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DIARY FOR APRIL.

4. Sun.....*4th Sunday in Lent.*
5. Mon....C. C. term begins. C. C. Sittings, for trial of non-jury cases, begin, except in York.
9. Fri .....Lord Bacon died 1626, æt. 66.
10. Sat .....County Court term ends.
11. Sun.....*5th Sunday in Lent.*

TORONTO, APRIL 1, 1886.

THE time has again come round for the election of the Benchers of the Law Society, and the usual preliminary skirmishing has been going on. The voting papers have to be sent to the Secretary of the Law Society between the 29th day of March last and the 7th day of April instant, both inclusive. All received by post prior to the first date and after the second will be useless. Several lists have been given to the public. A correspondent sends us another for publication, which will be found in another place. While we do not in any way further this list, the names seem representative in their character, and the list has the advantage of bringing to the notice of the profession several new names which are entitled to consideration. No list, of course, can include all names one might like to see upon it, and some must necessarily be omitted.

IN several places the local Bars have, we understand met, and, with more or less unanimity, decided as to those they desire should be elected as their representatives. Their recommendations will doubtless receive due consideration.

WE are surprised that the country practitioners have not combined more in their own interest to elect men who would urge legislation to protect their undoubted rights. The Society at present receives their fees, and makes no attempt to save them from spoliation, and calmly contemplates their death by starvation.

RECENT ENGLISH DECISIONS.

The *Law Reports* for March comprise 16 Q. B. D. pp. 305-514; 11 P. D. pp. 13-20; 31 Chy. D. pp. 251-350; and 11 App. Cas. pp. 1-92.

POSTPONEMENT OF MORTGAGE TO SUBSEQUENT MORTGAGE AT REQUEST OF MORTGAGOR—IMPLIED PROMISE TO INDEMNIFY.

Ex parte Ford, 16 Q. B. D. 305, although a bankruptcy case, is nevertheless of some general interest. In order to enable the owner of the equity of redemption to obtain a further advance from a first mortgagee, a second mortgagee agreed to postpone his mortgage to that of a third mortgage held by the first mortgagee, and also to the further advance. The mortgaged property was ultimately sold, and failed to realize sufficient to pay the second mortgagee the whole amount due to him. The mortgagor having become bankrupt the second mortgagee claimed to prove against his estate for the deficiency. It is not expressly stated in the report, but it seems probably to have been the fact, that the bankrupt was not personally liable for the payment of the second mortgage debt. If he had been, we do not see that there would have been any room for controversy as to the liability of his estate. It was held by the Court of Appeal that the estate was liable on an implied promise on the part of the bankrupt to indemnify the second mortgagee for any loss he might suffer from the postponement of his claim. Lord Esher, M.R., said:

> It seems to me that whenever circumstances arise in the ordinary business of life in which, if two persons were ordinarily honest and careful, the one of them would make a promise to the other, it may properly be inferred that such a promise was given and accepted.

PAYMENT OF MONEY UNDER MISTAKE OF LAW.

Ex parte Simmonds, 16 Q. B. D. 308, is another decision in bankruptcy of some general interest. In this case it was held by the Court of

Appeal that the ordinary rule as between litigants, that money paid under mistake of law cannot be recovered, does not apply to a payment made under such a mistake to a trustee in bankruptcy, on the ground that he is an officer of the Court; and in such a case, on the mistake being discovered, the Court will direct him out of the moneys in his hands, or thereafter coming to his hands, to refund the money paid him by mistake. Lord Esher, M.R., thus stated the principle on which the Court acts in such cases:

A rule has been adopted by Courts of law for the purpose of putting an end to litigation; that, if one litigant party has obtained money from the other erroneously under a mistake of law, the party who has paid it cannot afterwards recover it. But the Court has never intimated that it is a high-minded thing to keep money obtained in this way; the Court allows the party who has obtained it to do a shabby thing in order to avoid a greater evil; in order, that is, to put an end to litigation. But James, L.J., laid it down in *Ex parte James*, 9 L. R. Chy. 609, that although the Court will not prevent a litigant party acting in this way, it will not act so itself, and it will not allow its own officer to act so.

LIBEL—VENDOR OF NEWSPAPER.

In *Emmens* v. *Pottle*, 16 Q. B. D. 354, the Court of Appeal (affirming Wills, J.) laid down what we think must strike everyone as a reasonable rule in reference to the law of libel. The action was brought to recover damages for the publication of a libel contained in a newspaper sold by the defendants in the ordinary course of their business. The jury found that the defendants were ignorant that the newspaper contained or was likely to contain the libel on the plaintiff, and it was not by negligence that they were so ignorant. The judge at the trial, on this finding, ordered judgment to be entered for the defendant. The plaintiff appealed, and argued his case in person; and Lord Esher, M.R., said that it would be impossible for anyone to have argued it in better form, or with better logic; the Court, nevertheless, on the findings of the jury, held that the judgment was right. Lord Esher remarks at page 357:

The question does not depend on any statute, but on the common law, and, in my opinion, any proposition the result of which would be to shew that the common law of England is wholly unreasonable and unjust, cannot be part of the common law of England.

ACTION BY HUSBAND AGAINST WIFE FOR MONEY PAID TO HER USE.

In *Butler* v. *Butler*, 16 Q. B. D. 374, the Court of Appeal held (affirming the judgment of Wills, J., 14 Q. B. D. 831) that inasmuch as before the Married Woman's Property Act, 1882, a husband could in equity obtain a decree against his wife for breach of any contract whereby she intended to bind her separate estate, so he has still that right; and that it is competent for him to maintain an action against his wife in order to charge her separate estate with moneys lent by him to her after their marriage, and money paid by him for her after their marriage, at her request, made before or after their marriage.

JOINT ADVENTURE—LOSS—CONTRIBUTION.

In *Lowe* v. *Dixon*, 16 Q. B. D. 455, Lopes, J., was called on to apply the equitable rule as to contribution between parties to a joint adventure. A., B. and C. purchased goods on a joint adventure. The plaintiffs, on their behalf, paid for the goods, which they afterwards sold for the benefit of all at a loss. B. became bankrupt, and only a dividend on the amount of his share of the purchase money was received by the plaintiffs, and the question in the present action was whether A. and C. were liable to contribute equally to make good the default of B., and Lopes, J., held that they were. The learned judge points out the distinction which formerly prevailed at law and equity on this point, thus:—

At law, if several persons have to contribute a certain sum the share which each has to pay is the total amount divided by the number of contributors, and no allowance is made in respect of the inability of some to pay their shares. But, in equity, those who can pay must not only contribute their own shares, but they must also make good the shares of those who are unable to furnish their own contribution.

CONTRACT, BREACH OF, BY REPUDIATION BEFORE TIME FOR PERFORMANCE.

In *Johnstone* v. *Milling*, 16 Q. B. D. 460, the Court of Appeal reversed the judgment of the Divisional Court composed of Huddleston, B., and Cave, J. A counter claim was set up by a lessee against his lessor for breach of covenant to rebuild the demised premises. The covenant in question was contained in a lease for twenty-one years determinable by the lessee at the end of the first four years by

Recent English Decisions.

a six months' notice, and thereby the lessor covenanted to rebuild the premises after the expiration of the first four years. Before the expiration of the first four years the lessor frequently told the lessee that he would be unable to procure the money for rebuilding: and in consequence of this statement the lessee gave notice to terminate the lease at the expiration of the four years. After the determination of the lease the lessee continued in possession, paying rent to the lessor's mortgagees, on the chance, as he stated, of the lessor's procuring the money to rebuild. The lessor, however, being unable to rebuild, the lessee now claimed damages for breach of the contract to do so. But the Court of Appeal held that the lease having been terminated before the time fixed for the performance of the contract to rebuild, there had been no breach of it, unless it could be said that there had been an anticipatory breach of it within the doctrine laid down in *Hochester* v. *De la Tour*, 2 E. & B. 678, and *Frost* v. *Knight*, L. R. 7, Ex. 111, by reason of a wrongful repudiation of the contract before the time for performance; but they held that what the lessor had said as to his inability to raise the money to rebuild could not be considered such a repudiation, and the counter claim was therefore dismissed.

Penal action—Discovery.

In *Martin* v. *Treacher*, 16 Q. B. D. 507, the Court of Appeal (affirming the Court below) held that the general rule is, that in an action for penalties by a common informer leave will not be given to the plaintiff to administer interrogatories for the purpose of discovery.

Disentailing deed—Rectification of mistake.

Proceeding now to the cases in the Chancery Division the first to be noticed is *Hall-Dare* v. *Hall-Dare*, 31 Chy. D. 251, which is a decision of the Court of Appeal overruling the judgment of Bacon, V.C., in 29 Chy. D. 133, which we noted *ante*, vol. 21 p. 267. The Court of Appeal taking the more liberal view that a mistake in a settlement might be rectified although included in a disentailing deed, notwithstanding the provisions of 3 & 4 Wm. IV. c. 74 s. 47 (R. S. O. c. 100, s. 96.)

Settlement—Election against voidable covenant—Compensation to those disappointed.

The Court of Appeal, in *In re Vardon's Trusts*, 31 Chy. D. 275, have reversed the decision of Kay, J. (28 Chy. D. 124), which we noted *ante*, vol. 21, p. 129. A married woman at the time of her marriage, being then an infant, executed a settlement containing a covenant on her part to settle after-acquired property. Under the settlement she was entitled to the income of a fund, subject to a restraint against anticipation. Subsequently she became entitled to a legacy which she refused to settle; and Kay, J., held that those who were disappointed by her refusal were entitled to be compensated out of the life estate she was entitled to under the settlement. In arriving at this conclusion he followed a decision of Wood, V. C., in *Willoughby* v. *Middleton*, 2 J & H. 344; but the Court of Appeal, finding a conflict of authority on the point, decided the question on principle, and adopted the conclusion of Sir Geo. Jessel in *Smith* v. *Lucas*, 18 Chy. D. 531, and held that those who were disappointed by the refusal to settle the after-acquired property were not entitled to compensation out of the fund to which the married woman was entitled under the settlement, because the clause against anticipation would in that event be defeated.

Gift—Revocation—Transfer of stock into joint names of donor and donee.

Standing v. *Bowring*, 31 Chy. D. 282, is a somewhat curious case. The plaintiff, an old lady of eighty-six, desiring to benefit the defendant, who was her god-son, transferred a sum of £6,000 stock into their joint names with the express intention that if he survived her he should have the stock for his own benefit. She had been previously warned that if she made the transfer she could not revoke it. Fearing that the anticipation of wealth would make the defendant less active in the duties of life, she did not inform him of the fact of the transfer having been made. Two years afterwards the old lady married, and shortly afterwards the defendant learned for the first time of the transfer, by the receipt of a letter requiring him to re-transfer the stock to the name of the plaintiff. Having refused to do this, the action was brought, claiming to have it declared that the defendant was trustee for the plaintiff. But the Court of Appeal unani-

mously affirmed the judgment of Pearson, J. (27 Chy. D. 341), dismissing the action, holding that the gift was complete by the transfer, and that vested the property in the donee, subject to his right to repudiate the gift when informed of it, if he pleased.

The *prima facie* presumption of a resulting trust in favour of the plaintiff was held to be rebutted by the evidence showing that the plaintiff intended, at the time of the transfer, and for some time afterwards, to benefit the defendant.

INFANT—MAINTENANCE—CHARGE ON REAL ESTATE.

In re Hamilton, 31 Chy. D. 291, the Court of Appeal held that an order could not properly be made to charge infants' estate with their maintenance under the following circumstances:—The two infants were entitled to successive estates tail in remainder after the life estate of their father, which life estate had been sold under his bankruptcy. The father was abroad, and judicially separated from their mother, and was contributing nothing to their support. It was proposed to borrow by way of mortgage or charge on the infants' real estate, secured by policies of insurance on the lives of the infants, a sum to provide for their future maintenance, the amount for which the charge was to be given, including the premiums on the insurance. The Court, however, held that as the estate of the infants in the land could not, in the lifetime of their father, be taken in execution, the Court had, therefore, no power to charge it. Fry, L.J., was also of opinion that no effectual charge for the whole of the proposed advance could be made against the estate of the infant, who first became entitled in possession, because his estate could, in any case, only be made liable for what should be expended for his own maintenance.

LAW SOCIETY.

MICHAELMAS VACATION.

The following is the résumé of the proceedings of Convocation published by authority.

MONDAY, 29TH DECEMBER, 1885.

Present—The Treasurer and Messrs. S. H. Blake, Cameron, Ferguson, Guthrie, Irving, Kerr, Maclennan, Morris, Moss, Murray, Mackelcan, McMichael, Purdom, Robinson and Smith.

The minutes of last meeting were read and approved.

The report of the Secretary on the cases of Messrs. Latchford and Atkinson was read, shewing that each of these gentlemen had respectively complied with the conditions prescribed during last Term, and were entitled to Certificates of Fitness.

The report was received, ordered for immediate consideration, and adopted.

Ordered, That Messrs. Latchford and Atkinson do receive their Certificates of Fitness.

Mr. Murray, from the Finance Committee, reported verbally that the Ontario Government had caused the library ceiling to be examined and repaired, and that during next long vacation they proposed to repaint the room.

Mr. Maclennan, from the Committee on Reporting, presented the following report:

The Committee on Reporting beg leave to report as follows:

In consequence of the increase in the number of persons entitled to receive the reports, your committee recommend that the edition to be printed in future be increased from thirteen hundred and fifty to fifteen hundred.

The report was read and received; ordered for immediate consideration. Adopted and ordered accordingly.

Mr. Irving, from the Library Committee, presented their report with reference to changes proposed in the arrangement of books in the library, and recommending the removal of the Parliamentary Journals and Sessional Papers of Canada and Ontario, and also the Imperial Hansard, Canadian Hansard, etc., to the gallery of the new hall.

The report was read and received. Ordered for immediate consideration and adopted.

The petition of J. Thacker was received and read. Ordered for consideration forthwith, and disallowed.

The letter from W. A. Taylor, Esq., of Winnipeg, on the subject of supply of the reports to the Manitoba Bar, was read, and ordered to be referred to the Reporting Committee for report.

The letter of Mr. Alan Cassels, on the subject of Mr. Sibley, was read.

Ordered thereon, That the report of the Discipline Committee on the case of Sibley be considered on the second day of next Term.

Mr. Moss moved, seconded by Mr. Mackelcan, that the rules for the call of barristers, etc., read a second time at the last sitting of Convocation, be now read a third time. Carried.

The rules were passed, and are as follows:—

RULES FOR THE CALL OF BARRISTERS IN SPECIAL CASES UNDER REVISED STATUTES, ONTARIO, CH. 138, SEC. 38.

94. The following persons may, as special cases, be called to practise at the Bar:

(1) Any person who has been duly admitted and enrolled, and has been in actual practice as a Solicitor of the Supreme Court of Ontario, or an Attorney or Solicitor in the Superior Courts of any of the other Provinces of the Dominion in which the same privilege is extended to Solicitors of the Supreme Court of Ontario.

(2) Any person who has been duly called to the Bar of England, Scotland, or Ireland (excluding the Bar of merely local jurisdiction), when the Inn of Court, or other authority having power to call or admit to the Bar by which such person was called or admitted, extends the same privilege to Barristers from Ontario, on producing sufficient evidence of such call or admission, and testimonials of good character and conduct to the satisfaction of the Law Society.

(3) Any person who has been duly called to the Bar of the Superior Courts of any of the other Provinces of the Dominion in which the same privilege is extended to Barristers of Ontario.

95. Every such person, before being called to the Bar, shall furnish proof,

(1) That notice of his intention to apply for call to the Bar was given during the term next preceding that in which he presents himself for call and was also published for at least two months preceding such last mentioned term in the *Ontario Gazette*.

(2) That he was duly admitted and enrolled and has been in actual practice as an Attorney or Solicitor as mentioned in sub-section 1 of Rule 94 and that he still remains duly enrolled as such and in good standing, and that since his admission as aforesaid no adverse application has been made to any Court or Courts to strike him off the roll of any Court or otherwise to disqualify him from practice as such Attorney or Solicitor, and that no charge is pending against him for professional or other misconduct.

(3) Or that he was duly called to and is still a member in good standing of the Bar, as mentioned in sub-sections 2 and 3 of Rule 94, and that since his call no adverse application has been made to disbar or otherwise disqualify him from practice at the Bar of which he claims to be a member, and that no charge is pending against him for professional or other misconduct.

(4) That he has passed one or more examinations as hereinafter prescribed,

(*a*) An Attorney or Solicitor of at least five years' standing on the Rolls of any of the Courts mentioned in the said sub-section 1 of Rule 94 shall be examined with the ordinary candidates for call in the subjects prescribed for the final examinations of Students-at-Law.

(*b*) An Attorney or Solicitor under five years' standing on the Roll of any of the Courts mentioned in the said sub-section 1 of Rule 94 shall be examined with candidates for admission in the subjects prescribed for the primary examination of Students-at-Law, and with the ordinary candidates for call in the subjects prescribed for the final examination of Students-at-Law, and such examinations may be passed at the one term or otherwise, as the candidates may desire.

(*c*) A Barrister as mentioned in sub-sections 2 and 3 of Rule 94 shall pass such examination as may be prescribed at the time of his application for call.

96. The fees payable by such candidates for call to the Bar in addition to the ordinary fees payable for admission, and for call, shall be the sum of two hundred dollars.

RULES FOR THE ADMISSION OF SOLICITORS IN SPECIAL CASES, UNDER REVISED STATUTES, ONTARIO, CHAPTER 138, SECTION 41.

97. The following persons may, as special cases, be admitted and enrolled as Solicitors of the Supreme Court of Ontario.

(1) Any person who has been duly called to practise at the Bar of Ontario, or in any of the Superior Courts not having merely local jurisdiction, in England, Ireland, or Scotland, or in the Superior Courts in any of the other Provinces of the Dominion.

2 Any person who has been duly admitted and enrolled as a Solicitor of the Supreme Court of Judicature in England, or as an Attorney and Solicitor in the Courts of Chancery, Queen's Bench, Common Pleas, or Exchequer in Ireland, or as a Writer to the Signet, or Solicitor in the Superior Courts of Scotland, or as an Attorney or Solicitor of any of Her Majesty's Superior Courts of Law or Equity in any of Her Majesty's Colonies wherein the Common Law of England is the Common Law of the land.

98. Every such person before being admitted to practise as a Solicitor, shall, after complying with provisions of Revised Statutes of Ontario, chapter 140, section 7, furnish proof.

1. A Barrister as mentioned in sub-section 1 of Rule 97 that he was bound by a contract in writing to a practising Solicitor in Ontario to serve, and has served him as his articled clerk for the period of three years.

2. An Attorney, Solicitor, or Writer (as mentioned in sub-section 2 of Rule 97) that he was bound by a contract in writing to a practising solicitor in Ontario to serve, and has served him as his articled clerk for the period of one year.

3. That he has passed the usual examination in the subjects prescribed for the examination of candidates for Certificate of Fitness to practise as Solicitors of the Supreme Court of Ontario.

4. That notice of his intention to apply for admission as such Solicitor was given during the term next preceding that in which he presents himself for examination and admission, and was also published for at least two months preceding such last-mentioned term in the *Ontario Gazette*.

99. The fees payable by such candidates for admission to practice, in addition to the ordinary fees for articled clerks, and for admission, shall be the sum of two hundred dollars.

Mr. Mackelcan obtained leave to bring in the following rule:

That for the more effectual carrying out of the report of the Committee on Reporting adopted in Convocation on 9th February, 1884, rule numbered 155 is hereby repealed, and the following rule is substituted therefor:

(155) The Secretary shall subscribe for eight copies of the reports of the Supreme Court of Canada for the Osgoode Hall library and one copy for each of the county libraries to be supplied at the expense of the society.

The rule was read a first, second and third time, and passed.

Ordered, That the Library Committee be authorized to prepare a new edition of the catalogue of the library of Osgoode Hall, and to report to Convocation on the progress of the work, and as to the publication next Term.

Ordered, That it be referred to the Journals Committee to prepare a draft consolidation of the rules of the society, and to report to Convocation next Term.

Convocation adjourned.

HILARY TERM, 49 VICT., 1886.

During Hilary Term the following gentlemen were called to the Bar, namely:

Messrs. Edward K. C. Martin and George L. Taylor who passed their examination for Call last Term, and Messrs. Ernest Frederick Gunther, John Greer, Daniel Coughlin, Albert Edward Kennedy, Francis Robert Latchford, Frederick Weir Harcourt, Henry Wissler, Alfred Mitchell Lafferty, Thomas Davy Jermyn Farmer, John Wendell McCullough, Joseph Nason, Frederick Sheppard O'Connor, William Edward McKeough, Robert Bertram Beaumont, Charles Franklin Farewell.

The following gentlemen were granted Certificates of Fitness, namely:

Messrs. J. A. McIntosh, W. D. McPherson, H. J. Wright, T. B. Lafferty, M. Wilkins, Jr., T. D. J. Farmer, O. E. Fleming, J. Nason, A. B. Shaw, W. Morris, A. S. Campbell, R. Walker, E. A. Wismer, E. M. Yarwood, W. E. McKeough, J. F. Williamson, H. Wessler, R. B. Beaumont, J. S. Mackay, D. Coughlin, J. Thacker, W. B. Raymond, J. W. McCullough, A. McKechnie, G. E. Martin.

The following gentlemen passed the First Intermediate Examination, namely:

Messrs. H. L. Dunn (Honors and First Scholarship); F. Smoke (Honors and Second Scholarship), and Messrs F. Sangster, J. B. McCaul, Jas. Fraser, D. L. Sinclair, J. F. Gregory, J. B. Lucas, J. Coutts, F. C. Jarvis, F. B. Denton, R. F. Lyle, R. M. Dennistoun, C. D. Fripp, W. C. Chisholm, J. Ross.

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

Messrs. W. H. Hearst (Honors, First Scholarship); R. U. McPherson (Honors, Second Scholarship); W. J. Sinclair (Honors, Third Scholarship); A. E. Watts (Honors); and Messrs. C. J. McCabe, E. Heaton, J. H. Bowes, W. F. Kerr, S. C. Warner, H. G. Tucker, H. Guthrie, J. H. Burnham, A. D. Creasor, A. W. Lane, W. K. Cameron, J. P. Moore, J. Hood, J. H. Jackes, D. D. Grierson, J. Craine, J. C. Grant, A. E. Taylor, C. H. Brydges, E. A. Crease, T. F. Johnson, P. M. Bankier, G. H. Hutchinson, A. C. Steele, O. M. Arnold, A. L. Smith.

The following gentlemen were admitted as students-at-law, namely:

Graduates.—Victor Crossley McGirr, Archibald Weir, Isaac Newlands.

Matriculants.—Frederick William Hill, Arthur Franklin Crowe, Edward Lindsay Middleton, James Hamilton McCurry, Robert Ernest Gemmell, Hugh James Minhinnick, Merritt Oaklands Sheets, A. E. Slater.

Juniors.—George Edmund Jackson, John Agnew, George Turbill Falkiner, Dighton Winans Baxter, Charles Edwin Oles, Charles James Notter, William Carnew, Henry Lumley Drayton, Charles

Franklin Gilchriese, Edward John Harper, William Herbert Cawthra, John Francis Lennox, Augustus Grant Malcolm, Honore Chatelaine.

Articled Clerk.—Alfred James Fitzgerald Sullivan passed the Articled Clerks' Examination.

MONDAY, 1ST FEBRUARY, 1886.

Convocation met.

Present—Messrs. Britton, Falconbridge, Ferguson, Foy, Hoskin, Irving, Kerr, Mackelcan, Maclennan, Martin, Meredith, Morris, Murray, McCarthy, McMichael, Osler, Purdom, Robertson and Robinson.

Mr. Maclennan was appointed Chairman in the absence of the Treasurer.

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

Mr. Murray presented the report of the Finance Committee, which was received, read and ordered to be considered forthwith.

Ordered, That the report be adopted and the deed, relating to the grounds at Osgoode Hall referred to in the report, executed by the Society.

The report of the Legal Education Committee on the case of A. G. McLean was ordered for immediate consideration, and adopted.

Mr. Mackelcan presented the report of the Special Committee on Honors and Scholarships in connection with the First and Second Intermediate. Messrs. H. L. Dunn and F. Smoke passed the First Intermediate, with honors, and Mr. Dunn is entitled to receive one hundred dollars and Mr. Smoke to receive sixty dollars.

Messrs. W. H. Hearst, R. U. McPherson, W. J. Sinclair and A. E. Watts passed the Second Intermediate, with honors, and Mr. Hearst is entitled to get one hundred dollars, Mr. McPherson to get sixty dollars and Mr. Sinclair to get forty dollars.

The report was adopted.

The Secretary reported on the cases of S. T. Hamilton, Peter Franklin Young and J. Percy Lawless, reserved last Term, in respect of their Second Intermediate Examination, that they have complied with the direction of the Committee, and are now entitled to be allowed their examination as of last Term. Ordered accordingly.

Mr. Britton presented the petition of John Shaw Skinner, Captain Prince of Wales Rifles, to be allowed his Second Intermediate Examination as of this Term on account of compulsory absence on military duty.

Ordered, That the petition be granted under the exceptional circumstances of the case, and that Mr. Skinner be allowed his Second Intermediate Examination as of the present Term.

Mr. Osler presented the petition of Alex. Cameron Rutherford, solicitor, of Ottawa, to be allowed his examination for call on the ground of illness during his examination.

Ordered, That he be allowed another oral examination during the present Term.

Mr. Mackelcan presented the report of the Special Committee on the case of Mr. F. S. O'Connor, that he is entitled to be called to the Bar.

The report was received and read, considered and adopted.

Mr. O'Connor was ordered to be called to the Bar accordingly.

Upon the motion of Mr. Morris it was ordered that the Finance Committee prepare and submit to Convocation during present Term a statement in detail of the assets and liabilities of the Society to 31st December, 1885.

Ordered, That the use of the convocation and benchers' rooms and library be granted for the occasion of a dinner to be given by the York Bar Association and the Osgoode Legal and Literary Society.

The Secretary laid on the table a list of voters for the election of benchers under section 15 of the Act relating to the Law Society.

Ordered, That Mr. D. B. Read, Q.C., and Mr. Murray be appointed to act as scrutineers, and Mr. Maclennan to act as and for the Treasurer in case he should be absent during the meetings of scrutineers to count the votes at the ensuing election of benchers, and that each of the scrutineeers be paid the sum of twenty dollars for each day's attendance.

Mr. Falconbridge gave notice of motion for to-morrow that he will move that the use of a portion of the ground lying to the west of the building be permitted to members of the Law Society as a lawn tennis court.

Convocation adjourned.

LAW SOCIETY.

TUESDAY, 2ND FEBRUARY, 1886.

Convocation met.

Present—Messrs. Falconbridge, Foy, Irving, Maclennan, Martin, Meredith, Morris, Moss, Murray, Osler, Purdom, Robinson.

Mr. Maclennan was appointed Chairman in the absence of the Treasurer.

The minutes of the last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, reported, recommending that Mr. D. Coughlin be allowed his Certificate of Fitness, and that Mr. J. Ross be allowed his First Intermediate Examination.

The report was read and received; ordered for immediate consideration, and adopted. Ordered acordingly.

The Secretary reported that Mr. James F. Williamson is in due course, and is now entitled to his Certificate of Fitness.

Ordered, That Mr. Williamson's Certificate be granted.

Convocation considered the report of the Discipline Committee of 5th December, 1885, on the case of Mr. W. H. Sibley.

Ordered, That the report be adopted, and that the charge against Mr. Sibley be referred to the Discipline Committee for investigation.

Ordered, That the use of the lawn to the west of the Osgoode Hall buildings be granted to the Osgoode Legal and Literary Society for the purposes of a lawn tennis ground, subject to the superintendence of the Finance Committee.

Mr. Purdom gave notice of motion for next Saturday as follows:

That on Saturday, the 6th instant, he would move that it be referred to the Legal Education Committee to consider the advisability of permitting the Faculty of the Western University to conduct all examinations of students attending that university required by this Society, and the adoption thereof by this Society; also to consider the advisability of establishing a law school in connection with Toronto University similar to that now established in connection with the Western University, and to report at the next meeting of Convocation.

The Secretary reported that Messrs. McCullough and McKeough have completed their papers and are entitled to Certificates of Fitness.

Ordered, That their Certificates of Fitness be granted.

A petition, now before the Legislature of Ontario, by one Delos R. Davis, who was admitted as a solicitor last year, for an act to be admitted to the Bar, was laid before Convocation.

The Chairman was authorized to point out to the Attorney-General and to the Chairman of the Private Bills Committee and to the member in charge of the Bill the erroneous statements in the petition of the Rules of the Society applicable to his case.

Convocation adjourned.

SATURDAY, 6TH FEBRUARY, 1886.

Convocation met.

Present—The Treasurer and Messrs. Bell, Falconbridge, Foy, Irving, Kerr, Maclennan, Meredith, Morris, Murray, Osler, Purdom, Robertson, Robinson and Smith.

The minutes of last meeting were read, and approved.

Mr. Morris, from the Legal Education Committee, reported on the case of A. E. Slater, a candidate for admission as a Student-at-Law in the matriculant class, that he is entitled to be admitted.

The report was ordered for immediate consideration, and adopted.

Ordered, That Mr. A. E. Slater be admitted as a student in the matriculant class.

The Secretary reported on the cases of Messrs. Beaumont, McKechnie, Thacker and Wissler, which had been reserved, that they have completed their time and papers, and are entitled to Certificates of Fitness.

Ordered, That they receive their Certificates of Fitness.

The letter of Mr. Galbraith as to the fees of the late Mr. Fenton was read.

Ordered, That it be referred to the Finance Committee for consideration, and report to Convocation.

The petition of H. H. Robertson, praying for a reconsideration of the marks on his examination for call, was read.

Ordered, That it be considered forthwith.

Ordered, That it be referred to the Legal Education Committee to consider the petition, and also the cases of the other

persons who had failed under the examiners' report on the call examination, and to report to Convocation whether any, and if so, what relief should be granted to them or any of them.

Mr. Purdom laid before Convocation the letter of Mr. Mills, of 5th February, touching his notice of motion.

Mr. Purdom, seconded by Mr. Meredith, moved:

That it be referred to the Legal Education Committee to consider the advisability of permitting the Faculty of the Western University to conduct all examinations of students attending that university required by this Society, and the adoption thereof by this Society; also to consider the advisability of establishing a law school in connection with Toronto University, similar to that now established in connection with the Western University, and to report at the next meeting of Convocation whether, in their opinion any, and if so, what changes can be advantageously made in the course and in the examinations. Carried.

Convocation adjourned.

(Signed) J. K. KERR,

Chairman Committee on Journals and Printing.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

IN BANCO.

SMITH v. CITY OF LONDON INSURANCE CO.

Insurance—Misdescription of premises—Waiver—Arbitration — Verdict — Variance — Statutory conditions—Variation.

Plaintiff described insured building by a term intended for board, but read by company as brick, as which they insured the premises, not finding out mistake till after the fire. The 17th statutory condition on policy was that the loss should not be payable for thirty days after completion of proofs of loss, unless otherwise provided by statute or agreement of parties, and there was a condition on policy as required by the Fire Insurance Policy Act as a variation of conditions that "the loss should not be payable till sixty days after completion of claim." Action was begun more than thirty but less than sixty days after fire. After action defendants demanded magistrate's certificate under statutory condition 13 E., and had an arbitration under condition 16, and by the award the value of building was put at $2,500, and loss at $1,700. The jury found former $3,500 and loss $3,500.

Held (*per* WILSON, C.J.), 1. That by reason of mistake as to character of premises there never was any contract, but that defendants waived the right to object to the mistake by demanding the magistrate's certificate and the arbitration. 2. That the finding of jury as to value of building must prevail, notwithstanding the award. 3. That the condition that the loss should not be payable till sixty days after completion of claim being in policy, and not dissented from by plaintiff, constituted an agreement between the parties, and that it was a reasonable condition, but that it was unreasonable for the company to insist upon, as they never intended to pay the loss.

Per ARMOUR, J., following *Parsons* v. *Queen Insurance Co.*, 2 O. R. 45, any variation of the statutory condition is *prima facie* unjust and unreasonable.

Robinson, Q.C., and *Miller*, for plaintiff.

McCarthy, Q.C., and *Nesbitt*, contra.

HOLDERNESS v. LANG.

Short form lease—Covenant to repair—Alterations by tenant—Waste—Waiver—Forfeiture.

Plaintiff leased, under R. S. O. ch. 103, to defendant premises for a grocery and liquor store for five years. Defendant subsequently broke a door through an inside brick wall. Plaintiff at first objected, but afterwards in effect assented. A partition, part glass and part wood, in which was a door, separated office from store. Subsequently defendant began to move this partition nearer the centre of the store, substituting wood for glass, closing the door and converting a front window into a

door, so as to make the office into a liquor store, in order to comply with the law requiring separation of liquor from groceries. Plaintiff claiming an injunction to prevent further waste, and right to re-enter for breach of covenant to repair; and the judge, at the trial, finding no damage,

Held, 1. That making door in wall, if in breach of covenant to repair, was not a continuing one and was waived. 2. That under statutory covenant to repair, tenant being bound to keep in repair both the premises and all fixtures and erections made during term, he had right to erect or make such fixtures, etc. 3. Plaintiff's reversion not being injured there was no waste or forfeiture.

Maclennan, Q.C., for plaintiff.

Maclaren, contra.

MOORE V. MITCHELL.

Libel—Pleading in mitigation of damages.

In libel a plea in mitigation of damages must in its nature admit plaintiff's right to some compensation; but it amounts to a contention that the recovery shall be limited to value of plaintiff's character, which value is affected by the facts pleaded.

Such pleas, based upon plaintiff's bad character, must either shew plaintiff a man of bad general reputation or character, or a bad character with regard to some specific act relating to the charge in the libel complained of.

It is not open to a defendant to plead justification to libel, and under such defence to offer evidence of plaintiff's bad character in mitigation of damages.

Marsh, for motion.

Millar, contra.

GOLDSMITH V. CITY OF LONDON.

Municipal corporations—Defective sidewalk—Negligence—Misdirection.

The plaintiff, while crossing a certain street in the city of London, stumbled against the end of a sidewalk—which was constructed of asphalt, boxed in with boards, and was some four inches higher than the crossing,—fell and received severe injuries.

Held (WILSON, C.J., dissenting), evidence of negligence that must have been submitted to the jury, and that they, having found in favour of the plaintiff, their verdict could not properly be interfered with.

Held, also, that it was no misdirection to tell the jury that they were at liberty to infer that there was no evidence of it; that if the roadway was at that level when the accident occurred it had been filled up between then and the examination of it by the defendant's witnesses.

R. M. Meredith, for plaintiff.

W. R. Meredith, Q.C., contra.

IN RE KNIGHT V. UNITED TOWNSHIPS OF MEDORA AND WOOD.

Prohibition—43 Vict. ch. 8, s. 14—48 Vict. ch. 14, s. 1—Colonization road—Title to land.

Held, that a prohibition would not lie to the fourth Division Court of the District of Muskoka, no notice having been given, as required by 48 Vict. ch. 14, sec. 1, amending sec. 14 of 43 Vict. ch. 8, disputing the jurisdiction of said Court; and that in any case prohibition would not lie in this case, the title to the road upon which the injury complained of arose not being in question, the road being a colonization road built by the Government before the organization of the townships of Medora and Wood as a municipality, and the question arising not being one of title, but of liability to keep in repair a road so built.

Arnoldi, for motion.

Pepler, contra.

LAXTON V. ROSENBURG.

Ejectment—Receipt of rent after action brought—Waiver—Intention.

In an action of ejectment, plaintiff alleged a demise to defendant as a monthly tenant. Defence, a yearly tenancy. After notice to quit, plaintiff received from defendant a payment of rent.

Held (affirming the judgment of ROSE, J., at the trial), that there is no distinction in principle between the effect of the payment of rent as such, after action brought, upon the determination of the tenancy by notice to quit and by forfeiture, and therefore the payment of rent in this case after action brought

had no effect whatever upon the action, either as a bar to it or as a waiver of the notice to quit.

Held, also, that the intention with which the rent was received must be taken into consideration, and *Doe dem. Cheney* v. *Batten*, Cow. 243, approved.

Croft v. *Lumley*, 6 H. L. Cases, commented on.

S. M. Jarvis, for motion.

Watson, contra.

DEVERILL v. COE.

Action for possession by purchaser at tax sale.

Lands in question were, in 1879, assessed as non-resident. The defendant came to reside on them during that year, and paid taxes to the regular collector, whereas, under the Assessment Act the treasurer is the proper party to receive.

No notice was given of arrears to the then owner, and they were not put on the roll for 1882, as required by the Act.

The owner paid all taxes subsequently demanded of him, including those for 1882, but the lands were nevertheless put up and sold for a trifling sum.

Quære, per WILSON, C.J., whether there was not in this evidence that the lands were not sold in a "fair, open and candid manner."

Held, tax sale void, as taxes under the circumstances were not in arrears.

Held, per ARMOUR, J., the substantial performance of the provisions of R. S. O. cap. 180, secs. 108, 109, 110 and 111 is a condition precedent to the right of sale, and as there was no performance of these attempted the sale was bad.

Remarks of WILSON, C.J., on the impropriety of tax sales as now conducted under legislative authority.

McCarthy, Q.C., and *J. E. Robertson*, for motion.

H. W. M. Murray, and *Delamere*, contra.

MCQUAID v. COOPER.

Provisional judicial District of Thunder Bay—47 Vict. ch. 14, secs. 4, 5—Title to land—Jurisdiction.

Held, that the jurisdiction conferred on the District Court of the provisional judicial District of Thunder Bay by 47 Vict. ch. 14, secs. 4 and 5, is not subject to the exceptions to the general jurisdiction of the County Courts mentioned in R. S. O. ch. 43, sec. 18, and that, therefore, that District Court has power to try actions in which the title to land comes in question.

Watson, for motion.

Aylesworth, contra.

MILLER v. CONFEDERATION LIFE ASSURANCE CO.

Life assurance—Suppression by insured—Right to begin at trial—Discovery of new evidence—Direction to jury—New trial.

At the end of questions in an application for insurance, made in December, 1883, and forming part of the application, was an agreement signed by insured stating that he warranted and guaranteed that the answers to the said questions, were true to the best of his knowledge and belief, and he also agreed that the application should be the basis of his contract, and that any misstatement or suppression of facts in the answers to said questions or in his answer to the medical examiner should render the policy null and void. The proposal and declaration were also made the basis of the contract.

Endorsed on said application were answers given to questions by a medical examiner, and at the end thereof, a certificate, signed by insured, stating that he had made full, true and complete answers to the questions propounded by said examiner, and agreed to accept the policy on the terms mentioned in the application.

In answer to a question whether he had had any serious illness, local disease, or personal injury, and if so of what nature, insured answered, "No, except a broken leg in childhood."

There was an answer to a question giving one T.'s name, as that of his usual medical attendant, and in answer to another question, whether he had consulted any other medical man, and if so for what and when, insured replied, "Dr. A., for a cold."

Insured had been thrown from a load of hay, and on his examination in a suit for damages against the municipality he swore he had been five weeks in bed suffering from his chest, and was at that time unfit for work of any kind, and had been attended by three doctors. No mention was made of this accident or of the doctors.

In reply to a question whether his grandparents, etc., brothers, etc., ever had pulmonary or other constitutional disease, he replied, "No," and he also stated in reply to questions as to what disease his brother had died from, that he had died from over-growth.

It was shown that an elder brother had been treated by Dr. A., some years before for pulmonary affection, and that insured had said that the brother who died had bled at the lungs, and had been ill for some months before he died. Insured, also, in answer to a question whether any material fact bearing on his physical condition or family history had been omitted, replied "No."

Defendants admitted policy, proofs of death, probate, etc., and accepted burden of proof in pleadings and at the trial, and claimed the right to begin, which was refused.

On motion in Term, copies of letters and documents signed by insured, sent to the Government for leave to remain off a homestead in the North-West, and showing that he had been suffering from congestion of the lungs and illness, from the spring of 1883 to the spring of 1884, were produced. It was shown that the existence of some such documents had been suspected, and that they had been searched for in all the Government offices, but could not be found, and that defendants received them the day after the trial.

Held, that the plaintiff had the right to begin, notwithstanding such admissions.

WILSON, C.J., reserved the consideration of the admission of the new evidence.

Per ARMOUR, J.—It could not be received, as it was merely corroborative, and its suspected existence would have been ground for asking to have the trial postponed.

Per WILSON, C.J.—There should be a new trial. There was evidence to go to the jury as to the truth of answer given respecting the health of the deceased brother. The jury should have been asked to say whether the answer as to inquiries was a misrepresentation in fact: that the certificate meant the answers were given upon a knowledge of the facts, and upon insured's belief in the truth of those facts; and a statement made without knowledge would not be protected by the formula, "best of knowledge and belief," if insured had no knowledge; nor would such statements be protected if made regardless of insured's belief in the truth of such knowledge as he had. The proposal was a warranty that the answers were true according to *the best* of his knowledge.

Per ARMOUR, J.—The direction to the jury, whether insured had stated to the best of his knowledge and belief the truth, in regard to deceased's brother, was sufficient.

As to the accident, it was one which ought to have been mentioned, but it was probably considered of too little importance by insured, or else had escaped his memory at the time of the application, and it was sufficient for the jury to have found insured did not wilfully withhold the fact, but answered to the best of his knowledge and belief; and the proposals were not warranties.

The Court being equally divided, the motion for a new trial was dismissed with costs.

S. H. Blake, Q.C., and *A. Cassels*, for motion.

McMichael, Q.C., *McCarthy*, Q.C., contra.

ARSCOTT [v. LILLEY AND HUTCHINSON.

Keeping a bawdy-house — Habeas corpus — Penalty under 31 Car. II. ch. 2, sec. 6.

Defendant L., a J. P., convicted plaintiff for keeping a bawdy-house, sentencing her to six months' imprisonment, after undergoing two months of which she was released on bail pending appeal to sessions. Appeal was dismissed, and plaintiff again arrested on L.'s warant, under advice of defendant H., County Crown Attorney. She was discharged on habeas corpus under latter warrant, because it did not take into account the two days' imprisonment. She was again arrested, under warrant issued by same justice, upon the original conviction. In an action brought by plaintiff, for penalty of £500, awarded by sec. 6 of 31 Car. II. ch. 2.

Held, reversing Cameron, C.J., at trial, that that section of the act does not apply where prisoner confined upon a warrant in execution.

Held, also, that warrant in execution issued by convicting justice on discharge of prisoner from custody, for defects in former warrant, was the legal order and process of the Court having jurisdiction in the cause.

Semble, the warrant issued after the dismissal of the appeal by the sessions, and which the original conviction in directing imprisonment for six months, without allowing for the two days, was not open to objection.

Galt, J.]

REGINA v. RAMSAY.

Can. Temp. Act, 1878—Secs. 105, 111—Jurisdiction—Certiorari—Appeal to Q. S.—Conviction quashed.

Where a defendant submits to examination before a magistrate it is too late afterwards to object to its propriety.

In cases where a magistrate has jurisdiction, *certiorari* is absolutely taken away; but an appeal to the quarter sessions still exists which, however, is also by sec. 111 of the Canada Temperance Act, 1878, taken away where the conviction is before a stipendiary magistrate.

It is imperative under sec. 105 of the above act, that an information thereunder be laid before two justices, and that they both be named in the summons to the defendant. Where, therefore, a summons stated that an information had been laid only before the justice who signed it, and yet called upon the defendant to appear before another named justice as well as himself,

Held, that the justices had no jurisdiction, and that the defendant's appearing before them did not confer it. A conviction was therefore quashed.

Bell, for motion.

Howson, contra.

O'Connor, J.]

REGINA v. ELI.

Quashing conviction—Case tried same day as warrant served.

Defendant was steward of a "social club," in Walkerton. The members were elected by ballot, and on paying an entrance fee of $1, and a subscription of 25 cents per month, were entitled to use the club rooms, and buy from the steward spirituous liquors. The members were not responsible for goods ordered, or for any general expenses. An information was laid against defendant on 10th September, 1885, for an offence against the second part of the Canada Temperance Act, 1878, and on the 21st September, 1885, he was, about 3 p.m., served with a summons to appear at 8.30 a.m. next day before two magistrates. On the 22nd day of September, informations were in two other cases laid against him for similar offences, and he was in each, at 8.15 a.m., served with a summons to appear before the magistrates at 9 a.m. that day. When the magistrates met, the first case was partially gone into, and before it was closed the prosecutor asked the magistrates to take up the second and third cases. The defendant stated that he had not understood what the summonses meant, and by advice of counsel refused to plead. The magistrates entered a plea in each case of not guilty, and went on with both cases. The evidence in both showed that the offences charged in each case occurred on dates different from those laid in the information. The magistrates amended the dates in the informations. The defendant and his counsel were in Court all the time, awaiting completion of the evidence in the first, but refused in any way to plead or take part in the second and third cases, or to ask adjournment thereof. The magistrates, after taking all the evidence therein, at request of defendant, adjourned the first case, and in the second and third cases convicted the defendant of the offences as charged in the amended informations. It was shown by affidavits that the magistrates were willing in these cases, had defendant pleaded, to adjourn after taking the evidence of the witnesses present. There were affidavits showing that the magistrates had been before the Scott Act interested in promoting temperance.

The convictions were quashed, with costs against complainant, on the ground that the proceedings were contrary to natural justice, as the summonses were served almost immediately before the sittings of the Court which defendant was called to attend.

Regina v. Klemp, 10 O. R. 143, was followed as to the charge of interest.

H. J. Scott, Q.C., for motion.

Alan Cassels, contra.

O'Connor, J.]

REGINA v. REED.

Mun. Corps.—By-law—Anticipating legislation—Conviction quashed.

A conviction for infraction of a by-law was quashed, the by-law having been passed 27th March, to take effect 3rd April next, in expectation of 45 Vict. ch. 24 (O.), passed 10th March, to go into operation 2nd April following.

Dickson, Q.C., for motion.

G. Henderson, Q.C., contra.

COMMON PLEAS DIVISION.

DIVISIONAL COURT, MARCH 6.

SCOTT v. CRERAR.

Libel—Publication, evidence of—Nonsuit.

Action for libel. The alleged libel being contained in certain letters or circulars written on a type writer, sent to several members of the legal profession in Hamilton, imputing unprofessional conduct to the plaintiff in sending "bummers" around touting for business; and inducing the clients of other solicitors to leave them and employ the plaintiff's firm. There was no direct evidence to shew that the defendant was the writer; and the plaintiff relied on circumstantial evidence as proving the fact. As part of the plaintiff's case the defendant's examination before trial was put in by plaintiff, and which contained a denial by the defendant that he was the writer.

Held (ROSE, J., dissentiente), that on the evidence, as set out in the case, there was not sufficient to go to the jury to prove that defendant was the writer, and that a nonsuit was properly entered.

McCarthy, Q.C., for the plaintiff.

Robertson, Q.C., and *MacKelcan*, Q.C., for the defendant.

RE MASSEY MANUFACTURING CO.

Company—Increase of capital stock—Notice by Provincial Secretary—Municipal Act—Mandamus.

An application was made by the Massey Manufacturing Company to the Provincial Secretary for the issue of notice under his signature pursuant to sub-sec. 18 of sec. 5 of 27 & 28 Vict. ch. 23, for publication, as required by said Act, the application stating that a by-law of the company had been passed increasing the capital stock thereof by $300,000, making the total capital stock $500,000, and declaring the number and amount of the shares of the new stock to be 30,000 shares of $100; that none of the said stock had been subscribed for, and nothing paid thereon. A duly authenticated copy of said by-law was filed on the application to the Provincial Secretary.

Held, that the duty of the Provincial Secretary in the matter on the issuing of the notice was ministerial; and that on the requirements of the statute being complied with the Provincial Secretary had no discretion in the matter, but must issue the notice.

Held, also, that the proper mode of enforcing the issue of the notice was by mandamus.

Robinson, Q.C., and *Lash*, Q.C., for the applicants.

Irving, Q.C., for the Provincial Secretary.

McCarthy, Q.C., and *Neville*, for the dissatisfied shareholders.

CARTER v. GRASETT.

Easement—Light and air—Implied grant—Equity of redemption.

P., the owner of lots 8 and 9, by his will devised the same to trustees in trust to sell. In 1869 the plaintiff purchased from the trustees lot 8, on which there was a house with windows overlooking lot 9, immediately adjoining it to the north; the said lot 9 being then open and not built upon. In 1873 the trustees sold lot 9 to Mrs. Priestman, who sold to T., who erected a house thereon. T. sold to G., under whom defendant claimed title. At the time P. became the owner of lot 9, he did so subject to a mortgage thereon, and he continued at the time of his death to have only an equity of redemption thereon. The mortgage was discharged by G., who obtained the usual statutory discharge, which was duly registered by him. The plaintiff claimed that he was entitled by implied grant to the light and air to the said windows, and that the same had been infringed upon by the erection of the house by T.; and he brought this action claiming damages and an injunction.

Held, that by reason of P.'s trustees at the time they sold to plaintiff only having an equity of redemption on lot 9, no such implied grant to light and air could arise.

McCarthy, Q.C., and *G. Bell*, for the plaintiff.

Robinson, Q.C., for the defendant.

DYMENT v. NORTHERN AND NORTH-WESTERN RY. CO.

Parol evidence—Admissibility — Consignor and consignee—Who has right to sue—Costs.

The plaintiff's agent at Gravenhurst shipped two carloads of shingles on defendant's cars. The shipping bill signed by the agent was in the usual form, and requested defendants to receive the undermentioned property in apparent good order, addressed to "N. Dyment (the plaintiff), Wyoming, to be sent subject to their tariff," etc. Then, in the appropriate columns, followed the description of the shingles as

"3873 shingles 80 m.
G. T. R.
To Henry James, Mitchell.
8208 shingles 80 m.
(Sd.) CHAS. BROWN."

Parol evidence was admitted to shew that the meaning of the shipping bill was that the first named carload was to go to plaintiff at Wyoming; and the other to Henry James at Mitchell; and that the agent so told the defendants' station agent when shipping the goods.

Held, that the evidence was properly admitted. An objection was taken in term that the action should have been brought by the consignee, James, because, as was alleged, the evidence shewed that the property had passed to him; but the objection was not raised at the trial or on the pleadings; and if it had been made it would have been shewn that the property was still in the plaintiff; and in any event the consignee, James, consented to be added as a co-plaintiff.

Held, that the objection could not now be raised; but even if there were anything in it the Court would allow James to be added as a co-plaintiff.

At the trial the learned judge only allowed County Court costs. On shewing cause to the defendants' motion the plaintiff, who had not moved, asked to have the direction as to costs varied, and full costs allowed.

The Court, under the circumstances, refused to interfere.

McCarthy, Q.C., and *Pepler* (Barrie), for the plaintiff.

D'Arcy Boulton, Q.C., for the defendants.

PIRIE v. WYLD.

Letters written without prejudice—Admissibility.

Letters written or communications made without prejudice or offers made for the sake of buying peace, or to effect a compromise, are inadmissible in evidence, it being considered against public policy, as having a tendency to promote litigation and to prevent amicable settlements; but it may be said that no ground of public policy requires that a letter written to intimidate containing an admission should be held inadmissible.

Where a letter, written without prejudice, was deprecatory and complaining, rather than abusive, or with the object of intimidating, and written for the purpose of expressing the writer's views on the matter of litigation, and contained offers of settlement or compromise, it was held to be inadmissible.

G. T. Blackstock, for the plaintiff.

McCarthy, Q.C., contra.

O'Connor, J.]

FUNSTON v. CORPORATION OF TILBURY EAST.

Municipal corporations—Drainage by-law—Revision of assessments by Court of Revision—Necessity for alterations in by-law — Locus standi—Motion to quash—Whether to Divisional Court or single judge.

In a drainage by-law the assessments as made by the engineer and contained in the schedule to the by-law were revised by the Court of Revision, and alterations made; but the by-law was not amended before being finally passed so as to correspond with such alterations as required by section 571, subsection 2 of the Municipal Act of 1883, it being impossible to discover from the alterations as made the amount of the "total special rate" against each lot or part of lot, and therefore the amount to be annually levied, which is to be ascertained by dividing such total special rate by the number of years the by-law was to run, which in this case was fifteen years.

Held, that the defect was fatal to the by-law.

The *locus standi* of the applicant herein was objected to, but on the evidence the objection was overruled.

In moving to quash a by-law the practice having been adopted of applying to a judge sitting alone, an objection that the application should have been to the Divisional Court was not entertained. Such an appliction, if required to be made to the Divisional Court, must be to the common law Divisional Courts, and not to the Chancery Divisional Court.

Pegley (of Chatham), for the applicant.

Moss, Q.C., contra.

O'Connor, J.]

RE DUNN AND CORPORATION OF PETERBOROUGH.

Municipal law—Manufactories—Exemption—Public policy—Municipal Act, 1883, *sec.* 368, 47 *Vict. ch.* 34, *sec.* 8 (*O.*)

The Municipal Act of 1883, sec. 368, as amended by 47 Vict. ch. 32, sec. 8 (O.), authorized a municipal council to exempt any manufacturing establishment, in whole or in part, from taxation for any period, not longer than ten years.

A by-law of the town of Peterborough recited that a company had acquired several water privileges on the river Otonabee, and intended developing same by erecting thereon factories of different descriptions; and it was advisable, in the interests of the town, that the privileges, immunities and exemptions thereinafter mentioned should be granted. It further recited that the total assessment of the said water privileges and the lands in connection therewith amounted to $50,000. The by-law then enacted that the aggregate assessment of the said properties should be and remain for ten years, at the sum of $50,000; and the assessors from time to time were required to assess same at said sum, notwithstanding the erection of any buildings, etc., thereon.

Held, not a by-law within the said section as amended; and also that it was opposed to public policy and morality in directing the assessors from time to time to limit their assessment.

Shepley, for the applicant.

Robinson, Q.C., and *Edwards* (of Peterborough), for the defendants.

O'Connor, J.]

GORING v. LONDON MUTUAL INSURANCE COMPANY.

Insurance—Variation of statutory conditions—Fire Insurance Policy Act—Dominion Act—Mutual Insurance Co.—Attorney-General—Minister of Justice.

The defendants, a mutual insurance company, were incorporated by an Act of the Dominion Parliament, 41 Vict. ch. 40, by sec. 28, of which it is provided that "any fraudulent misrepresentation contained in the application therefor, or any false statement respecting the title or the ownership of the applicant, or his circumstances, or the concealment of any incumbrance on the insured property, or the failure to notify the company of any change in the title or ownership of the insured property, and to obtain the written consent of the company thereto, shall render the policy void."

Held, on demurrer, that the matters provided for by the above section were subject matters of the Fire Insurance Policy Act of Ontario, and over which the Province has exclusive jurisdiction; and although they might be proper subjects of legal contract, they would have no force or vitality through the Dominion Act *per se*, but only by being used as required or modified by said Ontario Act, namely, in the manner provided for variations to the conditions therein contained.

Citizens' Insurance Co. v. *Parsons*, and *Queen's Insurance Co.* v. *Parsons*, 7 App. Cases 96, commented upon.

The 28th section of the Mutual Fire Insurance Companies' Act, 1881, makes the Fire Insurance Policy Act applicable thereto, "except where the provisions of the Act respecting Mutual Fire Insurance Companies are expressly inconsistent with, or supplementary, and in addition, to the provisions of the Fire Insurance Policy Act."

Held, this includes all Mutual Insurance Companies doing business in the Province; and it was not alleged in the pleadings herein that there was anything in the defendants' Act "expressly inconsistent with" the Fire Insurance Policy Act, but merely that the matters were variations, etc., of the statutory conditions.

Held, also, that the questions, so far as raised, were not of a constitutional character, so as to require notice to the Attorney-General of the Province, and the Minister of Justice of the Dominion.

Osler, Q.C., for the plaintiff.

Moss, Q.C., for the defendants.

CHANCERY DIVISION.

Divisional Ct.] [March 6

INGALLS v. MCLAURIN.

Mortgage—Subsequent purchaser covering mortgaged property—Concealment.

The judgment of Cameron, C. J. C. P., reported *ante* p. 68, sustained.

Per BOYD, C. If the defendant did know as a matter of fact, the legal effect of G's action in buying the property, he should have disclosed it to the plaintiff before he sought to acquire the equity of redemption from him by means of a conveyance, of which the obvious intent was only to procure his wife's dower to be barred; if he did not know the effect of it, the equity of redemption was not in his contemplation as a property to be acquired from the plaintiff.

W. Nesbitt, for the appeal.

J. R. Roaf, contra.

Divisional Court.] [March 6.

COTTINGHAM v. COTTINGHAM.

Funds in Court—Assignment—Notice to Accountant—Stop order—Notice to the Court.

H. M. C., being entitled to certain moneys in Court, obtained certain advances from A. H., and gave him a power of attorney to endorse any cheques issued to him by the Court and repay himself. Subsequently H. M. C. obtained another advance from W. H. and assigned all his interest in the funds in Court to H., which assignment was duly filed in the accountant's office and entered in the accountant's books, and acted on for three years. W. A. H. recovered a judgment against H. M. C. H. had no notice of A. H.'s power of attorney, for the amount due him in December, 1883, and obtained a stop order in October, 1885.

On a motion for payment out to A. H. which was resisted by W. H. who claimed all the moneys under his assignment. It was

Held, that the Court is the custodian of the fund and not the accountant, and that notice to the accountant of an assignment of funds in Court is not tantamount to notice of the assignment of a trust fund to a private trustee, and that a stop order is the proper way of perfecting such a security.

Per BOYD, C.—It was not necessary for A. H. to recover a judgment in order to entitle him to a stop order. Payments out under the assignment should not be interfered with as the lodging of the assignment with the accountant was sufficient under the practice to justify payments out in the absence of any claim by A. H. under the first assignment.

Per FERGUSON, J.—A. H., having the earlier assignment, is first in point of time, and *prima facie* would be preferred in law and has obtained a stop order which has been held to be the proper way of giving notice to the Court, and thereby perfected his assignment.

G. H. Watson, for the appeal.

J. T. Small, contra.

Boyd, C.] [March 10.

SMITH v. MCLELLAN.

Marriage settlement—Power of appointment—Execution of or delegation of power—Vendor and purchaser—Power of revocation.

In a marriage settlement it was provided that in case there were no children, and W. K. S., the husband, survived his wife, M. M. S., the lands settled were to be held in trust "for such person . . . as he, the said W. K. S., by any deed or deeds with power of revocation and new appointment to be by him signed, . . . or by his last will and testament in writing, or any codicil thereto . . . shall direct and appoint. . . ." W. K. S. predeceased his wife, leaving no children, after making his will, in which he devised to his wife all his real and personal estate, and provided as follows:—"I do also transfer unto her all the powers vested in me to bequeath, convey, execute, by will or otherwise, all or any of certain properties conveyed to her by deed of settlement. . . ." M.

M. S. subsequently appointed the lands to her own use, and made a sale of part of them. On the statement of a special case for the opinion of the Court, it was

Held, that the will of W. K. S. was not an execution of the power, but a valid delegation of it to his wife; that an appointment can only be properly made in her favour by a deed with power of revocation, or in favour of another by will, and that a purchaser from her under an execution of the power by deed would not be compelled to accept the title under the power because of its revocable character.

McMahon, Q.C., and *Moss*, Q.C., for plaintiffs.
E. Martin, Q.C., and *Kittson*, for defendants.

Boyd, C.] [March 17.

LATTA v. LOWRY.

Will—Construction—Vesting liable to be divested to let in new members of a class—Special case on proper construction of a will.

Held, that the rule laid down in Hawkins on Wills, at page 72, appears to be substantiated by the authorities, and is in these words:—"If real or personal estate be given to A. for life, and after his decease to the children of B., all the children in existence at the testator's death take vested interests, subject to be partially devested in favour of children subsequently coming into existence during the life of A."; and the death of any child before the period of distribution does not affect the right of that child's representatives to claim the share of the one deceased.

Paradis v. *Campbell*, 6 O. R. 632, distinguished.

Moss, Q.C., *W. Cassels*, Q.C., and *J. Hoskin*, Q.C., for various persons interested.

Boyd, C.] [March 17.

RE KINGSTON AND PEMBROKE RAILWAY COMPANY AND MORPHY.

Railways—Expropriation of lands—Order for immediate possession—Practice.

Immediate possession of land, alleged to be necessary for the purposes of a railway, should not be granted to the railway on summary process under the Railway Act unless two points are very clearly established:—First, that the company has an indisputable right to acquire the land by compulsory proceedings; and, second, that there is some urgent and substantial need for immediate action, and inasmuch as these points could not be said to have been clearly established by the affidavits and arguments in this present case, the Court declined to interfere summarily, and dismissed the application of the railway company for a warrant to enter forthwith upon the lands.

A. J. Cattanach, for the applicants.
S. H. Blake, Q.C., contra.

MACDONELL v. MCDONALD.

Foreclosure suit—Computation of interest—More than six years' arrears—Action on covenant—Amendment.

On an appeal from a report of a Master who had allowed more than six years of arrears of interest in taking a mortgage account.

Held, that in a foreclosure suit interest, when due for more than six years, will be allowed in taking the mortgage account instead of allowing it for six years only, and compelling the plaintiff to bring another action on the covenant to recover the balance.

Howeren v. *Bradburn*, 22 Gr. 96, commented on. *Allan* v. *McTavish*, 2 A. R. 278, followed.

Nelson, for the appeal.
Holman, contra.

PRACTICE.

(Court of Appeal.) [January, 26.

HATELY v. THE MERCHANTS' DESPATCH CO. ET AL.

Security for costs—Delivery out of bond pending appeal to Court of Appeal.

The decision of the Queen's Bench Divisional Court, 11 P. R. 9, was reversed on appeal.

McCarthy, Q.C., and *Wallace Nesbitt*, for the appellants.

Aylesworth, for the respondents.

Boyd, C.] [March 17.

BALL v. CROMPTON CORSET CO.

Costs — Taxation — Tariff — Foreign witness — Rules of T. T. 1856, 154 *and* 168.

The tariff of costs now in force does not pretend to exhaust all possible items or services for which remuneration is to be made. The object of a tariff is to provide a fixed or movable scale for usual and ordinary services, and as to all items embraced therein it is generally conclusive, but for other matters one has to go outside of the tariff to the practice and course of the Court. It is therefore for the taxing officer to determine, according to a proper discretion, what allowance to make for procuring the attendance of witnesses who live out of the jurisdiction.

Rules 134 and 168 of T. T. 1856 are still in force.

Akers, for the plaintiffs.

Langton, for the defendants.

THE HAMILTON LAW ASSOCIATION.

We have much pleasure in acceding to the request of the secretary of the Hamilton Law Association to publish the following extract from the last annual report of the Association :—

This Association was formed in 1879, and held its sixth annual meeting on 15th February, 1886. From the report submitted it appears that the Association has steadily progressed until the library now contains upwards of 1,800 volumes of the value of about $8,000, and the number of members is 70, all of whom paid the annual fees of 1885 six new members being added last year.

The report refers to the need of increased library accommodation, and to the steps taken to obtain the same from the County Council, and then proceeds:

"The increasing influence of the legal profession and the power of making their views known and felt through the means of law associations should be taken advantage of to give expression to any suggestions for the better administration of justice.

"They would call attention to the large list of causes in the Court of Appeal, in which one or more *ad hoc* judges are required, which have been standing over for a long time, and to the necessity for some provision being made for their being disposed of without more delay. As the judges of the Court of Appeal have ceased to go on Circuit, it is believed such a state of things is not likely to occur again, but as the blame for delays generally falls on the profession it is deemed but fair to place it in the proper quarter.

"The block of business in the single Judge Court, and the frequent postponement of cases where counsel are in attendance from a distance to argue them calls for redress.

"Another matter to which they would advert is the postponement of cases, and even the adjournment of Courts to suit the convenience of counsel. This has been noticed more than once in the C. L. J., and while it may on occasion be proper, and even necessary to grant such postponements, the practice has become of too frequent occurrence.

"The trustees recommend the continuance of the Committee on Legislation appointed by them on 6th November last."

The officers of the Association are:—Æmilius Irving, Q.C., President; Thomas Robertson, Q.C., Vice-President; R. R. Waddell, Secretary; A. Bruce, Q.C., Treasurer; Trustees, Edward Martin, Q.C., F. Mackelcan, Q.C., G. M. Barton, J. W. Jones, and J. V. Teetzel.

CORRESPONDENCE.

To the Editor of the LAW JOURNAL:

DEAR SIR,—I send you a list of names which I think would meet the approval of many in the profession. I, at least and some others, intend to vote this list thinking it the best we have seen:

James MacLennan, Christopher Robinson, D. McCarthy, Charles Moss, D. McMichael, John Hoskin, J. K. Kerr, Walter Cassels, James Beaty, J. J. Foy, W. G. Falconbridge, H. W. M. Murray, H. J. Scott, Toronto; Æ. Irving, Thomas Robertson, F. McKelcan, Edward Martin, Hamilton; W. P. R. Street, W. R. Meredith, London; C. F. Fraser, Brockville; John Bell, Belleville; B. M. Britton, Kingston; T. B. Pardee, Sarnia: A. Hudspeth, Lindsay; H. H. Strathy, Barrie; A. S. Hardy, Brantford; F. H. Chrysler, Ottawa; C. R. Atkinson, Chatham; A. Shaw, Walkerton; H. W. C. Meyer, Wingham. Mr. S. H. Blake is, I believe, a Bencher, *ex officio*, if not his name should be included in the list.

Yours, etc., BARRISTER.

REVIEWS.

PRINCIPLES OF CANADIAN RAILWAY LAW, with the Canadian Jurisprudence and the leading English and American cases, to which is added the Dominion Railway Act, as amended up to 1886, with references to the Provincial Statutes of Ontario and Quebec, forms of proceeding in expropriation, and a complete index. By Chas. M. Holt, L.L.L., of the Montreal Bar. Montreal; A. Periard, Law Bookseller and Publisher, 1885.

The title page of the book before us would lead one to suppose that there is some marked difference between Canadian railway law, and other railway law, and that the writer intended to call special attention thereto. It occurs to us that it would be better to call the book a short manual of railway law, with references to all the Canadian decisions, and statutory provisions affecting the same. The writer gives his information in an easy and readable way. The arrangement, however, of the matter is not, in all respects, scientific, from a lawyer's point of view, though a good index enables the reader to get at it with sufficient ease. The principal part of the book is taken up with Dominion Railway Act, to which, are appended forms for use in Quebec and Ontario, respectively, of proceedings in the expropriation of land for railway purposes.

The writer's connection with a railway office has enabled him to give some decisions not previously reported, and to seize upon the more salient points of practical utility.

The mechanical execution is very good, reflecting much credit on the publishers.

LEWIS' LAW OF SHIPPING; being a treatise on the law respecting the inland and sea-coast shipping of Canada and the United States. By Edward Norman Lewis, of Osgoode Hall, Barrister-at-Law. Containing the statutes appertaining down to the year 1885. Carswell & Co., Law Book Publishers, Toronto: 1885.

This can scarcely be called a treatise, inasmuch as the author does not do more than collect under more or less appropriate headings a selection of head notes of decisions from various sources. There is no attempt to deduce principles, or help the student by consideration of doubtful points. It is simply a digest of cases, to our mind not very well arranged, with an appendix containing a number of statutes which bear on the subject of inland shipping, navigation rules, etc., etc. We should hardly have supposed that there was any felt want for a compilation such as this, but it will doubtless be useful to the few if not to the many. Where much labour has been honestly expended one does not like to criticise closely, but we can hardly call the volume a great success in the art of bookmaking.

FLOTSAM AND JETSAM.

THE following is an extract from a deed, recently in our possession. After describing the parties it proceeds thus:

"Witnesseth that in consideration of the following conditions viz.: that the parties of the third, fourth and fifth part, during the lifetime of the parties of the first and second part, furnish them with a comfortable house, plenty of good wood prepared for use, to be kept well clothed, viz.: 1 new suit every year, 25 bushels wheat, 200 pounds of pork, 100 pounds beef, 25 pounds tobacco, 6 bushels peas, 6 pounds tea, 12 pounds sugar, 6 gallons good liquor, an ever living cow, a horse and carriage when required—to pay all debts, viz.: A mortgage to —— —— and in case of sickness the doctor to be brought, when wanted a servant girl; to keep our granddaughter in a respectable and comfortable manner, and at the age of 21, to give her a cow and feather bed, and at the death of the parties of the first and second part, to be respectably buried with the accustomed Roman Catholic rites."

Twenty-five pounds of baccy seems too much smoking for 6 gallons of good liquor, although 12 pounds of sugar might be appropriate with a due proportion of hot water. An "everliving cow" is irresistibly suggestive of a perennial spring and a chalk pit, whilst the direction that the young woman should be buried on the death of the old people is worse than a "suttee."