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THE Examinations before Easter Term of the Law Society and Law School are now in progress, and judging from the number of candidates, the length of the papers given, and the energy displayed by the students, the examiners will be immersed in examination papers for several weeks to come. About 200 candidates presented themselves for examination, of whom 53 have taken the first-year examination in the Law School, and 58 the examination for the second year, 53 of whom wrote for honours. In the Law Society Examinations under the old curriculum, there were 28 candidates for the First Intermediate, 31 for the Second Intermediate, 26 for Solicitor, and 29 for Bar. The papers set for the students in the Law School contain twelve questions each, instead of the seven set to candidates under the old curriculum. The increase in the number of questions, and the care required in making the papers a fair test of the knowledge of the student and the work of the Law School, the double set of examination papers to be prepared, and the large number of new works placed on the list for examinations, have added greatly to the labour and responsibility of the examiners. They complain very justly of the inadequate remuneration granted them for their work, and we think they are fairly entitled to a substantial addition to the sum at present allowed them.

THE Court of Appeal has lately delivered judgment in the cases argued before it at the preceding sittings. Among the more important decisions are: *Regina* v. *Wellington*, where a tax sale and conveyances thereunder were set aside as void against the claim of the Crown as mortgagee of the lands; *Heward* v. *O'Donohoe*, in which the question of what is possession of lands sufficient to acquire title under the Statute of Limitations is discussed; *Herr Piano Company* v. *Central Bank*, where it was held that the bank could not follow as trust moneys into the hands of the company the amount of overdrafts in the private account of certain persons who were directors of the plaintiff company and of the bank; *Brady* v. *Sadler*, which involves the construction of a Crown patent; and *Cumberland* v. *Kearns*. In the latter case the court, sustaining the judgment of the Chancery Divisional Court, were unanimously of opinion that a local improvement rate charged upon the lands in question to defray the expenses of a scheme of improvements undertaken by the Municipal Corporation, on the petition of the defendant and others, was an incumbrance for which the plaintiffs were entitled

under the covenants in the conveyance against incumbrances and for quiet enjoyment, to recover from the defendant as damages a sum sufficient to remove the charge. A vendor of lands, upon which a local improvement rate is imposed, should, therefore, provide in the agreement of sale that the purchaser shall take the lands subject to the rate. Otherwise the purchaser may, before conveyance (and after conveyance, if the vendor has petitioned the corporation for the improvements, or has been in any way instrumental in creating the charge), compel him to commute the rate and remove it as an incumbrance upon the lands, or deduct a sum out of the purchase money sufficient to answer the charge. For the present sittings of the court, commencing on the 13th, there are thirty cases set down on the list, among which is the celebrated case of *Conmee* v. *C. P. Railway*. Three cases have been postponed for the convenience of counsel and until the services of an *ad hoc* judge can be procured. There have been no arrears in the court for some time past, and the judges, we believe, complain that the business of the court is delayed on account of counsel not being ready to proceed with their cases when called. We do not see why any different rule should prevail in the Court of Appeal than at the Assizes, and if counsel are not ready to proceed, or where no adequate grounds are stated for postponement, the cases should be struck off the list or dismissed, and no subsequent application for reinstatement of the cases be considered. If this rule were rigidly adhered to, junior counsel might have an opportunity for counsel work which is at present monopolized by leading counsel.

FUNDS IN COURT.

It is not our purpose to trace out the history of events which have resulted in the present practice of payment into court, or the relations of the court to the funds paid in, but rather to point out how the matter stands at the present time in regard to funds standing in court. The history of the Court of Chancery in Ontario, whose jurisdiction in regard to money paid in, including that of the former Courts of Queen's Bench and Common Pleas, is now vested in the High Court of Justice, shows that from very small beginnings the general balance in court has risen to a very large sum indeed. So far as the information at our command enables us to speak, this balance now amounts to upwards of $2,100,000. This sum consists of moneys resting in court for an infinite variety of reasons, some of which are that the persons entitled are minors, or of unsound mind; that the moneys are subject to a trust for unascertained persons, and subject or not to life-tenancies of some known individuals; or sometimes the funds are waiting for the happening of some event entitling some one to apply for the moneys; or, as is too often the case, the moneys are in court by reason of the default of trustees, or simply because there is no trustee.

The care of a fund consisting of so many different items, and with so many different interests to be conserved, would be in itself a very grave charge for a corporation specially organized for the purpose; yet up to the present time the

judges, with the staff of the accountant's office, have accomplished the task. So far as we know, there has never been a loss to a suitor in respect of a fund in court. This forms no insignificant factor in the aggregate of responsibility and labour cast upon our judges for which they are practically unremunerated, and might have been properly commented on in the article in our April number (*ante* p. 162) upon the subject of Judicial Salaries.

The court has always been anxious to have the funds in court made as productive as possible for the benefit of those interested therein. Until 1882 persons interested in funds in court might apply to have the same lent out upon mortgage with the approval of the court. Such applications were then very common, and large amounts were thus from time to time invested. The bank with whom the court did business also paid interest upon the general balance at an agreed rate, so that the result was that suitors were always able to obtain interest at a minimum rate of four per cent. Since 1882, however, a change has obtained in the whole system, and only in exceptional cases may suitors procure their money to be invested upon their own application.

In March, 1882, the former Consolidated Rule of Court, No. 521, was passed, which is in the following form:

"Whereas, by the Act, 35 Victoriæ, chapter 83 (Ontario), the Toronto General Trusts Company was incorporated, and thereby empowered to act as agents for the transaction of business as therein mentioned; And whereas, by the Act of 45 Victoriæ, chapter 17, the said Company may be accepted by the High Court of Justice as a Trust Company for the purposes of the said court, in case the Lieutenant-Governor-in-Council shall approve thereof as therein set forth; And whereas the said company has been so approved of by the Lieutenant-Governor-in-Council, by order dated the 10th day of March, 1882; And whereas the expenses of the accountant's office have been, by the Ontario Judicature Act of 1881, declared to be a first charge upon the income arising from the funds in court, and it is not desirable to reduce the interest payable to suitors to a less rate than four per cent., and it is necessary to procure the investment of moneys in court in order to raise a sufficient income to keep up this rate and provide for the expenses of the accountant's office: Therefore it is ordered that the Judges of the Chancery Division may arrange with the said Company to make investments, and to take the securities in the name of the Accountant of the Supreme Court of Judicature, of moneys in court upon first mortgages of lands, and may direct the issue of cheques therefor upon condition that the said company do, by proper instrument, guarantee the sufficiency of such securities, and the due payment of interest at the rate of 4½ per cent. per annum half-yearly on the moneys so invested from the date of the receipt by the company of the money for each investment, and also the due repayment of the principal moneys so invested; and upon further condition that in case the said company makes an investment as aforesaid at a higher rate than six per cent.; and upon further condition that the said company is to satisfy the official guardian of the said High Court of the sufficiency of the security as to value, and who is to certify the same to the court before the cheque issues for each investment."

This rule is now represented by the present Consolidated Rule 191, which is as follows:—

"The judges may arrange with the Toronto General Trusts Company to make investments, and to take the securities in the name of the Accountant of the Supreme Court of Judicature, of moneys in court, upon first mortgages of lands, and may direct the issue of cheques therefor upon condition that the said company do, by proper instrument, guarantee the sufficiency of such securities, and the due payment of interest at the rate of 4½ per cent. per annum, half-yearly, on the moneys so invested from the date of the receipt by the company of the money for each investment, and also the due repayment of the principal moneys so invested; and upon further condition that in case the said company makes an investment as aforesaid at a higher rate than 6 per cent., then the said company is to pay interest thereon to the court at the rate of 4¾ per cent.; and upon further condition that the said company is to satisfy the official guardian of the said High Court of the sufficiency of the security as to value, and he is to certify the same to the court before the cheque issues for each investment."

The Toronto General Trusts Company has up to the present time invested the general balance of the funds in court, less that retained by the bank, on the terms of the general order. The total sum invested by that company under this arrangement up to 31st March, 1889, is stated at $2,454,000, making an average of upwards of $350,000 per annum for the seven years. The company, with this business to do and the large opening for a general trust business which has undoubtedly existed for some time, has naturally become a very prosperous concern.

It must be borne in mind that, besides the general investing company, the court has a general banker—the Canadian Bank of Commerce, who pay the court a given rate of interest in consideration of having a large balance in return, $500,000, constantly at the credit of the court in their hands.

We cannot, without more data before us, state the cause, but the fact is, that lately the court has found itself compelled to reduce the rate of interest paid to suitors on funds lying in court from 4 to 3½ per cent. per annum.

Many persons are largely dependent upon the income from funds in court, and this change is productive of much discontent. Efforts have been made in different ways to procure the payment out of moneys for investment by trustees who could invest at market rates, and net more to their *cestui que trustent* than the court pays. Such applications have, however, been uniformly denied. The last case of this kind reported is *Re J. T. Smith's Trusts* (2), 18 Ont. Rule, 327, where a petition was presented to the court by the Trusts Corporation of Ontario and a party who was entitled for life to the income of a fund in court, the proceeds of the sale of certain settled estates, for the payment out of the fund for the purpose of investment by the company as trustees (they having been appointed as substituted trustees under the will which devised the settled estates), and the application was opposed by the official guardian on behalf of the remainderman. The Chancellor held that the practice and current of authority were against payment out of court of the moneys as asked by the petitioners, and that they were not entitled to it as a matter of right, and dismissed the application.

It seems to us that the court might very well relax its rule in favour of trustees in the shape of such Trusts Companies, as present security for their duties sufficient to receive the approval of the Lieutenant-Governor-in-Council under R.S.O., cap. 157, sec. 74, which provides that on obtaining such approval the court may appoint such a company trustee, executor, etc., without requiring the usual or any security. This form of company is of course new here.

Is the chartering of a company and the approval of the Lieutenant-Governor under the Act for the purpose (in the language of the Act and order) "of being accepted by the High Court of Justice for Ontario as a Trusts Company for the purposes of such court," a legislative sanction which the court should recognize? So far as suitors are concerned, to leave them without the benefit of competition is certainly a hardship. Until the year 1889 the Toronto General Trusts Company was the only Trusts Company organized which had received the approval of the Lieutenant-Governor-in-Council above referred to, which may account for the exclusive language of the former rule 521 and the present rule 191. In 1889, however, the Trusts Corporation of Ontario came into existence, and duly received the approval of the Lieutenant-Governor-in-Council before mentioned. The new company—The Trusts Corporation of Ontario — has applied to the Judges of the High Court of Justice to have the general order amended by making it wide enough to include them in the arrangement for investing court moneys, and to allow them to make an offer more advantageous to the suitors than the existing arrangement, or to throw the business open to competition. This application is now pending, and we therefore forbear comment upon it for the present. Suffice it to say just now, that the Trusts Corporation sets up that the existing arrangement was made at a time when the Toronto General Trusts Company was the only company in existence with whom the court could deal, and that that company obtained the business without competition, and practically on their own terms. This the Toronto General Trusts Company refuse to admit, and set up that having undertaken the business when the court required them, and having done their duty faithfully, they should not be disturbed by allowing competition or a rival company to interfere in the business, as that interference would injure them. The Trusts Corporation reply that the interests of the Toronto General Trusts Company are irrelevant to the question, and that the only interests which the court have to deal with are those of the persons interested in the funds in Court, and that it is the duty of the court to take the best means of procuring for them the largest return for their money consistent with absolute safety in the investment of it, and that the Trusts Corporation claims to be desirous of making an offer to compete for the purpose of assisting the court.

We shall watch with interest the result of the application. Obviously some effort must be made to prevent the rate of interest payable by the court upon funds in court being permanently reduced below four per cent. per annum. The public naturally look to the judges for protection. It is a question whether the use by the court of any Trusts Company, in the way the Toronto General Trusts Company in now used,, is really as beneficial to the persons inter-

ested in the fund, at least for the purpose of producing the best result in the way of income, consistent with safety, as the careful investigation by the judges, or by an officer of the court, of investments presented by suitors or beneficiaries, or by recognizing the approved companies when appointed trustees as entitled to have paid out to them the funds of the trust as contended for in the case above cited. If the contention be correct that the interests of the persons entitled to the funds are paramount, then the whole question should be faced. If on the whole it be thought that Trust Companies should be used as general investing agencies, then the court must consider whether the competition of a second, or third, or fourth Trust Company should not be invoked to produce the best result to those persons for whose interests the judges are responsible.

COMMENTS ON CURRENT ENGLISH DECISIONS.

We continue the Law Reports for April.

LONDON AGENT OF COUNTRY SOLICITOR—INTEREST ON COSTS.

The question in *Ward* v. *Lawson*, 43 Chy.D., 353, was simply this, viz., whether, where a country principal recovers from his client interest on his costs, his London agent is entitled also to interest on his agency fees included in such costs. The Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) decided that in the absence of any special agreement for interest, the agent was not entitled, and the decision of Chitty, J., to the contrary was therefore reversed.

JUDICIAL INQUIRY—DOMESTIC FORUM—PERSONAL INTEREST OF MEMBER OF TRIBUNAL.

An important question is discussed in *Leeson* v. *General Council of Medical Education*, 43 Chy.D., 366. The plaintiff, a medical practitioner, was charged by the managing body of an association of medical men, called "The Medical Defence Union," with infamous conduct, and an inquiry ordered by "The General Council of Medical Education" into the alleged charge, on which inquiry the plaintiff was found guilty, and his name ordered to be removed from the register. Two out of the twenty-nine persons who held the inquiry were also members of the Medical Defence Union, but were not members of the managing body of the Union, and had taken no part in promoting the inquiry. The plaintiff in the present action sought to restrain the General Medical Council from removing his name from the register, and from publishing the resolutions which they had passed with respect to his conduct, on the ground that the two persons in question were disqualified from taking part in the inquiry, which was therefore invalid. But the Court of Appeal (Cotton, Bowen, and Fry, L.JJ.), though divided in opinion, affirmed the decision of North, J., that the two members of the Medical Defence Union were not disqualified from taking part in the inquiry. Fry, L.J., who dissented, considered the principle laid down in *Regina* v. *Allen*, 4 B. & S., 915, was wide enough to preclude them from acting and to invalidate the proceedings; and it may be remarked that the judg-

ment of Bowen, L.J., is very like the famous verdict, "we find the prisoner not guilty of the crime charged, but strongly recommend him not to do it again." The case is an instructive one as to the extent to which the proceedings of domestic forums are examinable by a court of law.

WILL—CONSTRUCTION—REMOTENESS.

In re Hargreaves, Midgley v. *Tatley*, 43 Chy.D., 401, the Court of Appeal, in addition to disposing of a question of practice as to the jurisdiction of a judge in an originating summons, determined the construction of a will whereby a testatrix, who died in 1838, devised real estate to trustees in fee upon trust for her sister Mary, for her life, then for Mary's children successively for their lives; and after the death of Mary and her children, for her sister Elizabeth, and then to Elizabeth's children successively for their lives; and after the deaths of Mary and Elizabeth and their children, upon such trusts as the longest liver of Mary, Elizabeth, and their children should appoint, and in default of appointment, for the heir of the testatrix. The Court of Appeal held that the power of appointment was void, because the person to exercise it was not necessarily ascertainable within a life or lives in being and twenty-one years afterwards; because the children might not all be in being at the death of the testatrix. The case of *Brown* v. *Lloyd*, 5 Eq., 383, was overruled, and it was held that the heir at law of the testatrix took, not under the limitation is default of appointment, but under a partial intestacy.

BUILDING SOCIETY—BORROWING AND INVESTING MEMBERS—LIABILITY FOR LOSSES—EFFECT OF RULES.

In re West Riding of Yorkshire Building Society, 43 Chy.D., 407, Chitty, J., had to construe the rules of a building society in process of being wound up. These rules provided (1) that borrowing members could redeem their securities on payment of the amount fixed by the tables of the society, together with the full amount which should then be due "for subscriptions, fines, and other payments"; (2) that surplus profits, "after providing for all liabilities," should be appropriated equitably and equally between the investing and borrowing members, and (3) that "in the event of the directors determining," at a special meeting to be held every three years, that there was "a deficiency of income, by which the society might be prevented from meeting its anticipated expenditures and liabilities," the amount of such deficiency should be "apportioned by the directors" between the investing and borrowing members. The assets were insufficient to pay investing members the full value of their shares, and this was an application by the liquidator to place borrowing members on the list of contributories, no apportionment of losses having been made by the directors. Chitty, J., was of opinion that the "liabilities" to be provided for by rule 2 included sums payable to investing members; and that the word "income" in rule 3 was not used in contra-distinction to "capital," but meant what was coming in from all sources; and that "liabilities" in the same rule also included sums payable to investing members; and that under the rules borrowing mem-

bers were liable to contribute to any losses together with investing members, and that any borrowing member asking to redeem could only do so on paying what was due from him, including this liability; and he moreover held that the fact that the directors had not "determined" and apportioned the loss made no difference now that the society was being wound up by the Court. But for rule 3, which he held constituted a contract by the borrowing members to share all losses, he was of opinion that under *Toole* v. *North British Building Society*, 11 App.Cas., 489, losses other than to outside creditors would fall on the investing members alone.

TRUSTEE—POWER OF INVESTMENT—CORPORATION HOLDING FUNDS IN TRUST—TRUST INVESTMENT ACT, 1889 (52 & 53 VICT., C. 32) SS. 3, 5, 6, 7, 9—(R.S.O., C. 110, SS. 29, 30.)

In re Manchester Royal Infirmary: Manchester Royal Infirmary v. *Attorney-General*, 43 Chy.D.,42, certain funds were held by a corporation for a charitable trust, and an application was made by the corporation to North, J., to determine whether the corporation could properly invest the funds in the securities mentioned in the Trust Investment Act, 1889 (see R.S.O., c. 110, ss. 29, 30). He was of opinion that the corporation might so invest the fund, but that if the instrument creating the trust contained no power to vary the securities, it was not competent for them to sell existing investments for the purpose of investing the proceeds in securities mentioned in the Act. It may be noticed, however, that in R.S.O., c. 110, s. 29, there is an express provision enabling trustees to call in trust funds invested in any other securities than those mentioned in that section of the Act and invest the same in the securities mentioned in that section. But as regards the securities mentioned in R.S.O., c. 110, s. 30, there is no such express power to vary existing investments, and this case would therefore be an authority as to the construction of that section.

In the following case of *In re National Permanent Building Society*, 43 Chy.D., 431, North, J., also held that the funds of a benefit building society invested in the names of trustees for the society under the direction of the board, are not trust funds subject to the powers conferred by the Trust Investment Act, 1889. The trustees, in his view, had no power of reinvestment, but were merely agents of the society to whom the funds belonged, not as trust funds, but as their own property, and the Act contemplated that the trustees to whom it applied should have a discretion as to investment independently of the Act.

None of the other cases in this number seem to call for notice here.

Correspondence.

THE POWER OF COMMISSIONERS TO TAKE STATUTORY DECLARATIONS.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—A great deal of inconvenience has been caused the profession by a decision of Mr. Justice Patterson in *Regina* v. *Monk* at Whitby Assizes in 1876, which has been followed in a number of unreported cases, to the effect that Commissioners are not authorized to take Statutory Declarations under R.S.C., Cap. 141, "An Act respecting extra-judicial oaths." Although it is difficult to understand why a Commissioner is not included in the list of those authorized by the third section of that Act to take declarations, the wording of which is "any Judge, Justice of the Peace, Public Notary, *or other functionary authorized by law to administer an oath*," yet solicitors have been compelled to take the law as interpreted. The Legislature of Ontario, in order, it has been thought by some, to remove this inconvenience, has this Session passed an Act, providing that "Commissioners shall be deemed to have power to take Statutory Declarations in all cases in which Statutory Declarations may be taken, or may be required under the Devolution of Estates Act, or under any other Act from time to time in force in this Province." Now did not the Ontario Legislature exceed its power in passing what, in this view of the matter, is practically an amendment of a Dominion Act? For where the Dominion Act, according to the interpretation placed upon it in *Regina* v. *Monk*, says Commissioners shall not take Statutory Declarations, the Ontario Act says they may. And, moreover, as it is not within the powers of the Ontario Legislature to deal with criminal matters, even if they should give Commissioners power to take Statutory Declarations, they are unable to constitute it a misdemeanor to make a false declaration before a Commissioner. And so from this view of the case, it would seem that declarations taken before Commissioners are of the same value as before the passing of the Ontario Act.

But it must be borne in mind that there are many other statutory declarations besides those taken under the Extra-Judicial Oaths Act. The Ontario Act must surely be taken to affect only such declarations as are authorized by Ontario Acts, *e.g.*, the Election Act, Manhood Suffrage Act, the Public Service Act, the Legislative Assembly Act, Protection of Game Act, Assessment Act, Municipal Act, etc., for these Acts the Ontario Legislature may naturally and properly amend.

And may it not be that the general words used refer only to declarations that are *ejusdem generis* as those particularly described, viz., those made under the Devolution of Estates Act, *i.e.*, to those authorized by Ontario Acts? And thus far the new Act is effective. But in regard to declarations made by virtue of "the Act respecting extra-judicial oaths," the meaning and effect is not so clear. It might

seem that Statutory Declarations mean declarations made according to the *provisions* of Statutes. Now, a declaration made according to the *provisions* of the Statute respecting extra-judicial oaths, is not a Statutory Declaration until it is made before a person authorized by that Act to take it, viz., a Judge, Justice of the Peace, or Notary Public. Reading this enactment thus, the effect is nugatory. But in order to make it effective, "Statutory Declarations" must mean declarations in the *form* and upon the occasions prescribed by Statutes. Adopting this interpretation, this enactment means that Commissioners may take declarations in the form set out in the schedule to the Extra-Judicial Oaths Act, or in any other form or upon any occasion authorized by any Dominion or Ontario Act. R.S.O., Cap. 62, sec. 12, defines the powers of Commissioners, and it is there enacted that Commissioners have power to take affidavits and affirmations in matters before the Courts, or where affidavits or affirmations are authorized to be made by Statute. The new Act, therefore, in question, is practically an amendment of this section. In order to have the desired effect it must be taken to establish a form of Statutory Declaration in Ontario such as is now authorized by the Dominion Act. It remains to consider whether a person declaring falsely in such a declaration is guilty of a misdemeanor, for unless criminality attaches to a declaration, if false, it would be of no more value than an ordinary statement. The original Act, 37 Vict., Cap. 37, entitled "An Act for the suppression of voluntary and extra-judicial oaths," which remained in its original form up to the passing of the Revised Statutes of Canada in 1886, contained a provision "that if any declaration made in pursuance thereof be false or untrue in any material particular, the person making such false declaration shall be deemed guilty of a misdemeanour." This provision, it will be noticed, is not to be found in the Revised Statutes, and we must look elsewhere to find criminality imposed upon false declarations. The Perjury Act provides for this, enacting that everyone who wilfully and corruptly declares falsely in any declaration in any case in which by any Act or law in force in Canada or in *any Province* of Canada it is required or authorized that facts be verified by declaration, is guilty of wilful and corrupt perjury. Now, if by the enactment passed by the Ontario Legislature this last Session, declarations in the form and on the occasions set out in the Act respecting extra-judicial oaths are authorized to be taken by Commissioners, such declarations come within the purview of the Perjury Act, inasmuch as they are declarations authorized by an Act in force in a Province of Canada. And so it may be argued that in this somewhat roundabout fashion, declarations made before Commissioners will in future be valid, and criminality will attach to false statements made therein.

But this reasoning is unsatisfactory, for it cannot be said that a Statutory Declaration, *made before a Commissioner*, is made "by virtue of the Statute respecting extra-judicial oaths," as expressed in the form given in the Dominion Act, which form, it will be noted, is imperative. It should be expressed not only as made "by virtue of the Act respecting extra-judicial oaths," but also "by virtue of the Act passed by the Legislature of Ontario in the 53rd year of

Her Majesty's reign, entitled 'An Act with Respect to the Powers of Commissioners for taking Affidavits,'" but then we have a *form* not prescribed or authorized by any Statute.

Toronto, May 15th, 1890. J. E J.

[The decision in *Regina* v. *Monk* has caused a great deal of inconvenience to the profession and expense to suitors, and, so far as our opinion goes, unnecessarily so, as we doubt whether the learned judge arrived at a correct conclusion. The profession at least continued largely to use the services of Commissioners. The case, however, does not seem to have been appealed, and was followed in later cases. The Legislature has considered it best to make it plain that Commissioners are included within the Act. Our correspondent doubts whether the Ontario Act is sufficient to effect its object. We trust that it may be, so that the doubts as to the power of Commissioners to take declarations may be finally settled.—ED. C.L.J.]

Notes on Exchanges and Legal Scrap Book.

BANK ACCOUNTS AND THE STATUTE OF LIMITATIONS.—It is certainly not a well-known point of law that money left with a banker, and not drawn upon for six years, becomes at the end of that time the absolute property of the banker. Special attention is rightly called to this fact in the new edition of Chitty's Contracts as a "point of contract law seeming to require remedial legislation." Money deposited with a banker on current account is in law money lent to him. The contract between banker and customer is simply that of borrower and lender, with an obligation on the banker to honour the cheques drawn by his customer. If there is no payment of interest by the banker, nor any other acknowledgment by him that the debt is due, the right of the customer to recover the moneys which he has deposited with the banker will be barred after six years by the Statute of Limitations.—*Law Times.*

MONEY PAID UNDER ILLEGAL CONSIDERATION.—The law as to recovering back moneys paid under illegal contracts is in a most unsatisfactory state, as appears from the considered judgment of the Court of Appeal in *Kearley* v. *Thompson and Ward*, which we note elsewhere. There, £40 was paid to induce the defendants, acting as solicitors for a petitioning creditor, not to oppose a bankrupt's discharge. The bankrupt never came up for discharge, and it was sought to recover the money. Clearly the illegal contract had not been completely performed, but, nevertheless, the court held that the payer had no *locus pœnitentiæ*, the parties were *in pari delicto*, and the money must remain where it was. Some tribunal, some time or other, will have to deal with expressions used by Lord Justice Mellish and Lord Esher. The former said, in *Taylor* v. *Bowers*, 34 L.T.R.N.S., 938; 1 Q.B.D., 291: "If money is paid or goods delivered for an illegal purpose, the person who had so paid the money or delivered the goods may recover them back before the illegal purpose is carried out." The

latter said, in *Herman* v. *Jeuchner*, 15 Q.B.D., at p. 563; 53 L.T.R.N.S., 94: "In this case the illegal purpose has been wholly performed, and, *therefore*, the plaintiff cannot recover." Now it must be taken that, although the contract has not been wholly performed, money paid cannot be recovered back; and consequently, we suppose, if nothing is done under it at all the same rule applies.—*Law Times.*

A NOVEL CAUSE OF ACTION.—The courts have had very little consideration for us of late, and consequently we have felt that our columns were in danger of becoming dry. But just now several amusing cases have arisen to enliven us and our readers. In the English case of *Giles* v. *Walker*, one farmer sued another for allowing his adjoining land to become overrun with thistles, whereby, aided by the contributory negligence of the wind, the plaintiff's demesnes became infested with the noxious visitant, and he demanded the expense incurred in eradicating it. The defendant was condemned in the County Court to pay £3 therefor. The appellate court took a different view—as Artemus Ward said, "didn't see it in those lamps"—or, as one of our exchanges remarks: "Where, however, the negligence comes in is not clear, and the Divisional Court, to which an appeal was made, was somewhat more jealous of new actions. It would be very desirable no doubt if every one would keep his land in good order, and generally if our neighbours were all that we could desire. But there are unfortunately aberrations from this ideal, and the law does not always put them right. Negligence appears to indicate the omission to perform some duty, but hitherto no man has been under any duty to the general public to cultivate his land in a careful manner, and yet there must have been unthrifty farmers ever since our law began." There was no implied contract or obligation, as there was in the famous cabbage-seed case of *White* v. *Miller*, 71 N.Y., 118, where the Shakers innocently sold for Bristol cabbage a seed which had become impregnated by the wind with another seed from a neighbouring bed, causing a hybrid or barren result. Perhaps Walker was a Scotchman, and had an affection for thistles; or perhaps he was an——, but we must not let our sense of humor carry us extravagantly.—*Albany Law Journal.*

RIGHT TO CROSS-EXAMINE A SWORN WITNESS NOT EXAMINED IN CHIEF.—At the recent Taunton Assizes, before Stephen, J., with a common jury, in a dispute over work and labour done in making and saving hay, the counsel for the plaintiff called a witness into the box and had him sworn. The solicitor for the plaintiff then, having communicated something to the counsel, the latter stated his intention of not examining the witness, asked him no questions, and requested him to step down. Thereupon the counsel for the defendant asserted his right to cross-examine the witness before he left the box. The counsel for the plaintiff did not deny that the witness in question could speak as to the transaction. After hearing arguments on both sides the Court decided that, under the circumstances, the counsel for the defendant had the right to cross-

examine the witness. This point, decided on March 3rd, at Taunton, is somewhat unusual in practice, but apparently the decision is correct. The case which is nearest to it is that of *Wood* v. *Mackinson*, 2 M. & Rob., 273. There the counsel for the plaintiff called a witness, who went into the box and was sworn in the usual way, but before any questions were put to him the counsel said he had been misinstructed as to what this witness was able to prove, and that he would not examine him at all. Lord Coleridge, C.J. (then J.), in deciding that the witness was not liable to cross-examination, said: "The learned counsel explains that there has been a mistake, which consists in this, that the witness is not found able to speak at all as to the transaction which was supposed to be within his knowledge. That is, I think, such a mistake as entitles the party calling the witness to withdraw him without his being subject to cross-examination. If, indeed, the witness had been able to give evidence of the transaction which he was called to prove, but the counsel had discovered that the witness, besides that transaction, knew other matters inconvenient to be disclosed, and therefore attempted to withdraw him, that would be a different case." The report adds that the witness was accordingly withdrawn, and was subsequently called and examined in chief by the defendants as one of their witnesses.

The rule seems to be, that if a person other than the person intended, through some mistake or other, steps into the box and is sworn: *Clifford* v. *Hunter*, 3 C. & P., 16; *Simpson* v. *Smith*, Notts Summer Ass., 1882, M.S., referred to by Lord Coleridge, C.J. (then J.), in *Wood* v. *Mackinson*; or if a witness under simply a *subpœna duces tecum* steps into the box and is sworn unnecessarily by the officer of the court: *Rush* v. *Smith*, 1 C.M. & R., 94; or if counsel calls a witness who is sworn, and then learns that the witness is unable to speak as to the transaction in question, and that therefore there has been a genuine mistake in calling him: *Wood* v. *Mackinson*, 2 M. & Rob., 273; in all these cases, if there has been no examination-in-chief, the opposite side has not a right to cross-examine. But if, as was apparently the case in the recent Taunton incident, counsel, after calling a witness and allowing him to be sworn, then changes his mind, and puts no question to him, though he knows he can speak to the transaction, then the counsel on the opposite side can successfully assert his right to cross-examine.

In practice, therefore, the course would seem to be that the counsel who called the witness, allowing him to be sworn and refusing to examine him, would, if called upon by the other side, have to state his reason for not doing so. Then the court would have to decide whether the reason advanced brought the case within the exceptions.—*Law Times.*

TRUST AGREEMENTS.—The recent cases on "trusts" suggest, among other more important things, the question whether it is material that the subject-matter of the "trust agreement" be an article of necessity. In the case of the *People* v. *The North River Sugar Refining Co.*, 7 N.Y.Sup.Ct., 406, some twenty cases are cited and the result summed up in the following sentence: "In all these cases,

the reservation of the power to control the prices of necessary products, whether by express agreement or fair implication, has been condemned as unlawful." In *Dolph* v. *Troy Laundry Co.*, 28 Fed. Rep., 553, moreover, one] of the reasons for holding a contract between two rival traders fixing a scale of prices, legitimate, was that washing machines are not articles of necessity.

In discussing the differences between a monopoly of a necessary and that of a non-necessary (if we may be allowed such a term), one must look at the question both from the side of the monopolist and from that of the public. Of course, the object of a monopolist is to raise prices, and thus enrich himself at the expense of the public. Now, it is undoubtedly true that, as prices are raised in the two cases we are considering, the quantity of the non-necessary demanded by the public will fall off much more rapidly than that of the necessary. In other words, a man cannot make so much money out of the former, because his sales must be more limited than would be the result in case of an equal rise in the price of the latter. Therefore, the monopolist cannot gain so much at the expense of the public; but does it follow that the public's real loss is less by the same amount that the monopolist's gain is less?

We must not forget that the man who ceases to buy an article because of the rise in price, or one who does not buy so much as he did at the lower price set by competition, suffers a loss as well as the man who buys the same amount as before but at a higher price. In the case of the non-necessary, more people prefer to take the loss by going without the article than in the case of the necessary; that is, the same proportion of the loss does not materialize in the form of gain to tee monopolist in the former as in the latter case.

We do do not mean to imply that the loss is as hard to bear in the one case as in the other, or that it will be to the interest of the monopolist to raise prices to the same extent in both cases; but we do wish to point out that there is injustice to the public in the one case as in the other, and that the ordinary method of measuring the amount of the injustice by the amount of the monopolist's gain has a tendency slightly to exaggerate the difference in hardship to the public between the two kinds of monopoly. No doubt there is a difference, but it is a difference merely in degree.

Turning to the reports, we find that in *The Case of the Monopolies*, a monopoly of the manufacture and sale of playing-cards, granted to an individual by Queen Elizabeth, was held void at common-law. There would seem to be no reason for drawing a distinction on this point between a monopoly granted by the State and one acquired by an individual or group of individuals. Moreover, the maxim, "Competition is the life of trade" (a maxim which seems to measure with some degree of accuracy the extent to which the law takes notice of political economy), undoubtedly covers the manufacture and sale of both necessaries and non-necessaries.

Upon the whole, it is much to be doubted whether the decision in the New York case would have been different if the "trust" had been for the manufacture of playing-cards instead of the refining of sugar. The particular case before the court was the monopoly of an article of necessity, and we must conclude that

only the cautious habit of not deciding more than needful for the disposition of the case in hand led the court apparently to lay down what would seem to be an unnecessary limitation.—*Harvard Law Review.*

NATURAL RIGHTS.—There are at least three well-recognized natural rights —the right to support of land,* the right to unpolluted air, the right to running water.† These rights have often been called natural easements,‡ from a mistaken notion that they are a benefit in or over the land of another — the common attribute of easements. They are, however, nothing more than rights of property growing out of certain natural conditions of land, and the rights incident to any one parcel do not extend beyond the boundaries of that parcel.

The right of support is not a right to have the adjoining owner's soil *kept* in in its natural condition, but a right to have one's own soil *left* in its natural condition;§ the right to unpolluted air is simply the right to have the air over one's own soil remain in its natural purity; the right to running water confers no right to control its course or use, either above or below one's own land, provided its natural course and condition upon¶ one's own land remain unchanged.*

An interference with my natural rights is but an interference by another with the natural condition of my land. If, through the act of another, less water runs over my land than formerly, or if the air over my premises is polluted, or if the surface of my soil is changed, these natural conditions are altered, and, as a result, my natural rights are infringed. In other words, these rights are rights in one's own property—*corporeal* rights.†

* Lateral or subjacent. *Humphries* v. *Brogden*, 12 Q.B., 739.

† "It—namely, the right of support—is analogous to the flow of a natural river or of air." Per Willes, J., *Bonomi* v. *Backhouse*, Ellis, B. & E., 622, at p. 654.

‡ "Natural rights are a species of easements." Goddard on Easements (Am. ed.), p. 3.

§ *Backhouse* v. *Bonomi*, 9 H.L.Cas., 503; *Mears* v. *Dale*, 135 Mass., 508; *Mayor of Birmingham* v. *Allen*, 6 Chy.D., 284.

‖ The plea in *Flight* v. *Thomas*, 10 A. & E., 590, that "for the full period of twenty years' defendant "had enjoyed the advantage of having and using a certain mixen in and upon the said premises," *held* insufficient to support a prescriptive right. Per Lord Denman, C.J. "The plea may be completely proved without establishing that right. The nuisance may never have passed beyond the limits of the defendant's own land."

¶ Or *along*. "Lateral contact is as good *jure naturæ* as vertical." Per Lord Selborne, *Lyon* v. *Fishmongers' Co.*, 1 App.Cas., 662, at p. 683.

* "I apprehend that a proprietor may, without any illegality, build a mill-dam across a stream within his own property, and divert the water into a mill-lade, without asking leave of the proprietors above him, provided he builds it at a point so much below the lands of those proprietors as not to obstruct the flowing away of water as freely as it was wont; and without asking the leave of the proprietors below him, if he takes care to restore the water to its natural course before it enters their land." Per Lord Blackburn, *Ewing* v. *Colquhoun*, 2 App.Cas., 839, at p. 856.

† "The right to have a stream flow in its natural state without diminution or alteration is an incident of property in the land through which it passes." Per Parke, B., *Embrey* v. *Owen*, 6 Ex., 353, at p. 368.

Actual *damage*, in the sense of diminution of value for the uses to which the land is actually put, is not essential to the infringement of a natural right. Thus by the uniform current of decisions both in England* and America,† it has been held that an action may be maintained for a violation of the right of support or of rights in running water, although the land is occupied for no beneficial purpose whatever.‡

It has also been held that it is no justification for further pollutions that the water or air is already unfit for use.§

When the term "injury" or "actual injury" is used in the cases, it must be understood in its legal sense of "violation of a right"—the right being the absolute right of property already described.

The true test of the infringement of this absolute right would seem to be, not whether there is damage, but whether there is such a disturbance of air, water or soil as is perceptible to the ordinary man under the circumstances—"such as can be shown by a plain witness to a plain common juryman."¶ "If, in the course of nature, the thing itself is so imperceptible, so slow, and so gradual, as to require a great lapse of time before the results are made palpable to the ordinary senses of mankind, the law disregards that kind of imperceptible operation."* What would be a sensible disturbance to property situated in one place would be none to property situated in another, and a disturbance hitherto imperceptible may become perceptible when the land is used for a different purpose.†

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* "In *Orr Ewing* v. *Colquhoun* (2 App.Cas., 839, at p. 854), Lord Blackburn points out that the case of *Mason* v. *Hill* (3 B. & Ad., 304) settled the law that the proprietor of land on the bank of a natural stream above the flow of the tide has, as incident to his property in the land, a proprietary right to have the stream flow in its natural state, neither increased nor diminished, and this quite independently of whether he has as yet made use of it, or, as it used to be called, appropriated the waters." Per Cave, J., *Ormerod* v. *Todmorden*, etc., *Co.*, 11 Q.B.D., 155, at p. 160.

† "Actual, perceptible damage is not indispensable as the foundation of an action. The law tolerates no further inquiry than, whether there has been the violation of a right. If so, the party injured is entitled to maintain his action for nominal damages in vindication of his right, if no other damages are fit and proper to remunerate him." Per Story, J., *Webb* v. *Portland Manf. Co.*, 3 Sumn., 189, at p. 192.

‡ *Parker* v. *Griswold*, 17 Conn., 288; *Miller* v. *Miller*, 9 Pa. St., 74; *Wheatley* v. *Chrisman*, 24 Pa. St., 298; *Newhall* v. *Ireson*, 8 Cush., 595; *Franklin* v. *Pollard*, 6 So. Rep. (Ala.), 685. The same has been held in regard to pollution of the air, in *Dana* v. *Valentine*, 5 Met., 8; but see expressions contra in *Sturges* v. *Bridgman*, 11 Chy.D., 852.

§ *Crossley* v. *Lightowler*, L.R., 2 Chy., 478.

‖ "The pollution of a clear stream is to a riparian owner below both injury and damage, whilst the pollution of a stream already made foul and useless by other pollutions is an injury without damage." Per Fry, J., in *Pennington* v. *Brinsop Hall Coal Co.*, L.R., 5 Chy.D., 769, at p. 772.

¶ Per James, L.J., in *Salvin* v. *North Brancepeth Coal Co.*, L.R., 9 Chy., 705, at p. 709.

* Ibid.

† *Sturges* v. *Bridgman*, 11 Chy.D., 852.

Whether, when the purity of the air or the quantity of running water* is in question, the law imposes an additional test, may be doubted; if so, it is done in the interests of public policy, and does not affect the nature of the right.

Several important consequences flow from considering these rights as corporeal. First, they cannot be *granted away*. These rights are rights against all the world, to prevent interference with property; and if they could be granted away, the only result would be that the grantee, having himself no rights over his grantor's land, would have the right to prevent others from interfering with its natural condition. The right to sue for a nuisance is no more severable than the right to sue for a trespass.

Secondly, they cannot be *destroyed*. Property cannot exist without the incidents annexed to it by law for its protection.

Thirdly, not being rights over the land of another, they cannot be *released*.

Fourthly, being corporeal rights, easements may be granted in them. The right to maintain a nuisance is in strictness a right in or over another's land, and is subject in every respect to the usual laws governing the origin, continuance, and destruction of easements.†—*Harvard Law Review*.

MAY A NEWSPAPER REPORT SLANDER?—Of course a newspaper *may*; but will it be liable in damages if it does? It is clearly settled law that not only is the author or originator of a defamatory statement liable for it, but so also is any one who repeats it. Now at common law a newspaper is in no better position than any private individual; and therefore, apart from recent legislation, a paper which reported slanderous statements made at a public meeting could be sued for damages by the person whose reputation was injured by the slander. But the Libel Act of 1888 (R.S.O., c. 57,s.7), holds an ægis over the newspaper press, and to some extent protects it. But to what extent? This was the question which arose in the recent case of *Kelly* v. *O'Malley*, perhaps better known as the "Star" libel case.

The facts can be briefly stated. Mr. Kelly was addressing a public meeting, his audience was not very well disposed towards him, and frequently interrupted his flow of oratory with remarks of a derogatory nature—of course the ubiquitous "Starman" was present taking notes. Now one characteristic feature of the new journalism is, that instead of reporting the speeches made at a meeting and

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* The English law would seem to give riparian owners an easement of *reasonable diminution* not granted to non-riparian proprietors. See *Ormerod* v. *Todmorden*, 11 Q.B.D., 155; but cf. contra, *Miller* v. *Miller*, 9 P.St., 74; *Wheatley* v. *Chrisman*, 24 Pa.St., 298.

There is no such easement of pollution, however. See *Blair* v. *Deekin*, W.N. (1887), 148.

† "It—viz., the right to deprive land of support—was the grant of a right to disturb the soil from below and to alter the position of the surface, and is analogous to the grant of a right to damage the surface by a right of way over it." Per Lord Wensleydale, *Rowbotham* v. *Wilson*, 8 H.L.C., 348, at p. 362.

"There is no claim of an easement unless you make it appear that the offensive smells had been used for twenty years to go over to the plaintiff's land." Per Lord Denman, C.J., *Flight* v. *Thomas*, 10 A. & E., 590.

commenting upon them "in another column," *e.g.*, in a leader, it publishes a narrative account of the proceedings at the meeting, interspersing its own criticisms. The great point now-a-days is to render everything spicy, and a long speech relieved with pretty frequent criticisms of a racy and sprightly character is much more likely to be read through than a plain unvarnished tale. It is, perhaps, a question if these narrative reports can possibly be kept free from all trace of the writer's particular bias, certainly the temptation to twist the actual facts to suit one's private view is very strong, and for ourselves we prefer the good old plan of keeping separate the comment and the matter commented on.

The "Star" then published an account of the meeting, including the uncomplimentary remarks made by individuals amongst Mr. Kelly's audience, and Mr. Kelly sued the "Star" for damages for libel, alleging that the effect of the report was to charge him with dishonesty, his particular complaint being against the reporting of the audience's observations. The "Star" took refuge under the Libel Amendment Act, 1888 (R.S.O., c. 57, s. 7). There seems to have been no question about the slanderous nature of the words reported, and the defence rested simply on the ground that the report was a fair and accurate report of what had taken place at a public meeting, which was a matter of public importance, and that it had been published for the public benefit without malice.

The Act provides that a report in a newspaper of the proceedings of a meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, shall be privileged, if the report is fair and accurate, the matter is not blasphemous or indecent, and the matter complained of is of public concern. But the Act is not to protect the publication of any matter not of public concern, and the publication of which is not for the public benefit, and the privilege may be refuted by proof of express malice.

The only questions in the "Star" case were—(1) Was the report fair and accurate? (2) Was the matter complained of, of public concern? (3) Was the publication of it for the public benefit? We confess we are unable to understand why the two expressions, fair and accurate, should have been used. Are they not redundant? If the report is accurate, how can it be otherwise than fair? If it is fair, it can only be fair because it is accurate. As Baron Huddleston said, it is very difficult to say what is a fair and accurate report. We suppose it is a question of fact in each particular case. Into this, however, we will not go. It seems to have been found that the things mentioned in the "Star" report did take place in fact, and that the observations of the audience were slanderous. What we more particularly wish to do is to criticise some of Baron Huddleston's observations in his directions to the jury.

As far as we understand the matter, the "Star," in order to bring itself within the protection of the Act of 1888, had to show (1) that the meeting was public, *i.e.*, that it was *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of a matter of public concern. This point does not seem to have been in dispute. (2) That the report was fair and accurate. (3) That the matter published was of public concern. (4) That the publication of the report was for the public benefit.

Now Baron Huddleston, in our view, made one clear misstatement of the law. He said in effect that the Act did not protect a paper which published slanderous matter, although uttered at a public meeting. He was undoubtedly wrong here. If no slanderous matter was reported, there would be no need for protection, and the main object of the Act was to protect a newspaper which, *for the public benefit*, published matter to which exception might be taken as being slanderous. This is the sole reason for the existence of the Act. No protection is needed when there is no liability.

Again, Baron Huddleston seems to have thought that the Act only protected reports of speeches made at public meetings by the, so to say, official speakers, and not reports of remarks made by members of the audience. He said: "If a newspaper chooses to publish defamatory matter about anybody, though actually uttered at a public meeting, but which has nothing to do with the objects of the meeting, then it cannot shield itself behind the Act." We submit that this is a wrong direction as to the law. The Act protects fair and accurate reports of the "*proceedings*" at a public meeting, and surely the proceedings at a meeting comprise everything that takes place and everything that is said there, no matter by whom? In our opinion he ought to have directed the jury that if the remarks reported were not of public concern, and if the publication of the remarks was not for the public benefit, then the newspaper would not be protected by the Act. In our opinion Baron Huddleston has altogether failed to comprehend the Libel Act, 1888, and if the "Star" does not take proceedings to obtain a new trial, we shall be very much surprised.

Both counsel and judge seem to have treated the expressions "of public concern" and "for the public benefit" as if they were both equivalent to "of public interest." Now the Act does not use the word interest. It provides that the matter reported must be of public concern, and that the publication of it must be for the public benefit. There is surely a distinction between the words concern, benefit, and interest: the public may be interested in a matter which cannot concern it, and the knowledge of which cannot benefit it; the public is very interested in scandalous matter which affects only the parties immediately connected with it, and the knowledge of which is calculated to do more harm than good. And we do not think that it absolutely follows that because a matter concerns the public, it is necessary for the public benefit that it should be made known. There is such a thing as secret service. The first question that should be asked when considering whether a report is protected under the Act of 1888 is: Is it for the public benefit that a report of the matter should be published at all? If this is answered in the negative, the case is at an end. If it is answered in the affirmative, then follows the question: Was the matter published of public concern? If nay, there is no protection. If yea, then inquiry must be made into the fairness and accuracy of the report, and as to whether the meeting was a public meeting within the Act.

Though but small damages were awarded against the "Star," the case is one of great importance. The style of the "new journalism" is spreading to the older papers, and everywhere there is a disposition to throw the light of publicity

on everything that takes place. So long as matters of public concern only are dealt with, and the individual right to privacy concerning matters in which the public is not concerned is respected, we see no objection to this bringing forth everything into the full light of day. The old struggle to muzzle the press is practically over, but parties interested in keeping matters quiet are ever ready to put a forced construction on an Act of Parliament which aims at the wise object of allowing the fullest liberty without undue license.

The answer, then, which is to be given to the query with which we head these remarks is—Yes; if the slander has been uttered at a public meeting, the matter is of public concern, the publication is for the public benefit, and the report is fair and accurate.—*Law Notes.*

THE DUTIES OF COMMISSIONERS TO ADMINISTER OATHS.—The numerous and important body of commissioners to administer oaths will naturally turn to the charter to which they owe their existence in their surprise at the remarks made by Mr. Justice Kay last week. They will find in the Act 16 & 17 Vict., c. 78, s. 2, "that it shall be lawful for the Lord Chancellor, from time to time, to appoint any persons practising as solicitors within ten miles from Lincoln's-Inn Hall at their respective places of business, to administer oaths and take declarations, affirmations, and attestations of honour in Chancery, and to possess all such other powers and discharge all such other duties as 'the masters extraordinary in Chancery' previously did; and such persons shall be styled 'London Commissioners to administer oaths in Chancery;' and they shall be entitled to charge and take a fee of one shilling and sixpence for every oath administered by them, and for every declaration, affirmation, or attestation of honour taken by them, subject to any order of the Lord Chancellor varying or amending the same." Then, under s. 84 of the Judicature Act, 1873 (36 & 37 Vict., c. 66) all commissioners to take oaths or affidavits in the Supreme Court are appointed by the Lord Chancellor. Appointments are open to all practising solicitors on formal application to the Chancellor, accompanied by certificates; the condition being that the applicant shall have taken out certificates for the six consecutive years immediately preceding the application. There are also one or two of the Rules of the Supreme Court which have a bearing upon the matter. First, by Order XXXVIII., r. 5: Every commissioner to administer oaths is called upon to express the time when and the place where he takes any affidavit, or the acknowledgment of any deed, or recognisance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court or a Judge; and every commissioner is bound to express the time and the place where he does any other act incident to his office. Secondly, by Rule 13 of the same Order: "Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the

officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to, and appeared to be perfectly understood by, the deponent." An illustration of this rule came before Mr. Justice Kay five years ago in *Re Longstaffe; Blenkharn* v. *Longstaffe*, 52 L. T. Rep. N. S. 681, where the deponent could only read imperfectly, and was able to write nothing but his own name. The affidavits had not been read over in the presence of the commissioner, and therefore consequently were struck off the file. This completes the charter laid down by statute and rules for the conduct of commissioners to administer oaths. It is hardly necessary to point out that, on the principle *Expressio unius est exclusio alterius*, when a commissioner is expressly ordered to state the time and place of swearing, and to follow a particular method with regard to illiterate deponents, he is surely justified in assuming that no special precautions are to be taken with capable and educated deponents.

It may be added that the instructions given in Daniell's Chancery Practice prescribe two questions, and two questions only, the first being, "Is that your name and handwriting?" and the second being, "You do swear that the contents of this your affidavit are true?"

Now, many a commissioner who is thoroughly conversant with the Acts and rules already mentioned will be disagreeably surprised with the remarks attributed to Mr. Justice Kay in the case of *Bourke* v. *Davis* on the 3rd December last. The Judge called the attention of the Profession to a matter of importance which had been forcibly brought to his notice in that case—that is, the duty of commissioners to administer oaths where a witness is swearing to the contents of an affidavit. In the case before the Court certain witnesses contradicted the statements made by them in affidavits sworn in the cause, and in such a startling manner that the Judge required an explanation of the mode in which the affidavits were sworn. The commissioner before whom they were sworn attended the Court, and in answer to questions from the Bench, he said that he went with a solicitor in the cause to the houses of the several witnesses: that the affidavits were not read over in his presence, and that he took no means to ascertain whether the witnesses knew to what they were swearing. Mr. Justice Kay then expressed his strong disapproval of such a practice, saying that "it is the commissioner's duty before he administers the oath to satisfy himself that the witness does thoroughly understand what he is going to swear to; and he should not be satisfied on this point by anyone but the witness himself." It is to this reason that Mr. Justice Kay describes the rule which has come down from Lord Hardwicke's day, that the Court does not accept an affidavit sworn before the solicitor in the cause, or before his clerk, although either may be a commissioner: *Re Hogan*, 3 Atk. 812; *Wood* v. *Harper*, 3 Beav. 290; *Duke of Northumberland* v. *Todd*, L. R. 7 Chy. D., 777. The Court requires the security of an independent commissioner, and it is obvious, said the Judge, that it ought not to take only the statement of a solicitor in the cause that the witness knows what is in the affidavit. "When, as in *Bourke* v. *Davis*, many of the witnesses were in a humble position of life, I do not see how the commissioner can be

satisfied without having the affidavits read over in his presence. If an educated man says to him, 'I have read over this affidavit, to the truth of which I am going to swear, and all the statements are accurate,' that may in some cases be sufficient. But I confess I wish it were made more incumbent upon the commissioner in every case to go through the affidavit with the witness, and to refuse to take his oath until he was satisfied that the witness understood and intended every statement in it. A great deal of false swearing would be prevented if this were done."

This is the substance of remarks which have raised so much comment. Most of that comment has been adverse to the sense in which Mr. Justice Kay spoke. It cannot but be admitted that much of what is sworn in affidavits ought not to be sworn. On the other hand, it is absolutely impossible to throw upon the commissioners to administer oaths, while paid as they are at present paid, any more responsibility than they may at present have. In the case of an acknowledgment of a deed by a married woman the commissioner is required to satisfy himself that the married woman understands the deed which she acknowledges, and its exact effect upon her property, and the fee allowed by the rules is 13s. 4d., which is not more than sufficient for the time and labour. Again, when a solicitor has to satisfy himself that the grantor of a bill of sale understands the effect of the bill which he is executing, as to which see s. 10 (1) of the Bills of Sale Act, 1878 (41 & 42 Vict., c. 31), he charges considerably more than eighteenpence for his services. If the fee of eighteen pence only is to be paid for the duty which Mr. Justice Kay suggests—that is, the commissioner satisfying himself that the witness thoroughly understands the purport of his affidavit—then we may safely predict that no solicitor of any standing will undertake the onerous duties of a commissioner of oaths. The result will be that the duties, if performed at all, will be performed by a solicitor of lower standing and more needy position. This will certainly not conduce to greater regularity or to any more real observance of the oath. Besides, it must be remembered that in country towns there are often but two solicitors who are also commissioners. It will often happen that each of these two is engaged either for plaintiff or defendant in a case, and the affidavits of the defendant's witnesses will necessarily be sworn before the solicitor to the plaintiff. However honourable a man that practitioner may be, the process will be in effect reading his opponent's brief aloud to him, maybe before he has drawn his own. It is certainly a novelty to the Profession that commissioners should be fixed with any such duty as that suggested in *Bourke* v. *Davis*. Solicitors have had many new things at the hands of Mr. Justice Kay, but they have never had such a startling novelty as this. That a busy professional man should be called upon first, to understand himself, then, to make some ignorant, "oldest inhabitant" understand, the effect of an affidavit which extends perhaps to hundreds of folios, and should be asked to do this difficult and responsible work for the sum of eighteen pence, is a monstrous thing. And we, as at present advised, do not believe that there is any warrant in statutes or rules for Mr. Justice Kay's proposition. Certainly, on the principle that *Expressum facit cessare tacitum* it would be excluded. With all submissions to the learned Judge, we

contend that it is an unwarranted and an incorrect statement of the law. The line of decisions which begins with *Re Hogan (ubi sup.)* are certainly no authority for it.—*Law Times.*

EXTENT OF CROSS-EXAMINATION IN CRIMINAL CASES ON COLLATERAL MATTER.—In a criminal case a witness for the defence, on cross-examination, and without objection, testified that he had collected money in Seattle, Tacoma, and Portland, to assist in the defence; that he had raised between $800 and $900 for that purpose; that the witness had contributed about $500 to that fund. The witness was then asked by the district attorney, "Who were the parties here in Portland who contributed to that fund?" To this question an objection was made, but overruled and an exception taken. Witness answered: "Sliter." The witness then testified, under like objections and exceptions, that Sliter and McNamara contributed $100; that John Russell kept a saloon on Washington street, and contributed to the fund; that "The Mascot" also contributed; that Paul Fuhr also contributed $100, but not in Portland; that Frenchy Gratton contributed in the neighborhood of $200, and that his business was gambling. None of the parties referred to were witnesses in the case, nor were they in any manner connected with the trial any further than contributing sums of money to aid the defendant, who was on trial for the murder of Emil Weber.

As appears from the dissenting opinion of Lord, J., the record disclosed "that the gamblers of the city of Portland were divided into two factions—one headed by the defendant, Olds, the other by Emil Weber—between whom there existed a fierce feud, which finally culminated in the death of Weber at the hands of the defendant, Olds." And it further appears that the witness, a portion of whose cross-examination by the district attorney has been given, was "a gambling man," and, being witness for the defence, it is fair to presume that he belonged to the faction of gamblers headed by the defendant, Olds.

The question presented to the Supreme Court was, "whether or not the cross-examination above referred to, and to which objection had been taken, was such error as called for a reversal of the judgment of the court below, the defendant having been convicted of murder in the first degree, and sentenced to death."

The court, in passing on this question says (*State* v. *Olds*, 22 Pac. Rep., 940): "The state had the right, on the cross-examination, to ask this witness anything that would show his interest in the result of the trial, and anything he did in aid of the defendant about the trial, for the purpose of enabling the jury to properly weigh his evidence, and to intelligently pass upon his credibility. This was done without objection. . . . Was it competent for the State to prove, as independent facts, that certain saloonkeepers and gamblers in the city of Portland contributed in making a defence in this case? This question may be answered by referring to one or two of the plainest and simplest elementary rules of the law of evidence. 'And it is an established rule, which we state as the first rule governing the production of evidence, that the evidence offered must correspond with the allegations, and be confined to the point in issue.' 1 Greenl. on Ev., Sec. 51. A few cases may be cited in which this rule has been indirectly or

incidentally applied: *Campbell* v. *State*, 8 Tex. App., 84; *Watson* v. *Com.*, 95 Pa. St., 418; *Cesure* v. *State*, 1 Tex. App., 19; *Pinckford* v. *State*, 13 Tex. App., 468; *State* v. *Lapage*, 57 N. H., 245; *Farrar* v. *State*, 2 Ohio St., 54; *State* v. *Miller*, 47 Wis., 530, 3 N. W. Rep., 31; *Com.* v. *Campbell*, 7 Allen, 541; *Hall* v. *State*, 51 Ala., 9; *Brock* v. *State*, 26 Ala., 104; *Rogers* v. *State*, 62 Ala., 170. And it is equally well settled that this rule excludes all evidence of collateral facts, or those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute."

But a strict enforcement of this rule would exclude all evidence of collateral facts, and such as had not a direct or indirect tendency to prove the matter in dispute. Evidence of this character, however, is not admitted for the purpose of proving or disproving the fact in dispute, but for the sole purpose of affecting the credibility of the witness, and the weight to be given by the jury to his evidence; and while it is undoubtedly true that the general rule is that the cross-examination will be confined to matters and things about which the witness testified on his examination in chief, yet "where a party is a witness, or an unwilling witness is under examination, the Trial Court may, in its discretion, allow the cross-examination to take a wider range, which will be reviewed only for abuse": *Hanchett* v. *Kimbark*, 7 N. E. Rep., 491, 118, Ill., 121; see, also, *Lawson* v. *Henderson*, 14 Pac. Rep., 164.

And in *Stevens* v. *State*, 3 Tex. L. J., 139, it is said: "Cross-examination should ordinary be restricted with respect to the interest, motives and prejudices of a witness, his means of knowledge, his powers of discernment, memory, and the like." The extent to which a cross-examination, relating to collateral matters, may be carried, is within the discretion of the presiding judge: *State* v. *Rollins*, 1 East. Rep., 584.

Judge Thompson, in his excellent work on "Trials," quotes from *Watson* v. *Twombly*, 60 N. H., 491, 493, as follows: "How far justice requires a tribunal to go from the issue for the trial of collateral questions; how much time should be spent in the srial of such questions; what evidence may be excluded for its remoteness of time and place; and what evidence is otherwise too trivial to justify a prolongation of the trial—are often questions of fact to be determined at the trial." And he then adds: "It follows, where this rule prevails, that the decision of the judge, in the exercise of this discretion, is not subject to review, except in cases of manifest injustice or abuse": 1 Thompson on Trials, Sec. 464.

Another question that arises is this: Should a judgment be reversed, a new trial awarded, and great additional expense thereby incurred unless there is at least reasonable ground to believe that the result of the new trial will be other than that of the former; or that the evidence admitted over objection was weighed by the jury and affected their verdict?

"It is well settled that a new trial will not be awarded because illegal testimony was admitted, if wholly irrespective of that testimony, there was plainly and obviously sufficient evidence to justify the finding": *Stephen* v. *Crawford*, 44 Am. Dec., 683.

And certainly the admission of irrelavent testimony on a collateral matter will not justify the granting of a new trial, if the fact sought to be proved was not controverted: *Crosby* v. *Fitch*, 31 Am. Dec., 745.

In a criminal case the court says: The range of cross-examination, and extent to which such questions should be allowed, depend upon the appearance and conduct of the witness, and all the circumstances of the case, and necessarily must be regulated by a sound judicial discretion. It is only where there has been an abuse of this exercise of the discretion by the court, resulting to the prejudice of the party complaining, that error will lie": *State* v. *Pfefferle*, 9 Crim. Law Mag, 222, 36 Kans., 90. See, also, *State* v. *Bacon*, 13 Or., 143.

The case of *State* v. *Miller*, cited and relied upon by the court in the *Olds* case, is not authority for the rules there laid down. In the Miller case two questions were submitted to the court for decision, as follows: First, Did the Trial Court err in permitting the letter written by Miller at the police station, and at the request of the officers there, after he was arrested, to be admitted in evidence and given to the jury? Second, Did said court err in admitting testimony to show that the defendant had been guilty of forgery and larceny? 3 N. W. Rep., 31, 47 Wis., 530.

Each of these questions was answered in the affirmative; but there was no question raised or passed upon relating to the cross-examination of a witness upon collateral matter, or to what extent such cross-examination might be permitted.

The case of *State* v. *Lapage*, 57 N.H., 245, 24 Am. Dec., 69, is not in point. It simply decides that, when the defendant was on trial for murder and the prosecution attempted to show that the murder was committed in an attempt to commit rape, evidence that the prisoner had committed rape upon another person was incompetent. This is a well-considered case, but it does not touch upon the cross-examination of a witness to show prejudice against the party against whom he testifies, or interest in the party calling him, for the purpose of affecting his testimony, or the weight to be given thereto.

The case of *Com.* v. *Campbell*, 7 Allen, 545, 83 Am. Dec., 705, also cited in the Olds case, holds that a party cannot be proved guilty of one offence by evidence that, at a different time and place, he was guilty of committing a similar offence, and is not in point.

In *Farrer* v. *State* it is held that "on an indictment charging the prisoner with poisoning A in December, 1851, it is error to permit evidence in chief to show that she poisoned B in the month of August previous": 2 Ohio St., 54.

It is therefore apparent that four of the cases cited by this court do not sustain its contention, or, in other words, are not authority for the doctrine there laid down. The other cases cited I have not at present before me.

In the Olds case, Strahan, J., speaking for the majority of the court, says: "For what purpose was such evidence offered? Manifestly for the purpose of arousing a prejudice in the minds of the jury against the prisoner, and of exciting a feeling of hostility against him, growing out of the fact that lawless and immoral people were actively interesting themselves in his defense. Of course, we

cannot say that such evidence did have that effect upon the minds of the jurors, but such was its tendency, and it is sufficient for this case that it might have had that effect " : 22 Pac. Rep., 941.

And, yet, it appears to me that nothing is more natural than that gamblers, belonging to the faction of which Olds was the acknowledged head, and saloon keepers who were the friends of the gamblers, and in whose saloons gambling was frequently carried on, should contribute money for the defence of Olds when he was on trial for the murder of the leader of the rival faction of gamblers ; and certainly no juror would weigh in the balance against human life, the fact that the friends of the defendant (vile, degraded, and immoral though they might be), contributed to his defence. As was said by Lord, J., dissenting : " The truth is, the fact of contributing to the defence of a man, especially when on trial for his life, is not in itself an immoral act. It has been often done, and by all classes of men, and finds its source in the instincts of our common humanity to relieve those to whom we are attached " : 22 Pac. Rep., 943.

Lord, J., further said : " The witness under examination, out of whom these facts were elicited, testified in his direct examination that he was a gambling man, and, on his cross-examination, that he had contributed money for the defence of Olds, and collected money from others for that purpose, and to this extent the testimony is admitted to be legitimate cross-examination. So that we have the fact that money was contributed by the witness before the jury, and that he was a gambling man, brought out or proved by the defendant's witness. If such matter operates to affect the standing of the defendant in the estimation of the jury, the harm was already done, and the subsequent evidence elicited was, at the most, only cumulative of what had been regularly and legitimately proven " : 22 Pac. Rep., 943.

That the view taken by Judge Lord of this matter was the only tenable one that could be taken, must be apparent to any reasonable and unprejudiced mind. The opinion of the majority of the court was that the tendency of such evidence was prejudicial to the defendant, and that it was sufficient for the case that it might have had that effect. Cases are not usually tried upon possibilities, but here we have a judgment reversed because there is a bare possibility that the evidence may have had a prejudicial effect upon the minds of the jury. This case was remanded to the court below. The time of that court was occupied for several days in a new trial, and great additional expense was thereby incurred in order that the criminal might be punished for his violation of the law, when the evidence in the first instance was abundantly sufficient to justify the verdict of the jury, even if the evidence objected to had been wholly stricken out or never received. Cases are not determined in Trial Courts on possibilities, and courts of last resort are not warranted in reversing a judgment upon the possibility that the defendant may have been innocent (for there is always a possibility that this may be the case), or that the defendant may have been prejudiced by the admission of evidence of some collateral fact.—*The Advocate.*

DIARY FOR MAY.

1. Thu....St. Philip and St. James.
2. Fri.....J. A. Boyd 4th Chr., 1881.
3. Sat.....Mr. Justice Henry died, 1888. Last day for filing papers and fees for final exam.
4. Sun....*Fourth Sunday after Easter*
6. Tues...Supreme Court of Canada sits. Lord Brougham died 1868, æt. 90.
10. Sat.....Indian Mutiny 1857.
11. Sun....*Rogation Sunday.*
13. Tues...Court of Appeal Sits. General Sessions and County Court Sittings for trial in York begin. Solicitors' Examination.
15. Thu....Barristers' Examination.
18. Sun....*Sunday after Ascension.*
19. Mon....Easter Term commences. High Court Justice Q.B. and C.P.D. Sittings.
21. Wed....Confederation proclaimed 1867. Lord Lyndhurst born, 1772.
24. Sat.....Queen Victoria born 1819.
26. Sun....*Whitsunday.* Princess Helena born 1846.
27. Tues....Habeas Corpus Act passed 1679.
28. Wed....Battle of Fort George 1813.
29. Thu....Restoration of Charles II., 1660.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

STREET, J.] [March 20.

DUGGAN *v.* LONDON AND CANADIAN LOAN AND AGENCY CO. *et al.*

Assignment of shares of stock—"In trust"—Pledge by assignee—Redemption by owner.

Plaintiff assigned certain shares of stock to his brokers as security for advances, the assignment being made "in trust." The defendant company subsequently became the holders of the shares as security for advances (greatly exceeding in amount what was due by plaintiff to the brokers) made to the brokers, by assignment from a holder who also held "in trust." The company made no enquiry as to what, if any, trust existed, and plaintiff had no notice that his stock was being so dealt with.

Held, that the plaintiff was entitled to recover his stock upon payment of the amount due by him to the brokers.

McCarthy, Q.C., and *Moss*, Q.C., for the plaintiff.

Arnoldi, Q.C., for the company.

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

Ritchie, Q.C., for the defendant Scarth.

ROBERTSON, J.] [April 21

IN RE FRANCES J. MOORE TRUST.

Moneys invested in Brazil — Application for leave to apply to foreign court—Proceedings before same—Form of order.

A petition presented on behalf of F. J. M., entitled to a sum of money, part of her father's estate, represented by Brazilian bonds—father having died in Brazil. The petitioner married when an infant in Prince Edward Island, but executed (by power of attorney) an ante-nuptial settlement in Rio de Janeiro, approved by the Juiz de Orphaos (Court of Orphans) of that city; the fund was thereupon retained by the foreign court until F.J.M. attained her majority. On application there for payment, the foreign court refused to pay the money to the petitioner in consequence of the marriage settlement, which limited the fund to issue of the marriage, subject to mother's right to enjoy the income; but would pay money into an English court having jurisdiction over the parties, and upon such court granting leave to petitioner to apply to have the fund converted and remitted to the English court.

W. F. Burton moved upon petition for such an order as was required by the foreign court, and for leave to apply to the Juiz de Orphaos in Rio de Janeiro to convert the securities and remit money to this Province.

Hoskin, Q.C., for the infants, approved, but order should be permissive and terms to be approved by the foreign court; order made to be translated into Portuguese language; money, if paid into court, to remain there subject to further directions.

FERGUSON, J.] [April 30.

Re WARDELL AND WILSON.

Vendor and purchaser—Power of sale in a mortgage—No notice required.

In an application under the Vendor and Purchaser Act, in which the vendor was making title under a power of sale worded as follows: "Provided that the said mortgagees on default of payment for one month may, without giving notice, enter on and lease or sell the said lands," it appeared default was made January 17th, and the mortgagor gave up possession to the mortgagee; notice was given January 18th, and an abortive sale had March 1st, the reserve

bid not being reached. On March 15th an agreement for sale by private contract was made.

Held, that the vendor could make a good title.

N. McDonald for the vendor.

W. B. Doherty for the purchaser.

Law Students' Department.

EXAMINATIONS BEFORE EASTER TERM, 1890.

SECOND YEAR.

Contracts.

1. If a contract is to be partly performed within a year, and partly after the expiration of a year, is any writing required? Why?

2. What test is there to determine whether any particular contract is one for work and labour or for sale of goods? What practical effect is there in the difference?

3. What difference is there between a ratification after full age of a promise made during infancy, and a new promise to the same effect as the old one as regards the formalities to be observed?

4. Will part performance by the plaintiff of a verbal agreement with a corporation which ought to have been under the corporate seal but was not, entitle him to recover against the corporation? Why?

5. In what way is the question of any practical importance whether a verbal contract within the Statute of Frauds is void or only unenforceable?

6. What is the rule as to varying a written contract by verbal evidence? Does it make any difference if the contract is not required to be in writing? Why?

7. Is it the price or value of the goods which determines whether an agreement of sale is within the Statute of Frauds? Explain.

8. Explain the consequence in the following case: B enters into a contract with A believing him to be C.

9. The subject matter of a contract has without the knowledge of either party ceased to exist at the time the contract is made, what is the consequence? What if it ceased to exist after the contract was made? Why?

10. When will forbearance to bring an action be a sufficient consideration for simple contract?

11. Explain the different ways in which common law and equity treated a misrepresentation anterior to the contract before the Judicature Act. What general rule in case of conflict is laid down by that Act?

12. Where goods procured by fraudulent representations are transferred to an innocent purchaser for value, how are his rights affected by the fraud?

Broom's Common Law.

1. What is the *lex non scripta* in English jurisprudence?

2. To what extent (if any) does customary law prevail in Ontario?

3. What is the general principle applicable to the rights of an individual over his own property consistently with the rights of other persons? Illustrate by examples.

4. Give example of damage too remote to sustain an action.

5. Distinguish a private from a public nuisance, and the rights of individuals to abate either.

6. What rule is there as to the precedence of criminal prosecutions over civil actions for the same offence? How, and when, and by whom can the precedence be insisted upon?

7. Into what three branches are torts divided? Give an example of each, and also an example of an action of contract and an action of tort growing out of the same transaction.

8. What is the difference in regard to legal liability between nonfeasance and misfeasance of gratuitous contracts?

9. When will the killing of a person by another be murder, manslaughter, and excusable homicide, respectively?

10. What is the distinction between larceny and embezzlement, and between larcency and robbery, respectively?

11. If goods remain in the possession of the vendor, subject to his lien for unpaid purchase money, and a wrong-doer takes them away, can the purchaser maintain an action therefor? Why?

12. Explain the main point of distinction between tort and crime.

Real Property.

1. What was the old law as to right of entry, upon the severence of the reversion on a lease for condition broken? Is there any statutory provision affecting the same, if so, what?

2. What are the provisions of R.S.O., ch. 108, in respect of tenancy by the curtesy?

3. Can a conveyance to a man be drawn so that dower will not attach? If not, can a conveyance be drawn so that the grantee can convey free of dower, if so, how?

4. "A," the mortgagee of estate Blackacre, obtains from B the mortgagor a release of the equity of redemption. What are his rights as against a subsequent mortgagee, C seeking to foreclose? Reasons.

5. It was held as law formerly that a mortgagee might pursue all his remedies at once. Has this principle been in any way trenched on by Provincial Legislation, if so, in what way?

6. What do you understand to be implied by the use of the word demise in conveyancing?

7. What are the provisions of the Vendors and Purchaser's Act as to registered memorials of deeds and registered memorials of discharged mortgages?

8. What effect, if any, has a bar of entail without the consent of the protector of the settlement?

9. Lands are granted to A, a bachelor, for his life, and after his decease, to his eldest son and the heirs of his body, and in default of such issue, to B and his heirs. Construe this. Supposing A surrenders his life estate to B, what effect would this have had? What legislation is there, if any, dealing with such a case?

10. What, if any, statutory provision is there as to words of limitation in deeds subsequent to 1st July, 1886?

11. Is it necessary for a receipt of the purchase money of real estate to be endorsed on the conveyance? Explain fully.

12. What statutory provisions are there in respect of improvements made under mistake of title?

Equity.

1. Distinguish between the care and diligence required of trustees (1) as regards their duty; (2) their discretions.

2. Under what circumstances will the Court set aside and cancel agreements and securities which are voidable merely.

3. What is the jurisdiction of the High Court of Justice in respect of alimony?

4. What, if any, statutory provision is there as to relief against forfeiture on breach of covenant to insure?

5. A and B who are near relatives, and who have long had a family dispute, enter into a compromise under which their difficulties are settled; B seeks afterwards to have the same set aside, alleging as a reason that he mistook a point of law, which had he not done so, would have materially affected his action in the compromise. Should he succeed? Explain general law in reference to compromises of this nature.

6. A makes a mortgage dated 5th January, 1887, to B and C jointly. B dies in January, 1888. In July of that year A wishes to pay off the mortgage which has become due. Can C grant a valid discharge of same? Reasons for your answer.

7. A writes B, his agent, instructing him to purchase for him a farm of a particular character for $5000; B happens to have a contract with C for the purchase of a farm which is of the character required by A. He procures C to make a conveyance to A of the farm. A shortly after becomes aware of this fact, and seeks to have the transaction avoided. Can he succeed? Explain.

8. Can a surety compel a creditor to proceed against the debtor after the debt has become due? If so, why? If not, why not?

9. A writes B a private letter. He learns that he is about to publish it. Has he any remedy, if so, what? Under what, if any, circumstances might such remedy be displaced?

10. A and B are residents of Toronto. B owns a farm in British Columbia, which he mortgages to A. The interests falls in arrears, and A brings an action for foreclosure in the High Court of Justice here. B enters an appearance and demurs to A's statement of claim on the ground that the farm is not within the jurisdiction. Who should succeed on the demurrer? and why?

11. Under what circumstances will the Cypres doctrine be applied in respect of legacies for charitable purposes?

12. Can a solicitor receive a gift from his client during the pending of the relationship between them? Explain fully.

Law Society of Upper Canada.

LAW SCHOOL—HILARY TERM, 1890.

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

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

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

CURRICULUM OF THE LAW SCHOOL.

Principal, W. A. REEVE, Q.C.
Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.
Examiners, R. E. KINGSFORD, LL.B. P. H. DRAYTON.

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

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

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3.

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

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

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

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

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

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

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

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

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

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

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

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

THIRD YEAR.

Contracts.
Leake on Contracts.

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

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

Equity.
Lewin on Trusts.

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

Evidence.
Best on Evidence.

Commercial Law.
Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.
Westlake's Private International Law.

Construction and Operation of Statutes.
Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.
British North America Act and cases thereunder.

Practice and Procedure.
Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.
Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

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

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

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

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

GENERAL PROVISIONS.

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

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

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

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

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

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

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

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

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

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

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