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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and Proudfoot, Rose, Robertson, MacMahon and Street, JJ., it was resolved that Rule 671 be, and the same is hereby rescinded, and the following substituted therefor, viz.: "Actions not tried or disposed of after being once entered for trial shall remain for trial subject to the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 set-back 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., 1825. 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. Spragge, 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.

Quære, 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 præsente 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.* KLOEPFER.

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.* 32, *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 mortgages 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.s. (j.)

Upon a charge against an inmate of a house of ill-fame under s.s. *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 presence 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 of 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. Lussier, with honours and first scholarship; and Messrs. G. Ross, B. N. Davis, T. W. R. McRae, 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 Bencher, 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 Bencher, 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.

FEES.

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.
- Cæsar, B. G. I. (1-33.)

1890.
- 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; Childe 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 le toits.

or NATURAL PHILOSOPHY.

Books—Arnott'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 Pleadings 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.

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