Canada Law Journal.

VOL. XVIII. MAY 1, 1882. No. 9.

DIARY FOR MAY.

2. Tue... Primary Examination. Supreme Ct. Session begin.
3. Wed... J. A. Boyd appointed Chancellor, 1881.
4. Thurs. Primary Examination.
5. Fri... Napoleon Bonaparte died, 1821.
7. Sun... *4th Sunday after Easter.*
9. Tue... County Court sittings for York begin. Court of Appeal sitting begin. First Intermediate Examination. Final Examination for Attorney.
11. Thurs. Final Examination for Call. Second Intermediate Examination.
14. Sun... *Rogation Sunday.*
15. Mon.. Easter Sittings begin.

TORONTO, MAY 1, 1882.

THE discussion of various matters connected with the administration of justice in British Columbia, bringing up grave constitutional questions, has recently received considerable space in our columns. A valuable addition to the learning on the subject has been sent to us by Mr. Alpheus Todd, in a letter which is published in another place. The judgments in the *Thrasher Case* referred to in this discussion, and now criticised by our highly valued correspondent, are printed in pamphlet form, and can be obtained at the office of the publishers of this journal. Those who wish to see both sides of the question should procure a copy, and form their own opinion. These judgments and Mr. Todd's letter will prove a mine of learning on a subject of increasing interest to the profession.

IN our review of recent English decisions in the present number we are able, for the first time, by reason of having reviewed the Law Reports up to date, to turn to the *Law Journal* reports, and notice those cases of important application which have not as yet appeared in the former reports. Our present issue reviews the cases in the January an February numbers of the *Law Journal* reports, and it will be a surprise to many probably to find that there are so many cases of considerable importance which have appeared there so long ago as January or February, but which have not as yet been reported in the official reports. This would not be a matter of surprise if these were decisions of the various Divisional Courts merely, for it might then be supposed that they were standing for appeal, and that the editors of the Law Reports were waiting, so as to carry out their very convenient practice of reporting at the same time the decisions in the Court *a quo* with the decisions in the Court of Appeal; but it will be found that several of the cases we review in this number are decisions in the Court of Appeal. By the end of the year we shall, perhaps, be able to form an estimate of some real value as to the usefulness of the *Law Journal* reports.

PROBABLY few funnier things have ever come before a Court of Justice than the following agreement, made between the parties concerned previously to entering the bonds of matrimony. It is to be found given in its beautiful entirety in the recent case of *Dagg* v. *Dagg*, 51 L.J. N.S. 19, in which the husband was suing for dissolution of the marriage in question The male to the agreement, be it remembered, was a porter, and the female party a cook in a hydropathic establishment; and it is necessary to add, we regret to say, that the porter had been guilty of certain familiarities with the cook, which one would have hoped a man of his refinement would have shrunk from. This is the agreement:—

"This is to certify that whereas the under-

signed parties do agree that they will marry, and that only to save the female of us from shaming her friends or telling a lie; and that the said marriage shall be no more thought of, except to tell her friends that she is married (unless she should arrive at the following accomplishments, namely: piano, singing, reading, writing, *speaking* and *deportment*); and whereas these said accomplishments have in no way been sought after (much less mastered), *therefore the aforesaid marriage shall be, and is, null and void;* and whereas we agree that the male of us shall keep his harmonium in the aforesaid female's sitting-room, and agree that it shall be there no more than four months, and that from that time the aforesaid and undersigned shall be free in every respect whatsoever of the aforesaid female, as witness our hands, etc., Catherine L. H. Jeffries, William Pritchard Dagg."

Who can doubt, from internal evidence, that it was the "male of us," the elegant and accomplished, but too fastidious, Dagg, who penned this agreement with his own hand? Who can help admiring his heroic condescension in marrying the illiterate "female of us," even though she had in no way sought after, much less mastered, the accomplishments of piano, singing, reading, writing, speaking and deportment.? Lastly, who will not deplore the hard-heartedness of the judge who refused to grant poor Dagg's petition, and dissolve his marriage with this uncongenial "female of us?"

RECENT ENGLISH DECISIONS.

Having disposed of the March numbers of the Law Reports, and the April numbers not having yet arrived, we can now turn to the *Law Journal* Reports for the present year, and note such decisions therein as have not already been reviewed as reported in the Law Reports, and which appear to require notice.

VENDOR AND PURCHASER—LEASE.

In the January number of the *Law Journal* Reports the first case requiring notice, and which has not as yet been reported in the Law Reports, is *Ringer* v. *Thompson.* This was a summons under the Imp. V. & P. Act, 1874, (R. S. O., c. 109, sect. 3), by the vendor of an under-lease, to have it declared that he had satisfied a requisition as to the performance of covenants in the superior lease, the under-lease being subject to the same rent and the same covenants as the superior lease. The evidence of performance furnished by the vendor, consisted of an affidavit that (i.) he had been in possession of the premises without other disturbance than a certain action brought by the landlord to recover possession for breach of covenant, but stayed in default of delivery of particulars of breaches; (ii.) that he had repaired the premises; (iii.) that to the best of his knowledge and belief the covenants had been performed. Fry, J., held that this, coupled with the fact that the purchaser had access to the premises, but had adduced no evidence of any breach, was such *prima facie* evidence in the affirmative of the performance of the covenants as could be reasonably expected.

LODGERS AND BOARDERS—DISTRESS.

The next case requiring notice, *Morton* v. *Palmer*, is of importance as it goes far to decide the moot question of what constitutes a "lodger" under the Imp. Lodgers' Protection Act, 1871, which has been adopted by us in 43 Vict. c. 16, Ont. Brett, L. J., after referring to some tests which the Courts have in previous cases given, which help to decide whether a person is a lodger or an under-tenant, says:—"It follows, as it seems to me, that the person who takes in another to lodge must retain power in and dominion over the house, as the master of a house usually does in this country. It is not absolutely necessary that he should live in or sleep in the house: he may live elsewhere, and yet reserve power in and dominion over the house, such as a master of a house does in this country

usually have. If, however, he goes away, if he gives up all power of dealing with the house as master, then I do not think that it is possible to say that he takes another person to lodge with him;" and the other Judges of the Court of Appeal concur in this view.

This completes the cases in the January number, and we can now proceed to the February number of the *Law Journal* Reports.

SPECIFIC PERFORMANCE—MISREPRESENTATION.

The first case in this number, *Goddard* v. *Jeffreys*, requires notice. In it a purchaser resisted specific performance of a contract for the sale of certain houses (i.) on the ground of mistake; (ii.) on the ground of misdescription. (i.) As to mistake, Kay, J., reviewing the case, deduced the following as the rule in respect to what sort of mistake on the part of the purchaser will enable him to resist specific performance:—"A purchaser may escape from his bargain on the ground of mistake, if it was a mistake that the vendors contributed to—that is, in other words, if he was misled by any act of the vendors; but if he was not misled by any act of the vendors—if the mistake was entirely his own—then the Court ought not to let him off his bargain on the ground of a mistake made by himself solely, unless the case is one of considerable harshness and hardship;" and taking this as the rule, he decided against the defendant in the case before him. (ii.) As to the question of misdescription, the purchaser alleged (*a*) that the length of the term for which a tenant of the vendor held a portion of the property was misstated in the particulars of sale. Kay, J., however, held that the *onus* was upon the purchaser to prove,—where it was not a question of the length of the term sold, but of the length of the possession of a tenant under the vendor—that a misdescription of the length of the tenancy tended to injure him; and that as in the case before him he had not ventured even to allege that he would suffer any injury by it, this ground entirely failed; (*b*) that although before the time fixed for the completion of the purchase, the rental equalled the amount stated in the particulars, yet at the time said particulars were issued, the rents were not so high as stated. Kay, J., held that this defence was of no more weight than the others.

SOLICITOR—FRAUD OF CO-PARTNER.

Biggs v. *Bree*, p. 64, illustrates the rule that all the partners of a firm (in this case a firm of solicitors) are liable for money received by their firm in the course of their regular business, and in the discharge of its duty. In the present case the money was the deposit paid over by auctioneers, selling property under an order of the Court, to the solicitors of the party having the conduct of the sale. Bacon, V.C., said: "The innocent partners are the solicitors for the plaintiff having the conduct of the sale—officers of the Court, who know the decree for sale, and know that it is their plain duty to see that the deposit and the proceeds of sale are paid into Court. It was their plain duty to receive this deposit from the auctioneer, and they would have neglected their duty if they had not done so." While on this subject it may not be out of place to refer to *Re attorney*, 7 P. R. 174, in which Wilson, J., observes that in this country we have no such class of persons as scriveners, but solicitors receive money to invest generally, in the usual and ordinary course of their profession: thus showing that the distinction drawn in England between cases where one of a firm of solicitors has misappropriated money received to invest generally, and cases where he has misappropriated money received for the purpose of effecting some special investment, cannot apply here. In the former case, it is held in England, innocent partners are not liable, because to receive money for investment *generally* is not part of the proper business of solicitors, but of scriveners. (*Bourdillon* v. *Roche*, 27 L.J. Ch. 681; *Plumer* v. *Gregory*, 43 L.J. Ch. 803; Lindley on Partnership.)

WILL—REMOTENESS—CONDITION—ANNUITY—COSTS.

Of *Patching* v. *Barnett*, p. 74, we may observe that (i.) it illustrates the "perfectly well settled" rule of law, that where the age is part of the description of the devisee, if the gift is to the devisee who should attain that age, and the period of vesting is beyond the life in being and twenty-one years, the gift fails. In his judgment on this point, Jessel, M. R., observes: "We must not, because testators' intentions are every now and then frustrated by the application of rules of law, either attempt, on the one hand, to destroy those useful rules of law which exist against perpetuity or remoteness, or, on the other hand, break in upon recognized canons of construction merely for the purpose of giving effect to the testator's desires, where the law otherwise does not allow them to be carried into effect." (ii.) The testator bequeathed a certain chattel to "John, Duke of Bedford" upon certain conditions. The Duke of Bedford living at the date of the will and death of the testator was named "Francis." He died without fulfilling the condition. Malins, V.C., held that his executors in conjunction with present duke could perform the conditions imposed by the will. The Court of Appeal, however, held that on the death of Francis, the gift lapsed and fell into the general residue. (iii.) A codicil contained a gift to a lady of an "annuity or yearly sum," which the testator directed to be charged upon two certain farms, and if it was in arrear the annuitant might distrain; and if in arrear for a longer time, she might enter and receive the rents and profits. The Court of Appeal held this was a legal limitation of a rent charge, and the personal estate was not liable. Jessel, M.R., said: "There is no oneration or exoneration of personal estate. The personal estate is not charged at all. As I said before, those cases which say that where there is a bequest payable out of the personal estate the mere addition of a charge on real estate does not exonerate the personalty, have no application to a case where, from the construction of the instrument, the Court is led to the conclusion that the personal estate is not liable. (iv.) Lastly, a question arose as to costs, which gave rise to the following remarks from Jessel, M.R., which were concurred in by the other Judges of the Court of Appeal: "I think it important to say that in the the administration of real and personal estate, the modern rule is that the costs exclusively occasioned by the real estate are thrown upon the real estate; and the general costs of the suit are borne by the personal estate. But what I will call the increased costs arising from administering the real estate are, as a rule, thrown upon the real estate; and the Courts have been in the habit for several years past of apportioning these costs between each estate at the hearing, instead of throwing upon the taxing master the very difficult task of ascertaining how much of each bill of costs made out by the solicitors has been occasioned exclusively by the real estate administration, and how much by the personal estate administration. That rule has been found to be very convenient and to save great cost, great delay and great difficulty in the taxing office." And after observing that Malins, V.C., appeared to have adopted this course in the Court below, he added:—"I think it would not be right on the part of the Appeal Court to interfere with the discretion of the Judge in the Court below as to the apportionment of the costs."

PRACTICE—DISPENSING WITH LEGAL PERSONAL REPRESENTATIVE.

In *Curtius* v. *Caledonian Fire and Life Insurance Co.*, p. 80, the plaintiff, as assignee by way of mortgage of a policy of life insurance, sued the defendant company for the policy moneys, which were far less than the whole amount of his debt. The insured had died intestate and insolvent, and there was evidence showing that his widow and next kin disclaimed all interest in the policy moneys. Under these circumstances Jessel, M.R., had ordered payment and dispensed with the presence of a personal representative, under

Imp. 15-16 Vict. c. 86., sect. 44 (R. S. O. c. 49, sect. 9.) On appeal, the Court of Appeal held that he was right, and that the Court had jurisdiction to make the order, although it was agreed that the section was inapplicable to a case where there is a contest between the estate and claimant. Baggally, L. J., said:—"Here the case is clearly within the section. The deceased person was interested. He was insured in the office and is dead, and has no legal personal representative. It is clearly a case where a judge might, if he thought fit, dispense with the presence of a legal personal representative. But it is said, that in many instances the Court has not thought fit so to intervene. In every case cited for that purpose the Court went on the special circumstances of the case then before it. In some there were proceedings actually pending with reference to the appointment of a legal personal representative, in some litigation with reference to this very point, and there the Court has not thought fit to dispense with the appearance of the legal personal representative. Then again there were other cases of such a character, that duties had to be performed by the legal personal representative, and therefore the Court did not act on the powers conferred on it; and if any of the cases cited is looked into, it will be seen that it turns upon its own special circumstances."

PARTNERSHIP—DISSOLUTION—GOODWILL.

Leggott v. *Barnett*, p. 90, is an interesting case on the subject of goodwill. There had been a deed of dissolution of partnership executed, by which the defendant assigned and transferred to the plaintiff all his individual share in the stock-in-trade and effects of and belonging to the late partnership business. Nevertheless the defendant, after this dissolution, sent out circulars to the customers of his old firm soliciting their custom, and there was evidence that several of such old customers had commenced dealing with him. The plaintiff, therefore, brought an action against him for an injunction to restrain him, not only from soliciting the old customers, but also relying on a *dictum* of the M. R. in *Ginesi* v. *Cooper*, L. R. 14 Ch. D. 596, from actually dealing with such customers. The M. R. granted an injunction as asked. The defendant did not dispute the first part of the injunction, and only appealed as to the second part. Some of the judges of the Court of Appeal, however, take occasion to express opinions in favour of the first part of the injunction. Thus Brett, L. J., says:—"The mere fact of the other going out of the partnership, if nothing else was stated, left the goodwill in the other partner. * * * It being a deed dissolving a partnership, it follows that the goodwill is left to the partner who retains the business. * * * And I should say, where there is a dissolution of partnership for valuable consideration, that the outgoing partner who dissolves the partnership for good consideration, does impliedly contract that he will not immediately afterwards do away with that for which he has been paid by soliciting the customers, and so practically destroying the goodwill which he has agreed to leave with the surviving partner."

But the question really before the Court on the Appeal, was whether there was anything that would justify the Court in construing a sale of goodwill as an implied contract not to deal with any customers of the old business, the goodwill of which was sold. The Court held, unanimously, that there was not. Thus Cotton, L. J., says:—"No case has ever laid down, that a man who has sold his goodwill, although he set up a shop next door, was not justified in dealing with the customers of the old firm whom he did not solicit to come there. In *Churton* v. *Douglas*, John 174 the judgment of the V. C. quite concurs, I think, with the previous decisions, in assuming that the defendant might, if he thought fit, have carried on business with the customers of the old firm, provided that he did not represent to them that his was the

old business, or that he was the successor in business of the old firm." The Court, also, held that they could not prevent the defendant from dealing with those customers, whom he *had* solicited. This would really, as Brett, L. J., points out, be enjoining the public, and depriving them of the liberty, which anybody in the country might have of dealing with whom they like.

INTERPRETATION OF CONTRACTS—RECITALS.

In the above case, moreover, previously to executing the formal deed of dissolution, the partners had signed a written agreement for dissolution, which was in some ways more specific in its terms than the deed, and was recited in it. This gave rise to some *dicta* on the interpretation of contract. Thus James, L. J., with the entire concurrence of Brett, L. J., says: "I think it is very important, according to my view of the law of contracts, both at common law and in equity, that if parties have made an executory contract which is to be carried out by a deed afterwards executed, the real completed contract between the parties is to be found in the deed, and that you have no right whatever to look at the contract, although it is recited in the deed, except for the purpose of construing the deed itself. You have no right to look at the contract either for the purpose of enlarging or diminishing or modifying the contract, which is to be found in the deed itself. A recital of the agreement in such deed would have the same effect as an ordinary preamble to an Act of Parliament or any other instrument, as showing what the object of the parties was, and what they were about to do, so as to afford a guide in the construction of their words; but you have no right, for any other purpose, to look at anything but the deed itself, unless there be a suit for rescinding the deed on the ground of fraud or for altering it on the ground of mistake."

And Cotton, L. J., enunciates another principle on the same subject, viz: "Where parties have made a bargain and have contracted as to what rights one party shall gain over the other by the bargain, we ought not to put a forced interpretation on particular words used in the bargain in order to remedy what we may think in the particular case is a hardship on one of the parties."

It may be observed in passing that in a case a few pages on, *Walker* v. *Mottram*, the rule which precludes the vendor of the goodwill of a business from soliciting the former customer, though again affirmed by the Court of Appeal as regards voluntary sales, was held not to extend to the case of a compulsory alienation, as where, on bankruptcy, the business and goodwill have been sold by the trustee in bankruptcy.

MISREPRESENTATION—RESCISSION OF CONTRACT—ONUS.

Redgrave v. *Hurd*, p. 113, contains some lengthy judgments of the Court of Appeal on the above subject. The defendant resisted specific performance of a contract entered into with the plaintiff, on the grounds of misrepresentation by the latter as to the value of the business done by him as a solicitor. The evidence shewed that the defendant made some personal investigation into the affairs of the plaintiff to satisfy himself as to the value of his business, and Fry, J., citing *Atwood* v. *Small*, 6 Cl. & F. 232, held that if he made these enquiries carelessly and inefficiently, it was his own fault, and that having inquired to a certain extent, he could not now have the contract set aside. Jessel, M. R., in a long judgment, in which the other two judges concur, over-rules this statement of the law. He reviews at great length *Atwood* v. *Small*, and concludes as to it that: "In no way, as it appears to me, does the real decision, or do the real grounds of decision support the proposition that it is a good defence to an action for rescission of a contract on the ground of fraud, to say that the man who comes to set aside the contract enquired to a certain extent, but did it carelessly and inefficiently, and therefore did not observe the fraud, and is thereby prevented from upsetting the contract."

And after remarking on the difference which formerly existed between the rules of Courts of equity and the rules of Courts of common law as regards the rescission of a contract, he says: "Nothing can be plainer, I take it, on the authorities in equity, than that false representation is not got rid of by the defendant—that is, the person resisting its performance, or asking for rescission on the ground of deceit—being guilty of negligence. One of the most familiar instances in modern times, and one which occurs in case after case, both reported and unreported, is this: Men issue a prospectus containing false statements—false statements of the contracts made before the formation of the company, and on similar matters—and then say the contracts themselves may be inspected at the office of the solicitors. It has always been held that those who accept these false statements as true are not deprived of their remedy merely because they neglected to go and look at the contracts themselves, though they were told the contracts were in writing and might be inspected if they asked to see them. * * * It is not sufficient, therefore, to say that a man has had the opportunity of investigating the real state of the case, but has not availed himself of that opportunity." Moreover, both the M. R. and Baggallay, L. J., make some remarks to the same effect on the onus in such cases. The latter says, as to this: "Where a false representation has been made, it lies on the party who makes it, if he wishes to assail it, to show that although he made the false representation, the other party did not rely upon it. The *onus probandi* is on him to shew that the other party waived it and relied on his knowledge."

COVENANTS—ASSIGNEE WITH NOTICE.

The last case in the February number of the *Law Journal* reports which has not been reported in the Law Reports, and which requires notice here, is *Haywood* v. *The Brunswick Benefit Building Society*. In this case certain land was granted to one J. in fee subject to a rent charge. The grantee covenanted for himself and his heirs, etc., that he, his heirs or assigns, would pay the rent, erect buildings on the land and thereafter keep them in repair. The plaintiff was assignee of the rent charge, with the benefit of all the covenants. The defendants were mortgagees in possession subject to the covenant, and the plaintiff sued them on the covenant to repair. Two questions, therefore, arose: (i.) whether the covenant to repair ran with the land, so as to impose a liability on the defendants; (ii.) whether the defendants were bound to repair on the ground that an assignee of property taking property with notice of a covenant of a certain class, is bound by reason of the notice in such a way that a Court of equity will oblige him to observe the covenant. As to (i.) all the judges of the Court of Appeal held that the covenant did not run with the land, and that the plaintiff, therefore, had no right of action at common law. Cotton, L. J., said, as to this:—"For a covenant to run with the land it is necessary that it should affect the land, do benefit to the land or affect the rent issuing out of the land. Now this covenant does not affect the rent issuing out of the land—it is only a covenant to do something which shall be an improvement to the land, so that it is not a covenant within the second resolution in *Spencer's Case*, 1 Sm. L. C. (Ed. 8.) 68. It is unnecessary to consider whether it is a covenant the burden of which runs with the land, although I am not inclined to favour that view; but it is clear I think, that at common law this covenant would not run with the rent." (ii.) As to the remedy at equity, the unanimous view of the judges is concisely expressed by Lindley, L. J., thus:—"The doctrine is laid down in *Tulk* v. *Moxhay*, 2 Ph. 774, and *Cox* v. *Hislup*, 26 L. J. Ch. 389, and both these cases are different from the present. The former case shews that if a person buys land with notice of a restrictive covenant, he will be bound to

perform it. Now restrictive covenants are those which, so far as they are enforced, can be observed without expenditure of money or outlay. In such a case such a covenant will be enforced, even against a tenant from year to year, as is manifest from *Wilson* v. *Hart*, L. R. 1 Ch. 463; but with the exception of *Cooke* v. *Chilcott*, L. R. 3 Ch. D. 694 there is no authority to shew that the Court of Equity has ever extended the doctrine of *Tulk* v. *Moxhay* so to enforce anything more than abstention."

In the next number the arrival of the April numbers will make it necessary to return to the Law Reports. A. H. F. L.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Ferguson, J.] [April 8.

PETRIE V. GUELPH LUMBER CO. ET AL.

Misrepresentation in prospectus of company.

In this case the plaintiff filed his bill against the company, and certain individual members and promoters of the company. As regards the latter, he charged that they had concocted a scheme to form the incorporated company with limited liability, with the fraudulent intention of inducing the company to assume their business as lumberers, in order, not only to relieve themselves from the personal liability and risk involved in further carrying on the business, but also for the purpose of enabling them more successfully, as a company, to induce the public to advance money to extricate them from the financial difficulties in which they were placed; that he became a subscriber for shares, relying on certain fraudulent statements contained in the prospectus circulated by the defendants or their agents, as to the flourishing condition and hopeful prospects of the business; whereas the plaintiff charged that the said defendants well knew at the time that the business was an unsuccessful, unprofitable, and a failing business, and he claimed an order for repayment to him by the said defendants of the amount he had subscribed with interest.

Held, on the evidence as to this part of the case, that, although there was perhaps enough shown to have given the right to the plaintiff to have a rescission of his contract had he come to the court in good time, and although inaccuracies had been shown in the prospectus, and a degree of negligence whereby some of these inaccuracies arose and crept in, yet that the defendants had not been shewn to have been guilty of any fraudulent intent, or in other words, of "moral" fraud, as distinguished from "legal" fraud.

Held, also, that the suit was, as regards these defendants, simply an action of deceit, and whether the fraud is supposed to be a fraud in this court as distinguished from moral fraud or not, there must be a wilful and fraudulent statement of that which is false to maintain an action of deceit.

Held, also, as to the defendants, the company, that by his delay and his having acted at a meeting of shareholders after having knowledge of what he charged in his bill, or as much knowledge as he had when he commenced the suit, the plaintiff was precluded from asserting any right to have the contract for subscription for the stock rescinded, even supposing that he might have had such right otherwise.

Bill, therefore, dismissed with costs.

McCarthy, Q.C., for the plaintiff.

E. Blake, Q.C., with him *W. Cassels*, for defendants other than McLean and Ferguson.

Brough, for defendant Ferguson.

Bethune, Q.C., with him *Barwick*, for defendant McLean.

Boyd, C.] [April 22.

OAKLAND V. ROPER.

Treasurer's bond—R. S. O. c. 180, sect. 213. c. 204. s. 221.

Where a bond for the performance of his duties by the treasurer of a municipality, instead of following the form of words directed by the statute in force at the time of its execution, which directed the security to be "especially for duly accounting for and paying over all moneys which may come into his hands,"—limited the responsibitity to moneys coming into the

treasurer's hands "applicable to the general uses of the municipality."

Held, that clergy reserve moneys, and moneys derived from the distribution of the provincial surplus, which funds had by law been set apart for educational purposes, were not moneys "applicable to the general uses of the municipality" within the meaning of the bond, being moneys specifically appropriated to a particular purpose.

Held, also, that although R. S. O. c. 180, sect. 213, and c. 204, sect. 221, in terms declared that, "the bond of the treasurer and his sureties shall apply to school moneys," yet it appears from a reference to earlier statutes and otherwise, that (i) the term "school moneys" here refers to moneys provided by the legislature for the support of public schools; (ii) that the term treasurer applies to treasurers of counties, cities or towns, who deal directly with the Crown in respect to these moneys, and not to treasurers of townships who deal with the Crown through the medium of the counties in which they are; and moreover the statutory extension of the liability of the sureties should not obtain where the condition of the bond, indicated by the statute, has been departed from and limited, as in the present case.

Throughout municipal legislation, there is a plain distinction made between moneys or funds specifically appropriated and those unappropriated; between moneys applicable to special purposes and those applicable to general purposes, and it may also be taken that in these acts the terms "purpose" and "use" are synonyms.

Hardy, Q.C. (*Wilkes* with him) for plaintiff.
Smyth, for defendant Roper.

Ferguson, J.] [April 8.

ROBERTS V. HALL.

Adoption of child—Promise to make a will.

In this case the parents of the plaintiff, in 1846, entered into a written agreement with one Hall and his wife, whose representatives the defendants were, by which they agreed to give their daughter, the plaintiff, then six years old, to Hall and his wife, who were to adopt her as their own child and to make her the sole heir to their property in case they should have no child; but in case of their having a child, the plaintiff was to share equally with such child.

Held. 1. That this agreement was contrary to public policy and illegal, and specific performance could not be decreed. The law gives the father the custody and control of his children, and casts upon him the duty of caring for them and seeing to their education, and this duty he can neither renounce or delegate. The fact of the consideration having been executed does not entitle the plaintiff to specific performance by the other party in the case of such a contract.

2. That although the evidence shewed that up to the time of his death Hall intended that the plaintiff should have his property, and thought that the agreement he had made was binding in this respect, and that, therefore, it was unnecessary for him to make a will, and although it was urged that the plaintiff had been for at least five years in the service of Hall, after attaining full age, and this on the understanding, based on his statement, that she would be his heir, and that there was an agreement to that effect, yet inasmuch as the evidence was quire insufficient to show any agreement between Hall and the plaintiff, the latter could not succeed on this ground in establishing a right to the estate of the deceased.

3. That inasmuch as, if the parents of the plaintiff had brought a suit upon the agreement in this case, and recovered, they would be trustees of the proceeds for her, this entitled her to maintain the suit in her own name.

S. H. Blake, Q.C., for the plaintiff.
D. McCarthy, Q.C., for the defendant.

Ferguson, J.] [April 8.

WOLFE V HUGHES.

Contract of purchase—Pleading.

An agreement for the purchase of certain land, after providing for the payment of a certain portion of the purchase money, continued as follows: "The remaining $1,900 (after deducting the amount due to the Crown) payable in instalments of $100 each, without interest, on April 1st in each year during nineteen years,"—and the purchaser to secure by mortgage "the residue or sum of $1,900 (less the amount due to the Crown), payable as aforesaid."

Held, the true meaning of the above agreement was that the amount due the Crown was to

be substracted from the $1,900, and the balance paid in instalments of $100 each on April 1st in each year, until the whole of such balance should be paid; and it was the $1,900, less the amount due the Crown, which was to be secured by mortgage; and the purchaser had no right to apply any of the instalments in payment of the sum due to the Crown, or postpone payment to the vendor; and it must be *held* that the words, "during nineteen years," were employed either by error, or because it was not known how much was due to the Crown.

Semble: It does not follow that because a plaintiff asks in his bill for reformation of a document, that therefore a defendant in entitled to claim the same relief, though he has not asked for it.

S. H. Blake, Q.C., for the plaintiff.

McMichael, Q.C., for the defendant.

Ferguson, J.] [April 8.

BELL V. LANDON.

Trust—Administration—Account.

The bill charged that by a fraudulent and collusive sale, land of a testator was sold at an under value to one of the trustees and executors of the will, in the name of an accomplice.

The evidence did not support the above allegations; and moreover, by deed of March 6th, 1863, executed after the said sale, the various beneficiaries under the will, with one exception, (whose claim had, by the consent of all concerned, been compromised), assigned to the said trustee and executor all their interests under the will, on receiving a proper proportion of the sum actually realized at the sale. The deed recited that the assignors had carefully examined the accounts of the executors by themselves and their counsel, and also recited the fact of the sale, and that the assignors were satisfied with the result of it. All the parties were of full age and had professional advice, and all the circumstances attending its execution were fully explained.

Held, the deed was binding on the parties who executed it; and also the sale to the trustee was valid.

Held also, inasmuch as the accounts had, at the instance of one of the defendants, been brought into the Surrogate office upon a citation, that all parties interested were aware of, and had for eight years remained there without question, surcharge or falsification, the plaintiff was not entitled to have an administration of the estate.

Bill dismissed with costs.

Boyd, C.] [April 22.

WILMOT V. STALKER.

Statute of Frauds—Sufficient description of parties.

"Vendor" is not a sufficient description of the party selling to satisfy the requirements of the Statute of Frauds.

Where one of the conditions of sale was, "The vendor shall have the option of a reserved bid, which is now placed in the hands of the auctioneer;" and where that reserved bid was couched in the following terms: "Re sale Allan Wilmot's farm; reserved bid, $105 per acre;" and although it was conceded that the paper containing the reserved bid might be read as incorporated in the agreement signed by the purchaser at the foot of the conditions of sale, nevertheless it was *held* that the above words read together did not so indentify the vendor as to satisfy the statute. *Shardlow* v. *Cotterill*, L. R. 18 Ch. D. 293, and *Vandenbergh* v. *Spooner*, L. R. 5 Ex. 316, followed.

Maclennan, Q.C., for the plaintiff.

Foster and *Clark* for the defendant.

Boyd, C.] [April 22.

GILL V. CANADA FIRE AND MARINE CO.

Insurance by vendor under contract to sell.

1. A vendor, who has agreed to sell for full value, has nevertheless, pending the contract of sale, a perfect right to effect an insurance upon the premises sold.

2. If, under such circumstances, a vendor insures the premises describing them as "his," this is no such misrepresentation or misstatement as to invalidate the policy, where no enquiries have been made by the company as to the nature or extent of the interest of the applicant for the policy.

3. The fact of the vendor insuring under such circumstances, being an assignee in bankruptcy, makes no difference from the case of an ordinary vendor. The insurable interest of such an assignee who contracts to sell is not less at all events than that of an ordinary vendor.

4. Where the words in a condition in a policy are: "if the risk be increased or changed by any means whatever," the term "change" must be held to be used rather as a synonym of "increase" than as a word of different signification. *Ottawa Co.* v. *Liverpool Ins. Co.*, 28 U.C.R. 522, approved of.

Moss, Q.C., (*Muir* with him), for plaintiff.

W. Cassels, and *Laidlaw*, for defendants.

Boyd, C.] [April 22.

TRIBE V. THE LANDED BANKING CO.

R. S. O., c. 164, s. 50.

Semble: The above section is not limited in its application to what the Act refers to as "Permanent Building Societies."

Boyd, C.] [April 22.

SPROULE V. STRATFORD.

Party wall—Easement.

In the case of a party wall there is the right on the part of one owner to heighten that wall within certain limits, as, *e. g.*, when it can be done without injury to the adjoining building, and the wall is of sufficient strength to bear the addition. But this is subject to the right of the other owner to use the new part as a party wall, probably upon reasonable terms as to contribution towards the expense. And if the owner who thus heightens a party wall proceeds to pierce the wall for the purposes of a window, this amounts to distinct notice that he has ceased to regard the wall as a party wall, for party walls cannot have windows which open to the external air and admit light and air. The placing of the window is an attempt to change the wall in question, and to acquire rights therein which by lapse of time would prejudicially affect the other owner, and the further continuance of it may be enjoined. Dicta of Mellish, L.J., in *Weston* v. *Arnold*, L.R. 8 Ch., App. 1091 cited and approved of.

Bethune, Q.C., for plaintiff.

Hardy, Q.C., (with him *Wilkes*,) for the defendant.

Ferguson, J.] [April 25.

GILLIES V. MCCONOCHIE.

Parties—Rule 98, 99.

Motion by the executors of a will, (for the construction of which they had brought the present action), that it might be declared under rule 98, that the next of kin of the testator were sufficiently represented by those before the court.

There were certain charitable bequests in the will, which, if held invalid, would pass to the next of kin. Those who had been made defendants, and duly served with process and with notice of the present motion, were the widow of the testator, and four of his next of kin, being nephews and nieces of his, and the Attorney-General for Ontario.

It appeared that there was a very large number of next of kin, many of whom were not known, while the service upon others would be difficult and expensive.

Order granted under rule 98, on the ground that the next of kin were sufficiently represented by the parties before the court.

Hoyles, for the motion.

Symons, for next of kin who were made parties.

Boyd, C.] [April 27.

BANK OF COMMERCE V. BRICKER.

Agreements between solicitors.

Motion to vacate judgment and restore action to cause list for trial at the present sittings on the ground that defendant's solicitor had not been present at the hearing. As to costs, it was alleged by defendant's solicitor that there had been a verbal agreement between the solicitors of the parties, but there was a variance between the solicitors as to the actual agreement come to. The learned Chancellor said that the rule of Lord Bacon, requiring agreements between solicitors in reference to their client's causes to be in writing, was a wholesome one, and one that he intended to adhere to, and wherever there was a difference as to verbal agreements he would hold that the party relying on an alleged agreement must establish it by writing or he would pay no regard to it, it was impossible to enter on these motions into a nice calculation as to the weight of evidence upon such questions. In the present case, therefore, although it was reasonable that the defen-

dant should have on opportunity of making a defence, he would only vacate the judgment on the usual terms of the defendant paying the costs of the day and of the present motion.

C. Millar, for motion.

W. Cassels, contra.

CHAMBERS.

Mr. Dalton, Q.C.] [April 9.

MCDONALD V. FIELD.

Solicitor—Power to settle suit.

A solicitor has power to settle a suit so as to bind his client, if he acts *bona fide*, and as he believes best for the interest of the client.

J. E. McDougall for the plaintiff.

Caswell for the defendant.

Mr. Dalton, Q.C.] [April 5.

Term's notice to proceed.

Since the passing of the Judicature Act, a term's notice to proceed is not necessary, although a year has elapsed since the last proceeding.

H. W. M. Murray for the plaintiff.

Aylesworth for the defendant.

Mr. Dalton, Q.C.] [April 14.

TOWNSHIP OF MONAGHAN V. DOBLIN.

Examination of witnesses on a pending interlocutory motion, Order for—Rule 285.

The examination of witnesses who have not made affidavits on a pending interlocutory motion cannot be taken except under an order made under rule 285, O. J. A. G. O. Chy. 266 is superseded by the Judicature Act.

An appointment issued by a local Master for such an examination was set aside.

Watson for the motion.

H. Cassels, contra.

Mr. Dalton, Q.C.] [April 17.

HILLIARD V. THURSTON.

Transfer of actions—Power of Master in Chambers.

The Master in Chambers has no jurisdiction to transfer an action from one division of the High Court of Justice to another. Such power can only be exercised, if at all, by a Judge.

Watson for the motion.

H. Cassels, contra.

In a subsequent case, BOYD, C., made an order of transfer, subject to the consent of the President of the Division to which the case was transferred.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared by A. H. F. LEFROY, ESQ.)

BURRARD V. CALISHER.

Imp. Jud. Act, 1873, sect. 56—Ont. Jud. Act, sect. 47—Official referee—Report.

[Jan. 23.—Ch. D., 51 L.J. N.S. 223.

KAY, J.—Although there should not be a hard and fast rule, for each case must depend upon its own circumstances, yet where under the above section the Court has directed "an account of all dealings and transactions between the plaintiff and the defendant" to be taken before the official referee, the referee should not simply certify the result, but should take the account in the way usual in the Chancery Division, and should set out the account, stating what items he has allowed and what items he has disallowed.

[NOTE—*The Imp. and Ont. sections are nearly, but not quite identical. In re Brook, 19 W. R. 820, noted 17 C.L.J., 391, is another recent case under the above section.*]

DEACON V. DOLBY.

Imp. Jud. Act, 1873, sect. 56—Ont. Jud. Act, sect. 47—Official referee—Report.

[Jan. 23.—Ch. D. 51 J.T. N.S., 248.

Where a trial of an action has been ordered to stand over until the official Referee has reported on matters referred to him, it is not necessary to move to confirm such report, after it has been made, before restoring the action to the paper for hearing.

Motion, that an action, adjourned under the circumstances indicated in the above headnote, might stand out of the cause paper, and not be

restored to the paper, for further hearing, until the report of the referee had been confirmed.

Beaumont, for the motion.—The plaintiff has treated the report of the offiical referee as a final report, and set down the action for hearing. This he ought not to have done until after a summons, or a motion to confirm the report had been heard: *Munro* v. *Randall*, L. R. W. N., 1878, p. 41.

KAY, J.—It may well be that if the Court directs a reference in the usual form of a reference to a chief clerk, and reserves further consideration, there ought to be a formal adoption of the report by the Judge before the trial comes on. But in such a case the adoption is the merest form. There is no argument before the Judge; it is the most formal thing possible, unless a summons to vary has been taken out. No summons is required, and the only way by which a report can be discussed is by taking out a summons, not to confirm, but to vary the certificate. Here I am asked to introduce an entirely new practice, and to delay the hearing of the action until a summons has been taken out to confirm the report, upon the hearing of which the party who does not like the report is to have the opportunity of disputing it before it can be confirmed. If there is to be any formal adoption of the report, let it be done as in the case of a chief clerk's certificate. I look upon this application as nothing but an attempt, by a side-wind, to get rid of the report. I dismiss the motion with costs.

[*See note to last case.*]

CORRESPONDENCE.

The Supreme Court of British Columbia.

To the Editor of the LAW JOURNAL.

SIR,—I have read with much interest the judgment of the Supreme Court of British Columbia in the *Thrasher Case*, and the correspondence which has appeared in your columns on the subject. The question therein discussed is one of considerable importance in its bearing upon the interpretation of the British North America Act, I therefore invite the attention of your readers to some further comments upon it from a constitutional point of view.

Notwithstanding my high respect for the learned judges who concurred in the decision upon the *Thrasher Case*—who have already rendered valuable service to Canada by their judgments upon various doubtful and intricate questions of constitutional law—I regret to be obliged to differ from them in their conclusions upon the present occasion.

The point principally involved in this decision is the question whether the Supreme Court of British Columbia is or is not a "Provincial Court" within the meaning of the 14th sub-section of clause 92 of the B. N. A. Act. If it be a "Provincial Court" the Local Legislature is clearly empowered under that sub-section, coupled with clause 129 of the statute, to control and regulate its procedure, and either itself make rules for that purpose, or else delegate the framing of such rules to some other competent authority.

By the 129th clause of our Constitutional Act the Imperial Parliament obviously intended to convey to the Provincial Governments and Legislatures in Canada exclusive jurisdiction over all juridical matters, which are not of Dominion concern, without regard to the particular antecedent authority which had previously legislated thereupon.

This provision, taken in connection with clauses 130 and 135 of the same statute, secures the unbroken continuity, jurisdiction and operation, within each province, of all laws, courts of justice, legal or executive institutions or tribunals which were previously in existence in any part of the new Dominion; except as otherwise provided by the statute itself.

It only remains to ascertain what courts, situate within the particular Provinces, are expressly subject to provincial legislation under the 14th sub-section of the 92nd clause of the B. N. A. Act. The words of this section are definite and explicit. They assign to the "exclusive" control of the Provincial Legislature all matters concerning "the administration of justice in the Province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters" therein. What Courts do actually exist in the several Provinces other than "Provincial Courts?" None, except the Dominion Supreme Court and the Maritime Court of Ontario, both of which were created by Dominion enactments; the first as a Court of Appeal for the whole Dominion, the other as a step towards the establish-

ment of Canadian instead of Imperial jurisdiction in matters now within the jurisdiction of the British Vice-Admiralty Courts, which are still in operation throughout Canada.

All other courts of law in the Dominion have, in point of fact, been subject since Confederation to the legislative control of the different Provinces, and have, from time to time, been remodelled and reformed at the will and pleasure of the respective Provincial Legislatures, without any interference or remonstrance on the part of the Dominion authorities. In the years 1878 and 1879, in the memorable contests which grew out of the Dominion Controverted Election Trials' Act, the Courts of Ontario and Quebec agreed that the Dominion Parliament though incompetent, under the B. N. A. Act, to alter the "constitution" of any Provincial Court, whether possessed of superior original jurisdiction or otherwise, was nevertheless at liberty to assign to the *Judges* of existing Courts—they being Dominion officers—additional duties for Dominion purposes, provided only that the same did not interfere with the primary and ordinary functions of the judges in holding Provincial Courts. This decision was ratified by the Dominion Supreme Court and approved by the Judicial Committee of the Privy Council. The judgment in this case effectually disposes of the distinction attempted to be drawn by the judges in British Columbia between superior and inferior courts in that Province, and of the assumption that the latter only were the proper subjects of Provincial Legislation, whilst the former were liable to be regulated and controlled only by the Federal Parliament.

And now as concerning the competency of the Legislature of British Columbia to enact rules for the conduct of business in the Provincial Courts.

The principle involved in this question was hotly contested in the Imperial Parliament between the years 1870 and 1875, when the reform of the judicature system of England was under discussion. The point then raised was as to whether the new rules of Court that must necessarily be prepared should be framed by the judges, by the Privy Council, or by Parliament. Setting aside old custom, individual preferences, and perhaps general expediency, which might incline in favour of one or the other method, the "omnipotence of parliament" ultimately prevailed. The rules were, for the most part, appended by Parliament to the Judicature Act, although permission was given for the drafting by the judges of Supplementary Rules. But before these Supplementary Rules could go into operation they had to be authorized by Order in Council, and then submitted to Parliament for forty days,—during which period they were open to rejection or modification,—afterwards, if not disapproved of by either House, they went into force. By this means the actual authority as well as the ultimate control of Parliament in the formation of rules for the guidance of the courts of law was recognized as being inherent in the supreme power. The question whether this function should be exercised by Parliament directly or through some intermediate agency was simply one of expediency and not of right.

A similar power must be admitted to exist in all Colonial Legislatures that have been authorized to regulate "the administration of justice" in the particular Colony or Province. Accordingly, in the Australian Colonies it has been customary by local enactment to empower the Judges of the Superior Courts to frame new Rules of Court when required, submitting the same for the information of the Local Parliament. A similar direction is contained in the Statutes of Ontario. These Local Legislatures have not indeed gone to the length of insisting that all Rules of Court shall be subjected to their own legislative supervision before they go into force, but if the Legislature of British Columbia should deem it expedient to exercise a more direct authority in such matters, they are not usurping an unwarrantable power, but are acting within the limits of the jurisdiction assigned to them by the aforementioned subsection of the British North America Act.

It is true that in a Province the exercising of this particular function by the Legislature may, in some instances, be ill-advised and objectionable, but the remedy in this contingency consists, not in denying the authority of the Legislature, but in the lawful oversight of the Dominion Executive, who are free to remonstrate and to suggest the amendment by the local authorities of any objectionable enactment and if necessary to disallow it altogether.

The British Columbia Judges allege that they have already protested against much of the local legislation in judicature matters, but

that their protests have been disregarded both by the Imperial and by the Dominion Governments. May not this have arisen because their censures and complaints were too sweeping, and because they denied the existence of powers which, in the opinion of others, had been undertaken within constitutional limits? Had the Judges been satisfied with pointing out the possibly injudicious exercise of their lawful powers by the Local Legislature, their criticisms and remonstrances would doubtless have received becoming attention.

As regards the Local Judicial District Act of 1879, which claims to fix the places of abode of the Judges, it is doubtful whether this is not an undue assumption of provincial authority. Under the 130th clause of the B. N. A. Act, taken in connection with clauses 96 to 100, which are made substantially applicable to British Columbia by clause 146, we may assume the Judges of the Provincial Courts to be Dominion officers. If so it would seem to appertain to Dominion authority to define their position, abode, personal service and responsibility, subject, of course, to the provisions of the Imperial Statute. But this Local Act of 1879 was virtually repealed by the Local Act of 1881, which admits the right of the Governor-General in Council to determine the residences af the Judges.

It is otherwise as regards the sphere of judicial operations and the duties of the Judges in relation thereto. These matters, as forming part of the local "administration of justice," have been advisedly subjected to the control of the Provincial Legislatures. This, I think, is evident from the Imperial Act of 1865, known as the Colonial Laws Validity Act. But independently of this Act, the decision in *Valin* v. *Langlois*, to which I have already adverted, establishes the principle that the Dominion Parliament is competent, for Dominion purposes, to prescribe additional duties to the Judges in their capacity as Dominion officers, and in the performance of such duties only to frame rules and prescribe procedure for their guidance whilst sitting as a Dominion Court, for the determination of questions affecting Canada as a whole. This exercise of authority on the part of the Dominion Parliament serves to mark with greater clearness the limits of local and federal authority over "Provincial Courts," and to confirm the view contended for in this paper as to to the right of the Local Legislature to regulate the procedure of the Courts when engaged in the administration of justice within the Province.

If, in providing for the local administration of justice, the Legislature were to enact anything that would hinder or interfere with Dominion judicature, the Governor-General in Council would naturally interpose to veto the Act. If not disallowed the Court itself would so construe the Act as to reconcile apparently conflicting jurisdictions and not permit the action of the Court when sitting for Dominion purposes, under a Dominion Statute, to be frustrated.

The Courts are sometimes required to fulfil Dominion functions in addition to their ordinary duties of administering provincial law. In the former event they are under Dominion control. In the latter they are exclusively subject to Provincial Legislation. The superior as well as the inferior Courts in all the Provinces of Canada are equally organized, constituted, maintained and regulated by provincial enactment in every respect, save only when they are required by special Dominion law to undertake certain exceptional duties on behalf of the Dominion. The position of the Courts towards the Local Legislature is in no wise affected by the consideration that the Judges themselves are appointed by Dominion authority, and are personally amenable to the jurisdiction of the Dominion Parliament. The position of the Judges, however anomalous at first sight it may appear, is analogous to that of the provincial Lieutenant-Governors, who, though appointed by the Governor-General and subject to his instructions, are nevertheless limited to a sphere of duty which is essentially provincial.

Further reasons of public policy might be adduced in support of the arguments urged in this paper, but enough has probably been said to justify the interpretations I have endeavoured to put upon so much of the B.N.A. Act as comes under review in the decision of the Supreme Court of British Columbia upon the *Thrasher Case*.

ALPHEUS TODD.

Ottawa, 21st April, 1882.

LAW STUDENTS' DEPARTMENT

The following are the dates of Examinations as recently fixed by the Benchers:

Junior Class	May 2.
Graduates or Matriculants of Universities	May 4.
First Intermediate	May 9.
Second Intermediate	May 11.
For Solicitors	May 9.
For Call	May 11.

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.

Anson on Contracts and Statutes.

1. State the characteristics of a judgment, distinguishing it from a simple contract.

2. Distinguish between *good* and *valuable* consideration, and state what you know as to the necessity of the existence of one or other of them to support a contract.

3. Can a contract made with a foreign sovereign be enforced by or against him in our Courts? Answer fully.

4. Give an example of a contract made void by mistake as to the nature of the transaction.

5. Point out different ways in which a contract may be discharged.

6. State broadly the distinction between the authority of a special agent and that of a general agent.

7. Of what facts does our statute law make the protest of a bill of exchange evidence?

SECOND INTERMEDIATE.

Williams on Personal Property—Ontario Judicature Act.

1. Mention some of the chief points in which personal property differs from real property.

2. "A grant cannot be made of that in which a man has no actual or potential property." Explain and illustrate this statement.

3. What is the effect of a grant of a chattel to A for his life, and after his death to B? Will the nature of the chattel make any difference? Explain fully.

4. What are the liabilites of an executor *de son tort?* and how are they created?

5. Distinguish between set off, as it existed before the Judicature Act, and counter claim, under that Act.

6. Can an action for the recovery of land be joined with any other cause of action under the Judicature Act? Answer fully, giving grounds for your answer.

7. What remedy is provided under the Judicature Act for cases in which causes of action are joined, which cannot conveniently be tried together?

SECOND INTERMEDIATE.

Equity Jurisprudence.

1. Give illustrations of the forms of words of recommendation in a will which will be construed as imperative.

2. Give illustrations of cases where the satisfaction of legacies will be held to be secured by subsequent legacies.

3. Give examples of assignments and contracts which equity will not enforce as being against public policy.

4. How does the Court deal with a case where a mortgagee pursues all his remedies concurrently?

5. In what cases will equity interfere to rectify ante-nuptial settlements?

6. Who may be the guardians to an infant?

7. How far will a Court enforce the performance of a representation of (1) an existing fact by, or (2) the intention of, a party?

EXAMINATION FOR CALL.

Real Property and Wills.

1. A person living in Montreal, owning real property and chattels situate in Ontario, dies in Montreal, leaving a will sufficient by the Quebec law to pass real estate, but insufficient by the laws of Ontario for that purpose; it is sufficient by the laws of Ontario to pass personalty, but insufficient by the law of Quebec. How should his estate in Ontario be distributed? Give your reasons.

2. A devise of lands is made "to A. and his heirs general." A. is a bastard, and can therefore have heirs of his body only. What estate in the land does he take?

3. Is a gift to build a charitable institution void under the Statutes of Mortmain (a) where the land on which the building is to be erected is already in Mortmain, (b) where the land is to be supplied from some other source after the testators death? Answer as fully and particularly as you can.

4. In a contract of sale of lands, what is the rule as to payment of interest on the purchase money, when there is no special agreement as to interest, (i.) where a time is fixed for the completion of the contract; and (ii.) where no time is fixed for its completion?

5. Can a mortgagor compel his mortgagee to produce any of the title deeds before paying him off? If so, state what deeds and during what period.

6. A. owns lot 1, and has a right of way over an adjoining piece of land. He makes a conveyance of lot 1 to B. pursuant to the Short Forms Act, which contains no exprees grant or conveyance of the right of way. Does it pass? Give your reasons

7. Is registration of an assignment of mortgage simply. sufficient notice thereof to the mortgagor?

8. Can the vendor of land by auction attend at the sale and bid for the land so as to prevent a sacrifice of of it?

9, What is implied by the use of the word "grant" in a deed?

10. A. is one of the witnesses to a will, by which there is bequeathed to his wife a legacy to her sole and separate use. Is her right to the legacy in any degree affected?

BOOK REVIEW.

Principles of the Law of Real Property, intended as a First Book for the use of students in conveyancing. By Joshua Williams, Esq., of Lincoln's Inn, Q.C. Adapted to the Laws in force in Ontario by Alexander Leith, Q.C. Toronto: Rowsell & Hutchison, 1881.

Mr. Leith's adaptation of Williams' well known and admirable work on the principles of Real Property Law supplies a long felt *desideratum*, and materially increases the debt of gratitude which is already due to the author for his former works in the same department. It is unnecessary for us to say anything in praise of Williams' "First Book," a work whose pleasant style and lucid exposition have guided so many generations of "students in conveyancing" in their arduous search after the principles of real property law. It will be generally admitted that few works have better realized the hope expressed by its author in the preface to his first edition, that he might be the "means of bringing the minds of such beginners as may peruse his pages to that tone of quiet perseverance which alone can enable them to grapple with the increasing difficulties" of his subject. Those very beginners, however, who have profited so much by the English work, have hitherto had to complain of a serious drawback to its usefulness—the fact, namely, that they were compelled in their study of its pages to learn a great deal which they immediately afterwards found it necessary to unlearn, or at all events, expedient to forget, as being inapplicable to or entirely different from Ontario law. The most experienced lawyer is compelled to recognize a difficulty of this kind in his study of English cases and text-books—how much more then must it be felt by the tyros who have year after year been preparing themselves for their "first intermediate" by laboriously "getting up" the old Law of Descent, the Stamp Acts, and the learning of advowsons and copyholds! Mr. Leith has in the work before us done much to remove this stumbling-block from a path which under the most favourable circumstances must be a somewhat thorny one, by expunging from the English work what is useless in Ontario, and inserting the law peculiar to this Province. We cannot, however, help regretting a defect, of which Mr. Leith's preface shows that he himself is conscious—we refer to the few and meagre references made to Canadian cases. The fact of the author's absence from Ontario during the preparation of the work is doubtless the reason for any deficiency in this respect. We could wish also that he had not included in his list of omissions from the English work such valuable features as the Table of Cases and List of Statutes Cited, and trust that they will not be forgotten when the book reaches a second edition. When their due weight, however, has been allowed to these and to other defects which the critical eye may discover, it will not be the less true that this little work will be of the greatest service to those for whose use it is designed, the beginners, whose primary necessity is a clear and concise exposition of elementary principles, and not a premature exploration of the wilderness of Case and Statute Law. In the interest of that large and important class, we venture to express the hope that the Legal Education Committee will see fit to substitute the Canadian adaptation of Williams for its English original in the curriculum of legal studies. We have but to add that the publishers have done their part well in the excellent typographical execution of the volume, which strikes us as being, in this respect, decidedly above the average of Canadian publications.

ARTICLES OF INTEREST IN COTEMPORARY JOURNALS.

The right of stoppage in transit.—*Central L. J.*, March 31.

Will or no will.—*Ib.*

Telegrams as evidence.—*Ib.*, April 7.

Does stipulation for attorney's fee render a promissory note non-negotiable.—*Ib.*

Should a Judge practice in a court in which the judge is his near kinsman.—*Ib.*

Presumptions of life, death and survivorship.—*Irish L. T.*, March 11, 18, April 1, 8.

The reform of legal procedure (From the *Times*).—*Ib.* March 11, 18.

Parisian law student life (From *N. Y. Times*).—*Ib.*, March 18.

Limitation of penal actions (From the *Justice of the Peace*.—*Ib.*, April 1.

Injuries to infants.—*Central L. J.*, April 14.

LATEST ADDITIONS TO OSGOODE HALL LIBRARY.

Bills of Exchange :—

A Digest of the Law of Bills of Exchange, Promissory Notes and Cheques : by M. D. Chalmers, M.A. Ed. 2. Stevens & Sons : London : 1881. 1 Vol.

Bracton :—

Henrici de Bracton de legibus et consuetudinibus Anglio. Edited by Sir Travers Twiss, Q.C., D.C.L. Published by the authority of the Lords Commissioners of Her Majesty' Treasury, under the direction of the Master of the Rolls. Vol. 4. London : 1881.

Companies :—

A summary of the Law of Companies, by T. Eustace Smith. Ed. 2. Stevens & Haynes : London : 1871. 1 Vol.

Companies :—

Company precedents for use in relation to Companies subject to the Companies Acts, 1862 to 1880, with copious notes, by F. B. Palmer. Ed. 2. Stevens & Sons : London : 1881. 1 Vol.

Conveyancing : –

Prideaux's Precedents in Conveyancing ; with dissertations on its Law and Practice. Ed. 11. By F. Prideaux and J. Whitcombe. Stevens & Sons : London : 1882. 2 Vols.

Digest :—

An analytical digest of the cases published in the New Series of the Law Journal Reports and other contemporary reports from Mich. Sittings, 1875, to Trinity Sittings 1880, with references to the statutes passed during the same period : by Cecil C. M. Dale, Esq., assisted by George A. Streeten : E. B. Ince : London : 1881. 1 Vol.

Fixtures :—

The Law of Fixtures in the principal relation of landlord and tenant, and in all the other or general relations, showing also the precise effects of the various modern statutes upon the subject, and incorporating the principal American decisions : by Archibald Brown. Ed. 4. Stevens & Haynes : London : 1881. 1 Vol.

Sale of Goods :—

The law relating to the sale of goods and commercial agency : by Robert Campbell, M.A. Stevens & Haynes : London : 1881.

Statutes :—

Chitty's Collection of Statutes of Practical Utility, arranged in alphabetical and chronological order, with notes thereon. Ed. 4. Containing the statutes and cases down to the end of the second session of the year 1880 : by J. M. Laby, Esq. Henry Sweet : London : 1880. 6 Vols.

FLOTSAM AND JETSAM.

The following, we need scarcely say, comes from Ireland :—

> Every process server shall before service compare the copies of the civil bills delivered to him for service with their respective originals, and *prior to the service of such copies* endorse his name upon the original, the time when, the manner in which, and the place where such service was made, and the person (whether relative or servant) on whom the same was served.

The extract is from 'Rules for the Guidance of Process Servers,' issued by the clerk of the peace for County Clare. After this we should think that process servers will give up the business in despair. The Court, whose officer he is, appears to be harder upon him than even the defendant and his sympathising friends are said sometimes to be. A man may escape being made to eat the writ he is serving, but how can any merely human process server record the details of an event before it happens?—*Law Journal.*

The head-note to *Smith* v. *The Great Eastern Railway Company*, L. R. 2 C. P., runs as follows :—

> The plaintiff was bitten by a stray dog at a railway station while waiting for a train. It was proved that, at 9 p.m., the dog flew at and tore the dress of another female on the plat orm ; that, at 10.30, he attacked a cat in the signal box near the station, when the porter there kicked him out and saw no more of him, and that he made his appearance again at 10.40 on the platform, where he bit the plaintiff. Held no evidence to warrant a jury in finding that the company had been guilty of any negligence in keeping the station reasonably safe for passengers.

In this inimitable tale it is difficult to know which most to admire—the rapidity with which the hero changes his sex, being first a dog, then attacking 'another female,' and then again a 'he;' or the punctuality of this dog, putting to shame the best express train of the company which so basely repudiated him, or the anticlimax, by which, after all this graphic history of tearing, cat-baiting, and kicking, no one has to pay for it.—*Law Journal.*

Law Society of Upper Canada.

OSGOODE HALL.

MICHÆLMAS TERM, 1881.

The following gentlemen were entered on the books of the Society as students :—

GRADUATES.

Alexander George F. Lawrence, Charles Julius Mickle, Herbert McDonald Mowat, George Edward Evans, John Calvin Alguire, Donald McDonald Howard, John Armstrong, David Alexander Givens.

MATRICULANTS OF UNIVERSITIES.

John R. Shaw, Lewis Elwood Hambly, Samuel McKeown, John A. McLean, Alonze Edward Swartout, William James Tremcear, Frederick George McIntosh, George Francis Burton, James Vance, William Cherry.

JUNIOR CLASS.

Oliver Kelly Frazer, Thomas Reid, Noble Dickey, William Edgar Raney, William H. Sibley, A. M. Taylor, Franklyn Montgomery Gray, Marriott Wilson, Robert Stanley Hayes, John H. Bobier, William Leaper Ross, Samuel H. Bradford, Andrew Dodds, Richard Henry John Pennefather, William Edward Lount, Claude Foster Boulton, William Whittaker, John Wesley Ryerson, Marshall Orla Johnston, John O'Neill, H. D. Folinsbee, Edmund Montagu Yarwood, George Albert Jordon, Neil J. Clarke, Albert Edward Beck, Thomas Brown Patton, Frank Morris Gowan, Edgett William Tisdale, William Kenneth Cameron, Charles Henry Brydges, Horace Walpole Bucke, Edward Ernest Louis Pillsworth, John James Smith.

Herbert Dawson was allowed his examination as an Articled Clerk.

The following gentlemen passed their examination and were called to the Bar:

Rufus Shorey Neville, Ernest V. D. Bodwell, William Cayley Hamilton, Edward A. Peck, George William Begyon, John Henry D. Munson, Charles Crosby Going, Thomas Trevor Baines, Frank Marshall McDougall, Alfred Beverley Cox, Archibald James Sinclair, George H. Muirhead, Henry Yale, Sidney Wood, Newenham Parkes Graydon, James Russell, Archibald Stewart, Robert Cassidy, Victor Chisholm, William Humphrey Bennett, Frank Andrew Hilton, George Henry Smith, John Lawrence Dowlin, William Proudfoot, George Miles Lee, Daniel Fraser McWatt, Henry Boucher Weller, Nathaniel Mills; the names are arranged in order of merit.

HILARY TERM, 1882.

The following gentlemen passed their examination and were called to the Bar:

Edwin Taylour, English Honors and Gold Medal; Adam Johnston, Honor and Silver Medal; Daniel Johnson Lynch, John Arthur Mowat, George James Sherry, Benjamin Franklin Justin, Thomas Ambrose Gorham, Charles Rankin Gould, James Lane, William James Cooper, Robert McGee, Henry Nason, William Johnston, Albert Edward Wilkes, George Frederick Jelfs, Henry Joseph Dexter, Stewart Masson; the names are in order of merit.

The following gentlemen were called to the Bar under the Rules in Special Cases :—

Donald McMaster, Henry Gordon McKenzie.

The following gentlemen were entered on the books of the Law Society as students at law :—

GRADUATES.

Marcus Selwyn Snook, Stephen Johnston Young, Alexander Sheppard Lown, John Earl Halliwell, Patrick Macindoe Bankier.

MATRICULANTS OF UNIVERSITIES.

Nelson Sharp, Stephen Alfred Jones, Frank Burr Mosure, Edward Wesley Bruce, Robert Barry, Alexander Campbell Aylesworth, Thomas Hislop.

JUNIOR CLASS.

Willard Snively Riggins, Allan Napier McNab Daly, George Cooper Campbell, John Elliott, Alexander A. McTavish, John Dawson Montgomery, George Albert Lorcy.

Frank Ernest Coombe was allowed his examination as an Articled Clerk.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

1881.
- Ovid, Fasti, B.I., vv. 1-300; or
- Virgil, Æneid, B. II., vv. 1-317.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 1884, and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil at their option, which are appointed for Students-at-law in the same year.

Students-at-Law.

CLASSICS.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, B. G. B. IV., c. 20–36, B. V. c. 8–23.
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles. V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

1884. Cicero, Cato Major.
Virgil, Æneid, B. V., vv. 1-361.
Ovid, Fasti, B. I., vv. 1-300.
Xenophon, Anabasis, B. II.
Homer, Iliad, B. IV.

1885. Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.
Cicero, Cato Major.
Virgil, Æneid, B. I., vv. 1-304.
Ovid, Fasti, B. I., vv. 1-300.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose.

MATHEMATICS.

Arithmetic; Algebra, to end of Quadratic Equations; Euclid, Bb. I., II. & III.

ENGLISH.

A paper on English Grammar.
Composition.
Critical Analysis of a selected Poem:—
1882—The Deserted Village.
The Task, B. III.
1883—Marmion, with special reference to Cantos V. and VI.
1884—Elegy in a Country Churchyard.
The Traveller.
1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencemen. of the Second Punic War to the Death of Augustust Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy, and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.

1883, 1885: Emile de Bonnechose, Lazare Hoche.
1882, 1884: Souvestre, Un philosophe sous les toits.

OR, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics, 7th edition, and Somerville's Physical Geography.

A student of any University in this Province who shall present a certificate of having passed within four years of his application an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be) upon giving the prescribed notice, and paying the prescribed fee.

From and after January 1st, 1882, the following books and subjects will be examined on:

FIRST INTERMEDIATE.

William's Real Property; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and Cap. 117, Revised Statutes of Ontario and Amending Acts.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, Wills; Snell's Equity; Broom's Common Law; Williams' Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 130.

FOR CERTIFICATES OF FITNESS.

Taylor on Titles; Taylor's Equity Jurisprudence; Hawkin's on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

FOR CALL.

Blackstone, vol. I, containing the Introduction and Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobold on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills; the Statute Law and Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

The Law Society Terms begin as follows:—

Hilary Term, first Monday in February.
Easter Term, third Monday in May.
Trinity Term, first Monday after 21st August.
Michælmas Term, third Monday in November.

The Primary Examinations for Students-at-law and Articled Clerks will begin on the second Tuesday before Hilary, Easter, Trinity and Michælmas Terms.

Graduates and Matriculants of Universities will present their Diplomas or Certificates at 11 a.m. on the second Thursday before these Terms.

The First Intermediate and the Attorneys Examination will begin on the Tuesday before Term at 9 a.m.

The Second Intermediate and the Barristers Examinations will begin on the Thursday before Term at 9 a.m.

The First Intermediate Examination must be passed in the Third Year, and the Second Intermediate Examination in the Second Year before the Final Examination, and one year must elapse between each Examination, and between the Second Intermediate and the Final, except under special circumstances.

Service under articles is effectual only after the Primary Examination has been passed.

Articles and assignments must be filed within three months from date of execution, otherwise term of service will date from date of filing.

Full term of five years, or, in case of Graduates, of three years, under articles must be served before Certificate of Fitness can be granted.

Candidates for Call to the Bar must give notice, signed by a Bencher during the preceding term, and deposit fees and papers fourteen days before term.

Candidates for Certificate of Fitness are required to deposit fees and papers on or before the third Saturday before term.

FEES.

Notice Fees	$ 1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Attorney's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00