DIARY FOR MAY.

1. Mon.. Prince Arthur born, 1850.
2. Tues.. Primary examinations.
4. Thur... Last day for filing petition against election of any Bencher.
7. SUN.. *3rd Sunday after Easter.*
9. Tues.. General Session and County Court sittings for York only. Intermediate examination.
11. Thur... Examinations for admission. Can. for call to pay fees.
12. Frid.. Examinations for call.
14. SUN.. *4th Sunday after Easter.*
15. Mon.. Easter Term begins. Term of Benchers elected in 1871 expires.
19. Frid.. Paper Day, Q.B.
20. Sat.... Paper Day, C.P.
21. SUN.. *5th Sunday after Easter.* Rogation Day.
22. Mon.. Paper Day, Q.B.
23. Tues. Paper Day. C.P.
24. Wed.. Queen Victoria born, 1819.
25. Thur.. Ascension Day. Princess Helena born, 1846.
28. SUN.. *Sunday after Ascension.*
31. Wed.. University College Easter Term ends.

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THE
Canada Law Journal.

Toronto, May, 1876.

The presentation of the address and testimonial to the Hon. John Hillyard Cameron, the Treasurer of the Law Society, referred to in the *resumé* of proceedings of the Benchers for last term, has been deferred until the first day of next term.

In gratifying the conservative desire to preserve the legal functions of the House of Lords, Lord Cairns has framed a tribunal which will be in reality a distinct Court of Appeal. It will neither be the old House of Lords, in which every peer had a vote on judicial questions, nor the more recent "House of Lords," in which the "Law Lords" alone had judicial functions. It will consist of those members of the House of Lords who have filled high judicial offices, and of two new Lords of Appeal, to be chosen from persons of suitable qualifications at the Bar or on the Bench. These new Lords of Appeal are to receive a summons, and sit and vote in the House like other peers, and to be paid each a salary of £6,000 a year. A fusion is gradually to be made with the Judicial Committee of the Privy Council, which now practically consists of the four salaried members. Two additional Lords of Appeal are to be appointed in place of the four judges of the Privy Council, as vacancies occur. The practical result of the whole measure will be the creation of a new ultimate Court of Appeal, styled the "House of Lords," and having two divisions, one of which will deal with colonial appeals. To the colonies, therefore, Lord Cairns' bill is of no very vital importance. To insure the despatch of business, provision is made for continuous sittings of the new Court, unaffected by the prorogation or dissolution of the House of Lords.

SUITS "BENEATH THE DIGNITY OF THE COURT."

(*Second Paper.*)

We now proceed to consider the doctrine and practice in Equity touching suits which are deemed *infra dignitatem curiæ.* For all practical purposes, our investigations may be limited by the Ordinances of Lord Bacon, promulgated on the 29th of January, 1618, which have been declared to be in force in this Province. By Ord. 15 it is declared that "all suits under the value of ten pounds are regularly to be dismissed;" and by Ord. 60, "where any suit appeareth upon the bill to be of the natures which are regularly to be dismissed according to the fifteenth ordinance, such matter is to be set forth by way of demurrer." The present general order in force in England provides as follows: "Every suit, the subject matter of which is under the value of £10, shall be dismissed, unless it be instituted to establish a general right, or unless there be some other special circumstance which, in the opinion of the Court, shall make it reasonable that such suit should be retained:" G. O. ix., rule 1.

After the recognition of the general rule that the insignificance of the subject-matter was a reason for the Court declining jurisdiction, several exceptions were soon established. These may be classified under three heads: (1) Where the suit was for a charity, or for the benefit of the poor, the smallness of the sum involved was no valid objection: *Parrott* v. *Pawlett*, Cary R., 147, 1 Eq. Ca. Abr., 75. (2) Where the bill was to establish a right. Thus in *Cocks* v. *Foley,* 1 Vern. 359, a bill for establishing a right to ancient quit-rents of very small value was allowed to be filed. In a very recent case, *Hoskins* v. *Holland,* 23 W. R., 477, the Master of the Rolls had occasion to consider this exception under the English general order. He said that a suit to establish a general right within the meaning of the order was a suit which would determine some question for all time. He instanced a tithe suit, and also referred to an unreported case where the sum at stake was twopence; but the Court gave relief on the ground that the result was to establish the general right of the plaintiffs to a toll of that amount. He held that the bill before him, being one filed by the assignee of a policy of marine insurance to recover from one of the underwriters the premium of £3, was not such a suit, as it would establish nothing against the other underwriters. (3) It would, probably, be held under the English general order that the want of jurisdiction in any other court would be such a special circumstance as would justify the interposition of the Court of Chancery. There is no decision to this effect under that order; but such, we have seen, was the well-established and highly reasonable rule at law, recognised in the modern case of *Stutton* v. *Barment,* 3 Exch. 834. And such appears to have been the practice under Lord Bacon's ordinance. In *Eastcourt* v. *Tanner,* Cary R., 106, the suit was for a sum under £10, and it was stayed upon it appearing that both parties dwelt within the jurisdiction of the marches of Wales.

The Court refused to interfere by way of injunction and give an account of profits in cases of literary piracy, but left the plaintiff to his remedy by way of damages at law: *Bailey* v. *Taylor,* 1 R. & M., 73; *Whittingham* v. *Wooler,* 2 Swanst., 428. So a bill to interplead by a tenant failed when the whole rent actually due was less than £10: *Smith* v. *Target,* 2 Anst., 529. In these insignificant cases the Court is wont to interpose in various ways: either upon demurrer, when the facts appear on the face of the bill, or at the hearing, if the facts do not so appear, by dismissal of the bill (*Bruce* v. *Taylor,* 2 Atk.

253), or by taking the bill off the files upon a summary application for that purpose before answer: *Westbrooke* v. *Browett*, 17 Gr. 341.

In this case of *Westbrooke* v. *Browett*, it became necessary for the Court of Chancery in this Province to act for the first time upon the rule that the subject of the suit was too trivial to justify its taking cognizance of it. The Chancellor (Spragge), with his usual care, adverted to the fact that, in his view, the plaintiff was not left without remedy, as the matter appeared to him to be within the competence of the Division Court. The next case in Ontario was *Gilbert* v. *Braithwaite*, 3 Chy. Ch. 413, on an appeal from the referee, who dismissed the bill on the ground that the amount involved was only $24. The Court upheld the order, referred to Lord Bacon's ordinance as being in force here, and gave no effect to the weighty argument of Mr. Moss, that the plaintiff would be without remedy in any other court if the bill was not sustained. Upon this point, we think the authority of this case might well be examined, if it came before the Court of Appeal. The only other reported decision in this Province is *Reynolds* v. *Coppin*, 19 Gr., 627. There Blake, V.C., refused to grant an administration order at the instance of a legatee whose claim was only $28, although it was alleged that there were other legacies remaining unpaid, amounting to a considerable sum. We incline to think that in that case the Judge might have properly exercised his discretion to grant the order, but his refusal did not involve the loss of the amount, as steps could be taken in another court to enforce the payment.

Since the Administration of Justice Act, it may be deemed that the rules of Chancery we have been considering are abrogated by the statute. The jurisdiction of that Court is now made in effect co-ordinate with that of the Common Law courts. The Court of Chancery, therefore, could not now decline jurisdiction in any case when the sum claimed is over forty shillings, and the exceptions which obtain in the Common Law courts should also be given effect to in Equity.

It is on principles analogous with those which we have been considering, that the Court of Chancery proceeds in declining to entertain appeals from the Master when but a small pecuniary amount is at stake. Thus in *McQueen* v. *McQueen*, 2 Chy. Ch. 344, where it appeared that no principle was involved, Spragge, V.C., refused the ear of the Court to a dispute respecting ten dollars. Reference may also be made to *Re The National Assurance and Investment Association*, 20 W. R., 324, before the Lords Justices, in which they declined to hear an appeal from the Master of the Rolls in a winding-up proceeding, arising out of the application of a solicitor to have a lien declared in his favour for the amount of his costs of proving a claim, which had been taxed at £1 15s.

THE TRANSFER OF REAL ESTATE.

(*Communicated.*)

We see in the April number of the *Canadian Monthly* a paper by Mr. Holmested, in which some suggestions are made for the amendment of the law relating to real estate. The proposals made in this paper may be classed under two heads, viz.: first, the simplification of our present system of land transfer, and secondly, the assimilation of the law of real and personal property as far as possible, so as to make the law relating to realty conform to that which governs personalty.

With regard to the first proposition, it is almost needless to say that the evil

effects of our present system of land transfer are so well known to all practising lawyers, that the introduction of any simpler system which would effectually obviate these defects would meet with the cordial support of the profession.

For the last twenty years the greatest English lawyers have been endeavouring to devise some scheme which shall effect this much desired end; but the glory of delivering the country from the incubus of our present system of conveyancing must rest, not with lawyers, but with a layman whose strong practical sense has enabled him to cope successfully with a difficulty which has foiled the efforts of more than one Lord Chancellor.

In 1862, the late Lord Westbury thought he had discovered a panacea for the evil, and an act was passed under his auspices, of which golden hopes were formed. After a short trial, however, it proved to be a most complete and absolute failure. Mr. Osborne Morgan, of Burial Bill notoriety, in 1874 thus amusingly depicted its collapse: "The present duties of the Land Registry Act Office in Lincoln's Inn Fields consists not in putting titles on the register, but in taking them off. He had been in the habit of passing it daily for many years, and in that long course of time he never saw a single person enter it. The court-yard leading to it was a wilderness; it was covered with grass and weeds—weeds, he might say, grown as high as a man—and was as desolate in appearance as any property that had been in Chancery." Such was the result of Lord Westbury's labours.

Repeated failures, however, have not resulted in despair; on the contrary, renewed efforts have been recently made, and resort has at last been had in England to the South Australian system, the introduction of which into this country is advocated in the paper we have referred to. The Imperial Statute 38 & 39 Vict., cap. 87, which came into force on the 1st January last, is based on the South Australian system of Sir Robert Torrens.

The object of the act is to enable land to be transferred somewhat on the same principle as ships are now transferred, and to secure indefeasible titles to owners of real estate. It aims at getting rid of the necessity of investigating the rights of prior owners, and thus doing away with lengthy abstracts and searches into prior transactions in reference to the land, which is the necessary consequence of our present system. The English act is a modification of the Australian, and whether or not it is likely to prove as efficient in its operation, it can hardly fail to be productive of beneficial results.

The English act admits of the registration of three classes of titles. (*a*) Those that have been submitted to judical investigation and are found to be absolute and freed from encumbrances; (*b*) Those that have been submitted to judical investigation and are found subject to certain specified qualifications; and (*c*) those which have not been submitted to judicial investigation, and which are only claimed to be possessory. As to the first two classes, the title of the registered proprietor as it appears on the register is to be absolute and indefeasible, but as to the third class, the rights of any claimants adverse to that of the first registered proprietor are preserved, and may be enforced notwithstanding registration. As to this last class, Lord Selborne, when speaking on the subject in 1873, said: "We think that a registration founded on ostensible or possessory ownership should be permitted in the first instance; in the meantime the titles would be as good at least as they are at present; every year would tend to bring nearer the time when the register alone would be sufficient to prove the title, and every transfer would be unattended with a considerable portion of the present expense."

In Australia we believe every title must be submitted to investigation before registration, and the third class of cases, which is admitted to registration under the English act, is practically excluded under the Australian act, unless the possession can be shown to be of sufficient length to give a legal title.

The want of a universal system of survey in England has also rendered it necessary to provide that there the registration shall not be conclusive as to the boundaries of the land registered, which is considered by Sir Robert Torrens a very serious defect in the act. It is one, however, that we should be able to avoid in case the measure is ever introduced here.

The practical success of the South Australian act has been proved beyond all question. It only came into operation on the 2nd July, 1858, and yet by the 31st December, 1869, 2,763,887 acres had been brought under its operation, leaving only 1,193,039 acres under the old system; and this satisfactory result was attained notwithstanding the act is not compulsory.

The subject is one that must obviously soon engage the earnest attention of the Legislature of this Province; though, owing to the system of registration which has prevailed in this country, the difficulties and hardships which prevail in England are not felt here to anything like the same extent. The act for quieting titles was a step in the direction indicated, but that act has not been utilized as much as was anticipated, possibly because it was thought proper to apply most rigorous rules in its application. And this made owners of land loath to put a cloud on their titles, should they fail to establish a case sufficient to entitle them to a certificate.

As to Mr. Holmested's other proposition for the assimilation of the law relating to real and personal property, it is worthy of consideration how far this is desirable, and if desirable, to what extent practicable. While it is obvious to any lawyer that there can never be a perfect assimilation of the law relating to the two classes of properties, it is nevertheless a fair question whether the laws regulating the rights to real and personal property might not advantageously be brought into closer harmony than they now are.

LAW SOCIETY.

Hilary Term, 39 Victoria.

The following is the *resumé* of the proceedings of the Benchers during this term, published by authority:—

Monday, 7th February, 1876.

The Treasurer being absent, the Benchers elected D. B. Read, Esq., Q.C., to preside in Convocation.

The following gentlemen were called to the Bar, namely: Messrs. E. D. Armour, J. R. Metcalfe, A. R. Lewis, J. W. Frost, and R. G. Cox.

The following gentlemen received certificates of fitness: E. G. Patterson, Robt. Pearson, James Leitch, R. Gregory Cox, T. C. Johnstone, E. P. Clements, W. M. Hall, E. D. Armour, A. E. Smythe, H. Archibald, T. C. Hegler, G. A. Cooke, and D. Lennox.

The petitions of Messrs. W. C. Perkins, F. S. O'Connor, T. G. Blackstock, and A. W. Kinsmans were granted.

Tuesday, 8th February, 1876.

The abstract of balance sheet for 1875 was laid on the table.

ABSTRACT OF BALANCE SHEET FOR 1875.

RECEIPTS.

Certificate and Term fees	$13,507 44
Notices	481 00
Attorneys' Examination fees	3,950 00
Miscellaneous	3 61
Call fees	5,292 00
Admission fees	5,680 00
Reports sold	217 80
Receipts from Ontario Government	5,725 31
Interest	1,355 15
	$36,212 31

EXPENDITURE.

Salaries and Scholarships	$12,748 00
Hall and grounds	7,810 56
Library	3,089 11
Rowsell & Hutchison for reports	4,700 21
Fees returned to rejected students	3,127 50
Insurance premiums	217 50
Petty expenses	425 37
Examiner and Auditors	200 00
	$32,318 25

OUTSTANDING ASSETS DEC. 31st, 1875.

Cash on hand	$ 97 58
Bank deposits	22,010 62
Special deposit	20,000 00
	$42,108 20

The report of the Examining Committee for this term was received and adopted.

Ordered, That the secretary obtain from the Dominion Telegraph Company a full return of the receipts and expenditure of the company, in connection with the Osgoode Hall Telegraph Office, to be laid before the Finance Committee, in order that the committee may ascertain what loss, if any, has been sustained by the company in respect of this office, and make such allowance to the company as may seem just.

Messrs. Crickmore and Hodgins were appointed scrutineers for the election of Benchers, to take place in April of this year, and Mr. D. B. Read was appointed to act as and for the treasurer at such election.

Ordered, That the auditors be paid fifty dollars each for their services during 1875.

Ordered, That Mr. Evans be appointed examiner for Easter Term, and be paid fifty dollars for his services this term.

Ordered, That a special meeting of the Benchers be called for Tuesday Evening, the 15th instant, at 7.30 o'clock, to consider the subject of reporting.

Mr. Hodgins reported that the Bill to Amend the Acts respecting the Law Society had passed the Legislative Assembly.

Mr. Boswell was appointed auditor for 1876, in place of Mr. Ewart, whose time has expired.

Saturday, 12th February, 1876.

The petition of Mr. Spragge, to be called to the Bar under the special circumstances stated in his petition, was granted.

Mr. Spragge was called to the Bar.

The petition of Mr. Monkman, to be called to the Bar on passing his final examination, was granted.

The petition of Mr. Stone, to be allowed to present himself for his second intermediate examination next term, was granted.

The petition of Mr. Titus, to be allowed to file his articles *nunc pro tunc*, was granted.

The application of Messrs. A. & W. Diamond was granted.

Tuesday Evening, 15th February.

Resolved, That the fees hereafter to be paid in Michaelmas Term for certificates for attorneys and solicitors, including term fees, shall be thirty dollars per annum, in order to provide for a proper and efficient system of reporting the judgments of the Courts.

The report of the Special Committee on Reporting was received and read, and being slightly amended, was adopted.

Resolved, That a committee, consisting of the Treasurer, Messrs. McCarthy, Armour, McKenzie and Hodgins, be appointed to confer with the Attorney-General on the subject of shorthand reporting.

Resolved, That the increase of salaries of the editor and reporters of the Queen's Bench and Common Pleas shall take effect from the first day of Easter Term last, provided all arrears of judgments unreported be reported by the first day of Trinity Term next; but if not, from the first day of Easter Term next, to apply to each reporter and the editor-in-chief, according to the completion of their respective reports.

Mr. Read gave notice that he would, on Friday, 18th instant, move that a committee be appointed to frame rules and regulations under the Benevolent Fund Act of last session of Provincial Parliament.

The Treasurer here left the convocation room.

Mr. D. B. Read was elected chairman.

Resolved, That, in view of the valuable services rendered by the Honourable John Hillyard Cameron, the respected Treasurer during the last sixteen years, to this society, Messrs. Armour, McCarthy, Hodgins, and Bethune, be a committee to prepare an address and procure some testimonial, to be presented to him, expressive of the appreciation of the Benchers of his valuable services.

Friday, 18th February.

The Hon. Adam Crooks, Q.C., was elected chairman.

Mr. Hodgins, from the committee appointed last meeting, brought up the draft of an address to the Hon. John Hillyard Cameron, at the close of his period of office.

The address was submitted paragraph by paragraph, and adopted unanimously.

Resolved, That the sum of five hundred dollars be appropriated for procuring the testimonial to accompany the address.

Resolved, That the presentation of the address and testimonial be made on Wednesday, the 5th day of April, at the hour of noon.

The treasurer, the Hon. John Hillyard Cameron, Q.C., here entered and took the chair.

Nicholas Flood Davin, Esq., was called to the Bar.

H. C. Gwyn, Esq., was called to the Bar.

The petitions of Messrs. A. J. B. Macdonald, R. M. Meredith, F. VanNorman, E. Thos. Essery, were received. The petitioners were allowed to give notice of application for call under the Act next term in the usual way.

The petitions of J. E. O'Reilly and T. H. A. Begue were received and read, and allowed to stand over until next term.

Messrs. Crooks, Maclennan, Benson, Armour, Bethune, and Hodgins, were appointed a committee to draft all necessary rules and regulations under the first and second sections of the Act to amend the laws respecting the Law Society, and to report next term.

The petition of the students of the Law School was received and referred to the Committee on Legal Education.

Messrs. Hodgins, McKenzie, Britton, Osler and Read were appointed a committee to frame rules in respect of the benevolent fund, and to report to Convocation next term.

SELECTIONS.

RIGHTS OF PASSENGERS IN DRAWING-ROOM CARS.

THE case of *Cox* v. *New York Central and Hudson River Railroad Co.*, 6 N. Y. Sup. Ct. 405, is a very important one in several particulars. The facts of the case were substantially as follows: One Peck purchased at Norwich, Chenango county, tickets for himself, his wife and his daughter, for Albany *via* Utica, over the road of the defendants. On arriving at Utica, the train on defendants' road consisted of drawing-room cars, with one ordinary passenger car in the rear. The plaintiff was making his way to the rear car, but it was so filled with passengers that it afforded no accommodation for his party, and the conductor telling him that there were a few seats forward, and motioning him to that part of the train, they went forward and took seats in a drawing-room car. After they had ridden about twenty-five miles, and while the condition of the rear car remained the same, Peck was required, by the conductor of the drawing-room car, to pay for the privilege of riding in it. He refused to comply with the demand, or remove to the rear car, and in consequence was violently ejected from the train, and his family followed him. Another train came along in about two hours, and the party rode

on that to their destination, on the same tickets. There was evidence that the plaintiff was injured in his person by the ejection, and that he suffered from the effects at the time of the trial. There was also evidence that after the plaintiff was removed from the car, and just as he reached the ground, turning around to see if his wife and daughter were following, he was again violently handled by the defendants' servants. The permanent injury consisted in the straining and crooking of one of his fingers, and the temporary injury consisted in being confined to his bed for two weeks. There were two trials. On the first trial the verdict was for the plaintiff for $8,000, which was by consent reduced to $5,000, the amount demanded in the complaint. This was set aside by the general term as excessive, Judge Daniels delivering the opinion. Subsequently the plaintiff pressed the cause for a second trial, but the trial was postponed on the defendants' application, on the defendants' stipulating that if the plaintiff should die the action should not be deemed to abate. The plaintiff afterward died, the action was revived by his executor, a second trial was had, and a verdict was rendered for the plaintiff for $4,000. On appeal the general term held, first, that the ejection was wrongful; but, second, that the damages are excessive, and consequently the judgment must be set aside; and thirdly, that the action had abated by the death of Peck, and the stipulation of the defendants could not revive it, and therefore no new trial should be ordered and no costs allowed.

It seems to have been conceded by Judge Daniels and Judge Boardman, who delivered the opinions on the respective appeals, that the decedent was wrongfully ejected from the train. Judge Boardman observes: "So long as the defendant furnished a sufficient number of trains, with a sufficient number of proper cars, to accommodate the travelling public on the line and route of its road, it had the right to run extra or special trains with special or drawing-room cars, charging for seats or rooms therein, and to exclude from such cars all persons refusing to pay extra for seats therein. But every such train should, in some way, be so marked, designated or guarded, as that no passenger could get upon it without notice of its special character. In this case it was not so guarded." So far, then, this case seems to be an adjudication that if a passenger is permitted to enter upon a train, and cannot find a seat in the ordinary cars, he may lawfully enter a drawing-room car and occupy a seat therein without extra charge.

In the second place, as to the damages. If the views of these two general terms are sound, why not abolish the jury at once, and let the general term pronounce on the question of damages? In respect to the first verdict Judge Daniels remarks, that it "warrants the conclusion that prejudice, partiality, excitement or bias controlled their action;" and Judge Boardman observes, "that the jury must have been influenced by prejudice, passion or something outside the case itself." This is all very well in theory, but we fail to see how the verdicts evince any such thing. They may be higher than these judges or ourselves would have awarded, or they may not, but if a verdict of twelve jurors must be just what a bench of three judges think it ought to be, pray what is the use of the jury? If the jury had awarded one hundred thousand dollars or twenty thousand dollars, there might be some warrant for the remarks of the judges, but it really does not seem to us that a verdict of $4,000 or even $5,000 is so startling or unusual as to lead to the conclusion that it must be the result of passion, prejudice or partiality. If Judge Daniels had been the passenger in question, and had been "yanked" out of a car, his wife and daughter following in terror, and been assaulted again on reaching the ground, and had had his hat knocked off, and his hand so permanently disabled that he couldn't write those elaborate opinions of his, which the whole profession are so apt to sit up nights to read, without pain and suffering, we guess that he would not have thought $5,000 too much to soothe his physical hurts and his wounded feelings, and that the fact that he was enabled to take the next train and "reach Troy in time for tea," would hardly have balanced the account. Judge James says: "It was the duty of the deceased, on being informed of the situation, either to pay the extra charge or

leave the car and look to the corporation for redress." We wish, if possible, to speak and think respectfully of judges, but really it does sometimes seem to us that being raised into the rare atmosphere of the bench, some men forget the conditions and necessities of the common world below, and endeavour to square earthly affairs with the standards prevailing in their own cerulean region. In view of the final result of this case, we think it a great pity that the judges did not notify the plaintiff, on the first appeal, just how much of a verdict they would approve.

This brings us to consider the eventual shipwreck of the case by reason of the plaintiff's death. When the action came up for a new trial the plaintiff was ready, but the defendant was not; the defendant moved for a postponement, and this was granted on his stipulating that, if the plaintiff should die before the action could be tried, the action should not abate. Now, two judges of the general term decide that this stipulation was outside the powers of the attorneys who made it; that the attorneys could not alter the law by stipulation; and that the second trial was a nullity. Well, if it was a nullity we do not see any excuse for all the discussion about excessive damages, unless the Court felt that two poor reasons were equal to one good one. In regard to the idea of abatement Judge James correctly says, in his dissenting opinion: "It has been repeatedly held that the Court, on application to put a cause over the circuit, has power to impose, as a condition, that the party shall stipulate that the cause shall not abate in case of plaintiff's death," citing *Ames* v. *Webbers*, 10 Wend. 576, "and having accepted it, and availed itself of its benefit, the defendant is estopped from denying the power of its agent to make it." Just so, we suppose, if a party asks a postponement of a cause not referable, and the Court grants it on condition of his assenting to a reference, and he accepts the condition, he will not afterward be tolerated in claiming that the reference was void because it deprived him of his right to a jury. A party has a right to assent and submit to an illegal judgment against him, and if he agrees to do so, and his consent confers on him a benefit and deprives the other party of a right, he must not be allowed to retract that consent.

It is no wonder that the public, on reading such a decision as this, jump at the conclusion that law is not common sense, and rail against the lawyers and the courts.—*Albany Law Journal.*

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

Richardson v. Shaw.

Interpleader—Jurisdiction—Prohibition—Waiver.

Where a judge makes an order, which, though possibly erroneous in itself, is made at the request of one of the parties and is acted upon, a prohibition at the request of such party will be refused.

[February 9, 1876—Gwynne, J.]

The defendants, Shaw & Campbell, obtained judgment against one George Richardson in 1874 for $339.98 damages and costs, in the County Court of the County of York, and issued execution directed to the Sheriff of Hastings. The sheriff seized certain goods and chattels in the possession of said Richardson, which the plaintiff, Ellen Richardson, claimed. An interpleader issue was directed to be tried at Toronto by the Judge of the County Court of York, which issue was afterwards ordered by the said Judge to be tried before the Judge of the County Court of Hastings, by consent of all parties. The issue was tried by the Judge of the County Court of Hastings, and verdict given in favour of the claimant, the plaintiff. The plaintiff afterwards obtained an order from the Judge of the County Court of York for the payment of costs by the defendants, and signed judgment and issued execution.

A summons was thereupon obtained, calling on the County Judge of York and the plaintiff to show cause why a writ of prohibition should not issue to restrain further proceedings.

Osler shewed cause, and contended that as the interpleader order was obtained by defendants and subsequent proceedings taken by the defendants, they could not succeed in this application.

D. B. Read, Q.C., contra, relied on *Nicholls* v. *Lundy*, 16 U.C.C.P. 160, and the cases there cited.

GWYNNE, J.—Judge Willes, in pronouncing the judgment of the Judges to the House of Lords in *The Mayor of London* v. *Cox*, L. R. 2 E. & I. Ap. at p. 282, says: "There is indeed a distinction after sentence between a patent and a suggested defect, for if the party below, whether plaintiff or defendant, thinks proper, instead of moving for a prohibition, to proceed to trial in the special or inferior court and is defeated, then, if the defect be of power to try the particular issue only (*defectus triationis*, as it has been called), the right to move for a prohibition is gone. If the defect be of jurisdiction over the cause (*defectus jurisdictionis*), and that defect be apparent upon the proceedings, a prohibition goes after sentence." This would seem to be applicable if the order which is assailed here as being in excess of jurisdiction had been made *in invitum*, and even then, after trial, the right to a prohibition would be gone; but here the Judge having jurisdiction over the cause, and having power to make an order sending the interpleader matter to the Judge of the County Court of Hastings, to be dealt with wholly by him, or to retain it in his own Court to be dealt with there, made an order directing the proceedings to be taken in his own Court. Afterwards, because it was more convenient to try the issue in the County of Hastings, he varied his order, on the application and at the request of the defendants and with the consent of the plaintiff, so far as to order the trial of the issue to take place before the Judge of the County Court of Hastings. The parties went down to trial there for their own convenience; it was their own act; the order allowing it may have been erroneous, but having been made at the special request of one party and with the consent of the other, and so drawn up, it could not have been appealed against. If either party repented of his having procured the Judge to make the order, he should have appealed to the Judge himself to revoke it before having been acted upon; but the party applying for the order cannot now, after the issue has been decided against him and the whole matter has been disposed of upon the basis of the verdict, move for a prohibition to prevent his own act having its legitimate consequences attendant upon it, any more than he could have appealed against an order made at his own special request. There is no such absolute right to a prohibition as would enable a party th to trifle with the Court after he found the tribunal of his own selection deciding against him.

Summons discharged.

EAKINS V. FRASER ET AL.

Relictâ verificatione—Signing judgment on—Reg. Gen. T. T. 1856, 8, 26.

A judgment may be regularly signed on a *relictâ verificatione* without a judge's order, and without the signature to the relinquishment being verified by affidavit.

It is proper on entering judgment in such a case to set out the plea, joinder of issue, and *relictâ* upon the roll.

[February 17, 1876—MR. DALTON.

There were two defendants in this case, Fraser and Aylwin. The defendants appeared by different attorneys, and pleaded separately. The plaintiff joined issue in the pleas of each defendant.

Subsequently the attorney for defendant Aylwin signed *relictâ verificatione* in the following form:—

"The seventeenth day of December, in the year of our Lord 1875. And the defendant, Horace Aylwin, as to the plaintiff's replication to his pleas, says that he relinquishes his said pleas and abandons all verification thereof."

The attorney for defendant, Fraser, signed a relinquishment according to the same form.

These relinquishments were signed by the respective attorneys, and given at the request of the plaintiff's attorney, and filed by him. There was no affidavit filed verifying the signatures of the defendants' attorneys. On the relinquishment being filed, plaintiff's attorney signed final judgment. The roll set out the declaration, pleas, joinders of issue and relinquishments, and then continued: "And thereupon the defendants, with the consent of the plaintiff, relinquishing their said pleas by them pleaded to the said declaration, say that they cannot deny the action of the plaintiff, nor but that the plaintiff ought to recover against the defendants his said debt by reason of the premises, whereby the defendants remain undefended against the plaintiff. Therefore," &c.

Osler, for defendant, Aylwin, obtained a summons calling on plaintiff to show cause why the judgment should not be set aside on the grounds (amongst others) that it was irregularly signed in this: 1. That no judge's order for the withdrawal of the defendant's plea was made or filed on signing judgment. 2. That if the alleged consent were sufficient, the Depu tyCler

of the Crown should not have signed said judgment without an affidavit of the due execution thereof. 8. Because said judgment was signed while the defendant's pleas were still on the file.

Brough, for plaintiff, shewed cause.

1. The relinquishment is an entry in the nature of a rejoinder—its use has been long recognised—and no order for withdrawal of pleas was necessary; Rastell's entries, tit. Appel de Mort p. 49, pl. 6, sp. 52, pl. 15; *McIntyre* v. *Miller*, 13 M. & W., 725; *Cooper* v. *Painter*, 13 M. & W, 734 (a); *Hutton* v. *Turk*, 13 M. & W., 734 (a); *Davidson* v. *Bohn*, 5 C. B., 170: Bullen & Leake Pr., 3rd ed., 672 and 657.

This proceeding is recognised by Reg. Gen. T. T., 1856, No. 8, and here the relinquishment was entered at the instance of the plaintiff's attorney. A relinquishment, being in the nature of a pleading, does not come within the meaning of rule 26, Reg. Gen. T. T. 1856, relating to cognovits. This is shewn by the fact that the proceeding by relinquishment is recognised by rule 8 of the same general rules. And in England, where 1 & 2 Vict., cap. 110, prescribed similar formalities in the execution of cognovits to those prescribed in this province by rule 26, Reg. Gen. T. T., 1856, the proceeding by relinquishment subsequently to that statute, has been held regular: *McIntyre* v. *Miller*, sup., *Davidson* v. *Bohn*, sup.

2. As the entry was a pleading, it was unnecessary that the signature of the defendant's attorney should be verified by affidavit.

3. The plaintiff was entitled to allow the pleas to remain on the file, and to set them out in the roll, together with the joinder of issue and relinquishment: Chitty's Forms, Bk. vi., c. 4, form 30. The proceedings here are similar to those in case of failure by defendant to rejoin, where, although it was formerly considered that the plaintiff should cause the replication and plea to be struck out, and then enter judgment for default of a plea, it has since been settled that he may, at his option, either adopt that course or set out the plea and replication on the roll, together with a suggestion of the default in rejoining, and enter judgment for default of rejoinder: *Lawes* v. *Shaw*, 5 Q.B. 322. But even if the pleas should have been struck off the files, it was the duty of the clerk so to have done, and no order was necessary for the purpose: *Anon*, Lord Raym., 345; Tidds N. Pr., 413; Chitty's Archbold's Q. B. Pr., 12th ed., 947. And the irregularity (if any) having arisen through an omission of its officer, the Court will not allow the plaintiff to be prejudiced thereby: *Nazer* v. *Wade*, 1 B. & S., 728; *Evans* v. *Jones*, 2 B. & S., 45.

Osler, in reply, cited Reg. Gen. T. T., 1856, 8, 26, and submitted that the present cause came within the rule.

MR. DALTON.—I consider the judgment regular. The plaintiff was entitled to enter judgment on the relinquishment given. I might have had more difficulty in determining as to the validity of a relinquishment where there had been a demurrer to the plea, owing to the rule that a party cannot confess the law against himself; but even that question appears to be settled by the cases in Meeson & Welsby. I consider also that the plaintiff was entitled to set out the pleas, joinder of issue and relinquishment upon the roll, so if he desired, and that he acted properly in so doing. I therefore discharge the summons with costs.

Summons discharged with costs.

SLATER v. STODDARD.

Change of attorney—Costs—Payment to attorney's former partner.

[February 29, 1876—MR. DALTON.]

Summons to change the plaintiff's attorney. It was asked that the order should be made subject to the usual condition of payment of the attorney's costs. It appeared, however, that the attorney sought to be substituted was a partner of the original attorney at the time the suit began, and that the former had already received from the plaintiff the costs due by him.

MR. DALTON held that the plaintiff was not liable to the attorney whose name appeared in the writ for the costs which had been paid to his partner, and that the summons must be made absolute without any condition as to payment of these costs, either by the plaintiff or the attorney who received them.

Chief Justice Hagarty recently discharged several summonses in Chambers, on the ground that the stamps upon them had not been obliterated. There seemed to be an impression that if the proper stamps were affixed it would not invalidate the proceedings, but his Lordship held otherwise.

COUNTY COURT OF THE COUNTY OF ONTARIO.

Fowke v. Turner.

Overholding Tenant's Act—"Occupant"—Colour of Right.

A person put in possession of a brickyard and house thereon was dismissed by his employee, but refused to give up possession until certain accounts were adjusted.

Held, that he was an "occupant" overholding without colour of right.

[Whitby, February, 1876—Dartnell, J.J.]

Fowke, the landlord herein, was lessee of a brickyard. He put Turner, the tenant, in possession thereof (including a house thereon) as his foreman, for the purpose of making brick. Fowke dismissed Turner for unfaithfulness and drunkenness, but the latter refused to go out of possession, claiming he had a right to retain it until the accounts between himself and Fowke had been adjusted. An order was granted by Burnham, J., and on its return evidence was taken before Dartnell, J., disclosing the above facts, who subsequently delivered the following judgment:

Dartnell, J.J.—Section 3 of 31 Vict., cap. 26, reads as follows: "If, upon such affidavit, it appears to such County Judge that the tenant wrongfully holds, without colour of right, and that the landlord is entitled to possession, such Judge shall appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired, or has been determined by a notice to quit or otherwise, and whether the tenant without any colour of right holds the possession against the right of the landlord, and whether the tenant does wrongfully refuse to go out of possession, having no right to continue in possession, or how otherwise."

My brother Burnham has already held, under the above section that the affidavit filed has made it appear to him that "the tenant wrongfully holds, without colour of right," and "that the landlord is entitled to possession." In other words, that a *prima facie* case is made out, sufficient to justify the issuing of a writ, in case of the non-appearance of the "tenant" after service on him of notice of these proceedings, under sec. 4.

The tenant has appeared; and under sec. 5 I have, as by it directed, "in a summary manner" heard the parties and examined into the matter, and also examined the witnesses; and I have now to consider, as directed by this section, (1) whether this case is one coming within the true intent and meaning of the second section of the act; and (2) whether the "tenant" holds without colour of right against the right of the "landlord."

Sect. 13 of the act explains *tenant* to mean an occupant, sub-tenant, under tenant, and his or their assigns and legal representatives; and the word *landlord* shall include the lessor, the owner, the party giving or permitting the occupation of the premises in question, and the party entitled to the possession thereof.

Under the agreement proved in evidence, the tenant in this case was let into possession of a brickyard, in which he was to work, making bricks for the plaintiff; and I take it, he was in much the same position as a farm servant, working for wages, and having the use of a house and garden on his master's land, a case of common occurrence in this country.

In such case the right of occupancy would terminate with the determination of the employment, either by effluxion of the time of hiring, or by dismissal. I think Turner is in no better position, and is and has been a mere tenant at sufferance.

I do not think the question whether he was wrongfully dismissed has anything to do with the matter. If he brought an action for wrongful dismissal, his being deprived of possession of the land would be an aggravation of damages. Fowke dismissed Turner, if not a year or more ago, certainly by the demand of possession given in these proceedings, and I think he now overholds without colour of right.

His contention that there are matters unsettled between himself and Mr. Fowke in relation to the accounts between them, arising out of the agreement in question, does not justify him in retaining possession of a property to which he has no right, particularly as Fowke is only a tenant himself, and his term had in part expired, although there is a renewal clause in the lease.

I do not think Turner, as against Fowke, can set up that the latter has no title. It seems to me that all I have to decide is whether, as against Fowke, does Turner hold without colour of right?

I hold that Fowke is "a party giving or permitting the occupation of the premises in question," and that Turner is an "occupant" thereof within the meaning of the act.

I direct the issue of the writ, and I order the defendant to pay the costs.

NOTES OF CASES

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

COURT OF APPEAL.

MARY ANDERSON (ADMINISTRATRIX OF MATTHEW ANDERSON, DECEASED) v. THE NORTHERN RAILWAY OF CANADA.

(Sept. 15, 1875.)

Railway Co.—Contributory negligence—Evidence—

Appeal from the Common Pleas.

The defendants, under the authority of 12 Vict., cap. 196, and 16 Vict., cap. 51, had constructed a wharf at Collingwood, and laid three tracks thereon for the purposes of their business. The wharf was much frequented and the only means of access to vessels lying at it. The tracks were so close together that it was difficult to distinguish between the tracks and the spaces between them. No portion of the wharf was fenced off for foot passengers, nor was there any railing to prevent persons from falling into the water, and they had either to walk upon the tracks or the spaces between them. A woman carrying her husband's dinner, who was working at a vessel, was walking down the wharf on the outside of the western track, and on meeting some men coming up, she, apparently to avoid them, stepped across on to the centre track, not observing a gravel train backing down along it. Just as the train was upon her, one of these men observing her danger, jumped on to the track and pushed her off, but for some reason hesitating for a moment, was himself struck by the train and killed. It appeared that there was no look-out man on the last car, and the evidence was contradictory as to whether defendants were going more than six miles an hour, and whether the whistle was sounded or bell rung. In an action by the administratrix of the deceased the jury found that defendants were guilty of negligence, and that neither the woman nor the deceased were guilty of contributory negligence, and that she would have been killed had not deceased pushed her off, which was the only means of saving her.

Held, in the Common Pleas, that the plaintiff could not recover, for the deceased was guilty of contributory negligence, his own direct and wilful act, however praiseworthy, being the cause of the accident.

Per HAGARTY, C.J.—*Semble*, that the woman in stepping on to the track was also guilty of contributory negligence, and could not have recovered.

Per GWYNNE, J.—Without deciding as to her right, the defendants were bound to exercise a much greater degree of caution in running their trains in such a place than on their ordinary line of railway.

A nonsuit was therefore ordered.

From this judgment the plaintiff appealed.

Per DRAPER, C.J. OF APPEAL.—The deceased was guilty of contributory negligence; and *semble*, that there was also contributory negligence on the woman's part, and no evidence of negligence on defendants' part.

Per STRONG, J.—1. Defendants were guilty of negligence as regarded the woman, but such negligence was too remotely, if at all, the cause of the injury to deceased. 2. The woman could not have recovered, if injured, by reason of her contributory negligence, and if so, neither could the deceased.

Per BURTON and PATTERSON, JJ.—There was clearly negligence on defendants' part, in going at excessive speed, and in omitting to have a look-out man in the rear car, as required by Con. Stat. U.C., cap. 66, secs. 144, 145. The jury were warranted in finding that there was no contributory negligence on the part of the woman, and in finding also that there was none on the part of the deceased, for his act was that of a man of ordinary care and prudence under the circumstances.

The Court being equally divided, the judgment of the Court below was affirmed with costs

D. McCarthy, Q.C., for plaintiff.

Harrison, Q.C., for defendants.

O'BRIEN v. CREDIT VALLEY RAILWAY COMPANY.

(September 18, 1875.

Railway Co—Contract with—Authority of agent—Statute of Frauds—Acceptance—Corporate seal.

Appeal from the Common Pleas. (25 C.P. 275.)

The plaintiff, acting under a written contract for the delivery of 12 toise of stone for the piers of a bridge which defendants were building over a river on their line of railway, delivered the amount, and was paid by defendants therefor, as well as for an additional toise and a half, and some sand subsequently ordered by the inspector. The inspector then ordered the plaintiff to deliver some more stone and sand, stating that e did not know what quantity of stone was required, but telling plaintiff to go on drawing

until told to stop, and the plaintiff then delivered some 26½ toise of stone and a quantity of sand, defendants having furnished the men and teams to assist the plaintiff in doing so. On observing, about the 8th of May, that defendants had stopped work on the bridge, the plaintiff ceased delivering. About the 12th May, he was paid for what had been delivered up to that time, an account being made up by some one acting for defendants, and the hire of teams and men furnished by them being deducted in it from the price allowed, which was $2 a toise more than that in the written contract. On the work being renewed, and on being ordered by the inspector to continue delivering, he delivered 26 further toise and some more sand. The defendants, however, refused to pay for the latter delivery, contending that they were not liable.

Held, by the Court of Common Pleas, and affirmed on appeal, that the defendants were liable without a contract under seal: 1. That there was sufficient evidence of authority on the part of the inspector to bind the defendants, and of their having adopted his acts: 2. That the contract was not required to be in writing to satisfy the Statute of Frauds; because the stone and sand now in question had been delivered under the order to go on drawing until told to stop, and part of the stone delivered under that order had been accepted and paid for.

Held also, in the Court of Appeal, that the contract did not require to be under the corporate seal, it being one directly connected in its nature with the purposes of defendants' incorporation.

O'Donohoe for plaintiff.
Lockhart Gordon for defendants.

McNish et al. v. Munro.

(September 25, 1875.)

Ejectment—Conveyance of land with "the appurtenances"—Construction—Statute of Limitations.

Appeal from the Common Pleas.

In 1848, by a fence intended as a division fence between lots 26 and 25 in the township of Southwold, the land claimed in this action as part of 25 was included with 26, and was occupied by M., the owner of 26, as part of his lot, until 1854, when the error was discovered by a survey. M. assented to the line as then run, and was to have moved his fence, but he continued to occupy until 1856, when he conveyed to the defendant, who entered into possession and occupied up to the fence as M. had done. The deed purporting to convey the south half of lot 26, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining, or therewith demised, held, and occupied or enjoyed, or taken or known as part and parcel thereof. By deeds made in 1865 and 1874, M. conveyed all his estate and interest in lot 25. In 1875 the plaintiffs, claiming under these conveyances, brought ejectment against the defendant for the part of 25 which had been enclosed with 26, as above stated, contending that M., notwithstanding the deed of 1856 and the delivering up of possession to the defendant, still retained a right of entry, either because the defendant was his tenant at will and so estopped from denying his title, or by virtue of his prior possession.

Held, in the Common Pleas, that whatever interest M. had in the land in question, whether it was part of 26 or of 25, passed to the defendant under the deed to him of lot 26, together with the appurtenances, &c., therewith occupied, &c.

Held, on appeal, that no part of 26 passed by M.'s deed to defendant; but *held*, that the plaintiff could not recover, for the defendant, when he took possession, did not enter as acknowledging any remaining right in M., and therefore not being tenant at will to M. of this piece, or estopped from denying M.'s title, he had acquired title as against the plaintiffs under the Statute of Limitations.

James Bethune for plaintiffs.
W. P. R. Street for defendant.

Lindsey v. The Corporation of the City of Toronto.

(September 28, 1875.)

Registrars—Plans—Fee for exhibiting—31 Vict., cap. 20, sec. 70, sub-sec. 11—Construction of.

Appeal from the Common Pleas.

The plans filed in the Registry Office of the city of Toronto, were exhibited to two assessors of the assessment department, who used the plans for the purpose of checking, for assessment purposes, the dimensions of the various lots shewn on them.

Held, in the Court of Common Pleas and affirmed on appeal, Strong, J., dissenting, that the registrar was not entitled to charge as for a search on each lot shewn on such plans.

Semble, that unless a plan is an original registered instrument under 31 Vict., cap. 20, sec. 70, no fee is chargeable; but *semble*, on appeal, that it is such registered instrument.

Richards, Q.C., and *Beaty*, Q.C., for plaintiff.
C. R. W. Biggar, for defendants.

QUEEN'S BENCH.

VACATION COURT.

Leys v. Withrow et al.

(March 28, 1876—Harrison, C.J.

A. J. Act, sec. 9—Transferring case to Chancery.

Declaration: that plaintiff was assignee of a mortgage of realty made by one G. M.; that said mortgage was in default; that G. M. was a partner of H. M.; that said firm was embarrassed, and assigned to defendants as trustees; that defendants accepted the trusts; but though frequently applied to, they neglected to pay the plaintiff, though in a position to divide and pay the proceeds of the real and personal property of the partners; that the greatest portion of the real and personal estate so assigned was the sole property of the mortgagor.

On demurrer, *held* a proper case to be transferred to the Court of Chancery, under sec. 9 of the Administration of Justice Act. The Court of Chancery to deal with the costs.

McMichael, Q.C., for plaintiff.

W. A. Foster for defendants.

Redford v. Mutual Fire Insurance Co. of Clinton.

(April 5, 1876—Harrison, C.J.)

Insurance—Misrepresentation—Over Valuation—Agent.

Declaration: On a policy of insurance against fire on a house, barns, &c.; usual averments as to interest, &c.

Pleas: 1. That misrepresentation rendered the policy void, and that plaintiff falsely represented the value of the dwelling house to be greater than it was. 2. That plaintiff represented that $1,500 was not more than two-thirds of the value of the buildings, exclusive of the soil, whereas $1,500 was a far greater value.

Replication to each plea on equitable grounds: that one S. H., the secretary of defendants and their duly authorised agent, and having full knowledge of the value of the buildings, prepared the application, and without any previous inquiry of the plaintiff in that behalf, but acting on his own knowledge and information of and concerning the buildings and the value thereof, acquired in the discharge of his duty as such agent, &c., did write the said values; and the plaintiff, honestly believing the values to be correct, and without concealment, &c., on his part, and at the request of said S. H., as such secretary and agent of defendants, signed the application so filled up, &c.

On demurrer to the replications: *Semble*, that it is the duty of insurance companies against fire to ascertain for themselves the true value of houses, &c., insured by them, and that misrepresentations as to value by the insured will not affect the policy unless made wilfully or fraudulently, or be designedly untrue. *Laidlaw* v. *Liverpool and London Insurance Co.*, 13 Gr. approved of. *Semble*, also that the replications were good answers to the pleas.

C. Robinson for plaintiff.

McGee for defendant.

Re Brodie and the Town of Bowmanville.

(April 11, 1876—Harrison, C.J.)

Municipal Law—Tavern and Shop Licenses.

A by-law was passed on the 29th Feb., 1876, by the town of Bowmanville, to limit the number of shop licenses, &c. Clause 2 limited the number of shop licenses to one. Clause 4 provided that the duty for a tavern license should be $100, and for a shop license $200. Clauses 5 and 6 practically closed all drinking places after 10 p.m. at night on Monday, Tuesday, Wednesday, Thursday and Friday, and at 6 p.m. on Saturday. Clause 7 regulated the sale of liquor to children, &c. Clause 8 prohibited gambling, swearing, &c., in taverns, &c. Clause 9 prohibited a licensed dealer selling in any place other than that in which he was licensed to sell.

Held, that clauses 2, 5 and 6 were unauthorised, and beyond the power of the Council to pass.

Held, that clauses 4, 7, 8 and 9 were within the power of the municipality to pass.

Held, also, that an objection that the by-law was irrelevant as to time was untenable.

C. Robinson, Q.C., for plaintiff.

Loscombe for defendants.

Re Richardson and Police Commissioners of Toronto.

(April 18, 1876—Harrison, C.J.)

Motion to quash a by-law dated 23d Feb., 1875, on the ground that it prescribed the fee for a tavern license in the city of Toronto at $160 instead of $130, as required by sec. 23 of 37 Vict., cap. 32, and that it illegally prescribed the fee payable for March and April, 1876, at $21.66, *i.e.* one-sixth of said $160. That said by-law was not submitted to the electors, though intended to exact over $130.

Held, that the by-law was valid.

Semble, as the by-law would become utterly

effete on 1st May, and no excuse was shown for moving at so late a date, the Court, in the exercise of its discretion, would refuse to interfere.

Biggar for plaintiff.

Hodgins, Q.C., for defendants.

Re Day and Storrington.

(April 18, 1876.)

Held, that a by-law passed under 27 and 28 Vict., cap. 18 (Dunkin Act), at the requisition of thirty or more qualified electors, and voted on by the electors, where it is sworn and not denied that many of the voters were prejudiced for want of notice, is void for non-publication of the requisition to pass the by-law. *Coe* v. *Pickering*, 24 U.C.Q.B. 439, followed.

Osler for plaintiff.

S. Richards, Q.C., for defendant.

Regina v. Johnstone.

(April 18, 1876.)

Sweeping Chimneys.

Defendant was convicted before the Police Magistrate, Toronto, on the 23rd February, for sweeping a chimney in the city contrary to the city by-law in that behalf. Sec. 4 of the by-law provided, "That no person other than the chimney inspectors appointed by the Municipal Council shall sweep, or cause to be swept, for hire or gain, any chimney or flue in the city." Sec. 8 provided a penalty for infringement of the by-law. Other sections provided for the appointment of the inspectors.

Held, that sec. 4 was beyond the power of the Corporation, and void as creating a monopoly and restraint of trade, and that the conviction should be quashed without costs.

Biggar for plaintiff.

D. H. Watt for defendant.

COMMON PLEAS.

VACATION COURT.

Brown v. The Toronto and Nipissing Railway Company.

(October 1, 1875—Galt, J.)

Railway Co.—Liability to make farm crossings—General issue—Obstruction to highway—Special damage—Pleading—C.S.C., cap. 66, secs. 13, 19.

The first count of a declaration was by the present proprietor of land crossed by the defendants' railway, the railway having been built during the ownership of a former proprietor, by whom the right of way for that purpose had been conveyed, but without his in any way releasing defendants from their statutable duty to make farm crossings, with gates, &c., and averring as a breach defendants' neglect to make such crossings, &c.

The second count was for the obstruction by the defendants of a public highway, alleged to be the only communication between plaintiff's lands and town line, and averred as special damage that plaintiff was precluded from egress from his residence and a portion of his farm to the said town line; and was thereby prevented from carrying to market the products of his said farm; and also certain cordwood and valuable bush, which was subsequently destroyed by fire and rendered useless.

Galt, J., *held*, 1. That both counts of the declaration were good.

2. That the general issue by statute could be pleaded to the first count.

3. That a plea to the first count, setting up that at the time the railway was built the land was covered with wood and defendants were not notified that a crossing was required, forms no defence, as such a defence could only arise under the 19th section of C.S.U.C. cap. 66, which merely applies to the failure to erect fences.

W. Macdonald for plaintiff.

J. B. Read for defendants.

Dinwoodie v. Smith.

(October 5, 1875—Hagarty, C.J.)

Agreement—Construction of—Substituted agreement.

Declaration: That by deed, dated 18th April, 1874, the plaintiffs covenanted, for the consideration therein named, to keep their mill in running order, using due diligence during the season of 1874; to saw, cull, draw and pile all the pine lumber required to be cut thereat, as they might be instructed, and to draw the logs from a named point, the plaintiffs to give three days' notice of their requirement to have the logs delivered at the aforesaid point; and defendant covenanted that if, after the said notice, the said logs were not delivered at the aforesaid point, he would pay the costs and charges of the men and hands kept idle in consequence, but which were not to commence until the expiration of the three days' notice; and the plaintiffs averred that although they had given defendants three full days' notice to have the logs delivered, and all conditions were fulfilled, &c., yet defendant did not deliver the said logs; whereby, &c.

Fourth plea: That before the alleged breaches the defendant gave the plaintiffs notice that he

did not require any further logs cut or sawed at the said mill during the season of 1874.

Fifth plea on equitable grounds: Setting out in substance a parol agreement, under which the plaintiffs agreed, to saw certain logs known as the Boyd logs, and other logs not included in the first agreement, for his benefit and profit, but on the express agreement and condition that the defendant should not be liable for the costs and charges of the men being kept idle pending the delay; and that plaintiff accordingly sawed the said logs and the other logs on these terms; but the plea did not aver positively the acceptance of a substituted agreement shewing a new cause of action capable of enforcement, or the acceptance of the performance of the new agreement in satisfaction, &c.

HAGARTY, C.J., C.P., *held* that fourth plea was bad; for under the agreement the defendant was not authorised of his own mere motion to put an end to it; that the fifth plea was good, as amounting to a satisfaction after breach.

Remarks as to the present practice of not averring in express terms an acceptance in satisfaction, &c.

J. K. Kerr for plaintiff.

James Bethune for defendant.

JAMES V. HAWKINS.

(October 14, 1875—HAGARTY, C.J., C.P.)

Seduction—Denial of service—Abandonment—C.S.U.C., cap. 77, sec. 2.

To an action of seduction brought by the mother, alleging that the seduction took place after the father's death, defendant pleaded that the daughter was not the plaintiff's servant, and that for ten years before and five years since the cause of action arose, the plaintiff had continually abandoned, and refused to provide for and to entertain the daughter as an inmate.

HAGARTY, C.J., C.P., *held* plea bad; for the mere abandonment could not of itself divest the right of action, though it should affect the damages; and there was no allegation of the cause of action being vested in any other person.

Fitch (Brantford) for plaintiff.

VanNorman, Q.C., for defendant.

DALGLISH V. CONBOY.

(March 31, 1876—HARRISON, C.J.)

Patent right—Agreement of assign—Sufficiency of—Tender of deed for execution—Necessity for.

A declaration alleged that the defendant, being the inventor and patentee in Canada of a certain buggy seat, called "Daniel Conboy's turn-down seat," agreed to permit the plaintiff, for 15 years from the 8th February, 1876, to have the exclusive right, privilege, and liberty of making, constructing and using, and of selling to others to be used, the right to manufacture and sell the said patent article in the county of Wellington, and of selling it in the province of Ontario; and to prepare, execute, and deliver to the plaintiff a proper and sufficient deed of assignment of the said patent invention, capable of being registered in the Patent Office pursuant to the statute in that behalf, and sufficient to enable the plaintiff to sell the said patent invention as aforesaid. The plaintiff to pay $200, by $50 in cash, and the balance on the delivery of the said deed. The declaration then alleged the payment by the plaintiff of the $50, and of his readiness to pay the balance on the delivery of the deed, and of performance of conditions precedent, &c.; and averred as a breach the non-delivery by defendant of the deed; whereby, &c.

The defendant pleaded that the agreement was in writing setting it out, without any further averment.

The plea was demurred to and exceptions taken to the declaration.

HARRISON, C.J., *held* that the declaration was good; that it shewed a valid agreement for the purposes mentioned; that even if there was any necessity for the agreement being in writing or under seal, which he was of opinion that there was not, the declaration need not so aver; nor need it aver a tender by plaintiff to defendant of a deed for execution, as by the agreement defendant was to prepare, execute, and deliver the deed to plaintiff.

That the plea was bad, as it admitted the agreement and the breach, without confessing or avoiding it.

Robinson, Q.C., for the plaintiff.

Howell for the defendant.

WILLIAMSON V. THE HAND IN-HAND MUTUAL FIRE INSURANCE COMPANY.

(April 4, 1876—HARRISON, C.J.)

Action on a fire insurance policy on a stock of goods—Action on a policy of insurance.

HARRISON, C.J., *held*, where the claim is for a total loss of the goods, the insured may recover as for a partial loss; and also that a condition providing for certain requisites being complied with by the insured, in case of the partial destruction of the goods, only applies where the goods partially destroyed are the subject of the claim

but not where the claim is for a portion of the goods totally destroyed.

Robinson, Q.C., for the plaintiff.

Maclennan, Q.C., for the defendants.

In re Caton & Cole (Insolvents).

(April 7, 1876—Harrison, C.J.)

Insolvency — Fraudulent assignment — Separate and partnership creditors—Rights of.

A partnership which had been in existence for some two years, trading under the name of and style of Caton & Cole, was, on the 2d June, 1875, dissolved by a deed of dissolution executed by the partners Cole retiring from the firm, and transferring all his interest in the partnership property to Caton. At this time the firm, as well as the individual partners, were in insolvent circumstances. Caton then proceeded to carry on the business, Cole continuing as a clerk, and the sign of the firm over the place of business remaining unchanged. Subsequently, and within three months after the transfer, Caton absconded, and his estate was placed in compulsory liquidation, and one Murdoch appointed assignee. Murdoch then took possession of the estate and effects, which included what had constituted the partnership assets, and sold the same. The partnership creditors also took proceedings in insolvency against the firm of Caton & Cole, and appointed one Dobbie assignee. Dobbie then, as representing the partnership creditors, demanded from Murdoch the partnership assets or the proceeds thereof; and, on Murdoch's refusal to hand them over, petitioned the County Judge for an order compelling him to do so. The County Court Judge held that, under the circumstances, the transfer was fraudulent and void, and that therefore the partnership creditors were entitled to the assets of the firm; and he made an order directing Murdoch to hand over the same to Dobbie. From this order Murdoch appealed.

Harrison, C.J., *held* that the County Court Judge was right, and he dismissed the appeal with costs.

Lash for the plaintiff.

McMichael, Q.C., for the defendant.

CHANCERY.

Re Henderson's Trusts.

(March 18, 1876.)

Investment in real estate by trustees—Building.

By a deed of settlement executed prior to the marriage of the parties, certain lands were conveyed to trustees for the benefit of the contracting parties and of any issue of the marriage, with power to the trustees to sell the lands, or any portion thereof, and invest the proceeds of such sale in, amongst other ways, the purchase of real estate. A portion of the real estate had lately been sold, and the proceeds invested in mortgages. Another portion of the trust estate consisted of a lot in the business part of Toronto, on which it was deemed advisable, in the interest of the *cestuis que trust*, to erect a new building, at a cost of about $8,000 or $10,000, and the husband and wife united with the trustees in a petition to the Court (under the 29th Vict., cap. 28, s. 31), asking a declaration that the trustees have power under the trust to raise the money required, and expend the same in the erection of such building.

Proudfoot, V.C., declined making an order authorising the expenditure of any specified sum on the building, but expressed a clear opinion that the power to invest in real estate authorised the trustees to expend money in the erection of a building which would be a permanent and substantial improvement on the land; but that "The trustees will have to determine for themselves whether the circumstances are such as to justify the expenditure in that way, and of the amount being proper, and getting the consent of those interested."

J. S. Ewart for petitioner.

Atkinson v. Gallagher.

(April 3, 1876.

Solicitor and client—Mortgage.

In this case a mortgage for $1,000 had been created by a third party, who was indebted to defendant, Gallagher, in favour of a solicitor, as security for such costs as he might incur in carrying on a suit for the defendant, Gallagher. It was alleged that the client afterwards consented to the solicitor assigning the mortgage to an amount not to exceed $500, which was done. This suit was afterwards instituted against Gallagher and his solicitor by the assignee of the security, to enforce payment of that amount.

Spragge, C., *held* the security valid to the extent only of what was actually due to the solicitor for costs, the assignee of the mortgage having failed to notify the mortgagor of the assignment, by reason of which a sum of $530 had been by the client allowed to be paid to the solicitor. His Lordship observed that the money still due upon taxation must be paid to some one. It is a matter of indifference to Gallagher to whom he pays it; and as between the solicitor and the plaintiff, there can be no

question that the plaintiff is the proper person to receive it. It seems clear upon the authorities, that a mortgage, given by a client to his solicitor to secure costs yet to be incurred, is absolutely void as against public policy.

Blake, Q.C., and *Bain* for plaintiff.

C. Moss for defendant.

Brotherton v. Hetherington.

(April 5, 1876.)

Mortgage—Improvements.

The defendant had been mortgagee of the premises in question, and subsequently obtained a release of the equity of redemption, giving back a memorandum, by which she covenanted and agreed with the mortgagors, &c., that if they, or either of them, "should at any time, within three years, pay unto her $2,000 with interest from 1st May, 1867, and also all costs of improvements made by her upon the said lands since that day, she would reconvey, bargain, sell, release, assign and assure unto them, or either of them, the said lands in fee simple, free," &c.

Proudfoot, V.C., *held*, upon appeal from the local master, that the defendant was entitled to be allowed for permanent and lasting improvements, although the estate might not have been increased in value to an amount equal to the sum expended thereon.

Ewart for defendant.

G. D. Boulton for plaintiff.

Re Weeks—an Insolvent.

(April 5, 1876.)

Appeal from County Judge—Evidence of claim.

In proceedings before the County Court Judge, a claim was put in by the mother of the insolvent, which the creditors opposed the allowance of, on the ground that the mother was indebted to the son in a greater amount than her claim—such claim being distinctly proved by the claimant, her husband and the insolvent. The Judge allowed the claim, from which allowance the inspectors of the estate appealed, and then sought to impeach the claim of the mother altogether as being fraudulent—the only thing that could be suggested in opposition to the evidence stated, being the fact that the money said to have been deposited in the bank by the claimant was in gold—English sovereigns, which the Court was asked to assume was so improbable and incredible, as to be evidence of fraud. This, however, the Court refused to do; and on the ground that the Judge who saw the parties give their evidence having thought the proof of the *bona fides* of the debt sufficiently established, had allowed the claim.

Proudfoot, V.C., agreed in the conclusion at which the Judge had arrived, and dismissed the appeal with costs.

In the same matter, the Judge of the County Court had allowed the claim of the father for $1,800 against the estate. From this the inspectors also appealed, insisting that the father and son had in reality been partners in carrying on business.

Proudfoot, V.C.—I have only considered the evidence on which the Judge of the County Court placed reliance, and upon that evidence I come to the conclusion, that the claimant and the insolvent were partners from early in January, 1873 (7 January), till 1st May, 1875, and therefore that the claimant's proof should be expunged; and that the order of the judge of the 12th of February, 1876, be reversed.

Maclennan, Q.C., for the appeal.

Read, Q.C., contra.

Miller v. Vickars.

(April 12, 1876.)

Devise subject to a charge—Practice.

The testator devised certain lands to one John Bishop, subject to a charge of £20 a year, in favour of the plaintiff, to be paid by Bishop. Bishop subsequently sold portions of the devised property, and the annuity of the plaintiff being allowed to fall into arrear, she filed a bill seeking to enforce payment of her annuity against the defendants, who were owners of only part of the estate under Bishop. The defendants objected that the owners of the other portions of the estate should be joined as defendants, in order that all interested might contribute to the amount payable to the plaintiff.

Blake, V.C.—I think under the circumstances the most convenient course to pursue will be, as the cause is virtually being heard, to proceed against the present defendants, giving them full liberty to proceed by petition in this cause to add any persons whom they may think liable to contribute with them to the plaintiff's claim. It is more reasonable that these questions should be litigated at the expense of those defendants who seek to make these others persons liable, rather than at the expense of the plaintiff. The rule in mortgage cases does not assist—there the party redeeming gets a reconveyance of the whole estate; and in order to work out the rights of the parties, the whole estate must be represented.

J. A. Boyd for plaintiff.

Fitzgerald, Q.C., for defendants.

Re McQueen—McQueen v. McMillan.

(April 12, 1876.)

Guardian of infants.

The father of the infants having died intestate, his widow obtained letters of administration, and she by her will appointed her sister the defendant, wife of J. L. McMillan, guardian of the infants, her two daughters. After her death, the grandfather of the infants applied to the Judge of the county of Simcoe to be appointed their guardian, who in opposition to objections made by the defendant, did appoint him their guardian, from which decision the defendant appealed to this court.

Proudfoot, V.C.—It would have been satisfactory to me if the Judge had seen his way to comply with the wishes of the mother; but in these proceedings, I cannot say he has decided erroneously. Appeal dismissed with costs.

A. Hoskin for appeal.

Moss contra.

Snell v. Davis.

(April 12, 1876.)

Will, construction of—Estate for life—Descent.

Bill for partition filed by brothers and sister of the testator. who died in 1856, leaving his son George Snell, his only child, and the defendant —Davis, his widow, him surviving, after having duly made and published his will, whereby he devised the lands in question to his widow during her widowhood, and after her death or marriage then to his son, George Snell, in fee; and by a subsequent clause in the will the testator provided that, "If my son die and she marry, all to come to my brothers and sister, equal share alike." The widow married again in 1859, and George Snell went into possession as owner in fee. George Snell subsequently died intestate and without issue. Thereupon the plaintiffs, claiming the fee in the land, filed a bill for partition, to which the widow demurred for want of equity.

Blake, V. C.—At the time of the marriage the son was alive and enjoying his estate, which I do not think can be taken from him by the at least very doubtful construction put upon the will by the plaintiffs. The son having died, the mother takes the premises. The plaintiffs are therefore not entitled to the relief claimed by their bill, and the demurrer must be allowed with costs.

J. A. Boyd for plaintiffs.

G. Murray for defendant.

Knox v. Travers.

(April 13, 1876.)

Demurrer—Administration of Justice Act—Fraudulent judgment.

The plaintiff filed his bill on behalf of himself and all other creditors of the defendant, Travers, alleging that by collusion between him and his co-defendant, a judgment had been fraudulently recovered against Travers in favour of the co-defendant, and executions issued with the object and intent of fraudulently protecting the goods and lands of Travers from his creditors, and alleging fraud under 13 Elizabeth, cap. 5. The bill further alleged, that the plaintiff and other creditors had commenced proceedings at law, and prayed that the fraudulent judgment creditor might be restrained from enforcing his executions. The defendants demurred for want of equity.

Blake, V.C., was of opinion that since the Administration of Justice Act came into force, it was not necessary to apply to Equity to set aside a fraudulent judgment, the court of law having ample power to do complete justice to the parties, and work out all equities between them. Demurrer allowed.

Fitzgerald, Q.C., for demurrer.

Hodgins, Q.C., contra.

CHAMBERS.

Re Bazeley.

(February 7, 1876—Proudfoot, V.C.)

Infants—Application of property for maintenance—29 Vict., cap. 17, and 33 Vict., cap. 21, s. 3.

33 Vict., cap. 21, s. 3, (o) only authorises the application of the interest on insurance moneys (apportioned to infants under 29 Vict., cap. 17) for the maintenance of the infants. The principal can, under these acts, only be applied for advancement, but under the general jurisdiction of the Court, may be applied for maintenance.

The deceased father of the infants had insured his life under 29 Vict., cap. 17, for the benefit of his wife and children. The amount apportioned to the children was $1,000, and was held by a trustee for them.

Foss now applied on behalf of the children, for an order authorising the application of a portion of the principal for the maintenance of the infants.

It was shewn that the income had already been anticipated to the extent of $100, and that the necessities of the children required payment of a portion of the principal.

Foss for application.

Cox v. Keating.

(February 15, 1876—Referee.)

Replication—Introduction into replication of matter by way of confession and avoidance—Order 151.

Replication held irregular which contained

new matter by way of confession and avoidance of the defendants answer.

Such matter should be introduced by way of amendment to the bill.

Beatty, Miller & Lash for plaintiff.

Hoyles for defendant.

MASTER'S OFFICE.

Kennedy v. Brown.

(February 15, 1876—Taylor, Master.)

Costs—Higher or lower scale.

A bill was filed for the specific performance of a contract for sale of land, for a sum less than $150. Before suit the plaintiff, the vendee, had entered upon the land and made improvements upon it, which increased its value to more than $200.

Held, that the "subject matter involved" in the suit was more than $200, and that the plaintiff was therefore entitled to costs according to the higher scale.

J. S. Ewart for plaintiff.

Hoyles for defendant.

COMMON LAW CHAMBERS.

Huston v. Wallace.

(March 9, 1876—Mr. Dalton.)

Proceeding within a year.

Held, that the obtaining a Judge's order by the defendant to set aside an irregular notice of trial, is not a proceeding within a year, which will entitle the plaintiff to proceed without giving a term's notice.

Small for plaintiff.

T. H. Bull for defendant.

Watson v. Henderson et al.

(March 16, 1876—Mr. Dalton.)

Interpleader—Parties acting under judicial authority.

An interpleader order was granted in this case in favour of an auctioneer, who had sold goods for the mortgagee of the owner, but had, in obedience to a Judge's order, paid over the proceeds to an assignee of the owner, subsequently appointed in insolvency proceedings.

Ferguson, Q.C., for plaintiff.

Monkman for defendant.

Lash for assignee.

Dalziel v. Grand Trunk Railway Co.

(March 25, 1876—Mr. Dalton—Harrison, C.J.)

Railway company—Examination of "officer."

The Tie Inspector of a railway company is not an "officer" of the company within sec. 24 of the Administration of Justice Act.

G. B. Gordon for plaintiff.

Bethune, Osler & Moss for defendants.

In the Matter of Henry Sandfield Macdonald, and the Mail Printing and Publishing Company.

(March 30, 1876—Hagarty, C.J. C.P.)

Joint stock company—Transfer of shares—Mandamus.

This was an application by the transferee of certain shares in a joint stock company, for a mandamus to compel the directors to enter such transfer in the books of the company, so as to perfect the transfer. The by-law of the company provided that "any shareholder may, by leave of the directors but not otherwise, transfer his share or shares, by making an entry of such transfer in a book," &c. The directors declined to grant the required leave, but gave no reason to the applicant for their refusal.

Held, that it was for the directors to exercise their discretion, and that they need not give any reasons; and having exercised this discretion without any evidence of caprice, the application could not suceeed.

F. Osler for plaintiff.

C. Robinson, Q.C., for defendants.

Re Attorneys.

(April 1, 1876—Mr. Dalton.)

Attorney and client—Nominal plaintiff.

A client who is merely a nominal plaintiff, being in this case the person in whose name an election petition had been filed, and who lent his name for the purpose of convenience and was not held responsible by the attorney for his costs, is not entitled to an order on the attorney for delivery of his bill of costs, &c.

Creelman for the applicant.

Delamere for the attorneys.

Laird v. Stanley.

(April 15, 1876—Mr. Dalton.)

A. J. Act, 1873, sec. 24.—Re-Examination.

An *ex parte* order will not be granted for the re-examination of a party under sec. 24 of Administration of Justice Act, 1873, and special circumstances must be shewn.

UNITED STATES REPORTS.

SUPREME COURT OF ERRORS OF CONNECTICUT.

Charles F. Bollman v. Clark M. Loomis.

The policy of the law forbids that a person acting as the friend and confidential adviser of a purchaser, should at the same time be secretly receiving compensation from the seller for effecting the sale; and a contract for such compensation is void.

[15 Am. Law Reg., 75.]

Assumpsit, upon the common counts; brought by appeal from a justice to the Court of Common Pleas of New Haven county. The following facts were found by the Court:

In the latter part of the year 1872, Mrs. W. C. Robinson called at the store of the defendant to look at pianos which he kept for sale. She saw there one which pleased her so far as the outside appearance was concerned, but not being willing to purchase entirely upon her own judgment, it was suggested that the plaintiff, who was a friend of F. A. Robinson, a brother of her husband and an acquaintance of hers, should examine the instrument. The plaintiff was to some extent an expert, and his judgment was much relied upon by the Robinsons. Before this time the plaintiff had been an occasional visitor at the store of the defendant, and was well known to the defendant as an expert. The plaintiff and F. A. Robinson visited the store of the defendant together, and the plaintiff, in the presence of the defendant, examined the piano, and found the tone to be good and the instrument a good one, and so expressed himself. His opinion was communicated to Mrs. Robinson. The plaintiff did everything to this point of time in the utmost fairness and good faith towards the Robinsons, and gave them the benefit of his unbiassed judgment. Mrs. Robinson did not, however, immediately purchase, and the plaintiff afterwards happening to be in the store, the defendant asked him why Mrs. Robinson did not buy the piano. The plaintiff told him that he did not know, and explained the relation he sustained toward the Robinsons. The defendant knew that he was acting for the Robinsons, and that the Robinsons relied upon his judgment, and for this reason he requested him to go further than he had before gone, and to endeavour to effect a sale, and to urge the piano upon the Robinsons. This the plaintiff promised to do, and did. A sale was effected, and the plaintiff's exertions and recommendations were instrumental in effecting it. Neither of the Robinsons at any time knew that the plaintiff was acting for the defendant, and the plaintiff acted for the Robinsons merely as a friend, without reward or pay. After the sale was effected the plaintiff demanded payment for his services, and the defendant then denied that he had ever employed him; but the parties finally settled upon the sum of $20 as the amount to be paid.

Upon these facts the Court rendered judgment for the plaintiff for $20 damages and his costs, and the defendant brought the record before this Court by a motion in error.

Newton and *Arvine*, for the plaintiff in error.

Bollman, for the defendant in error.

Foster, J.—The principle involved in this case is doubtless of importance; but the amount involved, pecuniarily, is small; so small is an our opinion hardly to justify bringing the matter here to be decided.

There was gross duplicity on the part of the plaintiff in acting as the confidential friend and adviser of the purchaser of the piano, and at the same time as agent of the vendor, employed by him expressly to effect a sale.

The party proposing to purchase was deceived. Instead of getting, as he supposed he was, the opinion of the plaintiff as an expert, without bias and without interest, acting merely as a friend, the plaintiff was in fact acting as the agent of the owner, and charging fees for his services. A sale having been effected through his influence, this suit was brought to obtain a compensation.

We think there should be no recovery. We reach this result not out of any regard for the defendant; he is as fully implicated in the deception practised on the purchaser as the plaintiff himself. The rule in such cases is, that the law leaves the parties where it finds them. The transaction was inconsistent with fair dealing, contrary to sound policy, and offensive to good morals.

We do not say that the plaintiff or defendant committed a positive fraud. The plaintiff may have said nothing as to this piano which he did not believe to be true, and the defendant may have demanded and obtained for it no more than it was really worth. But the means resorted to to effect the sales deceived the purchaser, and were in violation of confidence. Such contracts and acts are deemed equally reprehensible with positive fraud. They are within the same reason and mischief as contracts made and acts done with an evil intent, and are therefore prohibited by law.

Cases of this character, though differing widely in their details, are unfortunately not

rare in courts of justice. In *Carter* v. *Boehm* Burr. 1910, Lord Mansfield said: "Good faith forbids either party, by concealing what he knows, to draw another into a bargain from his ignorance of that fact and his believing the contrary." In *Chesterfield* v. *Janssen*, 2 Ves. 155, s. c. 1 Atk. 352, Lord Hardwicke said: "Fraud may be collected or inferred, in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons, not parties to the fraudulent agreement." In *Fuller* v. *Dame*, 18 Pick. 481, Chief Justice Shaw said: "The law avoids contracts and promises made with a view to place one under wrong influences; those which offer him a temptation to do that which may affect injuriously the rights and interests of third persons." And again: "If such advice and solicitation, thus understood to be pure and disinterested, may be justly offered from mercenary motives, they would produce all the consequences of absolute misrepresentation and falsehood."

This case comes within a class of cases described in the books as "poundage for recommending customers to buy." The case of *Wyburd* v. *Stanton*, 4 Esp. 179, is directly in point. That was an action of assumpsit for goods sold and delivered. The plea was the general issue and set-off. One part of the set-off was for certain poundage and reward before that time agreed to be paid, and then due and payable from the plaintiff to the defendant, upon and in respect of certain goods and merchandise before that time sold and delivered by the plaintiff to one Andrew, for and in consideration of the defendant's having recommended the said Andrew to buy the said goods and merchandise from the plaintiff. Upon this being stated, Lord Ellenborough said he thought this demand could not be supported. It was a fraud on third persons. It was accordingly rejected.

We think this principle a salutary one, and applicable to this case. There is therefore manifest error in the judgment below.

Note by Editor of American Law Register.

There is no principle of the law of contracts of more vital force than that which requires that the same party shall not be interested or act, either as principal or agent, upon both sides. It is but the adoption and enforcement of that fundamental rule of Christian ethics, "ye cannot serve two masters." The rule extends to a large number of those legal relations, resting upon confidence, trust and dependence upon one side, and advice, direction, superiority and control upon the other. Thus an agent will not be allowed to buy or sell for his principal, of any corporation or joint stock company in which the agent is interested, without acquainting his principal with all the facts known to himself, and allowing him to judge for himself, the principal being of full age and competency to act understandingly and prudently: *Taylor* v. *Salmon*, 4 Myl. & Cr. 139. So one cannot make a binding contract where he acts as the agent of both parties: *N. Y. Central Ins. Co.* v. *Nat. Protection Ins. Co.*, 20 Barb. 470, where the cases are very extensively cited and judiciously analysed by Mason, J. And in the very recent case of *Raisin* v *Clark*, 41 Md. 158, the Court held that a real estate broker, who was employed to sell a property, and effected an exchange for other real estate, could not charge the owner of the latter a commission. The law does not permit the broker in such case to act as agent of both parties even by express agreement. Such an agreement would not be enforced; and a custom of brokers to receive a half commission from each party in an exchange, was held void as against a settled principle of law. So the trustee cannot become interested in the purchase of any portion of the trust estate: *Parkhurst* v. *Alexander*, 1 Johns, Ch. 394. And the purchase of any portion of the bankrupt estate by the assignee will be treated as a trust for the benefit of the other creditors: *Ex parte Lacey*, 6 Ves. 625. And the same rule will extend to executors and administrators, and to all persons acting as trustees for sale. And the surety is not allowed to purchase the debt for his own benefit, but it will enure to the benefit of the principal debtor: *Reed* v. *Norris*, 2 Myl. & Cr. 374. So an agent who discovers a defect in the title to land of his principal cannot procure the title for himself: *Ringo* v. *Binns*, 10 Pet. (U. S.) 269. The principle of these cases is now universally recognised. It is very learnedly discussed by two eminent English Chancellors, in the House of Lords, Thurlow and Loughborough, in the early and leading case of *York Building Co.* v. *Mackenzie*, 8 British Parl. Cases, in App.; 3 Paton, 378. The rule extends to directors in joint stock corporations, so that they cannot legally derive any personal benefit from any of their transactions on behalf of the company; *Great Luxembourg Ry.* v. *Magnay*, 25 Beav. 586; 4 Jur. N. S. 839. A director cannot recover for work erected for the benefit of the company, if he was himself interested in the contract: *Stears* v. *Southend Gas Light & Coke Co.*, 9 C. B. N. S. 180; 7 Jur. N. S. 447.

The rule extends to the avoiding of all contracts procured by taking advantage of the relation of attorney and client: *Corley* v. *Lord Stafford*, 1 De Gex & Jones 238; *Hobday* v. *Peters*, 6 Jur. N. S. 794; 8 W. R. 512. The burden, in all cases between attorney and client, is upon the attorney to show that the transaction was entirely equal and fair: *Lyddon* v. *Moss*, 5 Jur. N. S. 635; *Morgan* v. *Higgins*, 1 Giff. 270. All securities between attorney and client are presumptively void. The burden rests upon the attorney to support them: *Brown* v. *Bulkley*, 1 McCarter 457.

We need not here pursue this question further. The elementary books and the reports abound in wise rules and much beautiful moralising upon them. The rule is even more stringent as between trustee and *cestui que trust*, than between attorney and client, where we have seen it is only required to show the transaction fair; but in the former case the same is equally void, at the election of *cestui que trust*, even where it appears that no advantage was taken: *Cane* v. *Lord Allen*, 2 Dow 289. Ld. Brougham, Chancellor, in *Hunter* v. *Atkins*, 3 Myl, & K. 213, puts the case of attorney and client upon the same ground, and we see no reason for any distinction in the cases. But, as we said, after much beautiful moralising, we fear this very avenue to fraud

and corruption is one that it will be found, practically, most difficult to close up. Mere rules of law, or morality, seem to act as a kind of compensation in the minds of too many in our day, perhaps in all times, for giving more or less countenance to exceptional iniquities, upon the principle that all rules must and will have some exceptions, till the latter overbalance and outnumber the former.

I. F. R.

REVIEWS.

The Canadian Parliamentary Companion for 1876. Edited by H. A. Morgan, Barrister-at-Law. Eleventh Edition. Ottawa.

This useful little book again makes its appearance—larger and more complete than ever. Not being a law book, and pertaining more to the political world, we cannot be expected to pronounce an opinion on its merits. We will say this, however, that its preparation shows great industry and careful arrangement on the part of the compiler, and that its reputation in the circles best able to judge is very high. No one who reads the papers should be without it.

The Criminal Law Consolidation and Amendment Act of 1869, as amended and in force in the several Provinces of the Dominion. With Notes, Commentaries, Precedents of Indictment, &c., &c. By H. E. Taschereau, one of the Judges of the Superior Court for the Province of Quebec. 2 Vols. Vol. I. published by the Lovell Printing and Publishing Company, Montreal; vol. II. by R. Carswell, publisher, Toronto.

"The following pages will be found to contain the full text of the Criminal Statute Consolidation Acts of 1869, with a synopsis under each clause of the law and the rules of pleading, practice and evidence applicable to it." So runs the preface to the first volume. No cases decided in the Provinces are referred to; but "the reported English cases, down to July, 1874, will be found numerously cited and largely made use of."

The second volume contains the Criminal Law Procedure Act of 1869, with annotations, and other criminal statutes of general importance passed since 1869, not inserted in the first volume.

The work professes to be "hardly anything else but a compilation," chiefly of the annotations of Mr. Greaves, Q.C. The forms inserted appear to be wholly from Archbold.

It will be found very convenient to have all the criminal statutes together, in connection with much valuable matter culled from the best English works; but in this connection we cannot help expressing regret that the matter of the two volumes was not compressed into one volume of reasonable size, as it might readily be had the notes and commentaries been inserted as usual in smaller type.

A valuable little work by Hon. Mr. Abbott, Q.C.—the Insolvent Act of 1864, with Notes and Rules of Practice, contained in 100 pages, exclusive of index—could, by the same typographical arrangement as we find in Judge Taschereau's two volumes, be easily swelled into a volume as large as one of these now before us; whilst Harrison's Common Law Procedure Act, a single convenient volume, under the same typographical treatment as Judge Taschereau's book, would form at least six moderate sized volumes. With this, however, the author has usually less to do than the publisher; and though a small matter, it should not be overlooked by a critic, especially in a country where the art of bookmaking has not arrived at that perfection which it has attained in the mother country, though we can show specimens which compare very favourably with the best English works. We find also in the text several suggestions for alterations in the law, and touching the policy of certain provisions; and though some of them are interesting and suggestive, are rather out of place, it seems to us, in a work intended for ready reference and as a circuit companion; at all events, such matter is usually found in footnotes.

We doubt if the learned Judge appreciates properly the difficulty of assimilating and consolidating the criminal laws in force in four provinces, and presenting them in such a shape as to receive the approval of the Legislature—a formidable work, and generally done upon elaborate consideration and discussion by commission, in which all the provinces should be represented. The wonder is, considering the brief time allowed for preparing the consolidation,

that so few errors have been discovered. This, however, should not prevent a writer on the subject from entering upon a discussion of the points which suggest themselves to his mind for amendment. We agree with him as to some of his suggestions; others require more than a mere incidental examination, and it would be impossible, in a review of the work before us, to do more than call the reader's attention to them. We should have been glad if the various provincial enactments corresponding with the several clauses in the Consolidation Act had been referred to as well as the Imperial Acts. This would, at least in Ontario and the Maritime Provinces, have added much to the value of the work. While we cannot but notice the matters referred to, the work before us has doubtless cost much time and trouble in preparation; and for those who have not a good criminal law library, will be found very useful for reference.

SUPREME COURT TARIFF.

Fees to be Taxed between Party and Party in the Supreme Court of Canada—referred to in Rule 57.

	$	c.
On special case required by section 29 of the act when prepared and agreed upon by the parties to the cause, including attendance on the Judge to settle the same, if necessary, to each party,	25	00
Notice of appeal,	4	00
On consent to appeal directly to the Supreme Court from the court of original jurisdiction,	3	00
Notice of giving security,	2	00
Attendance on giving security,	3	00
On motion to quash proceedings under section 37 according to the discretion of the Registrar to,	25	00
(Subject to be increased by order of the Court or of a Judge.)		
On factums in the discretion of the Registrar to,	50	00
(Subject to be increased by order of the Court or of a Judge.)		
Printed case per folio of 100 words, including correcting, superintending, printing and all attendances,	0	30
On dismissal of appeal, if case be not proceeded with, in the discretion of the Registrar, to	25	00
(Subject to be increased by order of the Court or a Judge.)		
Suggestions under sections 42, 43, 44, including copy and service,	2	50
Notice of intention to continue proceedings under section 45,	4	00
On depositing money under section 48 in Controverted Election cases,	2	50
Notice of Appeal in Election cases, limiting the appeal to special and defined questions under section 48	6	00
Allowance to cover all fees to Attorney and Counsel for the hearing of the appeal in the discretion of the Registrar, to	200	00
(Subject to be increased by order of the Court or of a Judge.)		
On printing factums, the same fees as in printing the case.		
Besides the Registrar's fees, reasonable charges for postages and disbursements necessarily incurred in proceedings in appeal will be taxed by the taxing officer.		

EXCHEQUER TARIFF.

Fees and Charges to be Allowed to Attorneys and Solicitors in the Taxation of Costs between Party and Party.

Instructions.	$	c.
For informations, statements of claims and petitions,	5	00
For special cases, answers, examinations, demurrers, pleas and exceptions,	5	00
For amended or supplemental information and petition, when such amendment not occasioned by the error or default of the plaintiff,	2	00
For brief, for moving, for injunction,	2	00
For interrogatories and for *viva voce* examinations of parties or witnesses,	2	00
For special petitions in interlocutory matters,	2	00
For special affidavits,	1	00
For brief in suits by informations, statement of claim or petition of right in cause coming on for trial or hearing,	2	00
To defend proceedings commenced by information, petition, or statement of claim,	5	00

Exchequer Tariff.

	$ c.
For instructions for order to revive or add parties,	2 00

The preparations of pleadings and other documents.

	$ c.
Drawing informations, petitions, or statement of claim not exceeding twenty folios,	5 00
Drawing defence, answer, or other pleading not specially mentioned, not exceeding five folios in length,	2 00
For examining and correcting the proof of any pleading or affidavits or other papers required to be printed, per folio,	0 10
Preparing and filing joinder of issue,	1 00
Suggestion as to the death of parties and the like,	1 50
Affidavit of service of information, statement of claim or petition,	1 50
Special affidavit not exceeding five folios,	1 50
Every bill of costs not exceeding five folios,	2 00
Copies of a notice of motion, order, or certificate to serve, per folio,	0 20
Copies of all other documents or papers, per folio,	0 10
Notice of motion,	1 50
Certificate to appoint guardian *ad litem*,	1 50
Summons to attend Judge's Chambers,	1 50
Advertisements to be signed by Registrar, not exceeding five folios in length,	1 50
Every writ of mesne or final process, not exceeding five folios,	2 00
For every folio beyond the number provided for in any case, and for drawing or amending every other proceeding, notice, petition, or paper in a cause requiring to be drafted, not herein specially provided for, per folio, of necessary matter,	0 25

Perusals.

	$ c.
For perusing the print of an information, petition, statement of claim or amended information, petition, or statement of claim not exceeding 20 folios,	1 00
For every folio exceeding 20 folios,	0 05
For perusing an amended information, petition, or statement of claim when amended in writing,	1 00
The same rates as above for perusing answers in print or amended answer in writing,	
To the Attorney or Solicitor for perusing interrogatories, not exceeding 20 folios,	1 00
For every folio exceeding 20 folios,	0 05
For perusing all special affidavits filed by opposite party, and examinations at the same rate,	
For perusal of copy of supplemental statement and copy of order to revive, each,	1 00
In cases where pleadings or papers are printed, the amount actually and properly paid the printer is to be allowed, not exceeding per folio,	0 30

Attendances.

	$ c.
To inspect or produce for inspection documents pursuant to notice to admit or order for inspection,	
To examine and sign admissions,	
On taxation of costs,	
To obtain or give undertaking to defend, each,	1 00
On a reference, or examination of witnesses or parties, per hour,	
On a summons at Judge's Chambers,	
On consultation or conference with counsel,	
In court on motion, per hour,	
In court on demurrer, special petition or application adjourned from Judge's Chambers, when set down for hearing or likely to be heard,	
On hearing or trial of any cause or matter, per hour,	
To hear judgment, when same adjourned,	
For order made at Judge's Chambers, and to get same entered,	
To settle draft of any judgment, decree, or order,	
To pay money into court, each,	2 00
Every other proper attendance,	0 50

Services.

For service on a party or witness such reasonable charges and expenses as may be properly incurred.

Oaths and Exhibits.

	$ c.
To the Commissioner for oath,	0 25
To the Attorney or Solicitor for preparing each exhibit,	0 25
The Commissioner for marking each exhibit,	0 10

Counsel.

	$ c.
Fee on drawing and settling pleadings, and advising on evidence,	5 00

	$ c.
Fee on motion in court, up to	10 00
Fee on argument on demurrer not to exceed	20 00
Fee with brief on trial of issues or hearing, to	40 00
(No more than two counsel fees to be taxed without an order of a judge.)	
Fee on motion for judgment, to	20 00
(The above fees to counsel may be increased by order of the Court or of a Judge.)	

Disbursements.

Besides the Registrar's Fees, reasonable charges shall be allowed to Attorneys and Solicitors for necessary disbursements and postage on services of notices, motions, subpœnas, translations, printing of the same, copies, and other incidental proceedings.

In cases of special reference, where by order of the Judge or Court the inquiry is to be proceeded with at some place other than Ottawa, the referee shall be allowed travelling expenses not to exceed *per diem*,	4 00
For drafting report on reference, per folio,	0 30
Per diem allowance during the time employed on the reference,	10 00
(To be increased by order of the Court or a Judge.)	

When at the request of the parties, with the assent of the Judge, or when by order of the Judge, an examination of witnesses is taken by a short-hand reporter, the expenses of so taking such examination, not to exceed per folio 30 cents, including copy in long-hand to file in the case, may be taxed as costs between party and party.

In actions under $400, a deduction of one-third of the amount of the fees (other than disbursements) above allowed shall be made by the taxing officer—unless otherwise ordered by the Court or a Judge.

FLOTSAM AND JETSAM.

When Lord Eldon introduced his bill for restraining the liberty of the press, a member moved as an additional clause that all anonymous works should have the name of the author printed on the title page.

In the case of *Musselman* v. *Musselman*, in the Indiana Reports, vol. 44, p. 107, 1873, we find, among others, the two following head notes:

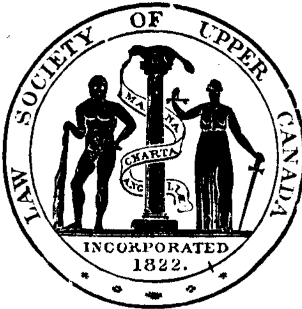
"Where it does not appear, on appeal, how smoking in court by the judge and attorneys prevented a party from having a fair trial, and the party assigning such conduct as a ground for a new trial does not appear to have objected to it, there is nothing for the Supreme Court to consider in relation to such conduct."

"The assignment as a reason for a new trial, 'that the court erred in sleeping or sitting with his eyes closed during the reading of the written evidence on the part of the plaintiff at the trial of the cause,' is too vague and indefinite. If the judge were asleep, the party should have ceased reading or awakened him; if he sat merely with his eyes closed, it is presumed he did so to hear the more acutely."

In the year 1598, Sir Edward Coke, then attorney-general, married the Lady Hatton according to the Book of Common Prayer, but without banns or license, and in a private house. Several great men were then present, as Lord Burleigh, Lord Chancellor Egerton, &c. They all, by their proctor, submitted to the censure of the archbishop, who granted them an absolution from the excommunication they had incurred. The act of absolution set forth that it was granted by reason of penitence, and the fact seeming to have been done *through ignorance of the law.*—*Middleton* v. *Croft*, Cunningham, p. 103, 3rd ed.

As an illustration of the absurdities produced by the "codes," the case of *Bennett* v. *Butterworth*, above referred to by Mr. Justice Grier, is worthy of attention. In that case the Court were unable to discover from the pleadings the nature of the action or the remedy sought. It might with equal probability be called an action of debt or detinue, or replevin, or trover, trespass, or a bill in Chancery. The jury and the Court seem to have laboured under the same perplexity. *The jury gave a verdict for twelve hundred dollars, and the Court rendered judgment for four negroes!*

LAW SOCIETY, MICHAELMAS TERM.



LAW SOCIETY OF UPPER CANADA.

OSGOODE HALL, MICHAELMAS TERM, 39TH VICTORIA.

DURING this Term, the following gentlemen were called to the Degree of Barrister-at-Law:

No. 1342—KENNETH GOODMAN.
THOMAS HORACE MCGUIRE.
GEORGE A. RADENHURST.
EDWIN HAMILTON DICKSON.
ALEXANDER FERGUSON.
DENNIS AMBROSE O'SULLIVAN.

The above gentlemen were called in the order in which they entered the Society, and not in the order of merit.

The following gentlemen received Certificates of Fitness:

THOMAS C. W. HASLETT.
ANGUS JOHN MCCOLL.
DENNIS AMBROSE O'SULLIVAN.
DANIEL WEBSTER CLENDENAN.
GEORGE WHITFIELD GROTE.
CHARLES M. GARVEY.
ALBERT ROMAINE LEWIS.

And the following gentlemen were admitted into the Society as Students-at-Law:

Graduates.

No. 2585—GOODWIN GIBSON, M.A.
JOHN G. GORDON, B.A.
WALTER W. RUTHERFORD, B.A.
WILLIAM A. DONALD, B.A.
THOMAS W. CROTHERS, B.A.
JOHN B. DOW, B.A.
JAMES A. M. AIKINS, B.A.
WILLIAM M. READE, B.A.
EDMUND L. DICKINSON, B.A.
CHARLES W. MORTIMER, B.A.

Junior Class.

ROBERT HILL MYERS.
WILLIAM SPENCER SPOTTON.
WILLIAM JAMES T. DICKSON.
WILLIAM ELLIOTT MACARA.
JAMES ALEXANDER ALLAN.
WALTER ALEXANDER WILKES.
WILLIAM ANDREW ORR.
ALFRED DUNCAN PERRY.
JAMES HARTEY.
HERBERT BOLSTER.
JOHN PATRICK EUGENE O'MEARA.
CHARLES AUGUSTUS MYERS.
CHARLES CROSBIE GOING.
DAVID HAVELOCK COOPER.
EMERSON COATSWORTH, JR.
WILLIAM PASCAL DEROCHE.
FREDERICH WM. KITTERMASTER

Articled Clerk.

JOHN HARRISON.

Ordered, That the division of candidates for admission on the Books of the Society into three classes be abolished.

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

That all other candidates for admission shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination upon the following subjects namely, (Latin) Horace, Odes, Book 3; Virgil, Æneid, Book 6; Cæsar, Commentaries, Books 5 and 6; Cicero, Pro Milone. (Mathematics) Arithmetic, Algebra to the end of Quadratic Equations; Euclid, Books 1, 2, and 3. Outlines of Modern Geography, History of England (W. Douglas Hamilton's), English Grammar and Composition.

That Articled Clerks shall pass a preliminary examination upon the following subjects:—Cæsar, Commentaries Books 5 and 6; Arithmetic; Euclid, Books 1, 2, and 3, Outlines of Modern Geography, History of England (W. Doug. Hamilton's), English Grammar and Composition Elements of Book-keeping.

That the subjects and books for the first Intermediate Examination shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C S. U. C. caps. 42 and 44, and amending Acts.

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

That the books for the final examination for Students-at-Law shall be as follows:—

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

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

That the subjects for the final examination of Articled Clerks shall be as follows:—Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

Candidates for the final examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining certificates of fitness and for call are continued.

That the Books for the Scholarship Examinations shall be as follows:—

1st year.—Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and amending Acts.

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

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

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

That no one who has been admitted on the books of the Society as a Student shall be required to pass preliminary examination as an Articled Clerk.

J. HILLYARD CAMERON,
Treasurer.