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The following announcement has been made with regard to the dates of the Law Examinations of Law Society, Trinity Term: 1st Intermediate, Aug. 26th; 2nd Intermediate, Aug. 28th; Solicitor, Sept. 2nd; Barrister, Sept. 3rd; Orals, Sept. 4th; Law School, 1st Year, Sept. 1st; 2nd Year, Sept. 5th. Last day for filing notices for call and admission as students, August 11th. Last day for filing papers and paying fees for Final Examinations, August 23rd. Term begins on Monday, September 8th.

THE recent case of *Cameron* v. *Walker*, 19 Ont., 212, reveals a somewhat curious state of the law in regard to the operation of the Statute of Limitations. The facts of the case were as follows: The property in question was owned by Mrs. Gardiner, a married woman. In 1869 her husband put the defendant in possession, and he continued in possession ever since without paying rent, or acknowledging title in any other person. In 1881, Mrs. Gardiner gave a mortgage on the lot containing a power of sale, and the plaintiff in the action claimed title under a sale had under this power. The Court held that Mrs. Gardiner (being a married woman) was not prejudiced by the possession of the defendant from 1869 to 1876; but that on 1st July, 1876, under the operation of 36 Vict., c. 16, ss. 1, 5, 16 (O.), the disability to sue, by reason of coverture, was removed, and it was consequently not till then that the Statute of Limitations began to run in the defendant's favor as against her. Consequently when the mortgage of 1881 was given, the defendant had not acquired a title by possession as against her. And the effect of the giving the mortgage, the Court held, was practically to create a new starting point for the Statute in favor of the mortgagee, whose right of action did not accrue until default had been made in the payment of his mortgage. The result was, that although the defendant had twenty-one years' undisturbed possession without having given any acknowledgment of title to any other person, he nevertheless failed to acquire a title under the Statute, as against the mortgagee's vendee. This is certainly a somewhat curious result, seeing that, as against the mortgagor, the defendant had acquired a good title. The effect of the decision is practically to enable an owner of the paper title indefinitely to postpone the operation of the Statute—for if the time for payment of the mortgage is fixed a hundred years hence, and interest is regularly paid in the mean-

time to the mortgagee, his right to bring an action would not accrue until the 100 years were up, and no one in the meantime could as against him acquire a title by possession. This, of course, is an extreme case, but serves to show the possibilities of the law.

It has been a favorite argument with the advocates of the Torrens' system of registration of title, that the conveyance of land is thereby made as safe and expeditious as the transfer of a share in a company. But the fancied ease and security supposed to attend the dealing in shares of companies is, perhaps, not so real as was supposed. So far as the actual operation of transfer is concerned it is easy enough; but if the recent decision of Mr. Justice Street, in *Duggan* v. *The London and Canadian Loan and Agency Company*, 19 Ont., 272, is a sound exposition of the law, the operation is by no neans as safe as has been supposed. In that case it has been held that a transferee of stock, held "in trust," though no specific trust is mentioned or referred to, has, nevertheless, constructive notice of the trust, whatever it may be, and is put upon inquiry to ascertain its terms, and, neglecting to do so, is responsible to the *cestui que trust* for the due execution of the trust. We believe that the introduction of the words, "in trust" into share certificates has been customary, not with the view of limiting the power of the holder of the certificate in dealing with the shares, but principally for the purpose of protecting the holder from personal liability as a shareholder, and we think it has been somewhat of a surprise, both to the public and the profession, to learn that the words "in trust" have the effect which Mr. Justice Street has attributed to them. The prevailing impression hitherto has been, that the holder "in trust," having the legal title to the shares, is able to make a good and valid transfer of them, and that the transferee is under no obligation to inquire into the trust, or the powers of the trustee, and in the event of any breach of duty on the part of the trustee, the *cestui que trust* had to look to the defaulting trustee, and not to his transferee, for relief. But Mr. Justice Street's decision has given a rude shock to all such theories as to the relative rights of the parties, and it will hardly be safe in the future to purchase shares without the intervention of a solicitor. The doctrine of constructive notice is one that has been the fruitful cause in the past of much injustice, and we do not think it one that it is desirable should be extended into new fields. The case before Mr. Justice Street was one of first impression, and determined on general principles, and we think it would not be a subject for any regret if, on appeal, a different conclusion should be arrived at. At the same time, we fear that the drift of authority is rather in favor of the view taken by the learned Judge. To use the language of Cotton, L.J., in *Williams* v. *Colonial Bank*, 38 Chy.D., 399, "if parties will, without inquiry, take documents which have on their face anything to put the takers on inquiry, they take them at their own risk; and if those from whom they take the documents have not a good title which they can transfer, then the transferors do not acquire a good title, although at the time when they take the documents, they do not in fact know of the real title of those who now assert it." That language was used

in a case where the transferors fraudulently assumed to have a title which they had not. Here the case is somewhat different, as the transferors had undoubtedly a legal title which they could confer, and the only question is whether the transferee is affected by notice of some collateral equity affecting the legal title.

COMMENTS ON CURRENT ENGLISH DECISIONS.

WILL—TESTAMENTARY PAPER EXECUTED "NOT AS A LEGAL WILL BUT AS A GUIDE."

Ferguson-Davie v. *Ferguson-Davie*, 15 P.D., 109, is a case in which a document duly executed as, and purporting to be, a will, but which was prefaced with the words, "This is not meant as a legal will, but as a guide," was held in consequence of these words to be no will, and probate was refused.

WILL—REVOCATION BY MARRIAGE—EXECUTION OF POWER OF APPOINTMENT—WILLS ACT (1 VICT. C, 26) S. 18—(R.S.O., C. 109, S. 20)—LIMITED PROBATE.

In re Russell, 15 P.D., 111, a testator having a power of appointment over certain property which, in default of appointment, was to be divided among his brother and sisters, executed a will whereby he bequeathed all the real and personal estate to which he might be entitled at the time of his death, or over which he had power of appointment, to Julia Smith, and appointed her his sole executrix. He subsequently married her, and died without making any other will. It was held by Butt, J., that so much of the will as was in execution of the power was within the exception of the Wills Act, s. 18 (R.S.O., c. 109, s. 20), and was not revoked by the marriage, and administration with the will annexed was granted to the widow, limited to the property over which the testator had a power of appointment.

ADMINISTRATION—NO KNOWN RELATIVES OF DECEASED—GRANT TO CREDITOR.

In the goods of Ashley, 15 P.D., 120, a grant of administration *ad colligendum* was made to a creditor of a deceased person, on an affidavit that deceased had no known relatives, and was believed to have died a widow.

ADMINISTRATION—COSTS—INDEMNITY AGAINST COSTS—LIQUIDATOR.

In re Blundell, Blundell v. *Blundell*, 44 Chy.D., 1, was an administration action, the conduct of which was given to a joint stock company who were creditors. The company, with the leave of the judge, made an application against a firm of solicitors to compel them to refund certain moneys which had been paid them for costs. The application was dismissed, and the company was ordered to pay the firm's costs. The company was afterwards wound up by the Court and could not pay anything. All the costs of the administration had been paid, except the costs of the application against the firm, but there remained in Court to the credit of the action a sum sufficient to pay either the costs of the company or the costs of the firm in relation to the application. North, J., was of opinion that the liquidator of the company had the better right to the money in Court;

but the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) were agreed that the firm to whom the company had been ordered to pay costs had a better equity, and the fund was accordingly ordered to be paid to the solicitors.

EASEMENT—EXCLUSIVE USE OF GATEWAY—ABSOLUTE OWNERSHIP.

Reilly v. *Booth*, 44 Chy.D., 12, the plaintiff claimed to restrain the defendant in the use of a covered gateway under the following circumstances. M. and others were owners in fee of a house fronting on a street, and also of a yard and premises in rear of the house. The covered gateway in question led from the street through the house to the premises in the rear. They conveyed the premises in the rear, "together with the exclusive use of the gateway," which was described by its dimensions, to one Wimbush in fee, who subsequently leased them to the defendant. The plaintiff subsequently became lessee of the houses, and claimed a declaration that the defendant was not entitled to use the covered gateway otherwise than in exercise of a right of way. The acts complained of by the plaintiff were fixing a transparency over the gateway, lighted by gas lights, and leaning against the plaintiff's house and advertising the objects of the Salvation Army, and the placing of a book stand at the entrance of the gateway where books and tracts were sold; and in short the converting the gateway into a room and using it as a room or shop and not as a passage way, but as if it was his own. Kekewich, J., held that the defendant was entitled so to use the gateway, and on appeal to the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.), on the defendant's counsel undertaking that the screws, whereby the transparency objected to was fixed to the plaintiff's house, should be removed, affirmed the decision of Kekewich, J., that under the conveyance to Wimbush the absolute ownership of the gateway passed, and that the defendant, as his lessee, was within his rights in his mode of using it, notwithstanding that beneath the gateway was a vault, and above it a part of the house which had not been conveyed.

DONATIO MORTIS CAUSA—BANKERS' DEPOSIT NOTE—CHEQUE INDORSED ON DEPOSIT NOTE.

In re Dillon Duffin v. *Duffin*, 44 Chy.D., 76, the law of *donatio mortis causa* was in question. The subject of the gift in this case was a bankers' deposit receipt, on which was indorsed a cheque for the amount of the receipt which the deceased filled up, payable to "self or bearer," signed and handed to the donee, and telling her that he was going to give it her conditionally, and that it was to be given back if he recovered, but if not "you are all right." The authorities were not clear that a deposit receipt might be the subject of a *donatio mortis causa;* and *In re Mead*, 15 Chy.D., 657, it was claimed, had decided that a cheque could not be the subject of a *donatio mortis causa* because it was revoked by the death of the drawer. A point was also made that the donee's evidence was uncorroborated. The Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) were of opinion that, on principle, a deposit receipt might be the subject of a *donatio mortis causa*, and that that was substantially what was intended to be given by the deceased, and that the fact that a cheque was indorsed on it did not prejudice the gift, but that the

signing of the cheque was a circumstance which corroborated the evidence of the donee, if corroboration were necessary, which they denied. We may remark that it has been laid down in Ontario that our statute (R.S.O., c. 61, s. 10) requiring that claims against a deceased person's estate should be corroborated is merely declaratory of what the law was before the passing of the statute (see *Orr* v. *Orr*, 21 Gr., p. 409, per Draper, C.J.), but this view is not borne out by the present case, in which Cotton, L.J., states (p. 80) that it is not the law in England (where no similar statute to our Provincial Act exists) that the Court will not establish a claim against the estate of a deceased person on the evidence of a claimant alone, unless it is corroborated. The decision of Kekewich, J., was therefore affirmed. See *Greenwood* v. *Croome*, recently decided by the Divisional Court of the Chancery Division, but not yet reported.

PERPETUITY—REMOTENESS—POSSIBILITY ON A POSSIBILITY—LEGAL LIMITATION OF ESTATE.

Whitby v. *Mitchell*, 44 Chy.D., 85, which was an appeal from a decision of Kay, J. (42 Chy.D., 494), noted *ante* p. 42, reveals the existence of a good deal of divergence of opinion on a point of real property law, viz., as to whether the old rule of law which prohibited the limitation of a legal estate upon a double possibility was or was not obsolete and superseded by the more modern rule against perpetuities, which prohibits property being tied up for a longer period than a life or lives in being, and 21 years afterwards. Mr. Joshua Williams Butler in his notes to Fearn, and Burton maintain that the old rule is still in force, but Lewin, Jarman, Tudor, and Davidson, all take the view that it is obsolete, and Lord St. Leonards himself was cited as having expressed opinions both ways. Kay, J., adopted the opinion of Joshua Williams, and his judgment was affirmed by the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.).

LUNATIC—NECESSARIES—IMPLIED OBLIGATION TO PAY FOR NECESSARIES—DEBT—RIGHT TO RECOVER FOR NECESSARIES AGAINST ESTATE OF LUNATIC.

In re Rhodes, Rhodes v. *Rhodes*, 44 Chy.D., 94, shows that the mere fact that necessaries are supplied for the maintenance of a lunatic, not so found, is not sufficient to create an implied obligation to pay for them, but that the Court will look at all the circumstances, and if they lead to the conclusion that the maintenance was furnished from motives of bounty and without any intention of creating a debt, the Court will not in such a case impute any implied contract to pay for them. In the present case a lunatic, not so found, whose income was £96 per annum, was confined from 1855 until her death in 1881 in a private lunatic asylum at a cost of £140 a year. Her brother received the lunatic's income, applied it towards her support, and paid the rest out of his own pocket until his death in 1875. After his death his son, who was his executor, continued to receive and apply the lunatic's income in the same manner, and the deficiency was made good partly by himself and partly by his brother and sisters. No claim was ever made in the lunatic's lifetime against her estate, nor did any of them appear to have kept any account against her. Under these dircumstances the

Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) affirming Kay, J., held that her estate after her death was not liable for the deficiency which had been paid by her brother and his children.

AFFIDAVITS—DUTY OF COMMISSIONERS.

Bourke v. *Davis*, 44 Chy.D., 126, may be referred to for the observations of Kay, J., on the duty of Commissioners in taking affidavits, according to which it would seem that the procedure which used to be indicated by the old Chancery jurat (which, it may be remembered, used to comprise a statement that the affidavit had been read over to the deponent, and that he had been informed that he was liable to be cross-examined as to its contents, and was at liberty to add to or vary the same) ought still to be observed. But so long as 20c. fee is all that is allowed for administering an oath, it is useless to expect Commissioners to do more for the money than they generally do at present.

PRACTICE—OFFICIAL REFEREE—REFERENCE TO TAKE ACCOUNTS—PROCEDURE BEFORE REFEREE.

In re Taylor, Turpin v. *Pain*, 44 Chy.D., 128, Chitty, J., held that where an action is referred to an official referee to take accounts he is not compelled to pursue the strict method followed upon a reference to a Chief Clerk. Our Rules would, however, appear to indicate that the procedure before a referee is to be similar to that before a Master (see Ont. Rule 43).

COMPANY—WINDING UP—TWO PETITIONS—COSTS.

In re Building Societies' Trust, 44 Chy.D., 140, Chitty, J., decided that where two petitions are presented for winding up an insolvent company, they will, in the absence of *mala fides*, take priority in the order they are presented to the Court, and not according to the dates of the advertisements. While the order was made upon the petition first presented, costs of the second petition were allowed against the estate up to the time the petitioner knew of the first petition.

LANDLORD AND TENANT—ASSIGNMENT OF PART—SUB-LEASE OF PART—RIGHT OF CONTRIBUTION.

Johnson v. *Wild*, 44 Chy.D., 146, is a decision of Chitty, J., which may be good law, but nevertheless is a hard case as far as the merits are concerned. The facts were as follows: Minor being lessee of certain lands assigned part of them to the plaintiff, and sub-let another part to the defendant at apportioned rents. He covenanted with his assignee and sub-lessee respectively to pay the rent due to his lessor, and indemnify them against any liability therefor. Minor became insolvent, and under threat of distress the plaintiff paid the whole rent under the original lease, and brought the present action claiming contribution from the defendant. Chitty, J., decided that the plaintiff was not entitled to relief, because, though the plaintiff as assignee was liable to the original lessor, the defendant as sub-lessee was not liable, and therefore the parties were not liable to a common demand, and therefore there was no right of contribution.

WILL—CONSTRUCTION—VESTING—"FROM AND AFTER."

In re Jobson, Jobson v. *Richardson*, 44 Chy.D., 154, is a decision of North, J., upon the construction of a will whereby a testator gave a house to his trustees upon trust, to permit his daughter to receive the rents thereof for life, "and from and after her decease the same premises shall be in trust for all the children of E. in equal shares as tenants in common, on their respectively attaining the age of twenty-one years." There was no direction as to the application of the rents of the property after the death of the tenant during the infancy of the children. The question was whether the words "from and after" had the effect of giving the children a vested estate before attaining twenty-one, and North, J., distinguishing the case from *Andrew* v. *Andrew*, 1 Chy.D., 410, held that it did not, but that the interests of the children were contingent on their attaining twenty-one.

PRACTICE—MORTGAGE—FORECLOSURE—REDEMPTION—SUBSEQUENT INCUMBRANCES.

Smithett v. *Hesketh*, 44 Chy.D., 161. was a foreclosure action in which the plaintiffs were first mortgagees; the second incumbrancer was an annuitant under a settlement; the plaintiffs were third mortgagees, and there were several subsequent mortgages. The plaintiff claimed that only one day should be given to all the subsequent incumbrancers to redeem his first mortgage, but North, J., gave the annuitant six months to redeem, and in case she did redeem gave the plaintiff, as third mortgager, three months to redeem subject to the annuity, and a third period of three months to the subsequent incumbrancers; but if the annuitant did not redeem, giving the subsequent incumbrancers a second period of only three months.

PRINCIPAL AND SURETY—CO-SURETIES—COUNTER SECURITY GIVEN BY PRINCIPAL DEBTOR TO ONE CO-SURETY—RIGHT OF SURETIES TO PARTICIPATE IN SECURITY GIVEN TO CO-SURETY.

Berridge v. *Berridge*, 44 Chy.D., 168, is an important decision on the law of principal and surety, and is a development of the doctrine established by *Steel* v. *Dixon*, 17 Chy.D., 825, in which it was decided that a surety is bound to bring into hotchpot, for the benefit of his co-sureties, whatever he receives by virtue of any security he may hold. The necessary effect of this rule is, as is shown by this case, that where there are several sureties, and one of them obtains from the principal debtor a security for his liability, this security virtually enures for the benefit of his co-sureties for the full amount of their liability; because as often as the surety who holds the security recovers any payment which he has made on account of the principal debt, he is bound to share the sums so received with his co-sureties in case of their liability; and as he has the right to resort to his security for indemnity against the amount so paid his co-sureties, the security is virtually a security for the whole debt, and not merely for the share of the surety to whom it is given.

ARBITRATION—AGREEMENT TO REFER MATTERS IN DISPUTE—STAYING ACTION BY PARTY TO AGREEMENT—QUESTION OF LAW—C.L.P. ACT, 1854, S. 11—(R.S.O., C. 53, S. 16).

In re Carlisle, Clegg v. *Clegg*, 44 Chy.D., 200, an application was made to North, J., to stay the action under the C.L.P. Act, 1854, s. 11 (R.S.O., c. 53, s.

16), on the ground that the parties had agreed to refer the matter in dispute to arbitration; but it appearing on the application that a question of law, arising on the construction of a deed, was involved, the Court ordered the motion to stand over until after the delivery of the defence in order that an application might then be made to the Court to determine any question of law raised by the pleadings before referring, if necessary, to an arbitrator to dispose of any matter of account.

STATUTE OF FRAUDS—TWO INDEPENDENT DOCUMENTS—PAROL EVIDENCE TO CONNECT—SPECIFIC PERFORMANCE.

In *Oliver* v. *Hunting*, 44 Chy.D., 205, the defendant agreed to sell to the plaintiff a freehold estate for £2,375, and signed a memorandum which contained all essential terms of the contract, except that it omitted to refer to the property agreed to be sold. Two days afterwards the plaintiff sent the defendant a cheque for £375 as a deposit, and in part payment of the £2,375, and the defendant replied by letter, "I beg to acknowledge receipt of cheque, value £375, on account of the purchase money for the Fletton Manor House Estate." The defendant having subsequently refused to carry out the contract the present action was brought for specific performance, and the question was whether the receipt for £375 could be connected by parol with the contract so as to supply the defect in it as to the property to which it was intended to relate, and Kekewich, J., held that it could.

INFANT—MARRIAGE SETTLEMENT.

Duncan v. *Dixon*, 44 Chy.D., 211, the only remaining case in the Chancery Division, is a decision of Kekewich, J., as to the effect of a marriage settlement made by an infant, in which he arrived at the conclusion that the settlement was not void *ab initio*, but voidable only, which accords with the decision of our own Court as to the effect of an infant's deed; see *Foley* v. *Canada Permanent L. and S. Co.*, 4 Ont., 38.

RIGHTS OF RIPARIAN OWNER—NAVIGABLE RIVER.

Most of the cases in the Appeal reports are appeals from Scotch Courts, which it is not necessary to refer to here. In *Booth* v. *Ratte*, 15 App. Cas., 188, the Judicial Committee affirm the decision of the Court of Appeal of Ontario (14 Ont. App., 419), which affirmed the previous decision of the Chancery Divisional Court (11 Ont., 491), holding that a riparian proprietor, on a navigable river, has a right to moor to his bank a floating wharf and boat-house, so as the same shall not be an obstruction to navigation, and is entitled to maintain an action for damages caused thereto by any unauthorized interference with the flow and purity of the stream. In this case the injury was occasion by the defendants casting saw-dust into the river.

PRACTICE—VERDICT OF JURY—MOTION TO SET ASIDE VERDICT.

In *Phillips* v. *Martin*, 25 App. Cas., 193, the Judicial Committee adopted the rule laid down by the House of Lords in *Metropolitan Railway Co.* v. *Wright*,

11 App. Cas., 152, that a verdict of a jury ought not to be disturbed as against evidence, or the weight of evidence, unless it is one which a jury, viewing the whole of the evidence reasonably, could not properly find.

TORRENS TITLE—ABSENCE OF CAVEAT—POWER OF COMMISSIONER TO REFUSE REGISTRATION—(R.S.O., c. 116, ss. 10, 76-78.

Manning v. *The Commissioners of Title*, 15 App. Cas., 192, is a case which may be referred to as illustrating the practice under the Ont. Land Titles Act (R.S.O., c. 116). The case is an appeal from Western Australia, in which the Judicial Committee, affirming the Colonial Court, decide that according to the proper construction of the Land Transfer Act, 1874, of that Colony, sections 19 and 21, the Commissioners of Titles, who answer to our Master of Titles, is not bound to register a title merely by reason of the issue of the prescribed notices and the non-filing of a caveat, but that such notices may lead to the production of evidence, and the Commissioners have a discretion in consequence thereof, or of a reconsideration of the application, to refuse to register, subject to the opinion of the Supreme Court. We may, however, remark that under the Ontario Act and Rules the power of the Master of Titles to refer a matter for the decision of the Court appears to be restricted to cases where there is a contest, or where he is requested to do so by some person interested in the title. See R.S.O., c. 116, ss. 10, 76-78, Rules 15, 60. It is by no means clear that he has jurisdiction to do so for his own satisfaction.

Correspondence.

REPORT OF MACMILLAN v. *GRAND TRUNK RAILWAY.*

Editor of THE CANADA LAW JOURNAL:

SIR,—The letter which appears in the July number of THE CANADA LAW JOURNAL, signed by Mr. C. H. Masters, Assistant Reporter S.C.C., takes me to task for msirepresenting the facts of the above case and the result of the judgments, in an article published in the June number of the *Canadian Law Times*. Mr. Masters identifies me as being "evidently the plaintiff's solicitor," and makes use of this argument as a weapon for a personal attack.

I am not aware of any impropriety in a lawyer criticising a judgment or the official report of a case which has been finally decided, merely because he was one of the solicitors engaged in it.

I do not intend at present to gratify the Assistant Reporter by stating whether his guess is correct or not, but as he seems to imagine that solicitors are under some indefinite obligation to never comment on their clients' cases, I would direct his attention to a recent case in the Supreme Court, in which Mr. Justice Strong, having referred to a letter written by you, Mr. Editor, while acting as solicitor in a proceeding then pending, says: "I at present fail to see that it exceeded the bounds of that fair criticism upon the public administration of justice, which every one is entitled to write and publish"; and in which Mr.

Justice Gwynne said: "A judgment of a Court of Justice is open to fair comment and criticism which may call in question its soundness in point of law, even though it be still open to revision upon appeal." (*In re Henry O'Brien*, 16 S.C.R., pp. 213 and 225).

My object in writing and publishing the article in question was intended as a humble contribution to "that fair criticism upon the public administration of justice which," Mr. Justice Strong says, "every one is entitled to write and publish."

I have too high a regard for the Bench, and too many respected friends upon it throughout the Dominion, to knowingly publish an unfair criticism upon their conduct. I need scarcely add that any misrepresentation of facts in such an article would weaken, if not utterly destroy, the author's intended effect.

This being my position, I am not concerned to explain, at any great length, the opening clause of my article, which Mr. Masters stigmatizes as "misleading as well as grammatically absurd." He at least has caught its meaning fairly well.

I was firing at two very different objects, which happened to be in a line, and apparently I pulled both triggers simultaneously. But I hit the Assistant Reporter. Now, while he is flapping the water so vigorously, I may safely reload, and after pursuing the more important object of my enquiry a little further, I shall return to him. The more important object is, of course, the case in question, and the points of law decided or discussed in it.

The opinion of any Supreme Court Judge is entitled to great respect, even though it be a mere dictum, and so I think it may be useful to briefly comment on the views taken by some of their Lordships in this case.

The Chief Justice, it will be remembered, based his judgment upon a release alleged to have been given by the plaintiff to the C. P. R. It was not pleaded, and although the defendants' solicitor knew all about it weeks before the trial, no application to set it up was made, nor evidence given of it.

A very similar question arose in *Edevain* v. *Cohen*, 41 Chy.D., 563, where an effort was made to set up a judgment against some joint tort feasors. North, J., refused to allow the amendment, and his decision was affirmed by the Court of Appeal (43 Chy.D., 187).

In giving the judgment of the Court, Cotton, L.J., said:—"It has been contended that a former judgment obtained in another action by these plaintiffs against other tort feasors engaged in this transaction was a bar to this action, and that the appellant was entitled to raise that point without any amendment of the pleading. . . . The contention of the appellant, however, is that he is only raising a point of law, not an issue of fact. But that is not so; the amendment would raise facts to enable a point of law to be relied upon, and those facts ought, according to the rule, to have been pleaded by the present appellant in answer to this action. Then it is said that the appellant ought to have liberty to amend his pleadings. An application to that effect was made to Mr. Justice North, and the learned judge, after he had heard all the evidence, refused leave to amend. That was done by him in the exercise of his discretion, and that fact alone, to my mind, is a strong reason to induce us now to refuse leave to amend.

Another strong reason is this—I do not think that this amendment is necessary to bring out the real question between the parties. I think this amendment is proposed merely to enable the appellant to avail himself of what I may call a technical rule of law, supported by the cases which have been referred to, and not in order to determine the real issue which ought to be determined in this action. Further, this objection was not taken and insisted upon at once by Cohen, the present appellant, in the Court below; it was first mentioned, and the objection was first taken by counsel, who then appeared for another defendant, and it was only raised and insisted on on behalf of Cohen after substantially all the evidence had been taken, and he had taken his chance of the evidence turning out in his favour."

In *Edevain* v. *Cohen*, as it appears, evidence was given and an application to amend was made at the trial, whereas in MacMillan's case no evidence of the release was given, nor was any application to amend made at the trial.

It is almost impossible to believe that Chief Justice Ritchie, deciding as he did, was not under the impression that the release in question was pleaded, and that evidence of it had been adduced at the trial.

The respondent in the present case appears in his factum to have relied upon the case of *Morton* v. *G. T. R.*, which is reported along with *Vogel* v. *G. T. R.*, in 10 A.R., 162, and 11 S.C.R., 612. In Morton's case, the contract, just as in the present case, was to carry from a point in Ontario to a point in Manitoba. The goods were damaged in Ontario by the negligence of the defendants or their servants, and it was held that, under the Railway Act, the defendants could not avail themselves of any conditions.

The only difference between that case and MacMillan's was, that in the latter the goods appeared to have been damaged in Manitoba.

It is to be regretted that Mr. Justice Strong, in his judgment, disposed of this point without discussing the case of *Dickson* v. *G. N. R.*, 56 L.J., Q.B., III, upon which the respondent appears to have based one of his strongest arguments, and in which, as in MacMillan's, the loss occurred on the line of another Railway Company.

Another argument put forward by the respondent was, that the defence was bad at common law.

The case usually cited on behalf of carriers within Ontario as justifying conditions exempting them from liability for their own negligence is *Hamilton* v. G.T.R., 23, U.C., Q.B., 600.

In that case, as appears by the report, *but not by the head note*, the defendants' charges were not prepaid, whereas in MacMillan's case the charges were prepaid.

The respondents' factum argues this point at considerable length, making extracts from many English, Canadian, and American decisions, and points to the conclusion that *Hamilton* v. *G. T. R.* was itself wrongly decided, and at all events that it is not decisive of MacMillan's case on this point.

Mr. Justice Strong passes over what appears to be a point deserving attention, with the remark, "There was no statutory or other legal impediment to a

contract by them limiting their liability either as carriers or otherwise in respect to the goods to be carried after they had left that company's own line."

The question of *res judicata* arising out of the demurrer was not, as I stated in my article, properly before the Supreme Court at all, but as Mr, Justice Strong has given us his opinion upon it, and it is rather a nice point, I quote the following extract from a case decided in the Court of Appeal in England, not referred to by his Lordship:

"No authority has been cited which shews that a man is obliged to go on repeating an objection once clearly and distinctly taken. I am of opinion, therefore, if the case depended upon this point, that it is not now too late to repeat the objection which was taken in the Court below upon demurrer, or too late to give leave to appeal from the demurrer so as to take it again, because I cannot conceive that it would be right to allow a man who has taken an objection to lose it because he has not gone on verbosely to repeat it a second time on a subsequent occasion." (James, L.J., in *Johnasson* v. *Bonhote*, 2 Chy.D., 301).

But to return to the Assistant Reporter.¶ The first portion of my article which he deals with is the following: "The judgment of the Privy Council refusing leave to appeal was delivered more than a year ago, and must have been in the hands of the Supreme Court Reporter before the publication of the report in question. Why was it not alluded to?"

Now, I was in a position to put this matter in a much stronger light, for I happened to know that not merely the judgment of the Privy Council, but the petition upon which it was based were furnished by the much abused plaintiff's solicitor to the officials of the Supreme Court at Ottawa several months before the report in question appeared, for the express purpose of framing a proper report.

The Assistant Reporter takes some pains to shew that the writer was not justified in assuming that the judgment (of the Privy Council) must have been in the hands of the Reporter, but in so doing he stumbles into the distinct admission that it was in his hands. Here are his words:

"But had such a note appeared at the end of the case of the *Grand Trunk Railway Co.* v. *MacMillan*, it would have been misleading, inasmuch as it would have been open to the inference that the judgments of the Supreme Court were approved by the Privy Council, *and so it was omitted.*"

That is to say, the Reporter of this case, with the judgment of the Privy Council before him, studiously concealed from the profession the very thing which they were most interested in learning.

The second point discussed by Mr. Masters relates to the legal results of the judgments of the Court of Appeal. The conclusion I arrived at in my article was based upon a very simple application of the Rule of Three.

The defendants required the favourable opinion of three judges in the Court of Appeal, in order to reverse the Divisional Court. They only obtained two.

The same thing occurred in the Supreme Court. The Assistant Reporter gives us his reasons for framing the head note on this point as he did, but they are not satisfactory.

The opinion of Mr. Justice Strong was, of course, entitled to great weight, but why the Reporter should depend for his facts or law upon the factum of one of the parties to a cause is not so clear.

Whatever view may be taken of the legal result of the point in question, Mr. Masters was not in any way taken off his guard, for I have good reason to believe that his attention was directed to this very point several months before his report was published.

The next point dealt with by Mr. Masters, and the only one in which he attempts to verify his charge against me of misrepresenting the facts of the case, relates to the demurrer. In my article, after quoting the condition mentioned in the head note, and the opinion of Strong and Taschereau, JJ., thereon, I had stated that the plea in question *was never demurred to at all.*

Mr. Masters' comment upon this is as follows:

"We will first deal with the question of fact contained in the last sentence. The holding is given in almost the exact words used by Mr. Justice Strong in his judgment; so, if the writer is correct, his Lordship has founded that holding upon a state of facts which did not exist. If such were the case, the reporter would be perfectly justified in framing his head note upon the judgment as it stood, but the fact is that this is one of the instances of the writer's ignorance of his own case, for there can be no doubt that the plea in question was demurred to. The demurrer was to paragraphs four and eight; among others, of the statement of defence; and both these paragraphs set up a breach of this condition. Mr. Justice Strong is perfectly right as to the facts, and they are presented in the same way in the appellants' factum."

Mr. Masters commenced his letter by referring to me as "evidently the plaintiff's solicitor." The only evidence of this identity in my article now comes to light, namely, ignorance of the case in question.

The Assistant Reporter has discovered and propounded a somewhat novel principle, which may be termed Selection by Inverse Ratios, according to which professional men are found to act in inverse ratio to their duty and means of knowledge. Whatever objections might be raised to this principle, it must be conceded that the Assistant Reporter is at least consistent in following it scrupulously himself.

The materials which he had at hand, in framing his report and writing his letter, certainly included the appeal book, the factums of both parties, the petition for leave to appeal to the Privy Council, and the judgment thereon. He is quite correct in stating that the demurrer was to paragraphs four and eight; among others, of the statement of defence; but he is quite wrong in stating that both these paragraphs set up a breach of the condition in question. Neither of them did so. Paragraph four of the defence sets up the condition of non-liability beyond the defendants' line, and paragraph eight alleges that the loss occurred beyond the limits of the defendants' line.

The demurrer was to the original statement of defence, as is clearly shown in the appeal book. After the C. P. R. were added the G. T. R. filed an amended statement of defence, omitting what had been paragraph No. 3.

In the appeal book the original defence was printed (including the defence in its amended form) and all the paragraphs after No. 3 were double numbered, with the following explanatory note at the end:

"NOTE.—The paragraph in italics was in the original, but not in the amended statement of defence, and the various paragraphs of the original statement of defence were numbered as is shown by the numbers in italics."

The numbers printed opposite to the paragraph setting up the condition in question were "*5*, 4." The condition in question was set up in the fifth paragraph, and, as I said, was never demurred to at all.

I leave the reader to judge whether Mr. Masters has made out his charge of misrepresentation, and whether he has not, with all the proper material before him, been guilty of both *suggestio falsi* and *suppressio veri*.

The next point which the Assistant Reporter deals with scarcely justifies further remark, were it not for the extraordinary views apparently held by the S. C. Reporters upon the subject.

In attempting to justify his head note, the Assistant Reporter proceeds:—

"Mr. Justice Taschereau simply says: 'I think the appeal should be allowed for the reasons stated in the judgment of Mr. Justice Strong.' Is the reporter to assume that Taschereau, J., agrees with everything contained in Judge Strong's judgment? I think the most that can be said is that he concurs in the grounds upon which Judge Strong disposes of the case, and not in any dicta holdings which are not necessary for such disposition. At all events it is a vexed question, and one which, I have no doubt, is troublesome to all reporters, how far the concurrence extends in such cases; and the Supreme Court Reporters have always endeavored in such cases to avoid the risk of making a judge appear to decide what he may have had no intention of holding. Moreover, why should the writer complain that a holding which he considers wrong and founded on a misapprehension of facts is restricted to a single judge? He surely would not wish to multiply error."

I doubt if their Lordships at Ottawa will feel grateful to the Assistant Reporter for thus interpreting their meaning.

A judge of the Supreme Court, in giving judgment, says that an appeal should be allowed for the reasons stated in the written judgment of another judge.

The Assistant Reporter innocently enquires whether he is to assume that the first learned judge means what he has said!

The want of unanimity among the members of the Supreme Court is notorious, but it is rather broad humor for one of their own reporters to tell us that when one of their Lordships says he agrees with another the reporters cannot believe their ears.

Mr. Masters' view is that the concurring judge only agrees with the grounds upon which the other judge disposes of the case, and not in any dicta holdings which are not necessary for such disposition. What is the meaning of this? Mr. Justice Strong "disposed of the case" as much on the ground in question as upon any other ground. But supposing all the grounds relied upon by

Mr. Justice Strong turned out to be "dicta holdings," as I have endeavored to show they were, what is the result? Why, according to Mr. Masters, Taschereau, J., agrees with no part of the judgment of Strong, J., at all.

This delicacy of dealing with the views of the learned judges ill accords with a previous portion of Mr. Masters' letter, where in treating of the decision of the Court of Appeal the Assistant Reporter does not hesitate to impute to Chief Justice Ritchie, amongst the other members of the Supreme Court, an opinion which he certainly does not express.

The last point taken up by Mr. Masters is my comment upon the flagrantly erroneous statement of facts which he inserted in his report.

No one would dispute that "the statement of facts is only supposed to contain what is necessary for a proper understanding of what is decided by the judgments."

I will not repeat what appeared in my article upon this point, except to say that Mr. Masters fails to point out a single error in my statement.

It is really a difficult matter to comment with patience upon a reporter who, having an important judgment in his hands, bearing upon the case he is reporting, reasons with himself that it must not be *assumed* to be before him; who omits all reference to the said judgment lest it should throw light on the case in hand; who being placed upon his guard as to a rather nice point of law, takes the judgment of only some of the judges and the factum of only one of the parties in order to solve it; who, with the appeal book before him, deliberately mis-reads it, relying once more upon the judgment of two judges and the factum of one of the parties; and who, when a judge says that he agrees with the reasons given by another judge, declines to believe it, and with a laudable wish not to multiply error, frames his head note accordingly.

The light which Mr. Masters sheds upon Supreme Court reporting can scarcely fail to interest the profession, and in conclusion I would suggest, as the most fitting tribute to his effort, that, for the future guidance of the staff at Ottawa, the Assistant Reporter should be himself reported.

AMICUS CURIÆ.

Notes on Exchanges and Legal Scrap Book.

RULES OF THE ROAD.—In the case about the Rule of the Road (ante p. 305) we stated the remarkable difference in that same Rule in England and America. In England the old rhyme states the fact very compactly and prettily:

> "The Rule of the Road is a paradox quite,
> As I think I can prove in my song;
> If you go to the left, you will always go right,
> But if you go right, you go wrong."

Now, what is the reason of this difference? An occasional correspondent writes us as follows, giving a suggestion: "In the crowded streets of London it

would, at most, be impossible to drive to the right; the driver sitting on the right side of the carriage, the two drivers going to the left, will be able to see exactly how nearly their wheels will come together, and so to pass safely, if there is just room for them to go clear; and the two drivers can speak if necessary, which would not be the case if they each drove to the right side of the carriage, which makes the observance of the English rule more necessary. Our American rule would seem to have arisen from the fact that in new countries driving was for some time done chiefly by drivers walking by the side of the horses or cattle they were driving, in which case the American rule would undoubtedly be the most convenient and best. I have heard it said that the American driver often sits on the left side of his carriage, and this would certainly be the best, if the American rule of driving to the right is to be followed when the driver sits in the carriage. There is an origin for every popular rule or custom."

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1890.

(Continued from page 369).

The report of the Finance Committee was ordered for immediate consideration by paragraphs, and adopted.

Ordered, that two copies of the amended library catalogue of books, and lists of subsequent acquisitions of books, and two copies of an inventory of pictures and furniture be prepared, and that one copy be placed in the safe of the Society, and the other in the custody of the Treasurer for safe keeping, and that the further lists and inventories be from time to time added to these copies.

Ordered, that it be referred to the Finance Committee to enquire and report on a plan for systematizing the use and increasing the amount of the wardrobe accommodation, and making a charge therefor.

The list of solicitors in default was referred to the Committee, with instructions to cause the necessary enquiries to be made as to the names on the list, and to devise a system of checking from time to time the names of apparent defaulters in the future, and report to Convocation.

Ordered, that Mr. Osler's notice for this day stand till next meeting of Convocation.

Ordered, that the old lunch room be allowed to be used as a lunch room during the recess of the Law School.

Convocation met. *Saturday, June 7th.*

Present—The Treasurer, and Messrs. Moss, Murray, Irving, Bruce, Foy, Shepley, Kingsmill, Martin, Robinson, Cameron, McCarthy, McMichael.

Mr. Moss, from Legal Education Committee, reported as follows:

1. In the case of Dugald Campbell, recommending that the filing of the articles be allowed.

2. In the case of G. A. T. Wright, recommending that his attendance at the Law School having been allowed as sufficient, he be allowed to present himself for call in Trinity Term next.

3. In the case of A. C. M. B. Jones, recommending that the prayer of the petition be not granted.

The report was received, adopted, and ordered accordingly.

Mr. Irving, from the Select Committee appointed on the question of electric lighting, reported as follows:

REPORT OF THE ELECTRIC LIGHT COMMITTEE.

On the 14th February last, Convocation ordered that the several letters of Messrs. Thornberry & Co. (27th Jan., 1890); of F. A. Barr, manager of the Edison Electric Light System (17th Dec., 1889); F. Nicholls, manager of the Toronto Incandescent Electric Light Co. (19th Dec., 1889); which had been laid before them on the subject of introducing electric light into the library, be referred to a Committee of Benchers, consisting of the Library Committee together with Messrs. Osler, Mackelcan, Murray, and Lash, for report.

The Committee consulted Mr. Storm on the subject, and obtained a report from him (7th April, 1890), and, after consideration, beg leave to submit to Convocation the following:

1. The power of light emitted by the four Lingren gas lamps now suspended from the centre of the library, is equal to 800 candles.

2. The Edison Electric Light System Company, of which Mr. F. A. Barr is manager, propose to put in the library fixtures for lights equal to 768 candles, believed to be sufficient for all library purposes, at a cost of $521.

3. The Toronto Incandescent Electric Light Company, of which Frederic Nicholls is manager, are prepared to supply the light which may be used at the rate of one cent per hour for a 16 candle power lamp, and in order to connect the library with the Light Company's underground main, 200 feet of underground main will have to be laid.

4. The cost of material and labour for this connection, the Light Company allege, would be not less than $400, and as the income they would derive from the light to be furnished will, they consider, be comparatively small, they do not feel justified in bearing the whole cost, but will assume half if the Law Society will assume the other half.

5. Since the offer to put up the fixtures for lights by the company represented by Mr. Barr has been made, the Toronto Incandescent Electric Light Company have made arrangements for doing the same kind of work, and if they will undertake the introduction of their lights on equally advantageous terms, it may be desirable that the whole work should be placed in the hands of the Toronto Incandescent Electric Light Company.

6. The 768 candle power which it is proposed to introduce is to be distributed over the library as follows:

Twenty-one lamps on brackets fixed to the top of each alternate book-case, on the end facing the centre of the room.

Three lamps of thirty-two candle power each at the secretary and assistant secretary's desk.

One sixteen candle power lamp in every passage between book-shelves.

7. Details of the character of the bracket for the lights, and the finish and system of buttons to turn on the lights, can be learnt from Mr. Storm's report, together with the proposals contained in the letters referred to the Committee, which are enclosed herewith.

8. The proposals do not include lighting the two library annexes.

9. As the quantity of electric light required will be paid for according to meter, and the gas lighting system will remain untouched, whereby the library will continue to be generally lighted, the Committee believe that the introduction of the electric light as an auxiliary may be thus secured on moderate terms.

The Committee recommend that Mr. Storm be directed to make the necessary arrangements for the introduction of electric light to the library in the terms within mentioned, with power to let the whole work to the Toronto Incandescent Electric Light Company, if their terms are not in excess of the offer made by Mr. Barr on behalf of his company.

(Signed) ÆMILIUS IRVING,
Chairman.

Ordered for immediate consideration and adopted.

Ordered, that Mr. Storm have power to arrange for the extension of the electric light system to the annexes to the library, in co-operation with the chairman of the Committee.

Ordered further, that it be stipulated that the property in connection with the main belong to the Society.

Mr. Murray, from the Finance Committee, reported that the Committee had met and made some progress with reference as to the defaulting solicitors, and expected to report fully at the next meeting of Convocation.

Mr. Moss, from the Legal Education Committee, presented a report on the subject of the attendance at the Law School by various students who have petitioned for allowance of attendance.

The Committee further reported as to those students who had failed in certain subjects at the May examinations, and as to September examinations that they had made an order as follows: That students whose attendance at lectures has been allowed as sufficient, and who wrote at the May examinations and failed to pass, are to be at liberty to present themselves for examination in September next, and be examined on those subjects in which they failed to obtain 55 per cent. of the marks obtainable on such subjects, and that the marks obtained by them in such examination shall be substituted for the marks obtained by them on such subjects in the May examinations, and the result is to be reported by the examiners.

But any student to whom the foregoing regulation applies may, at his option, take the September examination in all the subjects, and in such case no regard shall be had to the marks obtained in the May examination.

The September Law School Examinations to be held on the following days, viz.:

First Year—Written Monday Sept. 1st.

Second Year—Written Friday, Sept. 5th.

The report was considered and adopted.

The Report of the Examiners on the Law School Examinations was received and read, as follows:

(1) The Report on the Pass Examinations for the First Year reporting that the following gentlemen had passed, viz.: Messrs. L. P. Duff, J. S. Johnston, W. Cross, C. H. Barker, J. H. Moss, F. C. Snider, R. M. Lett, B. M. Aikins, J. D. Spence, A. Y. Blain, C. H. Glassford, G. A. Kingston, R. L. Johnston, D. R. Tate, H. J. Martin, W. Douglas, and G. S. Morgan, with honors; S. V. Blake, G. C. Biggar, F. W. McConnell, R. J. Gibson, C. R. Hamilton, W. J. Boland, W. W. B. McInnes, and J. E. O'Connor, equal; T. B. Martin, J. G. Smith, W. T. J.

Lee, A. E. Scanlan, W. J. McDonald, S. F. Houston, D. Martin, C. S. Coatsworth, W. M. Allen, J. R. Blake, F. M. Canniff, and J. E. Powell, equal; S. Griffin, M. P. Vandervoort, T. C. Gordon, H. McConaghy, A. Bain, W. G. Bee, and T. R. E. McInnes, equal; H. W. C. Shore, W. I. Dick, J. W. Henderson.

Ordered for immediate consideration.

The Secretary reported that all those who had passed had been allowed their attendance at lectures.

Ordered, that the above named gentlemen be allowed the above examination.

(2) The Examiners' Report on the Pass Examination for the Second Year was received and read, reporting that the following gentlemen had passed, viz.: Messrs. J. S. Denison, B. S. Lefroy, N. Simpson, W. Stewart, J. J. Warren, T. M. Higgins, G. D. Minty, N. B. Gash, A. F. Hunter, J. E. Jones, W. Johnston, H. D. Leask, *Z.* Gallagher, T. C. Thomson, H. Langford, J. Hales, and J. McBride, equal, with honors; and P. E. Ritchie, E. G. Fitzgerald, A. B. Armstrong, J. A. Taylor, W. A. Leys, F. C. Hough, W. A. Lamport, G. S. Macdonald, F. C. Jones, E. F. Blake, and F. R. Blewett, equal; G. Wilkie, A. W. Ballantyne, H. Jamieson, and J. B. McLeod, equal; J. F. Tannahill, T. H. Lloyd, J. E. Cooke, and R. Parker, equal; S. King, W. E. Burritt, T. B. P. Stewart, G. P. Deacon, J. A. McMullin, E. Mortimer, N. Kent, R. B. Henderson, R. N. Noble, W. H. Cawthra, W. F. Hull, W. H. Hodges, W. A. Baird, F. G. Evans.

Ordered for immediate consideration.

The Secretary reported that all those who had passed had been allowed their attendance at the lectures.

Ordered, that the above named gentlemen be allowed the above examination.

(4) The Report on Honors and Scholarships for the First and Second Year Examinations was received and referred to a Select Committee, composed of Messrs. Moss, Kingsmill and Foy, for enquiry and report.

The petition of R. V. Riddell and E. Hunter was read and received.

Ordered, that the petition and papers be referred to the Discipline Committee to enquire and report whether a *prima facie* case has been shewn for investigation.

Ordered that Mr. Osler's notices stand till next meeting of Convocation.

The letter of 7th June, from the editor on the subject of the reports, was read.

Ordered, that the Reporting Committee be discharged from action on the order made at last meeting on the subject of the reports.

The Select Committee, to whom was referred the Report of the Examiners for Honors and Scholarships in the Law School Examinations, reported as follows:

They find that the following candidates, namely, Messrs. L. P. Duff, J. S. Johnston, W. Cross, C. H. Barker, J. H. Moss, F. C. Snider, R. M. Lett, B. M. Aikins, J. D. Spence, A. Y. Blain, C. H. Glassford, G. A. Kingston, R. L. Johnston, D. R. Tate, H. J. Martin, W. Douglas, and G. S. Morgan, passed the First Year Examination with honors; and that Mr. Duff is entitled to a scholarship of $100, Mr. J. S. Johnston to $60, and Messrs Cross, Barker, Moss, Snider, and Lett, to a scholarship of $40 each.

The Committee further find that Messrs. J. S. Denison, B. S. Lefroy, N. Simpson, W. Stewart,

J. J. Warren, T. M. Higgins, G. D. Minty, N. B. Gash, A. T. Hunter, J. E. Jones, W. Johnston, H. D. Leask, Z. Gallagher, T. C. Thompson, H. Langford, J. Hale, and J. M. Bride, passed the Second Year Examination, with honors; and that Mr. Denison is entitled to a scholarship of $100, Mr. Lefroy to $60, and Messrs. Simpson, Stewart, Warren, Higgins, and Minty, to a scholarship of $40 each.

Ordered for immediate consideration.

Adopted, and ordered accordingly.

The Report of the Principal of the Law School to the Chairman of the Legal Education Committee ordered to be taken into consideration this day, was read.

Ordered that it is expedient to appoint two additional lecturers in the Law School, and that the Secretary be directed to insert the usual advertisement, calling for applications for three lectureships, and that a call of the Bench be made for Tuesday, the 24th inst, to make such appointments.

Ordered, that the question of house accommodation for the Law School be referred to a special committee composed of the members of the Legal Education Committee, and Messrs. Irving, Osler, Martin, McCarthy, and Foy, to report at the next meeting of Convocation.

Ordered, that Mr. Irving and Mr. Hoskin be authorized, on behalf of Convocation, to take steps to oppose any attempt to place a registry office on the grounds of Osgoode Hall.

The letter of Arthur Armstrong was read and ordered to stand till next meeting of Convocation.

Ordered that Mr. A. Dixon Patterson be commissioned to paint a copy of the portrait at Ottawa, of Sir William Campbell, late Chief Justice of Upper Canada, at the sum of $250.

CORRECTION.

In the *resume* of the proceedings of the Law Society in Hilary Term, 1890, the copy of the Rules amending the Rules relating to the Law School, printed on pages 234 and 235 of this volume, is inaccurate. Following are the correct Rules:

RULES TO AMEND THE RULES RELATING TO LAW SCHOOL.

164 (*g*). Students-at-Law and Articled Clerks who are exempt from attendance at the Law School, either in whole or in part, may elect to attend the Law School and pass the Examinations thereof in lieu of passing the Examinations under the existing Curriculum applicable to Students and Clerks, so exempt in whole or in part, as aforesaid; such election shall be made in writing signed by the Student or Clerk, addressed to the Principal of the Law School, and deposited with him when producing the Secretary's receipt for payment of the Law School fees for the first term to be attended, in conformity with such election, and after such election the Student or Clerk so electing shall be bound toattend the Law School and pass the Examination thereof in the same manner as if originally bound to attend the Law School and pass the Examinations thereof.

164 (*h*). Students-at-Law and Articled Clerks who shall elect to attend the Law School as provided in Rule 164 (*g*), and who would be entitled to present themselves for their First or Second Intermediate Examination, or for their Final Examination, as the case may be, in any term during any School year term, or before Michaelmas Term then next ensuing, shall, upon proof of such attendance, and of passing the Examinations prescribed for the First or Second Intermediate Examination or Final Examination (as the case may be), at the close of such School term, or at the Examinations thereof, commencing with the first Monday in September, be allowed such Examination in lieu of their First or Second Intermediate or Final Examination, as the case may be.

Provided, nevertheless, that no Student-at-Law or Articled Clerk shall be called to the Bar or admitted unless after the expiration of the period of service under articles or attendance in Chambers, as the case may be.

164 *(i)*. Rules 164 *(d)*, 164 *(e)*, 164 *(f)*, shall apply to rules 164 *(g)*, and 164 *(h)*.

164 *(j)*. All Students-at-Law and Articled Clerks admitted upon the books of the Law Society in Michaelmas Term, 1889, and who by virtue of any previous rule may be required to attend the School during the term of 1889-90, shall be deemed to have duly attended during said term, if they shall have attended not less than five-sixths of the aggregate number of Lectures, and four-fifths of the number of Lectures of each series pertaining to the first year of the School course which shall have been delivered subsequent to the date of their said admission.

[4th February, 1890.]

STATEMENT OF REVENUE AND EXPENDITURE OF THE LAW SOCIETY

FOR YEAR ENDING 31ST DECEMBER, 1889.

REVENUE.

Certificate and Term Fees	$23,071 50	
Less Fees returned	388 00	
		$22,683 50
Notice Fees		744 00
Attorneys' Examination Fees	$6,237 00	
Less Fees returned	110 00	
		6,127 00
Students' Admission Fees	$9,469 00	
Less Fees returned	740 00	
		8,729 00
Call Fees	$11,002 00	
Less Fees returned	865 00	
		10,137 00
Interest and Dividends		3,995 65
LAW SCHOOL :—		
Students' Fees	$1,320 00	
Less Fees returned	20 00	
		1,300 00
REPORTING :—		
Rowsell & Hutchison, for Reports sold		1,135 21
SUNDRIES :—		
Fees on Petitions, Diplomas, etc.		133 87
Fines, Lending Library account		10 20
Fees, Telephone Office		148 68
		$55,144 11
Total amount of Expenditure as per following pages		$48,646 27
Balance		6,497 84
		$55,144 11

N.B.—This Expenditure does not include an amount since paid to the Ontario Government for heating the Law Society Building for the winter of 1888-89—$850.

EXPENDITURE.

REPORTING :—		
Salaries	$9,697 85	
Printing Reports by Contract	5,596 56	
Notes for LAW JOURNAL and *Law Times*	244 49	
Insurance on Reports at Rowsell & Hutchison's	90 00	$15,628 90
LAW SCHOOL :—		
Salaries	$2,766 65	
Printing and Stationery	60 40	
Travelling Expenses of Principal and others to U. S. Law Schools	302 89	3,129 94
EXAMINATIONS :—		
Salaries	$2,483 32	
Scholarships	1,200 00	
Medals	121 65	
Printing and Stationery	304 70	
Examiners for Matriculation	362 00	4,471 67
LIBRARY :—		
Books, Binding, and Repairs	5,488 75	
COUNTY LIBRARIES	2,348 20	
GENERAL EXPENSES :—		
Salaries—		
Secretary and Librarian	$2,000 00	
Assistants	1,683 33	
Auditor	100 00	
Housekeeper	525 00	4,308 33
Lighting, Heating, Water, and Insurance—		
Gas	$175 23	
Water	78 00	
Insurance (Carpenter's Risk),	10 00	
Fuel	202 25	
Repairs to Apparatus	55 35	520 83
Grounds—		
Gardener	$315 50	
Tools and Repairs	24 28	
Wire	2 15	
Tiles	8 73	
Earth and Loam	56 05	
Trees	25 75	
Flowers and Ornamental Plants	47 15	
Labour	388 30	
Snow Cleaning	63 23	931 14
ADDITIONS, ALTERATIONS, AND REPAIRS :		
Addition for Law School and Consultation Rooms	$700 00	
Library, new shelving, and removing galleries $1,757 92		
Removing coal vaults, and repairing sewer and area at rear 842 02		
Architect's Fees 175 82		
Repairs 744 88		
	3,520 64	
Furniture	533 04	
New asphalt sidewalks	1,630 00	6,383 68

PRINTING, ADVERTISING, STATIONERY, ETC.:—			
Printing		$404 13	
Advertising		322 54	
Stationery		157 45	
Postages		78 35	
Telegrams		6 48	
Legal Charts, 1888 and 1889		200 00	
Resume		71 50	
			1,240 45
LAW COSTS:—			
Solicitor's Salary		$300 00	
Hands *v.* Law Society, deposit for security for appeal		400 00	
Hands *v.* Law Society, costs		807 49	
Macdonell *v.* Law Society, costs		116 62	
Law Society *v.* Carthew		40 21	
" *v.* Taylor		23 29	
" *v.* Macdougall		25 96	
" *v.* Gardner		34 64	
" *v.* Donovan		78 57	
" *v.* Scatcherd		3 69	
General Costs		12 29	
Fees paid Taxing Officer		9 00	
Counsel Fees, Lount, Q.C. (Macdonell *v.* Law Society)		80 00	
Counsel Fees, Reeve, Q.C. (Hands *v.* Law Society, and Macdonell *v.* Law Society)		80 00	
			2,011 76
TELEGRAPH AND TELEPHONE SERVICE:—			
Telephone Rent		$100 00	
Salary of Operator		494 75	
" Messenger		120 00	
			714 75
SUNDRIES:—			
Valuation of Furniture (Oliver, Coate & Co.)		$100 00	
Tinsmith		11 78	
			111 78
Moving and Dusting Books and Pictures	$55 33		
Attending Clocks	9 00		
Oiling Floor, etc	8 00		
Scrubbing	7 80		
Soap	43 57		
		$123 70	
Entertaining Governor-General, Term and Committee Luncheons		1,115 90	
Ice		37 50	
Locks and Keys		21 30	
Photographs of Hall		3 75	
Petty Charges		17 44	
Additional Attendance During Term		16 50	
Guarantee Co		20 00	
			1,356 09
Total Expenditure			$48,646 27

DIARY FOR AUGUST.

1. Fri....Slavery abolished in British Empire 1843.
3. Sun...*9th Sunday after Trinity.*
6. Wed..Thomas Scott, 4th C. J. of Q. B. 1860. Prince Alfred born.
9. Sat....Fort William Henry capitulated 1757.
10. Sun...*10th Sunday after Trinity.*
11. Mon...Last day for filing notices for Trinity Term. Battle of Lake Champlain 1814.
13. Wed..Sir Peregrin Maitland, Lieut.-Governor, 1818.
14. Thur.Battle of Fort Erie, 1814.
16. Sat....Battle of Detroit, 1812.
17. Sun...*11th Sunday after Trinity.*
23. Sat....Last day for filing papers and fees for final examinations.
24. Sun...*12th Sunday after Trinity.* St. Bartholomew.
30. Sat....Long vacation ends.
31. Sun....*13th Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

From FALCONBRIDGE, J.] [June 26.

ERIE AND NIAGARA R. W. CO. v. ROUSSEAU.

Railways—Lands acquired for railways—Adverse possession—Statute of Limitations.

A title by adverse possession may be acquired, as against a railway company, to lands originally obtained by them for railway purposes.

Bobbett v. *South Eastern R. W. Co.*, 9 Q.B.D., 424, approved.

Judgment of FALCONBRIDGE, J., affirmed.

H. Symons for the appellants.

H. H. Collier for the respondents.

From C.P.D.] [June 28.

DOAN v. MICHIGAN CENTRAL R. W. CO.

Negligence—Contributory negligence—Railways—Pleading—"Not guilty."

This was an appeal by the defendants from the judgment of the Common Pleas Division, 18 O.R., 482, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 19th of May, 1890.

The Court held that evidence of contributory negligence would properly be admissible under a defence of "not guilty," without any special plea of contributory negligence; and that at any rate, in this case, even if, strictly speaking, the evidence were not admissible as the pleadings stood, still, the evidence having been given without objection, the plaintiff could not afterwards complain.

The Court also held that, upon the evidence, the finding of the jury as to contributory negligence was a proper one, and that the action therefore failed.

The Court allowed the appeal, with costs, and restored the judgment of STREET, J., at the trial.

H. Symons for the appellants.

G. T. Blackstock for the respondent.

From Co. Ct. Wentworth.] [June 28.

GOODMAN v. BOYES.

Statute of Limitations—Acknowledgment.

An acknowledgment of a debt, not being a debt by specialty, to be sufficient under the Statute of Limitations, must be made to the creditor, or to his agent. A general acknowledgment of liability, or an acknowledgment to a third person, will not be sufficient.

Judgment of the County Court of Wentworth affirmed.

Teetzel, Q.C., for the appellant.

W. Bell for the respondent.

From ROSE, J.] [June 28.

CAMERON v. CUSACK.

Fraudulent conveyance—Intent to defeat creditor.

A conveyance made by a debtor, in good faith of his ability to pay his existing debts, cannot be impeached by one who at the time has a right of action against him for a tort, and subsequently recovers judgment, even though the conveyance is made because of the threatened action.

Judgment of ROSE, J., 18 O.R., 520, reversed.

J. M. Glenn for the appellant.

J. S. Robertson for the respondent.

From Co. Ct. Hastings.] [June 28.

BONISTEEL v. SAYLOR.

Contract—Bills of exchange and promissory notes—Illegality—Public policy.

The plaintiff purchased from an alleged company 15 bushels of hull-less oats, paying there-

for $10 a bushel, and receiving the company's bond to sell for him 30 bushels of oats at the same price. The company found in the defendant a purchaser of 30 bushels of oats, and the plaintiff's oats were sold to him and his notes for $300 transferred to the plaintiff. This was but one of a very large number of similar transactions, and both the plaintiff and the defendant were aware of this. The oats were not worth more than ordinary oats, and the transactions were in fact speculative and fraudulent.

Held, (BURTON, J.A., dissenting) that the transaction could not be dealt with as an isolated one, but that the whole scheme must be looked at; that the tendency of that scheme was clearly contrary to the general well-being of the public, and therefore that the transaction in question, forming a part of that scheme, was against public policy and illegal.

Judgment of the County Court of Hastings affirmed on other ground.

Moss, Q.C., and *J. H. Simpson*, for the appellant.

Clute, Q.C., for the respondent.

From C.P.D.] [June 28

OWEN SOUND STEAMSHIP CO. *v.* CANADIAN PACIFIC R.W. CO. ET AL.

Railways—Joint traffic agreement—Ultra vires.

This was an appeal by the defendants and a cross appeal by the plaintiffs from the judgment of the Common Pleas Division, reported 17 O.R., 691, both of which came on to be heard before this Court (HAGARTY, C.J.O., BURTON OSLER, and MACLENNAN, JJ.A.), on the 19th and 20th of May, 1890.

The Court held, for substantially the same reasons as those given in the Court below, that the agreement between the plaintiffs and the Toronto Gray and Bruce Railway Company was a valid agreement, and they therefore did not discuss the question as to the validation of agreement by the subsequent legislation.

The Court agreed with the Court below upon the question of the termination of the agreement.

The appeal and cross appeal were dismissed with costs.

D. E. Thompson, Q.C., and *George Bell*, for the plaintiffs.

McCarthy, Q.C., and *G. T. Blackstock*, for the defendants.

Queen's Bench Division.

Div'l Ct.] [June 27.

HEPBURN *v.* TOWNSHIP OF OXFORD.

Ditches and Watercourses Act, 1883—Work not in accordance with award—Remedy—Costs.

Where an award has been made under the Ditches and Watercourses Act, 1883, the only remedy for the work not being completed in accordance with the award is the remedy provided by s. 13 of that Act. An action for damages was therefore dismissed.

Murray v. *Dawson*, 17 C.P., 588, followed; and *O'Byrne* v. *Campbell*, 15 O.R., 339, distinguished.

No other or greater costs were allowed to the defendants than if they had successfully demurred, instead of defending and going down to trial.

Aylesworth for the plaintiff.

W. R. Meredith, Q.C., *McKillop*, and *Chas. MacDonald*, for the defendants.

Div'l Ct.] [June 27.

GRAHAM *v.* MCKIMM.

Libel—Article referring to advertisement published contemporaneously—Fair criticism—Evidence—Plaintiff's case—Production of advertisement—New trial.

The plaintiffs brought a written advertisement to the defendant for the purpose of having it published in his newspaper, but the defendant refused to publish it; and the plaintiffs took it away, intimating that it would be immediately published in another newspaper. It was so published; and on the day of its publication, an article, written before its publication, appeared in the defendant's newspaper, referring to it as unfit for publication. The plaintiffs sued the defendant for libel. The trial Judge told the jury that if the article was nothing more than a fair criticism of the advertisement, it was not libellous. It was objected that the defendant was not entitled to criticize the advertisement because it had not been published before the article criticizing it.

Held, that this was not a valid objection. The trial Judge ruled that the plaintiffs were

bound to produce and put in, as part of their case, the written advertisement, referred to by the defendant in the article complained of; and the plaintiffs, though protesting, accepted the ruling, and put in the evidence.

Held, that the ruling was wrong; but that the plaintiffs were not entitled to a new trial, as the only wrong to the plaintiffs was to let the defendant's counsel have the last word with the jury.

The statement in Odgers, Bl. ed., s. 573, that "if the alleged libel refers to any other document, the defendant is also entitled to have the document read, as part of the plaintiff's case," is too broad.

Watson, Q.C., for the plaintiffs.
W. Read for the defendant.

Chancery Division.

ROBERTSON, J.] [May 14.

ELLIOTT *v.* BUSSELL.

Husband and wife—Money paid by wife for use of husband—Corroborative evidence.

When in the administration proceedings of an estate of a deceased testator, it appeared that the plaintiff, his widow, had paid at the testator's request, out of her separate property, certain premiums payable by him on two Life Assurance policies on his own life, and the plaintiff swore that she was to be repaid the amounts so paid by her:

Held, that, on the plaintiff claiming these moneys in the administration proceedings, the onus was on the defendant, the executor, to shew that they were a gift from the plaintiff to the testator, and that it was not incumbent on the plaintiff to prove that the moneys were to be repaid to her before she could recover.

Laidlaw, Q.C., for the defendant.
Kilmer for the plaintiff.

ROBERTSON, J.] [May 22.

BRUYEA *v.* ROSE.

Action of trespass—Occupant of crown lands—Possession by tenant—Statute of Limitations.

The result of the cases appears to be that where a person is in possession with the assent of the Crown paying rent, as in *Harper* v. *Charlesworth*, 5 B. & C. 574, or where a person is a purchaser although the patent has not issued, such person can maintain trespass against a wrongdoer.

A tenant taking in land adjacent to his own by encroachment, must as between himself and the landlord be deemed *prima facie* to take it as part of the demised land, but that presumption will not prevail for the landlord's benefit against third persons.

Dickson, Q.C., for the plaintiffs.
Clute and Burdette for the defendants.

BOYD, C.] [June 4.

BANK OF COMMERCE *v.* MARKS.

Partnership—Debts of old firm—Privity.

G. M. & J. B. D., trading under the firm name of M. D. & Co., became indebted on certain promissory notes to the plaintiffs. G. M. left the firm, and S. M. formed a partnership with J. B. D., and continued the business under the same firm name, and this new firm agreed to assume the liabilities of the old firm.

Held, that the plaintiffs had no right of action against the new firm, merely because the latter had, pursuant to their agreement with old firm, made certain payments on account of the notes to the plaintiffs; nor because, apparently, under a mistake of law, the new firm had asked for an extension of time from the plaintiffs.

W. Cassels, Q.C., for the plaintiffs.
Laidlaw, Q.C., for the defendant Playfair.
Scott for the defendant Balfour.

Div'l Ct.] [June 9.

CITY OF KINGSTON *v.* CANADA LIFE ASS. CO.

Assessment and taxes—Insurance Company—Head office and branch office—Assessment of income at branch office—R.S.O. 1887, c. 193.

Held, reversing the decision of FERGUSON, J., reported 18 O. R. 18, that the amount of premiums, received year by year by the defendants at Kingston, were not assessable there.

"Income," as commercially used, means the balance of gain over loss in the fiscal year or other period of computation, and this is the meaning of the word in the Assessment Act. No distinct integral part of the defendants' income was referable to Kingston. The ultimate profit (if any) of the whole business of the Com-

pany represents the year's taxable income. Kingston was not a branch at which any sum arbitrary or otherwise could be assessed as "income." The argument *ab inconvenienti* applies cogently to exclude "income" as an item of "personal property" to be assessed at a "branch" which is entirely in subordination to the principal seat of business.

McCarthy, Q.C., and *Bruce*, Q.C., for the defendants.

Walkem, Q.C., and *Langton*, for the plaintiffs.

FERGUSON, J.]

MACKLIN *v.* DOWLING.

Sale of lands—Title—Private Acts—Equitable interest in mortgage.

On a reference as to title in a specific performance action, it appeared that one E. N. H. in 1861, through the Canada Agency Association, agreed to advance to certain mortgagors $7,430 at interest; that the Association agreed with E. N. H. to become liable to her for interest at 7 per cent. per annum on this sum, and in consideration of this was to receive to its own use all interest above that rate, and that the security for the money should be vested in trustees. Accordingly the mortgage, which bore date May 4th, 1861, was made to T. G. R. and D.B., trustees appointed by the Directors of the Association. On January 23rd, 1869, 32 Vict., c. 62, s. 5 O. was passed, whereby all lands, mortgages, securities, etc., held by trustees of the Association were vested in the Colonial Securities Company, and on September 23rd, 1872, the mortgagor released his equity of redemption to the Colonial Securities Co., in full satisfaction of the mortgage moneys, but not so as to merge the mortgage. On March 29th, 1873, 36 Vict., c. 121, s. 5 O. was passed, whereby all lands, mortgages and securities of the Colonial Securities Company were vested in the Colonial Trusts Corporation. On Jan. 12th, 1878, the Colonial Trusts Corporation conveyed the lands to the plaintiff, the present vendor.

Held, that the above Acts could not have the effect of operating the destruction of the rights of E.N.H., as *cestui qui trust*, whose right, if the moneys advanced had not been repaid, would be (she adopting the transaction of the trustees in taking the release) to the land, or to the mortgage plus the equity of redemption in case there was no merger. There was, therefore, an equitable interest outstanding, if E. N. H.'s claim had not been satisfied, and this interest was not necessarily a matter of encumbrance or conveyancing but of title.

Bruce, Q.C., for the plaintiff.

Bicknell for the defendant.

Full Court.] [June 21.

QUEEN *v.* BUNTING.

QUEEN *v.* CREIGHTON.

Criminal procedure—Jurisdiction—Chancery Divisional sittings—Application to move absolute a rule nisi in a criminal matter.

Per BOYD, C.: The Divisional Sittings of the Court are now the equivalent for the former sittings in full Court in term at common law, or for the purpose of rehearing in Chancery, and the criminal jurisdiction vested in the High Court, not exerciseable by a single judge is, by the effect of legislation, to be administered by Judges composing these Divisional Courts. Each division is to follow the same practice, and therefore the Chancery Division is empowered to use the criminal practice and procedure, which was formerly peculiarly limited to the common law courts.

Per FERGUSON, J.: Bearing in mind the provision (Cons. R., 218), under which the sittings of the Chancery Divisional Court at the time of this application were taking place, it had not the power to exercise the full jurisdiction of the High Court, such as it would have possessed if sitting under the provisions of the original Marginal Rule 480, s-s. (a) and (b), and had not a criminal jurisdicton. The other divisions of the High Court are not in the same position with regard to criminal jurisdiction.

Hellmuth for the motion.

W. R. Meredith, Q.C., and *Hamilton Cassels*, contra.

Full Court.] [June 30.

ABELL *v.* MORRISON.

Registry Act—Notice—Relief on ground of mistake—Subrogation.

On December 19th, 1887, the plaintiff registered a lien against certain lands. On the day before, the defendant, an intending purchaser, had searched the registry, and found only two incumbrances registered against the property.

On December 22nd, the defendant completed his purchase, and, having paid off the said two incumbrances, requested discharges thereof, with his deed of purchase, but as he did not make a further search, he did not discover the plaintiff's lien.

Held (affirming the decision of FALCONBRIDGE, J.), that the defendant was entitled to stand in the place of the incumbrancers, whom he had paid off, and to priority over the plaintiff's lien.

The defendant did not mean to give priority to the plaintiff's lien, of which he knew nothing in fact. The Registry Act, which declares (s. 80) that registration shall constitute notice, does not preclude enquiry as to whether there was knowledge in fact; and the Court was not compelled as a conclusion of law to say that the defendant had notice of what he was doing, and so could not plead mistake.

Langton, Q.C., for the motion.

Moss, Q.C., and *McKay*, contra.

Full Court.] [June 30.

KEYES *v.* KIRKPATRICK.

Reference—Action by creditor obtaining leave under R.S.O., 1889, c. 124, s. 7, s-s. 2—Compromise arrived at by assignee.

This was an action to set aside a bill of sale brought by a creditor, in the name of an assignee for creditors, the plaintiff having obtained an order under R.S.O., c. 124, s. 7, s-s. 2, enabling him to bring the action, the assignee being willing to bring it.

It appears that after service of the notice of motion for the order giving permission to bring the action, but before the order, the assignee believing that he had authority to do so, and with the approval of the inspectors, made a settlement with the defendants, in whose favor the bill of sale had been made, which settlement also it appeared was advantageous to the estate.

Held, that the settlement arrived at must be held good, and the judgment dismissing the action should be affirmed.

Du Vernet for the plaintiff.

W. Cassels, Q.C., for the defendant.

Full Court.] [June 30.

STRAUGHAN *v.* SMITH.

Seduction—Action by brother—loss of service—Infant defendant—Non-appointment of guardian—Cons. R. 261. 313.

In an action for seduction, it appeared that the plaintiff was the brother of the girl seduced; and that the girl, though in the service of another lady, yet (by agreement with her mistress entered into at the time of her engagement), was at liberty to perform, and did perform certain services at home for the plantiff.

Held, that the plaintiff was entitled to maintain the action.

It also appeared that the defendant was not quite of age, and that no guardian had ever been appointed, but that the fact of infancy was well known to the defendant's parents, and to the solicitor and counsel who appeared for him at the trial, and no objection on this ground was taken till this motion before the Divisional Court.

Held, that under Rules 261 and 313, the appointment of a guardian was not imperative; the Court had a discretion, and in this case refused to interfere with the judgment obtained against the defendant at the trial.

Bruce, Q.C., for the defendant.

Carscallen, Q.C., for the plaintiff.

Full Court.] [June 30.

MARTIN *v.* MAGEE.

Vendor and purchaser—Devolution of Estates' Act—Devisee of land—Payment of debts—Beneficial interest.

Held, that where one dies, since the Devolution of Estates' Act, leaving a will, devising lands, the lands devolve upon the executors of the deceased as assets for the payment of debts; when these are paid (or there being no debts), the executors will hold the bare legal estate for the devisee of the land. In other words, subject to the payment of debts, the beneficial interest in the land passes to the devisee, and she can make title as the real owner. If the payment of the debts will exhaust the land and other assets, there is no beneficial interest, but if the debts fall short of this in amount, the matter is in practically the same condition as with regard to any other incumbrance, *i.e.*, upon the charge or incumbrance being satisfied (which can be done out of the purchase money), the clear title can be conveyed.

E. D. Armour and *D. Macdonald* for the plaintiff.

Hoyles, Q.C., and *Chisholm*, for the defendant.

Full Court.] [June 30.

MORRIS *v.* MARTIN.

Interpleader issue—Mortgage of goods to secure wife barring dower—Payment of money into Court to abide further order.

In an interpleader issue in respect to goods (which had been sold pending proceedings) it appeared that they had been included in a chattel mortgage given to the defendant to the issue for the purpose of securing her against loss, damage, costs, etc., that she might sustain or be put to by reason of her executing certain mortgages for the purpose of barring her dower.

Her husband was still living, so that it did not appear that she had yet sustained any such loss or damage.

Held, that the money, the proceeds of the goods, must remain in Court to abide further order, so that the defendant would have the same security that she had by the mortgage, and if she should not become entitled to the money, it would be available to her husband's creditor, the owner of the goods mortgaged.

Moss, Q.C., for the defendant.

C. J. Holman contra.

Full Court.] [June 30.

WELLBANKS *v.* HENRY.

Fraudulent preference—Agreement to supply material for manufacture, the goods manufactured nevertheless to remain property of the supplier of the material—Defeating and delaying creditors.

Interpleader issue.

The claimant agreed with A., an insolvent, in writing, to furnish material to the latter for the manufacture of carriages from time to time, for the period of one year; it being also provided that no property, title, interest or ownership in said goods or merchandise should pass to, vest in or belong to A., but that notwithstanding any improvement, or work upon the same, or change of form, or addition thereto, or use thereof, the same and every part thereof, should be, and remain the goods and property of the plaintiff.

The material was supplied and manufactured into carriages by A., which were seized by the defendants', execution creditors of A., and the claimant claimed the same, more being owing to him for the material supplied than the value of the goods seized.

Held, reversing the decision of ARMOUR, C. J., that the above agreement was not one which could be said necessarily to have effect by defeating or delaying creditors, and in the absence of fraud, the claimant was entitled to succeed on this issue.

C. H. Widdifield for the claimant (plaintiff). *Alcorn* for the defendants.

Practice.

Ct. of App.] [June 28.

MARITIME BANK *v.* STEWART ET AL.

Bankruptcy and insolvency—English Bankrupt Acts, scope of—Canadian creditors proving claim in England—Staying actions in Ontario—Discretion—Duration of stay.

The order of the Queen's Bench Divisional Court, 13 P. R., 262, affirming the order of ROSE, J., ib. 86, staying proceedings, was affirmed on appeal.

HAGARTY, C. J. O., and MACLENNAN, J.A., were of opinion that the order was properly made.

BURTON and OSLER, JJ. A., were of opinion that as an exercise of discretion it could not be interfered with.

BURTON and MACLENNAN, JJ. A., were also of the opinion that the order should be varied by making the stay "until further order," instead of "for ever."

Robinson, Q.C., and *Gormully*, Q.C., for the appellants.

McCarthy, QC., and *A. Ferguson*, Q.C., for the respondents.

Chy. Div'l. Ct.] [June 30.

DOMINION BANK *v.* BELL.

Examination—Right of witnesses to presence of counsel—Special circumstances.

In an action against the maker and indorser of a promissory note, judgment went by default against the indorser, but the maker appeared, and upon the consent of the plaintiffs obtained an order under Rule 566, per the examination, before a special examiner, of the indorser and his book-keeper before delivery of defence, the object being to show that the in-

dorser alone was liable on the note, that he procured it by fraud from the maker, and that the plaintiffs held it with notice.

Held, that the interests of the indorser as a party might be affected by the examination, and that he was entitled to have counsel present upon the examination to protect his interests.

Shepley, Q.C., for the defendant Bell and the witness Callaghan.

C. Millar for the defendant Jay.

J. D. Montgomery for the plaintiffs.

Law Society of Upper Canada.

LAW SCHOOL—HILARY TERM, 1890.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in hte Law School.

CURRICULUM OF THE LAW SCHOOL.

Principal, W. A. REEVE, Q.C.

Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.

Examiners, R. E. KINGSFORD, LL.B. P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes 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.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto, are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be. At the first Law School Examination to be held in May, 1890, fourteen Scholarships in all will be offered for competition, seven for those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School:

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 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.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

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.

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 subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

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.

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

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.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
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.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be deliver d by a lecturer.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

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

Equity.

Lewin on Trusts.

Torts.

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

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.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectures on Real Property, and Practice and Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify 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 will 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 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 will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.