DIARY FOR AUGUST.

1. Thurs Abolition of slavery in the British Empire, 1834.
12. Mon...Disraeli made a peer.
13. Tues..Sir Peregrine Maitland, Lieut.-Gov.. 1818. Primary examinations (written).
14. Wed..Primary examinations (oral).
17. Sat ...General Hunter, Lieut.-Governor, 1799.
20. Tues..Intermediate examinations.
21. Wed..Long vacation ends. Intermediate examinations.
22. Thurs.Examinations for certificates of fitness.
23. Fri....Examinations for call.
24. Sat....Examinations for call with honours.
25. Sun ..Francis Gore, Lieut.-Gov., 1305.
26. Mon..Trinity term begins. Law Society Convocation meets.
27. Tues..Law Society Convocation meets.
29. Thurs.Rehearing term in Chancery begins.
31. Sat ..Law Society Convocation.

CONTENTS.

Canada Law Journal.

Toronto, August, 1878.

NOTES OF RECENT DECISIONS.

A number of important and interesting decisions appear by the "speedy notes" published in another place. The profession are much indebted to the enterprise of the Reporting Committee of the Benchers in thus giving the earliest intimation of the latest law.

The cases referred to show, amongst other things, that the happy days when Insurance Companies succeeded in Term after defeats at Nisi Prius seem to have passed away. Judgments are given in no less than seven Insurance cases. In five of them the plaintiffs succeeded. This result will probably be satisfactory to the junior Puisne Judge of the Queen's Bench who has become a terror to attorneys for Insurance Companies. We are glad to see that the fears of a judgment in favour of the plaintiff in the case of *Pringle* v. *The Town of Napanee*, owing to some observations of the same learned judge on the argument, have not been realized. The Court very properly took the broad ground that Christianity is a part of the law of this Province, and it is therefore a good defence to an action for breach of contract in not allowing the plaintiff the use of a public hall, that it was intended to be used for the delivery of lectures attacking Christianity.

The case of *McArthur* v. *Eagleson* is a curiosity in its way, and to the general reader the finding that the plaintiff was not barred by the Statute of Limitations, because the possession of the wife was the possession of the plaintiff, her husband, might seem unsatisfactory. This Enoch Arden of a plaintiff chose to absent himself without leave, and without notice of his being alive, for thirty years. The wife remained on the place, and at the end of seven years married again, "as she well might, &c." It was sufficiently impudent of this silent partner to come back at all and annoy people, and more so to claim a wife, to whom another man was much better entitled; but to claim lands which he had abandoned for more than a quarter of a century, and to assert that he had been in possession of them through the wife whom he had also abandoned, and who was living on the place under the protection of another husband, does seem a happy thought on the part of the plaintiff or his legal adviser; and it shews the advisability of losing nothing for want of a little "cheek." There were, doubtless, weighty arguments inducing the Court to uphold the plaintiff's contention, but as we have not seen the judgments, we cannot properly discuss the

finding. We notice that Mr. Justice Wilson dissented from the opinion of the majority of the Court.

CONCERNING COSTS.

A story is told by a friend of Campbell the poet, that when visiting at the house of the family, he and Thomas, then about thirteen, were speaking of getting new clothes, and descanting in great earnest upon the most fashionable colours. Tom was partial to green, the other preferred blue. "Lads," said Campbell's father, in a voice which fixed their attention, "if you wish to have a lasting suit, get one like mine." They thought he meant one of a snuff-brown colour, but he added, "I have a *suit* in the Court of Chancery, which has lasted thirty years, and I think it will never wear out." Playing upon the same subject of the traditional length and consequent expensiveness of Chancery cases, Swift in the person of Gulliver, informed the King of Brobdignag about his father having been ruined by a suit in Chancery, in which, after twenty years' litigation, he had obtained a decree in his favour *with costs*. Now-a-days these anecdotes only remind one of what has been. Suits in Chancery are now disposed of as expeditiously as actions at law, and if, in any instances, they seem to be longer, it is usually because these suits are many-sided, involve various issues between the different parties and contain sufficient material to form the staple of half-a-dozen ordinary common law actions.

However, costs are always a subject of much interest both to the suitor and his professional adviser. Mr. Jacob's happy thought about the pertinacity of counsel has been embalmed in one of the judgments of James, L. J. "I was informed," he says, "forty years ago, by the late Mr. Izech, that questions in this Court with respect to the importance attached to them, and the zeal with which they were argued, are in the following ratio:—Practice, first; costs, second; and merits, third and last:—*Attorney-General* v. *Earl of Lansdale*, 19 W. R. 235. But the point of even these sayings is becoming gradually less appreciated under the improved procedure of the Courts and the disposition manifested by the ablest judges to adjudicate upon the merits, even at the sacrifice of form and precedent. In regard to costs, it may be now said that there are settled rules for awarding these, both at law and in equity, which can readily be applied to each particular case. Although formerly it seems that an astute counsel could beguile a jury into giving him costs with only a farthing damages, as in the oft-cited instance of the Welch counsel, John Jones, whose advocacy almost always resulted in the jury finding "for John Jones, with costs," yet now it is well settled that a jury cannot award costs: *Campbell* v. *Linton*, 27 U. C. R., 563. And indeed, it is not seemly to discuss such a question before the jury: *Carrick* v. *Johnston*, 26 U. C. R. 69.

The leading principle, fixed by statute law and by the course of the Court in Equity, is to award costs to the successful litigant. Another principle is that when the relief sought in a superior, can be obtained in an inferior court, no greater costs will be taxed than could have been obtained in the lower forum, and at law a set-off of the defendant's extra costs is provided for by statute, in this Province. The Courts in England have gone to great lengths in allowing costs to "follow the event." It has been held by the House of Lords in *Garnett* v. *Bradley* just the other day that in an action of slander, where the verdict was one farthing damages, the plaintiff was

entitled to his full costs of suit, as a matter of right under the construction of Ord. 55, by which costs are to "follow the event."

There are still to be found in the reports some exceptional cases in Equity, which it is to be hoped will not at all be followed in similar circumstances. Where the only defence set up by the defendant failed in proof and the ground on which the Court decided was not taken in the answer, the Court, though dismissing the bill, refused costs; *McAnnany* v. *Turnbull*, 10 Gr. 298. A somewhat similar decision was made as to costs at common law in *Thompson* v. *Leach*, 18 C. P. 150. A plaintiff, who insisted on his legal rights in a case wherein he should not morally do so, was refused his costs in *Landed Estate Company* v. *Weeding*, 18 W. R. 35. We think it may be safely said that this principle of decision could not now be followed. In *Hawke* v. *Niagara Ins. Co.*, 24 Gr. 20, costs were refused to the defendants, although the bill was dismissed because they failed on some of their grounds of defence. We submit that this case should not be followed, inasmuch as a defendant is entitled to set up every defence which he deems to be tenable so long as he does not swear falsely to material facts in his answer. This last misconduct has usually been deemed a sufficient reason for withholding costs from the offending party: *McKay* v. *Davidson*, 13 Gr. 498; *McCrumm* v. *Crawford*, 9 Gr. 342; *Royal Canadian Bank* v. *Payne*, 19 Gr. 184. And this seems a reasonable rule so long as the Court requires the defendant to pledge his oath to the truth of his grounds of defence.

It is a matter of congratulation that the rules for the disposition of costs are becoming more settled and certain, and that much of the wrangling formerly indulged in touching this subject is now both unnecessary and inefficacious.

PRIVILEGED COMMUNICATIONS.

The *Central Law Journal* reports a case of *Belle Barber* v. *St. Louis Dispatch Co.*. The plaintiff's husband had filed a bill for divorce, founded on the alleged adultery of the wife. Before the case came on for hearing, the defendants published in their newspaper the substance of the charges. The defendants claimed that the publication was a fair report of a case before the courts. The Court said:

"The general question here involved is, whether the publication in the newspaper of the defendant belongs to the class of publications called privileged communications; that is, publications which would be libellous, but which are not so because the occasion and manner of the publishing are such as to rebut the inference of malice arising from the publication of matter which on its face is libellous. But the question on which the answer to this depends is not that which has been most discussed by counsel; namely, whether the same rule, in reference to privileged communications, that extends to trials where both parties are before the court, extends also to *ex parte* proceedings. This question has, no doubt, a bearing upon the legal issue before the court; but a solution of it in favour of the appellant will not necessarily involve the conclusion which the appellant desires to reach. Indeed, it may be granted that the general rule is as follows: Where a court or public magistrate is sitting publicly, a fair account of the whole proceedings, uncoloured by defamatory comment or insinuation, is a privileged communication, whether the proceedings are on a trial, or on a preliminary and *ex parte* hearing. But the very terms of the rule imply that there must be a hearing of some kind. In order that the *ex parte* nature of the proceedings may not destroy the privilege,

—to prevent such a result, there must be at least so much of a public investigation as is implied in a submission to the judicial mind, with a view to judicial action."

"The publication was not merely of the fact that a petition for divorce had been filed; but it purported to give the contents of a petition which had never been brought before the court at any sitting, or with a view to judicial action. No proceedings in open court had taken place, and, in fact, no proceedings in open court ever did take place, in the suit for divorce, from the time of the filing of the petition to the time of the dismissal of the suit. The statements made in this publication were not only of a kind to disgrace and degrade the plaintiff in the estimation of the community, but they impute an act which may be a crime under the statutes of this State. *Prima facie*, the words are actionable (Wag. Stat. 519, §1; *Stieber* v. *Wensel*, 19 Mo. 513) and their use raises the presumption of malice; that is, not of any actual design to injure, but of that wrongful intention which the law presumes to be the concomitant of an act which it condemns as wrong. This being the case, is there any great public advantage overriding the injury that would ensue in cases of this kind to individuals?

"That injury is apparent. If every paper on which a clerk of court marks the word 'filed' is a privileged communication, and the person who spreads its contents broadcast before the public is exempted from the penalties which the law imposes on those who injure the reputation and property of others, consequences most serious will follow. A court may well pause before it makes a decision to this effect, unsanctioned as such a decision would be by any authority. Papers may be filed, as declarations or petitions, which are filled with libellous matter. Their mere filing is no guaranty that the plaintiff intends to go to trial upon them. They may be so composed as to blast reputations and ruin business. They might be published with the most malicious design, yet, if privileged, the effect would be practically to deprive the injured party of redress. The anomaly, too, would be presented that, while the law would afford the defendant a remedy against the person who brought the suit (for the latter would be liable in damages for a malicious action), it would afford no redress against the libeller, whose publication may have produced the greater injury. Nor, if a publication is to be privileged, merely because a petition is on the files, is it easy to see why the filing of an affidavit, or deposition, even though it may be totally inadmissible in evidence and may be subsequently stricken from the files, does not confer a like exemption. When a matter is before a court upon a hearing, subject to the control and direction of the court, the right of publication may well be allowed. But where a paper is filed by a private person, perhaps not even with intent to produce an investigation, he who chooses to publish it should do so at his own risk. It is better that a craving after any thing but wholesome news should be disappointed, than a reputation assailed. If the charges of the petition are not baseless, they will soon be made the subject of judicial action, in one form or another; and, when they are made such, the law, from motives of public policy, makes all proper publications in regard to them privileged communications."

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

From Q. B.] [June 25th.

McMaster v. King.

Insolvent Act of 1875—Deed of composition and discharge—Estoppel.

The plaintiffs sued the defendant, a discharged insolvent, for a debt alleged to have been contracted under such circumstances that the imprisonment of the debtor for enforcing payment is permitted by the Insolvent Act.

Held, reversing the judgment of the Queen's Bench, that the plaintiffs had not precluded themselves from enforcing the claim by having proved it in the ordinary way, and not as a debt contracted by fraud; or by having taken composition notes and accepting payment of one of them.

W. Macdonald for the appellant.

Geo. Kerr, Jr., with him *Akers*, for the respondent.

Appeal allowed.

From Chy.] [June 25th.

WALLACE v. GREAT WESTERN RY. CO.

Railway Company—Specific performance—Covenant to keep a station.

In consideration of a bonus granted by the municipality, the Wellington, Grey and Bruce Railway Company covenanted to "erect and maintain a permanent freight and passenger station" at Gowanstown. Shortly afterwards he road was leased, with notice of the agreement, to the T. G. & B. Ry. Co., who discontinued the use of the station as a regular station, merely stopping there when there were any passengers to be let down or taken up.

Held, affirming the judgment of Spragge, C., that the mere erection of the station was not a fulfilment of the covenant; *Held*, also, that the covenant was binding on the T. G. & B. Ry. Co., and that the municipality was entitled to have it specifically performed.

The decree which enjoined the defendants from allowing any of their ordinary freight, accommodation, express or mail trains, other than special trains, to pass Gowanstown without stopping for the purpose of setting down and taking up passengers was varied by limiting it to such trains as are usually stopped at ordinary stations.

Boyd, Q.C., and *W. G. P. Cassels* for the appellants.

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

Appeal dismissed without costs.

From Q.B.] [June 25th.

MCDOUGALL v. CAMPBELL.

Counsel fees—Action for.

Held, affirming the judgment of the Queen's Bench, that when a Barrister who is also an Attorney deals directly with a client, he can recover for his services, even though a part of the service rendered may be for advocacy; but where a counsel is retained by an attorney he cannot bring an action for his fee.

Bethune, Q.C., for the appellant.

Dr. Spencer and *J. McDougall* for the respondent.

Appeal dismissed.

From Q.B.] [June 25th.

IN RE BROOKS AND THE CORPORATION OF THE COUNTY OF HALDIMAND.

County Council—Obligation to build a bridge—Mandamus—36 Vict., c. 48, sec. 413.

Section 413 of the Municipal Act of 1873, as amended by 37 Vict. c. 16, sec. 19, enacts that "it shall be the duty of County Councils to erect and maintain bridges over rivers forming or crossing boundary lines between two municipalities within the county."

A bridge over the Grand River, which runs between the townships of Oneida and Seneca, erected at the village of York by a private company, having become out of repair, was abandoned by the company. A distance of twelve miles, from Caledonia to Cayuga, was thus left without any bridge, and a mandamus was applied for to compel the county council to build a bridge at or near the village of York.

Held, reversing the judgment of the Queen's Bench, that as there were other bridges over the river, the question whether a bridge should be erected at this particular spot was a matter within the discretion of the county council.

C. Robinson, Q.C., for the appellant.

M. C. Cameron, Q.C., for the respondent.

Appeal allowed.

From Q.B.] [June 25th.

BURGESS v. BANK OF MONTREAL.

Tax Sale—Description of land sold.

The Sheriff, on a sale of land for taxes, in 1860, gave to the purchaser a certificate describing the land sold as "five acres of land to be taken from the south-west corner of the south-west quarter of lot 3, in the 11th concession of the Township of Zorra."

Six years afterwards the successor of this sheriff gave a deed describing the land particularly by metes and bounds.

Held, affirming the judgment of the Queen's Bench, that the sale was invalid.

Bethune, Q.C., for the appellant.

Becher, Q.C., with him *Street*, for the respondent.

Appeal dismissed.

From Chy.] [June 25th.

Attorney-General v. Walker.

Section 155 of the Inland Revenue Act, 1867, enacts that all duties of excise payable under the Act "shall be recoverable . . in any court of competent civil jurisdiction;" and sec. 32 of the A. J. Act, 1873, provides that "no objection shall be allowed on demurrer; . . that the subject matter of the suit is exclusively or properly cognizable in a Court of Law."

Held, affirming the judgment of the Court of Chancery, that, independently of the question whether the Administration of Justice Act was meant to extend to Crown cases under the above sections, the Attorney-General is entitled to sue in the Court of Chancery for the recovery of excise duties, even if it be a purely legal debt.

The 43rd and 44th sections do not restrict the right of the Crown to sue in respect of frauds committed upon the revenue to the period of one year, or prevent a recovery in a Court of Law, unless a special investigation has been held in pursuance of the Act.

S. Richards, Q.C., and *Fitzgerald*, Q.C., for the appellant.

Bethune, Q.C., with him *Hoyles*, for the respondent.

Appeal dismissed.

From Chy.] [June 25.

Vandicar v. Oxford.

The Court of Chancery has no jurisdiction to test the legal validity of a by-law.

The omission in a by-law, which closes up a road, to provide some other convenient road or way of access to the lands abutting on the closed-up road, under section 422 of the Municipal Act of 1873, does not render it void, but only subject to be quashed upon application to one of the Superior Courts of Common Law within a year.

Where, therefore, a bill was filed three years after the passage of such a by-law seeking to have it declared invalid, and asking for compensation:

Held, reversing the judgment of Blake, V.C., that the Court of Chancery had no power to interfere.

Held, also, that under sec. 373 of the Municipal Act, 1873, the only mode of fixing the compensation was by arbitration.

Bird, for the appellant.

E. Blake, Q.C., for the respondent.

Appeal allowed.

From C.C. York.] [June 25.

Wilson *v.* Ginty.

Liability of subscriber to creditors.—Conditional subscription for shares.

The plaintiff as a creditor of a railway company, sued the defendant as a shareholder, for the amount remaining due on his shares. It appeared that the defendant had signed the stock book of the company for forty shares upon the faith of an agreement with one L, a provisional director, who was also the principal promoter and director of the company, that he and one M should receive the contract for building the road. There was no proof that the defendant had received any formal notice of the allotment of the shares, but he paid 10 p. c. thereon. He swore that he made this payment because L told him he would not get the contract unless he paid it. He also attended a meeting of the shareholders and seconded a resolution granting an allowance to the directors.

Held, affirming the judgment of the County Court, that the payment of 10 p. c. made him a shareholder, and that he could not repudiate his liability to a creditor on the ground that he had not been awarded the contract as L had no power to bind the company by annexing such an agreement to his subscription.

T. Ferguson, Q.C., for the appellant.

T. Kennedy, for the respondent.

Appeal dismissed.

From C. C. Lincoln.] [June 26th.

Re Douglas.

Insolvent Act of 1875—Goods claimed by Insolvent as Administratrix.

Upon the death of her husband, the Insolvent, who took out letters of administration, continued to carry on the business of a hardware merchant, in which her husband had been engaged, and applied $4,000 to which she was entitled under a policy of insurance on his life in paying his debts and carrying on the business. Upon her insolvency soon afterwards, the assignee seized certain goods which belonged to her husband and which remained in specie.

Held, reversing the judgment of the County Court, that the insolvent was entitled to these goods as administratrix of her husband's estate.

W. Cassels, for the appellant.

Bethune, Q.C., for the respondent.

Appeal allowed.

From C. P.] [June 25th.

BOICE v. O'LOANE.

Action on Judgment—Limitation—38 Vict., c. 16. Sec. 11. O.

Held, reversing the judgment of Gwynne J., that Sec. 11 of 38 V., c. 16 O. does not apply to judgments; and an action may still be brought thereon within 20 years under C. S. U. C., c. 78, sec. 7.

C. Robinson, Q.C., for the appellant.

Bethune, Q.C., for the respondent.

Appeal allowed.

From C. P.] [June 25th.

NORTHWOOD v. RENNIE.

Sale of Goods—Warranty—Statute of Frauds.

The plaintiff sued the defendant for a breach of warranty of a hay press, which he had agreed to purchase from the plaintiff if it should be capable of pressing into bales 10 tons of hay per day, which the defendant warranted it would do. The machine was delivered to the plaintiff, but upon trial failed to do the stated amount of work, and was returned. The defendant denied the warranty and gave evidence to show that the sale was only on condition. At the close of the plaintiff's case an onsuit was moved for on the ground that no money having passed, the plaintiff could not maintain an action for damages, and that the machine having been returned and no money paid, no action would lie; also that the Statute of Frauds was a bar. Leave was reserved to move on the whole case. After discussion as to the position of the case on the evidence, it was arranged that the question to be submitted to the jury was, was there a guarantee by the defendant that the machine should be fit to do the above amount of work. The jury found a verdict for the plaintiff. *Held*, affirming the judgment of the Common Pleas, that the verdict was amply supported by the evidence; and that the arrangement entered into at the tria. precluded the defendant from taking the objection that no action would lie on the warranty because there was no sale. *Held*, also, that the plaintiff's right of action was not affected by the Statute of Frauds.

A. Galt, for the appellant.

C. Robinson, Q.C., for the respondent.

Appeal dismissed.

From Chy.] [June 25th.

STANDARD BANK v. BOULTON.

Married Woman—Separate Estate.

A married woman, married in 1852, who was by virtue of her marriage settlement entitled to the legal estate for life, in certain lands after the death of her husband, during his life endorsed a promissory note made by him to secure his liability to the Bank. A bill was filed against her after her husband's death to realize the amount. *Held*, reversing the judgment of Blake, V.C., that she was not liable, as this was not her separate estate within the meaning of 35 Vict., c. 16, s. 1, at the time the note was given.

C. Robinson, Q.C., and *Leith*, Q.C., for the appellant.

Boyd, Q.C., for the respondent.

Appeal allowed.

From C. P.] [June 25th.

CAMERON ET UX., v. WAIT.

Highways—Right to original allowance—Municipal Act.

Trespass for the removal of a fence placed by the plaintiffs across what was an original allowance for road between lots 8 and 9. The plaintiff who owned the south half of lot 9, claimed to be entitled to this allowance by reason of the Justices of the Quarter Sessions having, in 1837, laid out a road across the South half of lot 9, in lieu, as was claimed, of the original road allowance. In proof thereof, the report of the then surveyor was produced, dated 15th July, 1837, addressed to Justices, reciting the petition of twelve freeholders for the new road, with his certificate of his having examined and surveyed it, and given notice according to law; the road to be fifty feet wide. He also certified as to his having examined the original allowance and found it impracticable by reason of bad hills and swamps, while the new road was good. On the back of the report was endorsed the minute of the Quarter Sessions thereupon, namely: "Read and approved and confirmed this 18th July, 1837," &c., which, with the user of the road as a highway, was the only evidence of their action in the matter. At the time the road was laid out the Quarter Sessions had no power to sell an original road allowance or convey it to the person whose land was taken in compensation; and they could only alter a road on the condition that the new or substituted road should

be of not less width than the one for which it was substituted; while in ordering a new road they had a discretion to lay it out of any width between 40 and 60 feet. The original road allowance was 60 feet wide, while the new road was only 40 feet.

Held, affirming the judgment of the Common Pleas, that the plaintiff acquired no right to the original allowance under 50 Geo. III., ch. 1, and 4 Geo. IV., ch. 10, nor under the subsequent Municipal Acts.

S. Richards, Q.C.. for the appellant.

Bethune, Q.C., and *J. W. Kerr*, for the respondent.

Appeal dismissed.

From Chy.] [June 25th.

CAMERON v. KERR.

Collateral security to bank—Appropriation of payments.

M. & Co. being desirous of obtaining additional advances from a bank, executed a mortgage to secure a large sum for which they were liable on the 31st December, 1873, on commercial paper of the firm and its customers, which had been discounted by the bank. The mortgage provided that it should continue a security for the said sum and all renewals or substitutions therefor, and all indebtedness of M. & Co., in respect thereof. After the mortgage was given, M. & Co's line of discount was increased, but no separate account of the liabilities secured by the mortgage and these further advances was kept, the proceeds of the discounts and cash deposits being carried to M. & Co's credit in one open current account, against which they drew cheques to retire the notes secured by the mortgage as they matured. M. & Co. became insolvent on the 12th August, 1875, their indebtedness in the meantime never having been reduced.

Held, affirming the judgment of Blake, V.C. that this mode of keeping the accounts had not operated to a discharge of the mortgage debt.

Robertson, Q.C., *McMurrich* and *Symons* for the appellants.

Maclennan, Q.C., (*Rae* with him) for the respondent.

Appeal dismissed.

From Chy.] [June 25th.

OSTROM v. PALMER.

Estate tail—"Consent" of protector.

The tenants in tail and the mother who was protector to the settlement having a life interest in the estate, joined in a mortgage in fee simple, purporting to be made under the Act respecting short forms of mortgages, and containing the usual covenants, for the purpose of securing moneys borrowed for the purpose of paying off legacies charged on the whole estate, including her interest therein.

Held, reversing the judgment of Proudfoot, V.C. that her consent sufficiently appeared, and that the estate tail was barred.

C. Robinson, Q.C., for the appellant.

E. Blake, Q.C., for the respondent.

Appeal allowed.

From Q.B.] [June 25th.

MECHANICS' BUILDING AND SAVINGS SOCIETY v. THE GORE DISTRICT MUTUAL INSURANCE COMPANY.

Mutual insurance policy—Assignment to mortgagee—Effect of subsequent insurance by mortgagor.

Held, reversing the judgment of the Queen's Bench, where a mortgagee takes a transfer of a policy, under the latter part of section 39 of 36 Vict., c. 44 O., by way of additional security, the policy continues to be voidable by the acts of the mortgagor.

Held, also, that making a mortgage is an alienation within the meaning of section 39; and a mortgagee may avail himself of the power of novation accorded to alienees in general by taking the steps pointed out in the second paragraph of the above section, in which case he acquires a separate independent interest under the policy, and the policy will not be avoided by the acts of the mortgagor.

Bethune, Q.C. (*Durand* with him), for the appellant.

McCarthy, Q.C., and *Osler*, Q.C., for the respondent.

Appeal allowed.

C. C. York] [June 25th.

LAWSON v. LAIDLAW ET UX.

Married Woman.—Separate Property.

Declaration on a promissory note made July 2, 1875, by the defendant and his wife, payable to the plaintiff.

Plea by C. A. Laidlaw, that when she made the note she was and still is the wife of the defendant, J. Laidlaw.

Replication that C. A. Laidlaw was and is possessed of separate real estate in this Province

in which her husband has no legal or equitable interest, and that she contracted with the plaintiff and made the note in reference to, and to make her separate estate liable to be sold, if not paid at maturity, and that the plaintiff took the note from her relying upon the security of her separate estate to pay for it.

The defendants were married in 1854 without a marriage settlement. In 1852 the plaintiff became entitled as one of her father's heirs at-law to a share in certain real estate. This property was never taken possession of by either of them. It was afterwards sold under a decree for the purpose of making partition and at the time the note was given, Mrs. Laidlaw was entitled to the purchase money which was then in Court. The note was given for groceries supplied to her husband. The plaintiff only consented to let the account run on condition of its being secured by Mrs. Laidlaw—and the husband promised to procure his wife to make the joint note with him—but the husband had no authority to make this agreement, and the plaintiff had no communication with Mrs. Laidlaw. After the account was closed she joined her husband in making the note at his request, intending to pay it out of the money in Court. The evidence showed that the plaintiff supplied the goods on the faith that they would be paid for out of Mrs. Laidlaw's separate estate.

Held, affirming the judgment of the County Court, that the plaintiff was entitled to recover as the purchase money was her separate personal property, to which she was entitled when the note was made, and in reference to which she contracted.

T. Ferguson, Q.C., for the appellant.

C. A. Durand for the respondent.

Appeal dismissed.

C. C. Essex.] [June 27th.

Re Morton, an Insolvent.

Insolvency—Accommodation Endorser—Right to Security.

The insolvent, prior to his insolvency, borrowed $1,500 from M. & Co. bankers, from whom he was accustomed to obtain accommodation in carrying on his business. He gave them a chattel mortgage as security, and his promissory note at three months which was discounted by them at the Molson's Bank. No assignment was ever made of the mortgage to the Bank, nor did the Bank deal with M. & Co. in reliance on this security.

When the note became due M. & Co. paid $600 and renewed for $900. M. & Co. shortly afterwards went into insolvency and the Bank claimed to be entitled to the $1,500 chattel mortgage.

Held, in the Court below that the Bank were guilty of such laches and negligence in not realizing upon the mortgage as disentitled them to assert their right to the mortgage.

Held, in the Court of Appeal, affirming the judgment of the County Court, that under the circumstances the Bank could not be held guilty of laches as they never held the mortgage, and that if the transaction had remained as it was originally the Bank would have been entitled to the security; but a payment of $600 having been made the Bank was not entitled to claim priority in respect of that amount.

Osler, for the appellant.

H. J. Scott, for the respondent.

Appeal dismissed without costs.

C.C. Leeds and Grenville.] [June 27th.

Re Coulton—an Insolvent.

Costs—Privileged claim.

Under a decree, the Master found the amount due for debt and costs from C. to G., and G. issued execution for the costs. Shortly afterwards, and before the report was confirmed, C. became insolvent, whereupon the suit was revived, and the report was appealed from, when it was referred back to the Master; but the *fi. fa.* was ordered to stand for the amount to which the costs might be reduced upon taxation. The costs were largely reduced.

Held, affirming the judgment of the County Court, that, under sub-section K of section 3 of the Insolvent Act of 1875, the plaintiffs were entitled to a preferential lien in respect of the costs covered by the execution.

W. Cassels, for the appellant.

Bethune, Q.C., for the respondent.

Appeal dismissed.

C.C. York.] [June 28.

Re Cleverdon v. Martin, Insolvents.

Insolvent Act of 1875—Priority of claims.

The Insolvent and one Coombe, who were partners, made an assignment in Insolvency in

1876. A majority of the creditors, in value and number, including the wife and daughter of the insolvent, who were claimants, executed a deed of composition and discharge in consideration of a payment by him of 65 cents in the dollar. The wife and daughter consented to postpone their claim to the composition until the other creditors were paid. The insolvent then formed a partnership with one M., and it was arranged between them that the amount of these claims should remain in the business for the uses of the firm, and that they should receive interest thereon. The new firm also went into insolvency before the composition was paid, whereupon the wife and daughter claimed to rank on the estate with the other creditors.

Held, affirming the judgment of the County Court, that the assets of the old firm, which by the deed of composition and discharge were assigned to the insolvent, having been transferred to the new firm for what must be assumed was a valuable consideration, the claimants could not be postponed to the creditors of the old firm.

Kerr, Q.C. (*W. R. Mulock* with him) for the appellants.

M. C. Cameron, Q.C., for the respondent.

Appeal dismissed.

From C. P.] [June 25th.

Merchants' Bank v. Bostwick.

The judgment of the Common Pleas, reported 28 C. P. 450, was affirmed.

S. Richards, Q.C., and *Bethune*, Q.C., for the appellants.

Robinson, Q.C., for the respondent.

Appeal dismissed.

QUEEN'S BENCH.

IN BANCO—EASTER TERM.

Wesloh v. Brown.

Promissory Note—Indorsee—Alteration without notice—Promise to pay.

After making of a promissory note, it was altered by the maker, as to the time of payment, without the consent of the indorser, who, however, but without knowledge of the alteration, promised to pay it: *Held*, in an action against the indorser, that the alteration having been made without his authority, rendered the note void, and that no subsequent promise by him to pay could have the effect of ratifying it.

Held, also, that without *actual* knowledge, the promise to pay amounted to nothing, the means of knowledge alone being insufficient.

Richards, Q. C., for plaintiff.

F. Osler for defendant.

Rule absolute to enter nonsuit.

Black v. Reynolds.

Interpleader—Delay in giving security—Neglect of Sheriff to appraise—Effect of—Sale of goods by Sheriff—Action against—Estoppel.

In trover for the value of a piano, sold by the defendant, as Sheriff, under an execution, it appeared that an interpleader had been directed as to the piano, the plaintiff to give the usual security within 20 days. The defendant, though applied to, neglected to appraise the value of the piano, until impossible for the plaintiff to give the required security. Security was, however, afterwards given, but the defendant, notwithstanding, sold the piano, contending that he was justified in so doing, as the plaintiff had not complied with the terms of the order.

Held, that plaintiff having been prevented by the defendant's neglect from complying with the order, defendant was estopped from saying that plaintiff's non-compliance therewith justified him in selling the piano.

Held, also, that the effect of defendant's neglect was either to deprive him of the protection of the order or to operate as a waiver of the time thereby limited for giving security.

H. Cameron, Q. C., for plaintiff.

F. Osler for defendant.

Rule absolute to enter verdict for plaintiff for $450.

Brown v. Morrow.

Will—Search—Memorial by heir-at-law—Declaration against interest—Evidence.

A witness swore that she had seen the will, giving an explicit statement of its contents; and it further appeared that the devisees, among them the heir-at-law, all submitted to and acted upon it:

Held, sufficient evidence of the existence of the will.

Held, also, that the heir-at-law's execution

and registration of a memorial of the will were satisfactory proof of the latter, as being a declaration against his proprietary interest, he being dead at the time of the trial.

Ferguson, Q. C., for plaintiff.

McCarthy, Q. C., for defendant.

Rule discharged.

REGINA V. SMITH.

Forcible entry—Restitution.

Defendants, employees of the Great Western Railway Co.,—in obedience to orders from the Company went upon the land in question, then in possession of the Stratford & Hamilton Railway Co., and occupied by its employees. No actual force was used, but the latter had good reason to apprehend that sufficient force would be used to compel them to leave, and they left accordingly.

Held, that this was a forcible entry within the statute relating thereto.

The judge at the trial having granted a writ of restitution, *Held*, that such writ is in the discretion of the presiding judge, and that it had been properly exercised here.

M. C. Cameron, Q. C., for defendant.

Smith for the Crown.

Conviction confirmed.

PRINGLE V. CORPORATION OF THE TOWN OF NAPANEE.

Christianity part of the law of Ontario.

Held, that Christianity is part of the recognised law of this Province, and therefore that to an action for breach of contract to let a public hall, a plea setting up that the purpose for which said hall was intended to be used was for the delivery of certain lectures containing an attack upon Christianity was a good defence, and plaintiff was not entitled to recover.

Bethune, Q. C., for plaintiff.

Reeve for defendants.

Rule discharged.

LUCAS V. MOORE.

Highway—Want of repair—Death resulting from contributory negligence—Evidence.

Plaintiff's husband was found dead in a ditch along defendant's highway, the hub of his waggon-wheel resting upon him, the waggon being in a delapidated condition, and he fastened down very tightly. One of his horses was dead. The ditch was about 12 feet deep and 32 feet wide, much wider at the top than at the bottom, and extending about half way into the travelled road, which it appeared had been in this condition for several years. There was no railing or other guard round the ditch, nothing to indicate its situation on a dark night, such as the night in question was. It appeared that deceased was under the influence of liquor, though there was contradictory evidence on this point; but there was no distinct evidence as to how he fell into the ditch. *Held*, that there was evidence for the jury of non-repair of the road within the meaning of the present Municipal Act, and that such non-repair was the cause of the death; and that assuming there was a breach of duty on defendant's part, deceased having been lawfully using the highway, it might be fairly inferred that but for such breach of duty the accident would not have occurred.

The question of contributory negligence having been left to the jury and found in plaintiff's favour, the Court refused to disturb the verdict.

F. Osler for plaintiff.

Robinson, Q. C., and *Ferguson*, Q. C., for defendant.

Rule discharged.

DILLARCE V. DOYLE.

Gratuitous loan—Increase.

In the case of a gratuitous loan all the increase of and offspring of the loan, and everything accessional to it belong to the lender, and must be returned at the determination of the loan, and are not subject to seizure under execution against the bailee.

Spencer for plaintiff.

Campbell for defendant.

Rule absolute to increase verdict by $208.

MCARTHUR V. EAGLESON.

Ejectment—Estoppel en pais—Statute of Limitations.

Plaintiff, intending to return after a short interval, left his wife and home more than 30 years ago, and went to the United States, where he remained until a short time before this action. He had never communicated with his wife or friends whilst absent, and was until his return, two or three years ago, believed to be dead. Several years since, and within seven years after his departure, his wife, acting on this belief, married again, and lived with her new husband on plaintiff's farm. They both

mortgaged the farm to a Building Society, which sold it under a power of sale in the mortgage. On his return plaintiff brought ejectment against the purchaser from the company. *Held*, that he was entitled to recover, and that however culpable he may have been in not communicating with his wife, his negligence did not, even as against a purchaser under the *bonâ fide* belief that he was dead, stop him from claiming the land. *Held*, also, Wilson, J., dissenting, that he was not barred by the Statute of Limitations, for the possession of his wife was his possession.

Rock, Q.C., and *Ferguson*, Q.C., for plaintiff.
Robinson, Q.C., for defendant.

Rule discharged.

PARSON v. CITIZEN'S INS. CO.

Fire Insurance—39 Vict. Ch. 24—Absence of conditions—Averment of in declaration—Estoppel—Excessive statement of loss—Prior insurance—Excessive valuation.

A policy of Insurance issued after 39 Vict. ch. 24, did not contain conditions made necessary by that Statute.

Held, that the declaration having stated the policy was subject to conditions, setting them out, did not estop plaintiff from contending that there were no conditions, for he could amend if he saw fit.

Plaintiff having stated his loss at a much larger figure than the jury found he had sustained, the Court nevertheless refused to interfere on this ground, as the jury had at the same time found that he acted honestly, in making the representation.

The omission to communicate an existing insurance with another Co. is not *per se* such a wrongful concealment as to sustain a plea of fraud.

Excessive valuation does not avoid a policy unless intentional.

M. C. Cameron, Q. C., for plaintiff.
F. Osler and *M. McCarthy*, for defendants.

Rule discharged.

PARSONS v. QUEEN'S INS. CO.

Fire insurance—Interim receipts—Prior assurance—Notice of.

In an action on an interim receipt for insurance against fire, it appeared that annexed to the application and delivered to the Company, at the same time was a memorandum of prior assurances.

Held, that the memo. was part of the application, conveying full and correct information of the prior assurances, and the agent having received it, accepted the premium and issued the interim receipt, must, so far as the latter and the right of the plaintiff thereunder were concerned, be held to be the act and assent of the defendants, and therefore that, treating the interim receipt as subject to the Statutory conditions, the 8th condition as to the assent of the Company appearing in or being endorsed on the policy, had been sufficiently complied with.

Held, also, that "as soon after as practicable" in the 13th condition means within a reasonable time.

F. Osler and *M. McCarthy* for plaintiff.
M. C. Cameron, Q.C., and *J. T. Small* for defendants.

Rule discharged.

FRAZER v. MCFARLANE.

Promissory note—Married woman—Separate liability as indorser.

A married woman, possessed of separate estate acquired by her after the Married Woman's Act of 1874, indorsed a note for the accommodation of her husband, member of a firm to whom credit was given on the faith of such separate estate and her indorsement in reference thereto.

Held, that she was liable.
McLaren for plaintiff.
J. A. Miller for defendant.

Rule discharged.

HERBERT v. MERCANTILE INS. CO.

Fire insurance—Misrepresentation—Warranty—Adverse witness—Discretions of Judge at trial—Right to review.

To a question asked plaintiff, on his application for insurance, whether there was any incendiary danger either threatened or apprehended, the answer was in the negative, but the evidence shewed the contrary in both respects. The contract of insurance made the answer a warranty.

Held, that he could not recover.

The Court will not review the discretion of the Judge at the trial in receiving evidence to contradict a party's own witnesses as being adverse; nor in receiving evidence on the part of the defence after the close of the plaintiff's case, even though for the purpose of corroborating the defence.

F. Osler, for plaintiff.
J. K. Kerr, for defendants.
Rule discharged.

O'DONOHOE v. WILEY.

Foreign contract—Breach out of jurisdiction.

Defendants, merchants in New York, telegraphed plaintiff, an attorney practising in Toronto, in answer to a telegram from him offering his services, to represent them in certain insolvency proceedings pending in the latter place. Plaintiff did so, and upon sending his bill for services, which he did by letter, addressed to defendants at New York, defendants, by letter from New York, addressed to plaintiff at Toronto, refused payment. *Held*, that plaintiff could not recover, as both contract and breach arose out of the jurisdiction.

Held, also, that the words "cause of action" (Rev. St. O. ch. 50, sec. 49), do not mean the *whole* cause of action—*i.e.*, breach and contract, but breach alone.

Ferguson, Q.C., for plaintiff.
Foster, for defendants.
Rule discharged.

WILSON v. RICHARDSON.

Reference by consent—Time for moving against.

An award made under sec. 160, Con. Stat. U.C. ch. 22, before Trin. Term, must be moved against within the first four days of that Term, even though the full Court may not sit, as the motion can be made to a single Judge within the same period.

The order of reference, made at Nisi Prius, was afterwards made a rule of Court by the defendant, and expressed to be by consent of all parties: *Held*, not a compulsory reference under sec. 165 of the above Act, but a reference under sec. 160.

Robertson, Q.C., for plaintiff.
Osler, Q.C., for defendant.
Rule discharged, with costs.

GOWANS v. CONSOLIDATED BANK.

Sale of goods—Insufficient delivery— Warehouse receipts.

Plaintiffs contracted for the manufacture of a quantity of glassware, which though invoiced to and paid for by plaintiffs, was stored with a warehouseman as the goods of the manufacturers, and warehouse receipts granted to the latter, by whom they were transferred to defendants as collateral security for advances made to them. *Held*, that there had not been a sufficient delivery of the goods to pass the property in them to the plaintiffs, and that the delendants were therefore entitled to recover.

F. Osler for plaintiff.
R. Martin, Q.C., for defendants.
Rule discharged.

IN RE MAYLE AND THE CITY OF KINGSTON.

Award—Rev. Stat. O. ch. 134. sec. 456—Delay in moving against.

Held, that an application to set aside an award made under Sec. 456, Rev. Stat. O., ch. 134 and published before Trinity Term 1877, was too late on the 26 Nov. following.

Maclennan, Q, C., for the City of Kingston.
G. Kirkpatrick contra.
Rule discharged without costs, no costs of rehearing.

BROWN v. WINNING.

Married women—Sale of goods to—Separate estate— Examination in another suit—Admissibility in evidence.

Defendant, a married woman, possessed of real estate in Ontario, but living with her husband in Montreal, purchased goods from plaintiffs there, for domestic purposes. There was no evidence either of a settlement making the real estate separate estate, or that the marriage took place after the 2nd March, 1872; nor was it shewn that the debt was contracted with reference to her separate estate.

Held, that defendant was not liable to be sued for the price of the goods.

The only evidence of defendant's ownership of real estate was her admission signed by her when under examination in another suit.

Held, clearly admissible.
Richards, Q. C., for plaintiffs.
F. Osler for defendant.
Rule discharged.

CRAIN v. TRUSTEES OF COLLEGIATE INSTITUTE OF OTTAWA.

Award—Appeal under 39 Vict. ch 28, sec. 7, O. —Rev. Stat. O., ch, 50. sec. 192—41 Vict. ch. 6, sec. 3, O.

Held, that notwithstanding sec. 3 of ch. 6, 41 Vict. O., sec. 192 of ch. 50, Rev. Stat. O. being not only in effect, but in words the same as sec. 7 of 39 Vict. ch. 28, O. repealed but re-enacted by it, must receive the same construction as the repealed enactment under the

Manufacturers' and Merchants' Fire Ins. Co. v. *Alwood.* 28 C. P. 21; and therefore that there can be no rehearing by the Court by way of appeal from the decision on an award made by a single Judge under the repealed enactment.

Cassels for plaintiff.

F. Osler for defendants.

Rule discharged.

McEdwards v. McLean.

Replevin—Distress for rent—Official Assignee—Pleading.

Held. 1. That a plea denying right of plaintiff to goods did not put in issue the fact that plaintiff was Assignee.

2. That the Insolvent Act does not take away right to distrain.

F. Osler for plaintiff.

Davidson for defendant.

Rule absolute, to reduce verdict to $164.25.

Ontario Bank v. Wilcox.

Chattel mortgage—Assignee in insolvency—Notes improperly stamped—Execution—Attachment.

Held (1), That chattel mortgage securing mortgagee against endorsements must shew on its face that the indorsed notes, or renewals, fall due within a year, in order to save mortgages as against creditors or purchasers, but not assignee in insolvency.

(2), Notes improperly stamped are invalid if holder does not attach double stamps and cancel same when first receiving same, and will not support chattel mortgage.

(3), A chattel mortgage valid between the parties at common law, is valid against assignee in insolvency.

(4), An execution against insolvent debtor is superseded by attachment in insolvency, and chattel mortgage void against execution creditor, but good against assignee, prevails over execution so superseded.

M. C. Cameron, Q.C., for plaintiffs.

H. Cameron, Q.C., for defendant.

Rule discharged.

COMMON PLEAS.

IN BANCO—EASTER TERM.

June 28, 1878.

Leys v. Hollinshead.

Mortgage—Delivery—Evidence.

In an action on the covenant in a mortgage to pay the purchase money, the defendant set up that the mortgage had been delivered over by his solicitors to the plaintiff without his authority.

Held, that the evidence set out in the case showed that the plaintiff was cognizant of his solicitors' dealings in the matter, and had authorized the delivery to the plaintiff when the solicitors' in the defendant's interest, should deem it advisable, and it appeared that, on the faith of the solicitors' acts, the position of the parties was changed. The plaintiff was therefore held entitled to recover.

Robinson, Q. C., for the plaintiff.

J. B. Clarke for the defendant.

Ridgway v. The Corporation of Toronto.

Municipal Corporations—Accident—Liability.

The Water Commissioners of the City of Toronto, in order to drain off an old reservoir belonging to the city, but not in use for water works purposes, and in no way connected with the water-works they were constructing, dug a drain along a street in the city, but so negligently that it caved in, whereby the plaintiff was injured. The plaintiff having sued the defendants for the injury he had sustained,

Held, that the defendants were liable.

Denham v. Brewster.

Promissory Notes—Action by wife's administrator—Consideration—Stamps.

Action by plaintiff as administratrix of Mrs. T., widow of R. T., deceased, against defendants, his administrators, on two promissory notes, alleged to have been made by R. T. to Mrs. T., his wife, one bearing date April 2nd, 1869, for $125; and the other bearing date April 3rd, 1871, for $900; both payable one year after date.

Held, that the plaintiff could not recover: that there was no evidence that the wife ever ave any value for the notes, or that she ever

was possessed of or claimed any interest in them during his lifetime, or that they came into the plaintiff's possession in such a manner as to raise any presumption of liability against the husband's estate.

Held, also, that the notes were invalid as they appeared to be insufficiently stamped.

Ogden for the plaintiff.

Robinson, Q. C., for the defendants.

PARKINSON v. CLENDINNING.

Action for unpaid purchase money—Acknowledgment of payment in deed and receipt therein—Equitable right to recover—Agreement—Evidence.

In an action against defendant for unpaid purchase money on the sale of land, the deed thereof acknowledged the purchase money to have been paid, as also did the receipt on the deed, but the defendant in an equitable defence set up by him admitted the money was not paid, but claimed that he was not liable to pay it, by reason of the breach of an agreement made by the plaintiff at the time of the conveyance to pay off a prior conveyance, and on the faith of which agreement the defendant purchased. In his evidence at the trial he made the same admission.

Held, that the Court could entertain the plaintiff's claim as an equitable demand, under the Administration of Justice Act; but that the evidence failed to establish the agreement relied on.

Spencer for the plaintiff.

Beaty, Q. C., for the defendant.

LAW v. HAND-IN-HAND MUTUAL INSURANCE COMPANY.

Insurance—Subsequent erection of steam engine—Waiver—Evidence.

In an action against defendants, a mutual insurance company, on a policy against fire, averring a total loss, the defendants set up that the risk had been increased by the erection on the premises of a steam engine, whereby the policy was avoided. It appeared that when the engine was erected the plaintiff notified the defendants thereof, and they informed him that he must pay an increased premium, which he refused to do, as he said it was too high: that nothing further was done and no further objection was made until a month after the fire occurred: that when by the terms of the policy the renewal premium became due, the plaintiff received notice thereof from the agent to whom the renewal receipt had been sent from the head office, requiring him to pay the same, which he did, and was given the renewal receipt, and there was the same notice and payment of the next renewal premium.

Held, that under these circumstances the company could not set up that the policy had been avoided.

Richards, Q.C., for the plaintiff.

Maclennan, Q.C., for the defendants.

THE CONSOLIDATED BANK v. CAMERON.

Sci. fa.—Assets quando acciderint—Lands.

A *sci. fa.* upon a judgment assets *quando acciderint* must only pray execution of such assets as have come to the defendant's hands since the recovery of judgment, and if it pray execution generally it cannot be supported.

In an action of *sci. fa.* on a judgment against defendant as executrix under the will of C. deceased, it was alleged that divers lands as well as goods and chattels had come to the defendant's hands as such executrix to be administered, and praying execution.

Held, that the lands of which the testator died seized did not become assets in the hands of the executrix to be administered, and there being no evidence of any goods and chattels having come to the executrix's hands to be administered since the recovery of the judgment, a verdict was entered for the defendant. The Court intimated that the plaintiffs could obtain execution against the lands in the ordinary way.

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

Osler, for the defendant.

LOUCKS v. MCSLOY.

Chattel mortgage—Verbal consent to sale—Estoppel—Damages.

A chattel mortgage contained a proviso that in case the mortgagor should attempt to sell, &c., the mortgaged goods or any of them, without the mortgagee's consent in writing, then the mortgagee might enter and take the goods. The mortgagor sold a pair of horses, part of the mortgaged goods, to the plaintiff, when the defendant, the mortgagee, entered and took them, and kept them some four days, when he returned them to the plaintiff, who was not subsequently disturbed in his possession. The plaintiff having sued the defendant for the taking:

Held, that the evidence as set out in the case shewed that the defendant either verbally consented to the sale or acted in such a manner as would estop him from setting up the proviso and denying the property passing to the plaintiff.

Bunker v. *Emmany*, 28 C.P. 438, distinguished.

Held, also, that under the circumstances of the case, the plaintiff could only recover damages for the four days' detention, and not for the value of the horses in addition.

Read, Q.C., for the plaintiff.

Robertson, Q.C., for the defendant.

Sly v. Ottawa Agricultural Insurance Company.

Insurance—Variations of conditions not complying with statute—Value and age of building—Arbitration.

Action on a policy of insurance for $600 on a wooden building, alleging a total loss by fire. The policy contained the statutable conditions, and also what purported to be variations thereof, but without the statutory headings, by which the insured was stated to warrant the truth of the representations as to the value and age of the building, but all the conditions and variations were set out in the declaration. The plaintiff, in his application and proof papers, stated that the building was worth $900 and to be ten years old, while the jury found its value to be $300 and its age 19 years; but that plaintiff's statements as to value were not wilfully made. The defendants set up the breach of warranty, and also fraudulent misrepresentation, as to the value and age of the building. They also set up that by one of the conditions the value must be ascertained by arbitration.

The Court were dissatisfied with the finding of the jury as to the plaintiff's statement as to value not being wilfully made, but refused to give effect to the variations of the conditions, as not complying with the statute, and that even if sufficient whether they were not unreasonable, and that, even though their appearance on the record was the plaintiff's own fault, they would not deprive him of his objection to them, taken at nisi prius, and afterwards insisted upon in term.

The Court, under the circumstances, set the verdict aside: that, if defendants desired to try the question of fraudulent over-valuation, they might have a new trial without costs; but if they only desired to try the question of value, then there was to be an order of reference as required by the conditions.

Smythe (of Kingston) for the plaintiff.

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

Morris v. Hoyle.

Master and servant—Will—Wages.

The plaintiff when an infant a few months old was taken by the defendant, his uncle, a farmer, who had no children of his own, to live on the farm, and he continued to live thereon until just before the commencement of this action, when he was 26 years old, having, but without any contract of hiring, always worked on the farm. When the plaintiff was 16 years old, the defendant led him to understand that he would leave him the farm by his will, and he subsequently made a will in plaintiff's favour. Afterwards they quarrelled, and defendant tore up the will and turned the plaintiff off the farm. The plaintiff then brought this action to recover the value of his services, during the three years after his attaining his majority, it appearing that he and defendant had during the last three years worked the farm on shares, and that during such period no claim was ever made for his services for the three years now sued for.

Held, that the relationship of master and servant never existed between the parties so as to entitle him to recover the value of his services during the period claimed for.

Osler, for the plaintiff.

Robinson, Q.C., for the defendant.

The Stadacona Insurance Company v. McKenzie.

Calls on stock—Computation of time.

Where calls on stock were to be made "at periods of not less than three months' interval," and one call was made payable on the 10th of August, and another on the 10th November.

Held, by the Court of Common Pleas, affirming the judgment of Galt, J., that the interval of three months had not elapsed between the two calls and that the second call was therefore bad.

H. J. Scott for the plaintiffs.

J. Crerar for the defendant.

Parsons v. Victoria Mutual Insurance Company.

Insurance—Further insurance—Setting up—Estoppel.

The plaintiff had been insured on his stock

in the defendants' company in $2,000, and in other companies with defendants' consent in $3,000, making in all $10,000. In July he wrote defendants, notifying them of certain changes he had made in his policies, giving the amounts and companies, the total not exceeding $10,000. The defendants replied that notice of such changes was not necessary when the total amount was not increased. After plaintiff's letter of July, defendants reduced the plaintiff's policies to $1,000, and returned him the unearned premium on the other $1,000 The plaintiff, without notifying defendants, procured an insurance for a $1,000 in the Quebec Insurance Company, and there were changes in some of his other policies, but at no time, and up to the fire, did the total amount exceed $10,000.

Held, that the defendants could not set up that there was a further insurance without the consent of the defendants in writing as required by one of the conditions of the policy.

Osler and *M. McCarthy*, for the plaintiff.

M. C. Cameron, Q.C., for the defendants.

THISTLE v. UNION FORWARDING COMPANY.

Lease—Covenants to repair—Continuing breach—Tempest.

A lease, dated 7th May, 1874, for eight years, was made by the Pembroke Pier and Dock Company of their wharf or pier, to the defendants, containing a general covenant to repair, reasonable wear and tear, and accidents by fire and tempest excepted, and also a covenant to repair after a month's notice in writing, but without the above exceptions. In May, 1876, the pier was damaged by the action of the ice forced against it by reason of a high wind. On 11th February the lease was sold to the plaintiff under an execution against the lessors, and on the 10th July a deed thereof was executed by the sheriff. On 24th November 1876, a written notice to repair was given by the plaintiffs to the defendants. In an action against defendants for the breach of the covenants to repair generally, and after notice, the damage caused by the ice as aforesaid,

Held, that such non-repair was a continuing breach of the covenants to repair of which the plaintiff might avail himself.

Held, also that the covenant to repair after notice was subject to the same exceptions as contained in the general covenant.

Held, also that the damage here sustained, could not be said to be caused by tempest, so as to bring it within the exception.

Robinson, Q.C., for the plaintiff.

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

FITZGERALD v. GRAND TRUNK RY. CO.

Conditions—Additional parol term—Carriage of oil in covered cars—Station Freight Agent.

On the new trial in this case, (see 27 C. P. 528,) the Court was of opinion that a parol contract to carry in covered cars was clearly proved, and that it qualified the written contract to that extent; and that there was no such person as defendants' "station freight agent," at Halifax, to whom plaintiff could give notice as required by the condition in that behalf.

Glass, Q.C., and *Fitzgerald* (London), for the plaintiff.

M. C. Cameron, Q.C. for the defendants.

YOUNG v SMITH.

Landlord and tenant—Proviso for rent becoming in arrear on commencing to remove goods—Distress—Legality.

By the terms of a lease it was provided that in the event of the tenant commencing to remove the goods from the demised premises, the then current year's rent should immediately become due and in arrear. The tenant commenced removing the goods with a view of quitting the premises, when the landlord entered and distrained.

Held, That the distress was legal.

Griffith v. *Brown*, 21 C.P. 12, and *Re Hoskins*, 1 App. 379, distinguished, as being between the landlord and persons claiming under the insolvency, whereas in this case, it was a matter directly between the landlord and tenant, the parties to the contract.

Duff for the plaintiff.

Osler, Q.C., for the defendant.

NEWMAN v. GINTY.

DENISON v. GINTY.

Ry. Co.—Action by creditor against shareholders—Proof of defendant being a shareholder.

In an action against defendant as a shareholder of forty shares for unpaid stock, it appeared that the defendant signed the stock-book, which was headed with an agreement by the subscribers to become shareholders of the stock for the amount set opposite their respective names, and upon allotment by the company "of any or our said respective shares,"

they covenanted to pay the company ten per cent. of the amount of said shares and all future calls. The company subsequently passed a resolution instructing the secretary to issue allotment certificates to each shareholder for the shares held by him. The secretary accordingly prepared such certificates, the one for the defendant representing that the company "in accordance with your application for forty shares," &c., "have allotted to you shares amounting to $4,000." The certificates were handed to the company's brokers to deliver to the shareholders. It appeared that the company published a notice in a daily paper, that these certificates were lying at their brokers, who were authorized to receive the ten per cent.: that the defendant went to the brokers and paid them ten per cent. upon the forty shares; and his name was thereupon entered in the books of the company as the owner of forty shares with a credit of ten per cent. as paid thereon; and that he attended the first meeting of shareholders for the election of directors and moved a resolution for the payment of the provisional directors for their services.

Held, That the defendant was a shareholder.

The defendant also set up a verbal agreement made before subscription with one of the provisional directors of the company that he was not to be a shareholder unless he were awarded a contract by the company.

Held, that no effect could be given to this.

Richards, Q.C., and *T. S. Kennedy* for the plaintiff.

Ferguson, Q.C., for the defendant.

Nasmith v. Ginty.

This was a similar action to the above in which there was the same judgment.

Richards, Q. C., and *Proctor* for plaintiff.

Ferguson, Q.C. for the defendant.

Nasmith v. Manning.

This case differed from the above cases, in this that the defendant never paid the ten per cent., and never called for or received the certificate of allotment of fifty shares for which he subscribed, and he stated that he never had any notice of the allotment having been made to him.

The Court granted a new trial so as to have it expressly found on a fact whether the defendant had received any sufficient notice of the company having accepted him as a shareholder according to his subscription.

Richards, Q.C., and *Proctor* for the plaintiff.

Ferguson, Q.C., for the defendant.

Wilkinson v. Lawson.

Wages—Action for.

In 1863, the plaintiff, whose husband had left her, was hired by the defendant as his housekeeper at $10 a month. He gave her $30 a month for the household expenses, &c., but never paid her anything as wages. In 1875, the plaintiff, who for some time previous had cohabited with defendant, went through the form of marriage with him, and lived with him until 1877, having the full benefit of his earnings and position as his wife, when they quarrelled and separated. It appeared that the husband was alive, of which the defendant was ignorant, and of which the wife stated she also was; but it appeared that she might have ascertained the truth if she had so desired. The plaintiff having sued defendant for wages during the six years previous to the commencement of the action,

Held, that she could not recover.

Davidson Black, for the plaintiff.

J. A. Miller (St. Catharines), for the defendant.

Campbell v. Spurgeon.

Action on covenant to pay mortgage money—Equitable defence—Deeds, construction of.

In an action by the plaintiff as assignee of the covenant contained in a certain mortgage to pay the mortgage money, the defendant pleaded on equitable grounds certain facts to show that the plaintiff was not entitled to maintain the action. The question turned upon the proper construction to be placed upon certain deeds proved and admitted at the trial on which plaintiff's right was based.

Held, that the equitable defence was proved, and a verdict was entered for the defendant.

T. S. Kennedy, for the plaintiff.

J. E. Rose, for the defendant.

FLOTSAM AND JETSAM.

THE *London Standard* thus speaks of the bar in Russia: The bar is to this day far behind in its standard of professional honour and dignity. A system obtains of bargaining direct with the client on the "payment by results" principle. In criminal cases the prisoner will agree to pay his counsel three or four times as much if he secures him an acquittal, and the counsel takes good care to get a large part of this money in advance. A barrister will even descend to frightening his client by exaggerated statements of the danger he is in; and, further, will not scruple to demand, also in advance, payments for "secret purposes"—that is, for bribing influential officials. Indeed, the bar in Russia is mercenary and rapacious; and, as the division of duties recognised in England between the solicitor and the barrister is not known in Russia, sharp counsel are brought face to face with their unhappy clients, and take the measure of their means and ignorant credulity. The barrister regulates his fees in much the same way as an advertising quack doctor would do, and carries on the action or cure in the lowest commercial spirit.

The February number of the *New Zealand Jurist* contains a report of a committal to jail for one month of a barrister practising before the Supreme Court, for contempt of that tribunal. The counsel had objected to the statement of the case made by one of the judges in delivering the judgment of the court. The following conversation ensued: The Chief Justice—It is absolutely impossible to go on with these interruptions. I will not sit here with your interrupting the proceedings, Mr. Barton. Mr. Barton—If your Honour makes decisions which are based upon data contrary to the facts proved in evidence at the trial, I must be allowed to correct the mistakes of the court as to those data. Your decisions should be intelligible to the parties and public, but especially to the parties. The Chief Justice—You must keep your seat and hold your tongue. Mr. Barton—I will assert my right and my client's right, so long as I am in court. The Chief Justice—I will tell you now to keep your seat and hold your tongue—that is the order of the court. After a few more words the court closed the discussion rather abruptly with another order, this time to the jailor, to hold the barrister for one month in his keeping "without special instructions as to diet or otherwise."

The life of an eminent New York lawyer, Charles O'Conor, shows what diligence and perseverance will accomplish. When eight years old, he was an office boy and a newspaper carrier. His father published a weekly newspaper, and Charles, besides attending in the office, delivered the journal to its subscribers in New York, Brooklyn, and Jersey City. He used a skiff to cross the river, and frequently would be out all Saturday night serving his route. It is said that he never missed a subscriber. When seven years old, he entered a lawyer's office as an errand boy. He borrowed law books, took them home, and read them by the light of a candle, far into the night. Several lawyers, noticing the boy's industry, aided him in his studies. When he was twenty-four years old, he was admitted to the Bar; and even then it was said that young O'Conor's legal opinion was worth more than that of many other lawyers. But success comes slowly to a young lawyer, and it was not until his thirtieth year that clients recognized the legal learning and skill of young O'Conor. He was very poor, but industry and ability were his capital. He worked hard at the smallest case, never slighting any trust, and in time secured the reputation of a man who would do his best for those employing him. To this conscientiousness and industry he owed his success.—*Ex.*

CAPITAL PUNISHMENT IN FRANCE.—A bill for the abolition of punishment by death has been laid upon the table of the French Chamber. The proposition bears the signature of Louis Blanc and of 68 other members of the Extreme Left.—*Ex.*

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 41ST VICTORIA.

During this Term, the following gentlemen were called to the Bar, viz.:—

GEORGE FERGUSSON SHEPLEY.
WILLIAM JAMES CLARKE.
WILLIAM EGERTON HODGINS.
JAY KETCHUM.
ROBERT SHAW.
HAMILTON PARKE O'CONNOR.
WILLIAM CAVEN MOSCRIP.
JAMES JOSEPH ROBERTSON.

The following gentlemen were called to the Bar under 39 Vict. chap. 31. :—

DANIEL O'CONNOR.
JOSEPH BAWDEN.

The following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks :—

Graduates.

ALEXANDER DAWSON, B.A.
THOMAS DICKIE CUMBERLAND, B.A.,
WILLIAM BANFIELD CARROLL, B.A.

Matriculants.

FRANCIS BADGELEY WILLIAM MOLSON GILBERT LILLY.
JOSEPH MARTIN.
J. A. C. REYNOLDS.

Junior Class.

HUGH ARCHIBALD MACLEAN.
WILLIAM BURGESS.
LOUIS F. HEYD.
JAMES FOSTER CANNIFF.
JOHN DOUGLAS GANSBY.
GEORGE CORRY.
EDMUND WALLACE NUGENT.
CHARLES PATRICK WILSON.
DAVID MCARDLE.
THOMAS HISLOP.
WILLIAM ALEX. MCLEAN.
ALEXANDER JOSEPH WILLIAMS.
JAMES JOSEPH PANTON.
WILLIAM MELVILLE SHOEBOTHAM.
JAMES GAMBLE WALLACE.
GEORGE MOREHEAD.
WILLIAM GEORGE SHAW.
ROBERT PATTERSON.
HARRY HYNDMAN ROBERTSON.
JAMES ALEX. SHETTLE.
MOSES MCFADDEN.
ARTHUR B. FORD.
GEORGE HIRAM CAPRON BROOKE.

Articled Clerk.

HENRY WHITE.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AFD ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his h ving received his degree.

All other candidates for admission as students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

CLASSICS.

Xenophon, Anabasis, B. I. ; Homer, Iliad, B. I. ; Cicero, for the Manilian Law ; Ovid, Fasti, B. I., vv. 1-300 ; Virgil, Æneid, B. II., vv. 1-317 ; Translations from English into Latin ; Paper on Latin Grammar.

MATHEMATICS.

Arithmetic ; Algebra, to the end of Quadratic Equations ; Euclid, Bb. I., II., III.

ENGLISH.

A paper on English Grammar ; Composition ; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

HISTORY AND GEOGRAPHY.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:

FRENCH.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or GERMAN.

A Paper on Grammar. Museaus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students-at-Law), are required to pass a satisfactory Examination in the following subjects:—

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography — North America and Europe.
Elements of Book-keeping.

A student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination hall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Leake on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CALL, WITH HONOURS.

For Call, with Honours, in addition to the preceding:—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

2nd Year. —Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year. —Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice in this Province.

N.B.—After Easter Term, 1878, Best on Evidence will be substituted for Taylor on Evidence; Smith on Contracts, for Leake on Contracts.