## DIARY FOR FEBRUARY.

1. Thur.. Last day for Co. Treas. to furnish to Clerks of Muns. in Co.'s list of lands liable to be sold for taxes. Exam. of Law Students for call to the bar with honors.
2. Fri... Exam. of Law Students for call to the bar.
3. Sat... Exam. of Artic. Cks. for certificates of fitness.
4. SUN.. *Sexagesima Sunday.*
5. Mon.. Hilary Term begins. Last day for Artic. Cks. going up for inter-exam. to file certificates.
7. Wed.. New Trial Day, Q.B. Last day for sett. down and giving notice of re-hearing in Chancery.
8. Thur . New Trial Day, C.P. Inter-examinat'n of Law Students and Articled Clerks.
9. Fri... Paper Day, Q.B. New Trial Day, C.P.
10. Sat... Paper Day, C.P. New Trial Day, Q.B.
11. SUN.. *Quinquagesima Sunday.*
12. Mon.. Paper Day, Q.B. New Trial Day, C.P.
13. Tues.. *Shrove Tuesday.* P. D., C.P. N.T. Day, Q.B.
14. Wed .. *Ash Wednesday.* P. D., Q.B. N.T. Day, C.P.
15. Thur.. Paper Day, C.P. Open Day, Q.B. Re-hearing Term in Chancery commences.
16. Fri... New Trial Day, Q.B. Open Day, C.P.
17. Sat. .. Hilary Term ends. Open Day.
18. SUN.. *Quadragesima Sunday.*
25. SUN.. *2nd Sunday in Lent.*

THE

# Canada Law Journal.

## FEBRUARY, 1872.

We devote much space in this number to the judgments delivered by six of the judges of the Court of Error and Appeal in the celebrated Goodhue case. The case will be re-argued before a fuller Bench on the 11th March, and further authorities will probably be cited *pro* and *con*. Our readers having now the judgments already given before them, will be able to form their own opinions as to the merits and law of the case. The result which we should most like to see would be the disallowance of the Act by the Governor-General. This, however, is not thought likely, and if not done, this extraordinary piece of legislation, which has caused so much litigation, will, in all probability (whichever way the Court of Appeal may decide), be ventilated in England, not, we apprehend, to the credit of those who were concerned in passing the Act.

We direct special attention to the judgment of Mr. Justice Gwynne, who has originated a new theory, viz: that the act does not sufficiently show that the Legislature intended to affect the interests of the grandchildren. If he should prove correct in this view, which he supports by a most able and ingenious judgment, it will be a "facer" to the promoters of the bill; and the result would be sufficiently disappointing to those who have in other respects engineered their own interests so successfully. The Chief Justice, who does not agree with Mr. Gwynne, deals with the subject in his own peculiarly incisive manner.

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A question of precedence as between Crown Cases and civil suits in the order of their disposal by the Courts came up this term in the Common Pleas, in the case of *Reg.* v. *Gaines*.

It was contended by the counsel for the Crown in that case that Crown suits had precedence over any others on the paper. The Court having made enquiries from the Clerks of the Crown in both Courts, as to what the practice was in this respect, ruled that Crown cases had the precedence over other causes; the learned Chief Justice remarking that the Queen had a right to be heard in her own Courts, in her own suits before all othrs. We trust Her Majesty, being strong, will be merciful, and let her subjects have a fair share of the good things going in the way of justice.

The privileges belonging to the Queen, as representing the public, as distinct from individuals, have been many, and some of them harsh enough to the latter. That some of them are disappearing is not a matter of regret. The one under discussion is of no great moment in itself, though of some practical importance in the disposal of business.

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It is well known of Sir John Patteson, that difficulty in hearing occasioned his retirement from the English Court of Queen's Bench. Knowing his own passion for law, and yet feeling that his deafness might impede the administration of justice, he obtained a promise from one of his most intimate friends to suggest to him the fit moment of retirement. The promise was faithfully kept, and when the suggestion was made, this most able judge at once retired from a profession which he had followed with the passion of an enthusiast. It seems to us, judging from the tone of the Quebec legal journals, that there is at least one judge in that province who, though late, might even yet profitably follow the great example of Mr. Justice Patteson.

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We are indebted to our enterprising correspondent at Halifax, Mr. Meagher, (Blanchard and Meagher) for an important decision in Insolvency. Mr. Justice Ritchie seems to have followed the current of authority in England,

though agreeing with the view of some of the udges there that the result of those cases is not as satisfactory as might be desired. We are not aware of any decision in our Courts on this point. *McDonald* v. *McCallum*, 11 Grant, 469, came near it, but is not an authority on the question decided in the Nova Scotia case.

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While some members of this metropolitan municipality are struggling to have taxes imposed on the judges' salaries, we observe from the *Pittsburgh Legal Journal*, that, by the action of the Treasury Department, the taxes paid by the judges of State Courts in the United States on their respective salaries received from the State Treasuries, are to be refunded.

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We view with envy the gold-begetting list of legal notices in "the oldest law journal in the United States," *The Legal Intelligencer*, of Philadelphia. So famous is this paper, that we understand the correct pronunciation of its name is an unfailing test of whether a man is intoxicated or not. In one of the late weekly issues we count some 170 official and semi-official advertisements — the columns of this paper being the authorised medium for publishing such information to the public. Attempts are being made by other journals to have a partition of this privilege, but they are sturdily anathematised in the "leaders" of the official favourite. It has often occurred to us that there would be more sense in official notices, &c., being published in this Journal rather than in an Official Gazette, which is read by none who can avoid it.

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Many men, many minds—many judges, many judgments. In Illinois, the judges in one Supreme Court held that the maxim of independence, "all *men* are created equal," does not extend to women, and that by virtue thereof, or of anything else, they have no right of suffrage. In the same State, another Supreme Court decides that this maxim does apply to vagrant children, so that a statute providing for the rescue of such "little wanderers," and the committal of them to a reformatory school is unconstitutional, and a "tyrannical and oppressive" infringement upon the liberties of the citizen. In effect, therefore, juvenile vagrancy receives judicial sanction, and the state is powerless to protect and save destitute minors and orphans! We thought "*Salus populi suprema lex.*"

## SECURITY FOR COSTS FROM FOREIGNERS WITHIN THE JURISDICTION.

SECOND PAPER.

In the English Common Law Courts the contest is between the rule laid down in *Oliva* v. *Johnson* and that in *Tambisco* v. *Pacifico*: that is, whether a foreigner must shew that he is permanently resident in the country, or whether his temporary residence is sufficient to exempt him from giving security.

Looking at the course followed in other courts in find that the Equity Exchequer pursued a practice contrary to *Oliva* v. *Johnson*. In *Willis* v. *Garbutt*, 1 Y. & J. 511 (1827), where it was shewn that the plaintiff usually resided in Canada, and that he was *about* to leave the country, yet the court refused to order security. In a case before Leach, V. C., in 1826, the application was made on an affidavit that the plaintiff and his family usually resided in Marseilles, and that he was about to quit the country: this was unanswered, and yet the motion was refused: *Anon*, 5 L. J. Ch. (O. S.) 71. In 1845 the order was granted in the case of a foreigner who was at the time actually out of the jurisdiction: *Perrot* v. *Novelli*, 9 Jur. 770. In 1853 the Courts of Equity were at conflict amongst themselves on this question. In that year the Master of the Rolls decided *Ainslie* v. *Sims*, 17 Beav. 57, where it was shewn that the plaintiff carried on business, and was usually domiciled in Scotland, and that he had taken lodgings in London, and then filed his bill. The court thought the residence within the jurisdiction was merely colourable, and ordered security. In the report in Beaven, Sir John Romilly said, "I by no means say that if a foreigner were to come here and take up his abode and hire a house for a certain period, he would be required to give security." In the report in the *Jurist*, (vol. 17 p. 757), he is reported to have said, "if a person came for a *visit* that would not be enough, but it would be otherwise, if he were to come on permanent business into the country." In the same year, Wood, V. C., refused to follow this case, and held that a foreigner temporarily resident in the country will not be required to give security. *Cambottie* v. *Inngate*, 1 W. R. 533. In the following year, Wood, V. C., again adverted to *Ainslie* v. *Sims*, and said that the Master

of the Rolls expressly guarded himself in that case against being supposed to say that in every case in which a suit is instituted by a foreigner having a temporary residence in this country he may be compelled to give security for costs. See *Swanzy* v. *Swanzy*, 4 K. & J. 237. In 1859 some consideration was given to this point in our own Court of Chancery in *O'Grady* v. *Munro*, 7 Grant 106, and the holding there was in accordance with *Tambisco* v. *Pacifico*.

In the Irish Courts, *Oliva* v. *Johnson* has been considered overruled, and the authority of *Tambisco* v. *Pacifico* has repeatedly been recognized: See *Sisson* v. *Cooper*, 4 Ir. L. R. 40; *Allain* v. *Chambers*, 8 Ir. C. L. R. app. vii. (1858). So in the United States, Greenleaf in his "Overruled Cases" treats the case in the Queen's Bench as over-ruled by the later case in the Exchequer.

The various text books afford curious examples of the uncertainty that has obtained on the points under discussion: Maddock's Practice cites *Willis* v. *Garbutt* as laying down the rule. Morgan & Davey refer to *Cambottie* v. *Inngate* as the governing case. Daniell's Practice lays down the practice as determined by *Oliva* v. *Johnson*, and does not even cite *Tambisco* v. *Pacifico*, while in Chitty's Archbold (12th ed. p. 1415), nearly all the common law cases are cited, but the true practice is left undetermined in the text. It is submitted that the proper rule is between the extremes of the holding in *Oliva* v. *Johnson*, and that in the earlier Common Pleas and Equity cases. It is not necessary on the one hand to shew a permanent residence within the jurisdiction to exempt a foreigner from giving security, nor is it sufficient on the other merely to shew that he is actually within the jurisdiction at the time of the application. This in fact is the view adopted in the latest English case on the subject, where the application was made in 1860 in the Divorce Court before Sir Creswell Creswell. The important cases on both sides of the question were cited, and that very eminent judge laid down the rule thus, "where the party, being a foreigner, is in England, and there is no reason to suppose that he is on the point of going away, no order will be made for security." And he held in opposition to *Oliva* v. *Johnson* that the affidavit in answer to the application need not state an intention of permanent residence, but that it was sufficient to shew an intention to remain till the suit was disposed of: *Crispin* v. *Doglione*, 1 Sw. & Tr. 522.

## REPLEVIN—GOODS IN THE CUSTODY OF THE LAW.

An important point has been decided in Chambers by Mr. Justice Gwynne on the law of replevin, which it is desirable should be made public as soon as possible. It came up on an appeal from a decision of the Clerk of the Queen's Bench, who had refused an order for a writ of replevin against a guardian in insolvency on the ground that no such action would lie under the second section of the Replevin Act. It is very seldom that an appeal from Mr. Dalton's ruling is made, and when made more seldom is it successful; this one may, therefore, be noted as the exception which proves the general soundness of his decisions; and as to this point, it has, we believe, hitherto been supposed, amongst the profession, that the law was as laid down by Mr. Dalton.

We do not intend at present to state the facts of the case in full, as it will shortly be reported; but the point decided is simply that goods in the possession of a guardian or official assignee in insolvency are not in "the custody of any sheriff or *other officer*" within the meaning of sec. 2 of Con. Stat. cap. 29. In other words that goods may be replevied from a guardian or assignee in insolvency, notwithstanding the second section of the Replevin Act.

The reasons which the learned Judge gives for his opinion, in a very elaborate judgment, are to our minds conclusive, notwithstanding the apparently comprehensive words of the section; but we cannot at present state them at length. He holds, however, that the term, "sheriff or other officer," means a sheriff, or such an officer as his deputy or bailiff, or a coroner, "to whom the execution of such writ of right belongs;" and that what is declared by the statute not to be authorized is the replevying the goods which *such* sheriff or other officer shall have seized under or by virtue of the process in his hands; and that when the goods are delivered to the guardian or assignee, in discharge of the sheriff, the former holds them, and has only a right to

detain them, on the supposition that they are the property of the insolvent, which supposition, however, their true owner has a right to prove to be false, and take the goods as his own.

There can be no doubt at least of this, that this view is the one most consonant with practical justice; if the law be not as stated, incalculable injury might arise to the true owner, without any possibility of redress, and without doing any good either to the insolvent or his creditors.

## LAW SOCIETY, HILARY TERM, 1872.

Owing to the Hon. Adam Crooks being appointed Attorney-General, a vacancy occurred among the Benchers, which was filled by the election of the Hon. E. B. Wood to the vacant seat.

During this Term, John Hutcheson Esten, Esquire, Barrister, the son of the late Vice-Chancellor Esten, was appointed Deputy Secretary and Librarian and Sub-Treasurer. The appointment is an admirable one in itself, and his assistance will at this time be very valuable, owing to the failing health of Mr. Hugh Gwynne, who has for many years occupied the position of Secretary and Librarian.

### CALLS TO THE BAR.

During this Term the following gentlemen were called to the Bar:

Hon. J. H. Gray (Nova Scotia bar), Robert Wardrope (English bar) — also Alfred Frost, without oral; Charles Rann Wilkes, Arthur Wellington Francis, Charles C. Backhouse, William A. H. Duff, Wm. McDonald, Davidson Black, W. G. P. Cassells.

### ATTORNEYS.

The following gentlemen were admitted as Attorneys:

Messrs. McBride, Roaf, Clute, Reeve, Spragge, Fuller, Vincent, Platt, Ball, Pousette.

### INTERMEDIATE EXAMINATIONS.

The following students passed their intermediate examinations during the Term:

Fourth Year.—C. R. W. Biggar, R. M. Fleming, J. Bruce Smith, T. McIntyre, C. E. Barber, G. A. McKenzie, R. E. Kingsford (all without oral); G. H. D. Hall, E. R. O'Donnell, I. B. McQuesten, G. M. Roger, R. McLean, A. B. Kline, H. H. Sadleir.

Third Year.—G. B. Fraser, W. McDonald, (without oral); Thos. McGuire, H. Gale, O. A. Howland, T. B. Moore, C. G. Snider.

Mr. Biggar was highly complimented by the Treasurer upon the excellence of his papers.

## PROFESSIONAL JOTTINGS.

One can scarcely read a single number of an English periodical, without being struck with the terribly overcrowded state of the profession there; nor can we doubt a similar result in this country, if young men will still blindly rush into a profession to which many are utterly unsuited, either in education or capacity, but which *seems* to promise not only a respectable position in life, but an easy livelihood. In fact they fondly imagine that when their fathers have provided them with a profession, Providence will kindly provide them with clients. Within a few years after entering an office, this confiding, or, it may be, lazy youth, finds that the pursuit of legal knowledge is under perpetual difficulties, and has no royal road. If he has sufficient energy and diligence (helped on by the admirable system of legal education which we have in Ontario, by means of intermediate examinations, scholarships, &c.) to pass his final examinations, he finds himself afloat on his own resources. He may possibly have a business connection, or form a good partnership, but too often the deep waters go over him. In a young, expansive country like Canada, this is not so marked a feature in professional life; but in England, more seem to sink than to swim. The following is an extract from an article in the *Law Times*, calling attention to the distressing state of things in England:

"A barrister was a debtor, and his lordship made an order for payment by monthly instalments of £2. On the debtor's behalf it was stated that he had on an average one brief in a twelvemonth, and could not pay £2 a month out of so precarious an income. But to what or to whom is to be attributed the melancholy condition of so many barristers?—for the learned judge was undoubtedly right when he said that not one in twenty covers his outlay on entering the profession. In the first place, numbers of needy men go to the bar on the merest speculation, without any particular gift of eloquence or special knowledge of law, and, what is still more fatal, without connection. Not only this, however, but, strange to say, men who, both physically and intellectually, are unfitted for the practice of the law,

crowd the ranks of the bar. The shortest possible stature is considered no disqualification, whilst woolly-headedness, effeminacy of intellect, defective articulation, and the utter absence of the logical faculty, present no difficulties to the mind of the young aspirant or his guardians. A large number of barristers are, beyond doubt, unsuited in every way to the profession; but, again, many, admirably adapted for it, are without private means; too frequently have no idea of earning money outside their vocation; and, worn out by the cares of existence, sink into the condition which revealed itself to Mr. Justice Byles. There are, however, hard cases, which no foresight could provide against. The increase in the number of barristers, many being the near connections of attorneys, scatters the work (already in process of being scattered by legislation) relating to county courts. To such causes is attributable the bare appearance of many a table in the Temple once well covered with profitable business. Sound lawyers, of acknowledged capacity and experience, are unemployed; and this fact it is, to which we would principally call the attention of undergraduates, and men already in professions which they desire to leave. A livelihood is not to be got out of sessions where there are on the average two counsel to one prisoner; nor out of circuits, save to the favoured few, where there are frequently three times as many (on the Home circuit we should say ten times as many) counsel as there are causes. London business is in the hands of a score of prominent men, but the cause lists are slowly dwindling to insignificant proportions."

The picture here presented is wretched in the extreme; and although it would be exaggeration to say that it is fully true in this country, it is only a question of time and of degree even with us. A few men carry off the prizes by dint of force of intellect and persevering industry. A large number, of less capacity, make a decent living by a careful attention to business. But others, again, eke out a miserable existence (and especially miserable in that they have to keep up a respectable appearance) by stray suits and odds and ends of business, until, fortunately for themselves, they are compelled by want to turn to some other more congenial and profitable employment.

After thus taking a warning from the destitute position of some of our brethren in England, we turn from the unpleasant picture we have been contemplating, to another matter of interest to the profession in Ontario, and that is, as to the propriety of a division of labour.

In England, each branch of the profession undertakes a distinct field, and individuals attach themselves to one or other, as inclination or accident may determine. In the United States, things in this respect are much the same as with us; but the following remarks, taken from the *American Law Times*, show that the subject has received some thought there, and the observations of the writer contain some useful hints for us:

"The tendency of the members of the profession towards the specialties, which is, we think, unmistakeable, is a most fortunate condition, and one which we hope may develope into a permanent rule. As law is 'the most learned of all arts'—an art in its grandest, broadest, and the best sense—its practice should be governed, in some degree at least, by the same principles that experience has demonstrated to be almost essential in those arts which are recognised as such. It would seem to be an impropriety in a painter or sculptor to work in two distinct fields, or to attempt to combine two well defined schools in a single creation. The Michael Angelos of the past are few in number; and if their splendid successes afford any ground for regret, it is that their powers were possibly distracted, and not directed toward the accomplishment of one idea.

"The space of a single life is not long enough to enable even the most subtle and active mind to digest the wonderful and complex propositions which meet it at every turn in its wanderings through the labyrinth of learning which make up 'the temple of the law.' The most patient and conscientious labour must fail, unless it be directed toward the exploration of a special part These truths are pregnant with instruction, and are producing their results. Even at this early day in our history, we find that wherever a specialty can be successfully adopted, there are lawyers of ability who seize upon the opportunity, and make it their own.

"In nearly all of our cities we discover that there are certain eminent firms who confine themselves to a single line of practice, or divide their business, each partner having control of a particular subject. We have endeavoured to obtain data which would illustrate how far the above is true, and learn of no less than twelve or more subjects which have been resorted to as specialties; some of them by young lawyers whose career has little more than commenced, and others by those who have grown grey in the courts. We note particularly the following: Admiralty, Patents, Insurance, Testamentary Law, Real-Estate Law, Commercial Law, Bankruptcy, Criminal Law, Corporation Law,

Railroad Law, to which may be added, perhaps, Internal Revenue and Banking.

"We hope the time may come when every applicant for admission to the bar will consider himself called upon to select some special line of practice, and to make its investigation alone the object of his professional life. It may not be practicable to pursue such a course in the rural districts; but in the cities it is not only practicable, but desirable in every respect."

In a new country this division of labour must be of slow growth; but that it will come by degrees, cannot be doubted, and is just as sure in the legal as in any other profession or business: in fact it has already commenced, and with favourable results.

## LAW BILLS OF THE SESSION.

The following Bills have been introduced, and will probably be ready for the assent of the Lieutenant-Governor before they meet the eyes of our readers:—

*An Act to declare the true construction of the Act passed in the thirteenth year of the reign of Queen Elizabeth, and chaptered five, and intituled "An Act against fraudulent deeds, alienations, &c."*

Whereas by the first and second clauses of of the Act passed in the thirteenth year of the reign of Her Majesty Queen Elizabeth, it is enacted as follows:—

"For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions more commonly used and practised in these days than hath been seen or heard of heretofore, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions have been and are devised or contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent, to delay, hinder and defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages penalties, forfeitures, heriots, mortuaries, and reliefs not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargain and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued: All and every feoffment, gift grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them by writing or otherwise, and all and every bond, writ, judgment and execution at any time had or made since the beginning of the Queen's Majesty's reign, that now is, or at any time hereafter to be had, or made to or for any intent or purpose before declared or expressed, shall be from thenceforth deemed and taken only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs by such guileful, covinous or fraudulent devices and practices as is aforesaid, are or shall or might be in any ways disturbed, hindered, delayed or defrauded to be clearly and utterly void, frustate and of none effect; any pretence, colour, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding."

And whereas it is also by the sixth clause of the said Act provided and enacted as follows:

"This Act or any thing herein contained shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels had, made, conveyed, or assured, or hereafter to be had, made, conveyed, or assured, which estate or interest is, or shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, or bodies politic or corporate not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid, anything before mentioned to the contrary thereof notwithstanding."

And whereas there are doubts as to the true construction of the said Act, and it is expedient to declare the true constrution of the same; Therefore Her Majesty, by &c., enacts as follows:

1. The first and second clauses of the said Act apply to all instruments executed to the end, purpose and intent in the said clauses set forth, notwithstanding that the same may be executed upon a valuable consideration and with the intention as between the parties to the same, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same be protected under the sixth clause of the said Act by reason of *bona fides* and want of notice or knowledge on the part of the purchaser.

2. This Act shall not apply to any instrument executed before the date of the passing of this Act.

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*An Act to make Debts and choses in action assignable at Law.*

Her Majesty, &c., enacts as follows:—

1. Every debt and chose in action arising out of contract, shall be assignable at law by any form of writing, but subject to such conditions or restrictions with respect to the right of transfer as may be contained in the original

contract; and the assignee thereof shall sue thereon in his own name in such action, and for such relief as the orignal holder or assignor of such chose in action would be entitled to sue for in any court of law in this Province.

2. The bonds or debentures of corporations made payable to bearer, or any person named therein or bearer, may be transferred by delivery, and such transfer shall vest the property of such bonds or debentures in the holder thereof, to enable him to maintain an action thereon in his own name.

3. "Assignee" shall include any person now being or hereafter becoming entitled by any first or subsequent assignment, or any derivative or other title, to a chose in action, and possessing at the time of action brought the beneficial interest therein, and the right to receive and to give an effectual discharge for the moneys, or the charge, lien, incumbrance or other obligation thereby secured.

4. The plaintiff in any action or suit where the assignment is required by this Act to be in writing, may claim as assignee of the original party or first assignor, setting forth briefly the various assignments under which the said chose in action has become vested in him; but in all other respects the pleadings and proceedings in such action shall be as if the action was instituted in the name of the original party or first assignor.

5. In case of any assignment of a debt or chose in action arising out of contract, and not assignable by delivery, such transfer shall be subject to any defence, or set-off in respect of the whole or any part of such claim as existed at the time of, or before notice of the assignment to the debtor or other person sought to be made liable, in the same manner and to the same extent as such defence would be effectual, in case there had been no assignment thereof; and such defence or set off shall apply between the debtor and any assignee of such debt or chose in action.

6. In case of any assignment in writing as aforesaid, and notice thereof given to the debtor or other person liable in respect of a chose in action arising out of contract, the assignee shall have, hold and enjoy the same, free from any claims, defences or equities which might arise after such notice as against his assignor.

7. This Act shall not be constructed to apply to bills of exchange or promissory notes.

8. This Act shall take effect on, from and after the first day of April next, and shall not affect any suits or proceedings heretofore taken or pending.

## SELECTIONS.

### THE LEGAL PROFESSION IN ENGLAND AND AMERICA.

It is generally known in America, that the profession in England keep up a distinction between attorneys and solicitors on the one hand, and counsellors and barristers on the other, which is not regarded in this country. But we apprehend the extent of this distinction, and how it operates, is not generally appreciated, if indeed it be at all generally understood here. It is not that they do not meet and interchange views, for that they must of necessity constantly do. But they are as entirely distinct as it is possible for any two classes of men to be, who are employed in carrying forward the same enterprises, and are constantly in immediate juxtaposition.

Whether this distinctness and entire separation between these two orders of the same profession is wise or not, or how far it might be modified, with the mutual advantage of both classes, we do not propose now to consider. There has been, and is being now in England, a good deal said, and something done in regard to this question of separation, or consolidation, or modification of this relation. And we may allude to it again in that relation. But for the present we desire to point out how the matter stands there.

In the first place, then, the attorneys and solicitors in England, and equally in Scotland and Ireland, are not members of the bar at all. They are not allowed to sit within the bar, unless it be as matter of indulgence or courtesy, while instructing or consulting one of the barristers; and then they are generally expected to stand, as men stand in the presence of princes, or of marked superiors in age or position. We do not mean that if a solicitor has occasion to hold a very long consultation with the counsel or barrister at the bar, which practically seldom occurs, and out of weariness or forgetfulness he should sink down upon the nearest bench within the bar, or lean against it, he would be admonished by the barrister to stand up, although that may possibly sometimes occur. But generally, we suppose, this or any similar departure from that etiquette would be attributed to some infirmity, either of body or mind, more commonly the latter, perhaps, as where we see one drumming on his hat, or the table, we attribute it to want of culture, or absent-mindedness, or sometimes both. [Rather an extreme way of putting it.]

Nothing can be conceived more uncouth or inconvenient than the entire arrangement of an English court-room. In Paris it is entirely different. There the Palace of Justice is one of the most venerable, roomy, comfortable, and at the same time august of all the public buildings of that elegant metropolis. And the court-rooms in the Palace of Justice are broad and high, and roomy, like the Ame-

rican court-rooms, except that there most of the space is appropriated to the convenience of the judges, while in England, as here also, the judges' quarters are very narrow, and those of the bar more ample.

The difference of the social position of the two classes of the profession in England is world-wide apart. That of the barrister is esteemed among the first class of the gentle and well-bred in the kingdom, coming next to the nobility and gentry itself. All the high judicial offices of the realm and its dependencies come exclusively from the higher order of the profession. No judicial appointments, as a rule, are made from the solicitors. Indeed, none can be so made. Many very eminent judicial officers have from time to time begun life as solicitors, but they have become barristers long before they were made judges, and this by keeping their full terms in one of the Inns of Court or Law Colleges, the only avenue to the higher grade in the profession. Lord Hardwicke was originally a solicitor; and the same is true of Chief Justice Wilde, of the Common Pleas, afterwards Lord Chancellor; and Truro, a very eminent Judge, and we believe the present Mr. Justice Hannen, of the Queen's Bench, was at one time a solicitor, and that he was called to the bench before he had taken his silk gown.* And there are many other similar exceptional cases; but the rule is otherwise.

The distinction between senior and junior counsel, not only in position but in work, is maintained with great strictness and, it might almost be said, severity. A barrister "in stuff," who settles the pleading, and does much of the manual labour in preparing a cause for hearing, the moment he "takes silk," as it is called, ceases from all such work, even in the causes in which he is already engaged, and other counsel must be employed and instructed before the case can proceed, if the delay costs the loss of a trial at the time appointed: at least this is the rule. There may be, now and then, an exceptional case, growing out of the exceptional character of the man; for in England, as everywhere, there will be some exceptional characters, who will insist upon doing their own work in their own way, in spite of all the canons of custom, or the horrors of those who will regard them as little less than barbarians, because they presume thus to transgress the rules of etiquette.

But no solicitor is ever, under any pretence whatever, permitted to intrude himself into any office or function of the barrister, either senior or junior. He may know more law, and be better able to present the case understandingly to court or jury than all the barristers in London or Middlesex; and that is sometimes true in a particular case; but he cannot be allowed to say one word to the court or jury, or to ask one question of any witness, under any pretence whatever. One would just as soon expect him to come into court *in puris naturalibus*, or to utter the direst profanity in the presence of the judges. The thing is not even to be dreamed of. If one happens to have a complicated cause, or a stupid barrister to conduct it, which is not an exceptional case anywhere, he must be content to let his solicitor, perhaps a brilliant man and an elegant speaker, distil his, the lieutenant's, ideas through the cranium of his forlorn senior counsel, who is the only man whom etiquette will allow the court and jury to listen to in the first instance, the other barristers following him in the order of seniority; but the solicitors never, under any circumstances.

There is another rule, too, which looks very queer to an American lawyer. The most condescending and courteous barrister will not, on any account, allow himself to communicate with his client, face to face. That must be done, and can only be done, through the solicitor. The client may himself understand the case better than any barrister, both the law and the fact. He may have a cause of great complication and difficulty. He may sometimes feel that his solicitor is not fortunate either in his comprehension or his mode of communicating with counsel, and that he fails to give the fullest force of the cause, or some particular points of it, to the counsel. No matter; his mouth is sealed. He must commit an inexcusable discourtesy, or lose his cause, and lose it any way he will, if he presumes to violate the cast-iron etiquette and consistency of the English bar. His counsel would throw up his brief in the midst of the trial, if his client should presume to speak to him in court, or indeed out of court, in regard to the cause. It is a thing not to be endured, and no man ever thinks of it, any more than the culprit in the dock, under sentence of death, thinks of redeeming his lost position by an assault upon the judge. The thing is simply impossible. It is not only *fiat justitia ruat cœlum*, but let justice come in its own way, or the sky *will* fall!

Now, all this sounds very ludicrous to an American; more so, if possible, than our practice does to an English barrister. An English barrister in full practice cannot well comprehend how this is endured by American counsellors, for whom he cannot help entertaining a sort of half-and-half respect, after seeing them, day after day, and finding that they sometimes understand the rules of the English law quite as familiarly as himself—whom he cannot help respecting, we say, if he would; but there is certainly no want of courtesy

*Mr. Jeaffreson, in his Book about Lawyers, gives a long list of distinguished members of the bar, who began as solicitors; among whom he enumerates Sir William Grant, Master of the Rolls, and one of the most eminent of all the long line of English equity judges; Lord Mansfield, the most original and self-reliant of all the distinguished common-law judges; Lord Thurlow, for many years Lord High Chancellor, and whose ability and independence gained him respect, in spite of his sometimes coarse wit and constant profanity; and Sir Samuel Romilly, Master of the Rolls, and a law lord for hearing appeals in the House of Lords, although but seldom sitting in that capacity.

among the English bar towards their brethren in America, as many of us have had the very best reason to know and to feel. But still, with every disposition to put himself in our places, he cannot comprehend how such a man, who seems just as courtly and polished and learned as himself, can possibly ever condescend to be dogged by, it may be, a rather rough and disagreeable client for months and years, not only at his office and in office hours, but at his dwelling also; and at all hours and in all places; at home and abroad; in the railway carriage and by the wayside, and by letters innumerable; on all days, *fasti et nefasti;* before church and after church; at baptisms, and fasts, and festivals; not giving him time to eat or sleep in quiet; and ready, as the good patriarch said in his extremity, "to swallow down his spittle" before he dies.

We do not blame our English brethren for escaping, if they can, this awful ordeal. It is too sad a truth to be lightly spoken of; but it is the life of an American lawyer in full practice, and it ought not to surprise any one that the profession in other countries cannot comprehend why we submit to it. But we do, nevertheless.

It is a necessity which grows out of our perfect social equality among all grades and denominations of men. We doubt if the same degree of separation between the solicitor and counsel, or between client and counsel, exists anywhere else, as in England. We are sure this separation is much less rigidly enforced in Scotland than in England. In Edinburgh the members of the bar commonly have their offices at their dwellings, and there meet the solicitors and their clients; and in France there seems to be no reluctance among the most eminent avocats to meet both clients and the subordinate members of the profession, whether avocats or avoués, as the solicitors are there called.

We are not surprised at the recent movement in England to provide a more liberal basis for the intercourse of the different grades of the profession. We have watched the movement with sincere interest; not because we have any hope that it could teach any lesson which it would be possible for us to profit by. This is one of the subjects to which the maxim *nulla vestigia retrorsum* applies with invincible force. It would no more be possible for the American bar to adopt and enforce any rules of etiquette among themselves except those of the most general and unmeaning character, than it would to restore the wig and gown, which are certainly not without their significance and value in the English bar.

There is something about this matter of ceremonial, in America, which seems puzzling, when attempted to be viewed upon any basis of reason or consistency; or, to speak more artistically, in the affected terminology of the schools, when psychologically considered. There is no country in the world, probably, so fond of all manner of ceremonial, pertaining to dining-room and drawing-room manners. And the same is true of all social fêtes, weddings included. The Americans seem willingly to make themselves a world-wide laughing stock, in all these matters, by their very excesses. But the moment you touch any such matter, or official dress or ceremony, unless it be in the army or navy, there seems to spring up a kind of competitive rage, to absolutely run the thing into the ground; as if they could never rest satisfied with the work of demolition. The movement in Congress to dispense with all diplomatic costume, by our representatives abroad, was a striking instance of infatuation in this way, which no foreigner ever will or can comprehend, except as an appeal to the popular prejudice, in our own country, against official ceremonial. That our ministers should be in advance of all others in dress and ceremonial everywhere else but at court, and positively barbarous there, is not easy of explanation, except upon the basis of an appeal to popular prejudice; and in that view it is scarcely respectful to the courts where we claim recognition, since commonly we expect the head of a household to set the pattern of ceremonial in his own house, and others to follow; and this furore in regard to diplomatic costume seems to be nothing less than an attempt to control such matters, both at home and abroad.

We have read Mr. Jevons' letter, upon which the movement in England, just referred to, rests, or to which it is primarily referable, mainly, if not exclusively; and we must confess that it strikes us as eminently reasonable, just and moderate. We cannot comprehend why it may not be adopted. But we know that such changes come about very slowly among long-established institutions in an old and stable order of things. We believe the order of solicitors dates no further back than the days of the Star Chamber; and that at first they had no very well defined office more than some members of the profession have among us, who assume to undertake what others will not or cannot accomplish. We hope we may be pardoned for an allusion to Mr. Jevons', which is mainly of a personal character. He is one of the leading solicitors in Liverpool; a gentleman of high culture and learning, both in his profession and elsewhere. We met no member of the profession in England, either within or without the bar, who seemed to us more calculated to do honor to himself and valuable service to his clients, in any department of practice, than Mr. Jevons. He seemed to us a gentleman whom no terrors could deter from doing his duty, and whom no influence could swerve one hair's breadth from the strict line of duty. There are many other honorable names of a similar character among the solicitors of England; among whom Mr. Edwin Field, so often mentioned by Crabbe Robinson in his Diary and Correspondance, is worthy of honorable remembrance, with whom as well as Mr. Jevons we formed a most delightful ac-

quaintance; all of whom the barristers would gladly welcome to their ranks. But the mass of the solicitors of England must be regarded as a somewhat lower grade of men, both in culture and character. By being restricted to a lower grade in the profession, they seem, while losing caste, to have lost something of that nice and critical self-respect, which proves so indispensable in maintaining a high degree of honor and decorum in any profession or pursuit. And we greatly fear that in combining both orders of the profession in this country, we shall be more in danger of pulling them all down to the lower level, than likely to bring them all up to the higher plane of professional honor and purity. There are, no doubt, in the English bar a very large proportion of members who have almost no occupation, but who live in chambers at the different inns of court, and subsist in a very small way, upon a narrow income, inherited perhaps;—whom you will never see in court or in society; but who are nevertheless pure-minded, clean-handed men; not a whit inferior in point of character to the ablest men in Westminster Hall or Lincoln's Inn. We have no such men, and never can have, whose very presence is a rebuke to vice, and a defence from crime. Many of our hangers-on, upon the contrary, are a dead weight to drag us downwards. And by hangers-on we mean to embrace many who are nominally in the bar, but have gone into other and more hopeful pursuits on the score of emolument or promotion, and among the number, many who have gone into political life and who subsist upon robbery of one kind or another. From none of our number do we receive more fatal wounds.—*American Law Register.*

## CANADA REPORTS.

### *ONTARIO.*

### COURT OF ERROR AND APPEAL.

In re Goodhue.
Tovey *v.* Goodhue.
Goodhue et al. *v.* Tovey et al.

*Right of Provincial Legislature to pass an Act interfering with private rights—Disallowance of Act—Interpretation of Statutes—Rights of parties, infants, not named in Act—Property out of Province not affected.*

[Error and Appeal, January 16, 1872.]

This was an appeal from the Court of Chancery.

The Hon. G. J. Goodhue, on 11th January, 1870, died, seized and possessed of large real and personal estate, partly in this Province, part in England, and part in the United States. He left surviving him, his wife, one son and five daughters, all married, also the wife of a deceased son, a sister-in-law, as well as several infant grand-children. By his will, dated 8th December, 1869, he devised and bequeathed to H. C. R. Becher and Verschoyle Cronyn, their heirs, executors, administrators and assigns, all his estate and property (subject to some specific devises of real estate for the life of the respective devisees, and to certain annuities to his daughter-in-law and sister-in-law), in trust for conversion and collection, and for the investment of the proceeds thereof. He directed the trustees to pay his funeral and testamentary expenses, his debts, certain legacies, the said annuities, and the taxes and insurance premiums on a house and premises devised to his wife. He directed the surplus of the annual income and proceeds of his estate to be accumulated during the life of his widow, and that upon her death the trustees should hold all the trust premises then undisposed of and not otherwise disposed of by his will, in trust to make good any loss that might have arisen and been ascertained in the investment and control of certain moneys which he had paid over to the said Becher and Cronyn in trust for his (the testator's) children respectively, and which sums and the trusts thereof were more particularly described in six certain indentures of settlement dated the 8th December, 1869, and respectively executed by the Testator and the said Becher and Cronyn, and thereafter in trust for all the testator's children who should be living at the decease of his wife, in equal shares, and for the child and children of such of them as might then be dead, in equal shares, such grand-child or grand-children to be entitled to the share which his, her, or their father or mother would have been entitled to if living.

By indenture made after the testator's death, and dated 26th September, 1870, his widow, his surviving son, and his five daughters and their respective husbands, after reciting the will, and after other recitals as to the annuities and legacies, and that the residuary estate amounted to more than $300,000, and that it was desirable that the children should respectively enter into possession and enjoyment without waiting for the death of the testator's widow, and that the several parties had agreed to execute the said indenture, in order to secure to each of the children of the testator the immediate possession of their respective shares in the residuary estate, exclusive of their reversionary interest under the will, they mutually covenanted and agreed that sufficient sums to pay the annuities and other charges created by the will should be set apart and held by the trustees to pay and satisfy the annuities and other charges mentioned in the will, after which they provide for the division of the residue of the trust estate into six parts, and for the allotment of one part to each of the children absolutely in severalty, the share allotted to each daughter being free from the control of her present or any future husband. Similar provision was made for the division of the reserved sums as they severally fall in, and they also agreed to apply to the Legislature of Ontario to confirm the arrangement, and for all necessary and incidental powers.

By the Statute of Ontario, 34 Vict. c. 99, passed 15th February, 1871, it was, after reciting the will at length, and referring to the deed of 26th September, 1870, enacted that the said deed should be confirmed and made valid, and the trustees were authorized and required to carry into effect the provisions thereof; and were, in so doing, saved harmless and indemnified.

Mr. Becher, one of the trustees named in the will, refused to carry out the arrangements contemplated by this deed, and confirmed by the statute. The other trustee expressed his readiness.

Thereupon a petition was presented to the Court of Chancery, by the testator's six children, praying that the trustees might submit their accounts, that a referee might be appointed for making the allotment and distribution provided for by the indenture, that the trustees might be ordered to carry into effect such allotment and distribution, when made, and that all proper directions might be given, enquiries had, and accounts taken.

The Court made an order, granting the prayer of the petition, against which Mr. Becher appealed.

1. Because it was beyond the power of the Legislature to pass this Statute, and it ought not to have been acted upon by the Court.

2. Because it appeared that some of the parties, prejudicially affected by the Statute, were domiciled in Great Britain, and others in the United States of America, and never had their domicile in this Province.

3. Because a considerable portion of the testator's estate was not in this Province at the time of his death.

4. Because the order directs the appellent to commit a breach of trust, without affording him any protection.

A suit was also instituted in the Court of Chancery in the names of three infant grand-children of the testator, not living in the Province, and by Mr. Becher, against all the children of the testator, and against the several husbands of his daughters, and some of the testator's grand-children. The bill, among other things, set forth, that by the Royal Instructions, the Governor-General was directed to reserve for the Royal Assent, or to disallow, any bill of an extraordinary nature and importance, whereby the rights and property of Her Majesty's subjects, not residing in the Dominion of Canada, might be prejudiced: that the petition above stated had not been served on the infant plaintiffs, or infant defendants in this suit, nor was any notice given them. And it prayed for an injunction against any act or thing, by virtue of the order of this Court, on the aforesaid petition, or the statute, or the indenture or deed of distribution, and that the indenture of distribution, statute and order might be declared void, and that the trusts of the will might be carried into effect.

The testator's son, Charles F. Goodhue, demurred to so much of this bill as sought relief in respect of the orders of the Court, as no case is made for relief by the bill, and as the matters thereinbefore specified were adjudicated on the hearing of the petition.

Some of the other defendants also demurred to the amended bill, on the ground that it made no case for relief.

The Court allowed the first demurrer, giving leave to amend, and disallowed the second.

The plaintiffs appealed against the order allowing the demurrer, and the other demurring defendants appealed against the disallowance of their demurrer.

*C. S. Patterson* and *Barker* for the appellant.

*Crooks*, Q. C., and *S. H. Blake* for the respondent.

Chief Justice of Appeal (Draper). — The principal question arises on the first reason of appeal against the order made upon the petition, viz., that it was beyond the power of the Legislature to pass this statute. If the Act can be shown to be a dead letter, the order founded upon its validity falls lifeless and inoperative. It required an Act of the Legislature to alter a will after the death of a testator, which will was at the time of its execution made in strict accordance with the law of the land, and in exercise of his rights and power; for it is not questioned that he had sufficient discretion to make a will, and that he exercised his own free will. He was under no legal incapacity, and it stands admitted that before this Act was passed the will was operative, the estates and interests created and given, vested in the trustees and in the beneficiaries named; and the very deed by which the children of the testator agree to defeat, as far as in them lies, the accumulation directed by the testator, as well as certain contingent interests given by him to his grand-children, provides that it, the deed, shall be of none effect unless the Act desired is obtained from the Legislature.

The life estate of the widow in the mansion and premises in which the testator resided rests on the will alone; for though the Act confirms the indenture of 26th September, 1870, it confirms nothing else, and the indenture does not profess to deal with the devise to her. And further, I cannot refrain from remarking that to every owner of lands or goods in the Province of Quebec, who has a right to alienate the same in his lifetime—is given, by the Statute of 14 Geo. III., chapter 83, s. 10, the right to devise or bequeath the same at his or her death; and that such right was virtually, though not in words, re-enacted and confirmed by the first statute of Upper Canada, which made the law of England the rule for the decision of all matters of controversy relative to property and civil rights. This right the testator had, and he exercised it in a legal manner.

The conduct of the children, beneficiaries under this will, is not marked with that deference and respect for the wishes and intentions of their deceased father which he most probably anticipated and relied upon, and but for which reliance he might have made the disposition of his property in such form as to ensure effect being given to what he might express.

He was absolute owner of a large amount of property. By law he and he only could transfer it, either by his acts while he lived or by his will to take effect after his death, by which latter means he might either fulfil, or disappoint, or qualify the *spem successionis* which blood relationship or kindred might create.

Now, whether by his will or by intestacy (leaving the disposition, regulated by law, to take effect), on his death the rights which up to his death the owner of private property had, are transferred, and any one who prejudices such rights or interferes with their enjoyment is a

wrong-doer to the transferee, as by similar acts he would have been to the prior owner in his lifetime.

These are mere truisms, but they have their application to the present case.

The testator intended that his residuary estate should accumulate during the life of his widow. He intended, also, that the children of any of his children who died in the lifetime of his widow should take their parents' share, and he provided for both these matters in language as clear as that used by him in making gifts to his children. But his intention evidently has met neither their wishes nor their expectations, and, therefore, by the deed of 26th September, in which there are no other considerations suggested than these—because the residuary estate exceeds $300,000: because "it is desirable" that the children should get their shares immediately, rather than that they should wait for the period fixed by the testator, and because they executed that deed to secure to each child such immediate possession by an immediate division of this large residue, they mutually agree on a mode of division which shall bind them; and because it was "doubtful" whether their arrangements could be legally assented to and carried out by the trustees by reason of the coverture of several of the parties, and also from the insufficiency of the powers of the trustees under the will, they agree to apply to the Legislature to confirm *their* arrangements, and to compel the trustees to carry them out in place of those stated in the will; in other words, to abrogate the disposing power of the testator after he had unequivocally exercised it, and to take away the possibility which the will had created in favour of grandchildren—in short, to deprive him of powers which the law had given him.

The concurrence of the widow is really of no importance; for, in fact, the deed does not prejudice any of her interests arising under the will; on the contrary, it seems designed to secure them to the fullest extent.

I think that, on the death of the testator, the rights of his children under his will became vested in interest, though not in possession; but that they were liable to be defeated as to each child if he or she should die in the lifetime of the testator's widow, in which case the interest of such child vested in his or her children, but was still postponed as to possession till the death of the widow. The promoters of the Act sought to have their interest given to them in possession.

The Legislature have passed such an Act as the parties applying desired. They have, in effect, altered the testator's will—not to supply a defect, which rendered it difficult or impossible for his trustees to carry his intentions into effect—but to substitute an intention contrary to what he has expressed, by rendering the accumulation impossible, and making the division immediate which he directed should await the death of his widow.

It would be indecorous to express what it would be fitting for a Court to express if such changes had been procured in the testator's lifetime, by or through any fraud, or imposition upon him. It is now, if a valid Act, the Act of the highest authority—an Act of our Legislature, which has received the assent of the head of the Local Executive on behalf of the Governor-General. It cannot, however, be disrespectful to quote the language of Lord Tenterden. "It is said the last will of a party is to be favorably construed, because the testator is *inops consilii*. That we cannot say of the Legislature; but we may say that it is '*magnas inter opes inops*:'" *Surtees* v. *Ellison*, 9 B. & C., 752.

No English authority has been cited, nor do I think there is any, which would warrant our denying the power to pass such an Act. There may be cases in which the decisions look in the direction of neutralizing the enactment by construction, or in which a long series of decisions have, as it were, fined away the force of the language used, so as apparently to disappoint the intention of its framers; but they do not apply here.

Among the classes of subjects with regard to which exclusive power is given to the Provincial Legislatures to make laws, we find "property and civil rights in the Province," and "generally all matters of a merely local or private nature in the Provinces" I cannot say that the present is not a matter belonging to one or other of these classes.

Nor do I think that we can derive any help from American authorities, though there is much to be found full of valuable suggestion to those who wield the Legislative power. For, as in England, it is a settled principle that the Legislature is the supreme power, so in this Province, I apprehend that within the limits marked out by the authority which gave us our present Constitution, the Legislature is the supreme power. It is on this principle that private Acts of Parliament are upheld as common modes of assurance, being founded upon the actual or implied assent of those whose interests are affected.

But this power of binding private rights by Acts of Parliament is, as Sir W. Blackstone suggests, to be used with due caution, and upon special necessity; as to cure defects arising from the ingenuity or the blindness of conveyancers, or from the strictness of family settlements, or in settling an estate, as where the tenant of the estate is abridged of some reasonable power; or to secure the estate against the claims of infants, or other persons under legal disabilities. In these or the like cases "the transcendent power of Parliament is called in to cut the Gordian knot." (Parl. His., Vol. IV., p, 247.) The restoration of Charles II. gave rise to a good deal of this private legislation, and at the close of the Session (13 Ch. II., 1661) His Majesty observed on the unusual number of Private Bills, "But I pray you let this be done very rarely hereafter. The good old rules of the law are the best security. And let not men have too much cause to fear that the settlements that they make of their estates shall be too easily unsettled *when they are dead*, by the power of Parliaments."

It may not be too much to suggest that, in the absence of a second Chamber, and to secure the interposition of full discussion and patient consideration between the introduction of private

bills and the final act of legislation, there should be some stringent rules as to full particulars of notice, and providing for a long interval between the first reading and the third; and again for ample time for a report by the Law Officers of the Crown, as to the protection of any private interest involved. These, however, are not questions for our consideration.

"As to what has been said as to a Law not binding if it be contrary to reason, that can receive no countenance from any Court of Justice whatever. A Court of Justice cannot set itself above the Legislature. It must suppose that what the Legislature has enacted is reasonable, and all, therefore, that we can do, is to try to find out what the Legislature intended. If a literal translation or construction of the words would lead to an injustice or absurdity, another construction possibly might be put on them, but still it is a question of construction, and there is no power of dispensation from the words used."—(*Per* Lord Campbell in *Logan* v. *Burslem*, 4 Moo. P.C. C., p. 296.]

Mr. Sedgwick, in his learned and admirable treatise upon Statutory and Constitutional Law, argues, and I think unanswerably, that the Judiciary have no right whatever to set aside, to arrest or nullify a law passed in relation to a subject within the scope of Legislative authority, on the ground that it conflicts with their notions of natural right, abstract justice, or sound morality."—(P. 187.)

Again, Chancellor Kent (1 Com. 408) writes, "Where it is said that a Statute is contrary to natural Equity or reason, or repugnant, or impossible to be performed, the cases are understood to mean that the Court is to give them a reasonable construction. They will not, out of respect and duty to the lawgiver, presume that every unjust or absurd consequence was within the contemplation of the law; but if it should happen to be too palpable to meet with but one construction, there is no doubt in the English Law of the binding efficacy of the Statute."

A late British writer has remarked, it may be argued, that a second Chamber is considered a valuable element in the Constitution, (in the mother country,) and that as to its importance he makes no dispute. "On the principle of a division of labour it is wanted for the despatch of business, and it is also required for the interposition of discussion and delay between the hasty introduction of bills and the final act of legislation."

In regard to the absence of a second chamber, it may be further observed, so far at least as estate or private bills are concerned, that as such bills involve ordinarily no mere party political considerations, all those whose interests are or may be touched have a right, in the first place, to expect a careful examination of their contents, on the part of the Provincial Executive —and a withholding of the Royal assent if it is found that the promoters of the bill are seeking advantages at the expense of others whose interests are as well grounded as their own. And further, if from oversight, or any other cause, provisions should be inserted of an objectionable character, such as the deprivation of innocent parties of actual or even possible interests, by retroactive legislation, such bills are still subject to the consideration of the Governor-General, who, as the representative of the Sovereign, is entrusted with authority,—to which a corresponding duty attaches, to disallow any law contrary to reason, or to natural justice and equity. So that while our legislation must unavoidably originate in the single chamber, and can only be openly discussed there, and once adopted there, cannot be revised or amended by any other authority, it does not become law until the Lieut.-Governor announces his assent, after which it is subject to disallowance by the Governor-General.

I can find neither principle nor authority upon which to hold that the Courts of this Province have jurisdiction to override or pronounce nugatory Acts passed by the Legislature in relation to matters coming within the classes of subjects enumerated in the 92nd section of the British North America Act. We have not failed to consider the exception in the 129th section in connection with 14 Geo. III, c. 83, s. 10; but we think that we could not hold that these provisions place beyond the power of the Provincial Legislature an Act like that in question.

I have not omitted to consider the difference of the language used in, as well as the substance of the clauses of the British North America Act, 1867—on erecting the Parliament of the Dominion, and the Legislatures of the respective Provinces.

In and for the Dominion, there is one Parliament, consisting of the Queen, the Senate, and the House of Commons, and the Sovereign being one branch of this Parliament, provision is made for the Royal assent being given by the Governor-General in the name of the Sovereign, whose commission, under the Great Seal of the United Kingdom, he holds, to such Bills as the two Houses pass, or for the reservation of any such Bills for the signification of Her Majesty's pleasure. An Act assented to by the Governor-General may, however, be disallowed by the Queen in Council, within two years after it has been received by one of the principal Secretaries of State, to whom it is the duty of the Governor-General to transmit it.

But, in the Province of Ontario, there is constituted a *Legislature*, not as in the Dominion, a Parliament, which, Legislature consists of the Lieut.-Governor—and of one House, styled the Legislative Assembly of Ontario.

As to assenting to Bills passed by the Legislative Assembly, it is provided for only under sec. 90 of the British North America Act, 1867, which extends the provisions of that Act, regulating (among other things) the assent to Bills, the disallowance of Acts, and the signification of pleasure on Bills reserved, to the Provincial Legislatures with some alterations and substitutions. The assent to bills is regulated by sec. 55 of that Act, thus: "where a bill passed by the House of Parliament is presented to the Governor-General for the Queen's assent, he shall declare according to his discretion," &c., &c. Reading this, together with sec. 90, a doubt may possibly be suggested, whether in relation to the Provincial Legislatures, it should be read—"where a Bill passed by any of the Provincial Legislatures is presented to the Lieut.-Governor for the Governor-General's assent—he

shall," &c. This would apparently be the literal substitution provided for by sec. 90, and if correct, this consequence would follow: the "Governor-General" being substituted for "the Queen," the Lieutenant-Governor would declare "that he assents to the Bill in the Governor-General's name, or that he withholds the Governor-General's assent, or that he reserves the Bill for the signification of the Governor-General's pleasure." I am not called upon to put a construction on these two clauses, nor shall I offer any opinion with regard to the proper construction as to the assent to Bills.

As to disallowance, the clauses as to the Lieutenant-Governor's duty seem clear, that he is required by the first convenient opportunity to transmit an authentic copy of each Act assented to by him to the Governor-General, and if the Governor-General in Council within one year after the receipt thereof by him thinks fit to disallow the Act—such disallowance (with a certificate of the Governor-General of the day on which the Act was received by him) being signified by the Lieutenant-Governor by speech or message to the House of Assembly or by proclamation, shall annul the Act from and after the day of such signification.

But whether the power of assent or disallowance be, under the British North America Act, as regards Acts of the Legislature of Ontario, absolutely vested in the Governor-General so that he exercises such authority as given to him by that Act—and as in regard to the Parliament of Canada acting in the name and behalf of the Queen herself as the Lords Commissioners do in the mother country when Her Majesty cannot attend in person—makes, as far as I can see, no difference in the authority of the statutes when finally assented to. The statutes of the Legislature of Ontario are binding on all the residents of that Province, if made in relation to the subjects enumerated in the 92nd section of the British North America Act, 1867.

Assuming this Act to be in force, there is a difference of opinion between us as to its effect. As I understand, some of my brothers place a much more limited construction upon it than I can agree in.

Their view is, as I understand, chiefly founded upon the eighth clause of the deed of 26th September, 1870, as set out in the schedule to the statute in question, which recites doubts whether the intended arrangement for the settlement and distribution of the estate could be carried into effect by the trustees *by reason of the coverture of several of the parties thereto* and from the insufficiency of the powers of the trustees under the will, and it is contended that the first section of the statute, by which that deed "is confirmed and declared to be valid," and the trustees authorized to carry into effect the several provisions thereof, has no greater effect than to remove the objection as to coverture, and to enlarge the powers of the trustees so as to carry into effect such matters as were doubtful for the cause suggested.

It will not be disputed, that this being a private Act, ought to receive a strict construction so far as the interests of all parties affected by it are concerned. The intention of the Legislature, to be collected from the general object and from the language of the first section, which alone is in question, must decide our judgment; and the recitals of the Act may, and I think must be taken into consideration to aid in arriving at that intention.

Now the first thing recited in the statute is the petition praying for relief, which sets forth the testator's will containing the provision already set out, by which he provided for the conversion and collection of his estate, and after other provisions, devised and gave the same in trust for all his children who should be living at the decease of his wife, in equal shares, and the child or children of such as might then be dead, in equal shares, such grandchild or grandchildren to be entitled to the share his or her or their father or mother would have been entitled to if living. The petition further sets forth that the shares of the said children are considerable, and that it is desirable they should enter into possession and enjoyment of the same, and that this should not be postponed until the decease of the widow; that to secure to the children such immediate possession and enjoyment of their respective shares, the petitioners respectively executed a certain instrument dated 26th September, 1870—a copy of which is set forth in a schedule annexed to the Act—and they prayed that an Act might be passed *to confirm the indenture and the several provisions thereof, and to effectuate the same.*

The next recital is in these words, "*And whereas it is expedient to grant the prayer of the petitioners,*" and immediately following, the first clause, confirming "the said indenture," declaring it valid, and authorizing and requiring the trustees to carry into effect the several provisions thereof.

Now what was the prayer of the petitioners? The will, in very clear language, postpones the possession and enjoyment by the petitioners of this residuary estate until the death of the testator's widow. The petition states that it is desirable that the petitioners should enter into possession and enjoyment, and that this should not be postponed, and prays the confirmation of the deed of the 26th September, and the provisions thereof, and to effectuate it.

The deed, so far as the petitioners are seeking the aid of the Legislature for their individual benefit, provides for the division of the above-mentioned residue of the trust estate (exceeding, as is stated, $300,000), by allotting the same into six separate shares, and as soon as these allotments are made, for their distribution in a mode provided for, and for the conveyance of a share to each party according to the distribution and allotments, and this deed the Act confirms and declares to be valid.

According to my view of the intention of the Legislature, derived from the recitals to the Act, and this short but comprehensive clause, they intended, and have enacted that the division among the testator's children should not be postponed as the will directs, but should be immediate, although on the face of the will a contingency is foreseen and provided for, which the Act, as I understand, advisedly defeats.

I have already stated the opinion, as I understand, held adverse to the construction I place on the Act.

I must observe that the recital relied upon for this opinion is not a recital in the Statute, but in a deed of the petitioners, that the language of it is not the language of the Legislature, nor is it incorporated by the Legislature into their Act; it is set out in a schedule as the thing confirmed and made valid by the Act, but not as a part of it. I have looked with some care into authorities without meeting one which would lead me to treat the recital in this deed as a part of the Act. I do not know whether it is contended that this deed is to be construed, owing to the recital, as only meant to do away with the disability of coverture, and to enable the trustees to act as if such disability did not exist, but I have not so understood the opinions, hereafter to be given, of those from whom I have the misfortune to differ.

I must further add, that no such point, either as to the deed or the Act, is raised by the reasons of appeal, nor was it, to my recollection (though I would not rely on that after the lapse of six or seven months), alluded to during the argument.

It has been suggested that the order on the petition was *ex parte;* but that is not so, as the trustees were respondents, and Mr. Becher appeared by his counsel, and opposed the petition in the interest of the grandchildren. The point, that all the grandchildren, though minors, should have been served with the petition and made parties to it, is not taken in the reasons of appeal, nor was it urged before us in argument. All who might be interested could not have been served; as future born grandchildren would take equally with those *in esse* now; and to serve the infants now living with their parents, in order to give them an opportunity of opposing the petition of their parents, would obviously have been useless for any practical purpose. By the practice of the Court of Chancery, as regulated by the 61st Consolidated Order, and as decided in *King* v. *Keating*, 12 Grant 29, and other cases, trustees sufficiently represent their *cestuis que trust*, though the Court of Chancery, if it thinks fit, may order any of the *cestuis que trust* to be made parties also; and it is plain, in the present case, that the Legislature did not mean that all should be served, for the Act, in express terms, left it to the Court to direct to whom notice of the petition should be given.

We are, however, of opinion that the Act does not affect real or personal property not being within this Province. A majority of the Court are of opinion that this order is appealable. This being so, I am of opinion that it should be varied—by striking out the fifth section and inserting in lieu thereof, "that after such allotment and distribution, the said Master do convey and transfer the respective shares of each of the said petitioners, according to the respective natures of the several parts of such share, unto and to the use of each of the said petitioners, their respective heirs, executors, administrators and assigns, absolutely in severally, the shares of each of the said petitioners, being daughters of the said testator, being so conveyed and transferred for their respective separate use, free from the control of any present or future husband.

I am further of opinion that Mr. Becher was doing no more than his strict duty in opposing this petition, and also in bringing before the Court by means of both appeals the very important question involved in this case and the suits of *Tovey et al.* v. *Goodhue* and others, and that he should have all his costs, charges and expenses in relation to the proceedings in both cases and the two appeals, to be deducted from that portion of the residuary estate which is to be distributed under the said order.

Morrison, J.—I entirely agree with so much of the full and able judgment of the learned Chief Justice of this Court as applies to the power of the Legislature to pass the statute in question, and I concur in the remarks of the Chief Justice made in reference thereto; but, with the greatest respect, I cannot acquiesce in the conclusion that the learned Chief Justice has arrived at. I am of opinion after much consideration of the case; that the order of the Court below should be reserved, for the reasons about to be stated in the able judgment of my brother Gwynne, whose judgment I had an opportunity of reading and considering. I have only, in addition, to observe that, although we had much argument at the hearing upon the constitutional right of the Legislature to pass the statute under consideration, little or no notice was taken of what I think is the real matter in question—the rights of the infant appellants under the will of the testator, and the effect of the Statute upon those rights. It seems to me that to hold that the infant appellants are barred and deprived of their rights by virtue of the Statute—which in effect is the result of the order of the Court below—would be saying that which the Legislature has not said, and that which, in my opinion, the Legislature did not intend, and has not enacted or declared. In order to bar these infant appellants of their rights, and defeat the intention and object of the testator, the statute, in my opinion, should contain an express and explicit enactment to that effect, specifically referring to the appellants. I find no such provision or declaration in the Act; and I will further add that I think it is highly improbable that the Legislature had in their minds an intention to defeat the object and effect of the testator's will; and it is only reasonable to assume that if the Legislature proposed violently to interfere and deprive the grand children of their rights, it would have expressly declared such to be one of the objects and purposes of the Statute. Our Legislature in order to prevent any such injustice, by 31 Vic. cap. 1, sec 31, declared that no parties should be affected by the provisions of a private act such as this, unless therein mentioned or referred to; and if that section had been inserted in this act, it could not be argued that the rights of these infants were affected.

Galt, J. — I concur in the judgment of the Chief Justice, as well as in the remarks made and reasons given for his conclusion. I think the completion of the matter, after allotment, &c., should be made by the Referee, in order fully to relieve the trustees from all further trouble and responsibility.

Gwynne, J.— What has been contended on the part of the defendants in the above suit is, that the Legislature, in the exercise of what is

termed its paramount authority, has arbitrarily, by the Act alluded to (34 Vic. chap. 99), transferred to the testator's children the whole of the testator's residuary estate, although he had not by his will devised it to them, and has deprived the testator's grandchildren of their hopes of partaking in the testator's bounty, by stripping them of all possibility of enjoying estates which, in a given event which may yet happen, the testator had devised to them.

Conceding that the Legislature has the power to commit such a palpable injustice, I cannot be persuaded that the Act in question has done so, unless I find such an intent plainly and unequivocally stated, in language so express as to admit of no possible misconception, and no shadow of a doubt.

It is always to be presumed that the Legislature, when it entertains an intention, will express it in clear and explicit terms: *Gas Co.* v. *Clarke*, 11 C.B,, N.S. 827. When an Act of Parliament interferes with, or when the contention is that it interferes with, private rights and private interests, it ought to receive a most strict construction in so far as those rights and interests are concerned; and so clearly is this the established doctrine of the Court, that Lord Justice Sir G. Turner, in *Hughes* v. *Chester* and *Holyhead Railway Company*, 8 Jur. N.S. 221, said that it was unnecessary to refer to any cases upon the point, and that they might be cited almost without end.

In *Eton College* v. *Bishop of Winchester*, Loft., 401, it is said, that the construction of a Private Act is to be governed by the principles of common law, and applied to the subject in a manner analogously to the rules of interpretation of a private deed or conveyance. The Court knows nothing of the intention of an Act, except from the words in which it is expressed.

In *Edinburgh and Glasgow Railway Company* v. *the Magistrates of Linlithgow*, 3 Macqueen, H. of L. 704, Lord Truro C.J., says, that a recital, even in an Act of Parliament, will not bind those who are not within its enacting part. And our own interpretation Act. Ontario Statute. 31 Vict., ch. 1, sec. 31, enacts that if an Act of the Legislature of Ontario be of the nature of a private Act, *it shall not affect the rights of any persons, such only excepted as are therein mentioned and referred to.*

The whole frame of the deed which the Act confirms is based upon the assumption that the estate of the testator's children, living at *his* death, in the testator's residuary real and personal estate, is a vested estate, and that the period of distribution only is postponed until the decease of testator's widow.

The deed recites, among other things, as the occasion of the provisions of the deed, as follows:—"And whereas all the said testator's children have attained the full age of 21 years; and whereas (after paying and providing for all out-goings) the residuary estate is of large value, amounting to more than $300,000, *and the respective shares of the testator's said children therein are* considerable, and it is desirable that they should respectively enter into the possession and enjoyment *of the same, and that this should not be postponed until the decease of the said widow of the deceased;* and whereas the several parties hereto have respectively assented and agreed to enter into and execute these presents, *in order to secure* to each of the children of the testator *the immediate possession* and enjoyment *of their respective shares in the said residuary estate.*" The deed, for the reasons here recited, then proceeds to declare, among other things as follows:

"Now these presents *therefore* witness, and it is hereby respectively covenanted and agreed upon, by and between the said respective parties and their respective heirs, executors and administrators, as follows:"—Fifth—"That the residue of the said trust estate, other than is hereinbefore excepted, shall be divided into six separate shares or allotments of equal value, or as nearly so as circumstances will permit, and such division into the said allotments shall be made as soon as conveniently may be by the said trustees; and in making such allotments, the trustees shall distribute the said trust estate *in specie, as the same may then happen to be*, and without converting or collecting, or assuming to convert or collect *the same or any part of the said trust premises, and without making any equal partition of the said trust estate* which consists of realty, but treating and considering the whole of the said residuary estate to be allotted as converted into personalty, and of the money value ascribed by the said trustees to each part and parcel thereof; and that in case the said trustees shall neglect or refuse to make such allotment or distribution, or in case they should differ about the same, or in case of the death or removal from this Province, or the resignation of either of them the said trustees, in any of such cases any of the parties to these presents, other than the party of the first part, (that is the widow), may apply to the Court of Chancery or a Judge thereof, in a summary manner, *to appoint one or more referee or referees, by whom such allotment* may be *validly* made; and that in case of any difference as to which of the said several allotments *shall be taken by any of the said children, for his or her shares* respectively, the same shall be determined by lot or drawings by the said trustees, or referee or referees, in the presence of at least three of the said children.

6th. "When the said several allotments shall have been determined, and the respective shares distributed or assigned to each of the said children *then* the said respective shares to which the children are before said to be beneficially entitled in common, shall be duly conveyed and transferred according to the several natures of the respective parts of such shares, unto and to the use of each of the said children, their respective heirs, executors, administrators and assigns absolutely *in severalty.*"

Now, throughout the whole of this deed there is not a word to indicate that there was any doubt entertained as *to the vested* estate of the testator's children, living at his death, in the residuary trust estate; true, the will is recited, whereby it appears that the trusts of the will are "for all the testator's children who should be living at the decease of the testator's wife, in equal shares, and the children of such of them as might then be dead, such grandchild or grandchildren to be entitled to the share his, her or their father or mother would have been entitled to if living;" but the deed treats this

as an estate vested in interest in the testator's children living at his death, with the period of possession only postponed until the widow's death, and regards the interest of the grandchildren as being no other than by way of transmission through their parents, the testator's children. The object of the deed, treating the estate of the testator's children to be vested under the will, *is simply to expedite the period of possession, and to obtain a transfer to each of his or her share* in specie; that is whether real or personal estate, to be so conveyed as to pass according to the nature of the estate—if real, to each child's heirs—if personal, to his or her executors and administrators. These are the only deviations from the trust purposes declared by the testator as to his residuary real and personal estate by his will, which are professed and declared to be within the contemplation of the deed, and that this was the whole scope and contemplation of the deed appears clearly, as I think, from the eighth paragraph, viz: "Inasmuch as it is doubtful whether the hereinbefore ageed upon arrangements for the settlement and distribution by the said widow and children of the said estate of the said testator can be legally assented to or carried into effect by the trustees, BY REASON OF THE COVERTURE of several of the said parties hereto, and also *from the insufficiency of the powers of the said trustees under the said will*, it is hereby agreed that an application shall be made to the Legislature of the Province of Ontario *for an Act to confirm* these presents, and for such power as may be incidental thereto, *or necessary in the premises.*"

The object of the deed, then, was to expedite the period of possession of estates claimed to be and treated as vested in interest in the testator's children, and to obtain an *immediate* transfer of such vested estates in both the real and personal estates as existing, instead of in personalty only, after conversion of the realty into personalty; and the declared object of the Act, which was to be applied for, was to *confirm that deed*, and effect those purposes, notwithstanding the doubts as to its validity by reason of some of the parties being *femmes covertes*, and by reason of the insufficiency of the powers given to the trustees to enable them to transfer the estate to the parties to the deed (although entitled to such vested interests) sooner than was directed by the will.

The petition to the Legislature, as set forth in the Act as the reason for the passing of the Act, stated, among other things, the execution of above deed, which was set out in full, and that the object of the deed *was to secure* to each of the children of the testator *the immediate* possession and *enjoyment of their respective shares* in the said residuary estate, without being postponed until the death of testator's widow, and it *therefore* prayed that an Act might be passed in order to confirm the said indenture and the several provisions thereof, and to effectuate the same. It was thereupon enacted—"That the said indenture of the 26th Sept. 1870, in the schedule of the Act set forth, is hereby confirmed and declared to be valid, *and the said trustees* of the estate of the said Honourable George Jervis Goodhue, deceased, *are hereby authorised and required to carry into effect the several provisions thereof*, and in so doing are hereby saved harmless and indemnified in the premises."

Now, in so far as the question of the deed is concerned, all that the Act of the Legislature professes to do is, as it appears to me, to confirm it and make it valid, notwithstanding the doubts therein recited as to its being valid for the reasons therein stated without an Act,—to remove, in effect, simply the suggested doubts.

The Act then proposes to do no more than the deed itself purports to do, and as the deed itself suggests, it could have effectually done but for the doubts suggested. The removal of the doubts was all that was suggested to be necessary to give it complete validity. Now, under these circumstances, what is the effect of the enactment which declares the deed to be valid? A deed is said to be valid, I take it, when it it is effectual to bind the parties thereto and their privies to the extent of the purposes, scope and intent of the deed as declared therein. A deed *inter partes* has no validity or binding force upon any persons not parties thereto. To be bound thereby, a person must be a party thereto or in privity with a party. Infants and married women, although parties to and executing a deed, may not be bound by the deed by reason of their legal infirmity as infants or married women; but no one, whether infant or married woman, can be in any manner affected by a deed touching and concerning matters in which they have an interest, unless they are parties thereto, or unless in virtue of some *express provision* of an Act of Parliament, as for instance, the Act enabling tenants in tail to bar the estate tail and all remainders. The effect of the declaration in the Act is, as it appears to me, at most to declare and enact that the deed shall be valid and binding according to its tenor and effect, true intent and meaning, *upon the several parties* thereto, notwithstanding the doubts expressed as to married women who had signed it not being bound, and upon the trustees of the testator's estate, notwithstanding that they were not, in their character of trustees, parties assenting thereto, in so far as to authorize them to transfer to the parties to the deed in severalty such shares as were vested in them in interest by the will, without waiting for the decease of testator's widow; but the Act does not profess to deprive, and therefore cannot be construed to have an effect so contrary to all our ideas of legislation and of natural justice as to deprive any persons, least of all infants, who are contingently made objects of the testator's bounty, of the prospective benefit of such bounty, nor does it profess to vest, and therefore we cannot construe it to have an effect so contrary to all our ideas of legislation and of natural justice as to vest in any persons an estate and interest in the testator's estate, which the testator has not himself vested in such persons, but has made contingent upon an event yet in the future.

In the absence of an *express* legislative enactment, we cannot, I think, having regard to the recognized rules of construction of all instruments, hold that persons who, depending upon a contingency which has not yet happened, may be entitled to share in the testator's residuary

estate, are deprived of such interest by a simple declaration that a deed, to which such persons are not parties, or in privity with any of the parties, and which treats the estate as one in which they never could have any interest, and as if all persons interested therein were parties executing the deed, *should be valid*. Then the Act authorizes and requires the trustees of the testator's estate to carry into effect the several provisions of the deed. Now, what are these provisions? This question involves the consideration of the construction of the deed, an enquiry as to what is its true intent and purpose, nature and effect. To ascertain this purpose we must look at all the recitals, and at the whole scope and object of the deed as expressed therein, and doing so, we find it to be declared to be to expedite the personal possession and enjoyment of estates *which the deed treats as already vested in interest*, and to obtain a transfer of *such vested estates to each* of the parties entitled to the testator's residuary real and personal estate, in realty and personalty as it exists, and not wholly in personalty after conversion of realty into personalty. The express object of the deed is declared to be "*to secure to each of the children* of the testator the immediate possession and enjoyment of *their respective shares* in the said residuary estate, instead of having the period of such possession and enjoyment postponed until the decease of the testator's widow." Such being the declared object, scope, and intent of the deed, the trustees are authorized and required to carry such object into effect, and the Act is declared to be their warrant for so doing. Such, then, being the provisions of the deed, according to the proper construction to be put upon it, it cannot be held that a clause in the Act authorizing and requiring the trustees to carry such provisions into effect, notwithstanding that the testator's will had, as was suggested, directed them to defer the period of possession, should have the effect of requiring them to transfer the testator's estate to persons to whom he had not devised it, and of saving them harmless as against the claims of the parties to whom he had devised it, if they should make such a disposition of the estate of which they were made trustees.

Reading the Act by the light of the recitals contained therein, as to the scope, object and purpose of the deed, and as to the *necessity therein stated* for applying to the Legislature to confirm it, by reason of some of the parties being under coverture, and of doubts existing whether under those circumstances they were bound by the deed, we must, I think, hold that what the Act professes to authorize the trustees to do is not to deprive the infant plaintiffs of the bounty which, in a given event, the testator devised to them, but to divide the residuary estate into six equal shares, and to transfer to the several parties to the deed the several shares *which were vested in them in interest*, if they were vested in them in interest, as the deed treated them to be, thus expediting only the period of enjoyment. Without the most unequivocal and express language, I cannot venture to assume that the Legislature contemplated such an injustice and such a departure from all the rules and principles governing courts of justice, as to deprive the testator's infant grandchildren of the estates devised to them by the testator's will, in the event of their parent, the testator's child, not surviving his widow. The intention of the Act, to be collected from its recitals and enacting clauses, is, as it appears to me, to authorize such shares in the testator's estate, *as the parties to the deed had become entitled to in interest by the will, as the deed treated them to have become*, to be transferred to them in possession, in anticipation of the time specified in the will, and in specie as now existing.

It is, as it appears to me, an unwarrantable interpretation of the intent of the Legislature, and a strained construction of the language used, to hold that they contemplated by force of a Legislative Act to transfer to B. an estate, which in a given event, which may yet happen, the testator had devised to others, and which he had not at all devised to B., otherwise than contingently upon the happening of an event which has not yet happened, and by possibility may never happen; nor does the Act authorize the Court, contrary to its ordinary course and practice, to administer the testator's estate upon a summary application, and in the course of such administration to transfer to B. the immediate possession and absolute enjoyment of an estate which, under the terms of the testator's will, was not vested, and by possibility may never become vested, in interest in him, but which may become vested in others. The Act, in my judgment, gives no jurisdiction to the Court of Chancery to administer and distribute the testator's estate to the prejudice of parties who may become the sole parties under the will, or to deal with such interests in the absence of such persons, and without hearing them or notice given to them; nor do I find anything in the Act which can with propriety be said to divest the Court of Chancery of its high privilege of being the guardian of the rights of infants, or *to compel it* to dispose of those rights to others without suit and a deliberate judgment recorded, and in the absence of the infants. The third section of the Act authorizes any of the parties to the indenture, or their respective representatives, or the said trustees, or either of them, or their successors *under the trusts of the said will* of the said G. J. Goodhue, from time to time to apply in a summary manner to the Court of Chancery or to a judge thereof in chambers, upon notice to such other of the said parties as the said court or judge may direct—but for what purpose? The section in question says this summary application may be made only "in respect of any matter or thing for carrying into effect the provisions of the said indenture *connected* with the management of the trusts of the said will, *or* in the disposition of the proceeds of the said trust estate, or of any part thereof, or in respect of any matter or thing connected therewith, or in respect of which the said *court or judge would have jurisdiction, in case a bill or other proceeding was instituted in the said court*, and obtain the order and direction of the said court or judge thereupon; and such *order may*, amongst other things, require the said trustees to submit statements and accounts of the said trust estate and

the management thereof, and may generally be to the purport and effect *which, in the discretion of the said court or judge*, shall seem meet.

Now, it is an undoubted principle of natural justice, that the rights of parties interested in property, or claiming so to be, shall not be adjudicated upon or disposed of by any court of justice in the absence of such parties, or without their being given an opportunity, to assert their rights. To attribute to the Legislature an intent of subverting this universally recognized principle is what I cannot permit myself to do, unless I shall find that intent expressed in such language as is incapable of being mistaken; if the language be doubtful, I must construe the doubtful language so as to maintain and support inviolate a principle so universally recognized, instead of to subvert it. Bearing in view this sacred principle, and seeing no intention expressed in the Act upon the part of the Legislature to subvert it, this third section presents to my mind the clearest evidence that the Legislature was proceeding upon the basis adopted as the frame of the deed, and the assumption therein apparent, that all parties really interested were parties to the deed, when it provided that the notice of the proceedings in the court was to be given only to the parties to the deed and the trustees. I cannot interpret the language of this third section as providing that the interests, if any there be, of persons strangers to the deed shall be adjudicated upon or disposed of by the court in their absence, or that any such adjudication shall, contrary to the principles of natural justice, be binding upon such strangers so kept in ignorance of all such proceedings. The language of the section seems to me to expressly confine and limit the jurisdiction of the court and judge to the jurisdiction which, according to the established and well-known principles of equity, the court would have, in case a bill were filed for the like purpose, and if a bill were filed, all parties having any interest in the subject-matter in respect of which the jurisdiction of the court was invoked, should have to be brought before the court; moreover, it is apparent from the words "and may generally be to the purport or effect which *in the discretion* of the court or judge shall seem meet," that everything which the court or judge shall do in the premises is left open to the inquiry and the adjudication of a superior tribunal, as to the manner in which, in the given case, such discretion has been exercised; and I must say, that an order made in the absence of infants claiming to be interested in a testator's estate, to which order, when made, is attributed, rightly or wrongly, the effect of depriving the infants of the right to have the question of their asserted claims inquired into and adjudicated upon by the court, upon a bill filed for that purpose, according to the ordinary practice of the court, can in no sense, in my judgment, be said to be an order made in the exercise of a sound discretion, and can have no effect whatever so as to bind or bar the right of the infant claimants to have their claims entertained and adjudicated upon in a suit instituted on their behalf.

But this third section presents further evidence to my mind that it was not the intention of the Legislature to subvert the testator's will by transferring to his children estates not vested in them in interest by the will, and which, by possibility, might become the property of his grandchildren, and not of his children, but simply to expedite the enjoyment of estates assumed to be vested in interest; for the trusts of the will are, by the third section, regarded as still continuing in existence, and, as I read the Act, in all other respects than in so far as the authorizing the transfer of the immediate possession of estates, vested in interest, is an interference with these trusts. It is in respect of the management of the trusts of the will, or the disposition of the proceeds of the trust estate, or in respect of any matter connected therewith, or in regard to which the court would have jurisdiction in case a bill were instituted in the court, that the summary proceeding is authorized. Now, if the court would not have, and it cannot be contended that *it would have*, irrespective of the Act, jurisdiction on a bill filed by the children against the trustees, to compel them to convey to the testator's children estates not devised to them, then the statute gives no jurisdiction to do so by the summary proceeding authorized, and an order directing such a transfer to be made is, in my opinion, an order beyond the jurisdiction of the court to make.

But whatever may be the decision of the court upon the hearing of the cause instituted by the infants, and the trustee, Mr. Becher, who in the discharge of the trust reposed in him by the testator appears to have been in duty bound to invoke by bill the interference of the court—whatever may be the proper construction to put upon the statute, whether or not it shall be found that its operation is absolutely to deprive the testator's grandchildren of the benefit of the testator's bounty, although they, and they only, by reason of all their parents, the testator's children, dying in the life-time of his widow, should prove to be the persons entitled as devisees of the whole of the testator's residuary estate, the infant plaintiffs and their trustee have, in my judgment, an undoubted right to have the adjudication of the court by a decree upon that subject, before the infants, who are no parties to the deed to which the statute relates, and who are not mentioned or referred to in the statute, can be said to be barred of rights which, if any they have, exist wholly independently of the deed, and not by privity with any of the parties thereto.

In so far as the bill and the demurrers thereto are concerned, the case, as it seems to me, may be thus stated. That certain of testator's grandchildren, who may become entitled under the trusts of the will to certain estates thereby devised, and one of the trustees of the will, who is not acting in concert with testator's children file their bill, in effect alleging that the testator's children, claiming to be, and alleging that they are, beneficially seized of estates vested in interest (with period of enjoyment postponed) in the testator's residuary estate, have caused to be prepared a deed which they have executed, whereby, reciting that *they are* entitled to estates vested in interest in the testator's residuary estate, with the period of entering into posses-

sion and enjoyment only postponed, it is agreed among themselves that they shall enter into immediate possession of such estates vested in interest in them, without waiting for the arrival of the period named in testator's will for that purpose, and that they should apply to the Legislature to confirm the deed, upon the representation that the confirmation of the deed by the Legislature would be necessary for the reason only of some of the parties to the deed being *femmes covertes*, and of the *insufficiency* of the powers conferred by the will upon the trustees, and upon the further representation that all that was desired to be done was to secure the immediate possession of estates already vested in interest in testator's children, that by such representations they had applied to the Legislature for, and upon the faith of the representations procured an Act of the Legislature, which, after reciting the scope, object and purpose of the deed to be as above, and the alleged infirmity in the deed, which occasioned the sole necessity for applying to the Legislature, enacts and declares that the said deed, which is set out in the Act, with all its recitals therein contained, shall be valid; that testator's children thereupon, (still representing their estates under the will to be vested in interest,) by summary application upon petition, without notice to the infant plaintiffs, and without making them parties to the proceeding, applied for and obtained from the court what the infant plaintiffs allege and insist was an *ex parte* order, whereby it is ordered that the testator's residuary estate shall be divided into six parts, that is, as many parts as there are children of the testator, and that the trustees of the will shall immediately transfer and convey one of such parts to each of testator's children absolutely in severalty; that the infant plaintiffs and the trustee, Becher, contend that the testator's children have not, under the testator's will, an estate vested in interest in his residuary estate or in any part thereof, and that they may never have any such or any estate therein; and that such residuary estate may, under the will, devolve wholly upon the infant plaintiffs and others, testator's grandchildren; that if the trustees should obey the order of the court they would be guilty of a breach of the trust reposed in them by the will, and would wholly subvert the testator's will; that the defendants, while admitting that the testator's children have in reality no estate vested in interest in testator's residuary estate, insist that the operation and effect of the Act of the Legislature so obtained is to give them such an estate, although before they had none, and to deprive the infant plaintiffs of all prospect of enjoying any benefit from testator's bounty, and they insist that the order of the Court of Chancery is authorized and required by the Act, whereas the infant plaintiffs and the trustee, Becher, insist the contrary, and contend that the Legislature had no power to pass an Act having such effect as is contended for by the defendants; and (although they do not in express terms contend, yet they allege sufficient to raise the point) that the proper construction to put upon the deed and the Act is, that the Legislature has only authorized to be conveyed to the testator's six children the estates, if any, which, as they alleged, were vested in interest in them, and that testator's grandchildren, not being named in the Act, are not affected thereby; and that the order of the Court of Chancery, being made in their absence, and without their being made parties to the proceeding, and without any notice to them, and contrary to the course and practice of the court, without suit, is wholly inoperative to bar their rights. They pray, therefore, that the order of the Court of Chancery so obtained may be reversed; that a proper construction may be put upon the deed executed under such circumstances, and the Act of the Legislature so obtained; and that it may be declared that the infant plaintiffs are not thereby deprived of the benefit of the testator's will; that the trusts of his will in their favor shall be adhered to, their rights and interests protected, and the defendants restrained from proceeding upon the *ex parte* order so obtained, so as to affect or prejudice any rights, estates and interests devised by the will to the infants.

To drive these plaintiffs from the threshold of the Court by allowing a demurrer for want of equity, upon the ground that they have no *locus standi* in equity, because their own bill shows that the operation of the deed, Act of the Legislature, and order of the court, although they were never named in or made parties to, or had an opportunity of contesting any of such proceedings, and upon which deed, Act of Legislature and order they ask the court by bill to put a construction, has been to deprive them of all interest in the testator's will, seems to me, I must confess, to be a mockery of justice. I am of opinion, therefore, that the demurrers should be wholly disallowed, that the order made by the Court of Chancery is inoperative as affects any of the rights and interests of the infants, and that what these rights and interests are must be declared in a decree to be made in the suit, and that in the meantime all proceedings upon the order in Chancery should be stayed.

As to the appeal of the trustee, Becher, against the order itself. His is certainly a very critical position. If the testator's grandchildren, or any of them, should become entitled, as they may, to demand and receive from him the estate devised to them by their grandfather's will, he would, according to the ordinary recognized doctrine of the court, be liable as for a breach of trust if he should not have the estate forthcoming. Now the statute does not in terms direct him to transfer to testator's children any estate in which testator's grandchildren are, or may become, interested; it is only by a strained inference, if at all, that the Act can have that effect. Whether it has or not that effect can only be determined in a suit whereto all parties claiming under the testator's will are made parties, and by a *decree* in such suit. Now the statute does not profess to fetter the court in the exercise of its discretion; it does not *direct* the court *peremptorily* to proceed according to a course which would be subversive of the ordinary established doctrine of the court, that is to say, in the absence of parties interested or claiming to be interested, or to convey or cause to be conveyed to one set of persons estates not

devised to them, and which may in terms of the will devolve upon and become the property of others, some of whom may not yet be in being. The court is left in the unfettered exercise of its sound discretion as to what, according to the particular circumstances arising, it shall order, and as to how it shall proceed.

It is worthy of notice that the petition which invokes the interference of the court proceeds upon the same assertion that the Act of the Legislature proceeded, namely, that the estates devised to testator's children by the will are vested in interest, with the period of enjoyment only postponed. If that be clearly so, then no evil could ensue from the court proceeding upon a summary petition, on notice to the other parties to the deed; but if strangers to that deed contend that no estate, vested in interest, is at all devised to testator's children, and that to deal with the estate upon the basis claimed by the children may work a manifest fraud to the testator's infant grandchildren, then, as it seems to me, the proper course for the court to adopt is to decline to lend its aid to anything prejudicial to such infants in their absence, or otherwise than upon a bill and by a decree of the court, finally determining and adjudicating, according to its ordinary course and proceeding, upon the rights of all parties interested under the will, and by putting a decretal construction upon the deed and the act of the Legislature, which are claimed to have an effect so subversive of all the most acknowledged principles of justice.

It was argued upon the authority of *In re Freeman*, 2 Er. & Ap., 109, that no appeal lies from an order made upon a petition, as the order appealed from here was; but that decision does not, in my judgment, govern this case. There the proper proceeding to lead to the order was a petition, and the subject-matter of the petition was not appealable matter. Here what is complained of is, that the taking any proceeding upon the petition without notice to all parties interested, and affecting to bind the interests of absent parties, and to deprive them of their estates, was, as far as these parties are concerned, contrary to natural justice, and that an order made upon such a petition, which is prejudicial to the testator's grandchildren, was an improper proceeding, and under the circumstances not warranted. *In re Freeman* is, in my judgment, no authority for contending that an appeal does not lie in such a case. I entertain no doubt that it does, and think it was the duty of the trustee to appeal, and that his appeal should be allowed.

Wilson, J.—at present concurred in the judgment of Mr. Justice Gwynne.

Mowat, V. C.—I have read the judgment which the Chief Justice had prepared, and, as I concur in it in the main, I have not thought it necessary to write a separate judgment. I may observe, however, that we all agree that, so far as affects property, real and personal, which was actually in the Province at the time of passing the Act, the Legislature had power to pass the Act, even assuming the construction heretofore put upon the Act to be the correct one; and that in holding that the Act was inoperative, so far as relates to property which was out of the Province at that time, I acted on a correct view as to the limits of the power of the Legislature. That restriction receives further support from the late case of *Lynch* v. *the Provisional Government of Paraguay*, L. R. 2 Prob. and Div., 268, to which we are referred this morning. As to the direction in the order that the trustees should convey, I do not agree with my learned brother Galt, that the Court had no power so to order. I think that the Court had that power. I think, however, that conveyances by the referee would have been effectual, and that it was matter for the discretion of the Court, whether to order the conveyances to be executed by the one or by the other; and I do not dissent from the suggestion that that part of the order should be varied. As to the point raised by my brother Gwynne, that the Act does not sufficiently show that the Legislature intended to affect the interests of the grand-children, I have read his judgment very carefully, but I am unable to say that it has created in my mind any doubt as to the intention of the Act. The object of the Act was plainly to give at once to each of the testator's six children one-sixth of the testator's residuary estate; and that is what my order on the petition provided that they should have. That may not have been a right thing to do; it may have been a thing entirely unprecedented in British legislation; but the Legislature, as we all think, had power to do it; and I cannot say that, in view of the whole Act, its enactments, its preamble, and the schedule to it, I have the shadow of a doubt but that the Legislature had the intention to do what the orders *In re Goodhue* assumed as their intention.

*Barker*, for the plaintiff, asked the Court if the proceeds of some £10,000, Consols brought to this country after Mr. Goodhue's death, were to be included in the division.

Draper, C. J., and Mowat, V. C.—Yes, if the money was in Ontario at the time of the passing the Act.

*Becher*, Q. C., prayed, that as there was in effect no judgment of the Court of Appeal, the Court being equally divided, and as it was most desirable that a judgment should be obtained, which either party could appeal from to the Privy Council, the case might be re-argued at an early day. There might be then a fuller Bench.

The Court granted the application; and intimated that it would sit for the purpose of hearing the cases re-argued, on Monday, the 11th March, at 10 a.m.

## COMMON LAW CHAMBERS.

### Gardiner v. Graham.

*Security for costs—Next friend.*

Where a plaintiff sues by her brother-in-law, as next friend, with whom she lives, he will not be ordered to give security for costs, even though there is a doubt as to his solvency.

[Chambers, Oct. 4, 1871.—*Mr. Dalton.*]

Rachel Gardiner, the plaintiff, an infant, by Alonzo Richardson, her next friend, who was

her brother-in-law, sued the defendant for breach of promise of marriage.

The defendant obtained a summons calling on the plaintiff, by her next friend, her attorney or agent, to shew cause why the rule of court admitting Alonzo Richardson to prosecute this action as the next friend of the plaintiff should not be set aside with costs, and another next friend appointed, on the ground that he was an irresponsible person; or why all proceedings should not be stayed until the said Alonzo Richardson should give sufficient security for the costs.

Contradictory affidavits were filed as to the solvency of the next friend.

*J. K. Kerr* shewed cause:

This next friend is not only the brother-in-law of the plaintiff, but she is living with him as one of his family, and he is, at present at least, her natural guardian. *Morris* v. *Leslie*, 5 C. L. J. N. S. 318 is an authority in my favor, and *German* v. *Elliott*, 2 C. L. J. N. S. 267 is distinguishable. There is no evidence of insolvency, even if that would be sufficient to uphold this summons: *Yarworth* v. *Mitchell*, 2 D. & R. 423.

*W. S. Smith* contra.

The case of *German* v. *Elliott* governs here. The next friend not being, as the defendant contends, a responsible person, should give security for costs.

Mr Dalton.—I quite agree that this man is a proper person to represent the plaintiff as her next friend, without giving the security asked for, and I should think this, even if the application were not answered on the merits, which I think it is. *German* v. *Elliott*, so far as it applies, is against the contention of the defendant.

The summons must be discharged—costs to be costs in the cause to the plaintiff.

*Summons discharged.*

## CHANCERY.

*(Reported for the* Canada Law Journal *by* T. Langton, M.A., *Student-at-Law.)*

### Re Caverhill.*

*Quieting Titles Act—Title by prescription—Evidence of length of possession—Notice to person holding paper title—Deeds.*

A petitioner claiming title by length of possession must prove possession for the requisite length of time by clear and positive evidence, which should be of more than one independent witness.

In such a case, a notice prepared and signed by the Referee should be served upon the person having the paper title, if he can be found; but if not, evidence should be put in, both of search for him and his representative; and if such search prove fruitless, possession should be shewn to have been long enough against him, even though he had no notice of such possession.

A mortgage more than twenty years old appeared upon the Registrar's abstract. A discharge of this did not appear to have been registered, none was produced nor was any proof given of the mortgage ever having been discharged. It was stated on affidavit that nothing was known of the mortgagees, and that no demand had ever been made for the mortgage debt, though nothing had been paid, and that no acknowledgment had been given within twenty years or more.

*Held*, that evidence should be adduced of search for the mortgagees or their representatives. That a single *ex parte* affidavit that no payment or demand has taken place, would not bar claims of mortgagees who could be served with notice. But if they could not be found, notice might be dispensed with after a great length of time, and satisfaction presumed.

[November 20, 1868.—*Mowat*, V. C.]

This was a petition by Thos. Caverhill, under the Act for Quieting Titles. The chain of title put in as a schedule to the affidavit of the petitioner, shewed the paper title to be in Oliver Grace, who purchased from the patentee in 1810, and appeared never to have parted with his interest. The next record was a deed in 1820 from one Wm. McGinnis, whose title was not apparent, to one Meigham. In 1831 the property passed by deed from Meigham to R. W. Prentice; in 1833 by deed from Prentice to Jarvis. As these three last deeds were not produced it did not appear whether or not they contained a bar of dower. In 1823 Meigham gave a mortgage to J. Spragge and Wm. Hutchinson, no discharge of which was registered. In 1839 Jarvis conveyed to Michael Crawford through whom the petitioner claimed. From that time Crawford or those claiming under him had been in possession, and previous to Crawford's possession, the lands had been a state of nature or nearly so. The land of which the petitioner had been in possession since 1863 was not an entire lot, a portion having been conveyed by Crawford to the Hamilton & Toronto Railway Co. in 1853. Crawford made an affidavit, stating that during his possession no demand had been made for any part of the mortgage debt under the mortgage from Meigham to Spragge and Hutchinson: that he never paid anything on account of the same, nor ever had given any written acknowledgment of the right of any person or persons, thereto signed by himself, or any person as agent for him: and that no demand was ever made for dower by the wives of McGinnis, Meigham or Prentice, and that he did not even know that they had wives.

Mowat, V. C.—To make out a title by prescription where the proceeding is *ex parte*, the evidence should be clear, strong and satisfactory. It should be by more than one independent witness, and should shew that the possession was of the whole lot, as it had been decided in several cases in the Queen's Bench† that possession of part does not give a title by prescription to the whole lot. Unless the evidence for this purpose is clear, it should be given *viva voce* and before a judge. But the testimony of a single witness in the loose and general terms of Michael Crawford's affidavit would never do.

The rule hitherto acted upon, and which it seems most important to observe is to require notice to be given to the person having the paper title, where a title is claimed in opposition to it by prescription, the notice being prepared and signed by the Referee. To dispense with the necessity of this notice there should be due search for the person having the apparent paper

* We have unearthed the following judgment, which it appears has not yet been reported, and publish it for the benefit of practitioners. The points decided are important, and the case is an authority with the Referee.—Eds. L. J.

† See *Hunter* v. *Farr et al.*, 23 U. C. Q. B. 324; *Dundas* v. *Johnston et al.* 24 U.C. Q.B. 550; *Young et al.* v. *Elliott et al.*, 25 U. C. Q.B. 334.—Eds. L. J.

title, and it should be shewn by affidavit that nothing can be ascertained of him or his heirs. Here Oliver Grace appears as owner, and he or his family may be well-known, for all that appears on the papers. Inquiry about him should be made with such diligence as the case admits of, and as to his representatives. Amongst other things a search at the Probate office should not be omitted.

If the search proves fruitless and is shewn to have been so, the possession should be shewn to have been long enough against him; even though he had no notice of the possession; or there should be proof of his having been aware thereof.

There is no evidence of search for the following deeds, of which the names are put in evidence and the evidence necessary to let in secondary evidence at *Nisi Prius* is necessary here. I refer to the deeds, McGinnis to Meighan, Meighan to Prentice, and Prentice to Jarvis.

Evidence should also be given to dispense with notice to Spragge and Hutchinson. Some one in Montreal, acquainted with the business people there forty years ago, can no doubt be found, who may know something of them. If they are dead search should be made in the Probate office for will or administration.

If not ascertained to be dead, and not known what has become of them, notice to them may be dispensed with, in view of the long time that has elapsed. A single *ex parte* affidavit that no payment or demand has taken place within the twenty years, is not alone sufficient to bar the claim of mortgagees who can be served with notice. But if they cannot be served with notice, I may properly, I think, presume satisfaction.

If these difficulties are removed, the certificate will be subject to any dower of Mrs. McGinnis, to the taxes of 1868, and the particulars reserved by the 17th clause of the Statute for Quieting Titles, as also to Crown bonds.

## *NOVA SCOTIA.*

## SUPREME COURT.

(*Reported by* W. H. Meagher, Esq., *Barrister-at-Law.*)

### In re W. L. Dodge & Co., Insolvents, and Thomas G. Budd, an Insolvent.

*Insolvency—Partners—Proving on notes.*

*Held*, on the bankruptcy of a firm, that promissory notes drawn by the firm in favor of, and endorsed by one of its members, do not entitle the holders who were cognizant of the connection of the parties, to prove against both estates, but they may elect against which estate to prove.

*Held*, also, that proof may be abandoned before dividend paid.

[Halifax, November 30, 1871.]

In this case the Bank of British North America, at the time of the insolvency of W. L. Dodge & Co., and of Thos. Budd, held a note made by the former, and endorsed by the latter in his individual character, he being a member of the firm of W. L. Dodge & Co., of which the Bank was cognizant. The judge of Probate having decided that the Bank was entitled to rank upon the estate of the firm, and also upon that of Thomas G. Budd, for the full amount of the debt due that institution on the note above mentioned, an appeal was asserted by Messrs. J. T. Gilchrist & Son, creditors of Budd, on the ground that the Bank had no right to rank upon both estates, but must elect on which to rank, and having proved against the estate of the firm, must be held to his election, and is precluded from proving against the separate estate of Budd, until his separate creditors should have been paid in full; and, on the argument, their counsel relied on a rule to that effect which prevailed in England in cases of bankruptcy, and should prevail here, as he contended, in cases of insolvency.

On the part of the Bank it was contended that the rule referred to did not extend to such a case as this, and that if it did so in England, our courts were not to be bound by it in carrying out the provisions of the Dominion Insolvent Act, especially as English judges, who felt themselves bound by it, had characterized it as inequitable and arbitrary, and the Legislature, in the English Bankrupt Act (24 & 25 Vic. cap. 134 sec. 152) had introduced a different rule. It was further contended that, if the rule should be held to prevail here, the Bank, though its debt had been proved against the estate of the firm, has the option of abandoning that proof and resorting to the individual estate of Budd, as no dividends had been received, and in fact none had been declared.

*C. B. Bullock* for the appellants.

*James Thomson* for the Bank of British North America.

Ritchie, J.—The general rule of commercial law as to the application of joint and separate property of partners is, that the joint estate shall be applied to the joint debts, and the separate, to the separate debts, and the surplus of each reciprocally to the creditors remaining on the others; and if this were the only rule applicable to the case, the Bank of B. N. America would be entitled as the creditor of W. L. Dodge & Co, the makers of the note, to rank on the assets of the firm, and as the creditors of Budd, the endorser, on his individual assets, of course only to the extent of 20s. in the pound in the whole, from both estates; but in the case of bankrupt estates, a rule has been adopted by the English courts that a creditor who had a joint and several security for his debt was not entitled to double proof against the joint and separate estates, whether the debt was secured by the same or by two independent instruments. It is true, doubts have existed as to the extent to which the rule should be carried, and it has been found difficult to assign very satisfactory reasons for its adoption in the first instance, and judges, who have felt themselves compelled to yield to this authority, have sometimes questioned its wisdom; but, after a thorough investigation, it has received the sanction of the highest judicial tribunal of England in *Goldsmid* v. *Cazenove*, 7 H. L. Cas. 785. That case was first argued before Knight Bruce and Turner, Lords Justices (See *Ex parte Goldsmid*, 1 DeG. & J. 283) who differed in opinion on the question. Knight Bruce, L. J., after referring to decisions recognizing the validity of the rule, especially *Ex parte Moult*, 2 Deac. & Ch. 419, and *Ex parte Hinton*, DeGex

550,—the latter a case decided by himself as Vice-Chancellor under the authority of previous decisions,—uses this strong language "thinking myself now at liberty (as when Vice-Chancellor I did not) to decline being bound by *Ex parte Moult* and *Vanzeller*, and holding myself free to depart from *Ex parte Hinton*, I avow my opinion to be, that abstract justice, and the principles of commercial law, and general jurisprudence are with the petitioners, and that the law of England is not opposed to them." In *Ex parte Moult* it had been decided that the holders of a bill, the indorser and the acceptors of it being members of the same firm, were not entitled to double proof; and *Ex parte Hinton*, where three partners of a firm of six carried on a distinct trade by partnership and indorsed a promissory note made by the six, which was discounted by a person who believed at the time that the three were partners in the aggregate firm, but the funds were distinct, it was held that the creditor was not entitled to double proof. Lord Justice Turner on the other hand, recognized the authority of these cases as decisions of equal validity with their own, and having so long governed the practice of bankruptcy he would not venture to disturb them, and added if this must be disturbed at all, it should be by a higher authority, that of the House of Lords.

On the case coming before the House of Lords, it was very fully argued by eminent counsel, and it was admitted by the counsel for the appellant that there could not be double proof, when one of the two firms on the bill consisted of a single person, who was also a member of the joint firm, as in the present instance, and Lord Campbell in his judgment said, "I have come to the conclusion that *Ex parte Moult* ought not to be overturned and the counsel for the appellant have been unable to distinguish upon principle between that case and *Ex parte Hinton*. I think Lord Justice Knight Bruce when Vice-Chancellor properly decided *Ex parte Hinton*, and he did well in considering *Ex parte Moult* as a sound authority"—the other law lords concurred. I might mention that the case of *Ex parte Bank of England*, 2 Rose 82, decided some time previously is directly applicable to the case before me. There, Graves, Sharp and Fisher endorsed a bill to their partner, Fisher, who was a distinct trader, and he discounted the bill with the Bank of England, the Bank requiring and obtaining his endorsement, and thereby raising a contract for double security, yet it was held that the Bank was not entitled to double proof, but must elect.

The law being clearly established in England by these decisions, are our courts to be governed by it in carrying out the provisions of our Insolvent Act? The rule in question is not one depending on legislation, but was established by English judges on principles supposed to be applicable to distribution of insolvent estates, and it is as applicable to the Insolvent Act of 1869 as to the Bankrupt Acts of England, though it is not to be found enacted in either; for the provisions of our act, referred to on the argument, do not seem to me to touch the question: Section 56, certainly has no bearing on it, and section 64 does not refer to a case like this, where one creditor has the joint security of a firm, and the several security of one of the partners for his debt, but generally provides for the distribution of assets where an insolvent owes debts both individually and as the member of a firm.

The applicability of the rule to other cases than those under the Bankruptcy Act of England, came in question in *Goldsmid's case*, for there, while one of the estates had become bankrupt in England, the other had been declared insolvent under proceedings in the nature of a bankruptcy in a foreign country, and it was contended that the rule would not apply, but the court assumed that the proceedings in the insolvency were in their nature analogous and tantamount to an English bankruptcy; and it was held that the case was to be decided upon the footing of English law. The case of *Rolfe and Bank of Australasia* v. *Flower, Salting & Co.*, L. R. P. C. 1 vol. p. 27, is still more to the point. This was an appeal from a decision on the Insolvent Act of Victoria; and it was contended there, as in the present case, that the estates were to be administered under the insolvent law of the colony, and under an act which contains various provisions different from the Bankrupt law of England, especially in reference to the proof of joint and separate debts, and that the English rule, the adoption of which was urged on the court in that case, has been laid down without any consideration of its justice or expediency and was most unjust in its operation. Lord Chelmsford in giving the judgment of the court, page 47, said, "too much reliance was placed upon the notion that the Colonial Legislature was impressed with a sense of the injustice of the rule prevailing in England, and were determined to guard against it in their new code of insolvent law," but if this was the case, "and it was the object of the Colonial Legislature to prevent the operation of the rule which they considered unjust, it is hardly to be imagined that they would have committed their intention to the equivocal meaning of a few words in a single section of the Act, it is just as reasonable to suppose that knowing the rule established in England, which is not founded upon any statute but upon general principles applicable to many other cases, they did not intend to disturb it." The same reasoning applies to the case before me and under the authority of the case I have referred to, I can arrive at no other conclusion than that the Bank of B. N. America is not entitled to double proof: but as no dividends have been received or declared, the proof on the joint estate of W. L. Dodge & Co., may be abandoned, and the Bank may elect to resort to the separate estate of Budd.

As the effect of my judgment is to reverse that of the judge of Probate and Insolvency, and the question involved is a new one under the Insolvent Act, and the contention of the appellant has not been wholly sustained, there should be no costs.

# ENGLISH REPORTS.

## CHANCERY.

### PIKE v. DICKENSON.

*Settled account—Bill for account—Composition deed—Jurisdiction—Fraud.*

A debtor executed a composition deed under the Bankruptcy Act 1861, whereby he covenanted to pay his creditors a composition of 8s. in the pound. The deed was duly registered and assented to by the required majority of creditors. Subsequently a person who had acted as the debtor's agent in certain business transactions claimed to be his creditor for £300, and his name was entered as a creditor for that amount in the schedule to the deed, and he received the composition on it.

The debtor, having afterwards discovered several fraudulent overcharges in his agent's account, filed a bill for an account:

*Held*, that he was entitled to a decree for an account notwithstanding the composition deed.

[24 L. T. Rep. N. S. 927.]

This was a suit instituted for the purpose of obtaining from the defendant an account of shipments of hops, and of moneys paid and received in respect thereof by the defendant as agent for the plaintiff, who was a hop merchant.

In July, 1867, prior to which date the shipments in question had taken place, the plaintiff, having fallen into pecuniary difficulties, called a meeting of his creditors and agreed to pay them a composition of 8s. in the pound.

A composition deed, dated the 24th July, 1867, was accordingly executed; it was assented to by the requisite majority of the creditors, and registered under the Bankruptcy Act 1861, but it did not contain an assignment of property.

The defendant was not present at the meeting of the creditors, but he afterwards asserted that he had a claim against the plaintiff, on the shipments in question, for £300; and the plaintiff accordingly entered him as a creditor for that amount in the schedule to the deed, and paid him the composition on it.

Having subsequently discovered that there were many inaccuracies and overcharges in the account furnished by the defendant, the plaintiff filed his bill for an account.

The facts of the case will be found more fully stated in his lordship's judgment, which was in writing.

*Jessel*, Q.C., and *W. F. Robinson*, for the plaintiff, submitted that as the account contained fraudulent overcharges, the plaintiff was entitled to have it opened.

*Swanston*, Q.C., *H. M. Jackson*, and the Hon. *E. Romilly*, for the defendant.—This is not a case in which the Court of Chancery will grant relief, as the plaintiff has executed a composition deed. His relief, if he have any, must be obtained in the Court of Bankruptcy. It may be urged that the Court of Chancery has concurrent jurisdiction in these cases, but it is quite settled that it does not interfere in such cases except when the Court of Bankruptcy cannot give adequate relief: *Stone* v. *Thomas*, 22 L. T. Rep. N. S. 359, L. Rep. 5 Ch. 219; *Phillips* v. *Furber*, 22 L. T. Rep. N. S. 288, 707; L. Rep. 5 Ch. 746. But the Court of Bankruptcy has ample power to give relief under the 197th section of the Bankruptcy Act 1861. And the fact that the composition deed in this instance does not contain any assignment of property makes no difference, for in *Re Marks' Trust Deed* (15 L. T. Rep. N. S. 139; L. Rep. 1 Ch. 429), it was held that the 197th section of the Bankruptcy Act 1861, giving the court power under a registered deed to make the same orders as if the debtor was bankrupt, is not confined to deeds assigning property of the debtor. Again, to obtain a decree in this suit for an account, the plaintiff must offer to pay the defendant the whole amount which may be found due to him; the account may turn out in favour of the defendant, and it would not be fair to the plaintiff's other creditors that the defendant should be paid in full. Nor would it be just if the accounts should turn out in favour of the plaintiff, to allow him to recover the amount found due to him from the defendant for his own purposes. The other creditors would not have accepted such a small composition had they known that the defendant was a debtor and not a creditor of the plaintiff. For all these reasons this is a case for the Court of Bankruptcy, which can have all the creditors before it, and has jurisdiction to deal with the application of any sum which may be found due from the defendant to the plaintiff. They also referred to *Martin* v. *Powning*, 20 L. T. Rep. N. S. 133, L. Rep. 4 Ch. 356; *Lancaster* v. *Elce*, 7 L. T. Rep. N. S. 123, 31 L. J. Ch. 789; and *Willis* v. *Jernegan*, 2 Atk. 251.

*Jessel*, Q.C., in reply—The other creditors of the plaintiff have no concern in this question. They agreed to accept a composition of 8s. in the pound without knowing anything about the defendant's claim against the plaintiff, and it was not till after the execution of the composition deed that the defendant made his claim, and was entered as a creditor in the schedule. The arrangement made between the defendant and the plaintiff was a distinct and separate one, and the other creditors have no interest in the matter. The fraudulent overcharges contained in the defendant's account entitled the plaintiff to have it re-opened, and this can be done without setting aside the composition deed. This is clearly a case for relief in equity; the Court of Bankruptcy cannot grant the relief sought; for it cannot compel the creditor of a bankrupt to pay anything; it can only expunge his claim.

In answer to a suggestion made by Lord ROMILLY,

*Jessel* said that the plaintiff was not prepared to give an undertaking to divide amongst his creditors any sum which he might recover in this suit.

*May* 22.—LORD ROMILLY.—This is a suit instituted to obtain an account of shipments of hops and moneys paid and received by the defendant in respect thereof, on behalf of the plaintiff. The facts are peculiar. In and prior to 1863, and from that time down to the month of July, 1867, the plaintiff carried on business as a hop merchant at Oxford and also at Southwark. He bought large quantities of hops on speculation and consigned them to various places and persons abroad, and for that purpose he employed the defendant, who was and is a commission merchant, carrying on business in London, to act as his agent at a commission of 2½ per cent., besides regular expenses and charges. In 1867

the plaintiff got into difficulties and made a composition with his creditors, and accordingly on the 24th July, 1867, he executed an indenture made between himself of the first part, Thomas Viner of the second part, Robert Symons of the third part, James Boffin of the fourth part, and Nathaniel Humphreys of the fifth part, and the various creditors, whose names appear in the schedule, of the sixth part, whereby, after reciting that the plaintiff was unable to pay his creditor in full, and that he had proposed to pay to them 8s. in the pound, by four instalments of 2s., at intervals of three months each from the 10th July, 1867, and that three-fourths of all the creditors whose debts amounted to £10 and upwards had agreed to accept this composition; the deed proceeded to carry this proposal into execution, and by it the plaintiff covenanted that after registration of the deed under the 192nd section of the Bankruptcy Act of 1861, he, the plaintiff, would deliver to Nathaniel Humphreys promissory notes for the payment of the instalments, and Viner, Symons, and Boffin, severally for themselves and their respective executors and administrators, covenanted that, if not paid one month after notice of default in payment of these promissory notes, they would pay to each of the creditors of the sixth part in the schedule mentioned the amount of the other instalments due to the creditors on the sums set opposite to their names in the schedule, and thereupon by the said deed the creditors of the sixth part released the plaintiff from the debts due to them and from all actions, suits, and demands, with a proviso that if they failed the release should be null and void. This deed was duly registered in bankruptcy. While this deed was in preparation, and after the meeting of the plaintiff's creditors, the plaintiff met the defendant, who stated that he was a creditor of the plaintiff, and on being asked the amount due to him, said he could not state it exactly then, but, as far as he could make it out at that time, it amounted to £300. Thereupon the defendant's name was put down as a creditor for £300, and he received the composition accordingly, and duly executed the deed. The bill then states that according to subsequent investigation the plaintiff had discovered that in the series of the accounts rendered by the defendant and plaintiff, in respect to their transactions prior to the date of the deed, the defendant had charged the plaintiff with sums exceeding what he had paid on his account; and I regret to say that the evidence given in this cause fully establishes the truth of this charge. The evidence is given compulsorily, but John Brown, ship and insurance agent, and Thomas James Devitt, ship and insurance broker, by their evidence fully established these facts. Thus in one case, for example, where the defendant paid £13 9s. 7d. he charged the plaintiff as having paid £20 0s. 8d., and in another case, where the defendant had paid £17 10s. 11d., he charged the plaintiff with £25 1s. 9d. as paid on his account. It is not necessary to multiply instances of this, of which there are several. The result is inevitable, that when such conduct as this is proved, the account must be re-opened; and, indeed, from the first moment that this fact was established to my conviction, I only hesitated as to the mode by which and the conditions under which, I should adopt this course. The deed of composition seemed to present a considerable difficulty, because, unquestionably, if instead of £300 being due to the defendant, a large sum of money had been due from him, the state of the plaintiff's assets would have been materially altered, and the creditors might properly have refused to take so small a composition as 8s. in the pound. Accordingly I made some suggestion to the plaintiff's counsel to meet this difficulty, but after turning the thing over in my mind I have been unable to come to any satisfactory conclusion respecting it; and upon the whole I have thought that I should be creating expense and not doing anything effectual if I meddled with it, and that I had better leave the matter to be dealt with by the scheduled creditors, parties to the deed of the 24th of July, 1867, as they might think fit, if indeed they could do so at all. But I felt it impossible to allow such accounts, affected by such evidence, to go unnoticed, when brought in due form before the attention of a court of equity. I have accordingly determined to take no notice whatever of the deed of composition of the 24th July, 1867, and I shall simply direct an account to be taken of all dealings and transactions between the plaintiff and the defendant up to the 24th July, 1867, including therein all receipts and payments subsequent to that period in respect of transactions begun previously to that period; and if, in the course of taking such account, it shall appear that any account was settled between the plaintiff and the defendant, then that leave shall be given to either party to surcharge and falsify such accounts or any items therein. I reserve further consideration, and make a special reservation of the costs of the suit up to and including the hearing. I do this because, if the account should turn out favourable to the defendant, I should not be disposed to give him costs up to and including the hearing, in a case where such facts have been proved as I have mentioned, and in consequence of which alone I pronounce the above-mentioned decree.

## MIDDLESEX SESSIONS.

### Reg. v. Taylor and Smith.

*Conspiracy—Evidence.*

Prisoners were indicted for conspiring to commit larceny. A second count charged an attempt to commit a larceny.

The evidence was that the two prisoners, with another boy, were seen by a policeman to sit together on some door-step near a crowd, and when a well-dressed person came up to see what was going on, one of the prisoners made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of the coat of a man, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket; and to place a hand against the dress of a woman, but no actual attempt to insert the hand into the pocket was observed. Then they returned to the door-step and resumed their seats. They repeated this two or three times. There was no proof of any preconcert, other than this proceeding.

*Held*, not to be sufficient evidence of a conspiracy.

*Held*, also, not to be evidence of an attempt to steal.

[25 L. T. N. S. 75.]

The prisoners were indicted for conspiring together to commit larceny from the person of Her Majesty's subjects.

Another count in the indictment charged an attempt to commit a larceny.

*Moody* for the prosecution.

It was proved by two detective officers that a crowd was collected in the street, that the prisoners, with another boy, were sitting on a doorstep; that when a well-dressed man or woman went to look into the crowd one of the prisoners nudged the others, whereupon two of them rose and followed that person. In the case of a man, they were seen to lift his coat-tail, as if to ascertain if there was anything in his pocket; but they did not attempt to insert a hand in the pocket. In the case of a woman, they went and stood by her side; the hand of one of the prisoners were seen to go against her gown, but it was not seen as attempted to be thrust into her pocket, nor was any complaint made by these persons of any such attempt.

Mr. Serjt. Cox.—There is no evidence either of a conspiracy or of an attempt to steal. To constitute an attempt, some act must be done towards the complete offence. Feeling a coat-tail to ascertain if there is anything in the pocket is not an attempt to do the act of picking a pocket, for it may be that nothing was found to be in it, and therefore they did not proceed to the commission of the act itself; and if there was nothing in the pocket, even putting the hand into it has been held not to be an attempt to steal. But here there is not any proof that the pocket either of the man or woman contained anything, or indeed that they had any pockets at all.

*Moody*—But the count for conspiracy meets this objection. It charges them with conspiring together to commit larceny, which is an indictable offence, and it will be for the jury to say if being together and acting together in the manner described is not evidence that they had concocted a system of robbery.

Mr. Serjt. Cox.—To sustain a charge of conspiracy there must be evidence of concert to do the illegal act. In cases of treason, where the law of conspiracy has been most frequently applied, some evidence has usually been given of something said or done by the defendants previously to the commission or attempted commission of the act for which they have conspired, from which the conspiracy may be inferred. The peculiarity of this case is that the only evidence of conspiracy is the act itself, and the manner in which it was done. But then, according to the view which I have just taken of the act itself, it was not illegal, because it did not amount to an attempt to pick pockets. It appears to me to be impossible to say that the doing of an act not illegal is evidence of a conspiracy to do an illegal act, there being no other evidence of the conspiracy than the act so done. I cannot allow the case to go to the jury. The point is a very nice one, and, I think, quite new; but I am so clearly of opinion that, whatever may be the suspicions as to the intentions of the prisoners, there is not sufficient evidence to justify their conviction, that I cannot reserve it.

*Not Guilty.*

## REVIEWS.

Our Fireside Friend: A new Chicago venture, that covers the same ground in illustration and letterpress as the *New York Ledger*. We have found some amusement in looking over its columns. "*Bandy Tag*" commences in the most thrilling manner, though we notice the author rather confuses the functions of *shuttlecocks* and *battledores*. This story is probably quite as objectionable as the ordinary run of American works of fiction. The verses on "The Burning of Chicago," by Will. M. Carleton, fully sustain the reputation of that young, though widely-known poet.

One graphic couplet refers to the attempt of some enterprising citizen of the baser sort to set fire to a row of houses on his own account:

"The best line of action to follow, for yonder unprincipled scamp,
Is simply a line of stout cordage—one end on the post of a lamp!"

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The United States Jurist. Washington, D.C.: W. H. & O. H. Morrison, Publishers. Vol. ii., No. 1.

We have to notice this handsome legal periodical, which with this number is changed from a monthly to a quarterly law magazine. It is edited by James Schouler, the accomplished author of the late Treatise on Domestic Relations, which has already been cited with approval in the English Courts. This issue runs to 104 pages, and the contents are varied as follows: I. Judicial reforms by Mr. Justice Miller. II. Quarterly Table of Criticised Cases. III. Annual Digest of Federal decisions. IV. Quarterly Digest of English decisions. V. Book notices. VI. U. S. Supreme Court Calendar. VII. Legal intelligence. The paper on criticised cases is a new feature, but one which is capable of being worked to great profit. The book notices are pointedly written, and so far as we can judge with a bold determination to do even-handed justice on all sides: to condemn or commend as the merits or demerits demand. The paper of Judge Miller is an earnest protest against delay in the administration of justice—a comment upon the text that tardy justice is often the greatest injustice. He calculates that on an average there is a delay of three years in cases appealed to the Supreme Court, between the time when judgment is rendered in the

Court below and the time when it reaches that court again for execution, if it be affirmed with no unusual delay. Means are suggested whereby sound legislation may remedy this state of affairs, but our space will not allow us to draw further from this very suggestive article.

BOOKS RECEIVED.

*To be noticed hereafter.*

Ewart's Index of the Statutes (being an alphabetical index of all the Public Statutes passed by the late Province of Canada and the Dominion and Ontario, up to and inclusive of the year 1871. Rowsell & Hutchison.

A most useful help to the practising lawyer.

Canadian Monthly and National Review. January and February, 1872, Vol. I., Nos. 1, 2. Toronto: Adam, Stevenson & Co.

Revue Critique, January, 1871. Dawson Bros., Montreal.

British Quarterly Review.

Edinburgh Review.

Blackwood's Magazine, January, 1872. The Leonard Scott Publishing Co., 140 Fulton Street, New York.

American Trade Mark Cases, by Rowland Cox, Esq., Counsellor-at-Law, Washington, D. C.

## APPOINTMENTS TO OFFICE.

CORONERS.

BENJAMIN THOMAS McGHIE, Esq., M.D., to be an Associate Coroner for the United Counties of Leeds and Grenville; HUGH ALEX. MABEE, Esq., M. D., to be an Associate Coroner for the County of Norfolk. (Gazetted Nov. 25th, 1871.)

WILLIAM R. CHAMBERLAIN, Esq., to be an Associate Coroner for the County of Lennox and Addington. (Gazetted Dec. 23rd, 1871.)

NOTARIES PUBLIC FOR ONTARIO.

JOHN G. RIDOUT, MARTIN H. L. GORDON, and GEORGE KERR, Jun., of the City of Toronto; JOHN R. KIRCHOFFER, of the Town of Port Hope; and DAVID THOMAS DUNCOMBE, of the Town of Simcoe, Esquires, Barristers-at-Law. (Gazetted Dec. 2, 1871.)

WILLIAM PORTE, of the Village of Lucan, Esq., and JOHN WINCHESTER, of the City of Toronto, Attorney-at-Law. (Gazetted Dec. 9th, 1871.)

JOHN BAIN, of the City of Toronto, and THOMAS MAITLAND GROVER, of the Village of Norwood, Esqs., Barristers-at-Law. (Gazetted Dec 30th, 1871.)

JOHN ROBISON CARTWRIGHT, of the Town of Port Hope, GEORGE CHRISTIE GIBBONS and HUGH MACMAHON, of the City of London, JAS. STRACHAN CARTWRIGHT, of the Town of Napanee, and THOMAS MAITLAND GROVER, of the Village of Norwood, Esqs., Barristers-at-Law, and SAMUEL BARTON BURDETT, of the Town of Belleville, Gentleman, Attorney-at-Law. (Gazetted Jan. 6, 1872.)

COUNTY ATTORNEY.

EDWARD GEORGE MALLOCH, of the Town of Perth, Esquire, Barrister-at-Law, to be County Attorney and Clerk of the Peace in and for the County of Lanark, in the room and stead of Donald Fraser, Esquire, deceased. (Gazetted Jan. 6, 1872.)

DEPUTY CLERK OF THE CROWN.

IVAN O'BEIRNE, of the Town of Peterborough, Esq., to be Deputy Clerk of the Crown and Clerk of the County Court of the County of Peterborough, in the room and stead of Thomas Fortye, Esquire, deceased. (Gazetted Jan. 6, 1872.)

## SPRING CIRCUITS, 1872.

EASTERN CIRCUIT.

(Hon. Mr. Justice Morrison.)

| | | |
|---|---|---|
| Brockville | Wednesday | 13th March. |
| Perth | Tuesday | 19th March. |
| Kingston | Monday | 25th March. |
| Ottawa | Monday | 8th April. |
| Cornwall | Tuesday | 23rd April. |
| L'Orignal | Tuesday | 7th May. |
| Pembroke | Tuesday | 14th May |

MIDLAND DISTRICT.

(Hon. Mr. Justice Wilson)

| | | |
|---|---|---|
| Napanee | Wednesday | 13th March. |
| Belleville | Monday | 18th March. |
| Cobourg | Monday | 1st April. |
| Peterborough | Monday | 15th April. |
| Lindsay | Monday | 22nd April. |
| Whitby | Tuesday | 30th April. |
| Picton | Tuesday | 7th May |

NIAGARA CIRCUIT.

| | | |
|---|---|---|
| Barrie | Wednesday | 13th March. |
| St. Catharines | Tuesday | 12th March. |
| Welland | Monday | 18th March. |
| Hamilton | Thursday | 4th April. |
| Milton | Tuesday | 23rd April. |
| Owen Sound | Monday | 13th May. |

OXFORD CIRCUIT.

(Hon. Mr. Justice Gwynne.)

| | | |
|---|---|---|
| Cayuga | Thursday | 21st March. |
| Simcoe | Monday | 25th March. |
| Brantford | Tuesday | 2nd April. |
| Berlin | Wednesday | 10th April. |
| Stratford | Monday | 15th April. |
| Guelph | Monday | 22nd April. |
| Woodstock | Tuesday | 7th May. |

WESTERN CIRCUIT.

(Hon. Mr. Justice Galt.)

| | | |
|---|---|---|
| London | Monday | 25th March. |
| St. Thomas | Tuesday | 9th April. |
| Chatham | Tuesday | 16th April. |
| Sarnia | Tuesday | 23rd April. |
| Sandwich | Tuesday | 30th April. |
| Goderich | Monday | 6th May. |
| Walkerton | Tuesday | 14th May. |

HOME CIRCUIT.

(The Hon. the Chief Justice of the Common Pleas.)

| | | |
|---|---|---|
| Brampton | Wednesday | 13th March. |
| Toronto | Tuesday | 19th March. |