# The Canada Law Journal.

VOL. XXVI. JUNE 16, 1890. No. 11.

ON another page will be found the list of the Autumn Assizes which has just been published. Mr. Justice Falconbridge takes the Summer Assizes at Toronto, commencing June 10th, the Assizes at Bracebridge on July 14, and at Parry Sound on July 17. Mr. Justice Street will take the sittings at Sault Ste. Marie, commencing July 11, and at Port Arthur on July 18.

---

THE following Rules of the Supreme Court of Judicature for Ontario were passed on June 13, 1890:—

1,265. In the absence of the Clerk in Chambers, orders made by a judge of the High Court in Chambers may be signed by the assistant Clerk in Chambers; and such orders signed by the said assistant Clerk in Chambers shall have the same force and validity as if signed by the Clerk in Chambers.

1,266. All appeals to a Judge in Chambers from the report, certificate, order, decision, or finding of any officer of the court must be argued by counsel.

1,267. Rule 1,262 is amended by striking out the words "the County of York" and substituting therefor the words "any county."

---

IN *re The London and Ontario Investment Company and Young*, which came up lately before Mr. Justice Street on appeal from one of the Taxing Masters on a question of mortgagees' costs of sale proceedings, a decision was given which will delight the hearts of mortgagees' solicitors. The mortgage from Young to the Company provided that on default the mortgagees might exercise the power of sale therein contained without notice. Upon default taking place, the mortgagees proceeded to sell under the power, and prepared and served notices of sale upon the mortgagor, his wife, and a tenant of the mortgaged premises. A bill of the mortgagees' costs of sale was rendered at $138.95, exclusive of the costs of taxation. Upon the taxation of this bill the mortgagor objected to the allowance of the costs of the preparation and service of the notices of sale, amounting to $33.55, and the objection was sustained by the Taxing Master on the ground that the service of the notices was unnecessary and improper. Upon an appeal from this ruling it was contended with great force by counsel for the mortgagor that the mortgagees themselves had drawn up a contract in their own interest and for their own benefit dispensing with notice, and to say

that a further personal notice was required by implication would be equivalent to annexing a condition to the power of sale which the maker of the power did not see fit to provide, and the court would be making a contract for the parties instead of enforcing the one made by themselves; that the right to costs is a matter of contract, and that these costs being unnecessary under the contract the mortgagor could not be charged with them (see *Canada Permanent* v. *Teeter*, 19 O.R., 156). The court, however, held that the charges were proper and necessary, and as it was on a question of costs, there could be no appeal from this decision. In *Canada Permanent* v. *Teeter* it was held that the service of a notice of sale where the power requires no notice to be served, is a voluntary act, and is therefore unnecessary. Also in c. 27 of the Ontario legislation of last session, there is an express recognition of the validity of a sale under a power of sale providing for sale without notice. For these reasons we think that the decision is erroneous, and that the Taxing Master was right in holding the charges to be unnecessary and improper.

---

LEGAL documents are sometimes ridiculed by the unlearned for their apparent verbosity, and for the way in which the draftsman rings the changes on past, present, and future tenses, and attempts to provide for all sorts of contingencies; but the strict way in which written instruments are construed by the Courts shows that what seems to the unlearned foolishness is often a grave necessity. This is well illustrated by two recent cases of a very dissimilar character, the one relating to the construction of a contract not to carry on a particular business, *Stuart* v. *Diplock*, 43 Chy. D., 43, noted *ante* p. 232, in which it was held that the contract was not violated by the carrying on of a part of the trade in question. Here the omission of the familiar form of words " or any part thereof," proved fatal to the plaintiff's claim to restrict the defendant from carrying on the business in question altogether as was probably intended. The other case is *Re Wormald, Frank* v. *Muzeen*, 43 Chy.D., 633, noted post p. 328, in which the construction of a forfeiture clause in a will was in question. The will contained a devise and bequest to trustees upon trust for a married woman for her separate use " without power of anticipation," with a gift over " on her anticipating " the rents and income or any part thereof: and it was held that the words "anticipating " did not include " attempting to anticipate," and though the married woman had in fact executed a mortgage of her interest, yet this invoked no forfeiture because the mortgage was void and inoperative, and was a mere attempt to anticipate, which was not provided for. There can be little doubt that this was just the kind of act the testator wished to guard against; he did not intend to provide for a contingency which could not possibly happen, but for a contingency which might happen, viz., the attempt of the beneficiary to evade the restriction or enjoyment which he had seen fit to impose, and yet the draftsman of the will probably failed to carry out his client's instructions because he neglected to introduce into the forfeiture clause the words " or attempt to anticipate." As we have said before, these cases illustrate the necessity of that amplitude of expression which, though fatal to elegance of style, is necessary to the legal effect of instruments.

## *IMPRISONMENT FOR DEBT UNDER THE DIVISION COURTS ACT.*

The statement is often made that imprisonment for debt no longer exists, and has long been abolished, like hanging in cases of larceny, and other barbarous punishments of a ruder age. Yet there nevertheless is a sense in which imprisonment for debt still exists, whilst the theory is that this engine is only applied in cases of fraudulent or contumacious debtors who refuse to make satisfactory explanation of the disposition made by them of their property, or disobey the orders of Court for payment where the Court is satisfied that they are able to pay the debt. Besides the committal clauses of the Division Courts Act there are several chapters in the Revised Statutes of Ontario which deal with this subject.

Chapter sixty-seven of the Revised Statutes is entitled, "An Act respecting Arrest and Imprisonment for Debt," and makes provision in certain cases, and where the amount of the claim is $100 or upwards, for the imprisonment of debtors and their detention until satisfactory bail is furnished by a bond of not less than two or more than four sufficient sureties, conditioned that the person shall observe and obey all notices orders and rules of the Court concerning the debtor or person ordered to pay, or his appearing to be examined *viva voce* or otherwise, or his returning or being remanded into close custody. In the following chapter, relating to Indigent Debtors, certain relief is given to debtors in close custody for debt, and it is provided that in certain cases the debtor may obtain an order that the creditor pay the debtor a weekly allowance of $2 for his support, and in default of payment the debtor may demand his discharge. But the debtor is not, however, to be entitled to such allowance or to his discharge if, upon an examination pending the application, he fails to make full answer concerning any property or effects of which he may be possessed, or to which he may be entitled, or under the control of some other person for his use and benefit, or which he may have fraudulently disposed of to injure his creditor. By another section of the same Act provision is made for a motion by the debtor for his unconditional discharge upon his making oath that he is not worth $20 exclusive of the goods and chattels exempt from execution, and that he has submitted himself to be examined pursuant to order, or that no such order has been served, and upon the hearing of the application (if such examination has taken place) if the matter thereof is deemed satisfactory, the debtor shall be discharged from custody, but not, of course, from his liability to pay the debt. The Court exercises a discretion on such applications, but the leaning is in favor of the discharge of the debtor, if he has given a reasonable account of the disposition made by him of his effects; but in cases where the debt was contracted by any manner of fraud or breach of trust, or without reasonable assurance that it could be paid, or the debt is a judgment recovered in an action for breach of promise of marriage, seduction, crim. con., libel, or slander, the Court may order his re-committal for a period not exceeding twelve months, and to be then discharged.

It is, however, with the question of imprisonment under committal orders under the judgment summons clauses of the Division Courts Act that we propose to deal shortly in these pages. Some time ago this journal invited discussion on the utility of these clauses, and several communications were received and published from County Court Judges, who were concerned with the practical working of the Act. They were all of opinion, and it will be found to be that of the majority, that these clauses provide a speedy and inexpensive method of making collections of a considerable amount of money which otherwise could not be collected at all, and of making fraudulent debtors and deadbeats (a numerous class unfortunately in our cities and towns) pay up small accounts owing to tradesmen and mechanics, who could ill afford to lose the money.

When a suitor has recovered judgment for debt, damages, or costs, for an amount within the jurisdiction of the Division Courts, he has two courses open to him. He may proceed either against the goods or against the person of his debtor. If the debtor is a poor man the usual course is to proceed against him personally. A large proportion of his chattels are now exempt from seizure, and what is not exempt may be of no value, or may be claimed by some third person, sometimes justly, but more usually unjustly, to protect the debtor. Small traders often have a friendly bill of sale or chattel mortgage covering their goods, or an obliging landlord with rent in arrear, and some very small people take refuge under the Married Woman's Property Act. If the judgment is against the husband, the goods are claimed by the wife, and if against the wife, the husband puts in a claim. It is impossible for a creditor, without the tedious and expensive process of interpleader, in which he may not be successful, to find out under which thimble the pea really is. His usual course, under such circumstances, is to take advantage of the judgment summons clauses of the Division Courts Acts. By section 235 of the Act a judgment debtor may be examined upon oath before the judge at the instance of his creditor, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has of discharging the debt, and as to the disposal he has made of any property: provided the creditor or his agent shall, before the issue of the summons, make and file with the Clerk of the Court, an affidavit stating that the judgment remains unsatisfied, his belief that the debtor is able to pay the debt, and that he is liable to be examined under the Act. If the party so summoned does not attend on the examination, or attends and refuses to be sworn, or refuses to make satisfactory answers on the matters above mentioned; or if it appears to the judge, from the examination of the debtor or by other evidence that the creditor obtained credit or incurred the liability under false pretences, or by means of fraud and breach of trust, or has made or caused to be made any gift, delivery, or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or it appears to the satisfaction of the judge that the debtor had, when summoned, or since judgment, sufficient means and ability to pay the debt, the judge may, if he thinks fit, order such party to be committed to the

common gaol where the debtor resides or carries on business, for any period not exceeding forty days. By another section, the judge before whom the summons is heard, may, if he thinks fit, rescind or alter any order for payment previously made, and make any further order either for the payment of the whole debt forthwith, or by instalments, or in any other manner that he thinks reasonable or just. If the Court is not satisfied with proof of means, it may dismiss the summons or make an order for payment by instalments of the sum due. It has recently been held that no order of committal can be made against a married woman in respect of any judgment arising out of contract, as her contracts, under the Married Woman's Property Act, bind her estate and not herself personally (see *Scott* v. *Morley*, 20 Q.B.D., 120). The person obtaining the summons may summon and examine all witnesses whom the judge thinks requisite, on all the subjects mentioned above, and the debtor may also be required to give an account of the disposition made of property in his possession before the debt was contracted: *Ontario Bank* v. *Mitchell*, 32 C.P., 73. The debtor is bound virtually to give a full exposition of his affairs, and his answers should show a satisfactory disposition of his property, and any illegal and wrongful disposition of his property, or by gambling, etc., would be deemed unsatisfactory (see *Graham* v. *Devlin*, 13 P.R., 245).

The jurisdiction to imprison is within certain limits discretionary, so that each judge enforces the sections of Act according to his own views. The usual way is after an order has been obtained for payment of the whole debt, or by instalments, to commit on default being made. But a commital ought clearly to take place only when there has been wilful default in payment; because strictly the power of committal is not an imprisonment for debt; it is an imprisonment for past dishonesty together with the prospect of the plaintiff getting his money (see *Stonor* v. *Fowle*, 84 L.T., 173). In this way a great deal of money is collected with very little actual imprisonment. In the administration of the Act the question very often arises as to the meaning of the word "means" in section 235. Is it sufficient to show that money exceeding the judgment debt has passed through the debtor's hands since the judgment was given, or should the necessary expenses of the debtor be deducted and the surplus only considered as "means"? We think the correct practice is before committal to make inquiry as to the debtor's family, and what other payments he has to make; for if a judgment debt were to have priority over current expenditure it would necessarily result in forcing the debtor still deeper into the quagmire of debt.

It is also advisable that the judge should in the exercise of the jurisdiction to commit, inquire into the consideration of the judgment debt, and take a stricter or more lenient view of the debtor's means according to the circumstances under which the debt was incurred. In cases where the debt has been contracted under circumstances which show criminal fraud, or where, in the belief of the judge, either of the parties is supporting his case with perjured evidence (and the experience of most Division Court Judges is that a large number of the cases before them are of that kind, and that the atmosphere of the court fairly reeks with perjury), a much stricter view should be taken of the debtor's means than

in the case of the poor wretch who is run into debt by a spendthrift wife, or gets into the hands of Shylocks or sharks. No doubt it is sometimes a difficult matter for the judge to learn the truth as to the debtor's means, and he frequently has an anxious and unpleasant task. The plaintiff, on the examination of the debtor, is prepared to show that the defendant is receiving a good salary, is living in fine style, or has expectations, or has contracts on hand, or is engaged at work from which he must necessarily make enough to enable him to pay. If the debtor does not appear it would be wise in the judge to take these statements subject to a mental discount of fifty per cent. In most cases the defendant appears in person, having donned his worst clothes—ragged and out of elbows—with a pitiful tale of woe. Dr. Johnson somewhere says that "human nature is a d——d rascal," and that is often very apparent in the examination of judgment debtors. In such cases a skilful examination, especially when the examiner has posted himself as to the debtor's means and antecedents, will be effectual in exposing the sham cases. In cases of actual poverty and distress the judge should exercise his discretion and make a light order of $1 a month, or give him time to pay. In several of the counties in this Province these sections of the Act are a dead letter. The debt-collecting business of the Division Court is no doubt loathsome work, and to judges it may be disgusting to be made the instrument of the legalized tyranny of small money lenders and local Shylocks, or to collect debts which would never have been incurred were it not for the demoralizing system of selling on credit. The consequence is that in such counties a great amount of money remains uncollected because of this neglect. And the amount of money actually collected bears but a small proportion of the amount which is paid on account of these clauses of the Act being carefully enforced. In the City of Toronto the information of the officers of the courts is that the amount of money collected by these means, directly or indirectly, does not fall far short of $100,000 per annum. The fact is that a vast body of people in Toronto will not pay their small debts without compulsion of law, the ultimate resort being the power of imprisonment. If imprisonment were abolished this compulsion would be gone, and tradesmen ruined by uncollectable debts. So far from advocating the repeal of the committal clauses of the Division Courts Act we should like to see them enforced by the Division Court judges in all the counties of the Province; not with unnecessary harshness, but with the exercise of a wise discretion, and in the spirit of the enactments in that behalf.

## *COMMENTS ON CURRENT ENGLISH DECISIONS.*

We continue the Law Reports, Chancery Division, for May.

MARRIED WOMAN—CHOSE IN ACTION—TITLE OF HUSBAND—GENERAL PROBATE OF WILL OF MARRIED WOMAN.

In *Smart* v. *Tranter*, 43 Chy.D., 587, the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) have reversed the judgment of Kay, J., 40 Chy.D., 165 (noted *ante* vol. 25, p. 158). It will be remembered that in this case a woman married

before 1882 who was entitled to *choses in action*, but had no separate property, nor any property of which she could dispose by will; made, without the assent of her husband, a will, by which she appointed executors, and gave all her property away from her husband. After her death, probate of her will was granted in general form to one of the executors. This action was brought by the husband against the executor to recover the *choses in action*. Kay, J., dismissed the action on the ground that so long as the probate remained unrevoked the plaintiff could not claim adversely to the will, and that his remedy was to appeal to the Probate Division to revoke the probate, and to grant him administration of such estate of his wife as she could not dispose of by will. But the Court of Appeal decided that the effect of the general probate was only to enable the executor to get in all the assets of the wife, whether she had power to dispose of them by will or not, and did not affect the beneficial title to them; and that as to the *choses in action* to which the husband was entitled, the executor became trustee of them for him, and that the husband was entitled to have them transferred to him subject to the same deductions as they would have been subject to, if the husband had taken out administration under the old practice, under which the probate would have been limited to such part (if any) of the estate as the wife could properly dispose of by will, and administration as on an intestacy granted as to the rest of the estate.

ADMINISTRATION—DEBTS—MARSHALLING ASSETS—PECUNIARY LEGACIES—REAL ESTATE CHARGED WITH DEBTS.

*In re Bate*: *Bate* v. *Bate*, 43 Chy.D., 600, a question arose whether, where real estate was devised charged with payment of debts, the real estate could be resorted to, before the personal estate not specifically bequeathed, including what was required for payment of pecuniary legacies, had been exhausted. Kay, J., answered this question in the negative, and in so doing took occasion to point out that the statements to the contrary in Seton on Decrees, 4th ed., 989, 990, Snell's Principles of Equity, Jarman, and Theobald were erroneous.

PRACTICE—REVIVOR—ACTION FOR INJUNCTION AND DAMAGES—DEATH OF SOLE PLAINTIFF.

In *Jones* v. *Simes*, 43 Chy.D., 607, a motion was made to discharge an order to continue proceedings taken out by the executor and devisee of a sole plaintiff who had died. The action was for a mandatory injunction, and damages for obstruction of light to a freehold house. The plaintiff died more than six months after the writ issued. It was contended that the cause of action did not survive; but it was held by Chitty, J., that as to the damages, inasmuch as under Ord. xxxvi., r. 58, in the case of a continuing damage, the damages are now to be assessed not merely up to the date of the writ as formerly, but up to the time of the assessment, the executor might continue the action to recover damages accrued within six months prior to the testator's death, to which he would be entitled under 3 & 4 W. 4, c. 42, s. 2 (and see R.S.O., c. 110, s. 9, which contains no limit as to six months). We may observe, however, that there appears to be no provision in Ontario by rule or statute similar to that contained

in the English Ord. xxxvi., r. 58, and consequently as to damages accrued between the date of the writ and the death of the plaintiff the present case would probably be no authority in Ontario, and here a new action for such damages would be necessary. As regards the equitable remedy to have the obstruction to the light removed, it was held that this was a right which passed to the devisee, by whom the proceedings to enforce it might be carried on. This equitable right, it was held, did not stand on the same footing as the old common law right of action for a tort.

POWER OF APPOINTMENT—INVALID EXERCISE OF POWER—FRAUD ON POWER—APPOINTMENT TO OBJECT OF POWER WITH UNWARRANTED DIRECTIONS FOR SETTLEMENT—TRUST FOR PERSONS NOT OBJECTS OF POWER.

*In re Crawshay, Crawshay* v. *Crawshay*, 43 Chy.D., 615, is a case on the law of powers, and illustrates the rule that any appointment in favour of other objects than those contemplated by the power, whether by trust or otherwise, is an invalid exercise of the power. In this case a testator had power to appoint £35,000 to and among his children. By his will he bequeathed £150,000 to trustees for his daughter Jessie for life, and after her death for her children. The will then recited the power of appointment of the £35,000, and by virtue of the power the testator appointed £10,000 thereof in favour of Jessie, but directed this sum to be paid to the trustees of the £150,000, to be held on the same trusts. He also appointed £17,000 in favour of two other daughters, and the residue of the fund of £35,000 he appointed to his son Robert absolutely; and in case he had exceeded his power in not appointing the £10,000 to Jessie unconditionally, and in case his daughter or her husband, or any other person, should object to the settlement, or should not confirm it, if required so to do, then he appointed the £10,000 to his son Robert, "but who will, I am assured, settle the same voluntarily in the manner in which I have attempted to settle the same as aforesaid, so as thereby to carry out my wishes." After the testator's death, his son Robert executed a declaration of trust of the £10,000 to carry out his father's wishes. There was no evidence (other than the will itself) of any bargain between the testator and his son that the latter should settle the £10,000. North, J., upon the application of the trustees raising the question as to the validity of the appointment, determined, (1) that the appointment in favour of the daughter Jessie, being accompanied by the condition as to settlement of the £10,000, was for that reason invalid; (2) that the £10,000 did not pass to Robert under the appointment of the residue, but (3) under the last appointment to the son, there being no evidence of any bargain by the son to settle the fund, but only an expression of the testator's wish that he should do so, the fund would pass to the son absolutely, free from any obligation to settle it, and therefore it was validly appointed.

WILL—CONSTRUCTION—GIFT TO MARRIED WOMAN FOR LIFE WITHOUT POWER OF ANTICIPATION—GIFT OVER "ON HER ANTICIPATING" THE INCOME—MORTGAGE OF LIFE INTEREST.

The question *In re Wormald, Frank* v. *Muzeen*, 43 Chy.D., 630, was whether a gift over of a fund bequeathed to a married woman for life without power of

anticipation, took effect on her executing a mortgage of her life interest during coverture. North, J., was of opinion that "anticipate" did not mean "attempting to anticipate;" that the mortgage of the life interest was entirely inoperative, and consequently there was no forfeiture.

WILL—FORFEITURE CLAUSE—ABSOLUTE GIFT—BANKRUPTCY.

*Metcalfe* v. *Metcalfe*, 43 Chy.D., 633, was a case in which the effect of a forfeiture clause in a will had to be construed. By the will the testator gave personal estate to his children as tenants in common. He then gave to trustees real and personal estate, on trust, to pay the rents and profits to his children as tenants in common during their lives, with benefit of survivorship. He then gave certain reversions to trustees on similar trusts. And he provided that if by act or operation of law any interests given by his will in trust for his children should be aliened whereby the same should vest in any other person, then his trustees should apply the interest so aliened to and among the other persons entitled by survivorship, as in case of the death of the person so aliening. One of the children was, at the testator's death, a bankrupt. Within a year afterwards she became entitled to property which, when sold, was sufficient to pay her debts and the costs, but the bankruptcy was not formally annulled until two years after that. Kekewich, J., decided that as to the absolute gift of a share of the personal estate, the forfeiture clause was repugnant and had no effect. He also held as to the remainders not come into possession before the annulment of the bankruptcy, that as personal enjoyment by the legatee was not interfered with, the forfeiture therefore did not take effect And that for the purpose of ascertaining when the annulment of the bankruptcy took effect, the time when the bankrupt came into legal possession of property enough to pay her debts and the costs, and not the time of the formal annulment of the bankruptcy, must be taken.

POWER—EXECUTOR RENOUNCING—EXERCISE OF POWER BY EXECUTOR RENOUNCING.

The only other case to be noticed is *Crawford* v. *Forshaw*, 43 Chy.D., 643. In this case a testator appointed three executors. He then gave the residue of his estate to certain charitable institutions or others as "my executors herein named may select, to be divided in such proportions as they may approve of." Two of the executors proved the will, and the third renounced. On the application of the two executors it was determined by Kekewich, J., that the renouncing executor, notwithstanding his renunciation of probate, was entitled to join with the two executors in exercising the power of appointing the residue. That this was a power imposed on the executors, not as part of their office as executors, but as trustees.

# Notes on Exchanges and Legal Scrap Book.

SOME CURIOUS PLEAS.—A man was once tried in Illinois for horse-stealing, upon evidence sufficiently conclusive to satisfy even his own counsel that conviction was inevitable. Still, that worthy was in no way daunted, but, rising for the defence, said he should not attempt to controvert the evidence before the court, but would put in a plea of matrimonial insanity. "Matrimonial insanity!" exclaimed Judge W——, mated, as everybody knew, to a most unamiable woman. "That is a novel defence; but let us hear the evidence." A witness was soon in the box who had known the prisoner for ten years, and deposed that in that time the delinquent had married half a dozen times and was living with his sixth wife when arrested. "Well," continued the witness, "if any of them was better than the others, I am not aware of it; they were all a sorry lot. They kept the man constantly in hot water by their peevish, scolding, quarrelsome dispositions." Other witnesses having confirmed this account of the prisoner's matrimonial mistakes, his counsel addressed the court, dilating upon the cunning way in which women drew men into matrimony, and the wondrous change that came over them when the victim was ensnared; finishing up by contending that his client could not be held a responsible agent after being galled by such Xantippes for ten years. This skilful "touch of nature" was sufficient for the judge, whose charge ended thus: "This court has had a certain amount of matrimonial experience with one female, and such experience has not been altogether of a satisfactory character. But here is a man who has been so blind, imbecile, and idiotic as to marry in ten years six horrible scolds and shrews. For so doing I class him as a natural fool; and even if he possessed any intelligence, the dwelling with these women must have destroyed it. The plea of the counsel for the defence is sound in law and equity, and I charge you to bring in a verdict of acquittal." The jury did as they were bid. A tax collector at Naples ran away with a large sum of public money, was caught, brought back, and put upon his trial. His counsel admitted the facts, but contended that the collector was one of the people, the money was the people's money, and it would be monstrous to convict a man of stealing what was his own; and the jury being of the same mind acquitted the thief. A barrister retained to defend an unhappy man charged with purloining a duck, found himself embarrassed in consequence of the rogue having exercised his invention over freely, and having volunteered several explanations of the matter. First, he said he did not steal the duck—he had found it; then he said somebody had given him the duck: then that his dog had picked it up; and lastly, that a malicious policeman had put the duck in his pocket unknown to him. Putting the case to the jury, his counsel left the gentlemen to take their choice, saying: "My unfortunate client has told half a dozen different stories as to how he became possessed of the duck. I don't ask you to believe all these stories, but I will ask you to take any one of them." Which story they took the advocate never knew, but the man got off. One plea, if it is a good one, is quite enough, and in certain

cases there is none so good as infancy. The law is very tender of "infants," going great lengths to protect them against themselves. A woman was arrested in Pressburg, Hungary, for receiving stolen goods. She was by birth a Jewess; but six months previous to her detection had been baptized into the Roman Catholic Church. When put upon her trial she pleaded that she was an infant, and could not therefore be held responsible for what she had done—the date of birth in Hungary running according to the date of baptism: and after serious cogitation, the tribunal decided the defence a good one, and that she, a woman of forty, was legally but six months old.—*Green Bag.*

---

DEFINITION OF "ATTEMPT."—We find our taste for definitions and our fondness for animals gratified in *Reg.* v. *Brown*, 24 Q.B.D., 357, where Lord Coleridge, C.J., Pollock, B., and Field, Manisty, Cave, Day, and Grantham, JJ., sat upon the grave question whether a duck is an animal. We rejoice to find our impression of some years' standing confirmed by the decision of the court that a duck *is* an animal. This speaks well for the judgment of the judges, for, according to the senior Mr. Weller, "the man as can form a ackerate judgment of a animal, can form a ackerate judgment of anythin'." The more important question, however, was as to the definition of an "attempt." The conviction was of an attempt to commit an unnatural offence with domestic fowls, including, we infer, a duck, and the point was raised, that as the offence was impossible of commission, there could be no "attempt" to commit it. In other words, that there can be no attempt to do the impossible. The court unanimously denied that reasoning, disapproving *Regina* v. *Collins* and *Regina* v. *Dodd*, in which it was held that where one put his hand into another person's empty pocket he could not be convicted of an attempt to steal. This accords with our views, and two American cases—*Com.* v. *McDonald*, 5 Cush., 365, and *People* v. *Jones*, 46 Mich., 441—hold precisely the same doctrine: and *Rogers* v. *Com.*, 5 S. & R., 462; *State* v. *Wilson*, 30 Conn., 500; *Kunkle* v. *State*, 32 Ind., 520; *Hamilton* v. *State*, 36 id., 280; *State* v. *Beal*, 37 Ohio St., 108, hold the like doctrine in respect to acts *with intent* to do a particular thing. Mr. Bishop is of the same opinion. But the Supreme Court of this State, in *People* v. *Moran*, 54 Hun., 279, hold the contrary of an attempt to pick a pocket which was empty, Van Brunt, C.J., and Barrett, J., being of that opinion, but Daniels, J., dissenting. The court had not the last English case before them. Judge Barrett distinguishes between "attempt" and "intent"—"an act done with a particular intent and an attempt to commit a specific offence," and he is "surprised at Mr. Bishop's difficulty in reconciling the cases. Mr. Jerome's illustrations are apt and plausible, but hardly convincing. I agree that if we throw a stone at a piece of plate-glass, and fail to break it because the glass was too strong, there is an attempt to break plate-glass. The act tended to break it, and failed. If, however, the stone were thrown at what appeared to be plate-glass, but was not, the wrong-doer might be guilty of throwing with intent to break plate-glass, but no matter what was in his mind, he could not be guilty of an attempt to break anything save the shining object

which he mistook for glass. So as to the scare-crow illustration, a man does not in a legal sense attempt to commit murder, when passing through a field in the dusk, he shoots at a dummy, believing it to be his enemy. He shoots with intent to kill his enemy, but that is not the crime of an attempt to commit murder." This seems to us too fine, although it is very ingenious. Suppose that a man wrongfully shoots at another man, and hits him, but the latter is clad in underwear of impenetrable steel. Will Judge Barrett tell us that there is no attempt to commit murder? To attempt means to try, and that is all there is of the dispute. There is no distinction in law, or logic, or usage, between "attempt" and "intent." A man may "attempt" to jump over a fence ten feet high, although it is impossible, and his endeavour is not simply an "intent to attempt" to jump over the fence. The intent is involved in the attempt. The matter is reduced to absolute common sense in the Rogers case, where it is said: "The intention of the person was to pick the pocket of Earle of whatever he found in it, and although there might be nothing in the pocket, the intention to steal is the same." For "intention" read "attempt," and the law and sense are just as good. And forcibly and more elaborately the same idea is expressed in *Com.* v. *Jacobs*, 9 Allen, 274: "Whenever the law makes one step toward the accomplishment of an unlawful object, with the intent or purpose of accomplishing it, criminal, a person taking that step with that intent or purpose, and himself capable of doing every act on his part to accomplish that object, cannot protect himself from responsibility by showing that by reason of some fact unknown to him at the time of his criminal attempt, it could not be fully carried into effect in the particular instance." Judge Barrett is right in saying that "an attempt to commit larceny necessarily contemplates an act tending to effect the felonious *taking of specific property*." He is wrong, we think, in supposing that the specific property must be present so that it can be taken. Suppose it were a pocket-book, and the pickpocket got hold of it, but could not remove it because it was firmly fastened to the bottom of the pocket. Would there not still have been an attempt to take it? This case is not different from the case of the empty pocket. Bishop says, very exquisitely: "The means must be adapted to the end, but the adaptation need only be apparent."—*Albany Law Journal.*

---

DANGER DEEMED A "DEFECT" IN THE CONDITION OF MACHINERY.—Does danger constitute a defect in the condition of a machine, within the meaning of section 1, sub-section 1, of the Employers' Liability Act? No doubt to attempt to define what "defect" is in the abstract would be to attempt an impossibility, and it would be hardly less difficult to define every possible thing which might come within the meaning of the word "defect"; but *Morgan* v. *Hutchins*, reported in this month's number of the *Law Journal*, lays down a principle sufficiently broad to cover, at all events, the narrower question in reference to danger—a principle, too, that will be found susceptible of very extensive and general application. That important case came before Lord Coleridge, C.J., and Lord Esher, M.R., on a County Court appeal, under those circumstances:

An action had been brought under the Employers' Liability Act by the plaintiff, a boy of thirteen, against the defendants, for damages for the crushing of one of his hands in a leather-pressing machine. The County Court Judge directed the jury to consider whether, in the first place, the boy was using the machine in the performance of his duty; and in the second, whether there was a defect in the machinery in not fencing it or covering the cogs. The jury found a verdict for the plaintiff for £195. From the facts proved at the trial it appeared that the machine in question consisted of rollers which were put in motion by cog-wheels at the side. The boy's duty was to feed the machine with leather, and to keep the leather straight as it passed between the rollers through the machine. The boy was put to the work after merely being told by another boy how to do it. Upon the day of the accident the leather became twisted in some way, and the boy, in endeavouring to straighten it, got his hand entangled in the cogs of the wheel at the side of the machine, and it was crushed. The wheel and cogs were not so fenced by wire-guard or otherwise as to render such an accident impossible, nor were they in any way covered or protected. An inspector of factories had, in 1885, warned the defendants against employing young persons to work the machine, for if the cogs of the wheel were not protected it was dangerous even to adults.

The contention on behalf of the appellant was, that the defect, for the purposes of the Act, must be a defect which prevents the machine doing properly the work it is required to do, that defect must apply to the machine itself, and so that danger was not a defect if the machine here in question was not otherwise defective for the purpose of rolling leather. What was the alleged defect? A part of the machine was wanting—that is, a fence to the cog-wheels; but, then, that would not have made it a better machine for pressing leather—so that, on the facts, the question was distinctly raised as to whether, however dangerous a machine may be, it can be defective if it is not defective for the purposes for which it is used. For instance, contended the plaintiff, a machine may be defective in the hands of a boy when it is not defective in the hands of a man; but, without necessarily going that length, the fact that here the machine could not perform its work without human skill and labour was, of itself, something that had to do with the "condition" of the machine. As Lord Esher put it: If its condition be such that the workman cannot do his part with safety, is that, or is it not, a defect in the condition of a machine the working of which is a necessary performance? However, no authority precisely in point was cited. *Heske* v. *Samuelson & Co.* (12 Q.B.D., 30) was rather the case of the misapplication of a perfect machine, defective in this, that all lifts for coke ought to have something in the way of a guard or fence to prevent the coke falling out; but, in a measure, the court there decided the principle which the court here were called on to lay down definitely. While, again, in *Walsh* v. *Whiteley* (21 Q.B.D., 37) it would rather seem to have been assumed that if the machine were dangerous to a workman, without any fault of his own, it came within the Act, the only doubt that existed in the minds of the two Lords Justices, who differed from the learned Master of the Rolls, being as to whether the defect had arisen from the

negligence of the employer. In *Morgan* v. *Hutchins*, however, a distinct and unqualified enunciation on the subject has been delivered. "The governing principle, in my opinion," said Lord Coleridge, "is that when a machine is defective with reference to a danger, and such defect is within the knowledge of the employer, he is then liable."

And "within the knowledge of the employer," it must be, no doubt; for, though the sub-section says nothing as to this qualification, it should be remembered that *Walsh* v. *Whiteley* (*ubi supra*) decides that the sub-section must be read together with sub-section 1 of section 2, thereby adding the words "owing to the negligence of the employer, or of some person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition." The court here, however, were not pressed by that decision, as the danger was clearly traceable to the employer, and indeed it was not suggested that it was not well within the defendant's knowledge. So that the learned Master of the Rolls was abundantly justified in observing, "it seems to me that unless we hold the defect complained of here to be one within the sub-section in question, the Act might as well never have been passed"—an Act passed with the intention of remedying the strictness of the common law on this subject, holding that the workman ran the risk, and could not recover for a defect in plant not known to him, though known to the employer.—*The Irish Law Times.*

## Reviews and Notices of Books.

*The Doctor in Canada—His Whereabouts, and the Laws which Govern Him.*—A Ready Book of Reference. By Robert Wynyard Powell, M.D., Ottawa. Montreal: *Gazette* Printing Co., 1890.

This is a useful book of reference. It gives in Part I. all the legislation in the Dominion and various Provinces in reference to matters pertaining to the medical profession. Part II. deals with sanitary legislation. Part III. gives Licensing Bodies and Teaching Faculties of various Institutions in the different Provinces. Part IV. gives the medical appointments in the Hospitals, Asylums, etc. Part V. gives a list of medical journals. The remaining pages of the book contain lists of various officers and others connected with medical lines in various Provinces.

## DIARY FOR JUNE.

1. Sun....*Trinity Sunday.*
4. Wed...Lord Eldon born 1751.
5. Thu....Battle of Stoney Creek, 1813.
7. Sat.....Easter Term ends.
8. Sun....*First Sunday after Trinity.*
9. Mon ...County Court Sittings for Motions in York, Surrogate Court Sittings.
10. Tues...General Sessions and County Court Sittings for trial except in York.
11. Wed ...St. Barnabas. Lord Stanley Gov.-Gen., 1888.
14. Sat.....County Court Sittings for Motions in York end. Magna Charta signed, 1215.
15. Sun....*Second Sunday after Trinity.*
16. Mon ...Battle of Quatre Bras, 1815.
18. Wed ...Battle of Waterloo, 1815.
20. Thu....Battle of Blenheim, 1704.
21. Fri.....Accession of Queen Victoria, 1837.
22. Sat.....Longest day.
23. Sun....*Third Sunday after Trinity.* Slavery declared contrary to the laws of England, 1772.
24. Tues...Midsummer Day. St. John Baptist.
25. Wed ...Sir M. C. Cameron died 1887.
28. Sat.....Coronation of Queen Victoria, 1838.
29. Sun....*Fourth Sunday after Trinity.* St. Peter.
30. Mon ...Jesuits expelled from France, 1880.

# Reports.

## HIGH COURT OF JUSTICE, ONTARIO.

### RE CENTRAL BANK. NORTH AMERICAN LIFE INSURANCE CO.'S CASE.

*Banking and company law—Purchase or pledge of bank shares—Limitation of a company's powers in respect thereof—Ultra vires—Loan to a bank on its shares—Liability of the loaning company under the Bank Act—Winding-Up Act, R.S.C., c. 129.*

It is not only a canon of English municipal law, but a principle of universal law, which must be taken, in the absence of proof to the contrary, to be a part of every system of jurisprudence, that the governing body of a trading corporation cannot in general use the funds of its community for any purpose other than those purposes for which they were contributed or authorized to be used.

The capacities and powers of trading and other companies are limited in degree according to the purposes of such companies, and the measure of a company's liability in respect of its contracts must be co-extensive with its power to make them.

The charter incorporating a company creates a contract between the company and its shareholders, and any act of the directors or company not within its express or implied powers would be a breach of such contract, and therefore *ultra vires*.

When a company has no power under its charter to become the owner of bank shares, or to acquire any other title than that of pledgee, such a company, in winding-up proceedings, cannot be treated as an ordinary holder or purchaser of such shares, so as to be subject to the double liability clause of the Bank Act.

Where any application of the funds of a company to a purpose not within its charter would be restrained by injunction at the suit of a shareholder, the court cannot declare such company's funds liable therefor, as such a declaration would be giving judicial sanction to a breach of trust, or to an act *ultra vires* of the company.

Where a company having authority to borrow money from other companies or individuals pledges its own shares as a security for a loan, the company making the loan thereon to the borrowing company cannot be made a contributory in the proceedings for the winding up of such borrowing company.

Therefore, where an insurance company loaned money to a bank and took as security for such loan a transfer of certain shares of the bank, which loan was repaid before the insolvency of the bank, and the shares though re-transferred by the insurance company were not accepted on the books of the bank, as required by the Bank Act, the insurance company, on the winding up of the bank, was held not to be a contributory in respect of such shares.

[May 14, 1890.

This was an application in the winding-up proceedings of the above bank against the above insurance company on the facts stated in the judgment. The case was argued before the Master on the 25th and 26th of April, 1890.

*W. R. Meredith*, Q.C., for the liquidators.

*J. K. Kerr*, Q.C., for the Insurance Company.

MR. HODGINS, Q.C., MASTER-IN-ORDINARY.—In these winding-up proceedings an application is made by the liquidators of the Central Bank to have the above insurance company placed on the list of contributories in respect of 135 shares of the capital stock of the bank, and to be held liable to pay the sum of $13,500, being the amount of the double liability imposed on shareholders by s. 77 of the Bank Act.

The evidence establishes that on the 27th July, 1887, the Central Bank obtained a loan of $12,000 from this insurance company through a firm of brokers in Toronto, on the security of a transfer of 135 shares in the capital stock of the bank. The transfer book of the Central Bank shows that on that day Mr. Allen, the cashier, but in his own name, purported to transfer 135 shares to the firm of brokers, who in like manner purported to assign them to the insurance company, whose manager appears to have duly accepted the shares. Interest on the loan was paid by the bank to the company, and charged against the interest account in the bank books. On the 27th September, 1887, the loan was repaid by the bank, and the company, through their Vice-President, purported to re-assign the 135 shares in blank, but by a marginal order they made the transfer subject to the order of A. A. Allen, cashier in trust. The transfer of these 135 shares was never accepted so as to divest the insurance company of their title and vest it in another holder, as required by the Bank Act, and hence the application by

the liquidators to enforce against this company the double liability of $13,500 in respect of these shares.

The application is resisted on several grounds, but it is only necessary for the purposes of the present application to consider those relating to (1) the power of this insurance company to acquire an absolute title to bank shares, and to (2) the liability of the company in respect of the shares assigned to them as a security for the loan to the Central Bank.

The Act under which this insurance company is incorporated (42 Vict., c. 73 D.) authorizes it to invest its funds, *inter alia*, in only one of the recognized modes of dealing with bank shares, viz., as mortgagee or pledgee, the words being "on the security of bank stock," and the charter provides that such loans are to be made "on such terms and conditions, and in such manner and at such times, and for such sums, and in such sums of repayment, whether of principal or interest or principal and interest together, and at such interest and return as the Board of Directors may from time to time determine and direct."

It has been clearly established by a long series of decisions that not only are the capacities and powers of trading and other corporations limited in degree, but so are also the purposes and ends for which such corporations are authorized to employ such capacities and powers. The charter incorporating a company creates a contract between the company and its shareholders, and any act of the directors or company not within its express or implied powers would be a breach of such contract, and therefore *ultra vires*.

The charter granted to this company defines and limits its powers and its purposes in such a way as to compel a consideration of what may be formulated as a canon of corporation law: that the measure of the company's liability under a contract respecting these shares must be co-extensive with its power to acquire them.

The doctrine thus tersely stated has been recognized as having a more universal application in the case of *Pickering* v. *Stephenson*, L. R. 14 Eq., 322, where, though the special powers and purposes of a corporation had to be construed according to a foreign law, the Court held that it was not only a canon of English municipal law, but a great and broad principle of universal law, which must be taken in absence of proof to the contrary, to be a part of every system of jurisprudence, that the governing body of a corporation organized as a trading partnership cannot in general use the funds of its community for any purpose other than those purposes for which they were contributed, or authorized to be used.

Were there no decisions to illustrate the application of this canon of corporation law, its cogency might command deference to its fiat. But the light of authority seems so clear that no reasonable doubt can exist as to its applicability to the case before me.

In *Coleman* v. *Eastern Counties R. Co.*, 10 Beav., 1, Lord LANGDALE, M.R., held that the powers given by an Act of Parliament to a corporation cannot be construed to extend further than is expressly stated in the Act. And in *Salomons* v. *Lang*, 12 Beav., 339, s.c. 14, Jurist 279, the same learned judge held that directors could not lawfully apply the moneys of their company in the purchase of shares in another company unless authorized to do so by Act of Parliament, nor could they apply such moneys for any other purpose whatsoever than those directed and authorized by Parliament; and that if any directors should seek to involve their company or shareholders in liabilities not so authorized, it would be the duty of the court to enjoin them by injunction.

In *Dobinson* v. *Hawks*, 16 Sim., 407, a trading company, in order to obtain a loan from a benefit building society, became shareholders in the society, and gave a mortgage in the ordinary form. It was contended that the company was not entitled to redeem the mortgage, without regard to the liability which they had incurred as such shareholders, but the court held that the subscribing for such shares was illegal, and that the trading company could not be made subject to the liabilities of shareholders.

The case of *Joint Stock Discount Company* v. *Brown*, L.R., 3 Eq., 139, and 8 Eq., 381, seems to further illustrate the doctrine I have referred to. The company was incorporated for the purpose, among other things, of "making advances and procuring loans on and investing in securities." The directors applied some of the company's funds for the purchase of shares in a banking company, but both Lord HATHERLY and Sir W. M. JAMES held that such a purchase was not an "investment in securities" authorized by its articles, and was therefore *ultra vires*.

In the last edition of "Brice on *Ultra Vires*" it is stated that "in the United States it is quite settled that corporations cannot purchase or hold or deal in stocks of other corporations, unless expressly authorized to do so by law" (p. 175.)

In the same jurisprudence it has been affirmed that parties dealing with corporations are bound to know the law governing them; and that therefore a party dealing with a corporation with limited powers, must be presumed to know the scope and restrictions upon its powers and purposes as granted and defined by the charter of its incorporation: *Connecticut Mutual Life Insurance Company* v. *Cleveland, etc., R.R. Co.*, 41 Barb. N.Y., 9; *Merritt* v. *Lambert*, 1 Hoff. N.Y., 166.

But the decision of the present Chief Justice of the Superior Court of Quebec on a clause in the Savings Bank Act (R.S.C., c. 122, s. 20), which has some analogy to the clause which I have cited from this insurance company's charter, and is so much within the policy of the canon of corporation law I have referred to, that I have no hesitation in applying it to the case before me. Under a power conferred upon savings banks to loan their moneys on personal security, taking as collateral thereto "stock of some chartered bank in Canada," a savings bank acquired 307 shares in the capital stock of the Exchange Bank as collateral security for loans made to several outside parties. On the winding up of the Exchange Bank, the liquidators sought to make the savings bank liable in respect of the 307 shares standing in its name in the books of the bank; but the court held that the savings bank could not acquire or hold such shares except as pledgees, and could not become the owner of such shares within the meaning of the Bank Act, and was not therefore subject to the double liability imposed by that Act: *Exchange Bank* v. *Montreal City and District Savings Bank*, 2 Montreal L.R., 57. This judgment was afterwards affirmed on appeal to the Quebec Court of Queen's Bench on the 27th September, 1887. The case of *Railway, etc., Advertising Co.* v. *Molson's Bank*, 2 Leg. News, 207, is to the same effect.

It seems, therefore, that this company had no power under its charter to become the purchaser or owner of bank shares; and it follows that any application of its funds to such a purpose, or any purpose not allowed by its charter, would be restrained by injunction at the instance of a shareholder. And were I to declare the company subject to a liability not warranted by its charter, I would be giving a judicial sanction to a breach of trust, or to an act *ultra vires* of the company's powers.

This might suffice for the disposal of the application before me; but as I find on the evidence that the loan was for the benefit of the Central Bank, there is another series of cases applicable to that finding.

In the *South Eastern R. Co.'s case*, L.R. 14 Eq. 10, an hotel company borrowed money from the railway company upon the security of unissued shares, which were placed in the names of trustees. The hotel company was afterwards wound up, but it was held that the railway company was not to be treated as contributories but as creditors, and to be entitled to prove for the amount of their loan.

The principle of this decision has been affirmed by the House of Lords in *Beattie* v. *Lord Ebury*, L.R. 7 H.L. 10. In that case unissued preference shares of a company had been assigned to their bankers as collateral security for advances made on the company's cheques. On the winding up of the company the bankers had been placed on the list of contributories in respect of such shares, but the House directed the names of the bankers to be struck off the list, and stayed the order dismissing the appeal until the names were so struck off.

The *ratio decidendi* of these cases may be illustrated by a consideration of the rights which would have to be adjusted if it were conceded that the Central Bank had authority to borrow money from other corporations or individuals on its unissued shares, and to transfer such pledged shares to a trustee to hold as security for the loan. Such trustee on the winding up of the Central Bank might have been found on the register of shareholders, and therefore liable to be placed on the list of contributories; but on the authority of *Re National Financial Co., Ex parte Oriental Commercial Bank*, L.R. 3 Ch. 791, such trustees would, if so placed on the list, be entitled to be indemnified against all calls in respect of such shares, on the ground that a trustee is entitled to be recouped by his *cestui que trust* for any payments made by him on account of the trust estate.

The application of the liquidators must therefore be refused.

The Bank Act (s. 29) provides that no assignment or transfer of shares "shall be valid unless it is made and registered and accepted in a book or books kept by the directors for that purpose." The non-observance of these conditions by the company left its name on an incompleted and unaccepted transfer of shares, and gave rise to this litigation, and the liquidators in executing their duties under the Winding-Up Act could not determine the mixed questions of law and fact themselves, and had no other course open to them but to bring the case before the court for its adjudication. There will therefore be no costs.

## SUPREME COURT OF BRITISH COLUMBIA.

### WEILER *v.* RICHARDS.

*Provincial legislation—Ultra vires—Licenses.*

Where an Act of the Legislature of the Province of British Columbia empowered the municipalities within the Province to impose a license tax upon all persons carrying on business as wholesale or retail merchants:

*Held*, that the Act was *intra vires* of the Legislature of the Province.

This was an appeal against a conviction of the Stipendary Magistrate of Victoria, for that the Appellant carried on the business of a wholesale as well as retail merchant without having taken out a license as provided by the by-law under the Municipalities Act and Provincial Statutes.

BEGBIE, C.J.—The facts being all admitted the only question argued before me was as to the constitutionality of the tax, *i.e.*, of the Provincial Statute which authorised it to be imposed. It is admitted that if the Provincial Legislature has this authority under s. 92 of the B.N.A. Act the tax has been in other respects lawfully imposed on the appellant.

Several cases were cited on both sides, for and against the tax, but the appellant's counsel almost rested his claim upon *Severn's Case*, 2 S.C.R., 70. Of course both duty and inclination would impel me to follow a decision of the highest Court of Appeal in Canada if the circumstances of the taxes are identical or even analogous; it is my clear duty to follow such decisions, and it would render all debate unnecessary and relieve from all responsibility in discussing so delicate a question as to the constitutionality of an Act of the Legislature.

Unfortunately, however, the two cases at the very outside are separated by a very broad and clear distinction owing to the differences in the trades of the two parties. The present appellant is an upholsterer; Severn was a brewer in Ontario subject to the Dominion excise laws and armed with a Dominion permit. And this is relied upon by all the judges who decided that the additional license tax was beyond the power of the Provincial Legislature. All matters connected with the excise are admittedly under Dominion law. Severn had already been duly licensed to exercise his calling, as far as manufacturing beer was concerned; and it was argued almost irresistibly that this involved a license to sell his beer when manufactured. It was not to be presumed that the B.N.A. Act contemplated a double taxation; and besides taxation by the Province would necessarily diminish the capacity of the taxee to sustain the excise taxes, which the Dominion might find it necessary to impose. All the four judges who formed the majority on Severn's case rely strongly on this ground. They allege other grounds also, but they all agree in this and place it prominently forward, and it is not easy to see an answer to it. Another matter which is also prominently put forward is the argument of *ejusdem generis*. The two clauses in s. 91 and s. 92, which are alleged to be in conflict, and on which the appellants and the municipality respectively rely are in well known words. Sec. 91, s-s. 2, declares that the Dominion Parliament exclusively is authorized to make laws "for the regulation of trade and commerce." Sec. 92, s-s. 9, declares that the Provincial Legislature exclusively shall have authority to make laws "in relation to shop, saloon, tavern, auctioneer and other licenses for raising revenue for provincial, local, or municipal purposes." It was argued by the majority in Severn's case that the words "other licenses" must mean others *ejusdem generis*, and that "shop licenses" in Ontario (being the province in which the tax appealed against was imposed), did not mean licenses for shops in the wide, general sense, but only for liquor shops, and that other licenses must, therefore, also mean other liquor licenses, though the auctioneer's license was not so readily dealt with. But, whatever the effect of this last word "auction-

cer" may be, the phrase "shop license" never had in British Columbia before Confederation the sense which it appears to have borne in Ontario. And all ordinary retail or wholesale trades of any description have long before Confederation been handed over to municipalities to be taxed and at discriminating amounts, as early at least as the Victoria Municipal Act, 1867. So that the agreement of the majority of the judges in the Severn case that the Imperial statute intended to retain to every corporation, after Confederation, the same and no other sources of municipal and local revenue, as it possessed before the Confederation, would lead in the present case to a conclusion as to the legality of the taxation exactly contrary to that which the same principles led to in the Severn case. That case is, no doubt, conclusive in favor of exempting a brewer in Ontario, but the principles there enunciated militate against the exemption of an upholsterer in British Columbia.

But in fact all the early decisions of all the courts must be read with attention to the later decisions of the Privy Council. And the Judicial Committee themselves observe (*Lambe's Case*, 12 App. Cas., 586): "Since *Severn's Case* was decided, the question has been more completely sifted before the committee in *Parson's Case*, 7 App. Cas., 96, and it was found absolutely necessary that the literal meaning of the words should be restricted in order to afford scope for the powers which are given to the provincial parliament." Lambe's case is itself an example of the results of this "sifting," for in it a provincial tax on banks was maintained, whereas in Severn's case the notion of a tax on banks was suggested by one of the majority of the judges as being too monstrous to be entertained, but yet as being logically correct, if the province could tax Severn.

I am left, therefore, to apply these later cases; extracting from them their principles and acting on them; examining also the principles of the B.N.A. Act, s. 91 and s. 92.

Now, no case has been cited in which sufficient weight seems to me to have been expressly given to the words actually used in the two subsections I have quoted. In particular, s. 92, s-s. 2, has been treated in argument both here and elsewhere, as if it drew under the power of the Dominion Parliament, and, therefore, withdrew from the Provincial Parliament all matters connected with trade and commerce. But that is not so; but only the regulation of trade and commerce. Whether only external or internal trade is meant, or whether this power extends to the regulation of the manner in which, and the times at which, all persons in the Dominion, and in every province and municipality thereof, may try and get their living by buying and selling, it is unnecessary here to enquire. The by-law does not seek to regulate trade, but only to tax it. Regulation and taxation very often go together, as is easily seen in the instances of customs and excise and licensed victuallers. But they are essentially different. The Dominion Parliament regulates insurance companies and banks; but it does not tax them. On the contrary, the province does not attempt to regulate them, but it does tax them, and in Parson's case and Lambe's case the Judicial Committee have decided that this power is lawfully claimed by the province.

And although the Imperial Parliament, when it regulates any trade or industry, does also very often proceed also to tax it (not so much for the purpose of revenue as to provide for the expenses of regulation), yet it is obvious that the two things are entirely distinct, and may, and often are, relegated to different bodies. Parliament is universally sovereign, and has all the powers of either the Dominion or Provincial legislation. And so the Imperial Parliament may both regulate and tax trade; but it often imposes a tax, or, what is the same thing, authorizes the demanding of fees, etc., in respect of any trade, and relegates the whole or the greater part of the regulation of such trade or occupation to the board of trade, or of health, the charity commissioners, etc., who have no power to impose taxes. There does not appear, therefore, to be necessarily any conflict between these two sub-sections. The B.N.A. Act seems to provide that the Dominion Legislature exclusively shall possess one of the functions of the Imperial, viz., regulation; and the Provincial Legislature is, so far as local revenue is concerned, to have exclusive power over the other function, viz., taxation by license fees. But neither the by-law nor the statute now impugned profess to regulate the appellant's trade, nor have, so far as I can see, any tendency to do so. And I am unable to see in this case any conflict or overlapping of jurisdiction. In practice the distinction between regulation and taxation

appears to have been often followed. Thus the Dominion Legislature regulated, and not taxed, banks and insurance companies, and their right to do so has been established in Lambe's case and Parson's case before the Privy Council. The Imperial Parliament in many cases, *e.g.*, shipping, factories, etc., regulates without taxing, and in many other cases taxes certain transactions without regulating how or where, or by whom or with what ceremonies those transactions are to be performed, or any regulations except those connected with the actual perception of the tax. I have already alluded to the *ejusdem generis* argument. The question almost immediately arises, "*eujusdem generis?*" These other licenses are to be of the same genus as that indicated by the previous particular words. Well, what is that genus? and here really the particular words cover every kind of trade. I prefer Justice Strong's meaning of the word shop—the general popular sense—as the proper sense in an Act of Parliament, and that is the sense which it has always borne here.

I could not listen to the suggestion that because "shop license" in Ontario was commonly applied to a license to a grocer to sell fermented liquors, therefore, it must necessarily, or ought reasonably, to bear that sole meaning here, where it never has been so confined.

It would be difficult to argue that in British Columbia the term "other license" would not cover an upholstery, and the argument of Mr. Justice Strong at p. 107 seems quite unanswerable. But for the purpose of this appeal it becomes quite immaterial to consider what is or what is not the "other license" phrase. It is not any "other" or undesignated license that is here taxed, but one of the licenses expressly designated in s-s. 9, viz., a "shop" license. It is admitted that the appellant keeps a shop, a place where he makes his living by buying and selling. Severn did not keep a shop in the ordinary sense of the word. He manufactured and sold beer. The only words under which he could be taxed, therefore, were "other licenses."

For these reasons I think that the tax is quite constitutional, and that the appeal should be dismissed, and with costs. I think that any other conclusion would be quite inconsistent with the judgments in Parson's case, and Lambe's case, and with the principles, though not with the decision, enunciated by all the judges in Severn's case.

*S. Perry Mills* for appellant.

*W. J. Taylor* for the respondents.

# Early Notes of Canadian Cases.

## *SUPREME COURT OF JUDICATURE FOR ONTARIO.*

### HIGH COURT OF JUSTICE.

### COURT OF APPEAL.

From MACMAHON, J.] [May 13.

SHAIRP *v.* LAKEFIELD LUMBER CO.

*Free grants—Crown timber—Timber license—Trespass — Patent — Reservation — R.S.O. (1887), c. 25, ss. 4, 10—R.S.O. (1887), c. 28.*

The plaintiff was in March, 1884, located as the purchaser of a lot in the township of Burleigh, and obtained a patent therefor in November, 1888, the patent being in the usual form of a patent in fee to a purchaser, without any reservation of timber or any reference to the Free Grants and Homesteads Act. The defendants assuming to act under a timber license issued in May, 1888, covering this and other lots, entered upon the lot after the issue of the patent and took timber therefrom. In the license the lot was referred to as "located and sold." The Township of Burleigh was within the geographical limits described in sec. 4 of the Free Grants and Homesteads Act, R.S.O. (1887), c. 25, but had never been appropriated or set apart as free grant lands under the provisions of that Act.

*Held*, that the lot was not "land located or sold" within the limits of the Free Grant Territory, within the meaning of that Act, and that the patent was not subject to the reservations as to timber in that Act contained.

The expression "Free Grant Territory" in sec. 10 does not refer to the whole territory or tract defined in sec. 4, but only to that portion of that territory or tract which may be actually set apart and appropriated by the Lieutenant-Governor-in-Council under the Act.

*Held*, further, that there being no actual reservation in the patent, the defendants had no

right to cut the timber after the issue of the patent, and were liable in damages.

Judgment of MACMAHON, J., affirmed.

*Poussette*, Q.C., and *Aylesworth* for the appellants.

*Watson*, Q.C., and *E. B. Edwards* for the respondent.

---

Co. Ct. of Elgin.] [May 13.

PECKHAM *v.* DEPOTTY.

*Contract— Master and servant — Parent and child.*

The plaintiff, while a child of very tender years, had been placed by her father with the defendant, who was not a relation, to remain with him until she attained eighteen years of age, he agreeing to support her during that time, to send her to school, to supply her with clothing and to give her certain articles when she reached the age of eighteen. She remained with the defendant until she was nearly twenty years of age, being in all respects treated as a member of the family, and doing such work as a member of the family would naturally do.

*Held*, that the plaintiff had no implied right to remuneration for services rendered after she attained the age of eighteen, and that in the absence of any express agreement for payment of wages she could not recover.

Judgment of the County Court of Elgin reversed.

*Aylesworth* for the appellant.

*J. S. Robertson* for the respondent.

---

From C.P.D.] [May 13.

LIVINGSTONE *v.* THE TEMPERANCE COLONIZATION SOCIETY.

*Company—Shareholder— Calls — Surrender of shares—Cancellation of shares—Compromise —Invalid resolution.*

A trading corporation has authority as an incident of its existence to compromise all *bona fide* claims made against it, and therefore has power to compromise claims made by a shareholder to be relieved of his shares, either by reason of fraud or misrepresentation or any other cause which would enable the court to decree such relief; but as the court, if a shareholder were to make a claim against the corporation for compensation in damages in respect of some matter not connected in any way with the validity of the shares held by him, could not decree a cancellation *pro tanto* of those shares, so the corporation itself cannot validly compromise a claim for damages against it by accepting the surrender of, and by cancelling, shares of its capital stock held by the claimant.

Judgment of the Common Pleas Division reversed.

*Moss*, Q.C., and *W. Barwick* for the appellants.

The respondent Livingstone in person.

---

From Q.B.D.] [May 26.

MENDELSSOHN PIANO CO. *v.* GRAHAM AND WEST.

*Partnership — Loan — Debtor and creditor — Sharing profits.*

This was an appeal by the plaintiffs from the judgment of the Queen's Bench Division, reported 19 O.R., 83, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 23rd of May, 1890.

The Court dismissed the appeal with costs, agreeing with the conclusions arrived at in the Court below.

*R. S. Neville* for the appellants.

*E. Coatsworth, jr.*, for the respondent West.

---

## *Queen's Bench Division.*

---

MACMAHON, J.] [May 17.

REGINA *v.* CREIGHTON.

*Criminal law—Pleading —Libel—Justification —Particulars—Motion to quash plea—R.S. C., c. 174, s. 2, s-s. (c); s. 143.*

To an indictment for libel the defendant pleaded that the words and statements complained of in the indictment were true in substance and in fact, and that it was for the public benefit that the matters charged in the alleged libel should be published by him.

*Held*, that the plea was insufficient because it did not set out the particular facts upon which the defendant intended to rely; and that the omission from 37 Vict., c. 38, s. 5 (R.S.C., c. 163, s. 4), of the words "in the manner required in pleading a justification in an action for defamation," which were contained in C.S.U.C. 103, s. 9, had not the effect of altering the rule,

*Held*, also, that this was a case in which the court should, in the exercise of its discretion, quash the plea upon a summary motion, without requiring a demurrer, a course permitted by s. 143 of R.S.C., c. 174, as interpreted by s. 2, s-s. (c).

*S. H. Blake*, Q.C., *Osler*, Q.C., and *Marsh*, Q.C., for the prosecutors.

*Ritchie*, Q.C., *Laidlaw*, Q.C., and *Cassels* for defendant.

---

FALCONBRIDGE, J.] [April 26.

BRENNEN *v.* BRENNEN.

*Husband and wife—Action by wife against husband's relatives—False representations and conspiracy to bring about marriage—Want of precedent—Public policy.*

Action by a married woman against the father, mother, and brother of her husband, and for false representations made to her before marriage, as to the character and financial standing of her husband, and for entering into a fraudulent conspiracy to induce the plaintiff to enter into the marriage contract.

*Held*, that the action was not maintainable because without precedent and contrary to public policy.

*J. K. Kerr*, Q.C., and *Neville* for plaintiff.

*McCarthy*, Q.C., and *Bicknell* for defendant, M. Brennen.

*S. H. Blake*, Q.C., for defendant, S. Brennen.

*J. A. McCarthy* for defendant, H. Brennen.

---

STREET J.] [May 21.

COUNTY OF MIDDLESEX *v.* SMALLMAN.

*Registrar of deeds—Bond for performance of duties of office—Payment to municipality of portion of fees—Liability of sureties—R.S.O., c. 114, ss. 13, 107.*

The action was upon a bond executed by the defendants as sureties for a Registrar of Deeds, dated 8th January, 1886, to recover the portion of fees received by the Registrar which he should have paid over to the plaintiffs under R.S.O., c. 114, s. 107.

The bond was in the form prescribed by Schedule A. of the Act, and was conditioned for the performance of the duties of the Registrar's office and against neglect or wilful misconduct in office to the damage of any person or persons.

This form was prescribed before the introduction of the provisions now contained in s. 107, and s. 13 makes special provision for the giving of special security for the payment of moneys under s. 107.

*Held*, that the bond given by the defendants must be taken to be restricted to the performance by the Registrar of the duties imposed upon him other than the duty imposed by s. 107, and the action was dismissed.

*Purdom* for plaintiff.

*Osler*, Q.C., and *Flock*, Q.C., for defendants.

---

## *Chancery Division.*

---

ROBERTSON, J.] [May 13.

RE SAUGEEN MUTUAL FIRE INSURANCE CO.

KNECHTEL'S CASE.

*Mutual Insurance Co.—53 Vict., c. 44, s. 4 (O.) —Retrospective operation.*

Appeal from the Master at Guelph.

*Held*, that 53 Vict., c. 44, s. 4 (O.), substituting a new section for R.S.O. (1887), c. 167, s. 132, is retrospective in its operation, and applies to premium notes given before its passing as well as to those given afterwards.

*Kingston*, Q.C., for the appellant.

*Hoyles*, Q.C., contra.

---

## *Practice.*

---

C.P. Div'l Ct.] [June 7.

COUNTY OF ESSEX *v.* WRIGHT.

*Consolidation of actions—Staying actions—Principal and sureties—Reference—Costs.*

Twelve actions brought by a municipality against the different sureties of the municipal treasurer, to recover accounts alleged to have been received by the treasurer and not accounted for, were consolidated and proceedings in them were stayed pending the determination of an action against the treasurer himself to recover the same amounts.

In the action against the treasurer a reference was directed to ascertain what was due from him, and an order was made permitting the sureties to appear upon the reference and contest the claims of the municipality. This order

was varied by making provision for awarding costs as between the municipality and the sureties.

*G. T. Blackstock* for plaintiffs.

*S. H. Blake*, Q.C., for defendant.

*Wright, Langton*, and *W. H. Blake* for other defendants.

# Law Students' Department.

## *EXAMINATION BEFORE EASTER TERM: 1890.*

### CALL.

### *Equity.*

1. State the general principles which, apart from statutory provisions, or any special provisions in the instrument creating the trust, govern Courts of Equity in determining whether or not a purchaser of land is bound to see to the application of the purchase money when buying from the trustee. Is there any statutory provision affecting the same? If so, what?

2. Under what circumstances would a tenant have been able to file a bill of interpleader against his landlord? Reasons.

3. A. is lessee of farm Blackacre. The lease contains a pre-emption clause under which A. can purchase the freehold by giving two months notice before the term expires, and by tendering the sum agreed on. He gives the notice at the required time, but fails to pay the money. The lessor refuses to carry out the contract, and A., the lessee, brings an action for specific performance. Can he succeed? Explain.

4. Distinguish between the effect of conditions in restraint of marriage; (1) where there is a bequest over in default of condition complied with; (2) where there is no bequest over. A father bequeaths a legacy to his daughter to be paid to her at 21 years if she does not marry until that period. She marries at 20 years of age. Will she be entitled to legacy? Explain.

5. A. is the executor of B., he writes to a supposed debtor, C., demanding payment of $1,000. C. pays the money, and A., the executor, distributes the same with other moneys to the legatees under the will. C. subsequently discovers that he had previously paid the debt. Can he recover same from the executor, and if he can, has the executor any remedys. If so, what?

6. A. and B. are about to ntermarry, a parol agreement is entered into between them, that A., the intended husband, will settle certain property on his intended wife, B. After marriage a settlement is executed in pursuance of such parol agreement. The husband being indebted at the time, and afterwards becoming insolvent, the creditors seek to have the settlement set aside. Should they succeed? Explain.

7. Distinguish between the relief granted in cases of defective executions of powers. (*a*) Where the same are created by private parties. (*b*) Where they are specially created by statute.

8. A., as executor of the estate of B., is liable as such to certain covenants contained in a lease made to B.—he is about to assign the lease to C.—what steps should he take in order to be able to proceed to distribute the personal estate of B., without any liability to himself? Reasons for answer.

9. A. and B. are joint obligors on a bond to C. The condition on the bond has been broken, and the right of C. to sue thereon becomes absolute. Before action brought B. dies. State C.'s rights, giving reason for your answer.

10. A Guarantee Company enter into bonds for the good conduct and honesty of A., a ledger keeper in the Bank of Toronto. Sometime after, and during the pendency of the bond, A. is promoted to the local management at Guelph. In such capacity he embezzles a considerable sum of money. The bank sues the Guarantee Company who defend the action. Who should succeed, and why?

### *Contracts—Evidence—Statutes—Honors.*

1. A. makes a proposal to B., which B. does not answer until after a delay of some months, and does not then assent to, but some months afterwards does accede to the proposal. How far is this evidence of a contract? Why?

2. A. has a horse to sell. He agrees to let B. have him for $130 if he likes him, and B. is to keep him a month on trial. B. takes him and keeps him for a fortnight. B. then tells A. he is not satisfied. A. then says, "Return the horse." B. keeps him ten days longer, and then returns him. A. refuses to receive the horse, and brings an action for the $130. Should he succeed? Why?

3. A. makes an offer by letter to B. B. answers in such a way that the answer, though

ambiguous, is capable of being construed as an acceptance. A. acts upon the answer as an acceptance. Is he justified in so doing? Why?

4. A negotiation for a compromise is commenced by a letter "without prejudice." Further letters relating to the matter were written, not stated to be without prejudice. The party who writes them objects to these latter letters being used against him. Is he right? Why?

5. A father verbally promises in consideration of his daughter's marriage, to give her a house as a wedding present. Immediately after the marriage he puts the daughter and her husband in possession. The house is not all paid for, and the father dies owing for the house. The daughter and son-in-law claim against the father's estate for the unpaid balance of purchase money. Should they succeed? Why?

6. C. covenants with A., his executors, administrators, and assigns, and to and with B. and his assigns to pay an annuity to A. and his executors during B.'s life. On the death of A., in whom is the right of action? Why?

7. In an action on a breach of covenant for assigning or sub-letting premises without license, what is the measure of damages?

8. Explain fully the limitations of the rule that a witness is not bound to criminate himself.

9. Explain the practice as to the right of summing up the evidence in a case at a Trial.

10. A witness is called, and after answering an immaterial question, his examination is stopped by the Judge. The other party claims the right to cross-examine him. Can he do so? Why?

---

*Criminal and Common Law—Honors.*

1. A statute contains a prohibition and a penalty:—Both are contained in one section of the statute; on which must you proceed?

If the prohibition is in one section and the penalty in another, on which can you proceed?

2. How far is the doctrine of a moral insanity, or insanity of the moral feelings while the sense of right and wrong remains recognized in English criminal law?

3. How is a deaf and dumb person to be tried, who is brought up for trial on a capital charge?

4. On an indictment against an accessory, it is proposed to use as evidence against him the confession of the principal. Can this be done? Why?

5. How far is the proprietor of a newspaper criminally liable for the publication of a libel supposing him to have had no part in the publication?

6. By the act of A. an injury is occasioned to the foundations of the house of B., of which B. has not at the time any knowledge, but which afterwards, more than six years from the injurious act, exhibits itself by creating actual mischief to A.'s house. From what time does the Statute of Limitations run? Why?

7. In trespass and assault against two persons, it is asked to sever the damages because the assault is proved to have been committed by one with more violence than the other. Can this be done? Why? What is the proper course?

8. A. and B. are co-sureties. A. verbally promises B. that he will indemnify him. On being sued, he claims that not being in writing, he is not liable. Is he right? Why?

9. When goods are not delivered at the time specified for delivery, what is the measure of damages?

(1) When their place can be supplied in the market?

(2) When their place can not be supplied in the market?

10. A. orders from B. a certain specified patented machine. A. finds that the machine wholly fails to accomplish the purpose for which it was intended, and which it was the expressed object of the patent to effect. On being sued for the price he refuses to pay on those grounds Should he succeed? Why?

---

*Real Property—Honors.*

1. A. and B., husband and wife, hold Black acre under a grant from C. A judgment is obtained by a creditor of "A", the husband, against him. *Fi. fa.* lands are taken out. Can the creditor at the expiration of the year proceed to advertise and sell Blackacre? Explain.

2. Where there is an agreement for the sale of farm property, which is silent as to the crops, what are the rights of vendor and purchaser in respect thereof?

3. A testator who died last December, devised his house and lot in Toronto to A.; would you, acting for a purchaser, accept title through A.? Reasons for your answer.

4. A bequest is made to A. of $5,000 to be paid him when he attains the age of twenty-five

years, with the direction that the interest thereon be paid him in the meantime. "A." dies when twenty-one years of age. Who is entitled to the $5,000, and why?

5. When (if at all) is a purchaser bound to disclose to the vendor facts relating to the land which he is about to purchase?

6. Where the vendor's solicitor receives the deposit money under an agreement for the sale of lands, in what capacity does he hold it? Is there any distinction between a solicitor and an auctioneer in such case?

7. A bequest is made by a testator to the children of A., "who survive me." A child is born six months after his death, will such child take any share?

8. Write a short note on testamentary capacity.

9. What statutory provisions are there in respect of the right of a subsequent mortgagee to bring action for arrears of interest in cases where a prior mortgagee has been in possession?

10. "A." attends an auction sale of real estate; he bids on the property and it is knocked down to him for $5,000; before signing the contract he seeks to retract his bid. Can he do so?

---

*Equity—Honors.*

1. As between husband and wife, who is entitled to the custody of their infant children? Can this right in any way be affected by the conduct of the parents? Is there any statutory (Provincial) legislation in regard thereto? If so, what?

2. Distinguish between Novation and Subrogation, giving an example of each.

3. A testator bequeathes $10,000 for "promoting charitable purposes, as well of a private as a public nature, and more especially in relieving distressed persons." Is such a good bequest?

4. What classes of persons may institute actions for the administration of a deceased person's estate?

5. Under what, if any, circumstances, will Courts grant relief in the case of an award *(a)* where mistake of a law is alleged, *(b)* where mistake of fact is depended on?

6. Under what circumstances will the Court decree the dissolution of a partnership at the instance of one of the partners when he cannot by his own act dissolve the same?

7. State some cases in which the Court will appoint a receiver. When appointed, what are his rights and duties? Why is such appointment often termed an equitable execution?

8. Under what circumstances will Courts at the present time grant relief in the case of confusion of boundaries?

9. A. is a tailor carrying on business in Toronto, as the York Tailoring Establishment; he sells out the business and good-will to B.; he then rents the next door shop, in which he starts a new tailoring business under the name John Smith. Has B. any remedy, if so, what? Explain.

10. Explain what is meant by the doctrine of pressure as applied to assignments made by insolvent debtors.

---

*Contracts—Statutes—Evidence.*

1. "There is believed to be one positive exception in our law to the rule that the revocation of a proposal takes effect only when it is communicated to the other party." State the exception. How far is notice to the other party requisite?

2. "There are certain classes of cases in which it may be said that mistake, or at any rate ignorance, is the condition of acquiring legal or equitable rights." Explain this statement.

3. In what cases can an agent personally enforce contracts entered into by him on behalf of a principal?

4. A question arises on the true construction of an arbitration agreement, whether the subject matter of a particular dispute falls within the agreement. Who must decide this question? Explain.

5. A. covenants with B. to insure his (A.'s) life within a given time. Before the end of that time his health becomes so bad as to be uninsurable. What is the effect on his covenant?

6. A. sells goods to B., and desires B. to send for them. C. obtains the goods from A., by falsely representing himself as B.'s servant. How far would a sale by C. be valid against A.? Why?

7. How may the genuinneess of a disputed writing be proved?

8. In civil actions how far is the evidence of a husband as to communications made to him by his wife admissible?

9. What is the test for determining whether a plaintiff and defendant are in *pari delicto?*

10. In an action for disturbance of support of and what damages may the plaintiff recover?

*Harris—Broom—Blackstone.*

1. At what stage and on what grounds can a motion in arrest of judgment be made, and what is its effect if successful?

2. Give an example, showing under what circumstances the taking of a chattel against the will of the owner will be (*a*) justifiable, (*b*) a trespass, (*c*) larceny.

3. To what extent does intoxication afford a defence to a criminal charge?

4. What is the difference between a civil and a criminal proceeding for libel as regards the defence of the truth of the alleged libel being a good defence?

5. If a spark escaping from a locomotive engine sets fire to a house near the railway, is the company liable? If so, what must be proved to make it liable?

6. A gas company employs a contractor to lay down gas pipes in the street; by the contractor's negligence the street is obstructed, and an accident occurs. Who is liable? Why?

7. How far does the object for which a statutory duty is created affect the right of action for violation of it?

8. What difference is there between the rules regulating the right to subterranean water and those applicable to the enjoyment of streams and rivers above ground?

9. What is the gist of the offence of conspiracy?

10. Explain *allegiance*. "Once an Englishman, always an Englishman." How far is this maxim now true as respects the allegiance due to the Crown?

*Real Property.*

1. A solicitor for a purchaser serves a set of requisitions on vendor's solicitor, reserving to himself the right to make further and other requisitions. To what extent will this reservation hold good?

2. A. enters into a contract with B. for the sale to him of a property of which the description runs as follows in the agreement: A lot in the City of Toronto, more particularly described in a certain mortgage to the Canada Permanent; A. afterwards refuses to carry out the agreement, relying on the Statute of Frauds as a defence. Should he succeed? Explain.

3. A. by his will bequeathes all his personal estate to B., except $10,000 Dominion stock, which he bequeathes to C. C. dies during testator's lifetime, what becomes of the $10,000 bequest to C.? Reasons.

4. A. enters into a binding contract with B., for the sale to him of Blackacre free from all encumbrances. A.'s wife refuses to release her dower. Has the purchaser any remedy?

5. A bequest is made by a testator to his "relations;" who would be entitled?

6. It is usual to provide in conditions of sale that if any requisitions he made which the vendor shall be unable or unwilling to remove he shall be at liberty to rescind the contract. State the true meaning of such a condition.

7. What are the provisions of the Mechanics' Lien Act as to workman's wages?

8. Where there is a bequest to one person, and in case of his death to another, at what, in event of death, is the gift over construed to take effect?

9. Write a short note on what constitutes a signing of an agreement so as to satisfy the 4th section of Statute of Frauds.

10. A., by his will, makes an absolute gift of all his property to his wife, subject to the payment of debts and legacies; and further on in the will says, "it is my wish and desire that after my decease that my said wife shall make a will, dividing the real and personal estate hereby devised and bequeathed to her, among my children in such manner as she shall deem just and equitable."

State the rights of the wife and children under such bequest.

## SOLICITOR.

*Mercantile Law—Statutes—Practice.*

1. A. leaves a sum of money with B. under such circumstances that it may be fairly presumed that B. has authority to use the money or not as he pleases. Distinguish the duties and liabilities of B. as he does or does not use the money.

2. A. agrees with B. to build B. a house. Before the building is finished, and during construction, the erections are burnt by accident. Who must bear the loss? Why?

3. A. pretends to be agent for C., and as such assumes to grant a lease of C.'s property to B. What damages ought B. to recover from A.?

4. From what losses is a carrier by water exempt at common law, and against what species of losses will not even the usual express exemptions in the carriage agreement exempt him?

5. A bond is made to A., B., and C. jointly, to secure payment of $1,000 to C.: C. dies. Who could maintain an action on the instrument at common law? Why? Is there any change now? If so, what?

6. State the present Statutory provisions in Ontario as to compensation for injuries to workmen.

7. A. has a factory in which B., C., and D. are employees; A. agrees with B., C., and D. that, in addition to wages, they shall be severally entitled to a share of the profits; the concern fails, and it is sought to make B., C., and D. liable as partners for the liabilities. What is their real position? What authority?

8. A. is killed in a railway accident in May, 1889; no letters of administration are taken out for his estate, but in April, 1890, his widow issues a writ against the company for damages; the company objects that the administrator should sue, and that there being no administrator, the action is not rightly brought. Is the objection right? Why?

9. State fully the limitations to the rights of a factor to pledge the property of the real owner.

10. In what cases can you get a writ of execution by leave of the Court?

---

*Contracts.*

1. Could the rights of a party under a contract be transferred by him to another at common law? If so, how?

2. State the principal rules as to acceptance in performance of a contruct.

3. What difference is there as to right of action by vendor against buyer where the property has or has not passed?

4. What is the liability of a carrier for delivery to a fraudulent purchaser?

5. What effect has a sale dependent on an act to be done by a third person?

6. If goods are sold on credit what is the effect of the transaction on the vendor's lien? Why?

Suppose the goods remain in the vendor's possession after the term for credit is expired, what is the effect?

7. A. signs a contract with B. for a purchase of goods over $40. He signs the contract without qualification. B. seeks to give oral evidence that A. signed really as agent for C. Can he do so? Why?

8. Explain the following expressions: "F. O. B." "Say about" such a quantity. "Sale or Return."

9. In what case is a sale of things not yet in existence good?

10. On a sale of an ascertained chattel is there any, and if so, what warranty of title?

---

## CERTIFICATE OF FITNESS.

*Real Property and Wills.*

1. A bequest is made to the children of A., to be divided among them equally when they attain the age of twenty-one years. Some die before reaching twenty-one, others attain that age. How should the property be divided?

2. What rules govern where legacies are repeated (*a*) in one instrument, (*b*) in two instruments, viz., a will and a codicil?

3. Within what time must a will be registered? What is the effect of non-registration?

4. A bequest to "A. and his family." Construe this.

5. There are several persons tenants in common of certain lands, they mortgage the same. The mortgagee enters into and continues in possession for ten years. During the ninth year of his possession he gives one only of the mortgagors an acknowledgment in writing of his title. Who is entitled to redeem? Supposing the case of several mortgagees in possession for ten years, when in the ninth year one of them only gives an acknowledgment to the mortgagor, what effect has this? Reasons.

6. What are the provisions of the Vendors and Purchasers' Act, in respect of summary applications to the High Court?

7. State the nature of a mechanic's lien. Within what time must it be registered, and what steps are necessary to keep it existing?

8. A. owns a lot in Toronto, on a portion of this he has built a house whose windows look into the vacant portion of the lot. A. grants the vacant lot without any reservations to B., he then sells the house to C. B. shortly after commences building so as to obstruct the lights of the adjacent house. C. seeks to prevent him by injunction. Can he succeed? Explain.

9. Is taking possession of property by purchaser a waiver of title? Explain.

10. "A." gets his solicitor to draw up a will when in Toronto; this he leaves with a friend and proceeds to Manitoba. When there he writes to his friend to burn the will, which is done. Is this a good revocation of the will? Explain.

### *Equity.*

1. A. and B. are partners in a mercantile concern. C. recovers a judgment against B. for a separate debt due him by B. What are the rights of a purchaser at sheriff's sale of B.'s interest in the firm? Explain fully.

2. Is possession of a property notice as against a registered title, if so, why? if not, why not?

3. A bequest to the Rector of St. James' Church, Toronto, for such charitable purposes as he may think proper. Is this good?

A testator leaves $5,000 to be invested for the poor of Toronto, naming B. his executor. B. dies during the testator's life, and no other executor is appointed. How can the fund be dealt with?

4. An executor desires to administer his testator's estate and distribute the residue without coming into court, how can he protect himself against the claims of creditors of which he has no notice?

5. Will a Court of Equity in any, and if so, in what case, decree specific performance of an agreement to enter into a partnership?

6. Distinguish between the duty of disclosure as to facts in cases of persons applying for policies of insurance, and those of creditors seeking to obtain a surety for the payment of a debt or performance of a contract.

7. What is a writ of arrest? Under what circumstances will the same be granted in this Province?

8. Where in an agreement a penalty is inserted for non-performance, can one of the parties elect to pay the penalty, where the other insists on performance? Explain.

9. In what way should a trustee having charge of trust funds act so as to provide against liability in the event of the failure of his bankers?

10. A., a resident of Toronto, dies there, letters of administration are taken out in Toronto, and A. having left property in New York State, aucillary letters are taken out there. What law governs as to the distribution of the assets there? Suppose there be a residue as to the foreign property after all claims paid, how can such residue be dealt with?

## *OSGOODE HALL LIBRARY.*

### Latest Additions.

(Compiled for The Canada Law Journal.)

Alabama Reports, vol. 87, Montgomery, 1889.
Dillon on Municipal Corporations. 4th ed., revised and enlarged, Boston, 1890.
Gniest's History of the English Parliament, 3rd ed., revised, London, 1889.
Holmested and Langton, The Judicature Act of Ontario, Toronto, 1890 (6 copies).
Indiana Reports, vol. 120, Indianapolis, 1890.
Kentucky Reports, vol. 87, Frankfort, 1889.
Law Reports (Ireland), vol. 23 Chancery, and vol. 24 Common Law, Dublin, 1890.
Mechem on Public Officers, Chicago, 1890.
Newfoundland Statutes for 1889.
Powell, The Doctor in Canada, his Whereabouts, and the Laws which govern him, Montreal, 1890.
State Trials, vol. 2, 1823-31, London, 1889.
Stephen's National Biography, vol. 22, Glover-Gravet, London, 1890.
Stevens on Mercantile Law, London, 1890.
Tudor on Charitable Trusts, 3rd ed., London, 1889.
Vaizey's Trust Investments, London, 1890.
Williams, Leaves of a Life, 2 vols., London, 1890

## *AUTUMN ASSIZES, 1890.*

### *Armour, C.J.*

Toronto Civil—Tuesday, September 2.
Toronto Criminal—Monday, October 13.
Milton—Wednesday, October 22.
Brampton—Wednesday, October 29.
St. Catharines—Tuesday, November 4.
Orangeville—Tuesday, November 11.

### *Rose, J.*

Stratford—Monday, September 15
Hamilton—Monday, September 22.
Welland—Monday, October 6.
Guelph—Monday, October 13.
Simcoe—Monday, October 20.
Cayuga—Thursday, October 23.
Berlin—Monday, October 27.
Brantford—Monday, November 3.

*Falconbridge, J.*

Barrie—Monday, September 8.
Ottawa—Monday, September 22.
Pembroke—Wednesday, October 1.
L'Original—Tuesday, October 7.
Perth—Monday, October 13.
Owen Sound—Monday, October 20.
Peterborough—Wednesday, October 29.
Lindsay—Tuesday, November 4.

*Street, J.*

Kingston—Monday, September 8.
Brockville—Monday September 15.
Cornwall—Tuesday, September 23.
Belleville—Monday, September 29.
Picton—Monday, October 6.
Napanee—Monday, October 13.
Cobourg—Monday, October 20.
Whitby—Monday, October 27.

*MacMahon, J.*

London—Monday, September 8.
Woodstock—Thursday, September 18.
Walkerton—Monday, September 29.
Goderich—Monday, October 6.
Sarnia—Monday, October 13.
Sandwich—Monday, October 20.
Chatham—Monday, October 27.
St. Thomas—Wednesday, November 5.

AUTUMN CHANCERY SITTINGS, 1890.

*Robertson, J.*

Toronto—Monday, November 17.

*Boyd, C.*

St. Thomas, Wednesday, October 1.
London—Monday, October 6.
Barrie—Monday, October 13.
Walkerton—Monday, November 10.
Goderich—Friday, November 14.
Sarnia—Tuesday, November 18.
Sandwich—Friday, November 21.
Chatham—Wednesday, November 26.
Whitby—Monday, December 8.

*Ferguson, J.*

Cobourg—Monday, September 15.
Lindsay—Friday, September 19.
Peterborough—Tuesday, September 23.
Ottawa—Monday, October 20.
Brockville—Monday, October 27.
Cornwall—Friday, October 31.
Belleville—Tuesday, November 4.
Kingston—Monday, December 1.

*Robertson, J.*

Simcoe—Tuesday, September 16.
Owen Sound—Tuesday, September 23.
Brantford—Tuesday, September 30.
St. Catharines—Monday, October 6.
Stratford—Monday, October 13.
Hamilton—Monday, October 20.
Woodstock—Monday, November 3.
Guelph—Monday, November 10.

# Appointments to Office.

SUPERIOR COURT JUDGES.

*Quebec.*

The Honorable Marcus Doherty, Judge of the Superior Court in and for the Province of Quebec, to be Assistant Judge of the Court of Queen's Bench for the said Province.

*Nova Scotia.*

Nicholas Hogan Meagher, of Halifax, to be a Judge of the Supreme Court of Nova Scotia, *vice* the Honorable Henry W. Smith, deceased.

COUNTY JUDGES.

*Ontario—York.*

Frederick Montye Morson, of Toronto, Barrister, to be Deputy Judge of the County Court of the County of York, from the 20th of June to the 20th of September, 1890.

*New Brunswick—Westmoreland and Kent.*

Pierre Cormand Landry, of Dorchester, Barrister, to be the Judge of the County Courts of Westmoreland and Kent, *vice* Bliss Botsford, deceased.

POLICE MAGISTRATE.

*Prescott.*

Frederick William Thistlethwaite, of Vankleek Hill, Barrister, to be Police Magistrate in and for the Village of Vankleek Hill, without salary, *vice* James Boyd, deceased.

CLERK OF THE PROCESS.

*Ontario.*

James Strachan Cartwright, of Toronto, Barrister, to be Clerk of the Process of the High Court of Justice for Ontario, *pro tempore*, *vice* William Beverley Heward, deceased.

ASSOCIATE CORONERS.

*Kent.*

Robert Nelson Fraser, of Thamesville, Doctor of Medicine, to be an Associate Coroner within and for the County of Kent, *vice* Richard Drake Swisher, M.D., deceased.

Duncan P. McPhail, of Highgate, Doctor of Medicine, to be an Associate Coroner within

and for the County of Kent, *vice* Andrew Decow, M.D., removed from the County.

*Lambton.*

Anthony Rayburn Hanks, of Oil Springs, Doctor of Medicine, to be an Associate Coroner within and for the County of Lambton.

DIVISION COURT CLERKS.

*Manitoulin.*

William John Tucker, of Manitowaning, to be Clerk of the Fourth Division Court of the said temporary Judicial District of Manitoulin, *vice* H. S. Francis, resigned.

*Peterborough.*

Wesley Sherin, of Lakefield, to be Clerk of the Fourth Division Court of the County of Peterborough, *vice* Samuel Sherin, resigned.

DIVISION COURT BAILIFFS.

*Dufferin.*

Alfred Finbow, of Grand Valley, to be Bailiff of the First Division Court of the County of Dufferin, *vice* Alfred Beals, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

John Alexander McGregor, of Montreal, to be a Commissioner for taking Affidavits within and for the City of Montreal, and not elsewhere, for use in the Courts of Ontario.

Alexander Mutchmor, of Ottawa, to be a Commissioner for taking Affidavits within and for the Province of Quebec, and not elsewhere, for use in the Courts of Ontario.

Harry Treadway Jones, of Halifax, Barrister, to be a Commissioner for taking Affidavits within and for the City of Halifax, and not elsewhere, for use in the Courts of Ontario.

---

ERRATUM.—In our Ottawa correspondent's letter on Dominion Legislation of last Session, in our last number, we regret several printer's mistakes occur. "l'Original time" should read "L'Orignal time"; in the quotation from Hamlet, "thrive" is inserted for "shove"; and in the fifth line following the quotation, for "taxation" read "lesion."

# Law Society of Upper Canada.

## LAW SCHOOL—HILARY TERM, 1890.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended o read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

CURRICULUM OF THE LAW SCHOOL.

*Principal*, W. A. REEVE, Q.C.

*Lecturers*, { E. D. ARMOUR. / A. H. MARSH, LL.B.

*Examiners*, { R. E. KINGSFORD, LL.B. / P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto, are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to them in lieu of their First or Second Intermediate

Examinations as the case may be. At the first Law School Examination to be held in May, 1890, fourteen Scholarships in all will be offered for competition, seven for those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School :

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

FIRST YEAR.

*Contracts.*

Smith on Contracts.
Anson on Contracts.

*Real Property.*

Williams on Real Property, Leith's edition.

*Common Law.*

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3.

*Equity.*

Snell's Principles of Equity.

*Statute Law.*

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

SECOND YEAR.

*Criminal Law.*

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

*Real Property.*

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

*Personal Property.*

Williams on Personal Property.

*Contracts and Torts.*

Leake on Contracts.
Bigelow on Torts—English Edition.

*Equity.*

H. A. Smith's Principles of Equity.

*Evidence.*

Powell on Evidence.

*Canadian Constitutional History and Law.*

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

*Practice and Procedure.*

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

*Statute Law.*

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be deliver d by a lecturer.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

*Contracts.*

Leake on Contracts.

*Real Property.*

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

*Criminal Law.*

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

*Equity.*

Lewin on Trusts.

*Torts.*

Pollock on Torts.
Pmith on Negligence, 2nd edition.

*Evidence.*

Best on Evidence.

*Commercial Law.*

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

*Private International Law.*

Westlake's Private International Law.

*Construction and Operation of Statutes.*

Hardcastle's Construction and Effect of Statutory Law.

*Canadian Constitutional Law.*

British North America Act and cases thereunder.

*Practice and Procedure.*

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

*Statute Law.*

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectures on Real Property, and Practice and Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicifor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.