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DIARY FOR MARCH.

15. Sun..... *4th Sunday in Lent.*
17. Tues.....St. Patrick's Day.
18. Wed.....Princess Louise born, 1848.
22. Sun.....*5th Sunday in Lent.*
23. Mon.....Sir George Arthur, Lieut.-Gov., U. C., 1838.
28. Sat.....Canada ceded to France, 1632.
29. Sun.....*Palm Sunday.* The Wills Act assented to, 1873.
30. Mon.....B.N.A. Act assented to, 1867.
31. Tues.....Lord Metcalfe, Governor-General, 1854.

TORONTO, MARCH 15, 1885.

HON. ANDREW STUART, Judge of the Superior Court of the Province of Quebec, has been appointed Chief Justice of that Province in the place of Hon. William C. Meredith.

WE publish in another place a letter from an old and valued contributor in reference to a question which must from time to time crop up, viz., Standard time. Anything that our correspondent writes is worthy of careful perusal, and he has given a great deal of attention to this particular matter, as his letter plainly shows. Some railway men may dissent from his views, but they must commend themselves to those connected with the administration of justice and business connected therewith.

THE English *Law Times* makes the following judicious observations in reference to the late Lord O'Hagan:

"The career of Lord O'Hagan, rightly read, is pregnant with lessons to the most bitterly prejudiced of our compatriots in Ireland. He was a Roman Catholic, he identified himself with the Repeal Association in 1845, he defended O'Connell when he and others were indicted for conspiracy, he defended Father Petcherine against the prosecution of the Crown, he defended the Phœnix conspirators, who were precursors of the Fenians. Notwithstanding all this he passed from one high office to another, until he at length found himself one of the very few Roman Catholic Peers in the Kingdom who have been created since the Emancipation Act. All this is natural and proper. There is no government in the world which recognizes more clearly than the English the fact that a man is not to be punished, but rather rewarded, for fearless conduct in his professional career. But there is a certain nobility in the recognition which in this case is conspicuous and exemplary, and it will not be amiss if Irishmen are taught to appreciate, that we in England regard as a matter of course, the fact that administrations honour, substantially no less than cordially, professional excellence irrespective of the cause in which it is displayed."

We are glad to know that the same just and liberal view prevails in Canada, and that an advocate need never fear that the courageous and honourable advocacy of an unpopular cause, will ever retard his professional advancement. It would indeed be a fatal blow to our justly prized liberties if any other policy should unhappily prevail.

SOME one defines language as an instrument, cunningly devised, for concealing thought, of which we are reminded by reading the head-note of the case *In re Ainslie*, in the January number of the Chancery Division of the Law Reports, which is as follows:—"At the death of a testator, the owner in fee of larch plantations, a large number of the larch trees had been more or less uprooted by extraordinary gales: *Held*, that trees which might continue to live but could not grow as ordinary trees, belonged to the executor, and trees that would continue to grow, but would have to be cut for the

proper cultivation of the plantations, belonged to the tenant for life under the will." By a severe effort we can arrive at a faint idea of "a tree which may continue to live, but cannot grow as an ordinary tree;" but when it comes to "a tree which will have to be cut down, but yet will continue to grow," we confess ourselves beaten. If the learned reporter had been content to follow the words of the judgment he would have produced a better head-note.

RECENT ENGLISH DECISIONS.

Passing to the February number of the *Law Reports* they are found to consist of 14 Q. B. D. p. 53-227; 10 P. D. p. 5-19, and 28 Ch. D. p. 103-185. In the former there are two cases of great interest and importance, bearing some relation to each other, the first of which is *Mitchell* v. *Darley Main Colliery Company*, p. 125.

CAUSE OF ACTION—ACTION IN RESPECT OF SECOND INJURY ARISING FROM SAME ACT AFTER RECOVERING DAMAGES FOR A PREVIOUS INJURY—STATUTE OF LIMITATIONS.

In this case the plaintiff was the owner of the surface of certain lands, of which there had been a subsidence in 1868, caused by excavations made about that time by the defendants who were then working a seam of coal lying under the plaintiff's land, or under adjoining land. That subsidence produced certain injuries which were repaired or paid for. The defendants never afterwards continued their excavations, and nothing further took place for twelve or thirteen years, when there was a further distinct subsidence in 1882 causing appreciable damage, and the plaintiff brought the present action to recover compensation for damages caused by the latter subsidence, whereupon the defendants pleaded that the alleged causes of action did not arise within six years before the commencement of the action, and that the plaintiff's right to sue was barred by the Statute of Limitations.

Thus, in the language of Bowen, L.J., at p. 135, the question arose, What was the cause of action in respect to the subsidence in 1882? Was it the original excavation in 1868, or the subsidence in 1882, or a combination so to speak of the two? The Court, consisting of Brett, M.R., Bowen and Fry, L.J.J., agreed in holding that the plaintiff was entitled to maintain an action for the damage done in 1882, and that his right to sue was not barred by the Statute of Limitations. The argument of the plaintiff was that the *causa causans*, that is, the excavating by the defendants of their minerals, gave the plaintiff no right of action at all in either case; but that the two different results of it had given the plaintiff two causes of action, and that, although it is true to say that for the same cause of action successive actions for damages cannot be maintained, yet there may be any number of successive causes of action. That was the whole dispute between the parties, and the Court upheld the plaintiff. This is held to be the logical result of the decision of the House of Lords in *Blackburne* v. *Bonomi*, 9 H. L. C. 509. In the case of *Blackburne* v. *Bonomi*, says Brett, M.R., at p. 130, "The question put to the judges was, in effect, that if there is only one subsidence, the result of one excavation, is the Statute of Limitations to run from the time of the excavation or from the subsidence, the words of the Statute of Limitations being that an action must be brought within six years after the cause of action accrued? . . . The House of Lords held that the excavation was not originally a wrongful act, and because it is not originally a wrongful act, it is not made a wrongful act by something happening subsequently. An act which is right at the time when it is done cannot be turned into a wrongful act by some-

thing that happens subsequently. Therefore, it was held that the excavation was not the cause of action; it was only the cause of the cause of action, the cause of action was the subsidence and that alone. The defendant had so used his property as to make the plaintiffs' property subside, and it was the making their property subside which was the cause of action." In the words of Bowen, L.J., at p. 136, in *Blackburne* v. *Bonomi*, "it was decided that the true character of the right of support is this, not that the person who had the land which was supported, and which demanded support from his neighbour, had an absolute right to support, the interference with which was a disturbance of property and gave a right to an action in respect of *damnum*, but that what he was entitled to was something different, the right to the ordinary enjoyment of his own land, and that the right to support was a right only to support so far as was necessary to enable him to enjoy his land in the ordinary way. From that it seemed to follow that until there was an interference with the enjoyment of the land there was nothing of which the plaintiff could complain." In accordance with what was decided in that case, and as a logical result thereof, the Court now held that each subsidence was a new cause of action, although the *causa causans* of each subsidence might be the same. But, as suggested by the judgments, it might be argued that the *causa causans* was not the same. The *causa causans* of the first was the excavation, the *causa causans* of the second was, as a matter of fact, the excavation unremedied, or the combination of the excavation and of its remaining unremedied. The result of the whole matter seems put very clearly by Fry, L.J., at p. 239: "With reference to principle, it appears to me to be plain that all damages which result from one and the same cause of action must be recovered at one and the same time, and therefore we are driven to the inquiry what is the cause of action in a case of this description. As has been pointed out by Bowen, L.J., very clearly, there are two possible ways of stating that cause of action. It may be said that the subsidence attributable to the defendants is itself an interference with the plaintiff's enjoyment of his property, and as such is the cause of action in itself, or it may be said that the cause of action is the defendants' allowing the cavity to continue without giving proper support to the super-adjacent land, and the damage which follows from that circumstance to the plaintiff. To my mind it is not very material to inquire which of the two is the more accurate way of stating the cause of action. Like Bowen, L.J., I incline to consider that the more simple and more correct mode of statement is to say that the subsidence of land, attributable either to the acts or default of the defendants, is itself an interference with the plaintiff's enjoyment of his own property, and as such constitutes the cause of action. But even if the other point of view may be the more just one, it appears to me that the cause of action for the second subsidence is really not the same as the cause of action for the first subsidence. Because what is the cause of action in the case of the first subsidence? I think withdrawing the stratum of coal without leaving or placing proper supports. It is really the act of omission to leave or place proper supports which gave rise to the cause of action. The mere withdrawal of the stratum of coal in itself is a perfectly legitimate and lawful act, and it is only because it is done without doing something else which would prevent the injury to the plaintiff that the cause of action arises."

CAUSE OF ACTION—SEPARATE ACTIONS IN RESPECT OF SAME—WRONGFUL ACT—DAMAGE OF PROPERTY AND INJURY TO PERSON.

The second case, above alluded to, is *Brunsden* v. *Humphrey*, p. 141. Here the

facts shortly stated were as follows: the plaintiff, whilst he was driving his cab, came into collision with a van of the defendant, through the negligence of the defendant's servant, whereby he sustained bodily injury and his cab was damaged, and the plaintiff, before the present action, sued the defendant for damage to his cab in the County Court, and the defendant paid into the Court a small sum which was accepted, and thereupon the action in the County Court was discontinued. The plaintiff then brought the present action, and judgment was entered for him at the trial. The Queen's Bench Division, however, made absolute a rule to enter judgment for the defendant, and the plaintiff now appealed to the Court of Appeal, which held that the plaintiff could maintain his action, and was entitled to have the judgment entered at the trial in his favour restored. The effect of the decision is thus given in the head-note: "Damage to goods and injury to the person, although they have been occasioned by one and the same wrongful act, are infringements of different rights, and give rise to distinct causes of action; and therefore the recovery in an action of compensation for the damage to the goods is no bar to an action subsequently commenced for injury to the person." At page 145, Brett, M. R., says: "Different tests have been applied for the purpose of ascertaining whether the judgment recovered in one action is a bar to a subsequent action. I do not decide this case on the ground of any test which may be considered applicable to it, but I may mention one of them; it is whether the same sort of evidence would prove the plaintiff's case in the two actions. Apply that test to the present case. In the action brought in the County Court, in order to support the plaintiff's case, it would be necessary to give evidence of the damages done to the plaintiff's vehicle. In the present action it would be necessary to give evidence of the bodily injury occasioned to the plaintiff, and of the sufferings which he had undergone, and for this purpose to call medical witnesses. This one test shews that the causes of action as to the damages done to the plaintiff's cab, and as to the injury occasioned to the plaintiff's person are distinct." A passage from the judgment of Bowen, L.J., at p. 150 *seq.*, will clearly shew the connection between this and the last case: "Two separate kinds of injury were in fact inflicted, and two wrongs done. The mere negligent driving in itself, if accompanied by no injury to the plaintiff was not actionable at all, for it was not a wrongful act at all till a wrong arose out of the damages which it caused. One wrong was done as soon as the plaintiff's enjoyment of his property was substantially interfered with. A further wrong arose as soon as the driving also caused injury to the plaintiff's person. Both causes of action, in one sense, may be said to be founded upon one act of the defendant's servant, but they are not on that account identical causes of action. The wrong consists in the damage done without lawful excuse, not the act of driving, which (if no damage had ensued) would have been legally unimportant . . . The view at which I have arrived is in conformity with the reasoning of the judgment recently pronounced by this Court in the case of *Mitchell* v. *Darley Main Colliery Co.*, where it was held, reversing *Lamb* v. *Walker*, 3 Q. B. D. 389, that each fresh subsidence of soil in the case of withdrawal of support gave rise to a fresh cause of action. Nor do I feel called upon to extend the application of the sound and valuable principle of law, that none shall be vexed twice for the same cause of action, to a case to which it has never yet been applied, and to which it can only be applied by pursuing analogy to lengths which would involve practical

injustice." It must be added that in a short judgment, Lord Coleridge, C.J., intimates his dissent from his learned colleagues, saying, "It appears to me that whether the negligence of the servant, or the impact of the vehicle which the servant drove, be the technical cause of action, equally the cause is one and the same; that the injury done to the plaintiff is injury done to him at one and the same moment by one and the same act in respect of different rights in his person and his goods, I do not in the least deny, but it seems to me a subtlety not warranted by law to hold that a man cannot bring two actions if he is injured in his arm and in his leg, but can bring two, if besides his arm and leg being injured his trousers which contain his leg, and the coat sleeve which contains his arm have been torn. The consequences of holding this are so serious, and may be very probably so oppressive, that I at least must respectfully dissent from a judgment which establishes it."

A. H. F. L.

LAW SOCIETY.

HILARY TERM, 1885.

The following is the resumé of the proceedings of the Benchers published by authority. The following gentlemen were called to the Bar, namely:

Messrs. Frank Hedley Phippen, Francis R. Powell, Henry John Wickham, John Workman Berryman, Richard Henry Hubbs, Harry Lawrence Ingles, William Albert Matheson, John Bell Jackson, Norman N. A. McMurchy, Frederick Luther Rogers, John Lawrence Murphy, Thomas Irwin Foster Hilliard, Hume Blake Elliott, Richard M. C. Toothe, Alexander Campbell Shaw, Joshua Denovan, Edward Allen Miller, Frederick W. Hill, Duncan Charles Murchison, Thomas Moffat, Manley Germon, George McLaurin.

The following gentlemen obtained certificates of fitness, namely:

Messrs. A. G. Murray, H. B. Elliott, A. E. Overell, H. J. Wickham, J. Greer, W. C. Widdifield, F. R. Powell, J. Heighington, N. N. A. McMurchy, A. Stuart, A. S. Lown, F. H. Phippen, J. Denovan, E. A. Miller, G. C. Thompson, R. H. Hubbs, W. A. Matheson, Joseph Campbell, T. Moffat, H. L. Ingles, James Miller, J. W. Berryman, F. E. Nelles, George Green.

The following passed their First Intermediate Examination, namely:

Messrs. Weekes, Sinclair, McPherson, Kerr, Millican, Hood, Lahey, McCabe, Fletcher, Guthrie, Quinn, Hutcheson, Jack, Watts, Murdoch, Thomson, Warner, Carson, Wallbridge, Dawson, Greene, Wardell, Fitch, Bowes, Chapple, Sinclair, Skinner. Messrs. Weekes, Kerr and Sinclair passed with honors, and were awarded the first, second and third scholarships.

The following gentlemen passed their Second Intermediate Examination, namely:

Messrs. Raney, Bristol, Cunningham, Marquis, Hays, Campbell, Harrington, Carson, Lewis, Macbeth, Treemean, Jackson, Hobson, Smith, Lindsay, Mowat, Coughlin, Stone, Wismer, Vanstone, Bucke, Lafferty, McTavish, Dawson, Gunn, McCarron, Yarwood. Messrs. Raney and Bristol passed with honors, and were awarded the first and second scholarships respectively.

The following gentlemen were admitted into the Society as students-at-law, namely:

Graduates — John Henry Cosgrove, Alexander Henderson, Jr.; John Arthur Tanner, Francis Alexander Anglin.

Matriculants of Universities—Alfred E. Cole, Dioscore J. Hurteau, William Charles Mikel.

Juniors—W. H. Moor, G. W. Littlejohn, A. St. G. Ellis, G. McCarter, W. A. Smith, E. N. R. Burns, E. S. Brown, J. P. O'Gara and W. Walton passed the Articled Clerks Examination.

MONDAY, 2ND FEBRUARY, 1884.

Present—Messrs. Meredith, Moss, J. F. Smith, Hoskin, Morris, Irving, Murray, McKelcan, Read, Maclennan, McCarthy, Ferguson.

In the absence of the Treasurer Mr. Irving was elected Chairman.

The various reports of the Examiners and Secretary in relation to the several

examinations were read and considered, and the names of the successful candidates announced. A letter from Mr. H. J. Scott was read complaining of an over-charge for a copy of a judgment.

Ordered, That it be referred to the Reporting Committee to enquire into and report to Convocation.

TUESDAY, 3RD FEBRUARY, 1885.

Present—Messrs. Moss, Murray, Meredith, Kerr, Morris, Maclennan, Irving, Britton, Ferguson, J. F. Smith, Foy and McMichael.

On motion of Mr. Meredith, seconded by Mr. Moss, Mr. Irving was elected Chairman in the absence of the Treasurer.

On motion of Mr. Moss, seconded by Mr. Kerr, Mr. B. B. Osler was elected a Bencher in the place of James Bethune, Esq., Q.C., deceased.

The report of the Legal Education Committee on the subject of the call of English barristers to the Ontario Bar was directed to be considered on Saturday, 7th instant.

Mr. Moss moved the following rule, seconded by Mr. Morris, That rule No. 23 be amended by striking out the word "six" in the first line thereof, and substituting the word "four" in lieu thereof. The rule was read a first, second and third time and carried.

Mr. Moss moved that the following rule be read a first time. Mr. Morris seconded the motion which was carried. The rule was read a first time as follows: That rule 50 be amended by striking out the word "six" in the last line thereof, and substituting the word "seven" in lieu thereof. The rule was read a second and third time and carried.

The Secretary laid on the table the estimates prepared by the Finance Committee for the year 1885 and the balance sheet for the year 1884. The estimates and balance sheet were read. (See schedules at end of resumé.)

Ordered, That the balance sheet be printed and distributed according to the statute.

SATURDAY, 7TH FEBRUARY, 1885.

Convocation met. Present — Messrs. McCarthy, Read, Ferguson, Osler, Morris, Martin, McMichael, J. F. Smith, McKelcan, Moss, Murray and Maclennan.

On motion of Mr. Read, seconded by Mr. Ferguson, Mr. Irving was elected Chairman in the absence of the Treasurer.

Mr. Read moved that Mr. Osler be placed on the Reporting Committee, and that Mr. Morris be placed on the Library Committee. Carried.

The petition of the Middlesex Law Association was referred to the County Library Aid Committee.

The report of the Legal Education Committee on the question of Call to the Bar of this Province of English, Scotch and Irish barristers was considered, and the fourth clause thereof was, on motion, expunged, and the report, as amended, was adopted.

Mr. Ferguson moved, seconded by Mr, McKelcan, That the Secretary be instructed to inform Mr. De Souza that his petition is not in order, and cannot be dealt with until after the Petitioner shall have complied with the rules of the Society as to notice, &c. Carried.

Mr. F. McKelcan gave notice that he would move, at the next regular meeting of Convocation, to introduce a rule amending the rules for Call in special cases by re-enacting the rules and regulations relating to the Call of Barristers in special cases as they existed prior to the 2nd September, 1882, and also to make further provisions for Call in special cases.

FRIDAY, 13TH FEBRUARY, 1885.

Present,—Messrs. Moss, Morris, Murray, Meredith, Bell, McCarthy, Beatty, Hoskin, Britton, Maclennan, McKelcan, Irving, Kerr, J. F. Smith, Read, Hudspeth, McMichael.

Mr. Irving was elected Chairman in the absence of the Treasurer.

The report of the Legal Education Committee on the petition of Mr. Green, an English solicitor of eighteen years' standing, recommending that he receive his certificate of fitness on payment of the fees in special cases, was received, read, considered and adopted. Ordered accordingly.

The report of the Committee on Legal Education, on the petition of Mr. Masson, was received and read.

Ordered, That the report be referred back to the Committee, with instructions to report that Mr. Masson should be admit-

ted to an oral examination, on the ground that he had obtained not less than fifty per cent. of the aggregate of the marks in all the subjects.

The report of the same Committee on the petition of Mr. Strange was received and read and adopted. Ordered that Mr. Strange be called to the Bar.

On the motion of Mr. Meredith, seconded by Mr. Hoskin, it was ordered that the Legal Education Committee be directed to take such steps as may be necessary to get legislation in regard to the admission of English barristers.

Mr. McKelcan moved, seconded by Mr. Beatty, that rule 94 be amended by inserting as a second sub-section thereof the clause following:—

2. Any person who has been duly called to the Bar by any of the Inns of Court or Societies having authority to call to the Bar of any of the Superior Courts of England, Ireland or Scotland.

That sub-section 3 of rule 95 be and the same is hereby re-enacted in the same terms as it stood in the rules of the Society prior to the 2nd September, 1882.

The amendment hereby enacted shall not apply to any one who shall have given notice during the present term of his intention to apply for call to the Bar.

The rule was read a first time.

On the motion of Mr. McKelcan, seconded by Mr. Britton, it was ordered that the above resolutions be referred to the Legal Education Committee for consideration, the Committee to report to Convocation next term.

Ordered, That the Solicitor of the Society be directed to instruct Mr. Robinson, Q.C., the Counsel retained, to oppose any claim of Mr. De Souza to practise at the Bar, without being first called to the Bar by the Law Society.

The report of the Finance Committee on the proposed investment of $5,000 was received and read.

Ordered, That the proposal of the Committee to invest $5,000 in the Huron and Erie Loan and Investment Company at five per cent., with a commission of one per cent., be approved.

Mr. Britton gave notice that he would on the first Tuesday of next term move that the question of having a telephone upstairs, at Osgoode Hall, be referred to a committee, with power to have one so placed.

The Secretary's letter to the Commissioners of Public Works was read, and no reply having been received, the Finance Committee was directed to take such action as may be necesssry to have the repairs done by the Government.

The Solicitor's report was read, and the attention of the Finance Committee was directed to the unsatisfactory position of the matter of the boundaries mentioned in the said report.

Convocation adjourned.

ESTIMATES FOR 1884.

Estimated Receipts.

Certificate and term fees	$17300 00
Notice fees	625 00
Attorney's examination fees	5500 00
Students' admission fees	6750 00
Call fees	8500 00
Interest and dividends	2500 00
Government payment for heating, light, and water	2000 00
Sundries—	
Fees on petitions, diplomas and certificates of admission	150 00
Commission and fees on telegraph and telephone	275 00
Reports sold, including Digest	950 00
	$44550 00

RECEIPTS FOR 1884.

Actual Receipts.

Certificates and term fees	$18253 75	
Less fees returned	41 50	
		$18212 25
Notice fees		674 00
Attorney's examination fees	$7442 83	
Less fees returned	1115 00	
		6327 83
Students' admission fees	$6520 00	
Less fees returned	400 00	
		6120 00
Call fees	$11629 75	
Less fees returned	3119 75	
		8510 00
Interests and Dividends		2821 05
Government payment for heating, lighting, and water		2000 00
Fees on petitions, diplomas and certificates of admission		125 00
		$44790 13

EXPENDITURE FOR 1884.

Actual Expenditnre.

Reporting—		
Salaries	$8924 20	
Postage	135 00	
Printing	7698 98	
Supreme Court Reports	1848 00	
Notes for *Law Journal*	395 49	
New Digest	2684 75	
	$21686 42	
Less reports sold	642 47	
		$21043 95

LAW SOCIETY.

Examinations—		
Salaries	$3200 00	
Scholarships	1380 00	
Printing and stationery	347 40	
Prizes in books (law school)	50 00	
Engrossing fee returned	2 00	
Examiners for matriculation	195 00	
Medals	177 87	
		5352 27
Library—		
Books, binding and repairs		3217 29
General Expenses and Salaries—		
Secretary, Sub-treasurer and librarian	$2000 00	
Assistants	1113 11	
Housekeeper	360 00	
		3473 11
Lighting, Heating, Water and Insurance—		
Engineer and assistant	$510 00	
Gas	475 53	
Water	631 73	
Insurance (books)	90 00	
Bennett & Wright, new apparatus	500 00	
Fuel	264 32	
Repairs to apparatus	182 30	
Carting coal and cutting wood	42 40	
		2696 28
Grounds—		
Gardener and assistant	$340 00	
Tools	3 30	
Manure	22 50	
Labour	396 46	
Snow clearing	101 64	
		863 90
Sundries—		
Postage	$31 60	
Advertising (including *Law Journal* account)	115 85	
Stationery, printing, etc.	172 39	
Law costs	752 83	
Repairs	180 35	
Furniture	449 77	
Term lunches	725 82	
County library aid	900 00	
Telephone office	273 98	
Portrait (Berthon)	400 00	
Auditor ($100 01), Ellis (clocks, $10)	110 01	
Tennant ($56 34), Telegrams ($5 90)	62 24	
Clarkson ($12 60), Gilly ($10)	22 60	
Resumé	43 00	
Blinds ($4 11), Hay & Co. ($12 90)	17 06	
Illuminating address (Spragge)	15 00	
Ice (two years, $25), papering ($29 68)	54 68	
Door springs ($7 50), J. Daley ($9 30)	16 80	
Oiling and cleaning	27 15	
Guarantee Company	20 00	
Dusting books	16 95	
W. Hope	20 00	
Telephone assistant	9 00	
Parkes	6 90	
Petty charges	28 25	
		4472 23
Balance		3671 10
		$44790 13

ESTIMATE FOR 1884.

Estimated Expenditure.

Reporting—		
Salaries	$8600 00	
Postage	105 00	
Printing	7850 00	
Supreme Court Reports	1800 00	
Notes for *Law Journal*	90 00	
New Digest, compiling ($1000), printing ($1400), distributing ($100)	2500 00	
Insurance	100 00	
		$21045 00
Examinations—		
Salaries	$3200 00	
Scholarships	1600 00	
Printing and stationery	250 00	
Medals	120 00	
Law school prizes	50 00	
Examiners for matriculation	300 00	
Law Journal account	100 00	
		5620 00
Library—		
Books, binding and repairs.		2800 00
General Expenses and Salaries—		
Secretary, Sub-treasurer and librarian	$2000 00	
Assistants	1200 00	
Housekeeper	360 00	
		3560 00
Lighting, Heating, Water and Insurance—		
Engineer and assistant	$425 00	
Gas	630 00	
Water	843 00	
Weighing coal	5 00	
Fuel	853 00	
Repairs to apparatus	300 00	
Carting coal and cutting wood	75 00	
		3131 00
Grounds—		
Gardener and assistant	$500 00	
Tools	5 00	
Cartage	60 00	
Water for lawn	34 00	
Snow clearing	40 00	
		639 00
Sundries—		
Gas for cook stove	$50 00	
Auditor	100 00	
Postage	30 00	
Telephone rent	100 00	
Clocks	10 00	
Ice	15 00	
Term lunches	400 00	
Cleaning windows	34 00	
Guarantee Company	20 00	
Dusting books	18 00	
P. O. box	6 00	

Telephone operator	432 00	
" boy	96 00	
" messages	8 00	
Resumé	40 00	
Repairs to furniture	50 00	
New furniture	300 00	
Repairs to walks	300 00	
Law costs	1000 00	
Removing matting	40 00	
Unforeseen expenses	200 00	
Stationery	240 00	
		3489 00
Extraordinary Expenditure—		
Furnace for east wing		400 00
County library aid		1616 00
Balance		2250 00
		$44550 00

ESTIMATES FOR 1885.

Receipts.

Certificate and term fees	$18250 00
Notice fees	630 00
Attorney's examination fees	5750 00
Students' admission fees	6000 00
Call fees	8250 00
Interest and dividends	2900 00
Sundries—	
Fees for petitions, certificates and diplomas	120 00
Commission and fees on telegraph and telephone	275 00
Reports sold	1150 00
Digests sold	1400 00
	$44725 00

Expenditure.

Reporting—	
Salaries	$8600 00
Printing	9950 00
Half probable expense of election reports	85000
Notes for *Law Journal* and *Law Times*	500 00
Insurance on stock of reports	90 00
Examinations—	
Salaries	3200 00
Scholarships	1500 00
Printing and stationery	250 00
Medals	120 00
Law school prizes	50 00
Examiners for matriculation	200 00
Law Journal account	100 00
Library—	
Books, binding and repairs	3000 00
General Expenses and Salaries—	
Secretary, Sub-treasurer and librarian.	2000 00
Assistants	1200 00
Housekeeper	360 00
Lighting, Heating, Water and Insurance—	
Gas for cookstove	70 00
" building	220 00
Water for building ($120), for grounds ($34)	154 00
Insurance premium for three years	595 00
Payment to Government under contract	750 00
Fuel, coal ($150), wood ($50)	200 00
New apparatus, balance due	370 00
Grounds—	
Man ($360), hose for lawn and reel ($60)	420 00
Expense of grounds as per contract	250 00
Repairing boardwalks	50 00
Snow clearing	50 00
Sundries—	
Flowers	25 00
Postage ($30), Resumé in *Law Journal* ($40)	70 00
Stationery ($200), law costs ($500)	700 00
Repairs to building, including fitting up new rooms in basement	250 00
Term lunches	500 00
Furniture, including new lockers and cupboards	300 00
County library aid (annual)	1300 00
Supplementary initiatory	2350 00
Guarantee Company premium	20 00
Telegraph operator	432 00
" relief operator	20 00
" message boy	96 00
Telephone rent	100 00
New clocks	30 00
Attendance on clocks	10 00
Portrait frame (C. J. Cameron)	114 00
Dusting books	18 00
Oiling floor of library	16 00
100 copies Resumé (four terms)	12 00
Auditor	100 00
Ice	15 00
Unforeseen expenses	200 00
Knife cleaner and carpet sweeper	21 00
Engrossment of resolution (late J. Bethune, Q.C.)	15 00
	$41813 00
Estimated balance	2912 00
	$44725 00

REPORTS.

ENGLAND.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

CANADA CENTRAL RAILWAY COMPANY (*Appellants*), v. PETER MCLAREN (*Respondent*).

Negligence—Contributory negligence—Evidence.

[July 12, 1884.

This was an appeal from the Court of Appeal of Ontario, reported in 8 App. Rep. 564, and was heard before Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

Bethune, Q.C., for appellant.

McCarthy, Q.C., for respondent.

The following is the judgment of the Court:—

The appellants are the proprietors of a railway which passes through the village of Carlton Place, in the Province of Ontario, situated on the north bank of the River Mississippi. The respondent is a timber merchant, and in the course of his business he brings large quantities of wood, in rafts, to Carlton Place, which are there converted into sawn lumber, and, when thoroughly dried, are sent to market along the appellants' railway. For many years prior to the origin of the present litigation, the respondent had, with the leave of the appellants, been in use to pile his sawn lumber on the appellants' land, with a view to its being conveniently loaded or "shipped" in railway cars, for conveyance to market. The piles, which were stacked on both sides of the line, were seventeen or eighteen feet in height, from a foot to a foot and a half apart, and the face of each pile was not more than six feet distant from the nearest rail used for the appellants' ordinary traffic.

On the 27th May, 1879, a fire broke out in one of the piles on the east side of the appellants' main line, and, spreading rapidly, destroyed a great quantity of lumber and plant belonging to the respondent. On the 3rd October, 1879, the respondent instituted an action against the appellants, for recovery of the damages thus sustained by him, upon the allegation that the fire had been caused by the escape of sparks, or burning matter, from one of the appellants' locomotives, in consequence either of its having been negligently and unskilfully managed, or of its having been insufficiently and improperly constructed.

The case was first tried before a special jury in January, 1880, when the jury brought in certain findings in the respondent's favour, which were subsequently set aside by the Court, as being against the weight of evidence.

The second trial took place in January, 1882, before Mr. Justice Osler and a special jury. The respondent's evidence was mainly directed to these points: (1) that the ash-pan of the appellants' locomotive engine No. 5, which admittedly passed the pile in which the fire began shortly before it was observed, was not properly constructed; (2) that the chimney or smoke-stack of the engine was defective in construction; and (3) that, owing to one or other of these defects, a live ember escaped, which ignited the pile in question, and so caused the destruction of the respondent's property. The appellants adduced evidence to meet the case set up by the respondent, and also to prove that the respondent had been guilty of contributary fault, inasmuch as he had suffered sawdust or similar inflammable material to adhere to the piles of lumber, and had failed in other respects to take sufficient precautions against fire.

At the close of the trial the presiding Judge put fifteen questions to the jury. Of these it is only necessary to notice the following, with the answers returned:—

First. How did the fire occur; from sparks or cinders cast out by the locomotive, or from some other cause?

Answer. We think the fire occurred from sparks cast by the locomotive.

Second. If you find that the fire was caused by fire cast out by the locomotive, did it come from the smoke-stack or the ash-pan?

Answer. From the smoke-stack.

Third. If you find that it came from the smoke-stack, was it from any imperfection in the construction of the stack, or from the way in which it was managed by those in charge of the train?

Answer. Imperfection of the stack.

Fourth. If you find that it was from any imperfection in the construction, state what the imperfection was; was the netting too large, the open or unfastened bonnet improper, or was the cone too close to the netting?

Answer. Cone too close to the netting.

Fifth. Was the bonnet rim fitted to the bed?

Answer. We think not so completely as it should have been.

Tenth. Would there be more substantial danger of fire from the bonnet provided with the mesh of the size of that used by the defendants (appellants), than from that used by the Northern Railway, which appears to be the smallest in use?

Answer. Yes.

Eleventh. Were the defendants (appellants), in your opinion, guilty of negligence in using such a mesh?

Answer. No.

Twelfth. Was the plaintiff (respondent) guilty of contributory negligence in piling his lumber so near the track, or by allowing sawdust to remain on it, or by not having sufficient appliances to extinguish fire. If the plaintiff (respondent) was guilty of negligence, could the defendants (appellants), by the use of ordinary care and diligence, have prevented the injury?

Answer. Not as to piling lumber, or as to sawdust, but somewhat so as to appliances. We think that defendants (appellants) could have prevented the fire, and that the plaintiff (respondent) is entitled to a verdict.

Questions 6, 7, 8 and 9 related to the management of the smoke-stack and ash-pan, and the possibility of the fire being caused by the ash-pan; and these, for obvious reasons, were not answered by the jury. Questions 13, 14 and 15 related solely to the amount of damages; and the answers to these are not impeached by the appellants.

Upon the foregoing findings Mr. Justice Osler directed judgment to be entered for the respondent for 100,000 dollars, the sum at which damages were assessed by the jury, with costs. The appellants, on the 14th February, 1882, obtained an order *nisi* to set aside that judgment and to enter judgment for themselves, or to allow a new trial, on these grounds:—(1) that the findings in question did not warrant a judgment in favour of the respondent, and that judgment ought to be entered for the appellants; (2) that there was no evidence to go to the jury in support of the main findings, or, at all events, that the evidence was altogether insufficient to support them; and (3) that certain evidence adduced for the respondent had been wrongly admitted, whilst evidence tendered by the appellants had been unduly rejected.

On the 10th March, 1883, the order *nisi* was discharged, with costs, by the unanimous decision of the Common Pleas Division of the High Court of Justice of Ontario, the bench consisting of Chief Justice Wilson, Mr. Justice Galt and Mr. Justice Osler, before whom the case had been tried. The cause was then carried, by the present appellants, to the Court of Appeal for Ontario. The learned Judges composing that Court were equally divided; Chief Justices Spragge and Hagarty being of opinion that the decision of the Court of Common Pleas was right, whilst Justices Burton and Patterson were in favour of allowing the appeal. In these circumstances, the appeal was, on the 6th October, 1883, dismissed with costs.

The present appeal has been taken against the judgments of the Court of Common Pleas and of the Court of Appeal of Ontario, discharging the order *nisi* obtained by the appellants on the 13th February, 1882; and all the points raised by the order *nisi* were fully argued by the appellants' Counsel, with the single exception of the alleged undue rejection, by the presiding Judge, of evidence tendered at the trial on behalf of the appellants.

Their Lordships entertain no doubt that, taking the findings of the jury as they stand, the facts thereby found necessarily lead to judgment in favour of the respondent. Shortly stated, the substance of these findings is: that the destruction of the respondent's piles of lumber was caused by fire escaping from the smoke-stack of a locomotive engine belonging to the appellants; that the escape of the fire was owing to the defective construction of the smoke-stack, its defects consisting in the cone being placed too close to the netting, and in the bonnet rim not being so well fitted to its bed as it ought to have been; and that, by the use of ordinary care and diligence, the appellants could have prevented the fire. Assuming the facts to be as thus found, their Lordships are unable to understand on what ground the appellants can be relieved of responsibility for damages directly occasioned by their using a defectively constructed locomotive — damages which would not have occurred but for their failure to exercise ordinary care and diligence.

Upon this part of the case their Lordships listened to a great deal of argument and minute verbal criticism of the findings of the jury, which had really very little bearing upon the question before them. In impeaching the judgment based upon these findings the appellants cannot travel beyond the reasons assigned by them in the order *nisi*; and the only ground there stated for setting aside the judgment of Mr. Justice Osler, and entering judgment for the appellants, is that "it is not found as a fact that the fire came from the defendants' (appellants') locomotives, but is at most only a matter of conjecture." Their Lordships can understand an argument to the effect that the jury must have based their findings as to the source of the fire on conjecture, but the proposition, as stated, has obviously no foundation in fact. The jury in response to the question, "How did the fire occur?" said, "We think the fire occurred from sparks cast by the locomotive." And in response to the further questions, "Did it (*i.e.*, the fire) come from the smoke-stack or the ash-pan?" affirmed, in express terms, that it came "from the smoke-stack."

The appellants' next contention was that the

findings ought to be set aside, and judgment entered for them, in respect there was no evidence to go to the jury in support of the respondent's allegations, and of the findings of the jury, to the effect that the fire which ignited the lumber came from the appellants' locomotive, or that the appellants negligently used an imperfectly constructed locomotive. It is sufficient to say that the argument for the appellants upon another branch of the case, which involved an examination of the statements made by the leading witnesses, satisfied their Lordships that there was evidence upon both these points well fitted for the consideration of the jury, and that the presiding Judge would have committed a grave error if he had given effect to the motion made by the appellants' Counsel in the course of the trial, and directed a nonsuit.

It may be proper to advert here to a proposition which was submitted, though not very strongly pressed, by the appellant's Counsel. It is thus stated in the order *nisi*, as a ground for setting aside the findings, and entering judgment for the appellants,—" that the plaintiff (respondent), by piling his lumber in the defendants' (appellants') property took upon himself the risk of the same being consumed by fire from such locomotives as the defendants (appellants) used." These words are deficient in legal precision. They might very well signify that the respondent took upon himself the risk of fire which might be attendant upon the careful management of such locomotives as the respondents generally use; and in that sense the proposition which they involve would hardly be disputed by the respondent, but it would not assist the appellants' case. Accordingly a much wider meaning was attributed to the words in the course of the argument, which really came to this —that the respondent must be held to have assumed all risks of fire arising from negligence on the part of the appellants' servants, and from the disrepair or defective construction of their engines. When thus explained, the proposition appears to be so opposed to reason and authority that their Lordships do not think it necessary to take any farther notice of it.

In the next place, it was maintained for the appellants, that the answers of the jury to the first, second, third, fourth and tenth questions were against evidence; and that the findings in answer to the question numbered the *fifth* ought to be set aside, not only because it was against evidence, but also in respect that the question was irregularly submitted to the jury. The alleged irregularity consisted in this, that the presiding Judge, after receiving replies to the other questions, and after the respondents' Counsel had moved for judgment, put that additional question to the jury, before they were discharged, with the view of explaining the answer which they had already given to the fourth question. It appears to their Lordships that, in so doing, the presiding Judge acted within his powers, and with perfect propriety. It was the duty of the learned Judge to prevent miscarriage, and to take care that the material issues of fact raised by the evidence should be exhausted; and in the event of any answer given by the jury being incomplete, or requiring explanation, it was his duty, as well as his right, to put a farther question or questions, with the view of ascertaining what the jury did intend to find as their verdict.

Upon the question whether the findings complained of in the order *nisi* are against evidence, their Lordships, after hearing Counsel for the appellants, are not prepared to differ from the judgments of the Courts below. It is for the appellants to show that an honest and intelligent jury could not reasonably derive from the evidence the conclusions which the jury who tried this case have embodied in their findings. That, in the present case, implies a very heavy *onus*. Seeing that there must, some time or another, be an end of litigation, Courts are naturally reluctant to allow a third trial by jury except upon clear and strong grounds; and in this case the verdict of the jury has been sustained by the concurrent opinions of no less than five of the seven learned Judges who heard and decided the case in the Courts below, one of the five being the Judge who presided at the trial.

Apart from these considerations, which are of great importance in determining whether a new trial ought to be allowed, their Lordships have formed the opinion for themselves, that there is evidence sufficient to sustain the material findings of the jury. The appellants' Counsel scarcely ventured to dispute that the evidence was sufficient to warrant the finding that the fire which caused the mischief came from the smoke-stack of the locomotive engine No 5. Then it seems to be sufficiently established by the evidence that,—if the lower edge of the cone be one or two inches above the level of the bed on which the rim of the bonnet rests, and if at the same time there be an aperture between the bed and the rim, caused either by the rim not being evenly fitted to the bed, or by the rim not being tightly fastened down—it is not only possible, but probable, that the exhaust steam from the cylinders will be deflected by the cone, and rush through that aperture, carrying with it sparks or live embers of a larger size, and therefore more likely to cause

a conflagration, than those which escape through the mesh of the bonnet. It is proved beyond doubt that, on the 27th May, 1879, the cone of the locomotive No. 5 was so constructed that its lower edge was two inches above the level of the bed upon which the bonnet rim was rested. Accordingly, in the course of the appellants' argument upon this point, the real and the only question came to be, whether there was evidence to show that, on the 27th May, 1879, the connections between the bonnet rim of No. 5 engine and its bed were so defective as to admit of fire escaping through some space between them, In the opinion of their Lordships there is evidence from which the jury might fairly draw the conclusion that fire did escape in that way, and did ignite the respondent's lumber. Their Lordships do not, however, consider it necessary to enter into a detailed explanation of their reasons for holding that opinion, it being quite sufficient for the disposal of this part of the case that the appellants have utterly failed to satisfy their Lordships either that the Judge should have withheld the case from the jury for lack of evidence, or that the findings were either perverse or unreasonable.

There still remain for consideration the objections taken by the appellants to the administration of evidence for the respondent, and in particular to the admission in evidence of the entry made by Burns, the driver of No. 5 engine, in the report book kept at the defendants' workshops at Brockville, on the 30th May, 1879, three days after the fire. The entry admittedly related to engine No. 5, and it contains *inter alia* this sentence: "Bottom rim of bonnet in stack wants making tight." It appears to their Lordships that an entry in these terms, applicable to the locomotive which was alleged to have caused the fire, could not, in the circumstances of this case, be regarded as immaterial evidence; and, in that view, the question whether it was wrongly admitted becomes of importance. The appellants objected to its admissibility on these grounds: (1) that evidence of the state of the engine on the 30th May could not be competently admitted as tending to show what was its condition on the 27th May; (2) that Burns could not on the 30th May bind the company by any admission, direct or indirect, as to the condition of the engine on the 27th May; and (3) that the entry was objectionable, because it went to contradict statements made by Burns, as a witness, with regard to the state of the engine on the 30th May, and that it was not tendered or admitted in terms of section 27 of the Revised Statutes of Ontario, cap. 62. As to the first of these objections, their Lordships are of opinion that it was competent for the respondent to give evidence as to the condition of the engine on the 30th May, as throwing light upon any structural defects arising from imperfect design, or from disrepair, which might have existed on the 27th May, it being open to the appellants to prove that any defects, appearing at the later of these dates, were due to intermediate causes. Their Lordships are also of opinion that the entry was not tendered or received as an admission by the company in regard to the condition of the smoke-stack on the 27th May.

What the respondent was endeavouring to prove, when the entry was put in evidence, was the condition of the smoke-stack of locomotive No. 5 at the time when it was taken into the appellants' workshops for repair, on the 30th May. It has been proved that it was the duty of Burns to take his engine to the workshop for repairs, and that it was his duty to enter in a book, kept there for the purpose, the repairs needed, for the information and guidance of the workmen. Had he given verbal instructions to the workmen, it would have been clearly competent to ask him what the instructions were. He was the agent of the appellants in giving such instructions, which were part of the *res gestæ* of the 30th May, and the appellants could not have objected to his telling the jury what instruction he did give, on the ground that these were inconsistent with something which he had already deponed to. There is no difference in principle between asking the witness to state the verbal instructions which he gave, and putting his written instructions in his hand and asking him to read them. Such an entry as that in question, when it is so put in evidence, cannot be regarded as a mere statement or narrative of fact; it was an instruction given, an act done, by Burns, in the ordinary course of his employment as an engine-driver of the appellant company. Their Lordships are accordingly of opinion that the entry was legitimately used as evidence at the trial, and they concur in the observations which were made upon this point by Chief Justice Hagarty in the Court of Appeal.

The only objection remaining to be noticed is that which was taken by the appellants to the admission of evidence that the locomotive No. 5 was in use to throw fire. The argument addressed to their Lordships, in support of this objection, really went to the value, and not to the admissibility of the evidence; and their Lordships have no hesitation in holding that the objection is not well founded. The admissibility of evidence depends upon its character, and not upon its weight; and their Lordships cannot doubt that

evidence tending to show that engine No. 5 habitually threw more fire than the other locomotives used on the appellants' railway might be legitimately taken into account by the jury in considering whether it was defective in construction.

Their Lordships will, therefore, humbly advise Her Majesty that this appeal ought to be dismissed. The appellants must bear the costs of the appeal.

RECENT ENGLISH PRACTICE CASES.

DAVID v. HOWE.

Transfer of action to County Court—Plaintiff failing to proceed—Jurisdiction of Superior Court.

[L. R. 27 Ch. Div. 533.

When an order has been made for the transfer of a Chancery action to a County Court under sect. 8 of the County Courts Act, 1867 (cf. R. S. O. c. 50, s. 31) the Superior Court retains its jurisdiction in the action until the transfer has been completed by all necessary steps being taken for that purpose.

Hence, if after such transfer the plaintiff fails to enter action for trial at the County Court, the plaintiff may move before the Superior Court to dismiss it for want of prosecution.

EMENY v. SANDES.

Action remitted for trial to the County Court—Costs.

[L. R. 14 Q. B. D. 6.

Where an action in the Supreme Court has been ordered to be tried in a County Court, and has been so tried, the High Court retains its power under Order 75, r. 1, 1883 (O. J. A. rule 428) of dealing with the costs of the action.

BRADFORD v. YOUNG.

IN RE FALCONAR'S TRUSTS.

Stay of proceedings pending appeal—Payment out of Fund in Court.

[28 Ch. Div. 18.

In the absence of special circumstances it is not the practice of the Court to retain in Court pending an appeal, a fund which has been ordered to be paid out, because there is an appeal from the order.

An order directing the payment of a fund out of Court, consisting of money on deposit and East India stock, to the plaintiff having been made just before the commencement of the long vacation, and an appeal having been presented, a suspension of the payment out was granted over the Long Vacation in order to enable the appellant to apply to the Court of Appeal.

Wilson v. *Church*, 12 C. D. 454, and *Walburn* v. *Ingilby*, 1 My. & K. 70 considered.

The application being renewed before the Court of Appeal, at the close of the Long Vacation, and it being shown that the plaintiff had been abroad for two years, and that the applicant could not discover his address, it was held that payment out ought to be stayed if the applicant would give security to pay to the plaintiff interest at £4 per cent. on the present value of the funds in Court, and to make good to the plaintiff, if the appeal was unsuccessful, the difference between the highest market price of the investments at any time before the hearing of the appeal and their market price on the day of the hearing of the appeal.

ADAM, SON & CO. v. W. TOWNEND & CO.

Imp. O. 12, r. 15—O. J. A. r. 57.

Service of a writ on one member of a trading partnership—Appearance by him only "as a partner of the firm."

A writ was issued against a trading partnership (unincorporated), and served upon a member of the firm, who entered an appearance, "W. N. a partner of the firm of W. T. & Co.' There was no service upon or appearance by the other members of the firm.

Held, that leave to sign judgment against the firm for default of appearance could not be granted

Jackson v. *Litchfield & Son*, 8 Q. B. D. 474 followed.

[L. R. 14 Q. B. D. 103.

MATHEW, J. You cannot have judgment against the partner who has appeared, which is in effect what you are asking for; nor can you have judgment against the *firm* including N. Your proper course would seem to have been to apply to strike out the appearance by him; this you have not done.

THE BEESWING.

Appeal—Cross appeal—Withdrawal of appeal.

[L. R. 10 P. D. 18.

When a respondent has given notice that he will, on the hearing of an appeal, contend that the decision of the Court below should be varied, and the appellant subsequently withdraws his appeal, such notice entitles the respondent to elect whether to continue or withdraw his cross-appeal. If he continues his cross-appeal the appellant has the right to give a cross-notice that he will bring forward his original contention on the hearing of the respondent's appeal.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Proudfoot, J.] [February 3.

HUGHES v. REES.

Res judicata—Estoppel—Necessity of pleading—No opportunity of pleading — Amendment at hearing—Master's office—O. J. A., r. 178, 184.

Appeal from the Master's Report made in accordance with his judgment reported 10 P. R. 301, and *supra*, vol. 20, p. 343, and pursuant to the reference ordered in this case which will be found reported 5 O. R. 654.

The defendant, D. J. Rees, now appealed from the report because the Master refused to conclude the plaintiff by the judgment in the Superior Court of Lower Canada, as it had not been pleaded, and had held that it was not open under the terms of the reference,

Held, that the defendant, D. J. Rees, had had no opportunity of pleading the judgment of the Lower Canadian Court; and might, therefore, produce it before the Master as conclusive evidence in his favour.

Although a judgment of a Court of competent jurisdiction directly on the point is, as a plea, a bar; and, as evidence, is conclusive between the same parties upon the same matter directly in question in another Court, yet to have this effect it must be pleaded *when there is an opportunity of pleading it*. But here the amendment made by the plaintiff was made on a motion subsequent to the hearing; but before the decree was drawn up under O. J. A., r. 178 and 184, and the order giving leave to amend was contained in the decree, which orders that upon the plaintiff amending his bill as he might be advised, it was referred to the Master to inquire if the plaintiff had any valid claim for maintenance, and if he had to take the account; but there was no provision for allowing the defendant to answer or set up a new defence, and from the order being for an immediate reference upon the amendment being made, it would appear that the learned Judge did not contemplate any answer being put in.

The Master certified that the defendant, D. J. Rees, also proved before him a judgment in the Superior Court of Lower Canada, dated Dec. 13, 1879, in an action by his wife against him for alimony, decreeing a certain sum to be paid by him to his wife as alimony from a certain date.

Held, this judgment must be deemed to put an end to any implied liability on the part of the husband to pay for the wife's maintenance subsequently to the date from which alimony was to be paid under it.

J. Maclennan, Q.C., and *R. E. Kingsford* for the appellant.

S. H. Blake Q.C., and *G. Morphy* contra.

Ferguson, J.] [February 17.

MACDONALD v. MCCOLL.

Creditors' suit—Chattel mortgage void against creditors—Simple contract creditors—Suit on behalf of all creditors except the preferred ones—Locus standi.

Action brought by simple contract creditors on behalf of themselves and all other creditors of C., other than the defendants, McColl & Co., to have a certain chattel mortgage made by C. to McC. & Co. set aside and cancelled as in fraud of creditors.

It appeared that the chattel mortgage was given by C. when in insolvent circumstances, because McC. & Co., knowing his circumstances, told him that if he gave it it would protect him against all his creditors but themselves, and that they would protect him. It also appeared that McC. & Co. told C. that there was no intention on their part to enforce the mortgage, unless other creditors took proceedings against him. C. did not give the chattel mortgage in answer to a demand on the part of McC. & Co., but because of their representations as above mentioned. Hence it appeared that a compact was entered into between McC. & Co. and C., the intent of which was to ward off, to hinder, and delay the other creditors, and to prefer McC. & Co. to them, and that the mortgage in question was made with this intent on the part of both parties to it; and that though the proposals that the

mortgage should be given came from McC. & Co., there was no pressure that induced the giving of the security—there was not a simple yielding to the proposal or importunity of the creditor.

Held, therefore, the plaintiffs were entitled to judgment.

Held, also, that the fact that the plaintiffs excluded McC. & Co. from the creditors on whose behalf they were suing was not a valid objection to the suit.

Held, further, that the fact that the plaintiffs were simple contract creditors only, and that the mortgagor had made an assignment for the benefit of creditors generally, and that the plaintiffs were not attacking the assignment as well as the mortgage, did not debar them from the relief claimed.

Meriden Silver Co. v. *Lee*, 2 O. R. 451 followed.

Blake, Q.C., and *Kerr*, Q.C., for the plaintiff.

Osler, Q.C., and *Bull*, for the defendants, other than Ferguson.

Foster, for the defendant, Ferguson.

Ferguson, J.] [February 25.

FERRIS v. FERRIS.

Ante-nuptial settlement—Trusts—Executory and executed—Rule in Shelley's case—Conveyance to husband and wife—Married Woman's Property Act of 1872.

Action for construction of an ante-nuptial settlement. F., on the eve of his marriage, executed a settlement, dated January 4, 1876, wherein the intended marriage was recited, and F. agreed with his intended wife and K. to assign, transfer and set over to K., by good and sufficient conveyances, all such property as he might receive by will or otherwise from relatives, and a certain policy of insurance, to hold the same unto K. for the joint use and benefit of him, F. and his then intended wife, for and during the term of their joint lives, and from and after the decease of either of them to the use of the survivor of them during the term of his or her natural life, and from and after the decease of the survivor then to the use of the heirs of the plaintiff as he might by will direct: and then followed an agreement that articles of settlement should be executed in pursuance of the document or settlement then signed and sealed by F.

The marriage took place on January 5, 1876; and by deed bearing date December 27, 1879, F. granted, in pursuance of the settlement, certain lands to K. and his heirs, upon trust, with the consent of F. and his wife or the survivor, to sell, lease or otherwise convey the same, and upon trust for K. to hold the moneys to arise from any such sale, and also the rents and profits of the premises, or of the unsold parts thereof, upon such trusts and subject to such powers as had been declared of the same respectively in the agreement or settlement of January 4, 1876, and upon trust to hold the moneys to arise upon any mortgage if made by K. to pay off and redeem any mortgage debt on the property, etc. F. and his wife occupied the premises till the death of the latter on November 20, 1884.

F. now brought this action, contending that the settlement was intended as a provision for his wife only, and that according to the true construction thereof, and of the deed of December 27, 1879, he was entitled to an estate in fee simple in the lands under the Rule in Shelley's case, or by way of resulting trust; and that the trusts of the settlement were exhausted, and he alone was now entitled to the land, and that K. should convey to him, which he refused to do on the ground that the infants were entitled to some interest in the lands under the limitations in the settlement.

Held, that the trusts of the settlement were executed and not executory; they were fully stated and declared; and the limitations on the face of the settlement must be construed in the same manner as similar legal limitations; and F. had an estate in fee simple under the Rule in Shelley's case.

It was not correct to say that, by reason of the transaction being after the Married Woman's Act of 1872, the husband and wife took as tenants in common for life, and that therefore the rule in Shelley's case could in any event only apply to an undivided moiety. The Married Woman's Act of 1872 has no such effect.

Walker, Q.C., for the plaintiff and trustee.

Maclennan, Q.C., for the infant defendants.

PRACTICE.

Rose, J.] [Jan. 12.

BRICE v. MUNRO.

Demurrer—Setting aside as frivolous.

An appeal from the order of the Master in Chambers setting aside a demurrer to the statement of claim as frivolous was allowed.

Held, that the jurisdiction as to setting aside demurrers as frivolous should rarely be exercised where the point is a new one and is apparently raised in good faith to obtain the opinion of the Court.

Where it is evident that the party demurring is raising a question, manifestly insupportable, not admitting of argument, is in fact trifling with the Court either through gross ignorance or desire to delay, it may be convenient to at once set aside the demurrer.

The demurrer raised the question whether in an action against a shareholder, living in Ontario, in a joint stock company incorporated under a Dominion Act, it is sufficient to show that judgment had been obtained against the Company, and execution issued and returned unsatisfied in whole or in part in another Province, or whether it is necessary to show that execution has been returned unsatisfied in whole or in part in Ontario.

Held, that the demurrer was not frivolous.

Lash, Q.C., for the appeal.

Shepley, contra.

Rose, J.] [Feb. 11.

MOXLEY v. CANADA ATLANTIC RY. CO.

Affidavit of documents—Material for motion for better affidavit.

The usual affidavit on production of documents made by an officer of the defendants contained a statement that the defendants objected to produce their repairs book and train register, but that they would produce such portions of the books "as are relevant for inspection at the offices of the company," and a further statement that the company had "sealed up such parts of the said books as do not relate to the matters in question in this action."

The plaintiffs went to trial and called as witnesses the train despatcher, locomotive engineer and an engine driver of the defendants. The Judge at the trial refused on the evidence then given to direct the books to be unsealed.

The trial was then adjourned, and the plaintiff applied to the Master in Chambers for an order for a further and better affidavit of documents from the defendants, reading on the application the evidence taken at the trial, and asking to have the sealed up portions of the books unsealed for inspection. The Master made the order asked, and the defendants appealed to a Judge in Chambers.

Held, that the evidence taken at the trial was not proper material upon which to make an order for a better affidavit of documents.

Held, also, that as such evidence did not satisfy the Judge at the trial that he should direct the books to be unsealed, a Master or Judge in Chambers should not have been called upon to pass an opinion on the same evidence to accomplish what the plaintiff at the trial failed to do.

Held, also, that even if the evidence could be looked at, it would be impossible to say that the affidavit on production was untrue.

Jones v. *Monte Video Gas Company*, 5 Q. B. D. 557, considered.

Lefroy, for the appeal.

Clement, contra.

Rose, J.] [Feb. 16.

LYON v. MCKAY.

Affidavit on production—Motion for better affidavit.

An appeal from an order of the Master in Chambers refusing to direct plaintiff to file a better affidavit on production was dismissed.

The plaintiff, in his affidavit of documents, mentioned "Other letters and papers filed herein, the particulars of which I cannot now depose to," and stated "that such documents were filed in this Court in the motion made by defendant for his discharge from custody."

The defendant contended that the plaintiff should have scheduled these letters.

Held, that the plaintiff's affidavit was sufficient, and that the defendant must inspect the documents at the office where they were filed,

or take the necessary steps to have them transmitted to the office of the Court at his own place of abode.

Held, that an affidavit to show the incorrectness of the affidavit of documents could not be received, following *Jones* v. *Monte Video Gas Co.* 2 R., 5 Q. B. D. 556.

Hoyles, for the appeal.

Clement, contra.

Master in Chambers.] [Jan. 27.
Rose, J.] [March 3.

MCCRANEY ET AL. v. MCLEOD; HAWKINS ET AL., GARNISHEES.

Attachment of debts—Money due under contract.

McCraney & Son, having a judgment against McLeod, obtained and served an attaching order and garnishing summons on Hawkins, the garnishee, on the 15th March, 1884.

The debt alleged to be due from Hawkins to McLeod was for work done by McLeod upon a building contract for Hawkins.

The contract was that McLeod was to erect a house for which he was to receive from Hawkins $1,225; $300 when the frame was up, $300 when the building was wholly enclosed, and the balance when the work was all completed. The building was to be completed on or before the 3rd February, 1884.

McLeod went on with the work and received the two sums of $300, but he had not completed the building on the 3rd February, 1884. He, however, continued the work till after that time, and until after the 1st April, when the building being still unfinished, Hawkins entered, took possession, and completed it.

Held, that the debtor, having abandoned the contract, and his employer not having entered upon the work at the time of the service of the attaching order, no debt then existed according to the terms of the contract, and no promise to pay had arisen by implication; and, therefore, there was nothing upon which the attaching order could operate.

Summons discharged.

McClive, for McCraney & Son.

A. G. Hill, and *Echlin*, for opposing creditors of McLeod.

Eddis, for the garnishees.

Boyd, C.] [March 4.

WHITE v. BEEMER.

Reference under sec. 48 O. J. A.—Jurisdiction of Master in Chambers and local judges.

A county judge sitting as local Master under rule 422 O. J. A. made an order, purporting to be under sec. 48 O. J. A., referring all the matters in difference in the action for trial to an official referee.

Upon appeal, the defendant urged that the judge had no power to make the order.

Held, that as the Master in Chambers has not the power to deal with matters of reference under the C. L. P. Act, he (or a local judge sitting as Master under rule 422 O. J. A.) should not, *a fortiori*, make orders under sec. 48 O. J. A., for by that means the findings of the referee become equivalent to the verdict of a jury, and perhaps can only be moved against before the Divisional Court.

Edminson, for the appeal.

G. Tate Blackstock, contra.

CORRESPONDENCE.

STANDARD TIME.

To the Editor of THE LAW JOURNAL:—

DEAR SIR,—The difference of local time according to longitude having been found very inconvenient by the managers of railways in Canada and the United States, especially as to their time-tables, a conference of these gentlemen was held in 1883, at which it was decided to recommend for adoption a system of *standard time* by which railways should be run, each 15° of longitude (one hour in time) to form a time zone, within which all railways should be run by it, the time of the centre meridian of each zone being taken as the standard for the seven and a-half degrees on each side of it, and that of 75° of West Longitude from Greenwich being chosen as the standard to be used by railways within the territory bounded by the meridians of 67½° and 82½°, including the Atlantic States and a large part of Canada. The same rule was to be observed for the whole distance across our continent. This system was nominally adopted by a very large majority of the American and Canadian railways. But it was found difficult to abide by it in some cases in consequence of the

sudden jump of an hour in time in passing from one time zone to another, as many railways in both countries must do; and it seems the Grand Trunk, Great Western and Canadian Pacific are each run into two time zones within Ontario, and the Intercolonial into two such zones in Quebec, New Brunswick and Nova Scotia. There must be many railways in the United States which violate the conference rule in like manner; and this is a very great imperfection in the rule itself. But this is a matter for the consideration of the railway magnates themselves. The matter to which I desire to call your attention is the legal aspect of the case.

Many people (not lawyers, of course) seem to suppose that standard time has become *legal* time, and seem inclined to govern themselves and their doings by it, thus putting the railway managers in the place of the Legislature. Now, looking for the moment at Ontario alone, standard time at London is about twenty-four minutes earlier than legal time; and there are places in Essex where the jump occurs from one time zone to another, and at which the standard time is an hour earlier on one side of an invisible line than on the other. Now our Act 32-33 V., c. 21, §1, defines "night" for the purposes of that Act as commencing at "nine o'clock in the evening of each day and ending at six o'clock in the morning of the next succeeding day," so that by standard time it would be night on one side of the line when it was day on the other; and by sec. 50 *burglary* is defined to be the commission of certain offences in the *night* only, so that the same offence would be burglary on one side the line and not on the other. Mr. Robertson, of Hamilton, has now a Bill before the House of Commons making burglary punishable by imprisonment in the penitentiary for life. Fancy a man tried for burglary in the neighbourhood of that line, and a question arising as to the hour when the offence was committed. But, even in London, the offence would be burglary twenty-four minutes earlier in the evening by standard than by legal time, and the offender, if he did not break in, would have twenty-four minutes longer to break out. Then, again, the Ontario Revised Statute, c. 111, §22, provides that no Registrar shall receive any instrument for registration except within the hours of ten in the forenoon and four in the afternoon, and he is to endorse on the instrument registered not only the year, month and day, but the hour and minute of registration. Now suppose him to shut and open his office in London by standard time, he would shut it twenty-four minutes before, and open it twenty-four minutes after the legal time. Might he not do serious wrong to a person whose mortgage or other claim he received or refused illegally? and might he not be liable in heavy damages for doing so? Or suppose a Returning Officer closing or opening his poll twenty-four minutes before or after the legal time; or a tavern-keeper doing the same by his bar; or a case of insurance with a policy expiring at noon, and a loss occurring after *standard* but before *legal* noon. And so of an infinite variety of cases, where time is of the essence of the act done and its effect. In England, where they look closely into the consequences of such things, difficulties of this kind were foreseen when Greenwich time was adopted for all England in 1880, and an Act, 43-44 V., c. 9, was passed making it *legal time*, which, of course, they knew it would not otherwise be. I can believe that the advantages of the change may there have been greater than the disadvantages; for England is comparatively small, and the greatest difference between standard and the old legal time is only about twenty-two minutes, and there is no jump of an hour; the sea bounds the time zone, so that no one can mistake it; and they have taken care to leave Dublin time for Ireland. Our case, and that of the United States, is different. We have five jumps of one hour each; and with all due respect for the railway authorities, I think it would have been better if they had adopted or would adopt the time of 90° West Longitude as the standard for the United States and Canada right across the continent—one railway time without jumps or breaks, and the two oceans for the limits of the time zone. A clock with two minute hands, or one hand with two points, would show legal and standard time at once; and there would be no places with two standard times, as there are now at the boundary of each time zone. I am informed that the authorities of the Naval Observatory at Washington hold the same opinion. If any but the present legal time is to be used *as such* the change should be made by law, as it was in England. In the United States, it appears, that every State has power to fix its own legal time; Congress has it only for the District of Columbia (ten miles square, I believe), and has exercised the power by adopting standard time of 75° West Long. But the said District is smaller than England, and there could hardly be a minute of time difference between any two places in it. In Canada, I think the power rests with the Dominion Government. I am of opinion that there should be no change in the legal time; that Canada is too big to adopt one legal time for its sixty or seventy degrees of longitude, and that no jump system could be made rational and workable in law. But I hold that the Dominion Government and the Governments of the several Provinces should state authoritatively that the mean solar time of each place remains as hitherto

the *legal* time thereat, and that all officers and functionaries must so consider it, and open and close their offices, and be governed in the performance of their duties, by it and by no other, At the International Conference for the purpose of fixing a prime meridian and universal day, held at Washing in October last, such universal day to begin and end at the same moment all over the world as it does at Greenwich, was adopted "for all the purposes for which it may be *found convenient*, and which shall not interfere with the use of local or other standard time where desirable." It would have made the day at Toronto begin at seventeen and a-half minutes after what we now call five p.m., and Sunday would begin at that hour on Saturday, and end at the same on Sunday. I think this would not be "found convenient," and that we in Canada shall not adopt it. It has always been used at Greenwich, I believe, for astronomical purposes, except that the day began at noon, and now begins at midnight. It is excellent for scientific purposes, and, for the adoption of Greenwich as the First Meridian, England, and all men of English blood and tongue owe a debt of gratitude to the conference and to Sandford Fleming.

I am, dear sir, very truly yours,

W.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.

EQUITY.—HONORS.

1. "Contracts and conditions in general restraint of trade, or beyond what is reasonably necessary for the protection of the party seeking protection, are void, as tending to discourage industry, enterprise, and just competition." Illustrate this passage by two examples.

2. A. employs B. to procure for him a property suitable for manufacturing purposes. B. enters into a binding agreement with C. for the purchase of a suitable property in B.'s own name for $10,000. B. then, without disclosing these facts, draws the attention of A. to the property, and the latter assents to the view that the property is worth $15,000, and expresses his willingness to give that sum for it. B. thereupon procures C. to convey the property to A. for $15,000, of which sum C. is to receive $10,000 and B. the sum of $5,000. A. afterwards learns the facts of the case, and brings his action against B., claiming that he is entitled at his option to recover the $5,000 from B., or to have the sale rescinded, What are the rights of the parties?

3. State the effect of the Statute 13 Eliz. cap. 5, with regard to the validity of a conveyance or assignment of real or personal property, and with regard to the persons who may avail themselves of the provisions of said statute.

4. Illustrate by an example the distinction drawn by courts of equity between the construction to be put upon executory trusts, and to be put upon executed trusts.

5. A. purchases and pays for three pieces of land known respectively as X. Y. Z., and under A.'s instructions the vendor conveys lot X. to A.'s family physician, lot Y. to A.'s son, and lot Z. to A.'s wife. What interests, if any, do the physician, the son, and the wife take respectively, and why?

6. What distinction does equity draw between its recognition of a perfect and of an imperfect gift, where the donor subsequently seeks to revoke the gift? Give an example of each.

7. State the nature of a solicitor's lien for costs.

SECOND INTERMEDIATE.

SMITH'S COMMON LAW.—HONORS.

1. What is meant by *scandalum magnatum* in the law of slander?

2. A. and B are proprietors of adjoining lands, with no fence between. A.'s cattle trespass on B.'s land and B.'s cattle on A.'s land. Is there any liability for such trespasses? Explain.

3. If a principal gives an order to an agent in such ambiguous terms as to be susceptible of two different meanings, and the agent bona fide adopts and acts upon the meaning not intended by the principal, will the act of the agent be considered in law to be authorized or unauthorized, and why?

4. Explain the difference between *easements* and *profits à prendre*,

5. In an action for malicious prosecution, on which party does the onus of proof rest, as to the question of reasonable and probable cause?

6. Explain the difference between self-serving and self-disserving evidence.

7. Give all the instances you can in which an assault and battery may be justifiable.