Vol. III. DECEMBER, 1897. No. 10.

The BARRISTER

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19	.61	7.32	32	.74	8.88	45	1.30	15.60
20	.62	7.44	33	.75	9.00	46	1.40	16.80
21	.63	7.56	34	.76	9.12	47	1.60	19.20
22	.64	7.68	35	.78	9.36	48	1.90	22.80
23	.65	7.80	36	.80	9.60	49	2.20	26.40
24	.66	7.92	37	.82	9.84	50	2.53	30.00
25	.67	8.04	38	.84	10.08	51	2.63	31.20
26	.68	8.16	39	.86	10.32	53	2.70	32.40
27	.69	8.28	40	.90	10.80	53	2.85	34.20
28	.70	8.40	41	.95	11.40	54	3.00	36.00
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30	.72	8.64	43	1.10	13.20			

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The Barrister.

VOL. III. TORONTO, DECEMBER, 1897. No. 10.

EDITORIAL.

Lord Justice Lindley who has for seven years presided over the second section of the English Court of Appeal, has been appointed Master of the Rolls in succession to Lord Esher, who retires from the Bench after thirty years of service.

Amongst the officers of the Medico-Legal Society of New York, whose election is announced, are the following vice-presidents for Canada and the provinces:

Dominion of Canada—Hon. A. G. Blair, Ottawa.

Ontario—Daniel Clark, M. D., Toronto.

Quebec—Wyatt Johnson, M. D., Montreal.

New Brunswick—Judge A. L. Palmer, St. John.

Nova Scotia—Hon. Wm. S. Fielding, Ottawa.

Manitoba—D. Young, M. D., Selkirk.

Baron Pollock, of the English Bench, who died last month was the last of the judges bearing that title, and was one of the members of the Order of the Coif. The remaining sergeants are Lord Penzance, Viscount Esher, Lord Field, Sir Nathaniel Lindley and Mr. Spinks.

The following federal appointments have been gazetted:—

Francois-Xavier Lemieux, of the City of Quebec, in the Province of Quebec, Esquire, Advocate; to be a Puisne Judge of the Superior Court of the Province of Quebec, in the room and stead of the Honorable Marc Aurele Plamondon, resigned.

The Honorable Sir Oliver Mowat, G.C.M.G., a Member of the Queen's Privy Council for Canada, and one of Her Majesty's Counsel learned in the Law; to be the Lieutenant-Governor of the Province of Ontario.

The Honorable David Mills, a Member of the Queen's Privy Council for Canada; to be the Minister of Justice and Attorney-General of Canada, in the room and stead of the Honorable Sir Oliver Mowat, G.C.M.G., resigned.

Thomas Robert McInnes, of the City of New Westminster, in the Province of British Columbia, Esquire, M.D.; to be the Lieutenant-Governor of the Province of British Columbia.

Charles Murphy, of the City of Ottawa, in the Province of Ontario, Esquire, Barrister-at-Law; to be a Commissioner under chap. 114 (R. S. C.) to investigate and report upon certain charges of conspiracy to defraud the revenue, preferred against James Devlin, of the City of Kingston, late Engineer of the Kingston Penitentiary.

At a meeting of the Osgoode Legal and Literary Society, on November 13th, an important amendment was made in the constitution of the society as regards the rights of barrister members.

The question came up in the form of a motion, providing that the society should consist of life members, honorary members and ordinary members. Life members should include past presidents of the society, and such other persons as the society might from time to time elect by ballot by a two-thirds vote of the members present at the meeting. Honorary members should consist of such barristers and solicitors practising in Toronto as might sign the roll and pay the proper fees. Ordinary members should consist of such students at law in attendance at the Law School or having attended the same within a period of two years next preceding and being resident in Toronto as should sign the roll and pay the proper fees. Honorary members and such life members as were barristers or solicitors should be permitted to vote for the office of president only, but in all other respects might take part in the proceedings of the society in the same manner and to the same extent as other members. Further provisions were added, placing the membership fee at one dollar per year.

Messrs. Sharpe, Montgomery, Elliott, O'Donoghue, Heeley, Perrin, and the mover, Mr. Sissons, spoke briefly in favor of the motion, which was vigorously opposed by Messrs. Finlayson, Hunt, McLean and McWilliams.

The party which upheld the present system in the recent elections was sparsely represented at the meeting, and the proposed amendments carried by an overwhelming majority.

It is sometimes said that "Blackstone's Commentaries" is a book that is out of date in this age of advanced law, and that however excellent it may be admitted to be in point of literary style, its value is largely lost by reason of the multitudinous alterations in the law and in methods of business since Blackstone's time. To a certain extent this is true, but the fact remains that no work on the subject of English law has since been produced which can take its place, and of late years a very general disposition has been manifested in legal circles to turn away from the ever conflicting reported cases and more thoroughly investigate the underlying principles of the common law. Necessarily this means a Blackstone revival and citations of that old, but standard, authority are increasing on every hand. Dr. Wm. Draper Lewis, the well-known Dean of the Law Department of the University of Pennsylvania has recently published a very excellent annotated edition of the Commentaries which, while retaining the whole of the original text, amplifies the same in copious notes so that one can readily comprehend the force of any part of it as applied to the conditions of the present day. On each page is also found, as a footnote, a translation of the Norman-French and other foreign words and phrases appearing there. All the cases in which Blackstone has been judicially cited in Canada, England or the United States are referred to and notes have been selected from the works of previous annotators. Barron Field's analysis and a complete index are added and the whole work makes four volumes and contains over 2,200 pages. The Canada Law Journal Co., by special arrangement with the American publishers, are offering this very excellent work in Canada at extremely low figures which place it within the reach of all and are made possible only by the continuing favor already accorded the book, both in England and the United States. Lewis' Blackstone goes a long way towards disposing

of the objections commonly made regarding the original text and in forwarding the Blackstone revival movement. It is to be hoped that from the movement will result a closer application to modern litigation of the foundation principles of our law.

Law Notes (Eng.), says: "Sir Henry de Villiers, the Chief Justice of the Cape, is one of the three Colonial judges appointed to the Judicial Committee, and during his stay in London he has been engaged in hearing several Privy Council appeals. He now returns to the Cape to resume his judicial duties there. In the case of the Cape and of Canada, this interchange of judicial functions between London and the Colonies may be feasible; but it is not easy to see how it could work in the case of an Australian judge. We think the Mother Country should provide salaries for these Colonial judges whilst exercising judicial duties in England."

CONCILIATION BOARDS.

Boards of Conciliation for trade disputes are meeting with but little success in the United States, and it is quite probable that a re-action will take place in favor of the ordinary law courts for the adjudication of such matters. The master builders of Boston, who were former advocates of such boards, now make charges of unfairness against them.

"We do not relish," they say, "the misrepresentations and the patronizing suggestions which the State Board of Arbitration sees fit to publicly visit upon us, even after they have been given the fullest and freest information as to our functions and purposes, and as to the efforts which we have been making toward securing peaceful solution of labor troubles. If this sort of treatment by a board which is expected to be fair and dispassionate is thought to be in the line of conciliation, then we do not properly understand the term. There is something wrong, either in the system or its administration, something that militates seriously against any great good to be secured by and through this expensive department of the State."

CRIME IN CANADA.

The Government report just published for the year ending September, 1896, shows a decrease of 335 in the number of charges for indictable offences in Canada, as compared with the previous year. Out of a total of 7,395 charges, 2,065 were acquitted, 13 detained for lunacy and 113 received no sentence for several causes, such as "jury disagreed," "bail forfeited," etc. In 1895, out of 7,730 charges, 2,154 were acquitted, 20 detained for lunacy and 32 received no sentence. The number of convictions is therefore reduced to 5,204 or 10.25 per 10,000 inhabitants for 1896, against 5,474 or 10.86 per 10,000 inhabitants for 1895.

Ontario's share of these convictions is 2,783 or 12.56 per 10,000 of inhabitants.

The indictable offences we divided into six classes:—Offences against the person; offences against property with violence; offences against property without violence; malicious offences against property; forgeries and other offences against currency and other offences not included in the foregoing classes.

The number of convictions in Class 1, in which are included murder, manslaughter, assaults, etc., show a decrease of twelve during the year, 1,118 in 1895, against 1,106 in 1896. Quebec shows the largest decrease in this class, with British Columbia and the Territories following, while all the other provinces show an increase.

In Class 2, are included burglary, house and shop-breaking, etc., the

number of convictions has decreased from 462 in 1895 to 408 in 1896; Nova Scotia being the only province where an increase is shown in this class.

In Class 3, in which are included larceny, horse and cattle stealing, embezzlement, fraud, false pretences, etc., the number of convictions shows a decrease of 4.4 per cent. during the year; 3,460 in 1895, against 3,306 in 1896.

Class 4 shows an increase of nineteen convictions during the year; 57 in 1895 and 76 in 1896. The greater part of this increase is in Ontario.

In Class 5 there is an increase of twenty-six in number of convictions. In this class Quebec shows a decrease of 19 and Ontario an increase of 34. Manitoba and British Columbia also show increases.

Class 6 shows a decrease of ninety-five in the number of convictions. In this class all the provinces show a decrease, while the Territories remain the same.

The summary convictions during the same period number 32,074.

The number of offences against the "Liquor License Acts" shows an increase of 187 during the year, and the cases for drunkenness have also increased by 263.

The number of fines in 1896 was 27,598, against 27,989 in 1895; and the total amount of fines was $212,-395 in 1896, against $221,001 in 1895. Of the total amount of fines 45.44 per cent. were for offences against the "Liquor License Acts," and 16.23 per cent. for drunkenness in 1896, against 42.16 and 16.36 respectively in 1895.

The number of convictions has increase in Nova Scotia, Ontario, the Territories, New Brunswick and Manitoba, while it has decreased in Quebec, Prince Edward Island and British Columbia.

The number of cases tried by a jury during the year 1896 was 898, of which 479 males and 17 females were convicted.

The number of cases in which the prerogative of mercy has been exercised during the year 1896 is 145, including two death sentences commuted, against 194 in 1895, including one death sentence commuted.

DYING DECLARATIONS.

Dying declarations in the technical sense of the term are not taken on oath, but written down in the presence of a magistrate and signed by the witness. The principal upon which such statement is admitted in evidence is laid down by Eyre, C.B., in the case of Reg. *v.* Woodcock, 1 Leach, at p. 502:

"The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth, a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice." It is not admissible in any civil case, though at one time it was held that it might be. Wright *v.* Littler, 1 W. Bl. 389.

A dying declaration is, therefore, only admissible in criminal cases, and then only in cases of murder or manslaughter. In Reg. *v.* Mead, 2 B. & C. 605, the defendant having been convicted of perjury, a rule *nisi* for a new trial was obtained. While that was pending the defendant shot the prosecutor, and on showing cause against the rule an affidavit was tendered of the dying declaration of the latter as to the transaction out of which the prosecution for perjury arose. *Held*, that it could not be read for that dying declarations are admissible only where the death is the subject of the charge, and the

circumstances of the death the subject of the declaration.

There is a curious case in which the dying declaration of a person was admitted, on which the prisoner was being tried, not for murdering the deceased, but another person, by the administration of poison, but in the perpetration of that act he had also inadvertently poisoned the deceased. In that case the court held that the same act caused the death of one as the other, and that, it being all one transaction, the evidence was admissible. Reg. *v.* Baker, 2 M. & Rob. 53.

There are also certain rules which apply to a dying declaration, which we may sum up briefly thus: It must have been when the declarant was in actual danger of death, had a full apprehension of his danger, and that death must have ensued. The various circumstances attending the making of such a declaration are evidence to its character. It must also be complete and unqualified, and it is governed by the ordinary rules of evidence as to the admissibility of the matter contained therein.

No doubt much confusion springs from the fact that the distinction between a dying declaration and depositions taken in the case of the serious illness of a witness is not properly appreciated. It is, moreover, deeply rooted in the human mind that the fear of approaching death is such that a man in such a position is bound to tell the truth. But, however this may be with regard to the intention of the witness, there are many circumstances which may affect the credibility of the witness.

Putting aside motives of spite or anger, there is still to be remembered that few people even with the greatest desire to speak the truth can give an absolutely accurate statement of circumstances which only took a few moments to occur, still less so, perhaps, when the memory and recollection are apt to be impaired by impending death. The law, therefore, has safeguarded as much as possible the use of dying declarations, and restricted their employment to cases where the manner of death is the subject of inquiry.

OLD LAW BOOKS.

Law books are certainly among the things that have kept pace with the population. It is especially true of legal treatises that of the making of them there is no end, and there is scarcely a lawyer who would not add that much study of them is a weariness of the flesh. Although law books were amongst the earliest works that issued from the printing press in England—the statutes of Henry VII. were printed by Caxton himself—yet Coke, writing some 250 years ago, could not count more than fifteen treatises on the law. Now the text-books, to say nothing of the reports and statutes, are to be numbered by their thousands. To Ranulf de Granville, who was chief justice in the reign of Henry II., belongs the distinction of writing the first treatise on the law. He combined with the learning of the lawyer the valor of the soldier, and he is known to fame not only as the father of legal literature in England, but also as the captor of the King of Scots at the battle of Alnwick. Among the most precious volumes in Lincoln's Inn Library is a MS. copy of his treatises more than 500 years old. A peculiarity of Britton's work, which is believed to have been written under the direction of Edward I., is that the words are put into the mouth of the king. This treatise was written in French, in which language law books continued to be written for nearly four centuries. During the same reign the commentary on English law, called "Fleta," was written. Nothing is known of the author except that he commenced and completed the work

while he was confined in the Fleet Prison, a fact which explains its curious title. Littleton, who bears among Coke's fifteen authors the most familiar name, was a judge of Common Pleas in the time of Edward IV. His celebrated work, the first edition of which was printed in 1481, is devoted to an explanation of the law as to the tenure of land. Its fame has, of course, been largely preserved by the remarkable commentary of Coke, which, according to the enthusiastic and eloquent Fuller, will be admired "by judicious posterity, while Fame has a trumpet left her and any breath to blow therein."

A modern legal writer, who arranged his work in the form of a dialogue, would be regarded as frivolous. Yet this was the form in which two of the old jurists cast their work. Fortescue, who wrote his treatise in the reign of Henry VI., while in exile in France with the Prince of Wales and other members of the Lancastrian party, represented himself as conversing with the young prince on the laws of England, and proving their superiority to those of other lands. "Doctor and Student," which was written early in the sixteenth century by Christopher Saint Germain, of the Inner Temple, is a series of dialogues between "A Doctor of Divinity and a Student in the Laws of England, concerning the Grounds of those Laws." Perhaps the most interesting fact about this quaint production is that it was cited as an authority by the judges at the trial of Hampden. On a fly-leaf of the Lincoln's Inn copy of Fitzherbert's "Grand Abridgment of the Law" is the following curious inscription: "Of your charity pray for the soul of Robert Crawley, sometime donor of this book, which is now worm's meat, as another day shall you be that now are full lustye, that remember, good Christian brother. Farewell in the Lord. 1534." The first edition was printed in 1516, and this is the date in the copy in Lincoln's Inn Library, which is singularly rich in ancient volumes. It would appear that the producers of law books in Fitzherbert's days were gifted with a greater love for art than is possessed by the authors of modern law books. Some of their title pages were adorned by the most elaborate designs. The first part of "Fitzherbert" contains a wood cut of the king on his throne, whilst the second is ornamented by a wonderful collection of the royal arms, a dragon and a greyhound, two angels, some scrolls, and a rose. It would be difficult for an illustrated law book to command the serious attention of lawyers in these days, even though its artistic embellishments came from Sir Frank Lockwood.

After speaking of such writers as Bracton and Littleton, one hesitates to describe Blackstone's commentaries as an old law book. It was first published at Oxford 137 years ago. But legislation moves so fast that, to glance at an early edition of the famous work is to believe that it is older than it actually is. No law book has ever enjoyed so great a measure of popularity. As many as twenty-one editions were published before any alteration was made in Blackstone's text, and innumerable attempts have since been made to adapt it to the ever-changing law. Not a little of their popularity was due to the impressive style in which they were written. Never in a law book has lucidity been wedded so happily to felicity. It is clear, notwithstanding the complaint she addressed to his fellow-tenant in Brick Court, that Blackstone's literary powers were unaffected by the boisterous sounds in Goldsmith's rooms overhead. The basis of the Commentaries was a series of lectures which Blackstone delivered at Oxford, and this may partly account for their sonorous note. Like most of the eminent

legal writers of the old school, Sir William Blackstone was a judge. Here, again, a change may be observed. The bench is no longer recruited from the ranks of text writers. Judges whose stepping stones to fame were books are still to be found in the courts. Lord Justice Lindley, for instance, owes his judicial seat largely to his standard work on Partnership. But there is now a strong tendency to exclude text-book writers from the active practice of the law, to make them a separate class of superior persons whose refined minds ought not to be devoted to anything less noble than the theory of the law. Among the first six leaders of the bar, there is not one with any reputation as an author.

During the past thirty years the publication of leading cases has been under the control of a council representative of both benches of the profession. The Law Reports have not, however, caused such old-established reports as the Law Journal Reports to disappear. The earliest reports in the libraries of the inns were issued in the reign of Edward II. Under the time of Henry VIII. the business of reporting was in the hands of lawyers, who were paid by the Crown. Their reports, which were published annually, are known as "Year Books." These are among the most quaint and valuable volumes in the libraries. To modern eyes, it is true, neither their bulk nor price is imposing. At the end of the Tenth Book of Edward IV.'s reign, which consists of forty pages, are these words: "The price of thys boke is iiii*d.*, unbounde." The ordinary reader, who looked for entertainment in these time-worn pages would suffer some disappointment, but it is said that Sergeant Maynard had "such a relish of the Year Books that he carried one in his coach to divert his time in travel, and chose it before any comedy." After the Crown ceased to supply the courts with reporters, the business of preserving the important decisions of judges was undertaken by a succession of eminent lawyers, among the number being Coke and Plowden. Law reporters grew so numerous after the Restoration that a diminution in their number was regarded as imperative, and an Act was passed prohibiting the publication of law books without the license of the judges. The rapid increase of reporters had, however, no peculiar relation to the restoration of the Stuarts, for Bulstrode, the foremost reporter during the Commonwealth, alluded to the multiplicity of reports in these picturesque terms: "Of late we have found so many wandering and masterless reports, like the soldiers of Cadmus, daily rising up and jostling each other, that our learned judges have been forced to provide against their multiplicity by disallowing of some posthumous reports, well considering that, as laws are the anchors of the republic, so the reports are as anchors of laws, and therefore ought to be well weighed before being put out."—*London Globe.*

NOTES OF CASES, ONTARIO.

FALCONBRIDGE, J.] [NOV. 19.

LAWSON v. JOHNSTON.

Slander—Married Woman—Security for Costs.

Appeal by plaintiff from order of junior local judge at London requiring plaintiff to give security for costs in an action by a married woman for slander, where the words alleged imputed unchastity. The statement of defence denied all the allegations of the statement of claim. The defendant by his affidavit (paragraph 6) said that he did not speak or publish the words charged, and that he never on any occasion or in any way charged the plaintiff as being a woman of immoral character, or of

having been guilty of aduitery, fornication or concubinage. The appeal was on the ground that the defendant had not shown a good defence on the merits. Held, that a prima facie defence was disclosed by paragraph 6 of defendant's affidavit, viz., a specific denial of having used the words charged or any other words imputing immorality to plaintiff. Counter-affidavits should not be received: Lancaster v. Ryckman, 15 P.R., 199; and affidavits ought not to be received to impeach the defendant's credibility. The case cannot be tried on a summary application of this kind: Whiley v. Whiley, 8 C.B.N.S., 653; Swain v. Mail Printing Company, 16 P.R., 132; Southwick v. Hare, 15 P.R., 222. Appeal dismissed with costs to defendant in any event.

W. H. Bartram (London) for plaintiff.

Dromgole (London) for defendant.

* * *

FERGUSON, J.] [NOV. 19.

BRERETON v. C.P.R. CO.

Jurisdiction—Tort in another Province.

Appeal from order of stipendiary magistrate at Rat Portage setting aside the service of the writ of summons and statement of claim upon the defendants in an action for negligently setting fire to plaintiff's house by sparks from an engine. The writ of summons was served upon the person in charge of the station of defendants at Rat Portage, which is in Ontario. The alleged wrongful act of the defendants took place in the Province of Manitoba, about thirty miles from Rat Portage. The local judge held that the defendants could not be served in this province with a writ claiming damages in respect of the tort committed out of the province. Appeal allowed and order set aside, with costs to plaintiff in any event.

Shepley, Q.C., for plaintiff.

A. MacMurchy for defendants.

CHAMBERS,] [NOV. 18

Moss, J. A.]

McCULLOUGH v. TOWNSHIP OF CALEDONIA.

Appeal—Security for Costs—Assignment of Judgment Below.

Motion by plaintiff for an order extending the time for the setting down of the appeal to the Court of Appeal and for serving the draft case, and dispensing with the giving of security for costs upon the appeal; under the terms of the judgment appealed against the plaintiff was awarded $187 and costs, which had not been paid, and was appealing to have the amount increased. The defendants also proposed to ask upon the plaintiff's appeal by way of cross-appeal that the action should be wholly dismissed. It was sworn and not denied that plaintiff was not herself possessed of property sufficient to answer costs of appeal. The learned judge made an order directing that upon plaintiff depositing with the Registrar an assignment of the judgment for damages and costs awarded by the referee against the defendants, duly executed by the plaintiff, to the accountant of the Court, together with an instrument executed by plaintiff's solicitors, of transfer of all claim in respect of the costs and of lien therefor, as security, to answer the respondents' costs of appeal; and upon it being made to appear that no previous assignment has been made, and no process in attachment served prior to the assignment to the accountant, or upon the plaintiff giving the usual security in accordance with the rules, the plaintiff is to be at liberty to proceed with her appeal. Time for delivery of draft case and reasons of appeal extended. Costs in the appeal.

J. H. Moss for appellant.

J. B. O'Brian for respondents.

* * *

MEREDITH, C. J.] [Nov. 19.

GALLAGHER v. GALLAGHER.

Alimony—Interim Disbursements.

Appeal by defendant from order made under con. rule 1,144 by the local judge at Hamilton, in an action for alimony directing payment by defendant to plaintiff's solicitor of interim alimony and prospective disbursements. The Master in Chambers and the senior taxing officer reported, at the request of the Chief Justice, as to the practice, their view being that the practice is not to make an order for the payment of prospective cash disbursements for counsel fees unless the applicant shows that counsel other than plaintiff's solicitor or his partner is to be retained. Assuming rule 1,144 to be applicable to prospective disbursements, the learned Chief Justice is unable to see how a sum of money which is not to be disbursed by the solicitor can be said to be a "cash disbursement actually and properly made by the plaintiff's solicitors," and the practice reported by the two officers is the proper practice. Appeal allowed and order varied by deducting from the sum ordered to be paid the amount included for the counsel fees. No costs of appeal to either party.

J. Bicknell for defendant.

W. E. Middleton for plaintiff.

* * *

TRIAL COURT,] [Nov. 11.
MEREDITH, J.]

MACDONALD v. CITY OF TORONTO.

Municipal Law—Appointment of ex-Mayor as Assessor.

Action tried without a jury at Toronto for a declaration that a contract between defendants Fleming and the corporation and the appointment of defendant Fleming as Assessment Commissioner for the City of Toronto were illegal and void, and for an injunction restraining the corporation from further employing Fleming under the appointment and from paying over to him any of the funds of the corporation for his services as Assessment Commissioner, upon the ground that his appointment to that office was procured by corrupt and illegal means, whilst he held the office of Mayor of the City of Toronto, and by an unlawful scheme, contrivance and conspiracy. At the close of the trial it was admitted that plaintiff had failed to prove these grounds of his attack; but it was contended that the rule of equity that a trustee shall not make a profit out of his office applied to defendant Fleming, and therefore he could not rightly hold the office; or, in other words, that all members of the Council are, and the Mayor especially is, ineligible for appointment to any office of profit in the gift of the Council. Meredith, J.—The defendant Fleming had, in the manner provided by the Municipal Act, ceased to be Mayor before being duly appointed Assessment Commissioner. After he had vacated the office of Mayor, the Council would have been within its legal rights in appointing some other person to the office of Assessment Commissioner, as it is its right, at any time, to remove him from it. I am unable to consider that defendant Fleming was disqualified for the office, because (as I find as facts) he desired the office and endeavored to obtain a salary of $5,000 a year, and was offered and accepted the office at $4,000 a year before vacating his office of Mayor. A man is not to be disqualified always because he has once been a member of the Council; the line must be drawn somewhere, and, in my judgment, can be rightly drawn only at the time of appointment to and acceptance of the office. No authority to the contrary was cited, and such cases as I have been able to find bearing upon the question tend to support the view I have expressed. (Stainland v. Hopkins, 9 M. & W., 178, and Regina v. Tizard,

9 B. & C., 418.) The Municipal Act provides that the Council shall not appoint as assessor a member of the Council, and also disqualifies assessors from being members of the Council; but that does not prevent the appointment of one who has been, however recently, but has ceased to be, such a member; in effect, it prevents one person holding the two offices, as probably the law, if there had been no enactment affecting the question, would have prevented it, as being incompatible offices: Regina v. White, L.R., 2 Q.B. 157. Action dismissed with costs.

DuVernet and S. H. Bradford for plaintiff.

Fullerton, Q.C., and W. C. Chisholm for defendants.

* * *

ARMOUR, C. J.
FALCONBRIDGE, J.
STREET, J.
[OCT. 26.

STRATFORD TURF ASSOCIATION v. FITCH.

Race Meeting—Sale of Betting Privileges.

Appeal by defendants from order of Judge of County Court of Wentworth, refusing to set aside judgment for plaintiffs, and direct a new trial of an action in the Ninth Division Court in the County of Wentworth, brought to recover $101 and interest as the balance due from the defendants to plaintiffs under an agreement for payment by defendants of $607, in consideration of their having exclusive betting privileges. Defendants contended that the cause of action was in reference to a gambling transaction contrary to section 197 of the Criminal Code, and not within section 204. The agreement sued on gave to defendants the exclusive betting and gaming privileges at the race meeting to take place on the track of the association on the 25th and 26th of August, 1896. The plaintiffs were not incorporated, but no objection was taken at the trial, when an amendment might have been made. The plaintiffs were the lessees for 1896 of the Stratford Athletic Company, Limited, an incorporated association, who owned the race course. No evidence was adduced to show that illegal betting or gaming was in the contemplation of the parties to this agreement at the time it was made. Held, that the betting or gaming to be carried on under their agreement would not necessarily be illegal under section 204 of the Criminal Code, for the provisions of that section are not to extend to bets "made on the race course of an incorporated association during the actual progress of a race meeting," nor would it be necessarily illegal apart from this section. The betting and gaming contemplated by the agreement were to be made on the race course, of which the plaintiffs were the lessees, during the actual progress of a race meeting, and this was the race course of an incorporated association, the Stratford Athletic Company, and it was not the less so, within the meaning of section 204 by reason of the lease to the plaintiffs; the object of the Legislature apparently being to reserve the race courses of the incorporated associations as places where betting might be made during the actual progress of a race meeting, without the betters being subject to the penalties of that section. Appeal dismissed with costs.

W. Nesbitt for defendants.

Teetzel, Q.C., for plaintiffs.

* * *

ARMOUR, C.J.
FALCONBRIDGE, J.
STREET, J.
[OCT. 26.

GILLARD v. MILLIGAN.

Assignment for Creditors—Costs of First Execution Creditor—Priorities.

Appeal by defendants from judgment of County Court of Wentworth in favor of plaintiffs in action by execution creditors of Vansyckle

Brothers against the assignee of his estate for the benefit of creditors and the assignee's solicitor to recover $55.97, their costs as first execution creditors, and the costs of their execution and sheriff's fees, alleging a lien against the estate therefor, and alleging that defendant Milligan realized a large sum of money out of the estate and wrongfully allowed it to go into the hands of the solicitor, the other defendant, and that defendants wrongfully refused to pay plaintiffs their costs, and for an account of defendant's dealings with the estate. Appeal allowed with costs, and action dismissed with costs. Held, that the assignment by R.S.O., ch. 124, sec. 9, took precedence of the judgment and execution, except as to and subject to the lien of the plaintiffs for their costs. The assignment did not stand in the way of the sheriff proceeding to seize and sell under the execution the property assigned for these costs, and this was the course that ought to have been pursued; but not having been taken, the plaintiffs having lost their lien under their execution, the only cause left to them was to claim for these costs against the estate, as ordinary, and not as preferential, creditors, and they had no right of action against defendants, or either of them, for these costs.

J. M. Glenn (St. Thomas) for defendants.

J. J. Scott (Hamilton) for plaintiffs.

* * *

ARMOUR, C.J.] [OCT. 27.
FALCONBRIDGE, J.]
STREET, J.]

REG. v. WILLIAMS.

Criminal Law—Evidence—Prisoner's Depositions before Coroner.

Crown case reserved by Robertson, J., at the Napanee assizes, upon the indictment of defendant for manslaughter. At the coroner's inquest upon the body of one Tyner, the defendant was examined as a witness; and at his trial subsequently the Crown sought to put in as evidence his depositions before the coroner. The learned judge rejected the evidence, following Reg. v. Hendershott, 26 O.R. 678, but reserved a case for the opinion of the Court as to whether the evidence was properly rejected. The defendant was acquitted. The Crown now asked for a new trial and for the opinion of the Court, relying on Reg. v. Madden, 30 C.L.J. 765, 14 C.L.T., Occ. N. 505. By section 5 of the Canada Evidence Act, 56 Vic., ch. 31, it is provided that "no person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person; provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence." Held, that the depositions proposed to be given in evidence were admissible, and should not have been rejected. Regina v. Hendershott, 26 O.R. 678, overruled.

Per Armour, C.J.—Prior to the passing of 56 Vic., ch. 31, these depositions would have been admissible: Regina v. Coote, 4 P.C. 599. Since that Act, substantially the same question was raised in Regina v. Madden, 30 C.L.J., 765, 14 C.L.T., 505, and we there held the deposition to be admissible, because the intention of the Legislature, as expressed in the section, was not to exclude evidence tending to criminate voluntarily given, but only such evidence when given under compulsion. Evidence is to be deemed to be given voluntarily when the party giving it may object to giving it and does not do so. The words "no evidence so given" mean answers to questions tending to criminate which the witness objected to answer, and was

not excused from answering, but was compelled to answer. The Imperial statute, 26 Vic., ch. 29, sec. 7, upon which the case of Regina v. Buttle, L.R. 1 C.C.R., 248, was decided, bears no analogy to the section under discussion. Judgment for the Crown.

J. R. Cartwright, Q.C., for the Crown.

Clute, Q.C., for the defendant.

* * *

Boyd, C.] [Nov. 8.

ARMOUR v. KILMER.

Barrister—Action for Counsel Fees.

Action by a barrister against a firm of solicitors for counsel fees. The items in dispute were in respect of an appeal to the Supreme Court of Canada in Jamieson v. London and Canadian L. and A. Co., in which the plaintiff was retained as counsel by the defendants. The plaintiff was paid the fees taxed between party and party in the action, but claimed a larger sum. Held, that the present law of Ontario, in contrast with that of England, permits counsel to sue client for the value of professional services. Kennedy v. Broun, 13, C.B.N.S., 677; Doe v. Hale, 15, Q.B., 171; Mostyn v. Mostyn, L.R.S., Chy., 457; McDougall v. Campbell, 41, U.C.R., 349; and Doutie v. the Queen, 9, App. Cas., 745, referred to. There is no provision in the procedure of the Supreme Court of Canada for the ascertainment of costs between solicitor and client. Boak v. Merchants' Union Ins. Co., Cassels. Dig., p. 387, No. 35; Paradis v. Bosse, 21, S.C.R., 410; Poucher v. Norman, 3, B. and C., 745, referred to. The solicitor retained the plaintiff in the interests of the client to prosecute the appeal before the Supreme Court. This was with the direct knowledge and sanction of the client, with whom the counsel had interviews touching the appeal. There was no evidence of any agreement beyond what arises from implication, and there was no evidence of any money being in the hands of the solicitor to answer this claim. Held, again, contrary to the English rule, that solicitors who employ counsel have implied authority to pledge the client's credit for the payment of counsel fees, and legal privity exists between client and counsel, though a solicitor has intervened in the usual way. This arises from the general authority which the retainer from client to solicitor imports to do all that needs to be done for the proper and effective conduct of litigation. There is no personal liability brought home to the defendants to pay these fees. Hobart v. Butler, 9, Ir., C.L., at pp. 165-6; Scrace v. Whittington, 2, B. and C., 11; Robins v. Bridge, 3, M. and W., 114; Lee v. Everest, 2, H. and N., 285; Johnson v. Ogilvie, 3, P. Wms., 277; Brigham v. Foster, 11 Allan (Mass.), 419; Miller v. McCarthy, 276, P., 147; Gordon v. Adams, 43, U.C.R., 207; re Broad, 15, Q.B.D., 420, referred to. Action dismissed without costs.

H. W. Mickle for plaintiff.

G. G. S. Lindsey for defendants.

* * *

C. A.] [Nov. 9.

LELLIS v. LAMBERT.

Alienation of Husband's Affection—No Cause of Action.

Appeal by defendant from order of a Divisional Court (Armour, C.J., Falconbridge, J., Street, J.), dismissing motion by defendant to set aside verdict and judgment for plaintiff for $2,250 in an action brought for damages for alienation by defendant of the affections of plaintiff's husband, tried before Robertson, J., and a jury. Held, that the weight of authority was against such an action as the present or that of Quick v. Church, 23, O.R. 262, and that the action was not maintainable by a wife under the Married Woman's Property Act. Appeal allowed with costs, and action dismissed with costs.

W. R. Smyth for appellant.

DuVernet for plaintiff.

FERGUSON, J.] Nov. 16.

RE FARMERS' LOAN AND SAVINGS CO.

Company — Winding-up — Appointment of Interim Liquidator—Status of Creditor Intervening.

Petition by a shareholder under the Dominion Winding-up Act and an amendment for an order directing that the company be wound up. The petition stated that at a meeting of the Board of Directors a resolution was passed by which, after reciting the fact that the company was unable to pay its debts as they became due without entailing serious losses in realizing on its securities, that owing to an action having been brought against the company by a depositor and the likelihood of other suits being instituted by those of its depositors who are giving notice to enable them to withdraw their deposits, and the likelihood of actions being brought by the holders of overdue debentures, it was resolved that it was but just and equitable that the affairs of the company should be wound up, and the various creditors of the company thereby prevented from obtaining unjust preferences, and instructed the solicitors of the company to aid any proceedings that might be taken for winding up. The petition also alleged that, in the opinion of the managing director of the company, it might be necessary to make one or more calls on the unpaid stock of the company in order to satisfy its liabilities. W. N. Miller, Q.C., appeared for the company, and consented. W. R. Smyth stated that he appeared for a creditor and desired to intervene upon his behalf. He stated that the creditor did not object to the order asked for, but thought that his client should be added as a party to represent the creditors. The Court decided that the creditor had no locus standi at this stage. Orders made declaring the insolvency of the company and its liability to be wound up under the provisions of the statute, and appointing Mr. Edmund B. Osler interim liquidator upon his giving security to the satisfaction of the Master, and upon his consent to act being filed. Reference to the Master to appoint a permanent liquidator and take all necessary steps for the winding-up of the company.

Osler, Q.C., and W. M. Douglas for petitioner.

* * *

TRIAL COURT, BOYD, C.] [Nov. 22.

STEWART v. MILLAR.

Assignment for Creditors—Procedure against Assignee—Solicitor's Costs.

Action by creditor, on behalf of himself and all other creditors of an insolvent, against assignee of the estate, under R.S.O., ch. 124, praying that defendant may be ordered to carry out the trusts of the deed of assignment and that the estate may be wound up under the advice and direction of the Court. Held, as to the compensation of the assignee, the amount received being only $46, that if plaintiff was dissatisfied with this, his course, as pointed out in sec. 11 (2) of R.S.O., ch. 124, was to apply in a summary way to the judge of the County Court to have it reviewed and readjusted; but it is not to be made the subject of litigation in the High Court. As to the amounts paid to the three inspectors, $60, that appeared to be an unauthorized payment. There were no travelling expenses incurred, and under section 11 (3) no other allowance is to be made to the inspectors except upon a resolution of the creditors. There is no such resolution, and though steps may be taken to legalize what has been done, at present defendant has not properly accounted for this disbursement. Unless the body of creditors at a proper meeting satisfy what has been done, or in so far as they fail to do so, the assignee must account for this item. As to the solicitor's

bill, there was no need to bring an action, as the solicitor was subject to summary jurisdiction of the court of which he is an officer in order that his bill might be taxed, and this was the proper course. Judgment accordingly, without costs. Counterclaim for penalties dismissed with costs.

* * *

SUPREME COURT OF CANADA. [OCT. 29.

O'DONOHOE v. BOURNE.

Appeal—Judgment by Default—Discretion on Leave to Defend.

In an action by respondent against appellant judgment was entered for want of defence. The Master in Chambers refused an application to have the judgment set aside, and to be allowed in to defend the action, and his refusal was affirmed on appeal to a Judge in Chambers, and on further appeal to the Divisional Court and Court of Appeal. From the decision of the Court of Appeal, defendant sought to appeal to the Supreme Court of Canada. On motion to quash his appeal,

Held, that it was discretionary with the Master to grant or refuse the application to open up the proceedings in the action, and under sec. 27 of the Supreme Courts Act (R.S.C., c. 135), no appeal could be taken to the Supreme Court from the decision on such application.

Quœre whether the judgment appealed from is a "final judgment" within the meaning of sec. 24 (*a*) of the Act.

Appeal quashed with costs.

Latchford, for the motion.

O'Donohoe, in person, contra.

* * *

FALCONBRIDGE, J.] [NOV. 29.

RE JOHNSON v. McRITCHIE.

Division Court—Jurisdiction—Title to Land.

Motion for a mandamus to the junior judge of the County Court of Kent to compel the hearing of a plaint in the 4th Division Court in that county for $30 damages for breach of a contract by defendants to give plaintiff an interest in a building when removed by plaintiff. Held, that the title to land did not come in question, and the Division Court had jurisdiction. Order made in the nature of a mandamus, as asked, with costs.

E. D. Armour for motion.

J. H. Moss contra.

* * *

FALCONBRIDGE, J.] [NOV. 26.

BARBER v. CRATHEM.

Fradulent Preference—Invalidity—Preferred Creditor's Right to Dividend.

Petition by the James Smart Manufacturing Company and the McClary Manufacturing Company, creditors of Lang and Meharry, insolvents, to set aside a consent judgment in this action, with costs against the defendant. This action was brought in the name of the assignee for the benefit of creditors of the insolvents, but for the benefit of certain creditors (pursuant to section 7 of the Assignments Act), against defendant, who was also a creditor of the insolvents, to set aside an assignment of book debts and a chattel mortgage made by the insolvents to defendant, as preferential. By the consent judgment referred to the assignment of book debts was declared valid, but the chattel mortage invalid, except as to certain specified chattels. The petitioners attacked this consent judgment upon the ground that it was unduly advantageous to the defendant, and prejudicial, detrimental and injurious to the petitioners, who were not, previous to judgment, informed of what was proposed, and upon the ground that, by the fourth paragraph of the judgment, it was expressly provided that the defendant should be entitled to rank with the other creditors, notably in the proceeds of the sale of the goods and chattels covered by the chattel mort-

gage. Held, that the affidavits of two members of the firm of plaintiff's solicitors completely answered and disposed of any suggestion of bad faith or collusion in the judgment; and the alleged over-stepping of the authority of plaintiff's solicitors was explained by the fact that the transfer of the book debts was at the meeting of creditors of 20th August, said to have been effected by a clause in the chattel mortgage, and the existence of a separate assignment was not then known. Held, also, that the settlement was made in good faith, and was a reasonable one. Held, also, that defendant was none the less a creditor because his securities were attacked. Had the assignee been suing in the ordinary course, and not under section 7, there could be no doubt that defendants would be entitled to share in the fruits of a successful action. In this action the assignee is the sole, though only a nominal, plaintiff. Why may not defendant say: "I will defend my security, but, if it be successfully attacked, I claim my right as a creditor to my dividend?" When, under such circumstances, any case of fraud or collusion shall arise, the Court will be able to deal with it. Petition dismissed, but without costs, as the point was new, and some elements of the case seemed, until explained, to invite attack.

E. Saunders for petitioners.

Shepley, Q.C., for plaintiff.

William Macdonald for defendant.

* * *

TRIAL COURT, STREET, J. [Nov. 27.

CONN v. SMITH.

The Bank Act—Warehouse Receipts —Exchange of Securities.

Action by a simple contract creditor of defendant Smith to recover judgment for his debt, and on behalf of all creditors of Smith to recover from defendants, the Merchants Bank of Canada, certain moneys and property of defendant Smith alleged to have come to their hands by means of breaches of the Bank Act. Thirteen transactions were attacked. Eleven of them related to pledges of hay and grain made by defendant Smith to the bank, in or before 1893, to secure advances. Plaintiff alleged that in these transactions there had been no contemporaneous advance, and that the pledge, whether in the form of a bill of lading or a warehouse receipt, or a direct pledge, was invalid under section 75 of the Bank Act, 53 Vic., ch. 31. It was not disputed that the bank had before action disposed of the hay and grain, and received and applied the proceeds in satisfying moneys advanced to Smith. The plaintiff claimed, as one of the creditors of Smith, who had ceased before this action to meet his liabilities, to be entitled to obtain the moneys so received by the bank, and to apply them in payment of creditors' claim under section 1 of 58 Vic., ch. 23(O), which is as follow: "In case of a gift, conveyance, assignment, or transfer of any property, real or personal, which in law is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made, shall have sold or disposed of the property, or any part thereof, the money or other proceeds realized therefor by such person may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, assignment or transfer was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors of the said debtor, but shall exist in favor of all creditors of such debtor, in case there is no such assignment." The evidence showed that there was sufficient pressure by the bank to exclude the intent of fraudulent

preference in the transactions in question. Held, that the words "invalid against creditors" should be treated as limited to transactions invalid against creditors qua creditors, and not as extending to transactions declared invalid for reasons other than those designed to protect creditors. Held, also, that the Act of 1895 did not apply because the money had been received by the bank before it was passed, and it was not retrospective, as was argued, because it conferred a right which had no previous existence, and did more than merely make an alteration in procedure. The next question concerned a quantity of hops still remaining unsold, which were held for the bank in a warehouse, under a receipt given by one Hiscox, the lessee of the warehouse. The defendant Smith was in the habit of buying hops from time to time, and giving the bank his own warehouse receipts or direct pledges for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his bookkeeper, Hiscox, his warehouse man, and Hiscox issued warehouse receipts to the bank in substitution for the securities or receipts therefor held by the bank, there being no further advance made when the new securities were given. The second usb-section of section 75 of the Bank Act enables the bank, on receipt of the goods, to store them and take a warehouse receipt for them without forfeiting any existing right. Held, that this exchange of securities should be treated as authorized under the sub-section. The remaining question related to the rights of the bank under a mortgage upon a block of brick buildings made by Smith to one Steele, and assigned to the bank. The plaintiff asked for a declaration that the advances by the bank upon this mortgage, or some part thereof, were contrary to the Bank Act, and that the property was free from the mortgage, or that the amount received under it might be paid into Court and applied in payment of the claims of Smith's creditors. Held, that no such declaration should be made in the absence of Steele, who was liable to the bank as endorser of a promissory note of Smith for $8,000 collateral to the mortgage. Judgment for plaintiff against Smith for the amount of his claim, with costs of an undefended action upon a specially endorsed writ. Judgment dismissing, as against the bank, with costs, all claims save that with regard to the mortgage. Plaintiff to be at liberty to proceed in this action for that claim, adding Steele as a defendant, and proceeding anew to trial. Unless he elects to do this, and takes the necessary proceedings within three weeks, the action will be dismissed, as against the bank, with costs, without prejudice to plaintiff's right to proceed within two months by a new action against the bank and such other persons as he may be advised, and either for himself or for all creditors to set aside in whole or in part the claim of defendants, or any of them, to the property covered by the mortgage, or the proceeds derived from it, or to have the same applied towards payment of creditors' claims.

ENGLAND.

COURT OF APPEAL. [Nov. 24.
LINDLEY, M. R.
CHITTY, L. J.
WILLIAMS, L. J.

WATERLAND v. SERLE.

Solicitor—Recovering and Preserving Property—Charging Order.

The plaintiff's solicitor by a summons in the action asked for a declaration that he was entitled to a charge upon funds in Court recovered in the action for the amount of his unpaid costs, charges, and expenses of or in reference to the action. Kekewich, J., dismissed the

summons and the solicitor appealed.

Held, that the appellant as solicitor employed by the plaintiff was entitled to a charge on the funds in Court for his costs, charges, and expenses incurred in the action for recovering and preserving the property, and it was referred to the taxing-master to settle the amount of the charge, with liberty to him to review his former taxation. He was also entitled to the costs as between solicitor and client of the application in the Court below and of the appeal, and these costs would be added to the costs of the action. The appellant solicitor would be in the position of an incumbrancer and would add his costs to the charge.

* * *

COURT OF APPEAL. [OCT. 30.
LINDLEY, M. R.
CHITTY, L. J.

STERN v. TEGNER.

Chattel Mortgage — Interpleader — Order for Sale.

By a bill of sale of August 11, 1897, Tegner assigned to Smith certain chattels as security for £300 and interest, payable on November 11. Stern recovered judgment against Tegner for £112 on a dishonored bill of exchange, and on September 30 the sheriff seized the chattels on his behalf. On October 1 Smith gave notice of his claim, and on the 5th paid out a distress put in by the landlord. On the 7th a receiving order was made against Tegner, and on the 15th he was adjudicated a bankrupt. The sheriff on the 7th issued an interpleader summons; the master ordered the sheriff to sell the chattels and pay the parties. On appeal, Ridley, J., in chambers varied the order by directing the sheriff to sell the chattels and hold the net proceeds of such sale to abide further order.

Smith appealed, and asked that the sheriff should be directed to withdraw, or that the goods should be sold only on the personal undertaking of the plaintiff or the trustee in bankruptcy to guarantee him against loss.

Held that where, as in this case, it was extremely doubtful whether the goods would realize enough to pay the bill of sale holder, the proper course was not to order a sale unless the execution creditor guaranteed the secured creditor against oss. Without that it would not be just to deprive him of his security. This was not consistent with Forster v. Clowser (Diprose claimant), 66 Law J. Rep. Q.B. 693; L.R. (1897) 2 Q.B. 362 as that decision was based upon the circumstance that the Court was satisfied that a sale would produce a surplus.

UNITED STATES.

FRASER v. McCONWAY COMPANY.

U. S. CIRCUIT COURT. [AUG. 26.

Aliens—Taxation of—Constitutional Law.

ACHESON, Cir. J.—The first section of an Act of Assembly of the State of Pennsylvania, approved June 15, 1897, provides: "That all persons, firms, associations or corporations employing one or more foreign-born, unnaturalized male person over twenty-one years of age within this Commonwealth, shall be and are hereby taxed at the rate of three cents per day for each day each of such foreign-born, unnaturalized male person may be employed, which tax shall be paid into the respective county treasuries; one-half of which tax to be distributed among the respective school districts of each county, in proportion to the number of schools in said districts; the other half of said tax shall be used by the proper county authorities for defraying the general expenses of county government."

It is further provided by the Act: "That all persons, firms, associations and corporations shall have

the right to deduct the amount of the tax provided for in this Act from the wages of any and all employees, for the use of the proper county and school district as aforesaid."

As the employer is authorized by the Act to deduct from the wages of the employee the prescribed tax, it is quite clear that the tax is upon the employee and not upon the employer: Bell's Gap R. R. v. Pennsylvania, 134 U. S. 232, 239.

The Court is here called upon to consider whether these provisions of this Act of Assembly are in conflict with the Constitution or Laws of the United States. The fourteenth amendment to the Constitution of the United States declares: "Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The general purpose and scope of these constitutional provisions were thus stated by Mr. Justice Field, in delivering the opinion of the Supreme Court of the United States in Barbier v. Connelly, 113 U. S. 27, 31: "The fourteenth amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law,' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their person and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences."

Congress has enforced the above provisions of the fourteenth amendment by legislation embodied in sections 1977 and 1979 of the revised statutes. The former of these sections enacts: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind and to no other."

It will be perceived that this statute, following in this regard the constitutional provisions themselves, embraces within its protection not citizens merely, but "persons" within the jurisdiction of the United States. The question of the extent of the application of these constitutional provisions with respect to persons was before the Supreme Court in Yick Wo v. Hopkins, 118 U. S. 356, 369, and it was there decided that the guarantees of protection contained in the fourteenth amendment to the constitution embraced subjects of the emperor of China residing in the State of California. Mr. Justice Matthews, in delivering the opinion of the Supreme Court, there said: "The fourteenth amendment to the constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty or property without due pro-

cess of law: nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color or nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

There can be no doubt that the fourteenth amendment embraces the case of the present plaintiff, who, although a British subject, is and since about April 2, 1893, has been a resident of the State of Pennsylvania, and whose right to reside within the United States is secured to him by treaty between the United States and Great Britain.

Can the tax laid by the Pennsylvania Act of June 15, 1897, be sustained, consistently with the principles enunciated by the Supreme Court of the United States in the cases which have arisen under the fourteenth amendment? I think not. This tax, as we have seen, is imposed "at the rate of three cents per day for each day each of such foreign-born, unnaturalized male persons may be employed." The tax is of an unusal character, and is directed against and confined to a particular class of persons. Evidently the Act is intended to hinder the employment of foreign-born, unnaturalized male persons over twenty-one of years age. The Act is hostile to and discriminates against such persons. It interposes to the pursuit by them of their lawful avocations, obstacles to which others under like circumstances are not subjected. It imposes upon these persons burdens which are not laid upon others in the same calling and condition. The tax is an arbitrary deduction from the daily wages of a particular class of persons. Now, the equal protection of the laws declared by the fourteenth amendment to the constitution secures to each person within the jurisdiction of a State exemption from any burdens or charges other than such as are equally laid upon all others under like circumstances: The Railroad Tax Cases: 13 Fed. Rep. 722, 733. The court there, in discussing the prohibitions of the amendment said: "Unequal exactions in every form, or under any pretence, are absolutely forbidden, and, of course, unequal taxation, for it is in that form that oppressive burdens are usually laid." It is idle to suggest that the case in hand is one of proper legislative classification. A valid classification for the purposes of taxation must have a just and reasonable basis, which is lacking here: Gulf, Colorado & Santa Fe Ry. v. Ellis, 165 U. S. 150, 165. Mr. Justice Brewer, in delivering the opinion of the court, there said: "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

I am of the opinion that the Act of Assembly of the State of Pennsylvania of June 15, 1897, here in question, is in conflict with the Constitution and Laws of the United States, and cannot be sustained.

The demurrer to the bill of complaint is therefore overruled. (Western Dis. of Penn.)

D. M. Fraser, a barrister of Almonte, Ont., while out hunting, shattered his arm with his own gun. He shortly afterwards fainted, and died a few moments after from heart failure.

PERSONAL.

D. A. McDonald has removed from Woodstock to Tilbury, Ont.

Mr. J. E. Day, barrister, formerly of Reeve & Day, Toronto, has removed to Guelph.

Rankin, Scullard & Co., is the style of a new law partnership at Chatham, Ont., with offices in the Eberts' Block.

Uriah McFadden and C. F. Farewell, of Sault Ste. Marie, Ont., have formed a partnership under the name of McFadden & Farewell.

Mr. O. A. Howland has retired from the firm of Howland, Arnoldi & Johnston, and the remaining members continue as Arnoldi & Johnston.

Mr. A. R. Dougall, Q.C., Belleville, Ont., one of the oldest members of the local bar, was stricken with paralysis while on his way to the police court.

Dr. Richard C. Weldon, Q.C., Dean of the Faculty of Law of Dalhousie University, is now associated as counsel with the firm of Harris, Henry & Cahan, at Halifax.

Solicitors' fees must be paid to the Law Society on or before Saturday, the 4th December. The reports of the Supreme Court of Canada will be furnished free to those who pay not later than above date.

On November 17th the following gentlemen were presented to the court by William Douglas, Q.C., a bencher of the Law Society of Upper Canada, upon their call to the bar, and were sworn in and enrolled as barristers-at-law: W. H. Burns (called with honors), J. T. C. Thompson, W. A. Hollinrake, J. E. Ferguson, J. R. Brown, S. B. Harris, E. H. Cleaver, and F. C. S. Knowles.

F. C. S. Knowles, E. H. Cleaver, W. A. Hollinrake, J. R. Brown, J. R. D. O'Connor, W. H. Burns, J. E. Ferguson, and J. T. C. Thompson, were sworn in and enrolled as solicitors.

MISCELLANY.

NOT THE ONLY ONES.—Lawyer Now, Mr. Thrift, describe to the court the chickens that you charged my client, the defendant, with stealing. Farmer Thrift goes into details, but is interrupted by the lawyer, who exclaims: "I have some chickens like those myself." Farmer thrift (resuming:) The chickens he took are not the only ones I have had stolen. *Legal Adviser.*

PRISONER'S JUSTIFICATION. Judge (to prisoner) You have been behaving very badly. You not only got drunk, but assaulted the officers who tried to restrain you. Prisoner I say, Judge, did you ever get drunk and just about the time you felt tired and wanted to sleep, have a policeman come pawing you around like you were a green watermelon? Judge No, I never was drunk. Prisoner —Then don't talk.

FOR THE DEFENDANT.—A Welsh County Court Judge recently had before him a case in which a printer sued a pork butcher for the value of a large parcel of paper bags with the latter's advertisement printed thereon. The printer having no suitable illustration to embellish the work, thought he improved the occasion by putting an elaborate royal arms above the man's name and address, but ultimately the latter refused to pay. The Judge, looking over a specimen, observed that, for his part, he thought the lion and unicorn were much nicer than an old fat pig. "Oh, well," answered the butcher, "perhaps your Honor likes to eat animals like that, but my customers don't. I don't kill lions and unicorns. I only kill fat pigs." Verdict for Defendant.