Canada Law Journal.

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DIARY FOR SEPTEMBER.

1. Thur.....Sittings of Divisional Court Chancery Division H. C. J. begin. Long vacation ends.
3. Sat.....Sir Edward Coke died 1634, æt. 82.
4. Sun .....13*th Sunday after Trinity.*
5. Mon.....Trinity Term of L. S. begins.
6. Tues....Sittings of Court of Appeal begin.
9. Fri.....Revolted American Provinces first called "the United States," 1776.
11. Sun .....14*th Sunday after Trinity.*
12. Mon.....Frontenac Governor of Canada, 1692.
13. Tues....Quebec taken and death of Wolfe, 1759. C. C. sittings for trial in York.
14. Wed ...Duke of Wellington died 1852. Sir J. S. Copley (afterwards Lord Lyndhurst) appointed Master of the Rolls, 1826.

TORONTO, SEPTEMBER 1, 1887.

As yet there is no definite information as to the appointment to the vacant Chief Justiceship. The long vacation is at an end, and in a few days work will begin again in earnest, and delay in making the appointment is likely to be prejudicial to the public interest. Whoever may be selected to fill the vacant post we earnestly hope that the exigencies of the public, and not of party, may prevail.

A CONSOLIDATION and amendment of the rules of practice, we believe, is in contemplation, and we trust that the work may be carefully and thoroughly done so that it may last without tinkering for a few years at least. Any undue haste or want of care in such a matter is sure to be dearly paid for in the long run by the public.

LAW SOCIETY.

RESUME OF PROCEEDINGS.

Special meeting of Convocation, called upon requisition to consider the action to be taken in view of the contemplated alteration in practice and procedure in the High Court of Justice.

WEDNESDAY, 23RD MARCH, 1887.

Present—Messrs. Beaty, Bell, Falconbridge, Ferguson, Foy, Hoskin, Irving, Kerr, Maclennan, Martin, McMichael, Murray, Osler, Purdom, Robinson, and Smith.

In the absence of the Treasurer, Mr. Irving was elected chairman.

A letter was read from Mr. Walter Barwick, Secretary of the York Law Association, enclosing the resolution of a joint committee, composed of members of the Wentworth and York Law Associations, which letter was as follows:

THE COUNTY OF YORK LAW ASSOCIATION,
TORONTO, 21st March, 1887.

The Secretary of the Law Society, Toronto:

DEAR SIR,—The Commissioners engaged in the revision of the Statutes furnished several of the County Law Associations with copies of the proposed Rules of Procedure, with a request for suggestions thereon.

The Associations of Elgin, Middlesex, Wentworth and York, have given a good deal of consideration to these rules, and on the 15th March a deputation from the Committee on Legislation of the Wentworth Law Association met with a deputation from a similar Committee of the York Law Association in Joint Committee for the purpose of considering these rules.

The Commissioners were waited upon, and it was represented to them how impossible it was to give any proper consideration to the draft rules within the limited time afforded to the Committee, and the Commissioners agreed to postpone the consideration of the rules if the Joint Committee would undertake to frame suggestions with regard to the rules after proper consideration.

This undertaking was given.

The Joint Committee are agreed in the general principles to be adopted in framing the new rules, and at the meeting mentioned adopted the suggestions, a copy of which is enclosed.

The Committee are of the opinion that the suggestions to be made to the Commissioners should take the form of a proposed code to supersede and be substituted for all existing rules relating to practice and procedure; and that a competent member of the profession should be employed by the Committee to frame and put into proper form and shape the general suggestions agreed upon by the Committee of the Associations.

The employment of such assistance will necessarily entail expense, and the Joint Committee desire to procure from the Law Society a grant to be expended under the direction of the Committee in the preparation of such a code.

I am, sir, yours, etc.,

(Sgd) WALTER BARWICK,
Sec. Joint-Com.

COPY OF RESOLUTION.

At a meeting of the Joint Committee on Legislation of the Law Associations of the Counties of Wentworth and York held in Toronto on the 15th day of March, 1887,

It was resolved,

That it is advisable to bring about a complete fusion of the three divisions of the High Court of Justice.

That one judge should sit in each week for the disposal of all business of the High Court required to be done in court and in chambers, without regard to the division in which the actions are pending.

That a uniform practice should be adopted in all the divisions of the High Court, including therein the practice at the sittings of the various Divisional Courts.

That there should be not less than four sittings held at permanent and fixed dates in each county for the trial of jury and non-jury cases, at two of which jury cases shall be tried as may be determined by general rules of the court.

That the tariff of costs be amended so as to allow the deputy clerks of the Crown, local masters and local registrars, as local taxing officers, to tax increased counsel fees with briefs at trials, or on assessments, to a sum not exceeding $40 to senior counsel and $20 to junior counsel, in actions of a special and important nature, provided that J. H. Thom, Esq., Taxing Officer, shall have power to tax increased fees; provided that if the application be made in the first instance to the said local officials for fiats, no application shall thereafter be made to the said taxing officer.

That the foregoing suggestions be enacted and adopted as rules forthwith; but the consideration and re-enactment of the proposed consolidation of the rules of practice and procedure as set forth in the printed draft thereof now under consideration by the judges, be postponed so as to enable proper consideration to be given to them, the Committee being of opinion that such rules should wholly supersede and be substituted for all existing rules relating to practice and procedure; and that in view of the great importance of these rules, application should be made to the Law Society to call a special meeting at an early day to consider what action should be taken to enable this Committee to procure a carefully prepared and efficient code of rules of practice and procedure in all the courts.

And it was further resolved that the Law Society should be requested to take into consideration the subject of the increase of judicial salaries, and make such representations as they may deem advisable to the proper authorities with a view of having suitable increases made.

On these documents being read, Mr. Walter Barwick, Secretary of the York Association, who was in attendance, was invited to attend before Convocation.

After discussion it was ordered,

That the sum of two thousand dollars ($2,000) be placed at the disposal of such members of the Joint Committee on Legislation of the Counties of York, Wentworth and Middlesex, as may be members of Convocation, for the purpose of obtaining such assistance as they may deem necessary, in order to assist them in making such suggestions as they deem advisable in drafting and perfecting the proposed code.

Resolved, That in the opinion of Convocation the salaries of the judges of the Supreme Court of this Province should be substantially increased, and that the Joint Committee on Legislation of the Counties of York, Wentworth and Middlesex, be requested to take steps forthwith to confer with the Governments of the Dominion and Ontario with the object of obtaining such suitable increase.

Convocation adjourned.

EASTER TERM, 1887.

The following is a *résumé* of the proceedings of Convocation during Easter Term and of the 28th June, 1887:

The following gentlemen were called to the Bar during Easter Term, 1887, viz.:

May 16.—William Field Kerr, Richard Henry Collins, Alexander Cecil Gibson, Clarendon Ivan Theodore Gould, Alonzo Edward Swartout, James Archibald Macdonald, Hugh Hornby Langton, Stanly Clark Warner, Angus William Fraser, William Henry Frederick Holmes, John Shaw Skinner, John Frederick Cryer, John Lyons Peters, William Kenneth Cameron, Alexander A Mactavish, Edward Malcolm Young, Ernest William Morphy, George Albert Loney.

May 17.—Herbert James Dawson, John Henry Bobier, Alfred Buel Cameron, John Elliott.

The following gentlemen were granted Certificates of Fitness as solicitors, viz.:

May 16.—R. A. Dickson, W. F. Kerr, S. C. Warner, F. M. Field, J. H. Bobier, H. B. Smith, G. F. Bell, J. Campbell, A. Dods, C. I. T. Gould, E. Heaton, J. Elliott, G. W. Field, W. H. F. Holmes.

May 17.—T. Urquhart, A. W. Marquis, J. Vance, J. A. Davidson, R. U. McPherson, E. M. Young, A. C. Gibson, J. F. Cryer, E. W. Morphy, J. A. Macdonald, H. H. Langton, J. Clark.

May 21.—A. A. Mactavish.

June 4.—R. H. Collins, A. E. Taylor.

June 28.—F. N. Raines.

The following gentlemen passed the First Intermediate Examination, viz.:

W. J. Hatton, honors and first scholarship; and Messrs. J. H. Denton, C. Styles, T. J. Mulvey, M. Murdoch, G. H. Cowan, W. G. Bain, R. V. Clement, A. J. Forward, C. Swabey, W. G. Richards, A. G. Browning, F. C. Hastings, D. M. Robertson, D. T. K. McEwan, R. E. Fair, I. Newlands, R. W. Smith, G. N. Beaumont, J. W. Evans, J. H. McArthur, W. J. Williams, G. S. McCarter, A. M. Macdonell, R. Baldwin, W. L. Beales, E. S. Brown, M. K. Cowan, A. J. McDonald, R. Segsworth.

The following gentlemen passed the Second Intermediate Examination, viz.:

J. A. McLean, C. Horgan, D. L. Sinclair, E. M. Lake, F. H. Kilbourne, W. W. Osborne, J. A. Macdonald, J. G. Holmes, W. W. Vickers, G. Hunter, J. F. Dumble, T. Walmsley, W. E. Hastings, E. H. Britton, W. C. Chisholm, J. B. Lucas, W. Lawson, J. H. Macnee, S. W. Burns, E. D. Cameron, J. F. Wills, H. V. Lyon, E. S. Wigle, J. G. Gauld, W. H. Stafford, G. F. Cane, A. D. Cartwright, H. W. Church, J. W. Coe, J. Fraser, S. R. Wright.

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

Graduates—A. Nugent.

Matriculants—V. M. Hare, G. D. Minty,

Juniors.—E. N. Livingston, A. W. Ballantyne, Z. H. Gallagher, W. S. Middlebrough, W. J. Clark, H. B. McGiverin, W. M. Shaw, T. L. W. Porte, U. A. Buchner, W. H. P. Walker, F. C. Jones, B. E. Swayzie, J. Steele, W. A. Boys.

The following gentlemen were admitted as Students-at-Law in the Graduate Class on the 28th June, their admission to date as of the first day of Easter Term, 1887. (See Rule 29th May, 1885.)

W. J. Kidd, W. A. Logie, C. W. Kerr, J. R. L. Starr, F. L. Webb, A. Crozier, W. H. Hunter, W. McBrady, A. H. O'Brien.

MONDAY, 16TH MAY.

Convocation met.

Present—The Treasurer, and Messrs. Beaty, Falconbridge, Foy, Hoskin, Lash, Maclennan, McCarthy, Morris, Moss, Murray, Osler, Purdom, Robinson.

The minutes of the last two meetings were read, approved and signed by the treasurer.

Mr. Moss, from the Committee on Legal Education, reported on the petition of Thomas Reid, asking for an award of a scholarship for the Second Intermediate Examination of last Term, recommending that under the rule in that behalf he be allowed his Second Intermediate Examination with honors, and receive the second scholarship of last Term.

Ordered for immediate consideration, and adopted and ordered accordingly.

Mr. Hoskin, from the Committee on Discipline, reported on the case of Mr. A. D. Kean, referred to them.

The report was received, read and ordered to be taken into consideration tomorrow.

Mr. Murray, from the Select Committee on the subject of students' text-books, presented their report, which was read and received.

Ordered to be considered on Saturday, the 21st instant.

The annual Report of the Examiners of the Law School was read.

The petition of Richard Reynolds, complaining of a solicitor, was read and received.

Ordered, that the petition be referred to the Committee on Discipline to report whether there is a *prima facie* case for enquiry.

The letter of Mr. J. H. Greenwood as to jubilee call, was read.

Ordered, that Convocation does not think fit to take any action on the said letter.

The letter of Mr. Walter Barwick, from the Committee on Legislation of the Law Associations, was received and read.

Ordered to be considered to-morrow.

The letter of Mr. L. H. Baldwin was received and read.

Ordered, that it be brought up on Saturday with the report on students' text-books.

Mr. Beaty, from the Select Committee on Honors and Scholarships, presented their report, which was received, read, ordered for immediate consideration and adopted.

Ordered, that W. J. Hatton be allowed his First Intermediate Examination with honors, and do receive a scholarship of one hundred dollars.

Convocation adjourned.

TUESDAY, 17TH MAY.

Convocation met.

Present — Messrs. Britton, Cameron, Falconbridge, Foy, Guthrie, Hardy, Hoskin, Irving, Lash, Mackelcan, Maclennan, Martin, McCarthy, Morris, Murray, Osler, Purdom, Robinson, Smith.

In the absence of the Treasurer, Mr. Irving was elected chairman.

The minutes of the last meeting were read, approved and signed by the chairman.

Mr. Irving being called away, Mr. Osler was appointed to the chair *pro tem.*

Mr. Hoskin brought up the report of the Committee on Discipline, in the case of a solicitor on the complaint of the Trustees of the Toronto General Hospital, that a *prima facie* case had been made out.

The report was adopted, and the matter was referred to the Discipline Committee under the statute and rules for investigation and report.

Ordered, that a call of the Bench be made for the last Saturday of the present Term (the 4th June next), for the purpose of electing a Bencher to fill the vacancy occasioned by the elevation of Thomas Robertson, Q.C.

There being present not less than fifteen members of the Bench,

Mr. Hoskin read the report in the case of Mr. A. D. Kean, and after consideration, on motion that the report be adopted, it was

Ordered, that Convocation having at its last meeting received the report of the Discipline Committee, respecting the charges made against Mr. A. D. Kean, and having ordered that the same be considered to-day, it is ordered that the consideration thereof be postponed until Saturday, the 4th day of June, and that a call be made of the members of the Bench for that day; that notice of this order be given to Mr. Kean, and that a copy of the report be forwarded to him to the intent that he may shew to Convocation any cause that he may have why the conclusion arrived at by the Discipline Committee should not be adopted by Convocation.

Mr. Osler being called away, Mr. Maclennan was called to the chair.

Ordered, that in case Mr. Kean should desire it, the evidence in his case be printed at the expense of the Society, and a copy sent to each Bencher and to the complainant and the accused, in due time before the day appointed for the consideration of the report.

Ordered, that all unfinished business of the day do stand adjourned till Saturday next.

Convocation adjourned.

SATURDAY 21ST MAY.

Convocation met.

Present—The Treasurer, and Messrs. Falconbridge, Foy, Irving, Moss, Murray, Osler, Robinson.

The minutes of last meeting were read and approved.

Mr. Blake was elected treasurer for the current year.

On motion of Mr. Irving, ordered, that the following be the list of the Standing Committees for the ensuing year, viz.:

FINANCE.

Messrs. S. H. Blake, W. G. Falconbridge, J. J. Foy, Æ. Irving, Z. A. Lash, E. Martin, T. H. Purdom, L. W. Smith, H. W. M. Murray, chairman.

LIBRARY.

Messrs. J. Beaty, S. H. Blake, H. Cameron, J. H. Ferguson, D. McMichael, J. H. Morris, Charles Moss, C. Robinson, Æ. Irving, chairman.

REPORTING.

Messrs. B. M. Britton, H. Cameron, W. G. Falconbridge, F. Mackelcan, E. Martin, D. McCarthy, H. W. M. Murray, B. B. Osler, James Maclennan, chairman.

LEGAL EDUCATION.

Messrs. J. H. Ferguson, J. Hoskin, Z. A. Lash, F. Mackelcan, W. R. Meredith, J. H. Morris, B. B. Osler, C. Robinson, Charles Moss, chairman.

DISCIPLINE.

Messrs. A. Hudspeth, J. K. Kerr, F. Mackelcan, J. Maclennan, D. McMichael, Z. A. Lash, C. Robinson, L. W. Smith, J. Hoskin, chairman.

JOURNALS AND PRINTING.

Messrs. John Bell, B. M. Britton, J. J. Foy, C. F. Fraser, J. Hoskin, D. McCarthy, Chas. Moss, T. B. Pardee, J. K. Kerr, chairman.

COUNTY LIBRARIES AID.

Messrs. B. M. Britton, H. Cameron, D. Guthrie, A. S. Hardy, A. Hudspeth, J. K. Kerr, W. R. Meredith, Z. A. Lash, E. Martin, chairman.

Mr. Moss presented the report of the Legal Education Committee on the case of R. U. McPherson, that his papers are now complete, and that he has duly served his time and is entitled to his Certificate of Fitness.

Ordered for immediate consideration, and adopted and ordered accordingly.

Ordered, that it be referred to the Discipline Committee to frame and submit to Convocation on the first day of next Term the draft of legislation thought advisable to perfect the machinery for enquiring into complaints against persons under the jurisdiction of Convocation, and also to persons untruly holding themselves out as solicitors or barristers, or evading the regulations as to practice.

On the order of the day for the petition on the subject of the jubilee, it was

Ordered, that the consideration of the petition do stand adjourned till Friday next.

The report of the Select Committee on the subject of students' books was taken into consideration.

The report was considered paragraph by paragraph, amended, adopted, and is as follows:

REPORT.

To the Benchers of the Law Society in Convocation:

The Special Committee to whom was referred the subject of text books for students in connection with the County Law Library Associations and of students' books generally, beg leave to report as follows:

They have had under consideration the above subject, having regard to the following rule and resolution of Convocation:

(Rule 142, paragraph 13, Dec. 4, 1886.) Convocation may furnish to each library such number of books for the use of students as may be required; the books so furnished to be kept by the librarian of each association, and students allowed to use the same on similar conditions to those in force from time to time in regard to similar books at Osgoode Hall.

Ordered, that Mr. Kittson's letter, in so far as it refers to students' books, be referred to a special committee, consisting of the Finance Committee and Messrs. Moss, Meredith, Britton and McMichael, to report to Convocation upon the subject, together with the system to be adopted to carry out the rules of Convocation, relating to students' books for county libraries; and further, to report to Convocation upon rules to be observed by students on the occasions of obtaining

and borrowing students' books. (18th February, 1887.)

The Committee find that there are two county libraries having fifty members, viz.: Wentworth and Middlesex; that the number of students using books in Wentworth is about thirty, and in Middlesex between forty and fifty; and that the price of one complete set of books is about $190.

1. That subject to the hereinafter mentioned rules, the Committee recommend that one complete set of students' books be supplied to each library association having at least fifty members, but that the renewal of such set or making good losses in the books be assumed by the library associations.

2. That each application be dealt with according to the circumstances thereof, and as the same is presented, that no settled rule be laid down.

3. That in places where there is no library association, or where there is an association but the number of members is less than fifty, students be allowed to apply to the secretary of the Law Society and receive books from him, subject to the same rules as students are who reside in the city of Toronto.

4. That the Wentworth and Middlesex Library Associations be at once supplied with one complete set of students' books.

5. That the rules as to lending books, whether from Osgoode Hall or from a county library, be as follows:

RULES.

The text books prescribed for the various law examinations will be loaned to students and articled clerks on the following conditions:

1. Every student or clerk, at the time of his first application, must file with the librarian of the library in question, a certificate (on prescribed form) signed by the solicitor in whose office he is, to the effect that he is a fit and proper person to be entrusted with the books, and must also deposit with the treasurer of the library in question the sum of ten dollars as security for the due return in good order of the book borrowed.

2. No book shall be retained by a student or clerk longer than one month. If retained longer than this period a fine of ten cents a day shall be exacted for each subsequent day.

3. No book shall be reserved for any student or articled clerk.

4. No student or clerk shall be entitled to more than one volume at a time.

5. No book shall be borrowed by the same person more than twice within six months.

6. Any student or clerk who shall injure, destroy, or lose any of the books of the Society shall forthwith make good the damage.

7. Books defaced with marks or writing shall be considered as injured, and assessed for accordingly.

8. No book shall be considered as returned by any student or clerk, unless it is handed to the librarian or to an assistant in the library, and its return duly entered in the proper book.

9. Students or clerks are prohibited from lending the books, or exchanging them with others.

10. Every student or clerk must give a receipt for every book loaned to him.

11. The librarian shall report to Convocation any student or clerk who removes any books from Osgoode Hall, or from any county library, except in accordance with these rules.

12. When a student or clerk notifies the librarian that he does not intend to apply for more books, the amount of his deposit shall be repaid to him, less fines and damages under these rules.

The letter of Mr. L. H. Baldwin, as to lending of books on the University curricula to members of the Society, was considered, and it was ordered that the existing order as to loaning books to students in connection with the courses of the Universities be extended to the members of the Bar.

It was further ordered that the regulations for lending of students books this day adopted be applicable to the cases of students and members of the Society borrowing books in connection with the University courses.

Ordered, that the secretary do cause to be published the usual advertisements for four gentlemen to fill the positions of examiners and lecturers, the applications to be in the secretary's hands not later than the 2nd day of June.

Ordered, that a call of the Bench be made for Saturday, the 4th day of June, for the appointment of four examiners and lecturers.

Convocation adjourned.

FRIDAY, 27TH MAY.

Convocation met.

Present—Messrs. Ferguson, Foy, Irving, Lash, Mackelcan, Maclennan, Meredith, Morris, Moss, Murray, Osler, Robinson.

In the absence of the Treasurer, Mr. Irving was elected chairman.

The minutes of the last meeting were read, approved, and signed by the chairman.

Mr. Murray, from the Reporting Committee, presented the report of that Committee, which was received, read and ordered for immediate consideration.

Ordered, that the editor-in-chief be informed that Convocation is of the opinion

that the digest number of each volume should be published within six weeks after the issue of the reports of that volume, and that the Committee be requested to inform Convocation of the reasons, if any, for the delays in the reports of the Appeal and Chancery Divisions; and that so much of the report as relates to the recommendation of the Committee to increase the salary of the Practice Court reporter from $600 to $900 per annum, the increase to take effect from 1st July next, be adopted.

Mr. Osler gave notice of a motion for Saturday, 4th June, to introduce a rule to alter the rule as to reporters' salaries, so as to give effect to the recommendation in the report.

A letter was read from the Canadian Pacific Telegraph Company, applying for permission to introduce the wires of their company into Osgoode Hall.

The letter was referred to the Finance Committee with power to act.

A letter from Mr. S. S. Macdonell was read, asking that his certificate to practice for 1887, which had never been sent to him, might be cancelled, as owing to his official position he had abandoned all intention of resuming practice.

Ordered, that his certificate be cancelled and his money returned to him, less any Term fees that might be due from him to the Society.

A letter was read from Mr. Macdonald of the Guelph Law Association.

Ordered, that the publishers be directed to send to the Guelph Law Association the back numbers of the volumes of the reports current at the time of the formation of that Association.

The petition from the members of the Bar of Ontario in reference to the fiftieth anniversary of Her Majesty's accession to the throne, presented to Convocation on 12th February last, and which stood over from previous meetings of Convocation, was considered, and it was deemed expedient that no action be taken thereon.

Mr. Morris gave notice that he would, at the next meeting of Convocation, move that an humble address be presented by Convocation to Her Majesty the Queen, congratulating Her Majesty on having reached the semi-centennial period of her reign.

Convocation adjourned.

SATURDAY, 4TH JUNE.

Convocation met.

Present—Messrs. Beaty, Britton, Falconbridge, Foy, Fraser, Hoskin, Irving, Kerr, Lash, Mackelcan, McCarthy, Morris, Moss, Murray, Osler, Pardee, Robinson, Smith, Maclennan.

In the absence of the Treasurer, Mr. Irving was elected chairman.

The minutes of the last meeting were read and confirmed.

Mr. Maclennan, from the Reporting Committee, read the following report.

The Committee on Reporting beg leave to report as follows:

1. The delay in the Chancery Division rests with Mr. Lefroy, who acknowledges that it is due to press of other work. He has, however, exerted himself to the utmost, and now states that eleven of the seventeen unreported cases are now ready to issue, and that with one exception this will clear off all cases to the 1st March. The Committee have an assurance from Mr. Lefroy of increased diligence hereafter.

2. The delay in the issue of the digest to volume 12, Ontario Reports, was caused in great part by the accidental omission of the matter of one of the numbers in preparing the index in the first instance, and also partly by the delay of the printer. Your Committee believe that the indexes will be issued more promptly in the future.

3. The serious arrears in the Court of Appeal appear to be without any excuse, and your Committee recommend that the reporter ought at once to avail himself of the arrangement with Mr. Brown, made some time since to bring up the arrears, but which it is understood has never been acted on up to the present time.

4. Your Committee recommend that 1000 copies of Mr. Cartwright's Digest of Constitutional Cases be ordered in sheets at the price of $1.50, provided reference is made in such Digest to the cases as reported in the regular reports as well as in Mr. Cartwright's own volume.

All of which is respectfully submitted.

The report was taken into consideration and adopted.

Ordered, that the Reporting Committee be authorized to take such immediate steps as they may deem necessary to have

the arrears of the Appeal reports brought up, and to prevent arrears in the future; and for that purpose, if necessary, to direct the suspension of the reporter's salary, and to require the employment of assistance by the reporter or themselves to employ such assistance or other means at the reporter's expense as they may deem necessary.

A letter from Alfred Baker, Registrar of Toronto University, was read as follows:—

REGISTRAR'S OFFICE, June 4th, 1887.

SIR,—At a meeting of the Senate of the University of Toronto, held May 27th, it was resolved that the Senate should invite the Law Society of Upper Canada to co operate with it in considering the question of the establishment of a Teaching Faculty in Law in the University, and I am directed to ask you to lay this communication before the Law Society at its next meeting. Your obedient servant,

ALFRED BAKER, *Registrar*

Ordered, that the following members of Convocation be a Committee to confer with the Senate of the University of Toronto on the subject of the establishment of a Teaching Faculty in Law in the University and report to Convocation, viz.:—Messrs. Falconbridge, Foy, Guthrie, Hardy, Irving, Kerr, Lash, Mackelcan, Martin, McCarthy, McMichael, Morris, Moss, Osler, Purdom and Robinson.

A letter from Messrs. Shilton, Allan and Baird was read, and referred to the Discipline Committee.

A letter from Philip Holt was read, on the subject of the election of a Bencher.

In the matter of the complaint against A. D. Kean, a barrister, on the report of the Committee on Discipline being brought up for further consideration,

Ordered, that charge four be considered as not sustained.

Mr. Kean was called upon to show cause to the report, and attended accompanied by his counsel, Mr. Lount, Q.C., and Mr. E. Douglas Armour. On hearing Mr. Lount, counsel for Mr. Kean, at length,

Ordered, that Convocation having considered the evidence reported upon the charges made against Mr. A. D. Kean, and having heard counsel for the said A. D. Kean, it is resolved that the evidence so reported fully justified the presentation of the charges preferred against Mr. Kean. But Convocation is of opinion that the circumstances do not warrant the conclusion that Mr. Kean should be disbarred. In the opinion however of Convocation, the admissions made by Mr. Kean establish that his conduct is censurable, and that he ought to be censured by Convocation, and that he ought to be ordered to attend Convocation forthwith to be censured by the chairman.

Mr. A. D. Kean thereupon attended, and was censured by the chairman. Mr. Kean's counsel were present.

Mr. Moss, from the Committee on Legal Education, presented the report of the Committee on Applications for the appointment of examiners and lecturers.

The report was received and read.

All the candidates having received nominations,

Mr. P. H. Drayton was elected Examiner and Lecturer in Equity Jurisprudence.

Mr. R. E. Kingsford was elected Examiner and Lecturer in Commercial and Common Law.

Mr. E. D. Armour was elected Examiner and Lecturer in Real Property.

Mr. W. A. Reeve was elected Examiner and Lecturer in Criminal Law and Torts.

The order of the day for the election of a Bencher in the place of Thomas Robertson, Esq., Q.C., elevated to the Bench, was taken up. Mr. Alex. Bruce, Q.C., of Hamilton, was elected.

Mr. Bruce was placed on the Discipline and County Libraries Aid Committees in the place of Mr. Lash.

On motion of Mr. Morris, pursuant to notice, seconded by Mr. Murray,

Ordered, that an humble address be presented by Convocation to Her Majesty the Queen, congratulating Her Majesty on having reached the semi-centennial period of her reign; that such an address be transmitted through the regular channel, and that the treasurer, the chairmen of the respective Standing Committees and the mover, be a Special Committee to draft, engross and transmit such address.

A Rule to amend the last clause of Rule number 113, with reference to the salary of the Practice reporter was read a first and second time, and ordered for third reading 28th June instant.

Convocation adjourned.

LAW SOCIETY.

TUESDAY, 28TH JUNE.

(Subject to confirmation at next meeting of Convocation.)

Convocation met.

Present—Messrs. Cameron, Foy, Hudspeth, Irving, Lash, Mackelcan, Maclennan, McMichael, Martin, Meredith, Morris, Moss, Murray, Osler, Robinson.

In the absence of the Treasurer, Mr. Irving was elected chairman.

Mr. Morris, from the Special Committee appointed to draft and forward an address to Her Majesty on the occasion of the completion of the fiftieth year of her reign, presented the report of the Committee—that the address had been prepared, and sent to the Secretary of State at Ottawa to be forwarded to Her Majesty.

The report was read and adopted.

The petitions of Messrs. J. D. Montgomery and T. C. Robinette were received and read, and the prayer granted.

The letter of Mr. Walter Barwick of this date was read as follows:

TORONTO, 28th June, 1887.

J. H. Esten, Esq., Secretary of the Law Society:

SIR,—At a meeting of the Bar held yesterday, presided over by the Attorney-General, a Committee was appointed to draft an appropriate resolution upon the subject of the death of the Honorable Sir M. C. Cameron.

The following motion was also passed at the meeting, "That Convocation be requested to have the resolution to be prepared by the Committee engrossed on the minutes of the Law Society, and that a copy of such resolution be forwarded to the family of the late Chief Justice."

I am, sir, yours, etc.,

WALTER BARWICK,
Sec. of the Meeting.

And the resolution of the Bar therein as follows:

RESOLUTION.

The profession have assembled in consequence of the death of the Honorable Sir Matthew Crooks Cameron, which took place on the 25th inst.

After practising at the Bar for thirty years he was, in the year 1878, made a Judge of the Court of Queen's Bench, and afterwards in the year 1884 was appointed Chief Justice of the Common Pleas Division, which distinguished position was held by him until his death.

He sat in the Legislature of the late Province of Canada and of this Province, and for a period of four years was a member of the Executive Council of Ontario as Provincial Secretary and Commissioner of Crown Lands.

He was distinguished as an advocate, a judge and a representative of the people, by singular individuality and independence of character, and by fearlessness in giving expression to his convictions when he believed himself in the right, he compelled the respect alike of his friends and opponents.

As an advocate he was forcible and courageous, as a judge impartial and patient, as a politician it is believed the rectitude of his motives were never questioned even by those opposed to him. His private virtues and his public life may well be taken as examples for all.

The imperial honor so recently bestowed upon him has rarely fallen on one who more truly embodied the best characteristics of the chivalry of old.

The Bar feel that as their body has been honoured by his life, so they and his native Province have lost by his death one who was the very type of those best qualities which mark the high-minded man, the honest politician and the successful advocate.

Ordered, that the resolution of the meeting of the Bar be entered on the proceedings of Convocation; and further, that an engrossed copy thereof be transmitted to the family of the late Sir Matthew Crooks Cameron.

A letter from A. Clark, of Orillia, dated 9th June, in *re* A. D. Kean, was read, and also the charge of W. H. Barker against A. D. Kean.

The secretary reported that he had written to Mr. Clark in reply to his letter.

Ordered, that the charge of Mr. W. H. Barker is too vague and indefinite for Convocation to take any notice of.

The letter of Mr. Goodwillie was read in reply to the enquiry as to what he had to say to the complaint that he was advertising himself as a barrister when he was a solicitor only.

The secretary was directed to write to him calling upon him to give an explanation of his calling himself a barrister, and repeating the cause of complaint in his letter, and to inform him that his communication is unsatisfactory.

A letter was read from Mr. Fowler, Secretary of the Lawn Tennis Club, in reference to a supply of water for their dressing-room.

The letter was referred to the Finance Committee with power to deal with it.

A letter was read from Mr. French in reference to the establishment of a mutual benefit association by the members of the profession.

Ordered, that Mr. French be informed that the subject of his letter was not new to Convocation, but that Convocation had hitherto not deemed it advisable to act.

The secretary reported that Mr. L. H. Dickson, of Exeter, who is a solicitor only,

advertises himself as a barrister, and produced the advertisement.

Ordered, that it be referred to the Discipline Committee.

Mr. Moss, from the Committee on Legal Education, presented the report of that Committee with reference to the admission of graduates. (For names of candidates admitted see list at beginning of résumé.)

The report was received, considered and adopted.

Mr. Martin presented the report of Mr. Winchester, Inspector of County Libraries.

The Rule relating to the salary of the Practice Court reporter was read a third time and passed, and is as follows:—

The salary of the reporter for decisions in matters of practice shall be nine hundred dollars per annum ($900).

Convocation adjourned.

RECENT ENGLISH DECISIONS.

The *Law Reports* for July comprise 19 Q. B. D. pp. 1-150; 12 P. D. pp. 145-157, and 35 Chy. D. pp. 191-399.

Husband and wife—Separate estate—Post nuptial settlement — Restraint on anticipation — Contract by wife during coverture—Married Women's Property Act, 1882 (47 Vict. c. 19 [O.], s. 2., ss. 4, s. 17).

In *Beckett* v. *Tasker*, 19 Q. B. D. 7, a Divisional Court (Day & Wills, JJ.) was called on to decide a question under the Married Women's Property Act, 1882. By a post nuptial settlement made before 1882, property which had been devised to a married woman for her separate use without restraint on anticipation was limited to her for life for her separate use, without power of anticipation, remainder to the husband for life, or until bankruptcy, remainder to the children. The wife, after the Act of 1882, and during coverture, made a promissory note in favour of the plaintiffs, and after the death of the husband the plaintiffs obtained judgment upon the note, and the question for the Court was whether the plaintiffs were entitled to a receiver of the rents and profits of the property included in the settlement. The plaintiffs claimed that the restraint on anticipation was determined on the death of the husband, and that from that time the widow held the property as a *feme sole*, and that the settlement being post nuptial was void for want of consideration. But the Divisional Court (overruling Huddleston, B.) was of opinion that, apart from the question as to the validity of the settlement, the property covered by the settlement would not have been bound by the contract prior to 1882, and that the death of the husband would not have affected the liability of the wife under such a contract, and that the Act of 1882 had not altered the law in this respect. Notwithstanding the general words of s. 1, ss. 4 (47 Vict. c. 19 [O.], s. 2, ss. 4), which provides that "every contract of a married woman with respect to, and to bind her separate estate, shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire," the court held that this merely includes property acquired during coverture, and does not include property acquired after the coverture. The validity of the settlement was upheld on the ground that the husband had no estate by the curtesy in the land settled, as no issue had then been born, and under the settlement he took an estate for life, whether there were children or not, which, on his part, he submitted should be determined on his bankruptcy. This case appears to be another instance of the astuteness which the courts have always displayed in construing the Acts relating to married women, so as to deprive them as far as possible of the beneficial effect the Legislature may be reasonably supposed to have intended them to have.

Naval officer—Resignation of commission.

The chief point decided by the court (composed of Lord Coleridge, C.J., Mathew, Cave and A. L. Smith, JJ.) in *The Queen* v. *Cuming*, 19 Q. B. D. 13, was that a commissioned officer of Her Majesty's navy who has accepted service on board of one of Her Majesty's ships, cannot, without leave of the Admiralty, resign his commission and retire from the service, and if he do, he is liable to be arrested and tried before a court martial as a deserter.

Carrier—Measure of damages—Delay in delivery of samples—Loss of season—Negligence.

Schulze v. *The Great Eastern Ry. Co.*, 19 Q. B. D. 30, was an appeal from Day, J. A par-

cel of samples was delivered to the defendants to be forwarded to the plaintiffs. By the negligence of the defendants who had notice that the parcel contained samples it was delayed on the way until the season at which the samples could be used in procuring orders had elapsed, and they had in consequence become useless. The plaintiffs could not have procured similar samples in the market. The action was brought to recover damages for the non-delivery of the samples in a reasonable time. The Court of Appeal held (affirming Day, J.) that the plaintiffs were entitled to recover as damages the value of the samples to them at the time they ought to have been delivered. Lord Esher, who delivered the judgment of the court, was of opinion that the case was governed by *Wilson* v. *Lancashire and Yorkshire Ry. Co.*, 9 C. B. N. S. 632.

BANKRUPTCY—REALIZATION OF ASSETS—INSURANCE OF DEBTOR'S LIFE—SUBMISSION TO MEDICAL EXAMINATION.

In re Betts, 18 Q. B. D. 39, is a bankruptcy decision of some moment. The principal asset of a bankrupt's estate was a contingent reversionary interest which could only be saleable if the bankrupt's life was insured. The question was whether the bankrupt could be compelled to submit to a medical examination, so as to enable the trustee to effect an insurance on his life, and whether his refusal to submit to such examination was misconduct. Lord Esher and Lopes, L.J., held that the bankrupt could not be compelled to such examination, and that his refusal to submit to the examination was not misconduct. But from this view Fry, L. J., dissented. The decision of Cave, J., *In re Garnett*, 16 Q. B. D. 698, was approved and followed by the majority of the Court of Appeal.

PRACTICE—SPECIALLY INDORSED WRIT—TIME FOR SERVICE—ORDER LXIV. (ONT. RULE 459).

In *Murray* v. *Stephenson*, 18 Q. B. D. 60, a Divisional Court, composed of Mathew and A. L. Smith, JJ., held that a specially indorsed writ is not a pleading within Ord. lxiv. (Ont. Rule 459), and service thereof may therefore be effected at any hour of the day.

ESTOPPEL—NEGLIGENT REPRESENTATION—WHARFINGER.

The Court of Appeal in *Seton* v. *Laforce*, 19 Q. B. D. 68, affirmed the decision of Denman, J., 18 Q. B. D. 139, which we noted *ante*, p. 64.

PRACTICE—INTERPLEADER—CHARGES OF SHERIFF SUBSEQUENT TO ORDER—APPEAL.

Goodman v. *Blake*, 19 Q. B. D. 77, was an appeal from a County Court on the question by whom the costs of a sheriff, subsequent to the granting of an interpleader, should be borne. The Court of Appeal held that the incidence of such charges is a question of law and therefore appealable; and on the merits, that a successful claimant is entitled to recover such costs from the execution creditor.

PRACTICE—APPEALS—STAY OF EXECUTION.

The short point decided by the Court of Appeal in *Hamill* v. *Lilley*, 19 Q. B. D. 83, was that when an appellant desires to stay execution pending an appeal from the Court of Appeal to the House of Lords, the application must be made solely to the Court of Appeal, and cannot properly be made either in chambers in the court of first instance, or to a Divisional Court.

MARINE INSURANCE—MUTUAL INSURANCE ASSOCIATION—PRINCIPAL AND AGENT—UNDISCLOSED PRINCIPAL.

An important point of insurance law was discussed in *United Kingdom M. S. Assurance Association* v. *Nevill*, 19 Q. B. D. 111. T., who was manager and part owner of a ship, took out a policy with a mutual insurance association in respect of the ship, and thereby became a member of such association. It became necessary to levy an assessment on the members of the association in order to provide funds to meet losses. T. had become bankrupt, and the association sought to make N., who was also a part-owner of the ship, liable for the assessment payable by T. as an undisclosed principal of T. But the Court of Appeal (affirming Grove, J.) held that the effect of the articles of association and the policy, was to impose the liability for assessments on members only, and N. not being a member, he could not be sued for assessments as an undisclosed principal of T.

None of the cases in the Probate Division call for notice here.

TRADE MARK—FANCY WORD NOT IN COMMON USE.

Proceeding now to the cases in the Chancery Division we come to *Re Arbens*, 35 Chy. D. 248, which was an application to register as a trade mark the word "Gem," as applied to air-guns manufactured by the applicant. Kay,

J., granted the application, but the Court of Appeal, finding on the evidence that the word "Gem," at the time of the application for registration, had become descriptive of a particular make of air guns, and not of the guns of the applicant exclusively, reversed the decision of Kay, J. Lindley, L.J., doubted whether the word "Gem" could in any case be registered as a trade-mark.

PRACTICE — COSTS — STAYING PROCEEDINGS FOR NON PAYMENT OF COSTS.

In re Wickham, Marony v. *Taylor*, 35 Chy. D. 272, a question which has once or twice recently been before our own court was considered by the Court of Appeal, and that is the power of the court to stay proceedings for non-payment of costs. It may be remembered that the Court of Chancery was accustomed to make such orders on the ground that the party making default was in contempt, and was not at liberty to take any proceedings against his opponent until the contempt was cleared. The Court of Appeal, however, have placed the jurisdiction to stay proceedings on a more reasonable footing, which may be gathered from the following passage from the judgment of Lindley, L.J., at p. 282:

> I agree that the non-payment of costs *per se* is not ground for staying proceedings, but there is a great distinction even now between actions, the costs of which come out of the estate, and ordinary actions in the Queen's Bench Division. It appears to me that under the present practice, whenever it can be shown that a person is proceeding vexatiously in not paying costs which he has been ordered to pay, the court has jurisdiction to stay the proceedings. This rule is, I think, applicable in all the Divisions of the Court.

PRACTICE—INFRINGEMENT [illegible]INT—PARTICULARS OF OBJECTION TO [illegible]ATENT.

Crompton v. *Anglo-American Brush Electric Light Co.*, 35 Chy. D. 283, was an action for the infringement of a patent. The defendant, by his statement of defence, denied the validity of the patent, and stated that the specification did not sufficiently describe the invention, and how it was to be performed. Further particulars having been ordered, the defendant repeated the objection, with the addition that the specification did not contain a sufficient direction to enable skilled workmen to make a machine having the advantages alleged by the inventor. Kay, J., having ordered further particulars, the Court of Appeal affirmed his order on the ground that if the defendant knew of a particular defect in the specification he ought to point it out, so that the plaintiff might not be taken by surprise.

PRACTICE—THIRD PARTY—DISCOVERY, RIGHT OF THIRD PARTY TO.

In *Eden* v. *Weardale Iron Co.*, 35 Chy. 287, the Court of Appeal reversed the judgment of Kay, J., on a point of practice. A third party had been notified by the defendant for the purpose of claiming indemnity against him, and an order had been made directing that the question of indemnity should be tried after the trial of the action, and that the third party should be at liberty to appear at the trial of the action, and oppose the plaintiff's claim so far as he was affected thereby, and for that purpose to put in evidence and cross-examine witnesses. Before the trial the third party applied to examine the plaintiff for discovery. Kay, J., conceiving himself bound by authority, refused the application, on the ground that the third party was not in the position of a defendant, although expressing a strong opinion that, but for the cases he referred to, the third party was entitled to discovery. The Court of Appeal overruled Kay, J., and granted the order.

ADMINISTRATION ACTION—REAL ESTATE—LIS PENDENS—PURCHASER PENDENTE LITE.

In *Price* v. *Price*, 35 Chy. D. 297, the doctrine of *lis pendens* is considered and discussed by Kay, J. The action was brought on 30th Dec., 1875, by one of two trustees of a marriage settlement against James Price and Nicholas Price as executors of their father, a deceased trustee, claiming payment by them of the trust fund of £1,000 alleged to have been received, and improperly retained, by their testator. The testator died in 1873, and by his will he specifically devised parts of his real estate to them respectively. The original statement of claim delivered on 2nd March, 1876, stated that the testator had received the £1,000, and claimed payment, but did not ask for administration. On 11th May, 1878, the plaintiff registered the action as a *lis pendens* against both defendants. On 26th March, 1879, an amended statement of claim was delivered, asking, in addition to the relief

formerly claimed, that if the defendants should not admit assets, then for administration of the real and personal estate of the deceased trustee. There was no averment that he had devised any real estate, and this was the only mention in the statement of the claim of the real estate of the deceased trustee. On 28th July, 1879, the writ was amended by claiming that the defendant, James Price, was also personally liable. On 20th March, 1880, judgment was awarded against the defendant, James Price, personally, and also for the administration of the real and personal estate of the testator. Subsequently, in 1881, inquiries were added as to the real estate specifically devised. Previous to the judgment, but after the registration of the *lis pendens*, viz., on 18th Nov., 1878, Nicholas Price mortgaged certain real estate specifically devised to him, and the question arose whether the plaintiff and other creditors were entitled to priority over the mortgagees. Kay, J., held that the debts of the plaintiff and other creditors not being a specific charge on the real estate, and there being no claim for administration in the action until after the mortgages had been given, the mortgagees were entitled to priority, and that the registration of the *lis pendens* did not affect their rights. We believe it has not been the general practice in this Province to register a *lis pendens* in administration suits, it has been assumed that all parties were bound by the administration judgment granted in chambers; but this case seems to indicate that the registration of a *lis pendens* is as necessary in such suits as any others in order to guard against the accrual of the adverse rights of purchasers *pendente lite*. This case also indicates the necessity of making all the specific devisees original parties, wherever resort is necessary to the land specifically devised. Under our recent Devolution of Estates Act, however, it will probably be found the executors alone sufficiently represent the realty, unless they have by conveyance or otherwise assented to the specific devises.

EASEMENT—IMPLIED GRANT—VENDOR—CONVEYANCING AND LAW OF PROPERTY ACT, 1881, 44 & 45 VICT. C. 41, S. 6, SS. 2, 4 (49 VICT. C. 20, S. 5, SS. 1, 2 [O.]).

Beddington v. *Atlee*, 35 Chy. D. 317, is a decision of Chitty, J., on a question of conveyancing. The owner (subject to a mortgage in fee) of a house and an adjoining lot first leased the house, then contracted to sell the vacant lot to the defendant, and afterwards contracted to sell the house, subject to the lease, to the plaintiff. The house and lot were first conveyed to the plaintiff, the mortgagee joining in the conveyance; afterwards the vacant lot was in like manner conveyed to the defendant. It was contended by the plaintiff that under the conveyance to him there was an express or implied grant of light to the house as it existed at the time of the sale, by which the owner of the vacant lot was bound. But Chitty, J., held that no such grant could be implied over land which the owner had previously contracted to sell to a third party, and that the section 5, ss. 1 & 2 of the Conveyancing Act, from which 49 Vict. c. 20, s. 5, ss. 1, 2 (O.) is adapted, did not apply.

MARRIED WOMEN'S PROPERTY ACT, 1870—REAL ESTATE—CONVEYANCE BY WIFE WITHOUT HUSBAND'S CONCURRENCE.

Johnson v. *Johnson*, 35 Chy. D. 345, is noteworthy as confirming the view taken by our own courts, that under the Married Women's Property Act, 1870, a married woman could not make a valid conveyance of real estate descended to her as a co-heiress without her husband's joining in the conveyance. Our later Act of 1884, however, has been held to have enabled her to convey alone.

WILL—CONSTRUCTION—GIFT OF RESIDUE TO CHILDREN OF NEPHEW, TO BE VESTED INTERESTS IN SONS AT TWENTY-FIVE, AND IN DAUGHTERS AT TWENTY-FIVE OR MARRIAGE—REMOTENESS.

Re Coppard, Howlett v. *Hodson*, 35 Chy. D. 350, turns on the construction of a will, whereby the testatrix gave a moiety of the residue of her estate to trustees for the benefit of the children of her nephew, to be vested interests in them; as to sons on their attaining twenty-five years of age; and as to daughters on their attaining twenty-five years, or being married before that age; and in case a daughter was married before that age, power was given to settle her share. Power was given to apply the income of an expectant share of any child, for its maintenance and education, and also to apply an expectant share for advancement in life. In case all the children of the nephew should die without taking a vested interest there was a gift over to the testatrix' brothers

and sister. The nephew had four children born before the testatrix' death, and three born after her death. All seven were infants. A daughter, one of the four, married under age. It was held by Stirling, J., that the four only were entitled to take, and that the daughter took a vested interest, which, at present, was one-fourth.

VENDOR AND PURCHASER — CONTRACT ABANDONED BY PURCHASER—DEPOSIT, FORFEITURE OF—DEFECT IN TITLE SUBSEQUENTLY DISCOVERED.

The case of *Soper* v. *Arnold*, 35 Chy. D. 384, was an action brought by a purchaser whose deposit had been forfeited on the ground of his having abandoned the contract, to recover such deposit because three years afterwards, on a re-sale of the property, an objection to the title had been taken which had been held fatal. But it was decided by Kekewich, J., following *Howe* v. *Smith*, 27 Chy. D. 89, that he was not entitled to succeed.

VENDOR AND PURCHASER — COMPENSATION—DELAY IN GIVING POSSESSION.

In *Royal Bristol Permanent Building Society* v. *Bomash*, 35 Chy. D. 390, it was held by Kekewich, J., that when a purchaser had been kept out of possession, and in consequence had lost a tenant, and the property had been damaged, after sale, by the removal of fixtures, the purchaser was entitled to compensation for the loss of a tenant, such damages being the amount of rent lost; and that he was also entitled to damages for the deterioration of the property.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

GEMMILL v. GARLAND.

The judgment of BOYD, C., 12 O. R. 139, affirmed.

DAVIS v. LEWIS.

The judgment of the Q. B. Division, 8 O. R. 1, affirmed.

GOLDSMITH v. THE CITY OF LONDON.

An appeal by the defendants from the judgment of the Q. B. Division, 11 O. R. 26, was dismissed, by reason of the judges of this court being divided in opinion.

MILLER v. CONFEDERATION LIFE ASSURANCE CO.

Insurance—Contract—Warranty of truth of answers by insured—New trial—Discovery of further evidence.

At the end of questions and answers forming part of an application for life insurance was an undertaking by the applicant as follows: I do hereby warrant and guarantee that the answers given to the above questions (all which questions I hereby declare that I have read or heard read) are true, to the best of my knowledge and belief; and I do hereby agree that this proposal shall be the basis of the contract between me and the said association (the defendants); and I further agree that any misstatements or suppression of facts made in the answers to the questions aforesaid, or in my answers to be given to the medical examiner, shall render null and void the policy of insurance herein applied for, and forfeit all payments made thereon."

The answers of the insured to the questions of the medical examiner were not in writing, and no evidence was given at the trial to show

what the answers were, but the insured certified in effect that he had truly answered whatever questions the examiner put to him, and the examiner made a written report of his examination of the insured.

Held, that there was no absolute warranty by the insured of what was contained in the medical examiner's report, nor of the truth of the written answers of the insured to the questions forming part of the application. The words, "to the best of my knowledge and belief," in the application, govern the words "any misstatements or suppression of facts" in the latter part thereof.

The defendants further contended that, even assuming there was no absolute warranty, the insured had been guilty of wilful and untruthful representations or suppressions, viz., as to three of his brothers having suffered from illness showing symptoms of pulmonary disease; the insured having himself met with an accident which he had not disclosed, and having been attended by two doctors whose names he had not given, and that these would be sufficient to avoid the policy. The judge at the trial charged as follows: "If you think there is anything in these answers which was calculated to mislead the defendants and induce them to enter into the contract when they otherwise would not have done it, then your verdict should be for the defendants. But if, on the other hand, you think the answers reasonably fair and truthful, to the best of the knowledge and belief of the man, I think your verdict should be for the plaintiffs." The jury found for the plaintiffs.

Held, that the verdict should not be disturbed.

The defendants after the trial discovered some fresh evidence, viz.. some declarations and a letter of the insured showing his state of health before and after the signing of the application for insurance, as to which evidence had been given at the trial.

Held, HAGARTY, C.J.O., *dubitante*, that the nature of the evidence would not warrant the granting of a new trial merely to enable the defendants to tender it. And the refusal, by reason of a disagreement of the Divisional Court, of a motion made by the defendants for a new trial on the ground of the discovery of fresh evidence (11 O. R. 120) was therefore affirmed.

JOHNSTON v. MOODY.

Attachment of debts—Issue—Rule 375.

The plaintiff after recovering judgment against the defendant upon a money demand, issued an attaching order upon moneys in the hands of the C. Company, which were admittedly not the moneys of the latter, and which the plaintiff swore he was informed and believed belonged to the judgment debtor, but which were claimed by a son of the latter. There was nothing before the judge of the County Court (Middlesex) to support the assertion of the plaintiff, and the examination of the claimant, taken at the instance of the plaintiff, showed that there was no reason to suppose that the claim of the former was not well founded.

Held, that the judge had, under Rule 375, a discretion to direct or refuse to direct the trial of an issue, and that such discretion was properly exercised in refusing to so direct, and in rescinding the attaching order.

Semble, if the plaintiff had been able to suggest even a plausible ground for supposing that it was the money of the judgment debtor, or to cast a suspicion upon the *bona fides* of the claim of the son, it would have been the duty of the judge to direct an issue, if the plaintiff desired it.

INTERNATIONAL WRECKING CO. v. LOBB.

Practice—Appellant proceeding on judgment appealed from—Abandonment of appeal.

By the judgment of the Common Pleas Division, 11 O. R. 408, delivered on the 6th March, 1886, it was adjudged that the plaintiffs' services alleged in the statement of claim were salvage services, and that they were entitled to be remunerated therefor as such; and that the vessel in question should be sold, one-half of the purchase money paid to the plaintiffs, their costs out of the other half, and the residue to the defendant.

On the 5th April, 1886, the plaintiffs gave notice of appeal, their contention being that they were entitled to be paid the full value of their services, which was fixed by agreement at $4,000.

On the 20th April, 1886, the defendant's solicitor wrote to the plaintiff's solicitors: "The judgment entitles you to a sale of the

vessel and one-half of the proceeds, and your costs out of the other half. The water is going out of the canal, and it is likely that unless something is done the vessel will be further injured. As your clients have a larger interest in it than ours, we think you should interest yourselves in preventing any injury to the schooner.

"We shall proceed to have the judgment issued at once in order that the vessel may be offered for sale as soon as possible, as otherwise she will have to be as she is, all season, and will be still further deteriorated." The defendant's solicitor swore that when he wrote this letter he thought that the plaintiffs were not sincerely intending to prosecute their appeal, nothing further having been done in the appeal, and the notice not having been served until the time for doing so had almost expired.

On the 14th June, 1886, the plaintiffs entered judgment, and afterwards took it into the Master's office where an advertisement was settled, and the vessel was sold for $700, which was paid into court. At the same time the plaintiffs carried on their appeal proceedings, and on the 27th August, 1886, the defendants served notice of motion to quash the appeal.

Held, that a party may appeal from a judgment in his favour if he thinks it should have been a judgment of a different character, but he must be taken to have abandoned his appeal, if he proceeds under the judgment. By the appeal the plaintiffs sought to obtain a judgment *in personam*, while the judgment appealed against, gave them a remedy *in rem*; having taken this remedy they could not be heard to say that it was not the one to which they were entitled.

If it had appeared that the letter of the 20th April, 1886, was written for the purpose of leading the opposite party into a false position, or to induce him inadvertently to take a course destructive of his appeal, the plaintiffs might have been relieved from the consequence of their acts, but it did not so appear, and it could not be said that the sale was one made by consent. The appeal was therefore quashed.

BANK OF MINNESOTA v. PAGE.

Practice—Appeal from District Court—Order for judgment under Rule 80—Order for security for costs, effect of non-compliance with.

There is a right of appeal to the Court of Appeal from the judgments of the District Courts of the Provisional Judicial Districts, R. S. O. c. 90, s. 34, imports that when by the law in force with regard to County Courts an appeal lies from those courts to the Court of Appeal, it lies also from the District Courts. An order for leave to sign judgment under Rule 80 is in its nature final and not merely interlocutory, and therefore such an order, if made in a County Court, would be appealable by virtue of 45 Vict. c. 6, s. 4, and is also appealable when made in a District Court.

47 Vict. c. 14, s. 4, assumes the existence of the right of appeal from District Courts; and the optional right to move against the verdict in the High Court, provided by sub-sec. 5, is not the appeal referred to in the first part of the section, in the words "subject to appeal."

On the 5th November, 1885, an order was made requiring the plaintiff to give security for costs within four weeks, and in default, that the action should be dismissed with costs, unless the court or judge, on special application for that purpose, should otherwise order. Within the four weeks the plaintiff took out a summons, with a stay of proceedings, for "further time to perfect security for costs," and on the 10th December, 1885, an order was made extending the time till the 23rd December, 1885, but not providing that the dismissal of the action should be the result of non-compliance with its terms. Security was not furnished within the time so extended, and it was contended that after that the action was dead, and there was no jurisdiction to make an order in it.

Held, that the action never became dismissed under either of those orders, and that a motion to dismiss was regular and necessary.

Leave to sign judgment under Rule 80 should not be granted, save where the case is clear and free from doubt; and under the circumstances of this case an order for such leave made by the judge of the District Court of Thunder Bay was reversed.

EASTMAN v. THE BANK OF MONTREAL

An appeal from the judgment of BOYD, C., 10 O. R. 79, was dismissed by reason of the members of the court being equally divided in opinion.

Per HAGARTY, C.J.O., and OSLER, J.A.—The judgment below should be affirmed.

Per BURTON and PATTERSON, JJ.A.—The appeal of the plaintiff against the Bank of Montreal, so far as it relates to the character of the debts upon the discounted notes, should be allowed.

MOXLEY v. CANADA ATLANTIC RY. CO.

Railway company—Fire caused by engine—Negligence—Evidence—New trial.

In an action for damages for negligence the complaint was that owing to negligent construction, or management, sparks of ignited matter had escaped from an engine of the defendants', and caused a fire which had spread and destroyed fences, and trees, on the farms of the two plaintiffs.

The evidence did not directly show the cause of the fire, but it showed that an engine, No. 4, had passed the place of the fire about an hour and a half before it, or the smoke from it, was perceived, and that another engine, No. 406, had passed about an hour and a quarter later, or about a quarter of an hour before the smoke was perceived. Engine No. 4 was said to be out of order, and was a wood burner, but it was not shown that there was any defect in No. 406, which was a coal burner, and it was assumed at the trial that it was properly constructed and in good condition. Evidence was given, in the shape of depositions taken before the trial, of two employés of the defendants, to the effect that an engine properly constructed and in good order could not throw dangerous sparks which would not be dead before they reached the ground, and one of them said that a greater quantity of fire would escape from a wood than from a coal burner. Two witnesses who were near at the time of the passing of the engines said that they saw no smoke or fire till after both trains had passed.

It was contended that the probabilities were very much against the fire having been caused by No. 4, the engine which was in bad order, and that, as the case depended altogether upon inferences from circumstantial evidence, there was not a case for the jury. The case was, however, submitted to the jury, and verdicts were found for the two plaintiffs.

Held (BURTON, J. A., dissenting,) affirming the judgments of the Queen's Bench and Common Pleas Divisions refusing orders *nisi*, that there was evidence from which the jury might infer that engine No. 4 was the cause of the fire; it was a presumption of fact depending on the circumstances of the case, and it was for the jury to fix the weight which should be given to it.

Per BURTON, J.A.—It was incumbent upon the plaintiffs to furnish evidence, not only of negligence but of its connection with the loss; and this was not done by showing that the fire broke out an hour or two after engine No. 4 passed, another engine which might have caused it having passed in the meantime; and the judge ought to have withdrawn the case from the jury upon the ground that there was no evidence of the issue which the plaintiffs were bound to establish, fit for them to take into consideration. The part of the evidence of the two employés above noted should have been rejected upon the ground that it came within the saving of "just exceptions," and also because judges as well as juries know what is the usual and normal state of things, and that it is a matter of common and universal knowledge that no locomotive worked by steam ever has been, or ever can be, constructed which can be effectively operated without throwing fire, or capable of causing such a loss as the present.

SHIELDS v. MACDONALD.

Practice—O. J. A., s. 48—Compulsory reference to referee—Jurisdiction of judge.

A judge has jurisdiction under O. J. A., sec. 48 to make a compulsory order referring not only questions of account but all the issues of fact in an action to an official referee.

Ward v. *Pilley*, 5 Q. B. D. 427, followed.

The plaintiff's claim was upon a verbal agreement entitling him to one-half of a certain commission received by the defendant, and his case depended upon his being able to prove the agreement, and to show that he per-

formed the services which were to form the consideration for it; if the plaintiff succeeded in establishing the agreement, and performance, the taking of an account would necessarily follow.

The defendant had also filed a counterclaim, as to which there was no question that it would be proper to direct a reference, either to arbitration or to an official referee. Two days after the commencement of the action the defendant's solicitor wrote, suggesting that all accounts between the parties should be settled by arbitration. The plaintiff subsequently made a motion to refer to an official referee under sec. 48, and the defendant also served a notice of motion to refer to a named arbitrator, or to some other arbitrator to be named by the court. The affidavit filed in support of the defendant's motion stated the belief of the defendant that the whole matter could be settled by a reference back to the court, by reference to an arbitrator who would have authority to decide as to the validity of the alleged agreement.

Held, that the real contest between the parties was as to the individual to whom the reference should be made; for the difference between a compulsory reference of the whole action to arbitration, and a reference of all the issues of fact in the action to a referee, was in this case not important; and the discretion exercised by WILSON, C.J., in referring the action to a referee, without the consent of the defendant, should not be interfered with.

MCKENNA v. MCNAMEE.

Contract—Destruction of subject matter of contract by vis major.

Where an executory contract is entered into respecting property or goods, if the subject matter be destroyed by the act of God or *vis major* over which neither party has any control and without either party's default, the parties are relieved.

The defendants, who had had a contract with the government of B. C. for the performance of a public work, but had forfeited it after a part of the work had been done, agreed with the plaintiffs that the latter should do the remainder of the work under the contract, and should receive ninety per cent. of the amount of every estimate issued till the completion of the work. The written instrument embodying the agreement referred to the contract as an existing one, but the fact was, as was fully known by all the parties, that at the time of making the agreement the contract had been forfeited, and the government had taken possession of the works. No advantage was taken by the defendants; the plaintiffs had examined the contract with the government, and understood as well as the defendants the exact position of affairs, but all trusted in the possession of certain influence by which they hoped to get back the contract and resume work upon it.

Held, affirming the judgment of the Queen's Bench Division (not reported), that the failure to obtain a restoration of the contract destroyed the whole consideration for each party's agreement or undertaking.

WOODRUFF v. MCLENNAN.

Practice—Foreign judgment, action on—Evidence—Fraud.

In an action upon a foreign judgment the defence was that the plaintiff fraudulently misled the foreign court by swearing to what was untrue to his knowledge at the trial of the original action. The matter in dispute was a claim for extra services in hauling logs for a greater distance than required by a contract between the plaintiff and defendants, and the contest was upon the question whether the services were, or were not, within the terms of the contract. On this question the evidence of the plaintiff and of one of the defendants, and of other witnesses, was given at the trial in the foreign court, the contract and certain letters were put in, and the judge's charge to the jury shewed that the whole evidence was clearly brought to the attention of the court. The verdict in the foreign court was in favour of the plaintiff, but it was now sought to establish the falsehood of the plaintiff's evidence with respect to the extra services.

Held, affirming the judgment of the Common Pleas Division (BURTON, J.A., dissenting,) that evidence under the defence was properly rejected at the trial, for what the defendants proposed to do was to try over again the very question which was in issue in the original

action. The charge of fraud was super-added, but that charge involved the assertion that a falsehood was knowingly stated, and before the question of *scienter* was reached a conclusion of fact adverse to that which had been arrived at by the jury would have to be adopted.

Per BURTON, J.A.—In admitting evidence under the defence, the court would not be assuming to re-try the issues disposed of in the foreign court, the finding upon those issues, being conclusive, cannot be questioned here; but it can be shewn that the decision arrived at was obtained by fraud practised upon the foreign court, and that right cannot be defeated because, in order to establish it, it becomes necessary to go into the same evidence as was used on the former trial to sustain, or defeat, that issue. The issues are not the same, although if the facts now discovered could have been shown at the former trial they would have secured a different result.

The authority of decisions of the English Court of Appeal, and the case of *Abouloff v. Oppenheimer*, 10 Q. B. D. 295, discussed.

MATTHEWS v. THE HAMILTON POWDER CO.

Master and servant—Injury caused by fellow servant—Negligence.

Action for damages by the administratrix of M. who was killed by an explosion of the defendants' powder mills, caused by a shaker being out of repair. W., a director of defendants, had some time before the explosion, when the works were idle, given express directions to C., the superintendent and head of the works, to have the shaker repaired before commencing operations, but C. neglected to attend to it, and the repairs were not made. It was not shown that W. in any way assumed to direct the practical workings of the mills, or that he had any special knowledge or ability to do so, and there was no suggestion that C. was an incompetent or improper person to employ.

Held, reversing the judgment of the Q. B. Division, 12 O. R. 53, that the intervention of W. had not taken the case out of the general rule of law, that the defendants were not responsible for accidents due to the negligence of a fellow servant, which C. was.

CHAPUT v. ROBERT.

Qui tam action—Non-registration of partnership—Parties—Joinder of parties—Practice.

An action by several plaintiffs, *qui tam* against two defendants for penalties for not registering their partnership under R. S. O. c. 123, of which s. 11 gives the action to any person who may sue.

Held, reversing the judgment of the court below, (1) That under the above section and the Interpretation Act an objection to the action being brought in the name of more than one person should not prevail; (2) That the circumstance that the plaintiffs lived out of the jurisdiction could not defeat their action; (3) That an objection that the claims against the two defendants were improperly joined in one action was not a ground of demurrer; and

Per OSLER, J.A.—There was no inconvenience or impropriety in joining these two defendants in one action.

BELL v. MACKLIN.

Vendor and purchaser—Misrepresentation—Compensation—Appeal on question of fact.

After conveyance of land by the defendant to the plaintiff, the latter complained that he had been induced to purchase by a misrepresentation of the quantity of land, and by his statement of claim asked to have the conveyance rescinded, or for an abatement of the purchase money. The contract for sale was in writing and contained no provision for abatement or compensation, and the deed conveyed the precise land which the defendant swore he had agreed to sell.

At the trial PROUDFOOT, J., pronounced a decree for compensation to the plaintiff for deficiency in the land sold, and the Divisional Court affirmed it.

Held, that as a matter of law the award of compensation was, under the circumstances, erroneous; and that upon the evidence the finding of fact by the trial judge could not be supported, and therefore rescission could not be decreed, HAGARTY, C.J., dissenting.

The circumstances under which an Appellate Court will reverse the decision of the trial judge upon a question of fact discussed.

QUEEN'S BENCH DIVISION.

Divisional Court.]

REGINA v. DUNNING.

Weights and Measures Act—42 Vict. ch. 16 (D.), and amendment—Crime—Evidence of defendant—Imprisonment—Jurisdiction—Certiorari—Conviction bad in part.

The defendant was convicted by two justices of the peace under the Weights and Measures Act, 42 Vict. ch. 16, sec. 14, sub-sec. 2 (D.), as amended by 47 Vict. ch. 36, sec. 7 (D.), of obstructing an inspector in the discharge of his duty, and was fined $100 and costs, to be levied by distress, imprisonment for three months being awarded in default of distress.

At the hearing before the justices the defendant tendered his own evidence, which was excluded.

The defendant appealed to the Quarter Sessions, and on the appeal again tendered his own evidence, which was again excluded, and the conviction affirmed.

On motion for *certiorari*,

Held, that, the conviction having been affirmed in appeal, *certiorari* was taken away, except for want, or excess, of jurisdiction, and that there was no such want, or excess, of jurisdiction, inasmuch as the justices and the Quarter Sessions had jurisdiction to determine whether the defendant's evidence was admissible or not, and that such determination, even if erroneous in law, could not be reviewed by *certiorari*.

Per ARMOUR, J.—That even if the determination on this point could be reviewed, the justices were right in excluding the evidence of the defendant, inasmuch as the offence charged was a crime.

Held, also, (ARMOUR, J., dissenting,) that although irregularly directed, imprisonment was justified in default of distress by sec. 62 of 32 and 33 Vict. ch. 31 (D.), incorporated in the Weights and Measures Act by sec. 53 thereof; but that if such imprisonment were not so justified the whole conviction would be bad, there being no power to amend by striking out the award of imprisonment.

Per ARMOUR, J.—That the 32 & 33 Vict. ch. 31, sec. 62 (D.), should only be construed as fixing the duration of the term of imprisonment, where the special Act provides specifically for some imprisonment without fixing its duration; and that as no imprisonment is expressly imposed by the Weights and Measures Act for the offence charged here, so much of the conviction as awarded imprisonment was made without jurisdiction, and was therefore bad; but that it was separable from the rest of the conviction, and should be quashed, leaving, however, the rest of the conviction to stand.

Shepley and *McDougall*, for motion.

Clement, contra.

Divisional Court.]

HENDERSON v. KILLEY ET AL.

Partnership—Dissolution—Agreement by new firm to pay debts of old—Right of creditors to enforce—Creation of trust.

K. and M., having carried on business under the name of K. & Co., dissolved partnership, and K. gave M. sixteen promissory notes for $500 each, with interest, for his share in the business, which was continued by K. K. afterwards, by agreement under seal, formed a partnership with O., to continue until a joint stock company should be formed to take over their assets, and K., by this deed, was to transfer to the co-partnership, as his contribution to the capital, all the assets of his business, to be taken at a valuation, subject to the deduction of his liabilities, which were to be assumed by the co-partnership and charged against him. Amongst K.'s liabilities, known to O. were ten of these notes, which he had indorsed to the plaintiff before they fell due. The new firm paid two of them, with interest on others, and there were negotiations for an extension of time to pay the whole. The company had been formed, and K. had transferred his interest to it. The assets of K. transferred to the new firm were sufficient to pay his liabilities.

Held, that though the plaintiff could not have sued upon the deed, not being a party to it, the circumstances established the relationship of trustee and *cestui que trust*, and entitled the plaintiff through K., as her trustee, to enforce performance of the stipulation in the deed for payment of the notes held by her.

Osler, Q.C., for motion.

Robinson, Q.C., and *Mackelcan*, Q.C., contra.