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WE would wish to echo the voices of the many friends of the veteran Premier and Attorney-General of Ontario in congratulating him on the honour of knighthood bestowed upon him on the 24th ult. He will be the better able to support the dignity with the aid of the increase in salary voted him by the Legislature, a more tangible but perhaps less appreciated recognition.

So much has been said in this JOURNAL and elsewhere about the appointments of Queen's Counsel in recent years in Canada that we again approach the subject with feelings of circumspection, lest we shall be considered to be harping upon a well-worn subject. We feel, however, that when the profession in conservative England is rising in its might and condemning the recent appointments, and advocating the abolition of the "silk," that we may be pardoned for again mentioning the subject and quoting a few remarks from the *Law Gazette*, which opens an article with the words "we shall doubtless be regarded as revolutionists of the deepest dye for making the proposal, but we fearlessly suggest that the time has come . ." That many mediocre men have been appointed is evident from the next remark: "The latest batch includes a greater number of able men than has usually been the case." It must be observed that the method of appointment in England is different from ours, for there the would-be Queen's Counsel makes application for the position, which is in the gift of the Lord Chancellor, who, if he practised at the Equity Bar, is probably ignorant of the merits of the Common Law men, and *vice versa*. There, too, when a barrister becomes a Queen's Counsel, he takes the risk of losing a lucrative "junior" practice in exchange for the narrower possibilities of a leader.

PROVINCIAL LEGISLATION OF 1892.

Another session of the Legislature has come and gone, and again it becomes our duty to give a short sketch of some of the more important alterations in, and additions to, our statute law.

The Acts of the last session are, as a whole, neither as numerous nor important as usual, and no question of very great moment has been before the Legislature. The chief result has been the consolidation of the municipal and assessment law, to which numerous amendments were also made, although, fortunately perhaps, all of the thirty-three bills introduced were not passed. The most important municipal amendment is the clause taking away power from municipalities to

bonus factories. This was needed by reason of the frequency of cases in which bonused manufacturers had, after a few years, removed to other localities, leaving the taxpayer to suffer for his ill-judged assistance. The endless amendments to these statutes rendered a consolidation absolutely necessary, and the rural member will now have a piece of whole cloth instead of a patchwork to form a basis for his tinkering next session. If the Government could see its way to a quinquennial revision of all the statutes, we think the time and money would be well spent. It is rapidly becoming a matter of importance too, that when a section is amended it should be reprinted *in toto*; for where, as in some cases, it has been amended four or five times since it appeared in the Revised Statutes, it is a matter of considerable difficulty to know just what the law is.

Among the Acts not printed in the supplement to the Ontario *Gazette*, as "not being of immediate public interest," is that respecting voters' lists in unorganized territories, where the stipendiary magistrate may compile a voters' list in places where there is no assessment roll. The magistrate's ruling may be appealed against to the county or district judge.

C. 4 enables the Hon. Nicholas Awrey, M.L.A., to be a commissioner to represent this Province next year at the World's Fair in Chicago without vacating his seat. The well-circulated petition to close the sheriffs' and registrars' offices in this city and county at one o'clock on Saturday afternoon has borne fruit in chapters 5 and 22, and conveyancers are hereby requested to take a half-holiday that day.

C. 6 provides for the payment of a succession duty. We presume that, the Ontario timber limits becoming exhausted, the Government has to look out other ways of increasing the revenue. The Act, which is taken in part from the English and in part from similar Acts in the United States, commences with a modest recital of the good deeds of the Province in aiding charitable institutions, and states the expediency of defraying part of the amounts expended on charities by a succession duty.

We have no doubt but that this Act is simply the thin end of the wedge, and that before long a very large portion of the revenue of the Province will be derived from such a duty, although at present the Act is qualified by many exceptions. The Act does not apply to estates not exceeding in value $10,000, property left to religious, charitable, or educational purposes, or given to the deceased's father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law. When the aggregate value exceeds $100,000, and the property passes to the relations above named, the duty is two and one half per cent., and, when $200,000, five per cent. When the value exceeds $10,000 and passes to relations other than those named or to strangers, it is subject to a duty of five or ten per cent., according to the degree of relationship. Where the property passes to any one person and the value is under $200, it is exempt.

If we must be taxed, perhaps there is no better way of doing it than by means of a succession duty; for experience teaches that people who inherit money are not inclined to object to the payment of a duty on moneys they obtained so easily. It is to be hoped that the Government will apply the funds derived

from this duty in the way indicated in the Act. If they do, we may expect to see a very marked improvement in the financial condition of some of the charitable institutions of this Province.

C. 7 allows the Provincial Treasurer, at a sale for taxes in Algoma or Thunder Bay, to purchase for the amount of the taxes lands not sold, which will again become Crown lands. "The Mines Act" consolidates the previous mining legislation, and also enacts that the owner of mining lands shall have priority where applications are made for patents or leases.

The Act for the protection of the Provincial fisheries follows the lines of the report of the Royal Commission, and makes machinery for the more complete protection of this important industry, as well as laying down very stringent rules regarding the catching of fish which it will be impossible to enforce. No person, not a resident of the locality where it is intended to fish, may catch in one day more than one dozen bass, or fifty speckled trout—which latter must not weigh in the aggregate more than fifteen pounds; and since all of these varieties under a certain length must be returned to the water, it will be advisable henceforth that each sportsman label his hooks, "Bass under ten and trout under five inches, please do not bite at this line," and the "complete angler" must also include a foot rule and a weighing machine. Stories, too, regarding the number of fish caught will no longer be in order.

By C. 12 the Provincial Legislature assumes the right to deal with Grand Juries by repealing c. 13 of 42 Vict., and limits the number of grand jurors to thirteen. We notice, however, that the Act is not to come into force until a day to be named by proclamation. It may be that there is still a doubt in the mind of the Attorney-General as to whether this Act is not *ultra vires* of his jurisdiction.

C. 14 makes the defendant or his or her wife or husband a competent and compellable witness in all cases where a contravention of an Ontario Act is in question, and is enacted in order to meet the decision of the Common Pleas Division in *Regina* v. *Hart*, 20 O.R. 611, where an offence against an Ontario statute was held to be a crime, and consequently such a witness was neither competent nor compellable, as the repealed section provided only for cases "not being a crime." By the omission of these words the defendant and his wife can now give evidence on all charges brought under a Provincial Act. The citizen, too, summoned for a breach of the snow by-law can now himself prove that he made a clean sweep of the sidewalk.

C. 18 provides for an additional yearly sitting of the High Court at Sault Ste. Marie and Port Arthur if required. C. 20 relaxes in a great degree the stringency of the Acts respecting mortmain, and by c. 25 the scope of the word "creditor" in the Act respecting assignments and preferences by insolvents is enlarged.

The Act respecting mortgages and sales of personal property is now made (c. 26) to apply to goods not the property nor in the possession or control of the mortgagor at the time of the mortgage or sale, and whether they are not yet delivered or ready for delivery. S. 5 is intended to give a *quietus* to the numerous actions brought to test whether or not the property in the goods had

passed, and the section enacts that where there is an agreement that the property shall not pass till certain conditions are fulfilled, the agreement must be in writing and filed in the same manner as a bill of sale.

By c. 27 the priority for wages or salary due by an execution debtor now counts for the three months previous to the seizure by the sheriff, instead of from the entry of the sheriff's notice as hitherto. This provision for priority is now made to apply also to seizures under the Absconding Debtors' Act. The Workmen's Compensation for Injuries Acts are consolidated by c. 30. C. 31 makes a very important amendment to the law of landlord and tenant by restricting the claim of the tenant for exemption from seizure by distress, and allowing the landlord to seize the tenant's goods when there is more than two months' arrears of rent due.

C. 32 we quote in full: "The Law Society of Ontario may in its discretion make rules, providing for the admission of women to practise as solicitors." Until the Legislature of Ontario *compels* the Law Society to admit women, there is no reason for supposing that this Act will ever be referred to save as a matter of historical interest. The Provincial Land Surveyors have now become incorporated by c. 34, which also amends the Act respecting them.

The Legislature has taken advantage, in c. 39, of its power to supervise the contracts of insurance corporations, and modifies the insurance law in many respects, necessitated by recent cases in the courts. All insurance and endowment corporations must receive Provincial recognition, and all such corporations are incorporated in one bureau, the Department of Insurance, and the registry officer is given large powers in deciding as to questions both of fact and law. S. 4 requires that insurance companies, in addition to obtaining a license, shall be registered in the office of the Inspector of Insurance. Friendly societies must also be registered. By s. 33 all terms and conditions of an insurance contract must be set out in full, and any erroneous statement made in an application form must be shown to be material before a contract is voided by reason thereof. The, as yet, barely settled question, whether the materiality is or is not a question of fact for the jury, is set at rest by s-s. 3. In order to cover a recent instance of a refusal of an assured to allow the insurer to enter after a fire, s-s. 4 now gives him the right to an immediate entry in order to examine the property. Where the age of the assured would be material and was incorrectly stated, a contract is not to be avoided if it was given without intention to deceive. A parent may insure the life of a child without having any further insurable interest. By s. 35, s-s. 7, minors of fifteen years and upwards are made competent to insure their lives and give discharges for money payable under the contract. S. 36 increases the scope of the term "accident" to include such a happening as an indirect result of an intentional act. Insurance agents must henceforth be registered. The amount named in a policy is now *prima facie* payable when the insurance is for an amount "not exceeding a certain sum," and the onus is on the insurer to prove the contrary, and where the maximum amount is not paid the claimant is entitled to inspect the society's books.

C. 51, to be cited as the Liquor License Amendment Act, is a piece of legis-

lation thoroughly in accordance with the Liquor License Act which it amends, namely, c. 194, R.S.O., only that it goes further and makes enactments which no doubt will be a fruitful source of litigation. S. 2 provides that members of municipal councils and constables shall be ineligible as bondsmen for license holders. S. 3 increases the fees for transfers and removals of licenses from $10 to $50, according to the locality of the licensed premises. The next section makes clear the original intention of the law that the highest fee a municipality may impose for a license is $200, in addition to the fee fixed by the Government. S. 5 appears to conflict with the Inland Revenue Act of the Dominion, and fixes the amount which may be sold by brewers at any one time, and also provides that they may sell only to licensed dealers. By s. 7 druggists are required to register every sale of liquor, no matter how small the quantity sold, and a medical certificate is required when the amount sold is more than six ounces. S. 9 introduces a new feature in the way of appeal by allowing the Crown, wher an order for dismissal is made, to have a new trial when the Attorney-General of the Province so directs. This is totally subversive of English criminal law, and if *Reg.* v. *Hart*, *ante*, is to stand as an authority, it will be a source of litigation to defendants who have once been dismissed on their trial by the magistrate. Ss. 10 and 11 increase the penalty for selling liquor to interdicted drunkards. S. 13 makes it clear that all the machinery of the License Act is behind a local option by-law, and the succeeding section, relating to local option by by-laws, enacts that any by-law passed under the provisions of s. 18, 53 Vict., c 56, shall not be repealed until after three years from the day of its coming into force, nor until a by-law for repeal has been submitted in the same way as the original by-law has been submitted to the electors; and in case of the defeat of the by-law for the repeal, no other such by-law for repeal shall be submitted within a like period of three years. This Act is in accordance with the system that has been pursued by the Legislature for some time past, and will probably be successful in pleasing no one.

C. 52 bring us to the much-canvassed merits of the provision prohibiting the use of cigarettes, cigars, or tobacco by minors under eighteen, an offender being subject on a summary conviction to a penalty of $50 or imprisonment, with or without hard labour, up to thirty days. This Act met with much opposition in the House, and a clause to punish children with tobacco found in their possession was finally dropped.

We had hoped, on perusing the "Act to prevent the wasting of natural gas," to find that it was intended to apply within the House as well as without. This idea might be put in the form of an amendment next session.

C. 58 makes a number of important changes in the game laws. S. 1 reduces the open season for deer shooting to fifteen days. By s. 2 the shooting of a variety of wading birds, commonly included in the term "plover," is practically excluded, since these birds are only to be found in Ontario during what is not the close season. No person may kill more than three hundred ducks in one season. While previous to this Act the exportation from Ontario of deer only was prohibited, all kinds of game birds are now excluded. S. 5 prohibits

hunting on Sunday. S. 6, s-s. 2, restricts the killing, except for the actual use of the hunter, of quail, snipe, wild turkey, woodcock, or partridge for a period of two years. It is necessary now that all non-residents of Ontario and Quebec shall obtain a license before they may hunt or kill any game in this Province, and for this a fee of $25 is required, but a guest of a resident may obtain free a license for a week. In this connection it would be interesting to know what "game" is; the Legislature has not furnished us, so far as we know, with a definition, and sportsmen have different ideas of what it includes. A board of fish and game commissioners of five members is appointed, who shall appoint wardens, take all necessary measures for the enforcement of the game laws, collect statistics, etc. Penalties varying from $5 to $50 for infractions of this Act make it advisable that it should be carefully read by all interested.

An Act to encourage the destroying of wolves makes the bonus $10 instead of $6 as formerly. The remaining Acts do not appear to merit special attention.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for May comprise (1892) 1 Q.B., pp. 569-739; (1892) P., pp. 109-137; and (1892) 2 Ch., pp. 457-658.

GIFT—VERBAL GIFT OF CHATTELS—DELIVERY TO DONEE—INTERPLEADER.

Kilpin v. *Ratley* (1892), 1 Q.B. 582, was an interpleader issue between an execution creditor and the wife of the execution debtor as claimant. The goods in question had originally belonged to the execution debtor, but had been bought by his father-in-law, to whom a bill of sale of them had been made. The father-in-law subsequently went to the debtor's house, where the goods had been allowed to remain, and verbally gave the goods to the claimant, his daughter, by words of present gift, pointing to the furniture and saying, "I give you this furniture; it will be something for you"; and he then left the house, leaving the furniture there, where it remained in the use and enjoyment of the claimant and her husband until seized in execution. It was contended by the creditor that there had been no sufficient delivery of the goods to the claimant so as to perfect the gift, and that the property in the goods had not passed to her. But Hawkins and Wills, JJ., were both of opinion that there had been a valid gift of the property, and they gave judgment in favour of the claimant.

STATUTE OF FRAUDS, S. 4—AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR—SIGNATURE OF PARTY TO BE CHARGED.

Evans v. *Hoare* (1892), 1 Q.B. 593, is one of that class of cases which exhibits the astuteness of courts of justice in getting round the Statute of Frauds when it stands in the way of substantial justice. The action was for wrongful dismissal, and the agreement of hiring on which the plaintiff relied was in the form of a letter addressed to the defendants, to this effect: "Messrs. H.M. & Co.: I hereby agree to continue my engagement in your office for three years from 1st January, 1890." This was signed by the plaintiff, and the question was whether the "Messrs. H.M. & Co." to whom the memorandum was ad-

dressed could be considered the signature of the defendants. From the evidence it appeared that the memorandum had been prepared by a clerk of the defendants, who had been authorized to draw it up and get it signed by the plaintiff. Under these circumstances, following *Schneider* v. *Norris*, 2 M. & S. 286, where a lithographed bill-head had been held a sufficient signature of the names mentioned therein, Denman and Cave, JJ., held that the name "H.M. & Co." was a signature by the defendants, so as to make the memorandum sufficient under the Statute of Frauds.

LUNATIC, CONTRACT BY—DEFENCE OF LUNACY—EVIDENCE—ONUS OF PROOF.

Imperial Loan Co. v. *Stone* (1892), 1 Q.B. 599, was an action brought on a promissory note made by the defendant, to which was pleaded a defence that at the time the defendant made the notice he was lunatic, and that the plaintiff knew of the defendant's insanity. At the trial, Denman, J., left it to the jury to say whether the defendant was insane and whether the plaintiff knew he was so. The jury found that the defendant was insane, but disagreed as to whether the plaintiff had knowledge of his insanity. Upon this finding the judge gave judgment for the defendant. The Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.), however, set the judgment aside and ordered a new trial, holding that the defence could not succeed unless the defendant established that the plaintiff had knowledge of his insanity at the time of the contract.

PRACTICE—REFUSAL OF LEAVE TO APPEAL—APPEAL FROM DECISION REFUSING LEAVE TO APPEAL.

In re Housing of Working Classes Act, ex parte Stevenson (1892), 1 Q.B. 609, the Court of Appeal decided that where a statute gave a party a right of appeal from an award upon obtaining the leave of the High Court or of a judge in chambers, and a judge in chambers had refused to grant such leave, no appeal would lie from his decision refusing such leave. The principle of this decision would appear to apply to all cases where the right to appeal is dependent on leave being obtained; *e.g.*, to appeals under Ont. Jud. Act, ss. 65, 66, 67, 69.

NOTICE OF ACTION—SUFFICIENCY OF STATEMENT IN NOTICE OF ACTION OF PLACE WHERE ACT COMMITTED.

In *Madden* v. *The Kensington Vestry* (1892), 1 Q.B. 614, the defendants were entitled to notice of action, and the notice served stated the act complained of had been done in Silver street, whereas the evidence showed that it was in Uxbridge Road, opposite Silver street, about twenty feet from the end of that street, which joined the Uxbridge Road. Denman and Cave, JJ., were agreed that the notice was sufficient.

JUSTICE—PRACTICE—SUMMARY TRIAL WITH CONSENT—CONVICTION—APPEAL TO GENERAL SESSIONS—SUMMARY JURISDICTION ACT, 42 & 43 VICT., C. 49, SS. 12, 19—(R.S.C., C. 176, S. 8; C. 178, S. 76).

The Queen v. *Justices of London* (1892), 1 Q.B. 664, is a case in which a prisoner charged with larceny elected to be summarily tried before a magistrate under the Summary Jurisdiction Act (see R.S.C., c. 176, s. 8), and it was held by Lawrance and Wright, JJ., that no appeal would lie from the conviction to the Quarter Sessions. The decision, however, to some extent, turns on the word-

ing of the English statutes bearing on the point, which are not in all respects identical with the Canadian statutes.

PRACTICE—SPECIALLY INDORSED WRIT—CLAIM FOR INTEREST—LIQUIDATED DEMAND—ORD. III., R. 6; ORD. XIV., R. 1—(ONT. RULES 245, 711, 739).

Ryley v. *Master*, and *Sheba Gold Co.* v. *Trubshawe* (1892), 1 Q.B. 674, are two cases which are reported together, both bearing on the same point of practice. It seems rather strange at this period of time to find no less than five cases following each other in the reports, all bearing on the question of what claims are properly the subject of a special indorsement, but so it is. In the first of these cases, *Ryley* v. *Master*, the indorsement was for money paid by the plaintiff for the defendant under a bill of exchange, to which was added a claim for interest on the amount paid at £5 per cent. per annum from the date of the writ until payment or judgment. This claim for interest was held to be an unliquidated demand, and therefore not the subject of a special indorsement, and an order for judgment, notwithstanding appearance, granted under Ord. xiv. (Ont. Rule 739) was therefore set aside. In *Sheba Gold Co.* v. *Trubshawe* the indorsement was for a claim for the balance of an account for goods sold and delivered. To this was also added a claim for interest from the date of the writ till payment or judgment. This also was held to be a claim for unliquidated damages, which vitiated the indorsement as a "special indorsement" and prevented the plaintiff from proceeding thereon as upon a specially indorsed writ. The decisions were given by a Divisional Court (Lord Coleridge, C.J., Hawkins, Wills, and Lawrance, JJ.). *Wilks* v. *Wood* (1892), 1 Q.B. 684, is another case dealing with the same subject by the Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.), in which the decision of the Divisional Court in *Sheba Gold Co.* v. *Trubshawe* is approved and followed. In this case Lord Esher, M.R., says: "The word 'only' in the rule (Ord. iii., r. 6; Ont. Rule 245) means 'only,' and that if anything else is added to the liquidated demand the writ does not come within the definition of a specially indorsed writ"—a construction of the rule, however, which has been rejected in Ontario by Boyd, C., and Meredith, J., in *Hay* v. *Johnston*, 12 P.R. 596, and *Mackenzie* v. *Ross*, 14 P.R. 299, and which is also opposed to the Ont. Rule 711, which appears to contemplate that, notwithstanding the word "only" in Rule 245, other claims may be joined without destroying the character of the indorsement or preventing its being proceeded on *quoad* the claim that is the subject of a special indorsement as upon a specially indorsed writ. *Wilks* v. *Wood* was recently followed by Mr. Winchester, acting as Master in Chambers, in *Casselman* v. *Barrie*, *ante* p. 281, in which he distinguished *Mackenzie* v. *Ross* and *Hay* v. *Johnston*. *London & Universal Bank* v. *Clancarty* (1892), 1 Q.B. 689, is a decision of Denman and A. L. Smith, JJ., which establishes that a claim for interest on a bill of exchange or promissory note may, by virtue of the Bills of Exchange Act, 1882, s. 57 (53 Vict., c. 33, s. 57 (D.)), be specially indorsed as being a liquidated demand; and this decision is practically affirmed by the Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.) in the next case of *Lawrence* v. *Willcocks* (1892), 1 Q.B. 696, who also decide that the expenses of noting the bill or note may be added as being made liquidated damages by the statute.

MINERALS WRONGFULLY TAKEN—COMPENSATION—INTEREST—DECREE FOR ACCOUNT—CLAIM FOR INTEREST MADE ON FURTHER CONSIDERATION.

Phillips v. *Homfray* (1892), 1 Ch. 465, was an action commenced in 1870, wherein a decree was pronounced declaring the defendants answerable to the plaintiffs for all minerals got and removed from under the plaintiff's farm, and an inquiry was directed as to what minerals had been got and removed, and it was ordered that the value, at the pit's mouth, of all minerals so got or removed, with just allowances for carriage, but none for getting, should be certified. The decree was silent as to interest, no claim for interest being made at the hearing. The referee reported the value of the minerals so got, at the pit's mouth, to be £9028. Upon the further consideration of the action in 1891 the plaintiffs claimed to be entitled to interest on that amount, on the ground that the action was in the nature of an action of trover, or trespass *de bonis asportatis*, within 3 & 4 W. 4, c. 42, s. 29. But the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) held that the action must be treated as an equitable action to recover the benefits the defendants had received from the wrongful taking of the minerals in question, and that although the plaintiffs would, if they had claimed it at the original hearing of the cause, have been entitled to interest, yet as they had not in fact then claimed it they were too late in claiming it for the first time twenty years after the date of the original decree, and they affirmed the decision of Stirling, J., refusing the interest. Under the more elastic provisions of the Ontario Consolidated Rules the interest in such a case would probably be allowed by the master as a matter of course, without any special direction in the judgment, or any special claim being made for it at the hearing or trial of the action. See Con. Rule 56.

DEED—CONSTRUCTION—RESERVATION OF RIGHT TO GET MINERALS—RIGHT, WHETHER EXCLUSIVE—SETTING ASIDE LEASE.

Duke of Sutherland v. *Heathcote* (1892), 1 Ch. 475, is a decision of the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.), affirming the judgment of Williams, J. (1891), 3 Ch. 504, noted *ante* p. 105. There were two points in the case: First, as to the effect of a reservation of the right to get coal and minerals in favour of the donees of a power of sale contained in a conveyance made by the donees in execution of their power. The Court of Appeal agreed with Williams, J., that it operated as a grant to the donees of the power, of the right to work minerals, but that it was not an exclusive right; that is to say, the grantees of the land were not by such reservation excluded from the right also to get coal and minerals. In other words, that the reservation of the right could not be construed as an exception of the minerals. The other point was that the plaintiff, in ignorance of this reservation, to the benefit of which he had become entitled, had accepted a lease from the grantees of the land, and it was claimed by the plaintiff that as this lease had been accepted by him in mistake and ignorance of his rights under the reservation it should be set aside, but inasmuch as the plaintiff was not prepared to give up possession of the property comprised in the lease, and as the mistake was not common to both parties, the court held that it could not be rectified or set aside.

PRACTICE—PARTIES—ADDING DEFENDANT—ACTION FOR INFRINGEMENT OF PATENT—APPLICATION OF MAKER OF MACHINE USED BY DEFENDANT TO BE ADDED AS A DEFENDANT.

Moser v. *Marsden* (1892), 1 Ch. 487, was an action for the infringement of a patent, and the Vice-Chancellor of Lancaster had on the application of the maker of the machine used by the original defendant, which the plaintiff claimed to be an infringement of his patent, added him as a defendant, on the ground that he was interested and claimed that a judgment in the action would injure him, and that the original defendant would not efficiently defend the action. The Court of Appeal (Lindley and Kay, L.JJ.), however, held that as the maker of the machine used by the original defendant was not directly interested in the issues between the plaintiff and the original defendant, but only indirectly and commercially, there was no jurisdiction to add him as a defendant.

LIBEL INJURIOUS TO TRADE—INJUNCTION.

In *Collard* v. *Marshall* (1892), 1 Ch. 571, Chitty, J., granted an interim injunction restraining the publication of placards and circulars containing libels injurious to the plaintiff's trade, the court being satisfied on the evidence that the statements contained in such circulars and placards were untrue.

EASEMENT—LIGHT—EXTINGUISHMENT OF EASEMENT.

In *Poudarves* v. *Monro* (1892), 1 Ch. 611, the plaintiffs applied for an interim injunction to restrain the defendants from erecting new buildings so as to obstruct the access of light to the plaintiffs' premises. It appeared on the evidence that the plaintiffs' building stood on the site of two old houses which had been pulled down in 1872. In 1876 the plaintiffs' buildings were erected. It was not satisfactorily shown that the windows in the building put up in 1876, as to any particular or defined part, coincided with those of the older buildings pulled down in 1872, and North, J., therefore refused the injunction.

PRINCIPAL AND SURETY—COUNTER-SECURITY GIVEN BY DEBTOR TO SURETY, RIGHT OF CREDITOR TO BENEFIT OF.

In re Walker, Sheffield Banking Co. v. *Clayton* (1892), 1 Ch. 621, an attempt was made on the part of a creditor to obtain the benefit of securities given by the debtor to a person who had become surety for the debt. The claim was based on *Mawer* v. *Harrison*, cited in 1 Eq. Ca. Abr., p. 93, pl. 5; 20 Vin. Abr. 102; but on examination of the original record of that case it was found that it did not really decide the point for which it was cited in the Equity Cases Abridged, and Stirling, J., decided that a creditor has no such right in respect of securities received by a surety from the principal debtor.

TRADE MARK—INFRINGEMENT—INNOCENT PURCHASER—COSTS.

American Tobacco Co. v. *Guest* (1892), 1 Ch. 630, was an action brought to restrain the sale of goods bearing a mark infringing the plaintiffs' trade mark, in which Stirling, J., lays down what appears to us to be a very wholesome and necessary rule regarding the costs of such actions. It appeared that the defendant had innocently purchased a small quantity of goods bearing the spurious

trade mark. They were served with the writ without any previous communication from the plaintiffs or their solicitors, and immediately after service they returned the bulk of the goods to the firm from whom they purchased them, and at the time of the motion for an injunction had only an insignificant quantity of the goods on their hands, which they at once handed over to the plaintiffs. Under these circumstances, Stirling, J., though granting the plaintiffs the injunction, nevertheless refused to order the defendants to pay the costs. He said that he thought such actions ought not to be encouraged, and that when a party finds his trade mark is being infringed he ought to go against the persons who put the goods on the market, and not the small retailer.

PRACTICE—PARTNERSHIP—DISSOLUTION—RECEIVER AND MANAGER—ARBITRATION CLAUSE IN ARTICLES—STAY OF PROCEEDINGS.

In *Pini* v. *Roncoroni* (1892), 1 Ch. 633, the action was brought for a dissolution of a partnership between plaintiff and defendant. The articles of partnership contained a clause for the determination of differences arising between the partners or their representatives during the partnership, or at its liquidation, or at its total or partial dissolution. The plaintiff moved for the appointment of a receiver and manager, and the defendant made a cross motion to stay proceedings, pursuant to the Arbitration Act (see R.S.O., c. 53, s. 38). It was claimed by the plaintiff that he had an absolute right to the appointment of a receiver on the partnership being dissolved; but Stirling, J., although conceding that the court would almost as a matter of course, under such circumstances, appoint a receiver, still held that the plaintiff had not an absolute right to have such appointment made. In the present case, being satisfied that the evidence established that the defendant had acted improperly, and in a way which justified the plaintiff in no longer trusting him, he appointed a receiver and manager of the partnership business. He also, on the defendant's motion, stayed the proceedings in the action except for the purpose of carrying out the order for a receiver.

LAND TITLES ACT.

The report of the Master of Titles for 1891 to the Lieutenant-Governor, just received, will be perused with interest. It reads as follows:

SIR:—I have the honour to submit the following report, showing the business done during 1891 under the Land Titles Act in the City of Toronto, County of York, and the Districts of Muskoka, Parry Sound, Nipissing, Algoma, and Thunder Bay, including the territorial district of Rainy River, being the portions of the Province in which the Act is at present in operation.

The volume of business done at this office, covering the land title transactions of Toronto and the County of York, has, on account of the recent stagnation in real estate in and about Toronto, been very much less during the year being reported on than during 1890. This stagnation was to some extent felt in 1890, but it was very much more pronounced in 1891, the registrations in 1891 being only 3,216, as against 4,129 in 1890 and 4,679 in 1889. This is the natural result

of the height to which the price of city and suburban property rose during the speculation that prevailed for some years prior to the middle of 1890, some properties having changed hands two or three times during a few months, and each time at a considerably increased price.

The same reason has prevented applications for first registration being filed during the year, where the object was merely to facilitate the transfer in subdivision lots of lands brought under with a view to early sale, and in most of the new applications other reasons of a special nature existed for making the applications. Of these there have been twenty-six filed during the year. The applications granted number twenty-eight. Some of these were filed prior to 1891. The total value of land registered for the first time during 1891 was $414,588. Of this, $246,388 was vacant land, $164,200 was improved property on which buildings were erected, and $4000 was farming land. The total value of first registrations in 1890 was $922,680, of which $783,275 was vacant, and $133,255 built upon. It will thus be seen that notwithstanding the aggregate value of first registrations during 1891 is little more than a third of the aggregate of 1890, the value of the first registration of improved property in 1891 is $30,945 in excess of that of 1890.

The receipts of the office for 1891 were $6470, and the expenses $7562.51. The receipts during 1891 were $9062 and the expenses $7816.55.

For convenience of comparison I state here the value of the first registrations had at this office during the various years the Act has been in force, as valued at the time the lands were brought under. These values have vastly increased through building and other improvements. The present aggregate value is probably between $11,000,000 and $12,000,000.

Year.	Vacant Land.	Built Upon.	Farming.	Total.
	$ c.	$ c.	$ c.	$ c.
1885	32,000 00	28,250 00	.....	60,250 00
1886	625,239 00	352,200 00	.....	977,439 00
1887	827,074 00	175,105 00	11,500 00	1,013,679 00
1888	363,820 00	265,300 00	25,000 00	654,120 00
1889	759,421 00	127,940 00	400 00	887,761 00
1890	783,275 00	133,255 00	6,150 00	922,680 00
1891	246,388 00	164,200 00	4,000 00	414,588 00
Aggregate	3,637,217 00	1,246,250 00	47,050 00	4,930,567 00

The total number of first registrations during the above years was 259. These lands now constitute about 3700 separate holdings.

The aggregate number of instruments registered up to 31st Dec. last is 16,129.

It may be here convenient to explain shortly the mode in which land is dealt with when first registered and subsequently. Upon first registration the applicant or his nominee is entered as owner subject to such incumbrances as may be on the land, and the particulars of these incumbrances are set out in the

entry of ownership. This land is numbered in order in the proper register, say, as Parcel 450 in the register for the West Section of the Township of York, or otherwise in accordance with the locality in which it is situate and the order in which it is entered; each parcel of land in every register being numbered in regular sequence. As many of the pages following this entry as are thought to be probably necessary for the purpose are left blank for the entry of dealings with respect to this land, and this entry and the pages following are called the Register of the Parcel. All charges (or mortgages) affecting any part of the land are entered on these pages; so also are all dealings with these charges. In case the owner transfers the whole parcel, the transferee is entered as owner subject to the incumbrances then existing, and the parcel still retains the same number. If the owner only transfers part of the land, this part becomes a new parcel with a new number, the new owner being entered as owner in a new part of the register-volume, where the particulars of all the incumbrances then remaining on this portion, if any, are stated, and a number of blank pages left for the entry of dealings in respect of this land.

In all cases where persons propose to purchase a piece of land, or to take security upon it, they should ascertain from the owner the number of the parcel and the register in which it is entered. These are always stated in the certificate of title, and also appear on the certificate of registration indorsed on the duplicate of every charge. The very frequent omission to obtain this information puts parties to the trouble and expense of searching the indexes in order to ascertain what, in most cases, they could have readily obtained by simply enquiring of the person with whom they are dealing.

Any number of lots may be entered together in the same parcel, and the charge for searching with reference to these is only twenty cents where the searcher has the number of the parcel as before stated. In the registry office the least charge is twenty-five cents for each lot. It is in the small expense incurred in searching titles and the short time it takes that the great saving accrues by the Torrens system. From one to five minutes is the time usually required to examine a title in this office. The charges for entering instruments cannot possibly be less under the Torrens system than under the old registry system, as the labour to the office is very considerably more, as well as being of a more responsible character.

As it is entirely optional with owners whether they take out a land certificate or not, they very often, in order to save the fee of $1 chargeable therefor, dispense with the certificate. The result of owners not having certificates is that their solicitors or agents frequently draw up descriptions of the property being transferred or charged without careful reference to the description in the entry of ownership. Where, as not infrequently happens, the description so drawn varies from that in the entry of ownership, the office is put to the trouble of correspondence in order to have the inaccuracy corrected, and the completion of the transaction is delayed. This more frequently happens where houses have been built upon the land subsequently to the entry, or where parts of the land have been transferred. The new transfer often describes the division line between the part

previously transferred and that then being transferred in language not by any means identical, and not having the same legal effect. It is almost superfluous to say that the boundary line between adjoining lands should be described by like language in both entries of ownership, and should, consequently, be similarly described in the documents on which the entries are founded. It seems extraordinary that the office should have considerable difficulty in impressing this almost self-evident principle upon conveyancers, but the fact is as stated. Where an applicant for a search cannot give the number of the parcel, an additional twenty cents is charged.

In October I made my annual inspection of the local offices. In North Bay there had been a misapprehension by the local master in respect of the proper practice where certificates were not applied for, and this caused him to leave some registrations incomplete. In the office at Port Arthur I found a considerable number of registrations had not been completed. In both offices the arrears were made up without delay, and in Port Arthur arrangements have been made with a view of preventing the recurrence of an incident of this kind. In the other offices, namely, at Bracebridge, where Mr. J. E. Lount is Local Master; at Parry Sound, where Mr. P. McCurry is Local Master; and at Sault Ste. Marie, where Hon. Walter McCrea is Local Master, I found the work well up and carefully done.

[Then follows a table showing the business of these offices during the year, and also since the Act came into operation in these districts, namely, 1st Jan., 1888.]

I presume it is not expected that many lands will be brought under the Act in these new districts for some years, other than the lands newly patented, the object of its introduction in the districts being chiefly to prevent the evils of the old system attaching to lands which are only now being patented by the Crown.

The amount to the credit of the Assurance Fund on 31st December, 1891, was $15,132.90. Of this, $1,371.06 is for lands in the districts. The remainder, $13,761.84, is in respect of lands in the County of York and City of Toronto.

J. G. SCOTT, *Master of Titles.*

Legal Scrap Book.

BARRISTERS AND SOLICITORS.

The fusion of the two branches of the profession has become an accomplished fact in Melbourne, Australia, where, notwithstanding that a Bar association was formed to oppose it, the "pro-fusionists" carried the day. In England a determined effort is now being made to accomplish the same end, and the Solicitor-General is counted among the strongest advocates of the change, in which he is ably supported by the *Times*. It is, therefore, more than possible that in the very near future the mother country will be found following the lead of her colonies in this matter, as she has done in many others.

LIABILITY OF CLUB COMMITTEES.

Athletic and other clubs will be interested in a case noted in the English *Law Journal* for May 7. In 1888 a printer tendered for certain printing to the

Newton Heath Football Club, and his tender was duly accepted by the then committee. Being unable to collect the money from the "artful dodgers," the printer sued all the members of that committee. It was contended on behalf of the defendants that the present committee was liable for the debt; but the judge, while expressing his regret that he could not so hold—considering, as he did, that since the debt was incurred for the benefit of the club the present committee should have taken it over—felt reluctantly compelled to give judgment against those of the defendants who were present at the meeting at which the tender was accepted.

LIABILITY O RAILWAY COMPANIES.

A somewhat uncommon action was that (*Long* v. *Chicago, etc., R. W. Co.*) brought in the Supreme Court of Kansas. A passenger bought a ticket at a small station on the railway from an agent who was suffering from smallpox, and having thereby contracted the disease brought this action. In the judgment, which was given for the plaintiff, it is said: "The negligent or accidental act, if any, of the agent in imparting a contagious disease to Long, the purchaser of the railroad ticket, was not within the scope of his authority so as to charge the company, his master. The sickness of an agent with a contagious disease cannot be presumed to be authorized or directed by the master, and is not an incident in any way to the employment of selling tickets or acting as agent at a station."

PLEA OF CONFESSION AND AVOIDANCE.

This heading might perhaps describe a defence entered to an action brought in a County Court in Manitoba, and now pending. The plaintiff's claim is comprised of two items, one of $4 and another of $10; and the defendant's answer on oath is as follows: "Don't owe the $4; inability to pay the $10 at present, as I have informed the plaintiff, owing to the loss of my situation in February. Sole income $360 per annum, for three hundred and sixty-five nights' work of twelve hours each, in Government service; have nine children, seven of them entirely dependent upon my earnings. After deducting rent, we have between five and six cents per diem for each head for food and clothing; consequently for the last half of each month we suffer semi-hunger; children without boots and insufficiently clothed, lacking every comfort and nearly all the necessaries of life, without possessing any single thing to make life even desirable."

It is well known that nearly all the necessaries of life are dearer in the western provinces than in the east; so that what might appear to a working man in Ontario a sum sufficient to exist upon might, as a fact, be inadequate in the western provinces. The plea is at all events a novelty, whether it be true or not in substance or in fact. It is not known that there are any demurrers by pleading in the Manitoba County Courts.

EXCESSIVE SENTENCES.

The well-known expression, "make the punishment fit the crime," is one which we expect to find in prosy reality as well as in poetry; but we are sometimes disappointed. In a recent case (*O'Neil* v. *State of Vermont*) which was

carried to the Supreme Court of the United States, a resident of New York State sent liquor into the State of Vermont C.O.D., and the question was whether this constituted a sale in the latter State and so a criminal offence. The defendant was charged in the accusation only with a single sale of liquor on a particular day, but by reason of the complaint reading "on diver's days" he was convicted by a justice of the peace of four hundred and fifty-seven distinct offences, sentenced to pay fines and costs amounting to $9613, and to be confined in a House of Correction for one month, and, if the fines and costs should not be paid before the expiry of that term, he was to be confined at hard labour for further terms, amounting in all to more than seventy-nine years. On appeal, this sentence was reduced to $6638 or fifty-four years. Mr. Justice Field, the dissenting judge in the Supreme Court, uses terms of great moderation when he describes the sentence as "unusual and cruel," and that "it does not alter its character as cruel and unusual that for each distinct offence there is a small punishment if, when they are brought together, and one punishment for the whole is inflicted, it becomes one of excessive severity." In the celebrated *Tweed Case*, the rule was laid down by the New York Court of Appeals that the punishment under one indictment should not exceed the maximum which might be inflicted for any one of the offences separately.

A. H. O'B.

Notes and Selections.

CROSS-EXAMINATION: A SOCRATIC FRAGMENT.—*Socrates.* Shall we not be right in saying, then, that the object of cross-examining witnesses is to elicit the truth?

Philotimus. It would seem to be so, Socrates.

Soc. Then the good advocate, aiming at this mark, will ask only such questions as will help to discover the truth?

Phil. Only such questions, Socrates.

Soc. How shall we reconcile this with what we arrived at before, that it is the function of the judge to find out the truth, and not the function of the advocate?

Phil. This is a hard nut to crack, Socrates.

Soc. Have we not, then, been confusing two different kinds of excellence, that of the judge and that of the advocate, just as if we were to confuse the excellence of the terrier and the excellence of the rat?

Phil. We seem to have been guilty of some such mistake, Socrates.

Soc. Let us consider, then, what is the special excellence of the advocate. Will it not be to recommend himself to his client so that he may obtain more briefs, and become popular among litigious people?

Phil. This seems very probable, Socrates.

Soc. Then will not the advocate who proposes this end to himself try, if he has a bad case, to make the worse appear the better reason, and to hoodwink

the jury, and to browbeat and bully the witnesses, and do other things of this kind, if he sees that they please his employer and procure him special retainers?

Phil. This is likely enough, Socrates.

Soc. And if he sees a witness timid and nervous he will speak to him in a loud voice and try to frighten him, and will treat him roughly, as if he was speaking lies?

Phil. We shall not be far wrong, Socrates, in expecting this.

Soc. And if he knows anything to the disadvantage of the witness he will rake it up, will he not, however old it may be, and whether it has anything to do with the matter in question or not: as, if a witness is called to prove a will, he will ask him whether he did not once steal apples when he was a boy; and if he knows nothing, he will suggest things which are not true and make innuendoes and insinuations?

Phil. This seems his best course, Socrates.

Soc. And if the judge interferes or remonstates he will insult him as far as he dares, or make slighting remarks in an undertone, to make his employer think that he is master in the court and more knowing than the judge?

Phil. I should advise him to act so, if he would listen to me.

Soc. And thus he will get the reputation of a verdict-winner, and will be talked about in the newspapers, will he not, and will receive retainers and refreshers continually?

Phil. No doubt, Socrates.

Soc. While the unskilful advocate who asks only relevant questions and is courteous to witnesses and respectful to the judge will be neglected and his fee-book will suffer?

Phil. Assuredly, Socrates.

Soc. We seem to have arrived at this then, that law is in the nature of a cock-fight, and that the litigant who wishes to succeed must try to get an advocate who is a game bird with the best pluck and the sharpest spurs?

Phil. It would be madness not to do so, Socrates.

Soc. And to know the law and the true principles of justice will be a matter of secondary importance?

Phil. Altogether secondary.

Soc. So that we may say that the law is a matter of clever rhetoric and of bullying witnesses and cajoling juries and other such arts, may we not?

Phil. Apparently.

Soc. Then how shall we reconcile this with the saying of one of the greatest of the wise men, that "law ought to be the leading science in every well-ordered commonwealth"?

Phil. We are in a fix, Socrates.

Soc. May we not have been wrong in saying that the special excellence of the advocate is to advertise himself and make himself popular with solicitors?

Phil. I am inclined to think that we must hark back, Socrates.—*Law Quarterly Review.*

Correspondence.

UNIFORMITY OF PRACTICE.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—For some years the profession have been justly complaining of the want of uniformity in the practice of the courts, each judge holding his own views as to what the practice is, and as to the construction of the rules, etc. Occasionally we find the Divisional Courts holding adverse views. I once heard the present Chief Justice of the Court of Appeal say, when Chief of the Queen's Bench, upon hearing some startling proposition laid down as being sanctioned by the Judicature Act, "I shall not be at all surprised to hear that you can hang a man under the Judicature Act." Since that time the practice has become more confused, until to-day no solicitor can speak with any certainty of what the practice really is.

A rather curious case has recently been decided which is worth noting on account of its startling result. The defendant applied to the acting Master in Chambers for leave to rejoin to the plaintiff's reply, filing on his application an affidavit verifying the statement of claim, defence, and reply. The plaintiff's counsel, on the return of the motion, objected to the motion, pointing out that under Consolidated Rule 382 the officer was to exercise his discretion, and that under the invariable practice both here and in England a copy of the proposed pleading should be filed or propounded on the motion either being shown by the notice of motion or the affidavit in support. The objection was overruled and an order made to rejoin to the reply. The plaintiff appealed on the ground that there was no sufficient material before the officer in chambers, citing form of summons in Chitty's Forms, 12th ed., p. 165, *Norris* v. *Beazley*, 35 L.T.N.S. 845. The motion was enlarged to put in proposed pleading and serve plaintiff with a copy. On the return, it was contended that the proposed pleading was unnecessary and contrary to rules of court. The judgment said, "All pleadings are unscientific, and the judge at the trial could dispose of the case on the evidence without regard to pleadings," and the motion was dismissed with costs to the defendant in any event.

The plaintiff, being admittedly right in his contention, was puzzled to know why his motion should be dismissed by the judge on appeal who ordered a copy of the pleading to be served, and why he should be ordered to pay costs, and appealed to the Divisional Court. The special rejoinder was said by one of the judges to be rather more explicit than former pleadings. But the appeal was dismissed with costs *payable by plaintiff forthwith*. Result: Plaintiff, who insists on defendant acting under the admitted practice, mulcted in costs; defendant, who acts contrary to the rules of court and against the admitted practice, helped at the expense of his unfortunate opponent. Query, what is the practice? The above case, which has recently come under my notice, is not an exceptional one, and whether it is to form a precedent for the future remains to be seen. It certainly does appear to put a premium on careless practice at the expense of the careful practitioner.

LEX.

Toronto, May 19th.

[ERRATA.—In the letter on "The Appeal Grievance," in our last issue, at p. 278, l. 11, for "four" read "six," and on the first line read "commerce shuns the law" for "commerce spurns the law." Our printer should have known that the latter would be a contempt of court, which is something we would not even border upon.—ED. C.L.J.]

DIARY FOR JUNE.

1. Wed.....First Parliament in Toronto, 1797.
2. Thurs..Chancery Division H.C.J. sits.
4. Sat.....Easter term ends. Lord Eldon born, 1751.
5. Sun.....*Whit Sunday. Battle of Stony Creek, 1813.*
6. Mon.....Sir John A. Macdonald died, 1891.
8. Wed.....First Parliament at Ottawa, 1866.
11. Sat.....St. Barnabas. Lord Stanley, Gov.-Gen., 1888.
12. Sun.....*Trinity Sunday.*
13. Mon.....County Court sittings for motions in York.
14. Tues.....County Court sittings for trial except in York.
15. Wed.....Magna Charta signed, 1215.
16. Thurs...Battle of Quatre Bras, 1815.
18. Sat.....Battle of Waterloo, 1815.
19. Sun.....*1st Sunday after Trinity.*
20. Mon.....Accession of Queen Victoria.
21. Tues.....Longest day.
24. Fri.....Midsummer Day. St. John Baptist.
25. Sat.....Sir M. C. Cameron died, 1887.
26. Sun.....*2nd Sunday after Trinity.*
28. Tues.....Coronation of Queen Victoria, 1838.
29. Wed.....St. Peter.
30. Thurs...Jesuits expelled from France, 1880.

Reports.

EXCHEQUER COURT OF CANADA.

ADMIRALTY SIDE—TORONTO DISTRICT.

(Reported for THE CANADA LAW JOURNAL.)

"THE GLENIFFER."

Maritime law — Salvage — Maritime lien — Towage — Nature of services — Express agreement for reward — Successful result — Possessory lien — Priority of lien — Amount of salvage award — Costs.

A stranded vessel abandoned by the owners to the underwriters and sold by them was saved, and was brought by the purchasers to a shipwright for repairs.

Claim for towage of vessel from place were stranded to dry dock; *Held*, a salvage service.

Claim for use of anchor, chains, etc., used in saving vessel; *Held*, a salvage service.

Claim for personal services not performed on vessel; *Held*, not a salvage service.

Claim for services of tug in unsuccessful attempt to remove vessel; *Held*, not a salvage service. Salvage is a reward for benefits actually conferred.

Held, maritime liens prior to possessory liens to the extent of the value of the *res* at the time of delivery to the shipwright.

Held, following the usual rule, that not more than a moiety of the value of the *res* at the time when saved be awarded to salvors, there being no exceptional feature except the small value of the *res*. Costs of salvors awarded out of other moiety.

Costs of arrest and sale and of bringing fund into court paid in priority to claims out of fund, in proportions of the value of the *res* at the time of delivery to the Dry Dock Company and balance of the proceeds of sale which was not sufficient to pay claim of possessory lienholder.

[TORONTO, March 31, 1892.

This was an issue between Frank Jackman, Patrick McSherry, A. B. Morrison, and Joseph Jackson, and the Toronto Dry Dock and Shipbuilding Company (Limited), in which said Jackman *et al.* set up that they respectively had valid and subsisting claims for salvage services performed on the ship, "The Gleniffer," and that their claims were entitled to rank on the proceeds of the sale of the said ship in priority to the claim of the company under a possessory lien for repairs and dockage charges.

The facts appear in the judgment. The issue was tried on affidavits on the 15th Feb., 1892.

Mulvey for the salvors.

The questions to be decided are whether the services performed give maritime liens, and whether the maritime liens should rank on the proceeds of the ship in priority to the possessory lien of the shipwright.

The services performed by Jackman and Morrison give a maritime lien. "The Catherine," 12 Jur. 682; "The London Merchant," 3 Hagg. 394; "The Princess Alice," 3 W. Rob. 138; "The Reward," 1 W. Rob. 174.

The services of Morrison give a maritime lien notwithstanding the fact that they were performed under an express agreement. "The Catherine," 6 No. Cas. Sup. 43; "The True Blue," 2 W. Rob. 176; "The Mulgrave," 2 Hagg. 77.

Jackson is entitled to a maritime lien for services rendered; although no immediate benefit accrued from his services, he was a party to the general successful result. "The Atlas," Lush. 523; "The Camillia," 9 P.D. 27; "The E.U.," 1 Spks. 66; "The Santipore," 1 Spks. 231.

When a ship is arrested by the marshal she is in the possession of the court, and the possessory lien is divested. "The Harmonie," 1 W. Rob. 178; "Ladbrook *v.* Crikett," 2 T.R. 649.

Possession is not required to support a maritime lien. The lien travels with the *res* into whosoever's possession it may come. It is inchoate from the moment the claim attaches, and when carried into effect by legal process relates back to the period when it first attached. "The Bold Buccleugh," 7 Moore P.C. 267.

A maritime lien is prior to a possessory lien. "The Gustaf," Lush. 506; "The Immaculata Concezione," 9 P.D. 37; "The Acacia," 4 Asp. M.L. 254 (n.).

The work done by the shipwright was done on personal security. There is no maritime

lien for such services. "The Heinrich Bjorn," 11 App. Cas. 276.

A. C. Galt, for the Toronto Dry Dock Co., after setting out the condition of the vessel when brought to the Dry Dock Co. and the work which was subsequently done on her:

When an agreement is entered into for the performance of service salvage remuneration will be refused. "Abbott on Shipping," 12 Ed. 547, 548, 569.

Salvage is a compensation allowed for services performed in rescuing a ship, and must involve skill, enterprise, and risk. Sweet's Law Dictionary. There was no risk or enterprise in this case, the vessel being an abandoned hulk.

A salvor is a person who performs useful services as a volunteer. When these alleged salvors entered into an agreement to perform the services, they were under a legal duty.

The services of Jackman was merely towage services, which give no maritime lien. "The Heinrich Bjorn," *ante*. Jackson's services give no maritime lien. No benefit was obtained therefrom.

A maritime lien travels with the *res*, but is subsequent to any lien through which the value of the *res* is increased. "The Bold Beuccleugh," *ante*. It is the general rule of maritime law that not more than a moiety of the *res* will be awarded to salvors. "Jones on Salvage." "International *v.* Lobb," 11 O.R. 408.

Mulvey in reply: The full value of the *res* was awarded in the following cases: "The William Hamilton," 3 Hagg. 168; "The Castletown," 5 Irish Jur. 379; "The Rutland," 5 Irish Jur 283.

The amount of the salvage award is in the discretion of the court. "The Acquila," 2 C. Rob. 37.

McDOUGALL, Admiralty J.: This is a motion before me, in the several suits brought against the above ship, to determine the priorities of the various claims. Four actions have been instituted for salvage, and one by the Toronto Dry Dock Co. for repairs. In two of the salvage cases the plaintiffs claim under an express agreement as to amount; in the other two salvage cases, the plaintiffs demand a *quantum meruit* by virtue of their alleged salvage services under the maritime lien thereby created. The ship was arrested in the salvage actions while in the possession of the plaintiffs in action No. 10, the Toronto Dry Dock Company, who claim they are entitled to a possessory lien for the amount of their account for repairs and dock charges. The owners do not appear to the actions in this court. The Dry Dock Company, before any one had commenced an action in the Admiralty Court, had taken proceedings in the High Court of Justice, *in personam*, against the alleged owners, and have secured a judgment by default against two of the defendants in the action, named Baker, for the amount of their claim. The other defendant, Patrick McSherry, disputes their right to recover against him, on the ground that he was not an owner of the vessel at the time she came into the hands of the Dry Dock Company for repairs. McSherry is plaintiff in action No. 6 in this court, claiming a considerable sum for alleged salvage services. All the alleged salvage services were performed before the ship came into the possession of the Dry Dock Company.

A brief history of the ship will be of value as showing the relative position of all parties. The "Gleniffer" was stranded on the shore of Lake Ontario, near Toronto, several years ago. She became a total wreck, and was abandoned by her then owners to the underwriters. These latter sold the wreck to McSherry; McSherry stripped her of her sails, rigging, chains, anchors, and practically all movable articles, leaving the hull partially under water, where she lay for a year or two. In the autumn of 1891 McSherry sold the hull and outfit removed by him to the present owners, two brothers named Baker, for the price or sum of $400, retaining, however, possession of the outfit until the purchase money was paid. The Bakers proceeded at once to recover the hull, employing the plaintiffs in actions Nos. 6, 7, and 8 to aid them in their endeavours to get the vessel afloat. Their efforts were ultimately successful, and the vessel was taken by the salvors, under the direction of the owners, the Bakers, to the yard of the Dry Dock Company, where the vessel had to be docked immediately on her arrival, as she was kept afloat only by the constant working of a steam pump.

The salvage claims may be described briefly as follows:

Action No. 5—Frank Jackman, plaintiff:		
67 hours' work of steam tug, at $6 per hour	$402 00	
Towing scows	5 00	
		$407 00
Action No. 6—Patrick McSherry, plaintiff:		
For use of boat, two lines, anchors, and chains, and 21 days' personal services		267 00
Action No. 7—A. B. Morrison, plaintiff:		
For use of steam pump, per express contract, at $20 per diem, for 23 days	460 00	
Half cost of fuel, also per express contract	24 00	
Ten days' use and work of steam scow, and crew (not covered by any agreement as to price), at $20	200 00	
		684 00
Less cash paid on account		167 00
Leaving a balance due of		$517 00
Action No. 8—Joseph Jackson, plaintiff:		
Trying to pull "Gleniffer" off ground, 2½ hours with steamer "Eurydice," under express agreement, $50 for the first hour, and $10 for each additional hour. These efforts were unsuccessful.		65 00

The value of the hull when delivered to the Dry Dock Company was about $300; after the repairs made to her by the Dry Dock Company the vessel was sold by the Marshal, without any outfit or sails, for $850.

In the first place, it must be determined whether all or any of the foregoing claims are properly salvage claims or not.

McSherry's claim, in action No. 6, is for the use of the boat tackle, anchors, chains, tow lines, tackle lines, etc., and twenty-one days' personal service, of which only three days were spent on the wreck, the remaining eighteen days being occupied in going about town, it is said, procuring and forwarding supplies. I think the services rendered were salvage services, except the eighteen days' personal services in town, which I disallow as salvage.

The claims of the plaintiff in No. 5, Frank Jackman, and of the plaintiff in No. 7, A. B. Morrison, are also clearly for salvage services. It is argued that the claim of the plaintiff Morrison for the use of the steam pump, being under express agreement, cannot rank as a maritime lien for salvage; the express agreement either ousts the court of jurisdiction, or, if it is found to be an express agreement, it ceases to be a lien, which is a right or privilege seldom arising, it is contended, except in the absence of an express agreement. I cannot concur in this view. The agreement does not alter the nature of the service as a salvage service, and the court will give effect to its provisions in awarding remuneration according to its terms. An agreement fixing an amount to be paid for the services, whether in writing or verbal, is legally conclusive on both parties as to the amount of the reward: "The Fire Fly," Swa. 240; "The True Blue," 2 W. Rob. 177. Such an agreement must, however, be free from fraud or any taint of dishonesty or corruption, and made with a competent knowledge of all the facts: "The Betsy," 2 W. Rob. 170; "The Kingalock," 1 Spk. 263. The proof of the alleged agreement rests with the party who sets it up, and satisfactory evidence must be given of its existence: "The Graces," 2 W. Rob. 297; "The Salacia," 2 Hagg. 265.

Jackson's claim for attempting to pull the boat off, which effort was entirely unsuccessful, I do not consider a salvage service. There is no agreement shown that he was to be paid in any event. Salvage is a reward for benefits actually conferred, not for services attempted, and resulting in nothing. The exertions must in some way contribute to the successful result: "The Edward Hawkins," Lush. 515. Here there is no evidence or allegation that the service resulted in the slightest benefit whatever.

The claims made for services which I hold to be salvage, with the amounts claimed, will be as follows:

Patrick McSherry		$213
A. B. Morrison, contract	$484	
Less cash paid	167	
Leaving balance of	317	
Services not under contract	200	
Total		517
Jackman's claim		407
Total		$1,137

The value of the vessel when saved, in the hands of the salvors, and at the date of delivery to the plaintiffs the Dry Dock Company, was $300. This amount is the fund to be distributed unless the salvors are entitled to claim up to the added value resulting from the work done by the Dry Dock Company. Singularly enough, I can find no express decision on the point. In the cases of "The Gustaf," Lush. 506, and "Immacolata Concezioni," 9 P.D. 37, the question was not raised; it may be because the maritime liens which were in priority in these cases were small in amount, compared with the amount realized from the sale of the *res*; probably, in each case, below the actual value of the *res* at the time it came into the hands of the shipwright. In the case of "The Gustaf," the vessel sold for £810, and the liens preferred to the claim of the shipwright came only to £390. In the case of "The Immacolata Concezioni," the proceeds of the sale paid into court were £2,328; wages were paid to the amount of about £500 Though that amount was not then settled, priority was given to such wages as had been earned up to the date of the ship's coming into the possession of the shipwright.

The principle laid down in the case of "The Gustaf," and followed in the case of "The Immacolata Concezioni," was that the shipwright takes the vessel into his possession *cum onere*: *i.e.*, with the existing obligations, then completed and done; and it would appear to me that the equitable and just meaning of taking the vessel *cum onere* would only extend to the value of the *res* at the time of its coming into the shipwright's hands. If the *res* at that time was of less value than the aggregated amount of the maritime liens attaching to the vessel, then the holders of such liens must abate their claims to the extent that their security failed them. I do not mean to say that it is always a simple thing to determine the value of the *res* at the time of its entering the shipwright's yard; but it can be very closely approximated. Especially should this rule be applied to claims for salvage. In the case of such claims the court rarely allots for salvage more than a moiety of the property saved. Surely a vessel worth $1,000 when saved and worth $5,000 after the shipwright has got through his work on her—though his, the shipwright's, individual claim may exceed, and usually would exceed, the selling value of the patched-up vessel—could not fairly be valued at $5,000 for the purpose of estimating the amount to be awarded for salvage. If this rule were to prevail the salvors need only to postpone suing for their claims till the shipwright has expended a large sum on the vessel and then make a large claim for salvage, and for an award therefor far in excess of the actual value of the property so saved. I think the value of the *res* must be taken at the time she is salved and handed over by the salvors, and it is in reference to this value that the amount to be allotted for salvage is to be computed.

In this case I find the value of the "Gleniffer" when handed over to the Dry Dock Company to have been $300, and I fix the amount of salvage at the sum of $150, being a moiety of the value of the property saved. I do not think there were any special circumstances of danger or risk involved in the services rendered in this case which would warrant my making an award exceeding what appears to be the usual limit in cases of salvage. The only exceptional feature in the present case is the small value of the property saved; but that, standing by itself, I do not consider as sufficiently exceptional or extraordinary to take the case out of the usual rule. I also allow the salvors their costs, but these (including their share of the costs of arrest and sale) are not to exceed the sum of $150, so far as the funds in court are concerned. This $150 for costs and the $150 allowed for salvage exhausts the full value of the *res* in the hands of the salvors at the time they delivered it over to the Dry Dock Company for repairs.

The owners in this case not appearing, the salvors are awarded the full value of the property saved, because I assume that the sum which will be taxed for costs will equal, if not exceed, the sum of $150, the other moiety of the value of the *res* saved. This view protects to a just extent the possessory lien of the Dry Dock Company. They will have to pay their proportion of the costs of arrest and sale; these will be in the same proportion to the salvor's share of these costs as $550 bears to $300. After the payment of these costs and the money awarded to the salvors, the Dry Dock Company will be entitled to the balance of their fund in court to be applied on their claim and costs.

ONTARIO.

FIRST DIVISION COURT, COUNTY OF SIMCOE.

(Reported for THE CANADA LAW JOURNAL.)

GORDON *v.* PLAXTON.

Right of tax purchaser to timber cut and removed during period allowed for redemption —Statute of Limitations.

Held, that under R.S.O., c. 193, s. 174, the holder of a tax certificate during the period for redemption has a qualified ownership in the land and timber thereon, which title becomes absolute upon the tax deed being duly given and registered, and that such tax purchaser, upon receiving his deed, is entitled to exercise his remedy of recaption and sustain an action for conversion even as against a third part, who has innocently purchased, from the original owner of the land, timber cut and removed off the land during the twelve months allowed for redemption. Under the circumstances the Statute of Limitations would be no defence as against such tax purchaser.

(BARRIE, April 16, 1892.

The defendant bought land at a tax sale on 5th Dec., 1883. The land was not redeemed, and on 26th Dec., 1884, the defendant obtained his tax deed, which was duly registered. During the period allowed for redemption a large number of cedar posts were cut and removed from the land by the original owner thereof and placed on neighbouring railway grounds, where, after the lapse of several years, they were sold by him or his agent to the plaintiff, who did not immediately remove them. In the fall of 1891 the defendant, having learned for the first time that the posts were cut on the land during the time he held the tax certificate, laid claim to the posts and removed a few of them, whereupon plaintiff interposed and took the balance of them, and brought this action of trover to recover damages for those the defendant had taken. The defendant counterclaimed for all the plaintiff had taken.

C. E. Hewson for the plaintiff: The right of the tax purchaser is to prevent timber being cut and removed during the year; not to recover for timber taken. The Statute of Limitations bars the defendant.

C. W. Plaxton, for defendant, relied on the wording of the statute referred to, *Brown* v. *Sage*, 11 Ch. 239; *Spackman* v. *Foster*, 11 Q.B.D. 99; *Keith* v. *McMurray*, 27 C.P. 428.

BOYS, JJ.: When the defendant purchased the land at sale for taxes and obtained the usual certificate of sale, he became, in the words of the statute, "the owner of the land so far as to have all necessary rights of action and powers of protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed" (R.S.O., c. 193, s. 174). He was entitled to possession of the land, and could successfully resist an action of ejectment by the owner, and he could maintain an action of ejectment against the owner (*Cotter* v. *Sutherland et al.*, 18 U.C.C.P. 357). Under these rights it seems clear the defendant was entitled to prevent the cutting of the posts in question at the time they were cut, and after they were cut he would have had the right to bring them back to the land and keep them there until the time for redemption expired. When that time did expire and the land was not redeemed, the conclusion, to my mind, is irresistible; the posts would then be absolutely the property of the defendant. Not knowing the posts had been cut and taken away until after the defendant got his deed, nothing was done by him regarding them during the time he only held the certificate, but his having received a more complete title can hardly lessen his rights. He must then, it seems to me, have become absolute owner of the posts, and has always been entitled to them.

The Statute of Limitations has not been pleaded, but if it had been I do not see that it would avail the plaintiff, for the defendant is not suing for damages for the trespass. He is merely, in my view, taking his own property, which has been legally, although doubtless not morally, stolen away from him, and against his doing so I see no objection. He could take it at any time as against the owner of the land who cut the posts, and the plaintiff can derive from the owner no better title than the owner had himself.

I think the action of the plaintiff must fail, and that the defendant is entitled to be paid for the posts recently taken by the plaintiff. Their value is not clearly shown, but, as far as I can see, $25 would be sufficient.

The plaintiff's action is therefore dismissed, with costs, and there will be judgment for the defendant on his counterclaim for $25 with costs.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Quebec.] [April 4.

GRANT *v.* THE QUEEN.

Petition of right (P.Q.)—R.S.C., Art. 5976—Sale of timber limits—Licenses—Plan—Description—Damages—Art. 992 C.C.

Where the holder of a timber license does not verify the correctness of the official description of the lands to be covered by the license before the issue of the license, and after its issue works on lands and makes improvements on a branch of a river which he believed formed part of his limits, but are subsequently ascertained by survey to form part of adjoining limits, he cannot recover from the Crown for losses sustained by acting on an understanding derived from a plan furnished by the Crown prior to the sale (FOURNIER, J., dissenting).

PATTERSON, J., was of opinion that the appellant's remedy should have been by action to cancel license under Art. 992 C.C., and with a claim for compensation for moneys expended.

Appeal dismissed with costs.

Hutchinson, Q.C., for appellant.

Bedard for respondent.

LACOSTE *v.* WILSON.

Donatio inter vivos—Subsequent deed—Giving in payment—Registration—Arts. 806, 1592 C.C.

The parties to a gift *inter vivos* of certain real estate, with warranty by the donor, did not register it, but by a subsequent deed, which was registered, changed its nature from an apparently gratuitous donation to a deed of giving in payment.

In an action brought by the testamentary executors of the donor to set aside the donation for want of registration,

Held, affirming the judgment of the court below, that the forfeiture under Art. 806 C.C. resulting from neglect to register applies only to gratuitous donations, and as the deed in this case was in effect the giving of a thing in payment *(dation en paiement)*, with warranty, which under Article 1592 is equivalent to sale, the testamentary executors of the donor had no right of action against the donee based on the absence of registration of the original deed of gift *inter vivos*.

Appeal dismissed with costs.

Lajoie for appellant.

Geoffrion, Q.C., for respondent.

BALL *v.* MCCAFFREY.

Appeal—Acquiescence in judgment—Jurisdiction—36 Vict., c. 81 (P.Q.)—Charges for boomage—Agreements—Renunciation to rights—Estoppel by conduct—Renunciation tacite.

In an action in which the constitutionality of 36 Vict., c. 81 (P.Q.), was raised by the defendant, the Attorney-General for the Province intervened, and the judgment of the Superior Court having maintained the plaintiff's action and the Attorney-General's intervention, the defendant appealed to the Court of Queen's Bench (Appeal side), but, pending the appeal, acquiesced in the judgment of the Superior Court on the intervention and discontinued his appeal from that judgment. On a further appeal to the Supreme Court of Canada from the judgment of the Court of Queen's Bench on the principal action, the defendant claimed he had the right to have the judgment of the Superior Court on the intervention reviewed.

Held, that the appeal to the Court of Queen's Bench from the judgment of the Superior Court on the intervention having been abandoned, the judgment on the intervention of the Attorney-General could not be the subject of an appeal to this court.

F.McC. brought an action against G.B. for $4464 as due to him for charges which he was authorized to collect under 36 Vict., c. 81 (P.Q.), for the use by G.B. of certain booms in the Nicolet River during the years 1887 and 1888. G.B. pleaded that under certain contracts entered into between F.McC. and G.B. and his *auteurs*, and the interpretation put upon them by F.McC., the repairs to the booms were to be and were in fact made by him, and that in consideration thereof he was to be allowed to pass his logs free; and also pleaded compensation of a sum of $9620 for use by F.McC. of other booms and repairs made by G.B. on F.McC.'s booms, and which by law he was bound to make.

Held, reversing the judgment of the court

below, that as there was evidence that F. McC. had led G.B. to believe that under the contracts he was to have the use of the booms free in consideration for the repairs made by him to the piers, etc., F.McC. was estopped by conduct from claiming the dues he might otherwise have been authorized to collect.

Held, further, that even if F.McC.'s right of action was authorized by the statute, the amount claimed was fully compensated by the amount expended in repairs for him by G.B.

Appeal allowed with costs.

Laflamme, Q.C., and *Charbonneau* for appellant.

Hoonan for respondent.

Brodeur for the Attorney-General.

LA SOCIÉTÉ CANADIENNE-FRANCAISE *v.* DAVELUY.

Acquiescence in judgment—Attorney ad litem—Right of appeal—Building society—C.S.L.C c. 69—By-laws—Transfer of shares—Pledge—Art. 1970 C.C.—Insolvent creditor's right of action—Art. 1981 C.C.

By a judgment of the Court of Queen's Bench the defendant society was ordered to deliver up certain number of its shares upon payment of a certain sum. Before the time for appealing expired, the attorney *ad litem* for the defendant delivered the shares to the plaintiffs' attorney, and stated he would not appeal if the society were paid the amount directed to be paid. An appeal was subsequently taken before the plaintiffs' attorney complied with the terms of the offer. On a motion to quash the appeal on the ground of acquiescence in the judgment,

Held, that the appeal would lie.

Per TASCHEREAU, J.: That an attorney *ad litem* has no authority to bind his client not to appeal by an agreement with the opposing attorney that no appeal would be taken.

A by-law of a building society (appellants) required that a shareholder should have satisfied all his obligations to the society before he should be at liberty to transfer his shares. One P., a director, in contravention of the by-law, induced the secretary to countersign a transfer of his shares to the Banque Ville Marie as collateral security for an amount he borrowed from the bank, and it was not till P.'s abandonment or assignment for the benefit of his creditors that the other directors knew of the transfer to the bank, although at the time of his assignment P. was indebted to the appellant society in a sum of $3744, for which amount, under the by-law, his shares were charged as between P. and the society. The society immediately paid the bank the amount due by P. and took an assignment of the shares of P.'s debt. The shares being worth more than the amount due to the bank, the curator to the insolvent estate of P. brought an action, claiming the shares as forming part of the insolvent's estate, and with the action tendered the amount due by P. to the bank. The society claimed the shares were pledged to them for the whole amount of P.'s indebtedness to them under the by-laws.

Held, reversing the judgment of the Court of Queen's Bench for Lower Canada (Appeal side) and restoring the judgment of the Superior Court, that the payment by the society of the bank's claim annulled and cancelled the transfer made by P. in fraud of the company's rights, and that the shares in question must be held as having always been charged under the by-laws with the amount of P.'s indebtedness to the society, and that his creditors had only the same rights in respect of these shares as P. himself had when he made the abandonment of his property, viz., to get the shares upon payment of P.'s indebtedness to the society (FOURNIER and TASCHEREAU, JJ., dissenting).

Appeal allowed with costs.

Laflamme, Q.C., and *Charpentier* for appellant.

Beique, Q.C., for respondent.

DORION *v.* DORION.

Substitution—Curator to—Action to account—Indivisibility of—Will—Construction—Transfer—Effect of—Sale of rights—Mandatary—Negotiorum gestor—Parties to suit for partition—Art. 920 C.C.P.—Purchase by heir while curator—Art. 1484 C.C.

P.A.A.D. (respondent), as representing the institutes and substitutes under the will of the late J.D., brought an action against J.B.T.D. (appellant), who was one of the institutes, and had acted as curator and administrator of the estate for a certain time, for reddition of an account of three particular sums which the plaintiff alleged the defendant had received while he was curator.

Held, reversing the judgment of the court be-

low, that an action did not lie against the appellant for these particular sums apart from and distinct from an action for an account of his administration of the rest of the estate.

The plaintiff in his action alleged that he represented S.D., one of the substitutes, in virtue of a deed of release and subrogation, by which it appeared he had paid to S.D.'s attorney, for and on behalf of the defendant, a sum of £437 7s. 6½d., the defendant having in an action of reddition of account settled by a notarial deed of settlement with the said S.D. for the sum of $4000, which he agreed to pay and for which amount the plaintiff became surety.

Held, that as the notarial deed of settlement gave the defendant a full and complete discharge of all redditions of account as curator or administrator of the estate, the plaintiff could not claim a further reddition of account of these particular sums.

The plaintiff also claimed that he represented F.D and E.D., two other institutes under the will, in virtue of two assignments made to him by them on 21st January, 1869, and 15th November, 1869, respectively. In 1865, after the defendant had been sued in an action of reddition of account, by a deed of settlement the said F.D. and E.D. agreed to accept as their share in the estate the sum of $4000 each, and gave the defendant a complete and full discharge of all further redditions of account.

Held, affirming the judgment of the Court of Queen's Bench, that the defendant could not be sued for a new account, but could only be sued for the specific performance of the obligations he had contracted under the deed of settlement.

In 1871 C.Z.D., another of the institutes, died without issue, and by his will made the defendant his universal legatee. Plaintiff claimed his share in the estate under a deed of assignment made by defendant to plaintiff, in 1862, of all right, title, and interest in the estate.

Held, that the plaintiff did not acquire by the deed of 1862 the defendant's title or interest in any portion of C.Z.D.'s share under the will of 1871.

Held, further, that under the will of the late J.D., C.Z.D.'s share reverted to the surviving institutes and substitutes, and that all defendant took under the will of C.Z.D. was the accrued interest on the capital of the share at the time of his death.

By the judgment appealed from the defendant was condemned to render an account of his own share in the estate which he transferred to plaintiff by notarial deed in 1862, and also an account of C.D.'s share, another institute, who in 1882 transferred his rights to the plaintiff. The transfer made by defendant was in his capacity of co-legatee of such rights and interests as he had at the time of the transfer, and he had at that time received the sixth of the sums for which he was sued to account.

Held (1), reversing the judgment of the court below, that the plaintiff took nothing as regards these sums under the transfer, and even if he was entitled to anything, the defendant would not be liable in an action to account as the mandatary or *negotiorum gestor* of the plaintiff.

(2) That F.D. and E.D. having acquired an interest in C.Z.D.'s share after they had transferred their shares to the plaintiff in 1869, the plaintiff could not maintain his action without making them parties to the suit. Art. 920, C.P.C.

Per TASCHEREAU, J.: Was not the transfer made by the institutes E.D. and F.D. to the plaintiff while he was acting as curator to the substitution null and void under Art. 1484 C.C.?

Appeal allowed with costs.

Lacoste, Q.C., and *Bonni*, Q.C., for appellant.

Madore for respondent.

British Columbia.] [April 4.

HOGGAN *v.* ESQUIMAULT & NANAIMO R.W. CO.

WADDINGTON *v.* THE ESQUIMAULT & NANAIMO R.W. CO.

Government lands — Pre-emption — Statutory right to — Lands reserved.

By 47 Vict., c. 14 (B.C.), The Settlement Act, certain lands in the Province previously withdrawn from settlement, purchase, or pre-emption were thrown open to settlers, and it was provided that for four years from the date of the Act "they should be open to" actual settlers for agricultural purposes "at the rate of $1 per acre," except coal and timber lands which were expressly reserved. A part of these lands, which had been reserved for a town site many years previously, had been granted to the defendant company as part consideration for the construction by them of a railway from Es-

quimault to Nanaimo. H. & Co., claiming that the statute entitled them to a conveyance of these lands from the company, applied under the Pre-emption Act for registration of lots of one hundred and sixty acres each which was refused, and the refusal was confirmed by the chief commissioner. No appeal was taken to the Supreme Court, as the Act allows, but suits were brought against the company by each applicant for a declaration of his right to purchase said lands upon payment of said price of $1 per acre therefor.

Held, affirming the decision of the Supreme Court of British Columbia, that the Settlement Act did not operate to open for settlement lands reserved, as these were for a town site, and that the applicants had never entered thereupon as actual settlers for agricultural purposes, but had express notice when they entered that they were not open for settlement as agricultural lands.

Appeal dismissed with costs.

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

Moss, Q.C., and *Davie*, Q.C., for the respondents.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [March 18.

CLARK ET AL. *v.* THE QUEEN.

Practice—Extension of time for leave to appeal after period prescribed by statute has expired —The Exchequer Court Act (1887) s. 51—53 Vict., c. 35, s. 1—Grounds upon which extension will be granted.

(1) Where sufficient grounds are disclosed, the time for leave to appeal from a judgment of the Exchequer Court of Canada prescribed by s. 51 of The Exchequer Court Act (as amended by 53 Vict., c. 35, s. 1) may be extended after such prescribed time has expired. The application in this case was made within three days after the expiry of the thirty days within which an appeal could have been taken.

(2) The fact that a solicitor who has received instructions to appeal has fallen ill before carrying out such instructions affords a sufficient ground upon which an extension may be allowed after the time for leave to appeal prescribed by the statutes has expired.

(3) Pressure of public business preventing a consultation between the Attorney-General for Canada and his solicitor within the prescribed time for leave to appeal is sufficient reason for an extension being granted, although the application therefor may not be made until after the expiry of such prescribed time.

Hogg, Q.C., for the motion.

McCarthy, Q.C., and *Christie*, Q.C., *contra.*

[March 21.

CORSE ET AL. *v.* THE QUEEN.

Goods stolen while in bond in Customs warehouse—Claim for value thereof against the Crown—Crown not a bailee—Personal remedy against officer through whose act or negligence the loss happens.

The plaintiffs sought to recover from the Crown the sum of $465.74 and interest for the duty paid value of a quantity of glazier's diamonds alleged to have been stolen from a box in which they had been shipped at London while the box was at the examining warehouse at the port of Montreal.

On the 21st February, 1890, it appeared that the box mentioned was in bond at a warehouse for packages used by the Grand Trunk Railway at Point St. Charles, Montreal, and on that day the plaintiffs made an entry of the goods at the customs house, and paid the duty thereon ($107.10). On Monday, the 24th, the customs' officer in charge of the warehouse at Point St. Charles delivered the box to the foreman of the customs house carters, who in turn delivered it to one of his carters, who took it, with the other parcels, and delivered it to a checker at the customs' examining warehouse. The box was then put on a lift and sent up to the third floor of the building, where it remained one or two days. It was then brought down to the second floor and examined, when it was found that the diamonds had been stolen, the theft having been committed by removing the bottom of the box.

Although the evidence that the theft was committed while the box was at the customs' examining warehouse at Montreal was not conclusive, the court drew that inference for the purposes of the case.

Held, (1) that, admitting the diamonds were stolen while in the examining warehouse, the Crown is not liable therefor.

(2) In such a case the Crown is not a bailee. The temporary control and custody of goods imported into Canada which the law gives to

the officers of the customs, to the end that such goods may be examined and appraised, is given for the purpose of the better securing the collection of the public revenue. Without such a power, the state would be exposed to frauds against which it would be impossible to protect itself. For the loss of any goods while so in the custody of the customs' officers the law affords no remedy except such as the injured person may have against the officers through whose personal act or negligence the loss happens.

Hogg, Q.C., for Crown.

Curran, Q.C., for claimants.

[April 4.

BURROUGHS *v.* THE QUEEN.

Salaries of license inspectors—Approval by Governor-General in Council—Liquor License Act, 1883, s. 6.

On a claim brought by the Board of License Commissioners appointed under the Liquor License Act, 1883, for monies paid out by them to license inspectors with the approval of the Department of Inland Revenue, but which were found to be in excess of the salaries which two years later were fixed by Order in Council under s. 6 of the said Liquor License Act, 1883,

Held, affirming the judgment of the Exchequer Court, that the Crown could not be held liable for any sum in excess of the salary fixed and approved of by the Governor-General in Council. The Liquor License Act, 1883, s 6.

Appeal dismissed without costs.

L. H. Burroughs for appellant.

Hogg, Q.C., for respondent.

ADMIRALTY DISTRICT OF NOVA SCOTIA.

MCDONALD, C.J.] [March.

THE SHIP "QUEBEC."

Salvage of ship and cargo—Principal and agent—Power of attorney given by crew to agent of owners of salving vessel for purpose of adjustment of salvage claim—Construction of.

A crew of a fishing schooner had performed certain salvage services in respect of a derelict ship, and gave the following power of attorney respecting the claim for such services to the agent, the owner of the schooner: "We, the undersigned being all the crew of the schooner *Iolanthe* at the time said schooner rendered salvage services to the barque *Quebec*, do hereby irrevocably constitute and appoint Joseph O. Proctor our true and lawful attorney, with power of substitution for us, and in our name and behalf as crew of the said schooner to bring suit or otherwise settle and adjust any claim which we may have for salvage services rendered to the barque *Quebec* recently towed into the port of Halifax, Nova Scotia, by said schooner *Iolanthe*, hereby granting unto our said attorney full power and authority to act in and concerning the premises as fully and effectually as we might do if personally present, and also power at his discretion to constitute and appoint from time to time, as occasion may require, one or more agents under him, or to substitute an attorney for us in his place, and the authority of all such agents or attorneys at pleasure to revoke."

Held, (1) that this instrument did not authorize the agent to receive the salvage payable to the crew, or to release their lien upon the ship in respect of which the salvage services were performed.

(2) That payment of a sum agreed upon between the owners of such ship and the agent and the latter's receipt therefor did not bar the salvors from maintaining an action for their services.

A. G. Morrison and *C. H. Smith* for salvors.

W. B. A. Ritchie for owners.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

BOYD, C.] [May 16.

ASHBRIDGE *v.* ASHBRIDGE.

Will—Construction—Devise to sons without words of limitation—"Die without lawful issue"—"Survivor"—Estate in fee simple—Estate tail.

The testator died in 1845, and by his will devised a farm to his two sons, without words of limitation, to be equally divided between them, adding, "and in case either of my sons should

die without lawful issue of their bodies, then his share to go to the remaining survivor."

Held, that the gift in the earlier part of the devise, though without words of limitation, was sufficient to carry the fee to the sons, unless a lesser estate appeared to be intended on the face of the will.

Both sons outlived the father; one died in 1874 leaving issue; the other died without issue in 1890.

Held, that the son who first died had an estate in fee simple absolute in one-half of the land; and, as the other left no survivor, he was not within the words of the will, and nothing had happened to divest him of the estate in fee given by the earlier part of the will, and therefore he also died seized in fee simple of one-half of the land.

The word "survivor" is to be read as meaning "longest liver," not "other."

The words "die without issue" do not mean an indefinite failure of issue, which would give rise to an estate tail.

Shepley, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *E. M. Lake* for the defendants.

Flotsam and Jetsam.

A NEW YORK burglar who was charged with using a pistol to prevent his arrest claimed that he was trying to commit suicide. The *Albany Law Journal* thinks this excuse is too convenient to make a proposed abolition of the provision against suicide safe.

BARDELL *v.* PICKWICK.—Mr. Walter Rye, the antiquary, writes to the *Athenæum*: "Frognal House, Hampstead, N.W. Mr. Lockwood, Q.C., in his most amusing lecture on this trial, missed, as I think all former commentators have done, what seems to me a very important point. All readers of Dickens of the present generation are very apt to think that the idea that the missive 'Chops and tomato sauce' could possibly be strained into a love-letter is rather too absurd even for a burlesque. But the other day it struck me that at the time Dickens wrote the then scarce tomato was just as usually known as the 'love-apple' as the 'tomato.' This supplies just enough possibility to enable plaintiff's counsel to found an innuendo, and I dare say many of the last generation of readers quite understood what is now a *crux* to many."

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

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COLIN MACDOUGALL, Q.C.

THE LAW SCHOOL.

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

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

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

ATTENDANCE AT THE LAW SCHOOL.

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

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

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

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

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

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

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to

Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

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

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

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

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

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired. In like manner, those who are required to attend during two terms must attend during those terms which end in the last two years respectively of their period of attendance in chambers or service, as the case may be.

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

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

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

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

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

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

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

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

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

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

EXAMINATIONS.

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

The three law examinations which every student and clerk must pass after his admission,

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

Any student or clerk who under the Rules is exempt from attending the School in any one or more of the three years of the school course is at liberty, at his option, to pass the corresponding examination or examinations under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during which it is deemed proper to continue the holding of examinations under the said Law Society Curriculum as heretofore. It has already been decided that the first intermediate examination under that curriculum shall not be continued after January, 1892, and after that time therefore all students and clerks must pass their first intermediate examination at the examinations and under the curriculum of the Law School, whether they are required to attend the lectures of the first year of the course or not. Due notice will be hereafter published of the discontinuance of the second intermediate and final examinations under the Law Society Curriculum.

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

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

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

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

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

Honors, Scholarships, and Medals.

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

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

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

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

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

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

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

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

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

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

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

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

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.
Smith on Contracts.
Anson on Contracts.
Real Property.
Williams on Real Property, Leith's edition.
Deane's Principles of Conveyancing.
Common Law.
Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.
Equity.
Snell's Principles of Equity.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.
Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.
Real Property.
Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Personal Property.
Williams on Personal Property.
Contracts.
Leake on Contracts.
Torts.
Bigelow on Torts—English Edition.
Equity.
H. A. Smith's Principles of Equity.
Evidence.
Powell on Evidence.
Canadian Constitutional History and Law.
Bourinot's Manual of the Constitutional History of Canada.
O'Sullivan's Government in Canada.
Practice and Procedure.
Statutes, Rules, and Orders relating to jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.
Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

Contracts.
Leake on Contracts.
Real Property.
Clerke & Humphrey on Sales of Land.
Hawkins on Wills.
Armour on Titles.
Criminal Law.
Harris's Principles of Criminal Law.
Criminal Statutes of Canada.
Equity.
Underhill on Trusts.
Kelleher on Specific Performance.
De Colyar on Guarantees.
Torts.
Pollock on Torts.
Smith on Negligence, 2nd ed.
Evidence.
Best on Evidence.
Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.
Private International Law.
Westlake's Private International Law.
Construction and Operation of Statutes.
Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.
British North America Act and cases thereunder.
Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.
Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

THE LAW SOCIETY CURRICULUM*

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

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

SECOND INTERMEDIATE.

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

FOR CERTIFICATE OF FITNESS.

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

FOR CALL.

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

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

*The First Intermediate Examination under this Curriculum has been discontinued since January, 1892.