-General. The majority of the court held that there was no remedy by injunction, though there might be in some other way; but the spectacle to the public, broadly stated, is that of a citizen seeking to uphold the will of the people as declared by its Legislature, and a court of justice holding him up to public contempt for so doing.

This judgment would probably be termed by the learned Chief Justice of the Queen's Bench, using his own terse and expressive language, an amendment of the Act of the legislature. The power of amendment has not yet, however, been given to the Court of Appeal, nor is the Supreme Court bound to "follow the amendment," as Chief Justice Armour was in the case referred to; we should therefore be glad to see this case go further. It is quite possible that, if it does, it may yet be decided (in accordance with the opinion of Maclennan, J.A.), that—the right to run the tramway on Sunday being deliberately and expressly withheld from the company, and the express exception in the charter being equivalent to a declaration of the Legislature that it was for the public interest that that power should be withheld—the company was (in the language of Lord Justice James, in a case cited on the argument) "disregarding an express prohibition of the Legislature, and ought to be at once stopped," and that by means of the injunction prayed for.

THE HON. SIR ADAM WILSON.

On the last day of 1891 all that was mortal of the late Chief Justice was laid to rest in St. James' cemetery. The cause of his death was the breaking of a blood vessel in his brain on the evening of Dec. 26th, producing insensibility, and ending in death on the morning of the 29th ult.

We took occasion to refer at some length to Sir Adam's history and public career, on his retirement from the bench, in our issue of December 1st, 1887. Since his withdrawal from his position as Chief of the Queen's Bench Division and President of the High Court of Justice, his well-known figure has been almost daily seen on our streets. It was always a pleasure to meet him. His greeting was uniformly sympathetic, and there has seldom lived among us one at once so

kindly and guileless in his disposition, so honorable in his dealings, and with such devotion to duty. His mind was undimmed and active to the last.

Soon after his retirement, Sir Adam and Lady Wilson spent a few months abroad. When at home, his residence was at his comfortable homestead on Spadina Crescent. The warm months of summer were for several years spent at his Balmy Beach cottage, a few miles east of the city, where, in full view of Lake Ontario, and with romantic rural surroundings, the active form of the Knight might be seen directing workmen, or himself often lending a not unskilful hand to their labors. It was pleasant here to meet him in the mellow afternoon of an August day.

Sir Adam was well read in current literature. He often gave his guests interesting details of men with whom he had been familiar, such as his old friends the Baldwins, Sir Louis Lafontaine, Sir F. Hincks, Sir George Cartier, Sandfield Macdonald, and Sir John Macdonald. In looking back on his experience of life, as a lawyer, and in the exercise of municipal, executive, and judicial functions, there were few of his cotemporaries whom he could not measure accurately, but in a kindly spirit. He shunned all ostentation, and only accepted the honor of knighthood on the repeated request of Sir John Macdonald.

When, under Hon. R. Baldwin as Treasurer of the Law Society, in 1856-7, the present main building was erected, Mr. Wilson was chairman of the Building Committee. His energy there had much to do in establishing the Society on its present broad basis, and confirming Osgoode Hall as the judicial and professional centre of the province. This result he used to refer to with satisfaction. On his retirement from the judicial bench Sir Adam resumed his seat among the Benchers and his work on committees of Convocation with an energy only now expected from representatives of the junior Bar. He took a warm interest in the Homœopathic Hospital and the Home for Incurables, and many other useful charities which found in Sir Adam a wise and generous benefactor. He had always a lively interest in scientific discovery and discussions, and was a member of the Toronto Astronomical and Physical Society. His literary memorial will be found in the numerous able and learned judgments in the law reports, many of them being exhaustive treatises on the subjects under discussion.

It may be inferred how pleasant and profitable a companion Sir Adam was to those whose happiness it was to meet with him, and of the void which will be felt by those the web of whose daily life was interwoven with his. Lady Wilson, his estimable companion since early manhood, survives him. She is a sister of the worthy Master, R. G. Dalton, Q.C. His only relation by blood in the Province is Mr. Geo. H. Wilson, of the Bank of Montreal.

The funeral ceremony was designedly private; but, being so well-known and beloved a citizen, it could not be entirely so, and numbers followed the remains to the grave, feeling that they had lost a personal friend, and that one had gone who "wore the white flower of a blameless life."

GRAND JURIES.

The attention of Parliament and of the public has lately been called to the question of abolishing the Grand Jury system, by reason of the publication of the replies of judges and others to a circular letter of the Minister of Justice asking for information on the subject. The result is given in the following summary: Forty-eight in favor of doing away with Grand Juries, forty-one against, and twelve doubtful. Substantially this is the verdict, although the classification as regards one or two of the opinions given may be considered a little defective. The officials consulted embrace nearly all the superior and county court judiciary, and it goes without saying that the views and arguments of these gentlemen are entitled to great weight. Notwithstanding this, it may be considered fairly open to discussion that some of them have had little or no experience of the working of the system, and that the arguments of several, although plausible, do not reach the practical test of every-day contact with Grand Juries. With due deference to the contention of those in favor of the continuance of the present order of things, we propose to briefly analyze the return and enquire whether, after all, any sound, practical reasons have been advanced for the retention of the Grand Jury as part of our system of administering criminal justice.

One feature of the enquiry is rather ludicrous. To take the opinion of a body as to the necessity of putting itself out of existence, is very near the line of the humorous, and certainly is not the safest method of getting reliable information. We suppose if the question were put to the judges composing the High Court of Justice for Ontario, "Are you in favor of being abolished with all the privileges and emoluments of your high office?" we would not require to wait very long for an answer. Ask the members of the Local Legislature or of the Dominion Parliament if they are in favor of doing away with half their number, and the reply would be sharp and short, although it may fairly be argued that a deliberative body one-half the size numerically, would be cheaper, better, and infinitely more expeditious in the despatch of business. If we make tender enquires regarding the number of Cabinet Ministers, either in the provinces or at Ottawa, and, in our solicitude for their and their country's good, mildly suggest that one-half might be abolished, the answer would be in the shape of legislation to prevent the spread of dangerous ideas subversive of good government. We frankly admit that our answer would very largely partake of the same character as those of the classes to whom we refer for the sake of argument, if we were placed in their position, but it would be the answer and judgment of an interested party, and of no value whatever in determining the point in question. To obtain a proper and unbiassed opinion regarding any subject, it is surely not necessary or safe to extract information from those whose existence is imperilled by the discussion. We must therefore look for our facts and information outside the Grand Jury room. One thing more in this connection might be profitably added to what we have said. In addressing Grand Juries, judges almost invariably point out to them the necessity for the system being continued, and the grand old historic character of their body is eulogized

to the highest degree, and the jurors have it strongly impressed upon their minds that they stand as a bulwark against oppression and tyranny, and constitute the most important factor in the administration of the criminal law. After being addressed in this way for half an hour or more, the good and true yeomen and squires constituting the Grand Jury are naturally filled with strong ideas of their own greatness, and are convinced, when thus told of their importance by a high judicial authority, that the constitution would be imperilled if the shutters were put up and the doors of the Grand Jury room closed. We may also point out that in several instances, Grand Juries themselves have favored a change, taking, perhaps, in such cases, something of the spirit in which they were addressed by a judge opposed to their continuance. On the whole, therefore, we say that the opinions of Grand Juries are not entitled to the weight which is attached to them in dealing with a question so personal to themselves as this undoubtedly is, and we venture the opinion that by taking a certain course, one way or the other in his charge, the judge could obtain a reply which would be but the reflex of his own views delivered at the opening of the court.

Dealing now with the return, we point out that the answer of the Attorney-General of this Province does not contain any reasons for his views, but simply states that he and the majority of his colleagues are of opinion that Grand Juries should not be abolished. The opinion of himself and colleagues is entitled to the gravest consideration, but it might be that his objections could be fairly met by both argument and facts. If we were in possession of the reasons which induced him to come to his conclusion, we might be in a position to speak more definitely with reference to his reply, and modify, if not completely answer, the objections to a change of system.

His Lordship Chief Justice Hagarty feels it would not be safe to leave the functions of the Grand Jury to be performed by an official like the present County Attorney owing to pecuniary and professional interest, but suggests only that until something clearly better and more effectual can be substituted for it, the grand inquest ought to be retained. In this we readily concur, but he does not say that the duties could not be performed by some other means.

His Lordship Chief Justice Armour declines to discuss the question, and His Lordship Chief Justice Galt is strongly of opinion that the Grand Jury system should be retained.

His Lordship the Chancellor takes very strong ground, and whilst it may be urged that his professional and judicial experience has not extended to criminal matters, we think it will be fairly admitted that there are few men more competent to pronounce an opinion upon any subject connected with the administration of justice, civil or criminal. He says: "I have long been of opinion that the time has come to abandon this expensive, anomalous, and circumlocutory process."

Their Lordships Justices Falconbridge and McMahon are in favor of the system. Both these judges have had wide experience in matters pertaining to this question. Mr. Justice McMahon has, perhaps, more than any other judge on the Bench, had that experience which is necessary to form a practical judgment relating to this question.

The Honorable Justices Ferguson and Street both argue in favor of the Grand Jury, but at the Bar they were not engaged in that class of work which brings men into close connection with the administration of criminal justice, where a practical knowledge of the working of the Grand Jury system can only be obtained.

His Lordship Mr. Justice Rose reasons upon the question at length, and puts the case very strongly. He places the matter largely upon the ground that grand jurors are not subject to the bias of a criminal prosecutor, and agrees with Mr. Justice Falconbridge and several of the other judges that the function of the Grand Jury as an educator is most important. We are free to admit that his answer contains all the arguments that can reasonably be advanced in favor of his views. They are clearly and forcibly put and deserve special attention.

His Lordship Mr. Justice Robertson, who had, at the bar, a wide experience in criminal matters, bases his views largely upon the fact that the grand inquest is an educator of the people and inspires confidence in constituted authority. He also puts his case very strongly.

We have referred more particularly to the opinions of our superior court judges because they demand serious consideration from those who are discussing this question. The real point, however, we submit with all deference, has not been touched upon, except by Mr. Justice Rose, namely, that the work could be done more efficiently, with greater protection to the public and to the individual, and at a much less expense than by Grand Juries, if responsible officers, specially qualified for the position, were appointed by the Crown. We agree with all that has been said with reference to the County Attorneys, and without reflecting in any way upon these gentlemen. We also readily admit, and there can be no doubt of the correctness of the position, that Grand Juries could not be abolished without some officer or other tribunal to take their place, and the real question seems to us to be: "Would an officer such as we have suggested in former issues be a good and sufficient substitute, and be eminently more satisfactory than the present system?" This question has not been answered.

The result of this analysis of the opinions of our judges here is, therefore, that as regards the bare issue of doing away with or retaining Grand Juries, they favor their retention. This, after all, is not capable of receiving any other satisfactory answer. It has never been pretended that the abolition of the Grand Jury without other provision being made would result in a satisfactory state of affairs. Every one knows that as matters stand at present—with an unprofessional and comparatively untrained magistracy dealing with preliminary investigations, with County Attorneys, very frequently appointed on purely political grounds without reference to mental or legal qualifications, and, in addition to this, with a nefarious system of paying Crown officers by fees unfortunately in existence—it would be madness to do away with the only safeguard, however slight, against the petty importance of some of our justices of the peace, or the maudlin condition and intense cupidity of some needy County Attorney. Assuming, however, that an officer, like a procurator-fiscal, were appointed for each circuit, at a salary, say, of five thousand dollars a year, and that, as the Chief Justice of the Court of Appeal suggests, he

should not be allowed to practise in contentious business, and assuming still further that the other duties of this officer would embrace all that a Grand Jury does in criminal matters, and would bring to bear on the cases submitted to him, what the Grand Jury never can or will, namely, a calm, deliberate, trained judgment, with no local feelings, no helping a neighbor out of a hole, no vindictive punishment of a personal enemy of one or more of the jurors by sending him for trial to take his chance in the felon's dock—under such conditions, with the details carefully considered and strict provision made against anticipated evils, would the answers of those of our judges of professional and judicial experience in criminal proceedings still be in favor of retaining a secret inquisition in this country? We believe if the question had been submitted in the way we indicate it should have been, every answer of practical value would have been for abolition.

Talk of protection to the accused! Every assize judge knows that Grand Juries present for trial at every court in the country men against whom there is not a particle of legal evidence of crime, nay, not even a shred of suspicion, and that cases are frequently withdrawn from the petit jury by reason of the judge holding that no crime appears either by the indictment or by the evidence for the Crown. Every judge, we say, knows this to a greater or less degree according to his experience; but the judges do not, and, by reason of their position, cannot possibly know how many guilty men are protected and relieved from the penalty of their crimes by a *Grand Jury trial!*

County judges, by reason of their local knowledge, are specially fitted to speak upon this matter, and they are well aware of this blot on the administration of justice, and it is a significant fact that they stand *twenty-two* to *nine* in favor of abolition, notwithstanding the bald way in which the question was put to them. Add to this majority, Judge Wood, who favors abolition as regards the sessions, and apologetically pleads for a compromise, and the minority is a very small one. The point we make is this: The County Court judges are thrown into very close contact with the workings of all institutions in their districts. They mix more frequently with the people than do the superior court judges, and in consequence they have a fuller knowledge of matters like the workings of the Grand Juries, and are more in touch with the way the ordinary man transacts his affairs than judges whose time is spent almost wholly in an atmosphere of law. They understand, from the very nature of their localized position, what influences have been at work when there is an evident miscarriage of justice. Most of the county judges have been practitioners and politicians in their respective counties. They know the factions and local jealousies and family differences of half their constituency. They know the most of the men on the grand inquest at each court, and when some failure of justice as regards either the innocent or guilty occurs, they can put their finger on the weak spot and say from what cause the innocent was presented for trial or the morally and legally guilty man allowed to escape. We need not individualize, but our readers will at once recognize the fact that there are a number of the county judges who have had very wide experience and have given the matter special attention, and it is not saying anything disrespectful to the superior court

bench, that the opinion of such men must, from their surroundings, personal observation, and local knowledge, be the very best evidence we can get on the subject. Senator Gowan, who, from his long judicial experience and from the special attention he has given to this matter, is surely entitled to speak with weight, and taking his arguments and views in favor of abolition, one naturally asks, "Are they reasonable and right?" It must be admitted they are, and more than this, they have never been successfully controverted.

Assuming his estimate of the cost of Grand Juries to be correct, let us look for a moment at the results which might be obtained from a judicious application of the fund. Five Crown officers could be appointed for the province, one for each circuit, and might be paid a salary of $5,000 a year each, and then the province would be a gainer to a considerable extent financially. It costs for Crown Counsel about $10,000 per annum out of the Provincial Treasury, so that the change we suggest would require only $15,000 additional, and the country would thereupon be relieved from the whole cost of the present system. And it occurs to us that the suggestion that an official like a circuit Crown officer would be more subject to bias and partiality than the Grand Juries are, is entirely gratuitous. The same remark would apply to the judges themselves, if there was anything in it, but the fact that the judges are not influenced is a convincing reason for believing that a Crown officer, paid a salary equivalent to that of a superior court judge, and selected not on political but on meritorious grounds, would be just as respectable, just as unapproachable, and just as pure as the purest judge on the bench.

We desire, before concluding, to refer to one or two of the arguments of those opposed to abolition. The remarks as to the bloodthirstiness of Crown officials would apply, in a less degree of course, to judges. Meaning no offence, and frankly stating the case, is it not the fact that some of the assize judges are looked upon as acquitting and some as convicting judges? Does this make them any the less efficient officers? Some men are naturally merciful, others naturally severe, in their private as well as public rules of life. Some detectives are eminently fair, some the reverse. Some Crown officers press for conviction as they would for a verdict in a civil suit. Some, again, handle the Crown prosecution with kid gloves. These anomalies are due largely to the fact that the men themselves are by nature inclined one way or the other, as the case may be, but, on the whole, a Crown officer, experienced and capable, is just as likely to be a fair man as the judge before whom he appears as prosecutor. It is a well-known fact that the longer the experience of a Crown counsel, the more careful he is in conducting Crown business, and the faults complained of are more apparent the more inexperienced the Crown counsel is. This is surely a strong argument in favor of permanent, trained men to fill the responsible position of prosecutors. We believe a judge, if he had his choice, would prefer an old experienced counsel in criminal prosecutions to one of less practice in these matters, given the same ability and discretion in both.

Then, as to the educator feature of Grand Juries, advanced by some of the judges, we need only glance at the actual facts to see what weight this has in the

discussion. The grand jurors are called at the opening of the court. They are addressed by the presiding judge and dismissed to their duties; from that time until they draw their indemnity, they are a secret conclave or a visiting body at the public institutions. They are rarely present in court except when they return their bills. They do not enjoy the advantages of a petit jury, who are engaged day after day in hearing evidence, weighing facts under the careful supervision and direction of the court, listening to able speeches by the counsel, gaining a useful knowledge of law and business, and performing their duties under the censorship of the press and the public. To say that two or three days attendance as a grand juror at an assize, once perhaps in every six or seven years and often only once in a lifetime, is an educator, is not the kind of argument that would weigh with the very men who use it as such if advanced in the trial of an ordinary action before them. The visit to the public institutions is also introduced as an important feature. This could be done by appointing a few of the petit jurors to do the same work at no expense, and with an equally good result. The fact that these institutions are under the control of a government responsible to the people and subject to the supervision of competent inspectors, is sufficient guarantee that the public interest in that respect is well guarded. Besides, it is scarcely necessary to point out that fifteen or twenty grand jurors, attending in a body in a perfunctory sort of way, would be the least likely of all men to have abuses thrust under their notice, or to ferret them out if they existed.

Again, as to influence from outsiders, is a well-paid, able, and carefully chosen Crown official more likely to be swayed one way or the other in the discharge of his duties than is the judge who tries the case? We do not believe that either would be affected, and the only fact which could give rise to such a suspicion, is the present system of making appointments on political grounds.

Let a good man be appointed for each circuit and let his salary be sufficient, and he will also be beyond the reach of influence. Work which is only half done now, would be carefully and honestly performed, and instead of counsel getting his facts as the case progresses, he would come into court as a faithful guardian of the public interest, and be of valuable assistance to the Bench in clearing the innocent of imputation, and punishing the guilty for their crimes. The police officers would not be, as they are now, left to grope in the dark, to find that much of what they have done is discarded, and that their theory is entirely opposed to that of the Crown counsel, when it is too late to overcome the difficulty. The fact that for the past two or three years in Toronto alone, the court and all its officials, the Grand Juries, counsel, and witnesses, have been kept for days in the performance of laborious and important duties with scarcely a single conviction, shows that something is wrong in the administration of criminal justice and requires a speedy and effective remedy. We believe that the appointment of a public prosecutor for each circuit, whose duty it would be to make the most searching enquiries into every criminal prosecution, to throw out all charges which are not well founded, to direct the police properly in the discharge of their duties, to keep a careful watch over the criminal elements in his district, to see that every case which is brought to trial is

thoroughly prepared, to guard against looseness on the one hand and unscrupulous zeal on the other, would be a blessing to the Government, the judges, and the public, and would be preferable in every way to the irresponsible, untrained, and too often prejudiced body which stands in the way of all this being done. Theoretically, the grand inquest is a noble and dignified old institution, hoary with age and fossil respectability—practically, as an instrument in the punishment of the guilty, or the protection of the innocent, there is, to use the historic words of a well-known politician, "nothing to it."

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for November—continued.)

CREDITOR'S DEED—CONSTRUCTION OF—RESULTING TRUST

Smith v. *Cooke* (1891), A.C. 297, is the name by which the case of *Cooke* v. *Smith*, 45 Chy.D. 38 (noted *ante* vol. 26, p. 524), is known in the House of Lords. It may be remembered that the point at issue was a very simple one, viz., whether a trust deed for the benefit of creditors which provided for the division of the estate among the creditors (who released the debtor from liability), but which contained no express provision for the disposal of any surplus, was to be construed as raising an implied trust in favor of the assignor in respect of such surplus, if any, with the consequent right of calling on the trustees for an account. Kekewich, J., decided against this proposition, the Court of Appeal overruled him, but the House of Lords (Lords Halsbury, L.C., Herschell, Macnaghten, Field, and Hannen) have in turn reversed the Court of Appeal and restored the judgment of Kekewich, J.

WILL—CONSTRUCTION—GIFT—RELATIVES—ILLEGITIMATE RELATIVES.

Seale-Hayne v. *Jodrell* (1891), A.C. 304, is the case of *In re Jodrell, Jodrell* v. *Seale*, 44 Ch.D. 590 (noted *ante* vol. 26, p. 488), the House of Lords (Lords Herschell, Macnaghten, Field, and Hannen) affirm the judgment of the Court of Appeal previously noted. The short point was whether under a gift to "relatives" illegitimate persons who had been previously recognized by the testator in his will as his relatives could take; and the question, which was one entirely of construction, was determined in the affirmative.

NEGLIGENCE—MASTER AND SERVANT—EMPLOYERS' LIABILITY ACT, 1880 (43 & 44 VICT., C. 42)—(R.S.O., C. 141; 52 VICT., C. 23 (O.))—MAXIM, "VOLENTI NON FIT INJURIA."

Smith v. *Baker* (1891), A.C. 325, was an action by a servant against his master under the Employers' Liability Act (R.S.O., c. 141). The action had been commenced in a County Court, from which it appears on a question of law an appeal lies ultimately to the House of Lords. The facts of the case were that the plaintiff was engaged to hold a drill while two other workmen struck it alternately with hammers. His work was carried on in a railway cutting, from which other workmen were engaged in excavating stone, which was lifted by means of a crane, and jibbed on to the bank over the heads of the plaintiff and other work-

men. The plaintiff was so occupied with his own work that he could not be also on the lookout for the stone, so as to get out of the way when it was passing. He knew, however, that his position was dangerous. The defendant did not provide any one to warn the plaintiff when the stone was coming. A stone slipped out from the lifting apparatus and fell on the plaintiff. The jury found (1) that the machinery, as a whole, was not reasonably fit for the purpose for which it was applied; (2) that the omission to supply special means of warning was a defect in the ways, works, machinery, and plant; (3) that the defendants were guilty of negligence in not remedying the defect; (4) that the plaintiff was not guilty of contributory negligence; (5) and that he did not voluntarily undertake a risky employment with knowledge of its risks. On these findings a judgment was entered for the plaintiff. The Divisional Court, thinking there was a conflict between *Yarmouth* v. *France*, 19 Q.B.D. 647, and *Thomas* v. *Quartermaine*, 18 Q.B.D. 685, dismissed the defendant's appeal. The Court of Appeal (Lord Coleridge, C.J., and Lindley and Lopes, L.JJ.) reversed the judgment of the Divisional Court and dismissed the action on the ground that there was no evidence of negligence by defendant. On the appeal to the House of Lords, it was contended that the ground on which the Court of Appeal had decided was not taken at the trial, and therefore was not open to the defendant. This point was conceded in the House of Lords. The only question raised at the trial, and which the House of Lords (Lords Halsbury, L.C., Watson, Herschell, and Morris) considered to be open to the defendant, was whether or not the maxim *volenti non fit injuria* applied, and their lordships came to the conclusion that it did not; Lord Bramwell, however, dissented in a characteristic judgment.

NEGLIGENCE—MASTER AND SERVANT—COMMON EMPLOYMENT—CONTRACTORS FOR SEPARATE PARTS OF THE WORK ON THE SAME BUILDING.

Johnson v. *Lindsay* (1891), A.C. 371, was another action brought by a workman to recover damages for injuries sustained in the course of his employment. The defence set up was that of common employment, and was successful before the Court of Appeal: but the House of Lords (Lords Herschell, Watson, and Morris) reversed the decision of the Court of Appeal, virtually on a question of fact. The respondents were contractors for the iron work required to be done in the erection of some buildings, and the appellant was the servant of the builders, and while employed in his work was injured through the negligence of a workman engaged by the respondents. The respondents' contract was with the owners, and they had no contract with the builders and were not under their direction or control. The Court of Appeal decided that the respondents and their servants were servants of the builders, and on that view gave effect to the defence; but the House of Lords held that the relationship of master and servant did not exist between them, and consequently the appellant and the servant who did the injury were not servants of a common master, and therefore the defence of common employment was not maintainable. As Lord Watson puts it, there must not only be a common employment, but a common master. Some Scotch cases, in which the doctrine had been laid down that a common employ-

ment under different masters entitled both masters to set up the defence of common employment, were disapproved.

ILLEGITIMATE CHILD — CUSTODY OF ILLEGITIMATE CHILD — RIGHTS OF MOTHER OF ILLEGITIMATE CHILD.

In *Barnardo* v. *McHugh* (1891), A.C. 388, the House of Lords affirmed the decision of the Court of Appeal (1891), 1 Q.B. 194 (noted *ante* p. 103), and hold that, in determining who is to have the custody of an illegitimate child, the Court in exercising its jurisdiction with a view to the benefit of the child will primarily consider the wishes of the mother. Their lordships, however, sustained the ruling of the Court of Appeal, that a judgment upon the motion for a *habeas corpus* for the custody of an infant was appealable, and not precluded by *Cox* v. *Hakes*, 15 App. Cas. 506.

INSURANCE, MARINE—COLLISION—VESSEL UNDER TOW—COLLISION WITH TUG.

McCowan v. *Baine* (1891), A.C. 401, was an action on a marine policy of insurance to recover damages sustained through a collision. The policy provided that "if the ship hereby insured shall come into collision with any other ship or vessel," whereby the insured becomes liable to pay any sum of money, the insurer would pay a certain portion of such sum. While the insured vessel was in tow, her tug came in collision with another vessel, whose owners recovered damages both from the owners of the insured vessel and of the tug. The House of Lords affirmed the decision of the Scotch Court of Session (Lord Bramwell dissenting), that the collision with the tug was a collision with the insured vessel within the meaning of the policy. See *The Quickstep*, *ante* p. 10.

INFORMAL WILL—WILL DRAWN BY BENEFICIARY—WILL SIGNED BY MARK—PROBATE—ONUS PROBANDI

Donnelly v. *Broughton* (1891), A.C. 435, was an appeal from the Court of Appeal of New Zealand to the Judicial Committee of the Privy Council. The action was brought in the Probate Court of the colony, and the Colonial Court of Appeal had refused probate of a will propounded by the appellant. The will in question was an informal one, and was drawn by the appellant, who was a beneficiary thereunder, and it was signed with a mark and witnessed by two of the appellant's relatives. The Judicial Committee adopted the principles applied by the English Court of Probate to such wills as laid down by Sir John Nichol in *Paske* v. *Ollat*, 2 Phill. 323, where, after stating that when the person who prepares the instrument and conducts the execution of it is himself an interested person, his conduct must be watched as that of an interested person, he goes on to say: "The presumption and *onus probandi* are against the instrument; but as the law does not render such an act invalid, the court has only to require strict proof, and the *onus* of proof may be increased by circumstances, such as unbounded confidence in the drawer of the will, extreme debility in the testator, clandestinity, and other circumstances, which may increase the presumption even so much as to be conclusive against the instrument." The circumstances surrounding the execution of the will in question were such as

to increase the presumption against it in the manner indicated by Sir John Nichol, and the Judicial Committee agreed with the colonial Court of Appeal in holding that the appellant had not satisfied the *onus* of showing that the will in question had been validly made.

CRIMINAL LAW—BIGAMY—OFFENCE COMMITTED WITHOUT A COLONY—POWERS OF COLONIAL LEGISLATURE.

Macleod v. *Attorney-General of N.S. Wales* (1891), A.C. 455, is a criminal case which appears inferentially to cast some doubt on the constitutionality of the Canadian criminal statute relating to bigamy (R.S.C., c. 161, s. 4, as amended by 53 Vict., c. 37, s. 10 (D.)). The appellant had been convicted for bigamy under a colonial statute, which was in the following terms: "*Whosoever* being married marries another person during the life of the former husband or wife, *wheresoever* such second marriage takes place shall be liable," etc. The second marriage of the appellant had taken place in the United States (it does not appear from the report whether or not the appellant was a British subject), and the Judicial Committee reversed the judgment of the colonial court, which had affirmed the conviction on the ground that to assume that the word "whosoever" was intended to apply to all persons out of the limits of the colony would be "to attribute to the colonial legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the most familiar principles of international law." They therefore held that the word "whosoever" must be intended to mean "whosoever being married and who is amenable, *at the time of the offence committed*, to the jurisdiction of the colony of N.S. Wales"; and the word "wheresoever" they held might be and should be read to mean, "wheresoever in the colony the offence is committed"; and their lordships say that "if the wider construction had been applied to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the bar, it would have been beyond the jurisdiction of the colony to enact such a law." Their jurisdiction is confined within their own territories, and the maxim, "*extra territorium jus dicenti impune non paretur*," would be applicable to such a case. The loophole which the Judicial Committee found in the N.S. Wales statute for the limited construction they gave to it does not exist as regards the Canadian statute, which reads as follows: "Every one who, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in Canada or elsewhere," etc. By sub-section 2, nothing in this section shall extend to "any second marriage contracted elsewhere than in Canada by any other than a subject of Her Majesty residing in Canada and leaving the same with intent to commit the offence." This sub-section, it is true, restricts the operation of the act in the case of a foreign second marriage to British subjects residing within Canada and going abroad to commit the offence; but if the *dictum* of the Privy Council which we have quoted is correct, can such a person when in a foreign country be said to be "amenable at the time of the offence committed to the jurisdiction of the colony," as to whom alone the committee appear to think that any British

legislature has power to legislate? For we may observe that the reasoning in this case impugns not only the authority of the colonial legislature, but also that of the Imperial Parliament itself, to make criminal any act committed beyond its territorial jurisdiction. The Canadian statute is evidently based on the Imperial statute, 24 & 25 Vict., c. 100, s. 57, which has been thirty years in force, and it is somewhat curious that the point has never before been raised.

ENGLISH BANKRUPTCY ACT, 1869, APPLICABILITY OF, TO LANDS OF BANKRUPT IN THE COLONIES.

In *Callender* v. *Colonial Secretary of Lagos* (1891), A.C. 469, the Judicial Committee hold that the English Bankruptcy Act of 1869 has the effect of vesting in the trustee in bankruptcy any lands belonging to a bankrupt situate in any British colony, subject to any requirements of any local law as to the conditions necessary to effect a transfer of real estate there situate. Their lordships repudiate the idea that the local law of a British colony is to be regarded as foreign law.

WILL—CODICIL—REVOCATION—REVIVAL OF WILL.

McLeod v. *McNab* (1891), A.C. 471, was an appeal from the Supreme Court of Nova Scotia. The question at issue was whether a codicil, dated 21st July, 1882, which expressed to be a codicil to the testator's will, dated 17th July, 1880, and which confirmed that will, was to be construed as also confirming an earlier codicil to that will, revoking a particular bequest therein. The Judicial Committee dismissed the appeal, holding that although a reference simply to the date of the earlier document was not sufficient of itself to restrict the confirmation to that particular document, yet other words in the confirming codicil and the surrounding circumstances could and did convey such an intention: and they therefore held that the intermediate codicil was not confirmed.

PROBATE—LOCALITY OF DEBTS—PROBATE DUTY.

Commissioner of Stamps v. *Hope* (1891), A.C. 476, raises an interesting point as to the locality of debts, as regards their liability to probate duty. The Judicial Committee lay down the principle that in order that an asset may be liable to a probate duty, it must be such as the grant of probate confers the right to administer, and therefore one which exists within the local area of the probate jurisdiction: *e.g.*, simple contract debts are to be regarded as having a local existence where the *debtor* for the time being resides, and a specialty debt where the specialty is found at the time of the creditor's death; and they held that a covenant to pay promissory notes which was subject to a proviso that the simple contract should not merge in the specialty was for the purpose of probate duty to be deemed a debt by specialty, even though the remedies on the simple contract were to a certain extent preserved, because in substance there was but one debt.

Notes on Exchanges and Legal Scrap Book.

CONSTRUCTIVE EVICTION.—An unusual but successful defence to an action by a landlord for rent was raised in the recent case of *Duff* v. *Hart* in the New York Court of Common Pleas. It appears that the plaintiff had leased to the defendant the upper portion of a building with the restriction that he should use it only for the purposes of a florist's establishment. Subsequently he leased the portion of the premises beneath the defendants for a laundry. As soon as the latter commenced operations, the defendant, before his lease had expired, vacated his premises, whereupon the landlord brought the present action. The defendant resisted on the ground that he had been evicted by his lessor, in that the maintenance and operation of the laundry rendered his premises untenantable, and defeated their beneficial use. The jury found for the defendant, and, on an appeal from the judgment, entered on the findings, the court held, that the circumstances constituted constructive eviction, for, by the operation of the laundry, the defendant was effectually deprived of the use of the premises leased to him.

UNRELIABILITY OF PHOTOGRAPHS.—An amusing case appeared some time ago in one of the law courts. It was a dispute between two persons about a wall. The plaintiff complained that the defendant's wall obstructed the light to which he had a right. Defendant denied the charge. The most amusing part of the case, however, was when the complainant handed the judge some photographs of the obstructing wall, and the judge observed that it was evident from them that the wall certainly did obstruct the light and was apparently of unnecessary height and size. Then up rose the counsel for the defendant, and with a smile handed the learned judge his photograph of the same wall. In the first set of photographs the wall was of immense size, towering above all the winds: in the second, however, it was of liliputian dimensions, a most insignificant thing, unworthy of any dispute. Now these different effects can all be brought about by using lenses of different angles, that is to say, lenses which collect or throw a more or less amount of view on a plate of given dimensions. A wide angle lens is one that includes a lot of view in a picture; and as the angle is a long way different to that of the human eye, the picture in no way gives a correct representation of the scene. Readers should beware of house agents' photographs of the houses and property they have for disposal. They are nearly all taken with a wide angle lens. With such an instrument it is possible to make a small London back garden resemble a large open park. The reason is that it causes all objects near at hand to appear large, and those a little distance away to recede far away in the background.—*London Tit-Bits.*

DIARY FOR JANUARY.

1. Fri. .....*New Year's Day.*
3. Sun.....*2nd Sunday after Christmas.*
4. Mon.....Chief Justice Moss died, 1881.
5. Tues. ...Civil and Criminal Assizes at Ottawa—Rose, J.
6. Wed.....Christmas vacation ends. Epiphany. Civil Assizes at London and Hamilton. Criminal Assizes at Toronto.
10. Sun .....*1st Sunday after Epiphany.*
11. Mon.....County Court sittings for motions. Surrogate Court sittings.
12. Tues.....Court of Appeal sits. Sir Charles Bagot, Governor-General, 1842.
13. Wed.....Civil Assizes at Toronto — Street, J., and Boyd, C.
14. Thur.....Duke of Clarence, heir presumptive, died '92.
15. Fri .....Lord Stanley of Preston born, 1841.
17. Sun .....*2nd Sunday after Epiphany.*
21. Thur.....Lord Bacon born, 1561.
23. Sat.....William Pitt died, 1806.
24. Sun.....*3rd Sunday after Epiphany.*
26. Tues.....Sir W. B. Richards died in his 74th year, 1889.
29. Fri..... George III. died in his 82nd year, 1820.
31. Sun .....*4th Sunday after Epiphany.* Earl of Elgin, Governor-General, 1847.

Reports.

ONTARIO.

(Reported for THE CANADA LAW JOURNAL.)

RE LEMON.

Insurance monies—Infants—Trustee in another province—Security—R.S.O., 1887, c. 136, s. 12.

A.M.N., who had been appointed administrator in Manitoba, was appointed trustee to receive the share of an infant, under R.S.O., 1887, c. 136, s. 12; and it being shown that he had given security largely in excess of the amount in question to the satisfaction of the court in Manitoba, where he and the infant resided, the trustee was not required to give security, and the insurance company was discharged on payment to the trustee.

[HAMILTON, December 3, 1891.

One Andrew Lemon was insured by two policies in the Canada Life Assurance Company, and made a declaration in favor of certain of his children, one of whom was a minor at the time of his death. The assured appointed one I.C. executor, and also guardian of his minor children; he declined to act; and administration, with the will annexed, was then granted to the petitioner.

The company admitted the claim, and were prepared to pay the shares of the adult children and the share of the minor upon the appointment of a guardian or trustee under R.S.O., c. 126, s. 12.

E. P. McNeill for petitioner: The administrator in the other Province has given security for more than double the amount in question, and the infant is desirous that he should be appointed trustee. The petitioner is entitled to his costs. See *Re Andrews*, 11 P.R. 199.

W. F. Burton for the insurance company: The company is entitled to be protected on payment to the trustee appointed without security, and the order should be so made. The company has always been willing to pay this claim, and following *Re Andrews* the company's costs should be provided for out of the fund.

MCMAHON, J., directed the order to be made dispensing with security in this Province, and, further, that payment to such trustee under the order should fully discharge the company, and, following the case cited, ordered costs to both parties out of the fund.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [June 22.

ROSS *v.* BARRY.

Contract—Construction of railway—Standard of quality—Evidence.

McC. and R. were the contractors for the construction of a part of the Grand Trunk Railway, and sublet the masonry work to B. & S. In a conversation between McC. and S., before B. & S. began their work, S. understood that the second-class masonry in his contract was to be of the same quality as that of the "Loop line," another part of the Grand Trunk Railway road, and prepared his materials accordingly on receipt of a letter from McC., instructing B.&S. to carry out their contract "according to the plans and specifications furnished by the company's engineer." After a small portion of the masonry work had been done, the subcontractors were informed by the engineer in charge that the second-class masonry required was of a quality that would increase the cost over thirty per cent., whereupon they refused to proceed, until McC., who was present, said to them, "Go on and finish the work as you are told by the engineer, and you will be paid for it." They thereupon pulled down what was built, and proceeded according to the directions of the engineer. When the work was nearly done, Mc. tried

to withdraw his promise to pay the increased price, but renewed it on the sub-contractors threatening to stop. After completion of the work payment of the extra price was refused, and an action was brought therefor.

Held, affirming the judgment of the Court of Appeal, that the conversation between McC. and S., prior to the commencement of the work, as detailed in the evidence, justified the sub-contractors in believing that the standard of quality was to be that of the Loop line; that the promise to pay the increased price was in settlement of a *bonâ fide* dispute, which was a good consideration for such promise; and that B. & S. were entitled to recover.

Appeal dismissed with costs.

Bain, Q.C., and *Laidlaw*, Q.C., for appellants.

Osler, Q.C., for respondents.

GRAND TRUNK RY. CO. *v.* FITZGERALD.

Railway company—Construction of line under charter—Money advanced and control exercised by another company—Liability of latter as to it—Tort-feasor.

In an action by F. against the G.T. Ry. Co. for damages caused by the building of an embankment along a line of railway which cut off access to the highway from F.'s land, the company contended that the said line of railway was built by and under the charter of another company; that there was no statute authorizing the G.T.R. Co. to build it, and its construction by them would be *ultra vires;* and that though the officers of the G.T.R. Co. were also officials of the company constructing said line, and F. had sustained damage by its construction, the G.T.R. Co., as a corporation, could not be made liable therefor. On the trial, the evidence showed that the G.T.R. Co. had advanced the money to build the line; that its president and other directors owned nearly all the stock in the chartered company; and that the work was done under the control and direction of the G.T.R. Co.'s engineers.

Held, affirming the decision of the Court of Appeal, that the G.T.R. Co. were liable to F. as wrongdoers.

Appeal dismissed with costs.

W. Cassels, Q.C., for appellants.

Edwards for respondents.

BRANTFORD, WATERLOO, AND LAKE ERIE RY. CO. *v.* HUFFMAN.

Contract — Tender for — Acceptance—Bond—Condition of—Consideration.

H., in response to advertisement therefor, tendered for a contract to build a line of railway, and his tender was accepted by the board of directors of the railway company, subject to his furnishing satisfactory sureties for the performance of the work, and depositing in the Bank of Montreal a sum equal to five per cent. of the amount of his tender. H. subsequently executed a bond in favor of the railway company, which, after reciting the fact of the tender and its acceptance, contained the condition that if within four days of the date of execution H. should furnish the said sureties and deposit the said amount, the bond should be void. These conditions were not carried out, and the contract was eventually given to another person. In an action against H. on the bond,

Held, affirming the decision of the Court of Appeal (18 A.R. 415), that no contract having been entered into pursuant to the tender and acceptance, the bond was only an executory agreement for which there was no consideration, and H. was not liable on it.

Appeal dismissed with costs.

Lash, Q.C., and *Wilson*, Q.C., for appellants.

Osler, Q.C., and *Harley*, for respondent.

HEWARD *v.* O'DONOHUE.

Statute of Limitations—Possession—Caretaker—Acts of ownership.

F.H. was the acting owner of certain real estate for some years prior to 1865, and O. was in possession under him as caretaker. In 1865, in a suit between F.H. and the other members of his family, a decree was made declaring F.H. to hold as trustee for, and to convey certain proportions of the property to, the other members. O. continued in possession after this decree, and took proceedings at different times against trespassers and others, but always represented that he did so by authority from F.H., and he did not act as asserting ownership in himself until 1884, when he fenced a portion of the land. In an action against O. to recover possession of the land:

Held, reversing the judgment of the Court of Appeal (18 A.R. 529), that the effect of the de-

cree in 1865 was not to alter the relations between F.H. and O.; that O. having once entered as caretaker, and having never disclaimed that he held as such for the necessary period to gain a title by possession, his possession continued to be that of caretaker, and he could not retain possession of the land against the true owners. *Ryan* v. *Ryan* (5 S.C.R. 387) followed.

Appeal allowed with costs.

McCarthy, Q.C., and *McMurchy*, for appellants.

Reeve, Q.C., for respondent.

O'DONOHOE *v.* BEATTY.

Solicitor—Bill of costs—Proceedings before taking officer—Evidence of settlement—Appeal.

The executors of an estate took proceedings to obtain from a solicitor of the testator an account and payment of monies in his hands due the estate. A reference was made to a taxing officer to tax the bills of costs produced by the solicitor, and in doing so the officer, subject to protest by the solicitor, took evidence of an alleged settlement between the executors and the solicitor, by which a fixed amount was to be paid the latter in full of all claims. The officer having reported a considerable amount due from the solicitor to the estate the solicitor appealed, urging that the order of reference did not authorize the officer to do more than tax the bills, and in doing so, as they had been rendered more than a year before the proceedings commenced, they should be taxed at the amount represented on their face. The officer's report was affirmed by the Divisional Court and the Court of Appeal.

Held, affirming the decision of the Court of Appeal, that the taxing officer not only could but was bound to proceed as he did, and the appeal should be dismissed.

Quære: As the matter in question relates only to the practice and procedure of the High Court of Justice in Ontario, and the conduct of one of its officers in carrying out an order of the court, is it a proper subject of appeal to the Supreme Court of Canada?

Appeal dismissed with costs.

O'Donohoe, appellant, in person.

McCarthy, Q.C., for respondent.

BICKFORD *v.* HAWKINS.

Appeal—Questions of fact—Interference with decision of trial judge.

In an action for payment of services alleged to have been performed by H. on a retainer by B. to procure a subsidy from Parliament and bonuses from municipalities of Sarnia and Sombra in aid of a railway projected by B., the giving of which retainer B. denied:

Held, that the question for decision being entirely one of fact, the decision of the trial judge, who saw and heard the witnesses, in favor of H., confirmed as it was by the Court of Appeal, should not be interfered with by the Supreme Court.

Appeal dismissed with costs.

Lash, Q.C., for appellant.

McCarthy, Q.C., and *Wilson*, Q.C., for respondent.

Nov. 17.

GLENGARRY ELECTION.

MCLENNAN *v.* CHISHOLM.

Election petition—Re-service of—Order granting extension of time—Preliminary objections—R.S.C., c. 9, s. 10—Description of petitioner.

When this petition was first served no copy of the deposit receipt was served with it, and the petitioner within the five days after the day on which the petition had been presented applied to a judge to extend the time for service that he might cure the omission. An order extending the time (subsequently affirmed on appeal by the Court of Appeal for Ontario) was made, and the petition was re-served accordingly, with all the other papers prescribed by the statute. Before the order extending the time had been drawn up the respondent had filed preliminary objections, and by leave contained in the order he filed further preliminary objections after the re-service. The new list of objections included those made in the first instance, and also an objection to the power or jurisdiction in the Court of Appeal or judge thereof to extend the time for service of the petition beyond the five days prescribed by the act.

Held, that the order was a perfectly valid and good order, and that the re-service made thereunder was a proper and regular service; R.S.C., c. 9, s. 10.

The petition in this case simply stated that it was the petition of Angus Chisholm, of the

township of Lochiel, in the county of Glengarry, without describing his occupation; and it was shown by affidavit that there are two or three other persons of that name on the voters' list for that township.

Held, affirming the judgment of the court below, that the petition should not be dismissed for the want of a more particular description of the petitioner.

Appeal dismissed with costs.

McCarthy, Q.C., for appellant.

S. H. Blake, Q.C., for respondent.

[Dec. 2.

HALTON ELECTION.

LUSH *v.* WALDIE.

Election petition—Appeal—Dissolution of Parliament—Return of deposit.

In the interval between the taking of an appeal from a decision delivered on the 8th Nov., 1890, in a controverted election petition, and the February sitting (1891) of the Supreme Court of Canada, Parliament was dissolved, and by the effect of the dissolution the petition dropped. The respondent subsequently, in order to have the costs that were awarded to him at the trial taxed and paid out of the money deposited in the court below by the petitioner as security for costs, moved before a judge of the Supreme Court in chambers to have the appeal dismissed for want of prosecution, or to have the record remitted to the court below. The petitioner asserted his right to have his deposit returned to him.

Held, per PATTERSON, J.: (1) That the final determination of the right to costs being kept in suspense by the appeal, the motion should be refused.

(2) That, inasmuch as the money deposited in the court below ought to be disposed of by an order of that court, the registrar of this court should certify to that court that the appeal was not heard, and that the petition dropped by reason of the dissolution of Parliament on the 2nd February, 1891.

Motion refused.

Kerr, Q.C., for motion.

Aylesworth, Q.C., *contra.*

Quebec.] [June 22.

OWENS *v.* BEDELL.

Conventional subrogation—What will effect—Art. 1155, s. 2—Erroneous noting of deed by registrar.

Conventional subrogation under Art. 1155, s. 2, C.C., takes effect when the debtor, borrowing a sum of money, declares in his deed of loan that it is for the purpose of paying his debts, and that in the acquittance it be declared that the payment has been made with the moneys furnished by the new creditor for that purpose, and no formal or express declaration is required.

Where subrogation is given by the terms of a deed, the erroneous noting of the deed by the registrar as a discharge and the granting by him of erroneous certificates cannot prejudice the party subrogated.

Appeal dismissed with costs.

Butler, Q.C., and *Geoffrion*, Q.C., for appellants.

Morris, Q.C., for respondent.

[Nov. 11.

MOIR *v.* THE VILLAGE OF HUNTINGDON ET AL.

By-law—Appeal as to costs—Supreme and Exchequer Courts Act, s. 24.

Since the rendering of the judgment by the Court of Queen's Bench refusing to quash a by-law passed by the corporation of the village of Huntingdon, the by-law in question was repealed. On appeal to the Supreme Court of Canada;

Held, that the only matter in dispute between the parties being a mere question of costs, the appeal should be dismissed. Supreme and Exchequer Courts Act, s. 24.

Appeal dismissed with costs.

Smith for motion.

Mitchell & Robertson contra.

[Nov. 17.

THE COUNTY OF VERCHERES *v.* THE VILLAGE OF VARENNES.

Jurisdiction—Action to set aside a procès-verbal or by-law—Appeal—S. 24 (g) and s. 29 of the Supreme and Exchequer Courts Act.

The municipality of the county of Vercheres passed a by-law or procès-verbal, defining who

were to be liable for the rebuilding and maintenance of a certain bridge. The municipality of Varennes, by their action, prayed to have the by-law or procès-verbal in question set aside on the ground of certain irregularities.

On appeal to the Supreme Court of Canada:

Held, that the case was not appealable under s. 29 or s. 24, s-s. "g," of the Supreme and Exchequer Courts Act, the appeal not being from a rule or order of a court quashing or refusing to quash a by-law of a municipal corporation.

Appeal quashed with costs.

Allan for appellant

Archambault, Q.C., for respondent.

WINEBERG ET VIR *v.* HAMPSON.

Jurisdiction—Appeal—Future rights—Title to lands—Servitude—Supreme and Exchequer Courts Act, s. 29 (b).

By a judgment of the Court of Queen's Bench for Lower Canada (appeal side), the defendants in the action were condemned to build and complete certain works and drains in a lane separating the defendants' and plaintiff's properties on the west side of Peel Street, Montreal, within a certain delay, and the court reserved the question of damages. On appeal to the Supreme Court of Canada:

Held, that the case was not appealable. *Gilbert* v. *Gilman* (16 S.C.R. 189) followed.

The words "title to lands" in s-s. "b," s. 29, Supreme and Exchequer Courts Act, are only applicable to a case where title to property or a right to the title are in question. *Wheeler* v. *Black* (14 S.C.R. 242) referred to.

Appeal quashed with costs.

Bethune, Q.C., for motion.

Robertson, Q.C., contra.

BORDEN *v.* BERTEAUX.

Election petition—Preliminary objections—Service at domicile—R.S.C., c. 9, s. 10.

Held, that leaving a copy of an election petition and accompanying documents at the residence of the respondent with an adult member of his household during the five days after the presentation of the same is a sufficient service under s. 10 of the Dominion Controverted Elections Act, even though the papers served do not come into the possession or within the knowledge of the respondent.

Appeal dismissed with costs.

Roscoe for appellant.

Boak for respondent.

STANSTEAD ELECTION.

RIDER *v.* SNOW.

Election appeal—Preliminary objections—Status of petitioner—Onus probandi.

By preliminary objections to an election petition the respondent claimed the petition should be dismissed *inter alia*: "Because the said petitioner had no right to vote at said election."

On the day fixed for proof and hearing of the preliminary objections, the petitioner adduced no proof and the respondent declared that he had no evidence, and the preliminary objections were dismissed. On appeal to the Supreme Court of Canada, the counsel for appellant relied only on the above objection.

Held, per SIR W. J. RITCHIE, C.J., and TASCHEREAU and PATTERSON, JJ.: That the onus was upon the petitioner to establish his status, and that the appeal should be allowed and the election petition dismissed.

Per STRONG, J.: That the *onus probandi* was upon the petitioner, but in view of the established jurisprudence the case should be remitted to the court below to allow petitioner to establish his status as a voter.

FOURNIER and GWYNNE, JJ., contra, were of opinion that the *onus probandi* was on the respondent, following the Megantic election case, 8 S.C.R. 169.

Appeal allowed with costs, and petition dismissed.

Geoffrion, Q.C., for appellant.

White, Q.C., for respondent.

Prince Edward Island.]

DAVIES AND WELSH *v.* HENNESSY.

Election petition—Preliminary objections—Personal service at Ottawa—Security—Receipt—R.S.C., c. 9, ss. 8, 9, s-s. (e) & (g), s. 10.

In Prince Edward Island two members are returned for the electoral district of Queen's County. With an election petition against the return of the two sitting members the petitioner deposited the sum of $2,000 with the deputy

prothonotary of the court, and in his notice of presentation of the petition and deposit of security he stated that he had given security to the amount of one thousand dollars for each respondent, "in all two thousand dollars duly deposited with the prothonotary, as required by statute." The receipt was signed by W. A. Weeks, the deputy-prothonotary appointed by the judges, and acknowledges the receipt of $2,000, without stating that $1,000 was deposited as security for each respondent. The petition was served personally on the respondents at Ottawa.

Held (1), that personal service of an election petition at Ottawa without an order of the court is a good service under s. 10 of the Controverted Elections Act.

(2) That there being at the time of the presentation of the petition security for the amount of $1,000 for the costs, etc., for each respondent, the security given was sufficient. S. 8 and s. 9, s-s. "e," c. 9, R.S.C.

(3) That the payment of the money to the deputy prothonotary of the court at Charlottetown was a valid payment; s. 9, s-s. (g), c. 9, R.S.C.

Appeal dismissed with costs.

Peters, Q.C., for appellants.

N. A. Morson for respondent.

CONTROVERTED ELECTIONS FOR THE ELECTORAL DISTRICTS OF:

PRINCE COUNTY, P.E.I. (PERRY AND YEO *v.* CAMERON);

SHELBURNE, N.S. (WHITE *v.* GREENWOOD);

ANNAPOLIS, N.S. (MILLS *v.* RAY);

LUNENBURG, N.S. (KAULBACH *v.* EISENHAUER);

ANTIGONISH, N.S. (THOMPSON *v.* MACGILLIVRAY);

PICTOU, N.S. (TUPPER *v.* MCCOLL);

AND INVERNESS, N.S. (MCDONALD *v.* CAMERON).

Election petitions — Preliminary objections — Service of petition — Security — R.S.C., c. 9, s. 10, and s. 9 (e) and (g).

In all these cases the appeals were from the decisions of the courts below, dismissing preliminary objections to the election petitions presented against the appellants.

The questions raised on these appeals were: (1) Whether a personal service on the respondent at Ottawa with or without an order of the court at Halifax, or at his domicile, is a good service. (2) Whether the payment of the security required by s. 9 (e) into the hands of a person who was discharging the duties of and acting for the prothonotary at Halifax, and a receipt signed by said persons in the prothonotary's name, s. 9 (g), were valid. The court, following the conclusion arrived at in the King's County (N.B.) and Queen's County (P.E.I.) election cases, held that the service and payment of security were valid and a substantial compliance with the requirements of the statute.

Appeals dismissed with costs.

McCarthy, Q.C., and *J. A Ritchie*, for appellants.

G. T. Congdon for respondents.

Manitoba.] [June 22.

LYNCH *v.* NORTHWEST CANADA LAND CO.

MUNICIPALITY OF SOUTH DUFFERIN *v.* MORDEN.

GIBBINS *v.* BARBER.

Constitutional law—B.N.A. Act, s. 91—Interest—Legislative authority over—Municipal act—Taxation—Additional rate for non-payment.

The Municipal Act of Manitoba (1886), s. 626, as amended by 49 Vict., c. 52, provides that "in cities and towns all parties paying taxes to the treasurer or collector before the first day of December, and in rural municipalities before the 31st day of December, in the year they are levied, shall be entitled to a reduction of ten per cent. on the same; and all taxes remaining due and unpaid on the 1st or 31st day of December (as the case may be) shall be payable at par until the 1st day of March following, at which time a list of all the taxes remaining unpaid and due shall be prepared by the treasurer or collector (as the case may be), and the sum of ten per cent. on the original amount shall be added on all taxes then remaining unpaid."

Held, reversing the judgment of the court below, GWYNNE, J., dissenting, that the addition of ten per cent. on taxes unpaid on March 1st is only an additional rate or tax imposed as a penalty for default, and is not "interest" within the meaning of s. 91 of the B.N.A. Act, which

is within the exclusive legislative authority of the Dominion Parliament.

Appeal allowed with costs.

South Dufferin *v.* Morden :
Martin, Attorney-General, for appellants.
McTavish, Q.C., for respondent.

Lynch *v.* Northwest Land Company :
Kennedy, Q.C., for appellant.
Robinson, Q.C., and *Tupper*, Q.C., for respondents.

Gibbins *v.* Barber :
Tupper, Q.C., for respondent.

[Oct. 28.

BARRETT *v.* THE CITY OF WINNIPEG.

Constitutional law—Constitution of Manitoba—33 Vict., c. 3 (D.)—Act respecting education—Denominational rights—Separate schools.

The act by which the Province of Manitoba became a part of the Dominion of Canada (33 Vict., c. 3 (D.)), gave to the province the exclusive right to legislate in respect to education, with the following limitation : "Provided that nothing in any such law (a law relating to education) shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons has by law *or practice* in the province at the union." The words "or practice" are an addition to, and the only deviation from, the words of the like provision in the B.N.A. Act, under which *ex parte Renaud* (1 Pugs. 273) was decided in New Brunswick.

In 1871, after the said union, an act relating to schools was passed by the Legislature of Manitoba, by which the control of educational matters was vested in a board, consisting of an equal number of Protestants and Catholics. A Protestant and a Catholic superintendent of education were to be appointed, and Protestant and Catholic school districts established, the legislative grant for schools to be apportioned to each. This act was amended from time to time, but the system it established continued until 1890.

By 53 Vict., c. 38, passed by the legislature in 1890, a system of public schools was established in the province ; the former system was abolished ; the control of educational matters was vested in a department of education, consisting of a committee of the executive council, and all the schools were to be free, and no religious exercises to be allowed except as authorized by the advisory boards to be established under the provisions of the act. The ratepayers of the several municipalities were to be indiscriminately taxed for the support of the public schools.

A Catholic ratepayer of the city of Winnipeg moved to quash by-laws passed to impose a tax for school purposes, and in support of his motion an affidavit of the Archbishop of St. Boniface was read, setting forth the position of the Roman Catholic Church with respect to education and the control it always exercised over the same, and showing that prior to the admission of Manitoba into the union Catholics had their own schools, partly supported by fees from parents, and partly by the funds of the church.

Held, reversing the judgment of the Court of Queen's Bench, Manitoba (7 Man. L.R. 273), that this act, 53 Vict., c. 38, prejudicially affected the rights and privileges with respect to denominational schools which Roman Catholics had *by practice* in the province at the union, and was therefore *ultra vires* of the provincial legislature. *Ex parte Renaud* (1 Pugs. 273) distinguished.

Appeal allowed with costs.

S. H. Blake, Q.C., and *Ewart*, Q.C., for appellants.

Germully, Q.C., and *Martin*, for respondents.

LISGAR ELECTION.

[Nov. 17.

COLLINS *v.* ROSS.

Election petition — Preliminary objections — R.S.C., c. 9, s. 63—English general rules—Manitoba—Copy of petition—R.S.C., c. 9, s. 9 (h)—Description and occupation of petitioner.

Held (1), affirming the judgment of the court below, that the judges of the court in Manitoba not having made rules for the practice and procedure in controverted elections, the English rules of Michaelmas Term, 1868, were in force : R.S.C., c. 9, s. 63 ; and that under Rule 1 of said English rules, the petitioner, when filing an election petition, is bound to leave a copy with the clerk of the court to be sent to the returning officer, and that his failure to do so is the subject of a substantial preliminary objection, and fatal to the petition. STRONG and GWYNNE, JJ., dissenting.

(2) Reversing the judgment of the court below, that the omission to set out in the petition the residence, address, and occupation of the petitioner is a mere objection to the form, which can be remedied by amendment, and therefore not fatal.

Appeal dismissed with costs.

Martin for appellant.

McCarthy, Q.C., for respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[Nov. 10.

THOROLD *v.* NEELON.

Company—Corporate act—Application of payments on shares—Partly paid-up shares treated as fully paid up.

An agreement was entered into between a corporation, certain of its shareholders and the defendant (vice-president of the company), whereby it was agreed that the shareholders should procure certificates for the amount of certain stock of the company held by them and said to be fully paid up, and should transfer the same to the defendant in consideration of advances of money to be made by the defendant to the company. One of the aforesaid shareholders having 188 shares of stock with 40 per cent. paid up thereon, and being unable to pay up the remaining 60 per cent., it was suggested at the meeting of the directors that, for the purpose of enabling the agreement to be carried out, the payments upon the 188 shares should be wholly applied to 75 shares, which should then be transferred to the defendant as fully paid-up shares. This suggestion was acted upon by an entry being made in the company's books of the transfer to the defendant of the seventy-five shares as paid-up stock, but no resolution authorizing this appropriation was passed, nor was the company's certificate for such stock procured.

Held, in action by judgment creditors of the company, that the intended appropriation was not made with the authority of the company by any corporate act, and that therefore there remained 60 per cent. still unpaid on the seventy-five shares, for which defendant was liable.

Held, also, that shares only partly paid up which have been improperly recognized as fully paid up by the directors, whose action in regard to them has been confirmed by a general meeting of shareholders, must be treated as against creditors of the company as fully paid-up shares in the hands of a transferee for value without notice of the actual facts.

Robinson, Q.C., and *Collier*, for appellants.

W. Cassels, Q.C., and *R. G. Cox*, for respondent.

ATTORNEY-GENERAL OF CANADA *v.* CITY OF TORONTO.

Municipal corporation—Water rates—Discount allowed except to Government institutions—35 Vict., c. 79 (O.), as amended by 41 Vict., c. 40 (O.).

By statute 35 Vict., c. 79 (O.), as amended by 41 Vict., c. 40 (O.), the corp ration of the city o Toronto were empowered, in regard to the city water works, to fix the price, rate, or rent which any owner or occupant of any house, lot, etc., in, through or past which the water pipes should run should pay as water rate or rent; whether the owner or occupant should use the water or not, having due regard to the assessment and to any special benefit oradvantage derived by such owner or occupant, or conferred upon him or his property by the water works. The corporation was also empowered to fix the rate to be paid for the use of the water by public buildings. Pursuant to these powers, a by-law of the corporation was passed, providing that the half-yearly rates "paid within the first two months of the half-year for which they are due shall be subject to a reduction of 50 per cent., save and except in the case of Government or other institutions which are exempt from city taxes, in which cases the said provisions as to discount shall not apply."

Held, that "government institutions" in the said by-law were "public buildings" within the meaning of the act.

Held, also, that the "price, rate, or rent" paid for the water was not a tax, but merely the price paid for the water supplied to the consumer, and that the corporation were not obliged to allow for water supplied to public buildings the discount allowed to taxpayers.

J. Reeve, Q.C., and *Wickham*, for appellant.

Biggar, Q.C., for respondent.

ONTARIO NATURAL GAS CO. *v.* GOSFIELD.

Natural gas -Power of municipality to allow boring on highway for—R.S.O., 1887, c. 184, s. 575.

Natural gas is a "mineral," and within the meaning of the Municipal Act, R.S.O., 1887, c. 184, s. 565. Judgment of STREET, J., 19 O.R. 591, affirmed.

Robinson, Q.C., and *H. S. Osler*, for appellants.

Aylesworth, Q.C., for respondents.

HIGH COURT OF JUSTICE.

Chancery Division.

MEREDITH, J.] [Dec. 1.

RE CENTRAL BANK.
CANADA SHIPPING COMPANY'S CASE.

Banks and banking—Bill of lading—Promise to transfer—Acquisition of goods attached by process in foreign country before bill of lading delivered—Conflict of law—Proof of foreign law.

A customer of a bank in Ontario arranged with the bank to make advances to him with which to purchase cattle for exportation and sale in England, and undertook to forward the cattle to Montreal and place them in the hands of the shippers for England, who were to make out the bills of lading in favor of and forward them to the bank.

After the cattle were in the hands of the shippers (the company), but before the bills of lading were made out, a judgment creditor of the customer in the Province of Quebec caused a writ of *saisie-arret* to be served on the company, the effect of which, by Quebec law, is to order the party served to hold the property for the benefit of the judgment creditor.

The company, however, made out the bill of lading to the bank and forwarded the cattle, and at the trial of the action the Quebec judge held that the writ attached on the cattle before the bill of lading was made out, and judgment was given against the company for the value of the cattle, which the company were obliged to pay.

In the winding-up proceedings of the bank in Ontario, the company sought to prove a claim for the amount of the judgment.

On an appeal from the Master, it was

Held [affirming the Master], that the bank acquired some interest in the cattle when placed on board the steamship good against the customer and the company, and that under the agreement the possession and a special property passed to it; and the company so receiving the cattle held them for the bank.

It was contended that the law of Quebec, by which a vendor of goods without actual delivery only acquired the *jus ad rem* and not the *jus in re*, should prevail.

Held, that if there was any difference between the law of Quebec and of Ontario it should be proved like any other fact, which was not done here, and that under the circumstances in this case it must be found as a fact that it was the intention of the bank and its customer that their agreement should be governed by the law of Ontario; and as the bank had not only a right to, but a property in and the possession of the cattle, the writ of *saisie-arret* was not effectual.

Held, also, following *Suter* v. *The Merchants Bank*, 24 Gr. at p. 374, that to acquire by anticipation a property in a non-existing bill of lading is to acquire by anticipation some right or title of the previous owner to the goods of which it is but the symbol before the date of the acquisition of the symbol.

Held, also, that the bank became entitled to the bill of lading as soon as the cattle were received by the company, and could not be prejudiced by delay in the manual operation of filling up and signing the form and delivering it, and so had "acquired" it before they actually "held" it, and the appeal was dismissed with costs.

Moss, Q.C., for the appeal.

Meredith, Q.C., *contra*.

BOYD, C.] [Dec. 3.

ALDRICH *v.* ALDRICH.

Husband and wife—Alimony—Condonation of matrimonial offences—Revival of same by husband's subsequent adultery—Effect of husband's adultery—Evidence.

Condonation of matrimonial offences is always on the condition that there shall be no repetition of any matrimonial offence in the future. And the effect of a husband's subsequent adultery is to revive previously condoned acts of cruelty.

The evidence of one witness, by confession of loose character, is not sufficient to prove adultery unless corroborated.

Proof that the wife was much with another man, drove with him in cabs, was seated with him while he held her hand, that he accompanied her when travelling, and corresponded with her clandestinely, are not such matrimonial offences as will disentitle her to alimony.

A woman, both in law and in morals, is justified in leaving and in refusing to return to her husband who has committed adultery; but his act which breaks up the household does not relieve him from his duty to maintain her; and proof of that offence would be sufficient upon which to award alimony.

F. McCity for plaintiff.

R. G. Code and *J. E. Orde* for defendant.

Practice.

FALCONBRIDGE, J.] [Dec. 23.

FERGUSON *v.* CITY OF TORONTO.

Indemnity—Third party notice—Setting aside—Action for negligence—Insurance policy, construction of—Inconsistency of pleading with claim over for indemnity.

The plaintiff sued for a personal injury, which, by his statement of claim, he alleged he had received when acting as conductor of a street railway car operated by the defendants by reason of the negligence of a servant of the defendants, who was driving a scavenger wagon used by the defendants. The company who had operated the railway before the defendants assumed it were insured against all sums for which they should become liable to any employee in their service while engaged in their work. The insurance policy was assigned to the defendants when they assumed the railway. The defendants served on the insurance company a third party notice claiming indemnity.

Held, that the policy did not cover injuries accruing by reason of the negligence of the defendants or their servants in other branches of their service; and that the insurance company should not be kept before the court on the chance of a different state of facts being developed at the trial from that which the plaintiff alleged.

An order was therefore made in Chambers setting aside the third party notice.

J. E. Smith, Q.C., for the insurance company.

H. M. Mowat for the defendants.

W. A. Leys for the plaintiff.

BOYD, C.] [Dec. 30.

IN RE RENWICK, RENWICK *v.* CROOKS.

Infants—Past maintenance—Special circumstances.

Where applications for past maintenance of infants are made, and especially where the only fund for payment is the *corpus* of the estate, the applicant should come on petition before a Judge in Chambers, showing and proving the special circumstances relied on to overcome the general rule that arrears of past maintenance are not given, which rule applies whether the claimant is father, mother, or other relative, a step-parent, or a stranger.

And where it appeared that a person making a claim for the past maintenance of his infant step-children against the proceeds of the sale of their father's farm realized in administration proceedings had not maintained the infants on the basis of being compensated therefor, but that his claim was an afterthought, a judge refused to confirm the master's recommendation of an allowance.

F. Stone for the plaintiff.

W. H. Blake for the claimant.

J. Hoskin, Q.C., for the infants.

BOYD, C.] [Jan. 7.

KIDD *v.* PERRY.

Evidence—Foreign commission—Examination of defendant—Discretion.

An application for a commission to examine witnesses out of the jurisdiction is one going to the discretion of the court, and this discretion will be more strictly exercised where the proposal is to examine an absent party on his own behalf.

In the case of a defendant proposing to have his own examination taken on commission, his personal affidavit may not be essential, but very cogent reasons should be given by some one who can speak with knowledge.

And where the affidavit in support of an application to have the defendant and his mother, by whom the negotiation was conducted with the plaintiff out of which the cause of action arose, examined abroad was made by the defendant's solicitor, who swore that he believed it was necessary to have their evidence; that it would save expense if it were taken on commis-

sion; and that it would be very inconvenient for the defendant to be long away from his place of abode abroad;

Held, that no case was made for the examination of the defendant abroad; and, as to his mother, that the absence of the usual affidavit as to her being a necessary and material witness, and the omission to state any reason why she could not appear at the trial, should prevail to the upholding of the discretion exercised by a master in refusing to order a commission.

G. G. Mills for the plaintiff.

J. A. Macdonald for the defendant.

Appointments to Office.

QUEEN'S BENCH JUDGES.

Province of Quebec.

Robert Newton Hall, of the city of Sherbrooke, in the Province of Quebec, Esquire, one of Her Majesty's Counsel learned in the Law; to be a Puisné Judge of the Court of Queen's Bench in and for the Province of Quebec, *vice* the Honorable Levi Ruggles Church, resigned.

COUNTY COURT JUDGES.

County of Wellington.

Austin Cooper Chadwick, Esquire, Junior Judge of the County Court of the County of Wellington, in the Province of Ontario; to be Judge of the County Court of the County of Wellington, in the said Province of Ontario, *vice* His Honor George Alexander Drew, deceased.

Austin Cooper Chadwick, Esquire, Judge of the County Court of the County of Wellington, in the Province of Ontario; to be a Local Judge of the High Court of Justice for Ontario.

Joseph Jamieson, of the town of Almonte, in the County of Lanark, in the Province of Ontario, one of Her Majesty's Counsel learned in the law; to be Junior Judge of the County Court of the County of Wellington, in the said Province of Ontario.

Joseph Jamieson, Esquire, Junior Judge of the County Court of the County of Wellington, in the Province of Ontario; to be a Local Judge of the High Court of Justice for Ontario.

LOCAL MASTERS.

County of Halton.

John Juchereau Kingsmill, Esquire, Acting Judge of the County Court of the County of Halton; to be Local Master of the Supreme Court of Judicature for Ontario in and for the said County of Halton, *pro tempore*, in the room and stead of Thomas Miller, Esquire, deceased.

REGISTRARS OF DEEDS.

County of Glengarry.

John Simpson, of the village of Alexandria, in the County of Glengarry, Esquire; to be Registrar of Deeds within and for the said County of Glengarry, in the room and stead of Angus McDonald, Esquire, deceased.

REGISTRARS IN ADMIRALTY.

District of New Brunswick.

Robert Oldfield Stockton, of the city of St. John, in the Province of New Brunswick, Esquire, Barrister-at-law; to be a Registrar in Admiralty of the Exchequer Court for the District of New Brunswick.

CORONERS.

City of Toronto.

William Henry B. Aikins, of the city of Toronto, in the County of York, Esquire, M.D., L.R.C.P. (Lond.); to be an Associate Coroner within and for the said city of Toronto.

County of Hastings.

Horace Augustus Yeomans, of the village of Deseronto, in the County of Hastings, Esquire, M.D.; to be an Associate-Coroner within and for the said County of Hastings.

DIVISION COURT CLERKS.

County of Bruce.

Robert Munro, of the village of Port Elgin, in the County of Bruce, Gentleman; to be Clerk of the Fifth Division Court of the said County of Bruce, in the room and stead of James McKinnon, deceased.

County of Grey.

Patrick McCulloch, of the village of Markdale, in the County of Grey, Gentleman; to be Clerk of the Eighth Division Court of the said County of Grey, in the room and stead of William Brown, deceased.

County of Middlesex.

Edward Thomas Shaw, of the village of Dorchester Station, in the County of Middlesex, Gentleman; to be Clerk of the Seventh Division Court of the said County of Middlesex, in the room and stead of Isaac N. Burdick, resigned.

District of Parry Sound.

James Dunn, of the village of Sundridge, in the District of Parry Sound, Gentleman; to be Clerk of the Seventh Division Court of the said District of Parry Sound, in the room and stead of Benjamin McDermott.

United Counties of Prescott and Russell.

Onezime Guibord, of the village of Clarence Creek, in the United Counties of Prescott and Russell, Gentleman; to be Clerk of the Tenth Division Court of the said United Counties of Prescott and Russell, *pro tempore*, during the absence or leave of Telesphore Rochon, Clerk of the said Court.

United Counties of Stormont, Dundas and Glengarry.

John D. McIntosh, of the village of Dominionville, in the County of Glengarry, one of the United Counties of Stormont, Dundas, and Glengarry, Gentleman; to be Clerk of the Twelfth Division of the said United Counties, in the room and stead of George Herndon, resigned, from and after the first day of February now next.

DIVISION COURT BAILIFFS.

County of Brant.

David Beattie Wood, of the village of St. George, in the County of Brant; to be Bailiff of the Third Division Court of the said County of Brant, in the room and stead of George S. Wait, resigned.

County of Hastings.

W. D. Ketcheson, of the village of Wallbridge, in the County of Hastings; to be Bailiff of the Second Division Court of the said County of Hastings, in the room and stead of J. E. Bleecker, resigned.

County of Simcoe.

John Wilson, of the village of Tottenham, in the County of Simcoe; to be Bailiff of the Third Division Court of the said County of Simcoe, in the room and stead of George A. Nolan, resigned.

District of Nipissing.

Joseph Powell, of the village of Sudbury, in the District of Nipissing; to be Bailiff of the Fourth Division Court of the said District of Nipissing, in the room and stead of William Irving, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Montreal.

Archibald McGoun, of the city of Montreal, in the Province of Quebec, Esquire, Advocate; to be a Commissioner for taking affidavits within and for the said city of Montreal, and not elsewhere, for use in the Courts of Ontario.

City of Buffalo (U.S.).

Arthur Blake Price, of the city of Buffalo, in the State of New York, one of the United States of America, Esquire, Accountant; to be a Commissioner for taking affidavits within and for the said city of Buffalo, and not elsewhere, for use in the Courts of Ontario.

Flotsam and Jetsam.

THE *Indianapolis News* tells us that the late Judge Test, of Indiana, was once in attendance as judge at an important trial at Lafayette. Most of the leading attorneys at the bar were in the case, and they were having a good deal of trouble and strife in securing a jury. There was a German on the panel who had been accepted. The German desired to be released, and appealed to the judge to be let off on the ground that "me no understand good English." "Oh tut, tut," said the judge, "that is no excuse. You will not hear any good English during this trial." A severe commentary this on the education other than legal of the Indiana bar.

A SOMNOLENT JUDGE.—Rumor at the Four Courts is busy as to which of the Irish judges is the central figure of the following story: It seems, as the *Law Gazette* puts it, that a learned judge is wont to doze during the more or less uninteresting speeches of counsel, and from time to time to awaken to ejaculate an odd remark in the course of a speech. An eloquent Q.C. was lately addressing his lordship on the subject of certain town commissioners' right to a particular waterway. In his address he repeated, somewhat emphatically,

"But, my lord, we must have water; we must have water." The learned judge thereupon awoke, and startled the bar with the remark, "Well, just a little drop, thank you; just a little; I like it strong."—*Ex.*

ENGLAND, Germany, and the United States are the only three countries which permit actions for breaches of promise of marriage on grounds of wounded feelings. Neither in Italy, Austria, Holland, nor France, does a mutual promise involve obligation of marriage, and, except in cases where the promise has been followed by betrayal, a defaulting lover is liable only in so far as his or her fault has caused actual pecuniary damage. In Germany an engagement invariably assumes an official form; and should one of the parties thereto withdraw, the other may claim damages to the extent of a fifth of the dower agreed upon. German bridal dowers are proverbially small, and the fractional fifth awarded to the jilted sweetheart by way of solace for wounded feelings falls considerably short of the average damages which an American or English jury would award.—*Green Bag.*

Law Society of Upper Canada.

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COLIN MACDOUGALL, Q.C.

THE LAW SCHOOL.

Principal, A. REEVE, M.A., Q.C.

Lecturers: E. D. ARMOUR, Q.C.; A. H. MARSH, B.A., LL.B., Q.C.; F. E. KINGSFORD, M.A., LL.B.; P. H. DRAYTON.

Examiners: FRANK J. JOSEPH, LL.B.; A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON.

ATTENDANCE AT THE LAW SCHOOL.

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

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

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

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

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

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

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

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

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

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

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

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles

may not have expired. In like manner, those who are required to attend during two terms must attend during those terms which end in the last two years respectively of their period of attendance in chambers or service, as the case may be.

Those students and clerks, not being graduates, who are required to attend the first year's lectures in the School, may do so at their own option, either in the first, second, or third year of their attendance in chambers or service under articles, upon notice to the Principal.

By a rule passed in October, 1891, students and clerks who have already been allowed their examination of the second year in the Law School, or their second intermediate examination, and under existing rules are required to attend the lectures of the third year of the Law School course during the school term of 1892-93, may elect to attend during the term of 1891-92 the lectures on such of the subjects of said third year as they may name in a written election to be delivered to the principal, provided the number of such lectures shall, in the opinion of the principal, reasonably approximate one-half of the whole number of lectures pertaining to the said third year, and may complete their attendance on lectures by attending in the remaining subjects during the term of 1892-3, presenting themselves for examination in all the subjects at the close of the last-mentioned term, and paying but one fee for both terms, such fee being payable before commencing attendance.

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

Friday of each week is devoted exclusively to moot courts, one for the second year students and another for the third year students. The first year students are required to attend, and may be allowed to take part in, one or other of these moot courts. They are presided over by the Principal or the Lecturer whose series of lectures is in progress at the time, and who states the case to be argued, and appoints two students on each side to argue it, of which notice is given at least one week before the day for argument. His decision is pronounced at the next moot court, if not given at the close of the argument.

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

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

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. The moot courts take the place of lectures on Friday. Printed schedules showing the days and hours of all the lectures in the different subjects will be distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, students will be provided with room and the use of books for this purpose.

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

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

EXAMINATIONS.

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

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

Any student or clerk who under the Rules is exempt from attending the School in any one or more of the three years of the school course is at liberty, at his option, to pass the corresponding examination or examinations under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed

proper to continue the holding of examinations under the said Law Society Curriculum as heretofore. It has already been decided that the first intermediate examination under that curriculum shall not be continued after January, 1892, and after that time therefore all students and clerks must pass their first intermediate examination at the examinations and under the curriculum of the Law School, whether they are required to attend the lectures of the first year of the course or not. Due notice will be hereafter published of the discontinuance of the second intermediate and final examinations under the Law Society Curriculum.

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

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

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

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

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

Honors, Scholarships, and Medals.

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

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

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

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

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

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following:

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

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

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

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

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

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

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

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

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.

Equity.

Snell's Principles of Equity.

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

SECOND YEAR.

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

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

Personal Property.
Williams on Personal Property.

Contracts.
Leake on Contracts.

Torts.
Bigelow on Torts—English Edition.

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

Evidence.
Powell on Evidence.

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

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

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

THIRD YEAR.

Contracts.
Leake on Contracts.

Real Property.
Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.

Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.
Underhill on Trusts.
Kelleher on Specific Performance.
De Colyar on Guarantees.

Torts.
Pollock on Torts.
Smith on Negligence, 2nd ed.

Evidence.
Best on Evidence.

Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.
Westlake's Private International Law.

Construction and Operation of Statutes.
Hardcastle's construction and effect of Statutory Law.

Canadian Constitutional Law.
British North America Act and cases thereunder.

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

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

THE LAW SOCIETY CURRICULUM.

Examiners: FRANK J. JOSEPH, LL.B.
A. W. AYTOUN-FINLAY, B.A.
M. G. CAMERON.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

FIRST INTERMEDIATE.*

Williams on 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. 123, Revised Statutes of Ontario, 1887, and amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44; the Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

FOR CERTIFICATE OF FITNESS.

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins 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. I., 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, and 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 First Intermediate Examination under this Curriculum will be discontinued after January, 1892.