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DIARY FOR DECEMBER.

15. Sat ...Christmas vac. in Supreme Ct. and Exch. Ct. begins. [Morrison, J. sworn in Ct. of Appeal, 1877.
16. Sun... *Third Sunday in Advent.*
17. Mon...First Lower Canada Parliament met, 1792.
18. Tues...
19. Wed...
20. Thur..
21. Fri....
22. Sat....Shortest day.
23. Sun....*Fourth Sunday in Advent.*
24. Mon ...Christmas vac. in Ct. of Appeal and Chy. Div.
24 Tues...Christmrs Day. [begins. Mun. Nominations.
26. Wed ..U. C. made a Province, 1791.
27. Thur ..Spragge, V. C. appointed Chancellor, 1879.
28. Fri....
29. Sat....
30 Sun....*First Sunday after Christmas.*
31. Mon...Rev. Stat of Ont. came into force, 1877.

TORONTO, DEC. 15, 1883.

BUSINESS NOTICE.

Until further announcement all communications to this Journal, whether on business or otherwise, are to be addressed to "CANADA LAW JOURNAL, *68 Church St., Toronto.*" *All remittances are to be made to the Proprietors of the Canada Law Journal at the same address.*

His Honor JUDGE BENSON was recently the recipient of a very pleasant congratulatory address from the Bar of Port Hope, his native town, expressing their gratification at his elevation to the Bench. We gladly "concur." The appointment is an excellent one.

We have received through Messrs. Rowsell and Hutcheson a copy of Sir James F. Stephen's Digest of the Law of Criminal Procedure, published by Macmillan and Co. This book, the excellence of which goes without saying, completes the set of works on the Criminal Law of the learned author, which are now famous all the world over. The student of Criminal Law is now furnished with all his heart can desire in the History of the Criminal Law of England, the Digest of the Criminal Law, and the Digest of the Law of Criminal Procedure. The arrangement of the present work is similar to that of the Digest of Criminal Law, the matter being set forth in separate articles, to which are appended illustrations, when required. The contents are sufficiently indicated by the title; and it will no doubt be at once recognized as the standard authority on criminal practice and pleading.

A country paper has been sent to us, with a marked passage, wherein the writer comments on the decision of Mr. Justice Cameron in the South Renfrew case. It is, apparently, impossible to restrain the venomous effusions of disappointed litigants and their friends, especially when politics are concerned, nor is this the first time that the most honorable men on our Bench have been wantonly assailed by those who ought to, but apparently do not, know better. The unsullied reputation of the learned Judge referred to requires no protection at our hands. It needs not to be said that his name is synonymous with true worth, honor and rectitude; that fact is known to all except, possibly, the writer of the article referred to, who, we trust, is by this time heartily ashamed of himself.

Some of the cases set down for hearing before the Chancery Divisional Court were recently dismissed on the ground that copies of the evidence for the use of the Judges had not been furnished prior to the cases coming on for argument, notwithstanding that the

counsel for the appellants had a certified copy of the shorthand writer's notes of the evidence in Court, and were ready to proceed. The regulation requiring copies of evidence to be furnished for the use of the Judges in this Divisional Court is (as far as we know) a mere private verbal regulation of the Judges of the Chancery Division, and is intended, we presume, to facilitate them in hearing causes; but, so far, it has not been embodied in any rule of Court; and the dismissal of causes merely because this regulation has not been complied with, seems to us rather a high-handed proceeding, and one of doubtful legality. The Judges of the Chancery Division have no power to make rules of Court, and yet the regulation in question is very like an attempt to do so. The regulation is not an unreasonable one, but at the same time, before any penal consequences can be attached to its non-observance, the profession have a right to demand that it be so formally and publicly and authoritatively promulgated, that there can be no reasonable excuse for ignorance of its existence. Country practitioners can hardly, in reason, be expected to be informed of every notice which may temporarily appear on the notice boards of the Courts.

NEW RULES OF COURT.

We have great pleasure in calling attention to the following new rules of Court, dated Dec. 17th. Of Canadian lawyers it may, indeed, be said, to adopt the epigram of Mr. Secretary Evarts—their pride is the wealth of their clients and the poverty of themselves. The latter portion of this principle may, however, be carried too far, and it is refreshing to see that at last the profession in this country has done something for themselves. Probably in no portion of the British Empire is the legal profession worse paid than in this, or has more work to do for the money. Lawyers know the expense, the delay, and the labour which it takes to fit a man for the legal profession; the general public do not. If lawyers do not look after their own interests no one else will do so. And these two rules which curtail the office hours while they tend to make a slight addition to the remuneration of practitioners, are in our opinion expedient and good. It is needless to point out how the length of office hours necessarily depends on the hours of the day limited for the service of papers, though possibly 4 p.m. is a trifle too early to fix as a limit. In conclusion, we think we are at liberty to mention the name of Mr. C. J. Holman as the gentleman to whose energy this change in the hours of service is mainly due. *Palmam qui meruit ferat!*

The rules are as follows: (1) It was moved, seconded and ordered, that the taxing officers shall have power to allow increased counsel fees in Chambers to an amount not exceeding $10. This order is to be substituted for item 166 in the order of the 10th September, 1881, respecting the tariff of charges. (2) It was further moved, seconded and ordered, that rule 459 of the Judicature Act be rescinded, and the following substituted:—"Unless otherwise specially ordered in the particular case, service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of four o'clock in the afternoon, except on Saturdays, when it shall be effected before the hour of two o'clock in the afternoon. Service effected after four o'clock in the afternoon on any week-day except Saturday shall be deemed to have been effected on the following day. Service effected after two o'clock on Saturday shall be deemed to have been effected on the following Monday." This order shall take effect on and after the 2nd day of January next.

NOTES OF CANADIAN CASES

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COMMON PLEAS DIVISION.

Wilson, C. J.] [Dec. 15.

DEVANNEY ET AL V. DORR.

Assessment — Taxes when due—Agreement—Arbitration—Costs.

Under the Assessment Act, the assessment is for the purpose of designating the person to be charged, but no debt is due until the rate on the dollar is imposed, and the amount of taxes thus ascertained and fixed.

By an agreement, dated 4th November, 1881, between one Q. and defendants, for the sale of Q.'s business, after reciting that defendants were to pay, satisfy and discharge all liabilities now due and owing, or hereafter to become due and owing, incurred by the said Q. in the said business, &c., the defendants covenanted to pay, satisfy and discharge all the debts, dues and liabilities, whether due or accruing due, contracted by the said Q. in connection with said business, &c. Q. was assessed for goods sold under the agreement, before the making thereof, but the rate was not imposed until May thereafter.

Held, that this was not a debt, &c., contracted in connection with the business, so as to come within the agreement.

By an order of reference the arbitrator was empowered to certify and amend pleadings and proceedings and otherwise, as a judge at Nisi Prius, and the costs of the reference, arbitration, and award were to abide the result of the award.

Held that the arbitrator had no power to make any disposition of the costs, as they were provided for by the reference.

McClive, of St. Catharines, for the plaintiff.

Aylesworth, for the defendants.

Osler, J.] [Dec. 15.

UNION INS. CO. V. O'GARA.

UNION INS. CO. V. SCHOOLBRED.

Corporations—Calls—Resolutions—By-laws—Notice—Stockholder—Change of head office.

Action to recover calls on stock in the defendants' company.

The defendants' act of incorporation provided that the directors could make calls at such times as they might deem requisite, provided that successive calls should be made at intervals of not less than two months between such calls, and that no call should exceed ten per cent., and that thirty days' notice should be given of every such call.

Held, that it is not necessary that calls should be made by by-law, but that a resolution is sufficient for the purpose; and that the resolution need not name the place of payment of the calls, but that this can be done in the notice.

A resolution was passed by which a call was made of 10 per cent., payable on the 1st March, and it was thereby further resolved that a further call of 10 per cent. be made, payable on the 1st September.

Held, clearly not a call of 20 per cent., but two calls of 10 per cent. each; and that the fact of the second call being illegal did not invalidate the first call, because contained in the same resolution.

The act provided that the head office of the company could be changed to such other place as might be determined by the shareholders at any one of the general meetings.

At its general annual meeting, a resolution was passed authorizing the directors to consummate arrangements for the removal of the head office from Ottawa to Toronto. The directors made the change, and the subsequent annual meetings were held at Toronto, at the first of which so held, the by-law referring to the place of holding the annual meetings was amended by substituting Toronto for Ottawa.

Held, that the change was effectually made.

An alleged third call was objected to as being a fourth call, in that the second illegal call before referred to had never been abandoned; but *held*, that the evidence clearly shewed such abandonment.

The same objection was taken as was done in *Union Ins. Co.* v. *Fitzimmons*, 32 C. P. 602,

as to there not being 30 days notice, but the objection was overruled on the authority of that case.

In addition to 50 shares personally subscribed by the defendants O. and S., the plaintiffs claimed that they were holders respectively of 75 and 60 shares of the said stock for which they had not subscribed.

Held, on the evidence that O. was not such holder, but that S. was, and was therefore liable thereon.

Foster, and *J. B. Clarke*, for the plaintiffs.

J. K. Kerr, Q.C., for the defendants.

FULL COURT, DEC. 15.

CORPORATION OF WELLAND v. BROWN.

Principal and surety—Collector's roll—Certificate—Entries on roll—Evidence—Commission.

In an action against sureties for a town collector for his default in paying over the taxes collected by him,

Held, (1) that it is not necessary that the roll should be certified, but it is sufficient if it be signed by the town clerk; (2) that entries made by the collector on his roll in the discharge of the duties of his office of taxes paid, are evidence in an action against the sureties.

The jury, without any evidence to justify such finding, allowed the collector a commission of 3½ per cent. on the taxes collected by him.

Held, that this amount could not be allowed, and that the verdict against the sureties must be increased by this amount, less a sum of $75, which appeared, by a by-law put in, by leave on the argument, to be the proper amount allowable to him, on defendants pleading a plea which would justify plaintiffs in making such deduction.

Lash, Q.C., for the plaintiffs.

Osler, Q.C., for the defendants.

REGINA v. FLINT.

Keeping house of ill-fame—Evidence—32 & 33 Vict. ch. 82, D., construction of—Statutory offence, or at Common Law.

On an application to the Divisional Court to quash a conviction made by the Police Magistrate of the city of Toronto against the defendant for keeping a house of ill-fame, there being evidence upon which the Magistrate could convict, the court refused to interfere.

In the conviction the offence was stated to be against the statute in such case made and provided.

Held, that if not constituted an offence under 32 & 33 Vict., ch. 32, D., the reference to the statute might be treated as surplusage, and the conviction sustained under the common law; but that the reference to the statute might be supported because the 17th sec. imposes a punishment in some respects different from the common law.

Bigelow for the prisoner.

Fenton for the Crown.

MCPHERSON v. GEDGE.

Mechanics lien—Lienholder not party to suit—Enforcing lien after dismissal of suit.

Held, Galt, J., dissenting, that a registered claimant under the Mechanics Lien Act, who has not commenced an action in his own right, either singly or alone, with other registered claimants, can in an action brought by other claimants, except in so far as it is his action, which has proceeded to the close of the pleadings, set aside the dismissal of that action which the plaintiffs therein have assented to, and claim the right to prosecute it for his own benefit.

Frank Hodgins, for the applicant.

Langton, for the defendants.

FARGEY v. GRAND JUNCTION R. W. CO.

Railway Companies—Amalgamation—Enforcing decree obtained prior to amalgamation.

Part of the consideration for the right of way over plaintiff's land was that the company, the B. & N. H. R. W. Co., should construct a cattle pass under the railway for the use of the plaintiff. The company refused to construct the pass, whereupon the plaintiff, on the 30th April, 1880, filed a bill in chancery against the company to enforce the agreement, to which the company, on the 13th September, 1880, filed an answer, and on the 13th November, a decree was obtained by consent to construct it on certain terms specified therein. In March, 1879, the Act 42 Vict. ch. 53, O., was passed, autho-

rizing the B. & N. H. R. W. Co. to enter into a deed of amalgamation with the defendants or any other railway company, subject to the ratification and approval of a majority of the shareholders at a public meeting called for such purpose. On the same day a similar act, 42 Vict. ch. 57, O., was passed authorizing the amalgamation of the defendants with the B. & N. H. R. W. Co. On 29th June, 1880, a deed of amalgamation was entered into between the two companies under defendants' name, which was on the same day ratified and approved of by a meeting of shareholders. By the terms of the deed certain clauses of the Imperial Railway Clauses Act of 1878, 26 & 27 Vict. ch. 92, under the heading "amalgamation" were incorporated therewith. Sec. 42 of said Imperial Act, provides that causes of action arising before amalgamation shall be valid and effectual against the amalgamated company; and sec. 43 provides that suits pending against the dissolved companies shall be continued against the amalgamated company. The plaintiff had no notice or knowledge of the deed of amalgamation or of its contents. On the 4th March, 1881, the Act 44 Vict. ch. 64, O., was passed, by sec. 1 of which the said deed of amalgamation was declared legal and valid, and that the two companies should be amalgamated and united under the said defendants' name in the terms of the said deed. The terms of the decree not having been carried out, the plaintiff brought this action against the defendants to enforce it.

Held, that there was no complete amalgamation of the two companies until the passing of the 44 Vict. ch. 44, O., so that the B. & N. H. R. W. Co. had not ceased to exist when the decree was made, and that it was therefore legal and valid; and that the plaintiff was entitled to enforce it against the defendants.

G. D. Dickson, Q. C., for the plaintiff.

Moss, Q. C., for the defendants.

RE BOTHWELL ELECTION CASE.

Contempt of court—Election law.

On an application on behalf of the respondent H. to an election petition for an order *nisi* calling on the defendant to shew cause why he should not be committed for contempt of court, for publishing in his newspaper, during the currency of an election petition, filed on his behalf, and in which petition the conduct of the returning officer was complained of, articles, reflecting on the respondent and the returning officer,

Held, that on the materials before the court a *prima facie* case of contempt was made out, but as it appeared on the same materials that the respondent had attended and spoken at a meeting held for the purpose of approving of the conduct of the returning officer, and presenting him with a watch as a mark of such public approval, the applicant was also in fault, and the motion was therefore refused.

H. T. Beck for the motion.

RE JARRARD.

Extradition—Altering Public book—Evidence—Alteration—Forgery—Extradition Act of 1877, 45 Vic, ch, 25 D.—construction of.

The prisoner was collector of the county of Middlesex, in the State of New Jersey and kept a book for the entry of the payment and receipt of all moneys received by him as such collector, and which was the principal book of account kept by him. The book was purchased with the money of the county, and was kept in the said collector's office, and was left by him on the close of his term of office. It was open to the inspection of those interested in it, and contained the certificates of the county officials as to the matters therein contained.

Held, that the book was the public property of the county, and not the personal property of the prisoner.

After the said book had been examined by the proper county officers for that purpose, as to the amounts received and paid out by the prisoner as such collector, and a certificate of the same made by them, the prisoner, who was a defaulter with intent to cover up his defalcation, altered the said book by making certain false entries therein.

Held, that this constituted forgery at Common Law as well as under 32 & 33 Vic., ch. 19, D.

Held, also, that under the Extradition Act of 1870, 40 Vic., ch. 25, D., it is essential that the offence charged should be such as, if committed here, would be an offence against the laws of this country. The offence was also proved to be a forgery against the laws of New Jersey.

Osler, Q. C., for the prisoner.

E. Martin, Q.C., and *Fenton*, contra.

COCHRAN V. BOUCHER.

Absence of Judge when judgment delivered—Subsequent delivery of judgment.

In this case judgment given by Wilson, C. J., and Galt, J., Osler, J., not being present, being engaged with assizes, was declared invalid in consequence of Wilson, C. J., having delivered the judgment at the trial. Subsequently Osler, J. delivered judgment concurring that the order should be discharged, and the other Judges affirmed their judgments previously delivered.

Lash, Q. C., for the plaintiff.

Moss, Q. C., for the defendant.

CHANCERY DIVISION.

Boyd, C.] [Dec. 12, 1883.

HAMILTON PROVIDENT LOAN CO. V. CORNELL.

Action of deceit against personal representative.

G. & M. were partners, and by the terms of their dissolution G. held the lands in question as security for a lien of $525. He with others entered into a scheme to defraud any company who would lend $1125 on the security of the land, by getting a deed (shewing the consideration money at $2250) executed by G. to C. and taking a receipt from G. for $1125 in part payment. The receipt was drawn up by M. but no evidence was given to shew that G. knew of M.'s fraudulent scheme, and the deed as executed was left in G.'s solicitor's hands as an *escrow* awaiting the payment of the $525. G. then died, plaintiffs becoming aware of his death a few days afterwards. Subsequently to their becoming aware of his death, on the recommendation of their own valuator, they lent $1125 on the property, (the actual value of which was perhaps $250). The receipt being sent to the plaintiffs' solicitors about the time the advance was made, S., who was G.'s administrator, knew nothing of the receipt or of the facts, except that he had a lien for the $525. The $525 was paid out of the proceeds of the loan.

Held, that an action of deceit would not lie against G.'s personal representative whose assets had not been increased by the fraud, as the receipt or representation had not been acted upon until after the plaintiffs had knowledge of G.'s death.

Idington, Q. C., for administrator.

Muir, for plaintiffs.

Boyd, C.] [November 21.

MCKAY V. HOWARD.

Short form mortgage — Added provisions—construction R. S. O. c. 104.

This was an action for wrongful distress under the following circumstances. A mortgage was made by the plaintiff to one Taylor to secure $3 600 and interest. It was in the statutory short form, except that immediately after the printed covenant for payment the following words were inserted: "it being understood, however, that the said lands only shall in any event be liable for the payment of the mortgage." The distress clause was printed in its usual place, viz., after the covenants. The defendant to whom this mortgage was assigned, when an instalment of interest fell due, distrained for it. The plaintiff, to prevent their goods being taken away, paid the interest to the bailiff under protest, and then brought this action.

Held, that the plaintiff was entitled to judgment for a return of the amount levied by distress and paid under protest, with interest and costs, for the earlier provision of the mortgage controlled the subsequent ones, both because first in the deed, and because it was in writing, whereas the others were the usual printed provisions, for the words superadded in writing were entitled to have a greater effect attributed to them than the printed.

Principle of construction laid down in *Robertson* v. *French*, 4 East, 136, and *Gunn* v. *Tyrie*, 4 B. & S. 713 followed.

W. Cassels, Q. C., and *Gregory Cox* for the plaintiffs.

John McKeown for the defendant.

PRACTICE CASES.

Proudfoot, J.] [Nov. 28.

WEBSTER V. LEYS.

Married women—Next friend—Rules 97 and 494, O. J. A.

Where a decree was made in June, 1881, two months before the O. J. A. came into force, and an order was made on the 29th October, 1883, staying proceedings until a new next friend was appointed to the married women plaintiffs, who sue in respect of their separate estate. *Held*, that the order was right, for although Rule 97, O. J A. says that married women may sue without a next friend in regard to their separate estate, yet R. 494, O. J. A., in effect says they shall not do so where a decree has been obtained before the O. J. A. came into force.

Black for the plaintiffs.

Kingsford for the defendant Leys.

Divl. Ct. Chy. Div.] [Dec. 13

WILLS V. CARRALL.

Jurisdiction of Master in Chambers—Judgment—Absconding Debtors' Act.

The MASTER IN CHAMBERS made an order under R. S. O. c. 68, sec. 9, referring it to the County Court Judge to ascertain the amount due by an absconding debtor and judgment was entered pursuant thereto; another creditor then obtained an order from the master setting aside the judgment and allowing him in to defend.

Held, on appeal, that the MASTER IN CHAMBERS has no jurisdiction to set aside such a judgment.

On appeal the Divisional Court upheld the order of PROUDFOOT, J., but the relief sought for was granted on terms.

W. Cassels, Q.C., and *Holman* for the appeal.

Aylesworth, contra.

The Master in Chambers.] [Nov. 30.

KELEBER V. MCGIBBON.

Entry of Judgment—interest—Rules 326 & 351 O. J. A.

In endorsing a writ of execution to levy interest upon the amount of the judgment, the interest is to be computed from the day of pronouncing the judgment, not from the day of the formal entry thereof.

Rules 326 & 351 O. J. A. are inconsistent. The "day in which judgment is pronounced" referred to in Rule 326, is "the time when judgment was entered up," referred to in Rule 351.

Ogden, for the plaintiff.

Clement, for the defendant.

Wilson, C. J.] [Sept. 20.

GRANT V. GRANT.

Sheriff's charges on execution—Rent—Possession—Money.

An application by the plaintiffs for the revision of a taxation by a local master. Writs of execution were placed in the sheriff's hands; and he levied on the 12th of February, 1883; the goods, with the assent of the debtor, were retained in Belleville, and in Madoc, on the premises in question, but the keys of both premises were handed to and retained by the sheriff who sold the goods on the 9th of March, 1883.

The following charges were taxed to the sheriff by the local master at Belleville:

1. Rent paid landlord of the execution debtor for premises in Belleville, due 1st March, 1883, $250: removal of goods $10 ..... $260 00
2. Taking stock at Belleville two persons at $4 each per day for ten days, $80, and $20 allowed at 60 00
3. Possession money at Belleville, 26 days at $2 per day 32 00
4. Taking stock at Madoc allowed at .. 8 00
4. Possession money at Madoc, 29 days $58 and $6 ..... 64 00

On appeal, WILSON, C. J., disposed of the items as follows:

No. 1 disallowed as well because the goods could have been removed before the rent became due, as because when seized they were held under the execution and in the custody of the law, and there was nothing in the lease which entitled the landlord to precipitate the payment of the rent by reason of the delivery of the execution to the sheriff.

Nos. 2 and 4 disallowed.

These items are not allowable by the tariff and by R. S. O., c. 66, sec. 51, the taxing officers can allow only such items as are correct and legal.

The tariff reads—"Schedule of goods taken in execution, including copy to defendant, if not exceeding five folios $1, and for each folio above five, ten cents"; this is for the mere writing of the schedule and not a charge as in this case for the measuring, classifying and valuing of goods which requires skilled labour.

The words in section 51—"Strike out all charges for services which, in his opinion are not necessary to be performed," do not authorize the allowance of charges not expressly authorized by the tariff.

Nos. 3 and 5 referred back to the taxing officer to obtain further information and evidence if necessary, and to be allowed only if *really and necessarily paid.*

The sheriff charged poundage upon each of the seven writs, though all were issued by the same solicitor and were delivered at the same time to the sheriff who made one levy.

This charge was allowed.

Held, that this motion was properly made under R. S. O., c. 66, sec. 52, and that the plaintiffs were not barred for not following the directions of Rule 447, O. J. A., as that rule applies only to taxations before the taxing officers at Toronto, appointed under Rule 438 O. J. A., and not to local officers.

Clement, for the plaintiffs.

Aylesworth, for the defendants.

Order accordingly.

The Master in Chambers.] [Nov. 29.

MCLAREN v. STEPHEN.

Action upon appeal bond—staying proceedings.

An action against the sureties upon a bond given by the defendants in the action of McLaren v. Canada Central Ry. Co, upon the appeal of the defendants to the Court of Appeal in that cause. The defendants in McLaren v. Canada Central were now appealing from the Court of Appeal to Her Majesty in Council, and in that appeal security had been given and allowed, including security for the whole amount recovered, and execution has been stayed in consequence.

Held, that proceedings must also be stayed in this action.

Clement, for the plaintiff.

Holman, for the defendants.

Proudfoot, J.] [Nov. 20.

WILSON v. BEATTY.

Money in Court—Security—Payment out.

On the 16th Nov., 1881, an order was made directing D. to pay a certain sum of money into Court. D. appealed from this order to the Court of Appeal, and for the purpose of staying execution, instead of giving security, as required by R. S. O. c. 38, sec. 27, ss. 4, he paid this sum into Court, being authorized so to do by an order in Chambers. On the 27th October, 1883, the Court of Appeal reversed the order of 16th Nov., 1881. The respondents then gave notice of appeal to the Supreme Court of Canada.

Held, that the money paid in by D. must be taken to have been so paid in in lieu of the bond required by the statute; when the decision in appeal was given in D.'s favour, the money had served the purpose for which it was paid, and ought to be repaid.

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