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WE delay the issue of this number that we may be able to give our subscribers the Index and Table of Cases for the current year. The Sheet Almanac will be issued with our next number, which will appear on the 16th January next.

WE are compelled by the pressure of other matter to hold over until our next issue a very interesting article by R. Vashon Rogers entitled, "Law for Ladies." His pen gives sound law in a most readable form.

OUR publishers have made arrangements by which the CANADA LAW JOURNAL and the *American Law Register* will be supplied to our subscribers at the low rate of \$9 per year. We hope that a large number will avail themselves of this liberal offer.

THE Maritime Court has hitherto done its work without much assistance in the way of rules. It has been found desirable, however, to add to the few in existence and recast the whole of them. The task devolves upon His Honour Judge Macdougall, Judge of the Maritime Court. The work is in able hands and will be well done.

AT a meeting of the Supreme Court of Judicature, on the 15th inst., at which were present the Chancellor, Sir Thomas Galt, C.J., MacLennan, J.A., and Proudfoot, Rose, Robertson, MacMahon and Street, JJ., it was resolved that Rule 671 be, and the same is hereby rescinded, and the following substituted therefor, viz.: "Actions not tried or disposed of after being once entered for trial shall remain for trial subject to the provisions of Rule 670, but shall not be heard at any subsequent sittings unless and until a fresh notice of trial be given for such sittings by one of the parties."

WE are pleased to be able to announce that the Law Faculty of the Provincial University is now fully organized. The University, the public, and the profession are to be congratulated on the appointments made. The staff consists of two paid professors and nine honorary lecturers, who give their valuable time gratuitously. The Professors are Hon. Justice Proudfoot, lecturer on Roman Law; and Hon. David Mills, LL.B., lecturer on Constitutional and International Law. The Honorary Lecturers and their subjects are:—Hon. Justice MacMahon, Wrongs and their Remedies; Hon. Edward Blake, Q.C., Constitutional Law; Hon. S. H. Blake, Q.C., Ethics of Law; Mr. Dalton

McCarthy, Q.C., Civil Rights; Mr. W. R. Meredith, LL.B., Q.C., Municipal Institutions; Mr. B. B. Osler, Q.C., Criminal Jurisprudence; Mr. Z. A. Lash, Q.C., Commercial and Maritime Law; Mr. Chas. Moss, Q.C., Equity Jurisprudence; Mr. J. J. Maclaren, LL.D., Q.C., The Comparative Jurisprudence of Ontario and Quebec. Mr. Justice Proudfoot's department is in the fourth year, but as there are no fourth year students yet, his lectures will not be delivered until next year. The Hon. David Mills commenced his lectures on the 17th instant, and will continue after the new year. The Honorary Lecturers will begin work with the new year according to the calendar which has just been prepared. Mr. Justice MacMahon, on account of his recent appointment, and Mr. Meredith, on account of other engagements, desire to defer their lectures till next year. The appointments are limited to five years, so that such changes can be made without inconvenience, either by omission or addition, as may be considered necessary.

THE TORRENS ACT IN MANITOBA.

From a paragraph which recently appeared in some of the Toronto daily papers we learn that the Torrens system of registration of titles is proving a great success in Manitoba. The Act is fortunately being administered by a gentleman who appears to be fully in sympathy with its provisions, and enthusiastic in his efforts to make it efficient. A recent decision of the learned Chief Justice of Manitoba, however, seems to us likely to have a somewhat retrograde effect. *In re Lewis*, 5 Man. R. 44, the question came up for decision, whether the provision of the Real Property Act, 1885, which provides for the devolution of real estate upon the personal representative of a deceased owner extends to all lands in the province, or only to lands registered under the Act. The learned chief justice came to the conclusion that the provision in question only applies to registered lands, and that as regards lands not registered, the old law of descent prevails. The inconvenience of having two different systems of succession to real property in force in the same province would, one would have thought, have weighed with the court as a very strong reason against arriving at this conclusion; but there is not only the argument of inconvenience which may be urged against the learned chief justice's conclusion, but there is also the fact that his decision is apparently opposed to the policy inaugurated by the Real Property Act of 1885. The manifest policy of that Act, we take it to be, was to simplify titles and to facilitate the registration of titles to land under the Torrens system. One of the means by which this simplification of titles was to be accomplished, was, by the alteration of the law of succession, by getting rid of the heir-at-law, the fruitful source of so many of the difficulties in the title to real estate. By the operation of this new law of succession, the Act designed by a gradual and imperceptible means to simplify titles, and in this way facilitate their ultimate registration under the Act. The learned chief justice, however, by his construction of the Act, has given a very effectual setback to this policy. Under his decision the old difficulties attendant upon the common law system of descent are to accumulate, and titles, instead of gradually

getting simpler; are to go on in the old style, gradually getting more difficult of proof with each change of ownership; and thereby the possibility of their being registered will be rendered more and more difficult as time rolls on. This decision appears to have been arrived at by a somewhat artificial and technical construction of the Act, which certainly is broad enough in its terms to have warranted a more liberal construction.

The learned chief justice had not the benefit of argument of counsel, and his decision was given upon a case stated by the Registrar-General. These facts stated, showed that letters of administration of the personal estate and effects of a deceased owner were granted to a Mr. Sutherland, and under these letters he assumed to convey the equity of redemption. It occurs to us that the letters of administration in any case, to be effectual to give title to the real estate, should extend in terms to the real as well as the personal estate of the deceased. One of the questions propounded was, whether letters of administration were sufficient proof of the death and intestacy of the deceased; the learned chief justice, founding himself on the law of England, came to the conclusion that letters of administration were not sufficient proof of death and intestacy as regards the realty. But if the letters of administration are expressly granted in respect of both real and personal estate, we do not see why the letters would not be just as ample proof of death and intestacy as regards the realty as they are with regard to the personalty.

On the whole, we think it is unfortunate that so important a question should have been disposed of without argument, and, as it were, by a sort of side wind.

Notes on Exchanges and Legal Scrap Book.

"THE WEEK."—We are pleased to notice the improvement which has been made in our esteemed contemporary, *The Week*, now in the sixth year of its publication. The publishers promise that its independent attitude in politics and criticism will be rigidly maintained, and we understand that important additions to its list of contributors will give additional interest to its columns during the coming year. In its enlarged form, it is the same size as *Harper's Weekly*, and is the largest paper of its class on the continent. We commend *The Week* to our readers as an excellent example of the higher type of journalism. The price remains as formerly, \$3 per annum.

THE FIRST CASE IN CHICAGO.—The following sketch from the *Chicago Legal News* is from the pen of Dr. Caton, ex-Chief Justice of the Supreme Court of Illinois.

Perhaps ten days after Spring and myself had introduced ourselves to the little public of Chicago, I obtained a client. Ready to earn a little outside the profession, both Spring and myself had undertaken to carry the chain for Josh. Hathaway, who had come to Chicago with me, and had been given a small job of surveying by Geo. W. Snow, who was Deputy County Surveyor.

Josh. had studied surveying theoretically, but had never set a compass, while I had some practical knowledge of the subject, so it was agreed that he should hold himself out as a surveyor, without advising the public of his want of practice, and that when he got a job I would go along to carry the hind end of the chain, and quietly give him any instructions he might need in starting. Spring was glad to go along to carry the fore end of the chain, for he seemed to be as glad to earn a dollar as I was. We found our starting point perhaps a mile north of the town, east of the north branch in the timber, and ran north. At noon we came back to town for our dinners, and as we passed the clerk's office on our way, Col. Hamilton came out and told us of a man who wanted to bring an action in attachment. We both wanted the case, of course, but agreed that we would eat our dinners and return to our work, and the Colonel was to send the client after us, and we would trust to luck as to which he would come upon first, who, of course would get the case. We told the Colonel that we would be found in that alder swamp, to which he was to direct the client. I thought that my position at the hind end of the chain would give me the advantage, for the man would most likely strike our trail where we entered the swamp, and so must necessarily follow it up, and come upon me first. We went back to our work, but made very slow progress in the dense thicket, all being idle most of the time except the axe-men. So soon as they had cleared the way sufficiently to let us advance we did so, and then sat down to wait. While thus sitting on a log, I heard a crashing in the brush, and guessed instantly that it was the coveted client. He was fighting his way slowly through the thicket, but making directly for the choppers. I thought the game was lost, but when he got opposite me, not more than twenty feet away, the devil took control of my hands, and I lifted the handful of steel pins in my right hand and dropped them into my left, which made a pretty loud ringing noise. Instantly the noise in the brush stopped, as if the traveller was in the attitude of listening. The sight could not penetrate more than half the distance between us, and the blows with the axes still continued. This, I apprehended, must soon start the man on his way to them, so I gave the stakes another ringing clash into my left hand, when the man started directly toward me, and asked me if I was a lawyer. I felt guilty of having broken the spirit of our agreement, if not the letter, and regretted what I had done; but it was then too late to repair the wrong. I said yes, and we started for the clerk's office together, and on the way he stated his case to me. A man owed him some money, who was a non-resident, but had some property which he wished to attach. We went to the clerk's office, where I prepared the necessary papers, and procured the writ of attachment, which was duly served by the time the surveying party returned. Spring was employed the next day by John Bates to interplead.

In May, 1834, the case was tried before the first petit jury ever impanelled in the Cook Circuit Court, when Spring beat me and got the verdict. I got my judgment by default against the debtor, but could never find a thing out of which I could collect it, and, as my own client never showed up again, I got nothing except a small retaining fee, while Spring got a good fee and a good client; so the laugh was on his side at the end, which I think he enjoyed almost as much as he did the fee.

DIARY FOR DECEMBER.

2. Sun.....1st Sunday in Advent.
4. Tues....General Sessions and C.C. sittings for trials in York.
6. Thur....Chancery Division H.C.J. sits.
8. Sat.....Sir W. Campbell, 6th C.J. of Q.B., 1885. L. S. Michaelmas term and H.C.J. sittings end.
9. Sun.....2nd Sunday in Advent.
11. Tues....General Sessions and Co. Ct. sittings for trials, except in York.
16. Sun.....3rd Sunday in Advent.
21. Fri.....Shortest day. St. Thomas.
23. Sun.....4th Sunday in Advent.
24. Mon....Christmas vacation begins.
25. Tues....Christmas day. Sir M. Hale died, 1676, æt. 67.
26. Wed....St. Stephen.
27. Thur....J. F. Sprigge, 3rd Chan., 1869.
30. Sun.....1st Sunday after Christmas. Holt, C.J., born, 1642.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

COURT OF APPEAL.

Re OSTRAM AND THE CORPORATION OF THE
TOWNSHIP OF SYDNEY.

Municipal Act, R. S. O. c. 184, s. 546—Notice of by-law to open road—Computation of time—Quashing by-law.

The Municipal Act, s. 584, enacts that no council shall pass a by-law for establishing a public highway until written or printed notices of the intended by-law have been posted up one month previously in six of the most public places in the neighbourhood of such road, etc.

The defendants on the 29th of July, 1887, published notices of their intention to pass a by-law on the 29th of August, 1887, to open a road across nine lots on the first concession of the township. On that day the council met and passed a by-law establishing a road across only four of the lots mentioned in the notice. The date of putting up the notice was recited in the by-law, and was admitted by the affidavits filed by the defendants on showing cause to the motion to quash the by-law.

Nothing had been done under the by-law.

Held, that the giving of the prescribed notice is a condition precedent to the right of the council to pass such a by-law; that the month is to be computed exclusive of the first and last day, and, therefore, that a notice on

the 29th of July of an intention to pass a by-law on the 29th of August, was insufficient.

Authorities as to computation of time in such a case considered.

Laplante v. Peterborough, 5 O. R. 634; *Wannamaker v. Green*, 10 O. R. 547, approved of.

Quere, whether the council could pass a by-law to open up or establish a road other than the road as described in the notice.

Baker v. Saltfleet, 31 U. C. R. 386, referred to.

Judgment of the court below reversed.

STUART v. GROUGH *et. al.*

Attachment of debts—Equitable debt—Payment by garnishee to attaching creditor after appointment of receiver—Receiver.

The interest of a debtor in a trust estate consisting of the right to a share of the proceeds of the sale of such estate when made by the trustees, is not attachable under rule 370 (Consol. Rule 935) relating to the attachment of debts. It is only a debt legally or equitably due, or accruing due, that is to say, *debitum in presentie solvendum in futuro*, which is capable of attachment; moneys which may or may not become payable by a trustee to his *cestui que* trust are not debts.

The case of *Leeming v. Woon*, 7 A. R. 42, is not to be followed, being founded on *Re Cowan's Estate*, 18 Chy. D. 638, which is now overruled by *Webb v. Stenton*, 11 Q. B. D. 530.

Judgment of FERGUSON, J., reversed.

The proper course in a case like this is to obtain equitable execution against the debtor's interest by the appointment of a receiver. For this purpose it is now unnecessary that the creditor should issue writs of *fi. fa.* against goods or lands.

After an order to pay over had been made upon the garnishee summons, but before the property had been sold by the trustees, an order for a receiver had been obtained by another judgment creditor, under which a receiver was duly appointed, and notice thereof given to the garnishees (the trustees) and the attaching creditor. Notwithstanding this, the garnishees subsequently, without further compulsion or threat of execution, paid the money to the attaching creditor without moving

against the attaching order, and without notice to the receiver, or giving him an opportunity of doing so :

Held, that the equitable execution must prevail, and such payment did not discharge the garnishees. The effect of the order for a receiver was absolutely to preclude the judgment creditor from enforcing the order to pay over, and the garnishees from disposing of the money when received by them (otherwise than by paying it to the receiver) without leave of the court.

The duty of garnishees who have notice of circumstances affecting the right of the attaching creditor, to enforce the order to pay over pointed out.

Wood v. Dunn, L. R. Q. B. D. 72, considered.

The effect of the appointment of a receiver upon the rights of an attaching creditor considered.

Hawkins v. Gathercole, 1 Drew. 12 ; *Ames v. Birkenhead Dock Co.*, 20 Beav. 332, acted on.

WARNOCK *v.* KLÖPFER.

Insolvent debtor—Assignment of book-debts—
48 Vict. c. 26, s. 2 (O.).

Held, affirming the judgment of the Chy. D. 14, O. R. 288, that book-debts are a species of property covered by s. 2 of 48 Vict. c. 26 (O.), and that any gift, conveyance, assignment, transfer or delivery thereof by a debtor in insolvent circumstances is void.

Burton, J. A., dissenting.

THE PUBLIC SCHOOL TRUSTEES OF SECTION NO. 9, NOTTAWASAGA *v.* THE CORPORATION OF THE TOWNSHIP OF NOTTAWASAGA.

Division Courts Act, R. S. O. (1887), c. 51, ss. 77, 78—*Splitting cause of action—Abandoning excess—Res judicata—Public School Acts*, 43 Vict. c. 33, s. 4 ; 48 Vict. c. 49, s. 126 ; R. S. O. 1887, c. 225, s. 117—*Right of trustees to whole proceeds of rates levied for school purposes—Money had and received.*

In each of the years 1881 to 1886 inclusive, the defendants levied a rate to raise the sums

required by the plaintiffs for school purposes. The rate was imposed in good faith, as being the nearest which could be struck in order to insure the collection of the sum demanded with the necessary expenses, but in each year a small surplus was produced by it, which the council refused to pay over to the trustees, contending that they were entitled to retain and apply it toward payment of any sum which might be demanded by the trustees in a future year, as in the case of an excess collected on account of a special municipal tax for a local object under s. 365 of the Municipal Act.

Held, affirming the judgment of the County Court, that this section did not apply, and that the money having been collected for school purposes, the council was required by the statute to pay it over to the trustees in each year. It was not intended by the Consolidated Public Schools Act of 1885, 48 Vict. c. 46 ; R. S. O. 1887, c. 125, to alter the law in this respect.

The difference between the powers of public school trustees and of the Roman Catholic separate school trustees to levy school rates by their own authority observed upon.

In 1887 the plaintiffs sued the council in the Division Court for the surplus rates received by them in 1881, and recovered judgment therefor. They afterwards brought this action in the County Court for the surplus received in the five subsequent years. The defendants contended that the claim was *res judicata* by reason of the judgment in the Division Court, and also that the plaintiffs were not entitled to recover, because by suing in the Division Court for the surplus of 1881 alone, they had divided their cause of action into two or more suits, contrary to s. 77 of the Division Courts Act, R. S. O. 1887, c. 51.

Held, reversing the judgment of the County Court, (1) That the recovery in the Division Court being for a wholly distinct and separate cause of action, and not upon a balance of account under s. 77, or after abandonment of the excess under Rule No. 7, was no defence to an action for the surplus rates received by the defendants in the subsequent years ; (2) That if there had been a splitting of the cause of action within the meaning of the Act, by suing for the surplus of one year alone, the objection should have been taken as a defence,

or by way of motion for prohibition, in the first suit, and could not be pleaded as a bar to this action.

Semble, that the several claims being entirely distinct and unconnected, did not form "cause of one action," so as to come within the prohibition of s. 77 against dividing a cause of action.

Re Ackroyd, 1 Ex. 479, referred to.

The proper form of judgment in the Division Court when the excess is abandoned, or the action is for balance of an account, pointed out.

REDDICK v. SAUGEEN.

Fire insurance—Statutory conditions—Additional conditions—Title—Physical risk—Moral risk.

The defendants in the prescribed manner endorsed upon the plaintiff's policy, as an addition to the first statutory condition, a condition providing that any fraudulent misrepresentation in the application, or any false, or incorrect statement representing the title or ownership of the applicant, or the concealment of any mortgage or execution, or any incumbrance on the property or on the land on which it was situate, should avoid the policy, unless the directors in their discretion should see fit to waive the defect. In his application the plaintiff stated that the land on which the building proposed to be insured was situated, was incumbered by a mortgage for \$1,500, but omitted to disclose that it was also charged, together with other property, with a small life annuity in favour of his father. The omission was not explained, but it was not attributed to any fraudulent intent.

The defendants pleaded that the non-disclosure of that charge avoided the policy under the first statutory condition on the above addition thereto.

The jury found that the existence of the annuity was not material to be made known to the defendants.

Held, affirming the judgment of the Q. B. D., (1) That the non-disclosure of the annuity was the concealment of an incumbrance within the meaning of the added condition. (2) That the added condition was not a just and reasonable one, because it was not limited to such facts or matters as were material to be made known

to the company. (3) That the Divisional Court might determine whether the condition was a just and reasonable one, and that it was not necessary that it first should have been raised at the trial.

In the statutory declaration proving the claim under the policy, the plaintiff said nothing of the annuity in favour of his father. Defendants failed to prove, and the jury were not asked to find, that the declaration was fraudulently false in this respect :

Held, no defence under the 15th statutory condition. *Mason v. Andes*, 18 C. P. 19, followed.

Semble, the first statutory condition applies to matters of title or incumbrance, or concerning the "moral" as well as the "physical" risk, where the policy is based upon an application on which the insured is interrogated as to such matters.

Klein v. The Union Ins. Fire Co., 3 O. R. 234, approved and distinguished.

On the argument of the appeal, the defendants for the first time set up that by the application the plaintiff had described the building insured as occupied by himself and his tenants as a dwelling-house, thereby contracting with the defendants that it was so occupied; whereas, in fact, it was then vacant; and that there being thus an entire misdescription of the subject matter of the insurance, the risk never attached. On the pleadings and at the trial this misdescription was relied upon, merely as being a material misdescription avoiding the policy under the first statutory condition. This issue was found in favour of the plaintiff, it being proved that the policy had been issued in substitution of a former policy in the defendant company, the risk on which they had continued after accepting notice that the building had become vacant, and that the application for the substituted policy had been filled up by their general manager, to whom the plaintiff had given all the information he asked, and had told him that the building was then unoccupied.

Held, that under the circumstances the knowledge of their general manager was the knowledge of the company; that the misdescription was immaterial, and that the defendants could not be permitted at that stage of the cause to shift their ground and set it up as a covenant.

EMBURY v. WEST.

Chattel mortgage to secure indorser—Relation back to prior agreement—Renewal.

A chattel mortgage to indemnify an endorser or to secure the mortgagee against liabilities otherwise incurred for the mortgagor, if given in good faith in pursuance of an antecedent absolute promise, is not avoided by the Act relating to assignments and preferences by insolvents, merely because it was not given contemporaneously with the indorsement or other liability.

The requirements of section 6 of the Chattel Mortgage Act, as to setting forth an agreement in the mortgage, apply only to mortgage to secure future advances for the purposes therein mentioned.

In the case of a mortgage under that section as security against liabilities incurred by indorsing, or in any other way, all that is necessary is that the liability shall be one not extending for a longer period than one year from the date of the mortgage, and shall be sufficiently described or identified therein.

The head note in *Barker v. McPherson*, 13 A. R. 356, corrected.

The reference in such a mortgage to a possible future renewal or extension of the liability which has not been agreed for, and which the mortgagee is not bound to accede to, does not invalidate the mortgage if in other respects sufficient.

HIGH COURT OF JUSTICE FOR
ONTARIO.*Queen's Bench Division.*

Div'l Ct.] [Nov. 19.]

FINCH v. GILRAY.

Landlord and tenant—Payment of taxes by tenant—Rent—Real Property Limitation Act.

Where there is no contract between landlord and tenant as to payment of taxes on the demised premises the landlord must pay them; and, therefore, payment of the taxes by the tenant must be regarded as part of the compensation which the landlord receives for the use of the land.

And where the tenant agreed to pay the taxes, and six dollars monthly in addition, and did pay the taxes during the whole period of his possession, but did not pay anything else from Christmas, 1867, until March, 1886.

Held, that the payment of taxes was equivalent to payment of part of the rent, and prevented the running of the statutory period of limitation prescribed by the Real Property Limitation Act.

Per STREET, J., dissenting, that the collector could not be treated as the agent of the landlord, and the payment of taxes was not sufficient to take the case out of the statute.

Wallace Nesbitt, for the plaintiff.

J. B. Clarke, for the defendant.

Chancery Division.

Boyd, C.] [Nov. 28.]

BUTLAND v. GILLESPIE et al.

Mortmain Act—Toronto General Hospital—16 Vict. c. 220—Devise of land.

The Act 16 Vict. c. 220, incorporating the Toronto General Hospital, provides that it shall and may be capable of receiving and taking from any person . . . by grant, devise, or otherwise, any lands, or interest in lands, . . . which any such person may be desirous of granting or conveying for the support and use of the hospital.

Held, that the plain meaning of this provision was to capacitate any person to devise land to the hospital, and to qualify the hospital to receive and enjoy beneficially lands so devised, notwithstanding the Mortmain Act, and a devise of lands to the hospital held valid.

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

Moss, Q.C., and *Barwick*, for the defendants.

Boyd, C.] [Nov. 28.]

TOTTEN v. TRUAX.

Tax sale—Indian lands—R. S. C. c. 43, s. 77.

Held, that R. S. C. c. 43, s. 77, s.s. 3, exempting Indian lands from taxation, only so exempts such lands while the title and interest is wholly in the Crown, but if the Crown sells or locates, then the interest of the purchaser

or locatee is subject to taxation by the local government.

Recent legislation at Ottawa is in recognition of the right thus to sell the interest of holders of Indian lands while yet unpatented, such sales being subject to the recognition of them by the Superintendent-General of Indian Affairs, 51 Vict. c. 22.

Held, also, the reeve of the municipality was not disqualified from purchasing at a sale for taxes. He had no power or duties with reference to the taxes or to the sale of a personal or official nature, and no interference in fact was proved.

Masson, Q.C., for the plaintiff.

O'Connor, for the defendant.

Practice.

Ferguson, J.]

[Nov. 17.]

ARCHER *v.* SEVERN.

Costs out of estate—Interest upon from taxation.

Costs of all parties of an action for the construction of a will were ordered to be paid out of the estate of the testator, and were taxed in 1883, but there were no funds available for their payment until 1888.

Held, that interest upon these costs could not be allowed out of the estate.

H. Cassels, for the executors.

Snelling, for the other parties interested.

Ferguson, J.]

[Nov. 13.]

In re CHAMBLISS AND CANADA LIFE ASSOCIATION COMPANY.

Administrator ad litem—Con. Rule 311.

C. joined his wife in executing a mortgage on her land to a company, covenanting for payment, and then died intestate.

The company, being about to sell the land to realize their claim on the mortgage, desired to have C.'s estate represented for the purpose of claiming against it for any deficiency. No letters of administration having been taken out.

Held, that it was proper to appoint an administrator *ad litem* under Con. Rule 311.

Bruce, Q.C., for the company.

No one contra.

Street, J.]

[Dec. 4.]

In re CHATHAM HARVESTER CO. *v.* CAMPBELL.

Arrest—Judgment debtor—Order for examination—Appointment—Failure to attend—Committal—Substituted service of summons—Writ of attachment—Notice to debtor.

An order was made by a judge of the High Court, upon the return of a *habeas corpus*, for the discharge of the defendant from custody under a writ of attachment issued by order of a County Judge in an action in a County Court.

Held, 1. That an order to examine the defendant as a judgment debtor, and an appointment under it, together were equivalent to an order that the debtor should attend upon the day mentioned in the appointment, and when he obeyed the order by attending and offering to be examined, its force was spent, and the power of the examiner under it at an end; to obtain a fresh appointment a fresh order was necessary.

Jarvis v. Jones, 4 P. R. 341; *McGregor v. Small*, 5 P. R. 56, referred to.

2. If an order for substituted service of a summons or notice of motion to convict can be made at all, even under the wide language of Con. Rule 467, it should not be made, except in a case where no doubt exists that the notice will come to the knowledge of the person against whom it is directed.

3. The order asked for by the summons, viz., for the committal of the defendant to the common gaol, was the appropriate punishment authorized by R. S. O. (1877), c. 50, s. 505, for disobedience to an order to attend for examination; and an order for the issue of a writ of attachment requiring the sheriff to hold the debtor in custody for an indefinite period was improper. At any rate, a different order from that indicated in the summons should not have been made in the absence of the debtor.

4. The writ of attachment under which the debtor was held was improperly issued without notice to him, as required by Con. Rule 879, and it made no difference that it was in lieu of one which had expired.

E. D. Armour, for plaintiff.

Aylesworth, for defendant.

STREET, J.] [Dec. 11.]

In re PECK AND TOWNSHIP OF
AMELIASBURGH.*By-law—Procedure on motion to quash—Notice of motion—Time.*

The procedure by rule *nisi* to quash a by-law is no longer in force, and the proceeding by motion is substituted for it; but section 332 of the Municipal Act, R. S. O. c. 184, which requires four days' notice of an application to quash, is still in force; and the notice of motion given in this case, being only a two days' notice, was insufficient.

A. H. Marsh, for the applicant.

No one for the township.

Street, J.] [Dec. 11.]

WILLGRESS *v.* CRAWFORD.*Foreclosure—Subsequent incumbrancer—Reference—Interlocutory order—Amending judgment.*

There is no authority to make a reference by interlocutory order to a Master to add parties, with the object of allowing them to redeem or having them foreclosed.

And where the plaintiff in a mortgage action obtained the usual foreclosure judgment, and had his account taken thereby without a reference, and after final order of foreclosure discovered that a subsequent incumbrance existed, the judgment was amended under Con. Rules 780 and 781, so as to convert it into a judgment under Con. Rule 776, with a reference to the Master in Ordinary to add incumbrancers, take the accounts, etc.

H. T. Beck, for the plaintiff.

MacMahon, J.] [Dec. 11.]

REGINA *v.* REMON.*Criminal law—House of ill-fame—Inmate—Satisfactory account of herself—R. S. C. c. 157, s. 8, s. 5. (j.)*

Upon a charge against an inmate of a house of ill-fame under s. 5, j., of s. 8, of R. S. C. c. 157, it is not necessary to show that the accused was called upon to account for her pres-

ence in the house before arrest; the concluding words of the sub-section, "not giving a satisfactory account of themselves," are to be read as applying only to frequenters, and not to keepers or inmates.

Regina v. Leveque, 30 U. C. R. 509, distinguished.

Aylesworth, for the defendant.

J. R. Cartwright, for the Crown.

Street, J.] [Dec. 11.]

TRUST AND LOAN Co. *v.* GORSLINE.*Receiver by way of equitable execution—Attachment of debts—Salary not yet due.*

Judgment creditors, on the 7th December, 1888, moved for a receiver by way of equitable execution to receive money, which they alleged would be due to the judgment debtor on the 21st December, 1888, for salary as a schoolmaster. The application was refused.

Held, that if the debt was one which could be garnished, the judgment creditors should attach it; if it could not be garnished, it was because there was no debt at all.

Kincaid v. Kincaid, 12 P. R. 462, distinguished.

A. H. Marsh, for the judgment creditors.

No one for the judgment debtor.

Street, J.] [Dec. 11.]

In re D. *IN* INFANTS.*Infants—Habeas corpus—Right of father to custody—Age of infants—Habits of parents—Religious belief—R. S. O. c. 137, s. 1.*

Upon an application by the father of two infants, under the ages of five and three respectively, for a *habeas corpus* to obtain their custody from the mother, it appeared that the applicant was a man of drunken habits and of evil conversation, that he had beaten his wife and so ill-treated her that she was justified in leaving him, while she was a moral and sober woman. It was also shown that the maternal grandmother of the infants was able and willing to give them a home with their mother, who lived with her, while the paternal grandmother was neither able nor willing to do so.

Held, that, having regard to the welfare of the infants and the conduct of the parents, the mother should have the custody for the present.

It was urged that the father had a right to have the children brought up as Presbyterians, and that the mother and her mother were both members of the Salvation Army.

Held, that this question was not a pressing one, owing to the tender age of the infants; the father might raise it again.

Held, also, that having regard to the wide discretion given by R. S. O. c. 137, s. 1, the judge was freed from any possible obligation to make, upon the application of the father, an order which would be refused in the application of the mother.

F. E. Hodgins, for the father.

W. H. P. Clement, for the mother.

Street, J.]

[Dec. 11.

BURKE v. PITMAN.

Indemnity — Relief against co-defendants — Procedure where such relief claimed — Trial of questions raised.

No order is necessary to enable a defendant to plead a claim for indemnity against his co-defendant, but such a claim will not be tried without an order providing for the determination of the question so raised.

P. borrowed money from the plaintiff, and then went into partnership with N. P. and N. afterwards sold the business to B. The plaintiff, having judgment against P., brought this action against P., N. and B. to set aside the sale to B. as fraudulent. P. alleged in his defence that N. agreed to pay half his debts, including that to the plaintiff, and that B. agreed to pay the liabilities of P. and N. appearing in the books, which the liability to the plaintiff did, and he claimed indemnity against N. and B.

Held, that the trial of the question whether or not the sale to B. was fraudulent as against the plaintiff, would involve an inquiry as to the terms upon which B. purchased from the other defendants, and that the whole matter was one that might be advantageously disposed of at one hearing.

George Macdonald, for the plaintiff.

George Ritchie, for the defendant P.

Gunther, for the defendants N. and B.

Rose, J.]

[Dec. 14.

PATTERSON v. GILPERT.

Report—Confirmation—Order—Consent.

Unless by consent, a report cannot be confirmed until after the lapse of time limited by Con. Rule 848.

It is an undesirable practice for an officer to make an order confirming his own report.

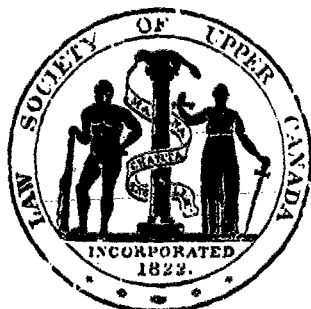
W. H. Blake, for the defendant.

H. H. Robertson, for the plaintiff.

Miscellaneous.

IN NEWGATE.—A well-known member of the Chicago Bar, who visited London during the past summer, among the sights took in the famous Newgate prison, whence so many prisoners, in times past, went forth to die upon the scaffold. He expressed a wish to his English guide to go inside one of the cells and see how it looked. The Englishman said "Certainly." The Chicago lawyer had no sooner entered the cell than the Englishman quietly shut the door, locked it, and walked away. The lawyer at first thought he would be liberated in a few minutes. He lighted a cigar and commenced smoking. But when half an hour had passed, and no one came, he called aloud for help, and kicked the door as if he would kick it down, but no one heard his cries; if they did, they were not heeded. After more than an hour had passed, the keeper came and wanted to know what in the world the prisoner was kicking up such a row for. The lawyer was told that the rules of the prison were so strict that no matter how a person came to be locked up in a cell, he could only be discharged upon a ticket or leave, which could only be obtained from the prison authorities. The ticket was soon obtained. The guide then told the lawyer if he had seen enough of their English sweat-box he was entitled to his discharge, and that twelve men who had been confined in that cell had been hung for crimes against the State. The matter was finally settled to the satisfaction of all concerned by the lawyer, the keeper, and the guide, over a glass of half-and-half.—*Chicago Legal News.*

Law Society of Upper Canada.



TRINITY TERM, 1888.

The following gentlemen were called to the Bar during Trinity Term, 1888, viz.:—*September 3rd*—Robert James McLaughlin, with honours, and awarded a gold medal; William Mundell, with honours, and awarded a silver medal; William Henry Williams, Alexander James Boyd, Stuart Alexander Henderson, Clifford Kemp, John Kyles, Henry Edward Irwin, Henry Newbolt Roberts, William John McWhinney, John Barrett Davidson, Charles Albert Blanchet, Edward Herbert Johnston, John Clark, Arthur Wellington Burk, Orville Montrose Arnold, Joseph Hood Jacks, Hubert Hamilton Macrae, Arthur Arnold Mahaffy, Robert Osborne McCulloch, William Wallbridge Vickers. *September 4th*—Robert Hall Pringle. *September 8th*—Henry Blois Witton, Edward Henderson Ridley, Ralph Robb Bruce. *September 14th*—Stephen Wesley Burns.

The following gentlemen were granted Certificates of Fitness as Solicitors, viz.:—*September 3rd*—W. H. Williams, E. W. H. Blake, C. A. Blanchet, W. W. Vickers, R. M. Dennistoun, W. A. F. Campbell, J. B. Davidson, A. MacNish, O. M. Arnold, E. H. Johnston, W. Lawson. *September 4th*—A. J. Boyd, C. Kemp, W. Mundell. *September 8th*—T. Browne, H. E. Irwin, J. Kyles, J. T. Doyle, J. L. Peters, E. H. Ridley. *September 14th*—M. Wright, A. W. Burk, S. W. Burns.

The following gentlemen passed the Second Intermediate Examination, viz.:—A. E. Lusier, with honours and first scholarship; and Messrs. G. Ross, B. N. Davis, T. W. R. MacRae, F. M. Young, F. S. Mearns, A. Weir, J. McCulloch, W. A. Thrasher, C. E. Lyons, E. L. Elwood, J. W. Roswell, A. B. McCollum, R. Segsworth, J. F. Keith, G. E. K. Cross, J. B. Arnold, H. D. Cowan, W. J. Hanna.

The following gentlemen passed the First Intermediate Examination, viz.:—W. Wright, with honours and first scholarship; A. G. McKay, with honours and second scholarship; J. A. Ferguson, with honours and third scholarship; A. J. Anderson and A. G. McLean, with honours; D. O'Brien, F. Pedley, W. E. L. Hunter, A. H. Northey, W. F.

Smith, A. C. Boyce, S. E. Lindsay, R. C. Gillett, W. McBrady, G. T. Kerr, A. Crozier, H. L. Puxley, D. Mackenzie, D. J. Hurteau, J. J. Drew, S. C. Macdonald, J. A. Mather, J. Armour, N. D. Mills, W. J. Kidd, H. Carpenter, W. H. Nesbitt, H. B. Travers.

The following candidates were entered on the books as Students-at-law, viz.:—*Graduates*—William Johnston, Philip Embury Ritchie, Alexander Andrew Smith, William Francis Robinson, Henry Anson Lavell, William Edward Burritt, George Francis Downes, John Graham Harkness, Franklin Arthur Hough, Newton Kent, William Alexander Lamport, William Arthur Leys, William Moore McKay, William Bernard Nichol, Edwin Arthur Pearson, Samuel Davis Schultz, William Llewellyn Wickett, Richard George Henry Perryn. *Matriculants*—Richard John Sims, Samuel Verschoyle Blake, Hugh McConaghy. *Juniors*—William McFarlane, Leopold Trefusis Wells Williams, D'Arcy Rupert Tate, Edmund Foster Burritt, John Joseph Coughlin, Archibald Young Blain, Herbert David Smith, Thomas Joseph Anderson, Morley Punshon Vandervoort, Edwin Armitage, Ede Halliwell, Frederick Moira Canniff, Henry Marshall Graydor, Nassau Brown Eagen, Columbus Calverley, Edward McMartin, Hugh Paterson Innes, John Troughton Thompson, jun., Dugald Campbell, Neil Hugh McIntosh, William Edgar Foster, Boulton Ramsay Kean, Alfred Ernest Fripp, Clarence George Powell.

CURRICULUM.

1. 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 on the Books of the Society as a Student-at-law, upon conforming with Clause four of this curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University, in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be) on conforming with Clause four of this Curriculum, without any further examination by the Society.

3. Every other Candidate for admission to the Society as a Student-at-law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with Clause four of this Curriculum.

4. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with

the Secretary, four weeks before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Benchor, and pay \$1 fee; and on or before the day of presentation or examination file with the Secretary a petition and a presentation signed by a Barrister (forms prescribed), and pay prescribed fee.

5. The Law Society Terms are as follows:—
Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday in June of the same year.

9. The First Intermediate Examination will begin on the second Tuesday before each Term at 9 a.m. Oral on the Wednesday at 2 p.m.

10. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

11. The Solicitors' Examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after the Primary Examination has been passed.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year

next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, \$2.

18. When the time of an Articled Clerk expires between the third Saturday before Term and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit only, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

19. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all Students entered on the books of the Society during any Term, shall be deemed to have been so entered on the first day of the Term.

20. Candidates for call to the Bar must give notice signed by a Benchor, during the preceding Term. Candidates for Certificates of Fitness are not required to give such notice.

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of \$2.

22. No information can be given as to marks obtained at Examinations.

23. A Teacher's Intermediate Certificate is not taken in lieu of Primary Examination.

24. All notices may be extended once, if request is received prior to day of examination.

25. Printed questions put to Candidates at previous examinations are not issued.

F E E S .

Notice Fee	\$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

**PRIMARY EXAMINATION CURRICULUM,
For 1889 and 1890.**

Students-at-Law.

- | | | |
|-------|---|----------------------------|
| 1889. | { | Xenophon, Anabasis, B. II. |
| | | Homer, Iliad, B. IV. |
| | | Cicero, In Catilinam, I. |
| | | Virgil, Æneid, B. V. |
| 1890. | { | Cæsar, B. G. I. (1-33.) |
| | | Xenophon, Anabasis, B. II. |
| | | Homer, Iliad, B. VI. |
| | | Cicero, Catilinam, II. |
| | | Virgil, Æneid, B. V. |
| | | Cæsar, Bellum Britannicum. |

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

Arithmetic: Algebra, to end of Quadratic Equations: Euclid, Bb. I., II. and III.

ENGLISH.

A paper on English Grammar. Composition.

Critical reading of a selected Poem:—

1889—Scott, Lay of the Last Minstrel.

1890—Byron, The Prisoner of Chillon; Child Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. 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 from English into French Prose.

1889—Lamartine, Christophe Colomb.

1890—Souvestre, Un Philosophe sous les toits.

or **NATURAL PHILOSOPHY.**

Books—Arnett's Elements of Physics, and Somerville's Physical Geography; *or*, Peck's Ganot's Popular Physics, and Somerville's Physical Geography.

Articled Clerks.

In the years 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.

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.

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and Cap. 123 Revised Statutes of Ontario, 1887, and amending Acts.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent of the maximum number of marks.

Second Intermediate.

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

Three Scholarships can be computed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

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

Candidates for the Final Examination 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.

Michaelmas Term, 1888.

INDEX.

	PAGE		PAGE
ACCOUNT—		ARBITRATION—Continued.	
Opening of settled, for fraud	203	Agreement to refer dispute to, before suit is valid	136
<i>See</i> Mortgage—Practice.		Submission under agreement, when revocable	137
ACCORD AND SATISFACTION—		Appointment of arbitrators invalid for lack of form—Submission and award will not be made a rule of court	170
Cheque by third party for smaller sum . . .	207	A problem in the English law of	185
ADMINISTRATION—		For renewal of lease—Costs of	445
Costs—Ascertaining class.—Trustee Relief Act	45	Submission—Power to revoke	520
Costs of, unduly great	53	Award—Motion to set aside—Draft award—Conduct, jurisdiction and admissions of arbitrator—New evidence	537
<i>De bonis non</i> —Grant of letters to legatee without citation of residuary legatee . . .	108	Notes of evidence—Appointment of arbitrator	565
Grant to absconding creditor revoked . . .	140	Time of appeal from award	569
With will annexed—Grant to stranger in blood—Minor	266	<i>See</i> Costs.	
Order—Discretion of court—Direction to bring action for	430	ASSESSMENT—	
Letters of, after action begun	565	<i>See</i> Municipal Law.	
<i>See</i> Costs—Executor and administrator.		ASSIGNMENT FOR BENEFIT OF CREDITORS . . .	549
ALIMONY—		Rights of assignee—Fraudulent preferences	127
Order for, <i>pendente lite</i>	263	Assignee attacking fraudulent conveyance	217
AMERICAN BAR ASSOCIATION—		Execution creditors added as plaintiffs . . .	217
Tenth annual meeting	79	Fraudulent preference	439
ANNOUNCEMENTS	1, 321, 609	Fraudulent mortgage—Foreclosure proceedings as defence—Action of assignee to set aside mortgage	477
APPEAL—		Creditor disputing, not debarred from claiming under	499
By consent	23	<i>See</i> Company—Chattel mortgages—Husband and Wife.	
Waiver of right of	31	ASSISTANCE, WRIT OF	583
By liquidator of company against his removal	42	ATTACHMENT OF DEBTS—	
Costs of, when decided on additional evidence	74	For costs only	30
Jurisdiction of Court of, to reverse judgment and assess damages	79	After assignment— <i>Res judicata</i>	61
Staying injunction	92	Before writ in sheriff's hands—Creditors' Relief Act	87
After time limited	110	Dividends on insolvent estate	92
Delay in—Power of judge in chambers to dismiss	121	Equitable debt—Payment by garnishee after appointment of receiver	613
From ruling of master on reference	158	Equitable execution—Salary not due	618
Cross notice of	183, 186, 187	<i>See</i> Garnishee—Execution creditors.	
Security on	218	ATTACHMENT, WRIT OF—	
Waiver of right of	355	Successive applications may be made for—Former application not disclosed—Cause of action—Particularity in stating	189
Further evidence on	409	Setting aside—Jurisdiction of County Judge in	410
From order for examination	478	Notice to debtor—Order for committal . .	617
From taxation of costs—Time	565	BAIL. See Criminal Law.	
From award—Time	569	BAILABLE PROCEEDINGS—	
<i>See</i> Arbitration—Practice.		Against defendant before judgment	514
APPOINTMENT—		BANKS—	
By residuary bequest	144	Winding up—Deposit made in bank the day it closes—Fraud	316
Date of power of—Remoteness—Settlement	362	Deposit receipt—Promissory note—Contributory—Set-off	345
"Express reference to power," when necessary	488	Deposit by money dealers of customers' securities—Purchases for value without notice	461
APPOINTMENTS TO OFFICE	253, 318, 350, 381, 414, 446, 480, 510, 544, 573, 606	Composition and discharge—Execution of deed by local manager—Agreement to accept part of claim	473
ARBITRATION—			
Invalidity of, for uncertainty	56		
By-law providing for	77		
Mistake of arbitrator in law—Revocation of submission—Jurisdiction of court to give leave to revoke	78		
Remuneration of arbitrators, right to sue for	106		
Extending time for making award, when done	126		

	PAGE		PAGE
BANKS—Continued.		CANADA TEMPERANCE ACT—Continued.	
Banking Act—Payment on subscription—		Quashing conviction—Forum—Police mag-	
Marginal transfer—Shareholders within		strate—Adjudication outside of terri-	
one month of suspension—Bank dealing		torial jurisdiction	155
with its own shares	538	Where liquor is sold to be resold in a Scott	
<i>See</i> Company—Bills and notes—Negotia-		Act county, notice of statutory defence	
table instruments.		necessary	183
BENCH AND BAR.		Third offence—Validity of lease of bar—	
Note on list of English judges	68	Evasion of law	251
Fusion of the legal professions	149	Certiorari—Summary Convictions Act—	
Conciseness in judgments commended	161	Form of Information—Evidence of the	
Lives of our judges	194	substance of the charge—Issue of warrant	282
Duration of life among lawyers	257	Appointment and jurisdiction of Police	
Changes in the judiciary	513	magistrates	308
Changes on the bench	546	Conviction—Jurisdiction of police magis-	
The first case in Chicago	611	trate—Place where offence committed	
BILLS AND NOTES—		—Question of fact—Statute not proved	
Money paid on, to the use of another	25	to be in force—Certiorari—Proof of	
Endorser's remedy against maker for fraud-		want of jurisdiction—Joint conviction—	
ulent disposal of property	56	Imprisonment of one offender or default	
Bill made in one country and payable in		of another	341
another—Law governing legality of con-		Jurisdiction of police magistrate for one	
sideration	60	of a union of counties—County and	
Share certificates in railway company, not		town—Information—Irregularity	343
negotiable instruments	130	Conviction—Information laid after de-	
Personal liability of president of company		fendant has left jurisdiction—Summary	
on cheque of company	159	Convictions Act	344
Becoming party to, after maturity without		Interest of magistrate—Rejection of evi-	
consideration—Liability—Endorsement		dence—Costs—Prior conviction—Juris-	
of payment of interest on back of note—		diction—Certiorari	377
Extension of time—Discharge of surety		Hard labour under—Payment of inspec-	
Proposal to renew in part refused—Accept-		tor's attendance	472
ance of cheque for balance	317	CANAL—	
Non-negotiable—Liability of maker on	500	Right to support—Statutory remedy—	
<i>See</i> Negotiable instruments.		Compensation	171
BILL OF LADING	13	<i>See</i> Company.	
Perils of the sea	13	CAPIAS—	
Damage caused by rats	13	Petition to be discharged from	56
Error in date of shipment—Liability of		Variation in affidavit to obtain	123
master for	78	<i>Ad respondendum</i>	279, 504
Construction of	554	Power of County Judge as to	504
<i>See</i> Ship—Salvage—Charter party.		<i>See</i> Practice.	
BILL OF SALE—		CARRIERS—	
Registration	6	<i>See</i> Railway company—Contract—Negli-	
Specific description of chattels in	107	gence.	
Act respecting, does not apply to equita-		CASE LAW—	
ble interest in after acquired property		Authority v. Principle	273
Mortgage of realty including fixtures not a		CHARITY. See Wills.	
<i>See</i> Sale of Goods—Chattel Mortgage.		CHARTER PARTY—	
BOOKS—		Maritime lien—Implied agreement—Ac-	
<i>See</i> Reviews—Law Students' Department.		tion <i>in rem</i>	427
BOYD, MR. CHANCELLOR—		<i>See</i> Bill of lading—Ships.	
Appointed arbitrator in C. P. R. Case	97	CHATTEL MORTGAGE.	
BRITISH NORTH AMERICA ACT—		As security for goods to be subsequently	
Power of local legislatures to tax	13	delivered	28
Appointment of magistrates under	183, 308	After-acquired property—Uncertainty—	
<i>See</i> Local Legislatures.		Invalid as to some goods, may be valid	
BURIAL, RIGHT OF—		as to others	168
What included in	484	Informality cured by taking possession—	
BY-LAW—		Insolvency of mortgagor—Seizure by	
<i>See</i> Municipal Law—Company.		mortgagees—Preference	343
CANADA TEMPERANCE ACT—		Void for preference of creditor	379
Information—Date of offence—Irregulari-		Consideration—Parol evidence to vary	475
ties—Remand and commitment	28	Transfer of property	478
Conviction for second offence—Inquiry as		Power of sale—Possession—Covenant not	
to previous conviction—Necessity for		to sell—Ordinary course of business	502
dealing with subsequent offence—Per-		To secure endorser—Relation back to prior	
emptory effect of—Certificate of—Mode		agreement—Renewal	616
of drawing	90	<i>See</i> Assignment for benefit of creditors—	
		Sale of goods.	

PAGE		PAGE
	CLUBS—	
	Supply of intoxicating liquor to	83
	CODICIL. <i>See</i> Will.	
	COMPANY—	
155	Debentures of	10
183	Mortgage of assets of	10
	<i>See also</i> Corporation.	
251	Subscriber, contributory—Liability—Variation between prospectus and charter of	27
282	Sale by director to company—Right to vote on ratification	40
304	Power to borrow money—Implied restriction not removed by assent of all the members	73
	Agreement to pay claim on paid-up shares—Contributory—Specific performance of agreement to take shares	74
341	Irregularity in calling board meeting—Agreement prior to incorporation of, how far binding—Agreement not to remove director	109
43	Share, certificates of, not negotiable instruments	139
44	Sale of shares—Refusal of company to register transfer	205
77	Misrepresentation in prospectus—Legal fraud—Deceit—Measure of damages	294
72	Inspection of registers of—Action by shareholder in interest of rival company	358
71	Contract on behalf of projected—Power of directors to ratify—Mortgage of unpaid capital	380
56	Interest on money advanced by shareholders—Surplus assets	380
23	Custody of seal—Loss by unauthorized use of	427
04	Power of, to dedicate expropriated land as highway	454
04	Deposit note for loan contracted without power	455
	Shares in foreign—Pledge of certificates—Defective title	456
	Shares in, issued at a discount—Invalidity of	457, 458
	Transfer of shares—Defective transfer—Inchoate legal title	459
3	Articles of association—Preference shares—Surplus—Winding-up—Profit	523
7	Acquisition of land by—Sale within certain time—Power to re-sell—Recital in deed	599
8	Unpaid stock—Liability of shareholders for—Return of <i>Nulla Bona</i> against company	600
	Winding-up—	
	Appointment of liquidator—Costs	30
	Removal of liquidator—Appeal by liquidator against removal	42
	Directors—Creditor—Payment of dividends out of capital—Delusive balance sheets—Auditor's liability	76
	Inspection of books and papers of, in winding-up	142
	Use of corporate name in litigation—Right of shareholders to sue	158
	Act to be put in motion by creditor only	188
	Nominees of creditors and shareholders for liquidators—Compensation of liquidators	189
	Contract necessary in—Burden of proof	200

		PAGE
	COMPANY—Winding-up—Continued.	
	Holders of shares issued at a discount liable for calls in winding-up	202
	Action brought after winding-up order—	264
	Contributory—Agreement to apply debt in payment of calls	270
	Contributory Director	297, 356, 600
	In liquidation—Powers of liquidators to ratify	329
	<i>See</i> Practice—Banks—Principal and agent—Railway company.	
	CONSOLIDATED RULES, The	97, 193, 385, 417
	Rule 671 rescinded—A new rule substituted	609
	Annotated edition of	545
	<i>See</i> Rules of Court.	
	CONSTITUTION, THE CANADIAN	235
	CONTEMPT OF COURT	25
	Telegrams not privileged from production by telegraph company	24
	By publishing telegrams	80
	Abusive language or threatening gestures to solicitor after application in Chambers	106
	Perjury, as	147
	Advertisement offering reward for evidence	266
	By disobeying order—Discharge of prisoner	453
	An extraordinary case of	545
	CONTRACT—	
	In restraint of trade—Public policy—Covenant, "so far as the law allows," to retire from business	43
	Agreement not to act as surgeon—Acting as assistant	43
	Rules of Society in restraint of trade void	44
	Specific performance of—Damages—Estate of married woman	73
	Compensation for tenant-right, a contract affecting land	135
	A novel action for breach of promise of marriage	161, 262
	Executory—Non-fulfilment of—Incidental demand—Damages—Cross appeal	185
	Goods not all deliverable at once—Payment when due—Refusal to pay or deliver	211, 215
	Of infant for sale of lands, when voidable—Restitution	213
	Mode of shipment of goods may be a material condition in contract	215
	Damage for breach of—Railways—Failure to run trains to point contracted for	280
	Failure of consideration—Impossibility of performance	306
	Tender—Evidence of prior agreement—Guarantee—Reference to advertisement	312
	Dismissal for engaging in stock speculations	313
	Meaning of "actual first cost"	313
	To enter into agreement with third party	358
	Quit-claim deed as consideration for bond	375
	And prohibition of sale of liquor	433
	Rectification of, when ordered	441
	Induced by misrepresentation—Rescission of	461
	Condition precedent, certificate of engineer of completion of work	476
	For maintenance—Sum in lieu of—Payable at end of year	477

	PAGE		PAGE
CONTRACT—Continued.		COSTS—Continued.	
For hire—Rolling stock—Agreement to purchase	500	Party and party—Status of solicitor	567
In restraint of trade	526	As between solicitor and client, may be awarded to successful party in a proper case	582
Machine to work to suit purchaser	532	Out of estate—Interest upon from taxation	617
Breach of promise of marriage—Successive promises—Statute of limitations—Justification of breach—General reputation	598	See Administration—Arbitration—Appeal—Practice	
See Mortgage—Warranty—Insurance—Company.		COUNSEL—	
COMMISSION—		Consent of, how far binding—Withdrawal of—Mistake	357
Of real estate agents	289	See Solicitor.	
CONVICTIONS—		COVENANT—	
See Canada Temperance Act—Justices of the Peace—Malicious prosecution—Malicious arrest—Summary Convictions Act.		Whether joint or several	460
COPYRIGHT—		Implied, in assignment of patent	485
And piracy	35	See Contract—Mortgage.	
What constitutes infringement of—Irregularities in obtaining	35	CREDITOR'S RELIEF ACT—	
Proof of—Domicil—Statute—Knowledge of copyright—Costs—Damages	01	See Assignment—Execution.	
Name of newspaper	359	CRIMINAL LAW—	
Dramatization of novel	525	Points decided in the trial of the Anarchists	49
CORPORATIONS—		Murder resulting from common unlawful design	49
See Company—Deceit—Municipal Law—Railway Co.		Larceny, what constitutes	49
COSTS—		The land our neighbours live in	82
Taxation of—Separate defences	43	Extradition	100
Of administration	45	Previous conviction, when evidence of admissible	120
Taxation at solicitor's instance—Order for payment—Costs of reference	122	Conviction for selling liquor to an Indian	128
Of counter-claim	125	Larceny by a trick—Wager	137
New tariff of fees and disbursements	133	Nature of vagrancy	157
Costs of settlement—When paid out of property settled	143	Whipping in second conviction for felony	207
Rights of judgment creditor on taxation of Certificate of taxation, when sufficient	157	Bail in criminal cases	321
Certificate of taxation, when sufficient	158	Forgery—Interested Witness—Corroboration—Partnership	344, 376
How taxed when counter-claim exceeds claim	169	Causes of Crime	353
When no order for, made at the trial, judge may order payment of, even after appeal to the Divisional Court	189	Larceny Act—Information—Bail	472
Cause for depriving successful party of—Certificate of	216	Conspiracy to boycott	491
In Division Courts	243	Theft of letters	495
Taxation of part of bill—Solicitor and client	268	Perjury—Evidence of special facts	501
Payment of, to successful party	278	Indictment for rape—Conviction for assault with intent to commit	503
Security for, in interpleader issue	281	Insanity as a defence	553
Security for, when married woman sues by next friend	428	Arrest—Stopping train to make	556
Security for, in garnisheematters—Evidence	505	Sentence of imprisonment—Time from which it runs	557
In motion for prohibition	346	House of ill-fame—Inmate—Satisfactory account of herself	618
As between solicitor and client	409	See Evidence—Practice—Summary Convictions Act.	
Scale of—Setting off	409	CROWN, THE—	
Of motion adjourned to the trial	432	Priority over other creditors	431, 487
Of reference—Terms of submission	451	Bonds to, no longer a charge on lands	449
Of counter-claim—Discretion of judge	453	Debts to—Surety—Priority	583
Of motion adjourned to the trial	455	See Customs Duties.	
Taxation—Appeal—Form of certificate or allocatur	478	CUSTOMS DUTIES—	
Increased counsel fee on arbitration	479	Lien of crown on other goods of importer for unpaid duty—Writ of extent—Preference of crown over subject	308
In action for divorce	484	DAMAGES—	
Of unnecessary counter-claim	540	For injury by vicious animal	147, 553
Joinder of causes of action—Recovery of land	541	Solatum for bereavement—Actual loss	187
Rule 756—Judgment under	541	Measure of—Evidence—Injury to land and business—Prospective value of land	214
Taxation—Between solicitor and client—Unnecessary proceedings—Interest—Time	565	Liability of inkeeper for—Injury to guest Nominal—Power of court to give judgment for— <i>Venire de novo</i>	278
		Under Workmen's Compensation for Injuries' Act	311

PAGE
 567
 582
 617
 357
 460
 485
 49
 49
 49
 82
 100
 120
 128
 137
 157
 207
 321
 376
 383
 472
 491
 495
 501
 503
 553
 556
 557
 618
 487
 449
 583
 308
 553
 187
 214
 235
 278
 311

	PAGE
DAMAGES—Continued.	
Principle of computation of, for expropriation	568
See Company—Contract—Employers' Liability Act—Negligence—Railway Co.—Ships.	
DEBENTURE—	
Definition of	203
Unauthorized issue of	360
See Company.	
DECEIT—	
Action of—Corporation may be liable in ..	538
DEED OF COMPOSITION—	
Covenant not to sue on	314
Execution of, by bank	473
DEVISE. See Will.	
DEVOLUTION OF REAL ESTATE	
Act respecting	375
Devolve—Construction of Act	539
See Vendor and Purchaser Act.	
DIARY	25, 54, 87, 120, 155, 182, 211, 243, 277, 306, 339, 376, 406, 438, 472, 497, 530, 563, 594
DIRECTORS—	
See Company—Principal and agent.	
DISALLOWANCE—	
Legal aspect of, in old Manitoba	30, 65, 115
In Quebec	480
See Local legislatures.	
DISCOVERY—	
In action for specific performance—Examination of grantors of vendor before defence	124
Examination of local agent of company ..	125
Of servant of corporation	126
Discovery of sales—Trade-mark—Premature application	202
Examination of witness on pending motion—Production of books	217
Preliminary issue	218
Transferee of judgment debtor	478
Conductor of railway company examined before trial	478
In action for malicious prosecution	504
See Evidence—Practice.	
DISTRESS—	
Exemption from seizure—Refusal of bailiff to seize through mistaken view of the law—Insufficient—Second seizure—Replevin—Detention a good seizure	339
For penalty—Gaming houses—Irregularity ..	599
See Landlord and tenant—Mortgage.	
DITCHES AND WATERCOURSES—	
See Municipal law.	
DIVORCE, Law of	
Separation de corps	161
American—Legality of in England	83, 200
Rules and forms of Senate respecting ..	226, 283
Adultery of husband and wife—Cruelty—Costs	484
See Husband and wife—Domicil.	
DIVISION COURTS—	
Prohibition—Jurisdiction—Ascertaining amount	125
Judgment against garnishee—Proof of amount due—Prohibition—Re-payment ..	216
Commital of married woman as judgment debtor—Prohibition to restrain	218

	PAGE
DIVISION COURTS—Continued.	
Fees of clerk and bailiff—Tariff of fees ..	243
Abandonment of excess—Abandonment at trial—Discretion of judge	410
Prohibition Defendant out of jurisdiction—Delay—Taking chances at trial ..	445
Jurisdiction of—Omission to dispute—Services upon foreign corporation	530
Prohibition—Judgment summonses—Partnership	601
Splitting cause of action—Abandoning excess— <i>Res judicata.</i>	614
DOMICIL—	
Abandonment of domicil of choice—vival of domicil of origin	44
In application for divorce	200
Affecting marriage	363
See Jurisdiction.	
DOWER—	
No damages for detention of, when husband did not die seized	27
The law of	259
In the surplus after mortgage sale	346
Bar of—Merger	538
See Mortgage.	
EASEMENT—	
Right of way	81
Implied reservation of right of way out of lease	139
Prescription may give, against express reservation	141
Derogation from grant of light	248
Conveyance—General words—Implied grant of	269
Appurtenant to land conveyed—Prescriptive right to—Construction of agreement ..	314
Right of way—User of—Property appurtenant, or adjoining	379
Implied grant of—Derogation from	429
ECCLLESIASTICAL LAW—	
Mandamus	354
EDUCATION—	
Compulsory	3
Proposal for a law school	130
Legal, in the United States	238
Legal	419, 492
The University Law Faculty	609
ELECTIONS—	
Form of order	33
Petition—Service	57
Controverted Elections Act—Judgment dismissing petition for want of prosecution non-appealable Judgment refusing to set aside petition for want of prosecution non-appealable	184
Defective service of election petition—Dismissal—Judgment on motion to dismiss not appealable—Trial within six months	184
Trial of controverted	257
Ruling by judge at trial—Appealable—Construction of Act—Time—Computation of—Extension of—Jurisdiction ..	277
Voters' lists—Advertising—Next Municipality	563
Municipal elections—	
<i>Quo Warranto</i> , procedure in	377
Duty of returning officer—Disqualification of candidate	460

	PAGE		PAGE
ELECTIONS—Municipal elections—Continued.		EXECUTOR AND ADMINISTRATOR—Continued.	
Agency—Bribery—Secrecy—Illegal practices	381	<i>Devastavit</i> —Statute of Limitations—Rents and profits—Assets	487
Inducing voter to vote—Loan to voter	445	Administrator <i>ad litem</i>	017
Hiring vehicles—Conveying voters to polls	446	See Administration—Wills.	
Nomination paper—Signature of electors	483	EXTRADITION—	
See Municipal Law—Practice.		The, of criminals	100
EMPLOYERS' LIABILITY ACT	10	FALSE IMPRISONMENT—	
Negligence of fellow-workman	10, 11	Reasonable and probable cause—Misdirection	472
A vicious horse is "plant"	11	Action for, against governor of prison	520
Defect in condition of plant	11	FEEs—	
Risk voluntarily incurred	11, 238	Contingent and exhibitant	364
Negligence—Defective machinery—Dangerous machine	520	Of registrar of deeds—Apportionment	408
See Negligence—Damages.		See Costs.	
ESTOPPEL—		FISHERIES TREATY	163
Of patentee, by omitting to give notice ..	75	FIXTURES—	
Ejection—Judgment for default of defence	80	Machinery in mill on trial	333
Of surety from denying suretyship	156	Apparent	584
By witnessing mortgage	474	FRAUD—	
From raising constitutional question by being party to action	501	Definition of	50
See Free grant lands.		Conveyance to defeat, delay and hinder creditors—Inability to pay debts	444
ESTATE TAIL—		Incidents of loss by	456
Enlargement of base fee—Further assurance—Specific performance of agreement by tenant in tail	75	Parol evidence of, admissible	504
ETHICS, CODE OF PROFESSIONAL	200	Insolvent debtor—Assignment of book debts—48 Vict. c. 26, sec. 2 (O.)	614
EVIDENCE—		See Assignment for benefit of creditors—Contract—Company—Insurance—Sale of goods—Statute of Frauds.	
Destruction of, a contempt of court	25	FREE GRANT LANDS—	
Letter-press copies of letters as	80	Right to pine lumber on - Estoppel	472
Of previous conviction, when not admissible ..	120	FUSION OF THE LEGAL PROFESSIONS	149
Cross-examination on affidavit—Attendance for	140	GARNISHEE—	
Commission to take, of party to action—Criminal proceedings	250	Payment by, under void judgment	160
Of reasonable and probable cause for prosecuting	312	Order binds beneficial interest of debtor ..	428
Comparison of writing in forgery, by jury ..	334	See Attachment of debts—Division Courts—Judgment debtor.	
Books of account as evidence	336	GAMING—	
In breach of promise of marriage—Corroboration—Presumption in favour of moral relationship	406	In stocks and merchandise, Act respecting ..	193
Application to adduce further, before Court of Appeal	409	Recovery of winnings	209
Foreign commission, to take	425	At an inn	454
Commission to take, when granted	450	See Horse-races.	
Defining declarations as	493	HABEAS CORPUS—	
Examination of witness before trial—Sole witness	541	Custody of infants by, or by petition	29
Note on—Admissibility of, to prove intent—Gift	561	Appeal from order granting or refusing ..	105
Parol—Of fraud and misrepresentation ..	564	May run concurrently with petition	189
See Discovery—Practice.		During remand on preliminary investigation, not issued	472
EXECUTION	10	See Practice.	
Creditors' Relief Act applies to executions against lands	122	HENRY, MR. JUSTICE—	
Liability of under-sheriff for proceeds of ..	106	Obituary	258
EXECUTION CREDITORS	10	HORSE RACKS—	
Liability of, for wrongful seizure by sheriff ..	310	Statutes 13 Geo. II. c. 19—Construction of racing rules	594
See Attachment of Debts—Garnishee—Practice.		HUSBAND AND WIFE—	
EXECUTOR AND ADMINISTRATOR—		Wife living apart—Husband in possession of wife's land—Recovery of possession by wife—Use and occupation	89
Liability for rents of leasehold of testator ..	143	Liability of husband for necessaries supplied to wife living apart from him—Adultery and connivance of husband ..	170
Restraint of, before probate from intermeddling with the estate—Injunction—Receiver	202	Separation of—Action for maintenance—Statute of Frauds	264
Discharge by interested executor, void ..	247	Sale by wife to husband's creditors for security set aside	307
		Joint tenancy of, not severed by marriage ..	429
		Agreement for separation—Intervention of trustee—Statute of Frauds	578

PAGE		PAGE
	HUSBAND AND WIFE—Continued.	
487	Gift to husband, wife and third person—	
617	Married Woman's Property Act	582
	See Divorce—Vendor and Purchaser.	
	IOE—	
100	Property in—Right of travelling on	335
	IMPRISONMENT, FALSE—	
472	Reasonable and probable cause	265
520	INDIANS—	
	Conviction for selling liquor to	128
	Information concerning	353
364	Taxes on lands of	616
408	INFANTS—	
	Custody of—Habeas corpus—Petition	29, 189, 569
103	Liability of father to volunteer maintain-	
	ing his children	51
333	Service of papers on infant executor	250
584	Power of, to convey—Married woman	328
	Right of father to custody of—Age of in-	
50	fant—Habits and religious belief of	
	parents	618
444	See Contract—Settlement—Vendor and	
456	Purchaser.	
504	INJUNCTION—	
	Stay of, by appeal	92
614	To restrain defendant, out of jurisdiction	431
	See Executor and Administrator—Practice.	
	INNKEEPER—	
	Liability of, for injury to guest	235
472	For gaming at inn	454
149	What is an inn?	539
	See Canada Temperance Act—Gaming—	
	Municipal Law.	
	INSANITY—	
	In its relation to marriage	98
	As a defence	553
	See Criminal Law.	
	INSOLVENT—	
	See Deed of Composition.	
	INSURANCE, FIRE—	
	Over value—First statutory condition—	
	Several insurances—Change of one policy	
29	—Notice	248
105	Description of property—Mutuality of con-	
189	tract—Variation of statutory condition.	306
	Effect of misrepresentation on liability of	
472	company	434
	Fraud and false statement—Statutory con-	
	ditions—Property covered while in any	
258	building insured	476
	Defence—Cancellation of policy	488
	Lien of mortgage on policy	494
	Statutory conditions—Additional condi-	
594	tions—Title—Physical risk—Moral risk	615
	LIFE—	
	Representation of the insured, honest but	
	untrue	55
89	Certificate of membership—Default—For-	
	feiture—Waiver	477
	By benefit society—Death allowance—Ad-	
70	ministrator	521
	Payment of premiums by person not bene-	
64	ficially interested—Lien	583
	MARINE—	
07	Concealment of material facts	12
29	Principal and agent	12
	Concealment by agent through whom	
78	policy is not effected	12
	Perils of the sea—Bursting of engine	40

	PAGE
INSURANCE, MARINE—Continued.	
Actual total loss—Sale of ship for less	
than salvage—Derelict	320
Concealment of material fact—Principal	
and agent	427
Non-disclosure of amount of—Notice of	
abandonment	502
Amendment of—Consolidated Rules 780,	
INTERNATIONAL LAW—	
De facto government—Contract—De jure	
government	431
See Jurisdiction.	
INTERPLEADER—	
Liability for costs of execution creditor not	
contesting claim	92
Variation of order	250
Jurisdiction of local judge in—Interlocu-	
tory order—Security for costs in	281
See Practice.	
JOURNAL OF JURISPRUDENCE—	
Note on	52
JUDGES—	
Note on list of English	68
JUDGMENT—	
On default of defence cannot give relief not	
claimed in pleadings	144
Order dismissing action for want of prose-	
cution, not a "final judgment"	169, 263
Foreign—Action on	203
Order for alimony <i>pendente lite</i> , not a final	
judgment	263
By consent	477
Amendment of Rules 780, 781, 786	618
See Practice.	
JUDGMENT DEBT—	
Married woman as	216
Committal for unsatisfactory answers	218
Non-attendance of, a contempt of court	218
Imprisonment of, for default—Judgment	
summons	328
Examination of—Unsatisfactory answers	
Notice of motion to commit	541
Order for examination—Appointment—	
Failure to attend—Committal	617
See Assignment for benefit of creditors—	
Discovery—Evidence—Practice.	
JURISDICTION—	
Order of Scottish court not enforceable in	
Ontario by attachment	30
Foreign law—Succession to personal estate.	
Decision of foreign tribunal—Comity of	
courts	72
Work done out of, place of payment	135
See B. N. A. Act—International Law—	
Local Legislatures	
JURY NOTICE—	
Equitable issues—Disagreement of jury—	
New trial	218
See Practice.	
JURY PROBLEM, THE	208
JUSTICES OF THE PEACE—	
Disqualification of, by interest or bias	105
Findings of magistrate, when reviewable	128
Action against, for non-return of convic-	
tions—Dominion and Provincial Acts—	
Malice of the plaintiff no defence—De-	
fence struck out	182
Information—Refusal to issue summons	451
See Canada Temperance Act—Police Ma-	
gistrates.	

	PAGE		PAGE
LANDLORD AND TENANT—		LIBEL—Continued.	
Right of distress not destroyed by assign- ment of tenant's goods	26	Privilege of public writers	337
Right of tenant to compensation for in- jury to premises	107	Privileged communication — Mercantile agency—Variation in proof of	440
Payment of rent to mortgagee by tenant . .	138	<i>See Slander.</i>	
Liability of sub-lessee on covenants in lease	141	LIBRARIAN, A MODEL	225
Legal notice to quit—Ejectment	171	LICENSE—	
Construction of instrument—Deed or li- cense	247	Authority to work mine	725
Liability of landlord	374	<i>See Municipal law.</i>	
Surrender by assignee of part of premises —Liability of assignor on covenant	426	LIEN—	
Agreement for lease—Forfeiture notice . .	454	On lands for improvement under mistake of title	347
Overholding tenant—Jurisdiction—Colour of right—Writ of possession	565	Of crown and for custom duties	307
Payment of taxes by tenant—Real prop- erty Limitation Act	617	On insurance policy	494, 583
<i>See Distress—Lease—Mortgage</i>		<i>See Mechanics' lien—Solicitor and client.</i>	
LAND TITLES ACT—		LIFE, DURATION OF	257
Progress of the Torrens system	322	LIQUIDATOR —	
LAW—		<i>See Company.</i>	
Delay in administering	146	LIQUOR—	
LAW ASSOCIATIONS—		Near public works	442
Report of Hamilton	23, 242	Permit—North-West Territories' Act	479
Report of County of York	116	Liquor License Act	377
Conservatism of	225	<i>See Canada Temperance Act—Clubs—</i> <i>Criminal law.</i>	
Annual meeting of County of York	65	LUNATIC—	
LAW SCHOOL—		Out of jurisdiction—Right of foreign cus- todian of lunatic to property of lunatic in England	40
The proposed	130, 151	<i>See Insanity—Receiver—Practice.</i>	
The English, in Japan	146	MACLENNAN, MR. JUSTICE—	
Proposed law faculty	172	Notice of his appointment	513
<i>See Legal Education.</i>		Sketch of his career	546
LAW SOCIETY—		MAGISTRATE—	
Proceedings of Michaelmas Term (1887) . .	18	<i>See Justices of the Peace.</i>	
" Hilary Term (1888)	174	MAINE, SIR HENRY—	
" Easter Term (1888)	398	Obituary	151
" Special meeting	393	MALICIOUS ARREST—	
The, and its duties	239	<i>Capias ad respondendum</i> must be set aside before bringing action—Reasonable and probable cause—Duty of judge	279
Curriculum, change in	23	Conviction for having liquor near public works—Conviction must be quashed be- fore action begun—Certiorari—New con- viction—Notice—Defence—Order for de- struction of liquor	442
LAW STUDENTS' DEPARTMENT—		<i>See Practice</i>	
Examination papers .159, 219, 251, 282, 348, 410, 505, 542, 569, 603	603	MALICIOUS PROSECUTION—	
Loan of books to students	317, 347	Action for—Pleadings—Observations of judge at trial of criminal charge—Publi- cation of charge	281
Examination dates for 1889	602	Reasonable and probable cause—Evidence of	312
LEASE—		Questions to jury—Specific findings— Waiver of general verdict	476
Construction of written instrument	247	<i>See Practice.</i>	
Covenant for renewal—Construction of— Costs of	445	MANDAMUS—	
Construction of	461	Return of absolute obedience to, may be questioned by a plea	199
<i>See Distress—Landlord and tenant—Mort- gage.</i>		Motion for in court or chambers—Costs . .	231
LEGISLATION—		Ecclesiastical law	354
The provincial, of 1888	231	In matters within discretion of judge . . .	410
LEGISLATURES, LOCAL—		To a magistrate	579
Power of, to impose taxes	3	MARITIME COURT—	
Disqualification of member of—Contract with the crown, what constitutes	57	Jurisdiction of	291
Power of to appoint police magistrates . .	308	Rules of	619
<i>See B. N. A. Act—Public lands—Police Magistrates.</i>		<i>See Ships.</i>	
LIBEL—		MARRIAGE—	
Newspaper criticism of stage play not privileged—Fair comment	140	Onus of disproving marriage, on whom . .	26
Injunction to restrain publication of . . .	201	Banns, publication of	26
And slander—Discussion on law of	228		
Communication of, by husband to wife— Defacing written character of a serv- ant—Damages	293		

PAGE		PAGE
	MARRIAGE—Continued.	
	Legal presumption in favour of	26
	Insanity in relation to	98
	According to custom of foreign country where polygamy allowed	363
	See Domicil—Insanity.	
	MARRIED WOMAN—	
	Committal of, for non-payment of debt. 107, 210	
	Use of name of, by husband to defraud creditors	147
	Restraint on anticipation, duration of.	268
	Separate estate of—Property acquired since 1882—Married Woman's Property Act	357, 554, 582
	Conveyance by—Joinder of husband	409
	Liability of separate property of, for debt contracted before marriage	426
	Restraint on anticipation—Payment out of court	457
	Maintenance for Desertion Act—Evidence Devised to—Restraint on alienation	563 593
	See Dower—Husband and wife—Vendor and purchaser.	
	MASTER IN CHAMBERS—See Practice.	
	MASTER AND SERVANT—	
	See Employers' Liability Act—Negligence.	
	MECHANICS' LIEN—	
	Prior or subsequent incumbrance	213
	Equitable interest in land—Fraudulent scheme to evade lien—Notice—Innocent purchaser	215
	Parties to action to enforce	481
	One lien against two owners set aside	503
	Priority of, over execution	505
	MISCELLANEOUS..... 31, 61, 93, 160, 190, 220, 252, 285, 318, 413, 480, 544, 574, 604, 619	
	MISREPRESENTATION—	
	See Contract—Insurance—Fraud.	
	MISTAKE—	
	In title, improvements under	247, 547
	In effect of offer, no ground for rescission..	409
	MORTGAGE—	
	Power of sale—	
	Departure from statutory form of	26, 27
	Notice to incumbrancers	378
	Non-compliance with the power of sale— Clause protecting purchaser against irregularity	429
	Short Forms Act—Power of sale without notice—Validity Entry prior to sale	475
	Trustee as assignee of	27
	Month substituted for months in short form	27
	Assignment of mortgage to third party where mortgagee has a second mort- gage on same land	29
	Land out of jurisdiction may be foreclosed, but not sold	61
	Redemption action—Mortgagee in posses- sion, overpaid—Rests—Costs	71
	Six months' notice of payment after matu- rity—Interest after maturity	121
	Payment of rent to mortgagee discharges tenant	138
	Trade fixtures	141
	Redemise clause in, effect of	212
	Discharge of mortgage by interested ex- ecutor	247
	Payment of, does not give new estate	248

	PAGE
MORTGAGE—Continued.	
Re-transfer of security on redemption— Breach of trust	269
Acquirement of equity of redemption by mortgagee—Release of mortgagor—Evi- dence of intention	310
Subrogation to rights of mortgagee	333
Bar of dower in—Claim for dower in the surplus	346
Of realty with trade fixtures, not a bill of sale	359
Mortgage for costs—Sale under power— Amount mortgage is security for	379
Rules of loan company, how far binding on mortgagor	438
Liability of assignors of, upon an exchange Equitable, of reversionary int rest—Real property limitations	441 459
Assignment of mortgage to third person when mortgagee has second mortgage ..	479
Lien of mortgagee on insurance policy ..	494
False valuation by valuator	524
Bar of dower—Prior registration—Merger —Surety	538
Redemption of previous mortgage—As- signment in place of discharge—Form of assignment	566
Second mortgagee removing timber— Rights of first mortgagee to make him account	599
Power to distrain—Interest or rent—Dis- tress after maturity without fixing new tenancy—Six months overdue	601
MUNICIPAL LAW—	
Tavern license—License commissioners— By-law	59
Liability of municipal corporation for in- jury caused by ice on side walk—Negli- gence	9, 311
Drainage, action for damages, notice	60
Approach to bridge—Liability of local municipality	120
Quo warranto proceedings set aside for defects in material on application for ..	126
Pathmaster, an officer of municipal cor- poration—Liability of corporation for acts of—Compensation for overflow of water ..	188
Drainage by-law—Majority of landowners —Mechanical operations—Notice—Al- lowance of lump sum—Duties of en- gineer	11
By-law authorizing construction of street railway—Notice of assuming ownership by city	307
Boundary line roads—Deviations—Adjoin- ing counties—Liability	309
Application of high school for grant	316
Municipal elections—	
Corrupt practices at—Procedure— <i>Quo warranto</i> —Summons or information ..	377
Voters' lists—Advertising—Next muni- cipality	563
Duty of returning officer—Disqualifica- tion of candidate	400
By-law—Transient traders—Conviction ..	378
Addition of new territory to city—Dis- qualification of voters	381
By-law of city—Street railway company— Safety of public	440
Ditches and Water-courses Act—Fees of engineer	488

	PAGE		PAGE
MUNICIPAL LAW—Continued.		PARTNERSHIP—Continued.	
Municipal by-law—Voting on—Casting vote—Expropriation of land—Damages	568	Liability of ostensible partner for judgment against firm	501
R. S. O. c. 184, s. 546—Notice of by law to open road—Computation of time—Quashing	613	Judgment against firm—Execution against partner	568
Public School Acts—Right of trustees to whole proceeds of school rates—Money had and received	614	PATENT—	
Procedure on motion to quash by-law—Notice—Time	618	Combination of mechanical contrivances—Infringement—Acquiescence—Estoppel	75
See Elections—Negligence.		Chemical process—Specification	77
NEGLIGENCE—		Infringement—Ground of damages for	462
Of public company—Compensation—Costs	72	Assignment—Implied covenant	485
Liability of owners of real estate for	80	PATTON, HON. JAMES—	
Liability of master for injury to third persons	171	Notice of death of	513
<i>Volenti non fit injuria</i>	171, 236, 452	Obituary	573
Liability of landlord for negligence of employee—Vindictive damages for—Cross appeal	186	PATERSON, MR. JUSTICE—	
A novel case of	272	Promoted to Supreme Court	543
By municipal corporation in allowing ice to remain on sidewalk	311	PLEADING. See Practice.	
Liability for accident	313	POLICE MAGISTRATES—	
Nervous shock resulting from fright—Remote damages	330	Appointed for county, exclusive of city—Right to sit in city to try offence in county—Appointment during pleasure—Place of trial by—Jurisdiction—Appointment of	308
Dangerous premises	452, 526	See Canada Temperance Act—Justice of the Peace—Local Legislatures.	
Of railway company—Locomotive at station—Noise	579	POLITICAL SCIENCE—	
Injury to trespassing child through	590	Note on chair of, in Toronto University	546
Injury to trespasser on railway track	591	POST OFFICE—	
See Railway Company—Damages—Employers' Liability Act.		Rules of Savings Bank	53
NEGOTIABLE INSTRUMENTS—		PRINCIPAL AND AGENT—	
Share certificates of American railway, not	139	Concealment of facts by agent	12
See Company—Bills and Notes.		Municipal corporation an agent for railway company	13
NEW TRIAL—		Stock-broker an agent—When liable to refund margins	55
Weight of evidence—Costs	90	Sale of agent's own property to principal—Non-disclosure of interest	78
Misdirection of jury, ground for	187	How far agent may bind principal	210
Obscure finding of jury	243	Manager of trading company—Promissory note on behalf of company	70
See Practice.		Liability of valuator of land	345
NORTH-WEST TERRITORIES ACT—		Liability of corporation for false imprisonment ordered by agent	473
Permit—Possessing intoxicating liquor under	479	See Contract—Company—Municipal Law.	
NOVEL WRIT, A—		PRINCIPAL AND SURETY—	
Note on	481	Limited term of employment of principal—Subsequent extension of time—Estoppel	156
OSGOOD LIBRARY—		Discharge of surety by extension of time	309
Recent additions to	31, 220	Release of surety—New bond	310
PARENT AND CHILD—		Surety for treasurer—Treasurer receiving taxes—No collector appointed—Liability of surety	315
Advancement—Contract for purchase by son—Payment by parent of part of purchase-money—Promissory notes of parent for part of purchase-money	296	Notice terminating liability—Bond applicable to present and future appointment	474
Testator in <i>loco parentis</i>	361	PRESUMPTION OF DEATH—	
See Infant.		Person not heard of for seven years	72
PARTNERSHIP—		PRIVILEGE—	
Goods supplied to inchoate company—Liability	60	Telegraph companies must produce telegrams in court	25
Change in firm	127	PROBATE. See Wills.	
Deed of one partner—When it binds the firm	298	PRODUCTION. See Discovery.	
What constitutes—Interest in profits	488	PROFESSIONAL BURDENS	129
Judgment against partners—Payment by one—Enforcing against the other—Accounts—Statute of Limitations	441	PROHIBITION—	
Induced by misrepresentation—Liability of partner	461	Granted against order attaching money, payment of which is in discretion of trustees	136
Dissolution—Expulsion of members of firm—Goodwill—Right to purchase-money of	503	No appeal in <i>forma pauperis</i> from	425

PAGE		PAGE
	PROHIBITION—Continued.	
501	Licensed brewers—Constitutionality of Quebec License Act	307
568	See Division Courts.	
	PROMISSORY NOTE. See Bills and Notes.	
	PROUDFOOT, MR. JUSTICE—	
75	Illness of	97
77		
462		
485		
513		
573		
543		
	PUBLIC LANDS—	
	Transfer of, to Canada—Precious metals in—Grant of, by Province of British Columbia, void	53
	PRACTICE—	
	Irregularities in conviction under Canada Temperance Act	28
	Alteration in petition filed in court—Spoliator—Amendment	28
	A court motion—Reading affidavits used on former motion	29
	Sale by sheriff after an interpleader order—Charges	31
	Form of an election order	33
	Security for costs, married woman—Service out of jurisdiction—Contract to be performed within the jurisdiction	44, 202
	Premature hearing of motion, an irregularity—Defence filed after pleadings closed	54
	Election petition, service of copy—Extension of time—Discretion of judge	57
	"The Court"—Trial judge, Divisional Court—High Court	61
	Amendment of pleading allowed, notwithstanding order striking out part sought to be inserted	70
	Appeal—New trial—Jurisdiction of Court of Appeal to reverse a verdict	70
	Delay in appeal—Power of judge in chambers to dismiss	121
	Term of foreclosure order	122
	Counter-claim—Costs—Construction of order	125
	Dismissal of action for want of prosecution—Motion for, where there are other defendants	126
	Amendment of pleadings	127
	Service of writ out of jurisdiction	135, 425
	Application to add parties takes the place of plea in abatement for non-joinder	136
	Irregularity in notice	155
	Local masters cannot refer causes	156
	Judgment—Date of entry	157
	Appeal from ruling of a master on reference—Reading depositions used on former application	158
	Material necessary for speedy judgment	158
	Notice of cross-appeal necessary	186, 187
	Jury notice restored	190
	Form of order to prevent frivolous applications	201
	Jury and counter-claim in action for redemption	203
	Demand for particulars of claim to stand until defence put in, where fraud was charged by plaintiff	203
	Notice	207
	Writ of summons—Amending indorsement—Re-serving	217
	Security on appeal to Supreme Court	218
	Parties—Partition—Plaintiff of unsound mind	268

	PAGE
PRACTICE—Continued.	
Irregularity—Power to impose terms	355
Particulars—Discovery	359
Third party procedure	359
Priority amongst incumbrancers—How tried	380
Replevin—Direction of writ of, to liquidator—Waiver of irregularity	410
Counter-claim—Default in pleading—Judgment on counter-claim	426
Unnecessary and embarrassing pleadings—Striking out	428
Notes of proceedings in court not privileged	432
Pleading matter since writ—Confession of defence—Judgment for costs	432
Particulars of defence	450
Petition to appear in <i>forma pauperis</i>	462
Discovery— <i>ex parte</i> order—Date of transfer—Service of order	478
Date of filing affidavits—Statement in notice of motion	479
Parties—Relief over	479
Service out of the jurisdiction—Proper parties	483
Legal defence to, no ground for cancellation of policy	488
<i>Ca. au.</i> power of County Court Judge	504
Time, computation of—Railway Expropriation	504
Notice of trial—Irregular service of	505
Jury notices, change in practice	513
Summary order for judgment for money demand—Other claim	539
Warrant of commitment—Variance—Enlargement	540
Lunatic—Official guardian—Service	540
Sale of land—Default of purchaser—Resale	540
Examination—Refusal to attend—Proof of Answers tending to criminate	542
Amendment alleging fraud and misrepresentation	564
Judgment of ejectment on non-appearance <i>Res judicata</i>	567
Reference, scope of—Pleadings—Judgment	567
Counter-claim, a part of defence	568
Judgment against firm—Execution against partner	568
Jury notice—Parties	568
Pleading—Costs—Title to land	568
Specially indorsed writ—Bond—Penalty	578
Counter-claim—Defence—Reply—Jurisdiction—Foreign defendant—Assets in jurisdiction—Set-off	601
Confirmation of report—Rule 848	619
Intr. locutory order—Adding parties	618
Relief against co-defendant—Procedure—Trial of all questions raised	619
Adding trustee as plaintiff without his consent	295
Speedy judgment	318
Verdict of jury—General rules as to upholding	320
Special indorsement of writ—Speedy judgment	347
Term motion in County Court case—Time for making	347
Payment into court—Tender—Denial—Payment out of court	354, 451
See Discovery—Jury Notice—New trial—Venue.	

	PAGE		PAGE
QUIETING TITLES—		REVIEWS AND NOTICES OF BOOKS—Continued.	
Irregularity in notice	155	Bills of Sale and Chattel Mortgage Acts	331
See Vendor and Purchaser.		Mechanics' Lien Act	331
RAILWAY COMPANY—		Magistrates' Manual	372
Effect of order of Railway Committee	13	Manual of Constitutional History of Can- ada	373
Right of, to commence operations	13	Statute Criminal Law of Canada	391
Trespass by	13	Lindley on Partnership	392
Application of General Railway Act to	123	New Brunswick Digest	471
Right of, to desist after notice of expro- piation	127	Ewart's Manual of Costs	488
Common carriers—Hand luggage—Negli- gence	327	Index to the Consolidated Rules	489
Incorporation of—Validity of municipal by-law—Conditions precedent	329	Evans' Law of Principal and Agent	550
Right of passenger to present detached coupon	333	Pollock on Contract	589
Bridges over highways	435	RIGHT OF WAY. See Easement.	
Damage by reason of railway—Limitation of action	443	ROMAN LAW—	
Failure of passenger to produce ticket— Conditions—Forcible removal	452, 592	In English jurisprudence	258
Forged transfer of shares in, by executor	458	Value of the study of	274
Liability for accident from latent defect in rail	501	RULES OF COURT—	
The great railway case	577	Notice on occasional	449, 480
Expropriation of land—		See Consolidated Rules—Practice.	
Increase in value—Right to set off pecu- liar benefit	278	SALE OF GOODS—	
Dominion or Provincial Act—Work for general advantage of Canada—Notice	279	Induced by fraud	12
Desistment—Powers—Bond	566	Restitution of goods on conviction	12
Computation of time	504	In market overt	12
See Company—Damages—Negligence— Practice.		Delivery of part—Absence of brand—Qual- ity of goods—Testing—Acceptance— Property in part not delivered	249
RECEIVER—		Subject to payment of purchase-money	315
Rights of, to estate subject to mortgage ..	138	Property passing—Agent entrusted—Fac- tors' Act	89
By way of equitable execution—Court mo- tion—Costs—Amount of judgment	217	Warranty of horse—Condition for return of—Implied condition	355
Interim of estate of supposed lunatic	295	See Assignment for benefit of creditors— Chattel mortgage—Contract.	
Appointed to collect rents of judgment debtor's land	346	SALE OF LAND. See Vendor and Purchaser.	
Not appointed after foreclosure	392	SALVAGE—	
Attachment—Salary not due	613, 618	Special contract—Action by agent of owner	246
REFEREE. See Arbitration—Practice.		See Ship.	
REGISTRY OFFICE—		SEPARATE ESTATE. See Married Woman.	
Condition of index books in city	226	SEQUESTRATION—	
REGISTRY LAWS—		Sale of seat at Stock Exchange under	247
Set up in defence	249	SETTLEMENT—	
REPLEVIN—		By widower in favour of issue by former marriage	110
See Practice.		By infant under sanction of court, binding rectification of—After-acquired property —Agency of wife's father	144 356
REPORTS—		See Will—Appointment—Vendor and Pur- chaser.	
Nuisances in the reporting arena	53	SHARES—	
An American view of	65	Pledge of certificates—Blank indorsement —Broker—Fraudulent transfer— <i>Bona fide</i> holder	73
And reporters	67	See Company—Negotiable Instruments— Railway Company.	
Consciousness in judgments	161	SHERIFF. See Costs—Execution—Inter- pleader—Practice.	
Undue prolixity in	493	SHIP—	
REVIEWS AND NOTICES OF BOOKS—		Perils of the sea	13
Armour on Titles	14	Collision	13, 265, 427
The Text-book series	17, 253, 330, 489	How to get out of a berth in	81
May on Fraudulent Conveyancing	17	Relation of tow and tug—Liability of vessel in tow	265
Kingsford's History of Canada	45, 550	Meaning of—Vessel—Registration	281
Acts not included in Vols. I. & II., R. S. C.	111	Collision, negligence in both ships—Da- mages for loss of life—Liability of own- ers—Lord Campbell's Act	327
Land Titles Act	145		
Lives of Our Judges	194		
Holland's Elements of Jurisprudence	204		
Tache's Legal Hand-Book and Law List ..	234		
Compendium of the Law of Torts	330		

	PAGE
<i>SHIP—Continued.</i>	
Damage at wharf—Implied representation	580
See Bill of Lading—Charter Party— Maritime Court—Salvage.	
<i>SLANDER.</i>	226
Spoken in a foreign language.	81
And the Married Woman's Property Act.	237
See Libel.	
<i>SOLICITOR—</i>	
Unprofessional advertising by.	2
Uncertificated—Allowing his name to be used.	564
Status of—Costs.	567
Investments on mortgage by—Negligence —Statute of Limitations.	583
<i>SOLICITOR AND AGENT—</i>	
Costs—Taxation of part of bill.	268
<i>SOLICITOR AND CLIENT—</i>	
Power of solicitor to bind client.	92, 528
Taxation at solicitor's instance—Order for payment—Costs of reference.	122
Retainer to collect, does not authorize in- terpleader.	136
Lien on fund recovered—Assignment— Priority.	142
Authority of solicitor to settle—Variation of interpleader order.	250
Liability of client for acts of solicitor.	310
Breach of duty by solicitor—Liability of partner—Scrivener's business.	376
False economy in not employing solicitor —Attorney acting for each party in turn.	527
See Costs—Counsel—Lien.	
<i>SPECIFIC PERFORMANCE. See Contract—</i> <i>Practice—Vendor and Purchaser.</i>	
<i>SOLLOQUY, A.</i>	207
<i>STATUTES OF ONTARIO, REVISED.</i>	97
Variations in.	104
<i>STATUTE OF DISTRIBUTION—</i> <i>Construction of.</i>	271
<i>STATUTE OF FRAUDS—</i>	
Offer not addressed to vendor.	212
Agreement not to be performed within a year.	264, 378
Part performance.	580
See Contracts.	
<i>STATUTE OF LIMITATIONS—</i>	
Rent received by father for infant son.	71
Title by possession—Successive occupiers.	91
Simple contract debt—Interest paid by tenant for life—Debt kept alive against remainderman.	205
Entry by owner—Life lease to one of sever- al in possession—Effect of.	311
Payment and new promise.	433
Exclusive possession—Time.	474
Taxes paid by tenant.	617
See Mortgage.	
<i>SURVEYOR—</i>	
Duties of, on reference to find boundary.	118
Boundary—New survey by.	389
<i>STANLEY, LORD—</i>	
Sworn in as Governor-General.	321
<i>STOCK EXCHANGE—</i>	
Sale under process, of seat at.	247
<i>STOPPAGE IN TRANSIT—</i> <i>Delivery on board ship—When transit ends.</i>	293
See Bill of lading.	

	PAGE
<i>SUMMARY CONVICTIONS ACT—</i>	
Information before one justice—Liquor License Act.	377
See Canada Temperance Act.	
<i>TAXES—</i>	
Power of Local Legislature to impose.	3, 13
Direct taxation.	13
The legal profession as collectors of.	129
On Indian lands—R. S. C. c. 43, s. 77— Purchaser.	616
<i>TAXING OFFICER—</i>	
Authority of, to charge interest.	565
See Costs.	
<i>TEXT BOOKS—</i>	
As authorities.	111
See Law Students' Department—Reviews and Notices of Books.	
<i>TRADE NAME—</i>	
Newspaper—Injunction—Evidence of damage.	269
<i>TRADE-MARK—</i>	
When distinguished only by colour, can- not be registered.	143
Fancy word.	524
<i>TRESPASS—</i>	
By constable searching without warrant.	149
<i>TRIAL BY JURY.</i>	33
<i>TRUSTS AND TRUSTEES.</i>	463
Trustee as assignee of mortgage.	26
Investment—Hazardous security.	78
Lien of trustee on fund for costs under void settlement.	105
Fund in discretion of trustees, not attach- able.	136
Breach of trust—Indemnity—Concurrence in breach of trust.	267
Appointment of new trustees, separate of trustees for part of trust property.	271
Bare trustee of life estate has no power to rent.	280
Breach of trust—Duty of trustee to get in trust funds—Payment by executors <i>de bonis propriis</i> —Creditors and legatee.	485
<i>C'est un qui trust</i> and trustee.	564
See Practice—Mortgages.	
<i>UNDUE INFLUENCE—</i>	
Deed procured through—Setting aside.	344
<i>VACATION—</i>	
The long.	321
<i>VENDOR AND PURCHASER—</i>	
Application under Act respecting.	27
Husband and wife as, direct.	27
Sale of land, delivery to agent.	57
Specific performance—Costs—Delay— Damages.	72
Validity of notice to rescind contract may be summarily tried.	110
Sale not set aside for fictitious bidding by stranger.	111
Mortgage 30 years old—Presumption re- garding—Verification of abstract—Pos- sessory title—Perfect title.	123
Objectionable title—Conditions in con- tract—Time.	125
Riparian grant, presumption as to con- struction of.	139
Forfeiture of deposit—Defect in title sub- sequently discovered—Recovery of de- posit.	143

inued. 331
 cts 331
 ... 372
 Can- 373
 ... 391
 ... 392
 ... 471
 ... 488
 ... 489
 ... 550
 ... 589
 ... 258
 ... 274
 449, 480
 ... 12
 ... 12
 ... 12
 qual- 249
 ce— 315
 ac- 89
 urn 356
 a—
 of 246
 ... 247
 ner 110
 ing 144
 rty 356
 ur-
 ent
 na 73
 —
 or-
 ... 13
 5, 427
 ... 81
 of 265
 ... 281
 a-
 n- 327

	PAGE		PAGE
VENDOR AND PURCHASER—Continued.		WILLS—Continued.	
Meaning of devise	214	Rebuttable presumption— <i>Cuius est solum</i> <i>ejus est usque ad coelum</i> —Occupation of adjoining occupant	475
Agreement for purchase of lease—Con- structive notice of cover. in lease	263	Power of testator to tie up property sub- ject to trusts	481
Act respecting, does not apply to questions of title not concerning the purchaser	268	Cancellation of will—Former will does not hereby revive	497
Construction of patent—Drowned lands— Presumption	342	Tenant for life—Securities—Power of trus- tees	525
Dead procured through threats—Setting aside	344	Gift to wife while living apart void— Condition—Limitation	581
Mortgage—Power of sale—Title—Recov- ery of deposit	370	Legacy—Satisfaction—Contemporaneous deed and will	582
Advertisement of lands in weekly paper— Insufficient notice of sale of church— Refusal of title	380	Tenant for life, past child-bearing—Evi- dence	583
Misrepresentation—Insufficient descrip- tion of lands	407	<i>See</i> Appointment.	
Time—When of the essence of the contract —Condition of sale	431	WILLS, CONSTRUCTION OF—	
Requisitions—Certified copies—Removing clouds on title— <i>Lis pendens</i> —Power of attorney—Compensation for deficiency	537	Die without leaving issue	44
Sale—Default of purchaser—Re-sale	540	Right of legatee to account of back rents from devisee	110
Misdescription—Conditions of sale—Lease —Condition that misdescription shall not annul sale	580	Restraint on alienation by devisee invalid. Revocation of—A residuary bequest, an exercise of power of appointment	128 144
Memorial of will over twenty years old— Contents—Evidence—Life estate	600	Gift to class—Ascertainment	203
Title when shown—Demand of abstract— Costs	600	Estate limited to heirs but not to assigns	214
Memorial of assignment endorsed on mort- gage—Discharge—Recital	601	Restraint on alienation, estate tail	214
VENUE, CHANGE OF—		"Property at my bank"	270
Preponderance of convenience—Disclos- ing witnesses on application for change of Convenience—Cause of action—Appeal— Terms	122	Ademption—Bequest of business—Double portion	271
<i>See</i> Practice.	347	Period of distribution—Thellusson's Act	279
VERDICT—See New trial.		Life tenant—Power of, to rent—Trustees	280
VOLUNTARY GIFT—		Residuary gift to charities—Direction to pay out of pure personality	294
Promissory note to be handed over to third person after death of maker	70	Locke King's Act, construction of	296
VOLUNTARY CONVEYANCE—		Bequest to children—Illegitimate children	298
Not revocable—Presumption of fraud	463	Absolute gift—Restraint on alienation— Condition	361
WAITE, CHIEF JUSTICE—		Vested interest—Gift over on death with- out leaving children— <i>Le co parentis</i>	361
Obituary	193	Remoteness—Severable proviso	362
WARRANT, AN OLD	80	Charitable legacy—Perpetuity	363
WARRANTY—		Provision for maintenance—What it in- cludes	380
Breach of—Costs of defending action by sub-vendee for	106	Mortmain—Charitable uses—Methodist Church	407
Implied condition—Breach of—Horse dis- abled	355	Mortmain Act—Toronto General Hospital —16 Vict. c. 220—Devise of land	616
<i>See</i> Contract.		Devise of properties passes real estate Occupation of tenant is the possession of the landlord	407
WASTE—		Wrong description— <i>Falsa demonstratio</i>	408
Permissive, by tenant for life	460	Satisfaction—Ademption—Legacy Debt	432
WOMEN, THE VALUE OF	323	Promoulture—Heir-at-law—Moneys paid over six years—Moneys not paid	443
WILLS—		WINDING UP	
Probate—Validity of—Right to question	90	<i>See</i> Company.	
Alteration of, by court to correspond with draft	108	WRIT OF SUMMONS	
Witness to, unable to remember signing	109	<i>See</i> Practice.	
Trustee may be executor, according to the tenor	140	WORDS—	
Ademption—Lunacy after making will	204	"The Judge"	29
Execution of codicil—Acknowledg- ment	206, 427	"The Court"	61
Revocation of power of appointment—"In favour of"	458	"Till"	128
		"Appurtenances"	139
		"Legal notice to quit"	171
		"Children"—"Representatives"	298
		"Fraud"—"Fraudulent"	455
		"True copy"	456
		"Devolve"	539
		"Goods" includes a dog	579