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PART II.

Canada Law Journal.

Toronto, April, 1878.

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

From Q.B.] [March 20.

LEPROHON v. OTTAWA.

The Legislature of Ontario has no power to impose a tax upon the income of an officer of the Dominion Government, or to confer such a power on the several municipalities.

Robinson, Q.C., for the appellant.

Cameron, Q.C., and *Bethune*, Q.C., *contra*.

Appeal allowed.

From C. C. Wellington.] [March 23.

ROGERS v. HAGARD.

Malicious prosecution.

In laying an information against the plaintiff, the defendant only intended to charge him with having unlawfully carried away a saw, and stated facts to the magistrate which merely amounted to a charge of trespass, but in drawing the information, the magistrate, of his own accord, used the word "feloniously," which word the defendant did not know the meaning of.

Held, reversing the decision of the County Court, that under these circumstances an action for malicious prosecution would not lie.

S. Richards, Q.C., for the appellant.

J. K. Kerr, Q.C., for the respondent.

Appeal allowed.

From C. C. Grey.] [March 23.

MAY v. MIDDLETON.

Inland Revenue Act—Conviction under.

Section 165 of the Inland Revenue Act prescribes that the pecuniary penalty or forfeiture incurred for any offence against the provisions of the Act, may be sued for and recovered before any two Justices of the Peace, . . . and if any such penalty be not forthwith paid . . . the said Justices may, in their discretion, commit the offender to the Common Gaol until the penalty shall be paid.

The plaintiff was tried under the Inland Revenue Act for distilling spirits without having a license, and was ordered to pay the sum of $200.

Held, affirming the judgment of the County Court, that the adjudication was a conviction, and not merely an order for the payment of money.

Robinson, Q.C., for the appellant.

Lane, for the respondent.

Appeal dismissed.

From C. C. Simcoe.] [March 23.

LANGFORD v. KIRKPATRICK ET AL.

Distress for Taxes.

A notice of action to a collector for an illegal distress, gave the time as "on or about the 28th May;" and the place was described as "at or near the west half of lot 31." The jury found that the seizure took place on the 23rd May, but the evidence shewed that it was merely a technical seizure, and the cause of action was the seizure on the 28th May, when the plaintiff's cattle were seized and removed for sale. The jury also found that the trespass was committed on the east half of lot 32.

Held, that the notice was sufficient, as reasonable certainty only is required.

The distress was levied for taxes—which included arrears that had been paid—and was made after the roll had been returned, without any resolution authorizing the defendant to collect the taxes, under Rev. Stat. c. 180, sec. 102.

Held, reversing the judgment of the County Court, that the distress was illegal.

Held, also, that there was no presumption that the defendant had received lawful authority, because it was conceded that he acted as Collector in levying the taxes.

McCarthy, Q.C., for the appellant.

Bethune, Q.C., for the respondent.

Appeal allowed.

From Chy.] [March 30.

Craig v. Craig.

Easement—Specific performance.

An agreement to grant an easement will not necessarily be for an easement in perpetuity.

Specific performance of an agreement to grant an easement may be enforced in equity.

A verbal agreement was entered into between the owners of two adjoining half-lots, that each should give a strip of equal width from his land, for a lane from the public highway to the clearing which they should make upon their respective lots—the agreement not being expressly limited as to time. In accordance with the agreement a rail fence was built by each on their respective sides of the lane, which they used in common for fifteen years, until the death of one of the parties. Upon a bill filed to restrain the defendant from closing up the portion of the lane situate on his land, it was proved that the greatest part of the lane was on the defendant's land: that there had been no expenditure on the plaintiff's land, or on the lane upon the faith of this agreement: and that the lane was merely kept open by mutual agreement.

Held, that specific performance could not be enforced as the site of the fence and user of the included land could not be referable to the original agreement; but even if the lane had been composed of equal portions of the land of each proprietor, under the circumstances no agreement to keep it open in perpetuity could be presumed.

Ferguson, Q. C., (with him *Bain*) for the appellant.

Boyd, Q. C., for the respondent.

Appeal allowed.

From Chy.] [March 30.

Botham v. Keefer.

Jurisdiction—Partnership.

The plaintiff, as assignee of the firm of S. J. & Co., which had been placed in insolvency under a writ of attachment against S. J. & M., filed a bill against the defendant, seeking to have him declared a partner of S. J. & Co., and to vest his property in the plaintiff as assignee of the firm. A decree was made as asked. The objection was taken to the jurisdiction of the Court of Chancery to make or entertain such a bill for the first time in the reasons against the appeal.

Held, that the Court of Chancery had jurisdiction to declare the defendant a partner; as upon proof of the partnership the plaintiff would have been entitled to have the partnership accounts taken; but that Court had no power to vest the defendant's property in the plaintiff.

Where there has been a contribution of capital as well as participation in the profits accruing from that capital, a partnership will be inferred, even though the parties agree that they will not call themselves partners, or did not intend to constitute that relationship.

M. C. Cameron, Q.C., with him *R. Hoskin*, for the appellant.

C. Moss for the respondent.

Appeal dismissed.

QUEEN'S BENCH.

IN BANCO—HILARY TERM.

March 15.

Regina v. Prettie.

Conviction—Conflict of Jurisdiction of Dominion and Local Legislatures—Liquor, sale of.

The defendant was convicted in a municipality where the Temperance Act of 1864 was in force. The information stated that defendant did "keep and have fermented liquors for the purpose of selling, bartering, or trading therein without the licence therefor by law required." The conviction was for that the defendant "did unlawfully keep liquor for the purpose of sale, barter, and traffic therein without the license therefor by law required."

Held, that it was a conviction under 37th Vict., ch. 32, sec. 25 O., and was improper; that the conviction should have been under the Temperance Act of 1864, sec. 12, for keeping liquor at all, and not for keeping it "without the license therefor by law required."

The conflict of jurisdiction between the Dominion and Local Legislatures under the power

to regulate trade and commerce on the one side, and the right to impose police regulations on the other, considered and discussed.

Robinson, Q.C., and *H. J. Scott* for applicant.

J. K. Kerr, Q. C., *contra.*

GUNN v. NORTH.

Equitable assignment—Contract.

A, of whom plaintiff is assignee in insolvency, contracted with T. and B. to do certain wrought iron, cast iron, and galvanized iron work, and sublet the different kinds of work to different people; amongst it some to defendants for $982. The work to be performed by defendants under the terms and conditions entered into between A. and T. and B., and defendants to be paid the $982 under the terms, and at the times, &c., expressed in the contract.

Held, a good equitable assignment as to the $982.

Bethune, Q.C., for plaintiff.

R. Martin, Q.C., *contra.*

GORDON v. ADAMS.

Counsel fees, assignment of—Implied contract.

H. assigned to the plaintiff a claim against defendant for counsel fees. Defendant is an attorney, and took H., a barrister and attorney, into his employ at a weekly wage. Nothing was said in the contract or during the engagement, which lasted some years, as to H's right to claim counsel fees.

Held, that no implied promise could be presumed to pay these counsel fees, and at all events none that they should be paid by the attorney.

Beaty, Q.C., for plaintiff.

J. K. Kerr, Q.C., *contra.*

BURNS v. CITY OF TORONTO.

Negligence—Ice on side-walk—Contributory negligence.

The plaintiff, while walking on Sherbourne Street, a street centrally situated in Toronto, fell on some ice on the side-walk and injured herself, for which she sues the city. It appeared from the weight of evidence that the ice had remained at the place of the accident all the winter; that the ice was caused by the thaw of the premises adjoining, which were higher than the side-walk; that the City Commissioner, whose duty it was to look after the state of the roads, had passed up and down the street in question repeatedly; that the plaintiff knew the street well, and passed up and down it a couple of times a day, that she had passed it once before the same day; that she knew it to be dangerous, and might have gone another way.

Held, that she could not recover.

Per HARRISON, C.J.—Because she was guilty of contributory negligence.

Per WILSON and ARMOUR, JJ.—There was not sufficient evidence to shew that the city was aware the road was out of repair. The fact that the Commissioner passed the place was not sufficient. *Kingland* v. *City of Toronto*, 23 C.P. 99, not assented to.

J. K. Kerr, Q.C., for plaintiff.

McWilliams for the Corporation.

STEVENS v. BUCK.

Ejectment—Improvements—Equitable defence after argument in term—Amendment.

Plaintiff brought ejectment for a piece of land as part of lot 3, which he held under a patent from the Crown, and the defendant claimed to hold it under a subsequent patent as part of lot 4. The Court were of opinion, on the evidence, that the land in dispute was part of lot 3, but refused to find for plaintiff, as the defendant had been in possession for many years before plaintiff's patent issued, and plaintiff never made any claim till this action, and refused to pay for the improvements. There was no equitable defence filed by defendant, but the Court directed the defendant to amend by filing one *nunc pro tunc*, and to join issue for the plaintiff, and directed that on this being done a verdict should be entered for the defendant.

J. K. Kerr, Q.C., for plaintiff.

M. C. Cameron, Q. C., *contra.*

DENNY v. MONTREAL TELEGRAPH COMPANY.

Negligence—Contributory negligence—Finding of Judge without a jury, as to.

Action by widow and executrix for damages for the death of her husband, caused, as alleged, through the negligence of the defendants.

It appeared from the evidence that the deceased was attending the Brockville Assizes as a suitor, when it became necessary to telegraph for witnesses. He went to defendants' office for this purpose. The day was bright,

and snow was on the ground. The office in the part used by the public was only a few feet wide, and a few feet beyond the part of the counter where telegrams were handed in there was an open trap door. The deceased entered the office and tapped at the glass partition on the counter for the operator, who replied to the effect that he would come in a minute. The deceased stepped toward the trap-door apparently as if going round the counter, when he fell through the trap-door and injured himself so that death soon resulted. The learned judge, who tried the case without a jury, and who viewed the scene of the accident, was of opinion that deceased, if he had used ordinary care, could have seen the trap, and that he was guilty of contributory negligence, and he found for defendants.

Held by this Court, that there must be a new trial, for, notwithstanding the finding of the learned judge, there was in their opinion no evidence of contributory negligence on deceased's part.

S. Richards, Q.C., for plaintiff.

C. Robinson, Q. C., for defendants.

RE BROWNING v. CORPORATION OF TOWN OF DUNNAS.

Assessment—Omission of name from voters' list—Application to restore—Laches—Mandamus—Costs.

The applicant was duly assessed in the Town of Dundas for $600 income in 1877, and his name appeared on the assessment roll accordingly. The Court of Revision, without notice to him, struck his name out, and his name did not appear in the voters' list which were posted up in August, 1877. Not examining the lists so posted up, he did not discover the omission till October, when he applied promptly to the Clerk of the Town and then to the Judge of the County Court, by summons, to have his name restored. The Judge, after examining the clerk, &c., refused to direct the amendment asked.

A rule *nisi* for a *mandamus* against the County Judge and Town Clerk to restore the name was discharged, the applicant having been too late in his application to the County Judge, and cause having been shewn for the County Judge, the rule was discharged with costs as to him.

Browning, in person.

Walker, for the County Judge.

WHITE v. MCKAY.

Ejectment—Amendment by adding party plaintiff—New trial on affidavits.

In an action of ejectment, where the defendant offered no evidence, a verdict was entered for the plaintiff, with leave to defendant to move on any ground he thought fit. Defendant having taken out a rule to set aside the verdict, on the ground that the plaintiff had not proved his title, and on affidavits disclosing new evidence which tended to show plaintiff was only entitled to a moiety, the plaintiff asked leave to amend, by adding a party plaintiff who was a bare trustee for the original plaintiff, the new party consenting to the amendment.

The Court directed the amendment to be made under sec. 222 of the C. L. P. Act, and secs. 8 and 50 of the A. J. Act of 1873, and discharged the rule on the affidavits, thinking them insufficient to establish the ground they raised.

Kingsmill for plaintiff.

Osler for defendant.

DRIFFILL v. MCFALL.

Verdict reduced to nominal damages—Application for certificate for full costs—Trover.

This cause is reported in 41 U. C. R. 313. There the Court ordered a verdict to be entered for $1,000, but directed that the verdict should be reduced to nominal damages if a note in respect of which the trover was brought were given up. On this being done, a verdict was ordered to be entered, but no application up to the time the rule issued was made for the certificate. In this Term, a rule having been taken out for full casts, the Court intimated that the application, in strictness, should have been made earlier, but as there was no rule or practice, or decision in point, the Court granted the certificate.

Per WILSON, J.—When the Court gives the verdict, the whole proceedings—the verdict at the trial, the motion to the Court, and the verdict given by the Court—should all be entered of record.

McCarthy, Q.C., for plaintiff.

Osler, contra.

CURRIE v. HODGINS.

Principal and surety—Release by giving time.

The plaintiff became the holder of a note not due, made by defendant H. and endorsed by

defendant D., dated 7th Nov., 1876, payable four months after date. Defendant D. pleaded equitably, that the note was given for the accommodation of H. to plaintiff's knowledge, and that plaintiff gave H. time. It appeared from the evidence that on February 3rd, before the maturity of the note, and without B.'s knowledge, but as plaintiff and H. swore, without any reference to the note, plaintiff accepted from H. a chattel mortgage for a year for the amount of the note and other items of account between plaintiff and H., payable at 10 per cent. interest.

Held, following *Wyke* v. *Rogers*, 1 De G. McN. & G. 408, and *Booter* v. *Mayor*, 19 C. B. N. S. 76, that the new security was collateral to the old, and that the surety was not discharged.

J. K. Kerr, Q. C., for plaintiff.

Beaty, Q.C., for defendant.

[March 15.

KIDD v. O'CONNOR.

Ca. Sa.—Setting aside arrest- Review of Judge's finding—Delay in moving—Amendment.

Held, that the Court have power to review the decision of a Judge granting a *ca. sa.* in a cause pending, upon facts and circumstances disclosed on affidavit sufficient to satisfy the judge as to the defendants being about to leave the province, &c., for having made a secret disposal of his property, &c.

The application as first made was in time, and was only for the discharge of defendant on affidavits. This was sent by the Court to a single judge. There it was discovered that the rule was inapplicable to a prisoner in custody under final process, and the rule was amended long after the term in which the application was first made, so as to come to the Court by way of appeal. *Held*, that the amendment was too late.

S. Richards, Q. C., for plaintiff.

Osler, for defendant.

SHULTZ v. REDDICK.

Distress—Notice of, too late—Damages.

The provision of the Statutes as to five days notice of distress by a landlord is imperative; where therefore a notice of distress was given on the 8th February, and the sale took place on the 12th February, it was held that the sale was illegal.

The jury in assessing the damages for the plaintiff gave a verdict for the full value of the goods sold, less the rent due.

Held, that the assessment was made on a correct principle.

Dunbar for plaintiff.

Osler for defendant.

COMMON PLEAS.

VACATION COURT.

MARCH 12.

HALCROW v. KELLY.

Promissory Note—Alteration—Discharge of endorser.

A printed form of promissory note with all the blanks filled, and complete in every respect, except that it had not been signed by the intended makers, was handed by them to defendant, endorsed by him for their accommodation, and handed back to them, when they, without defendant's knowledge, added, after the words "value received," the words, "with interest at ten per cent. per annum," and then signed it and transferred it for value to the plaintiff.

Held, that defendant was discharged by the alteration.

Alexander Dunbar for the plaintiff.

J. K. Kerr, Q.C., for the defendant.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported for the *Law Journal*, by N. D. BECK, Student-at-Law.)

PROVINCIAL INSURANCE COMPANY v. GOODERHAM.

Security for costs—Bankruptcy of plaintiff company after action—Receiver continuing suit.

Where an incorporated company, after they had commenced an action at law, became bankrupt, and a receiver was appointed by the Court of Chancery, in a suit in that court, and authorized to proceed in the action at

law. *Held*, that neither the company nor the receiver should be ordered to give security for costs.

[January 11—Mr. DALTON.

This was an action for calls, during the pendency of which the plaintiffs became bankrupt and a receiver was appointed by the Court of Chancery, at the instance of a creditor, to wind up the affairs of the company, and, before this application, had been authorized by that Court to proceed with this action.

Biggar obtained a summons to shew cause why the plaintiffs or the receiver should not give security for costs, on the grounds (1) that the plaintiffs had become insolvent since the commencement of the action; and (2) that the receiver, a solvent person, was suing in the name of an insolvent plaintiff.

Biggar moved the summons absolute. *Malcolm* v. *Hodgkinson*, L. R. 8 Q. B. 209, is precisely in point. There a receiver had been appointed, as in this case, and was suing for the benefit of the estate, and he was ordered to give security for costs. There is a distinction, with regard to ordering security, between cases in which, after the action has been commenced, the plaintiff becomes insolvent, and those in which he is insolvent at the commencement of the action. In the former case the assignees, if they interfere, will be ordered to give security: *Mason* v. *Polhill*, 2 Dowl. 61; *Stead* v. *Williams*, 5 C. B. 528, 530, 531 (a); *Heaford* v. *Knight*, 2 B. & C. 579; *Denton* v. *Williams*, 8 Dowl. 123. The case of the *United Ports and General Ins. Co.* v. *Hill*, L. R. 5 Q. B. 395, will be cited for the plaintiffs, but it is an earlier decision than *Malcolm* v. *Hodgkinson*, and seems to be overruled by it. The mischief intended to be avoided clearly is the allowing of a solvent person to prosecute, in the name of a bankrupt, a suit which the nominal plaintiff, from his very bankruptcy, could not carry on.

Lyon shewed cause. In *Sykes* v. *Sykes*, L. R. 4 C. P. 645, Bovill, C. J., says, at page 647: "To entitle a defendant to security, he must shew that not only plaintiff is insolvent, but also that he is suing as a nominal plaintiff, in the sense of another person being beneficially interested in the result of the action. . . . That doctrine, however, has never been applied to the case of an executor or the assignee of a bankrupt. The distinction is manifest; for, though there may be legatees or creditors, it does not follow that they will receive their legacies or a dividend on their debts; and so there is no person interested to give, or who would be willing to give, security for costs." And so he continues, maintaining this proposition; and this decision was concurred in and followed in *Denston* v. *Ashton*, L. R. 4 Q. B. 590, where it was held that an assignee suing for the benefit of the creditors will not be ordered to give security for costs. The *United Ports, &c.*, v. *Hill*, L. R. 5 Q. B. 395, is to the same effect. Moreover, the Court of Chancery having appointed a receiver and authorized him to proceed with the action, any application which would interfere with his proceeding should be made to that Court. If security be ordered here, it will in effect stay all further proceedings in this action, and as there are a number of cases in the same position, such an order would result in altogether preventing the collection of the assets of the company. [Mr. DALTON referred to *Campbell* v. *Lepan*, 19 C. P. 34, per Gwynne, J., and *M'Cullock* v. *Robinson*, 2 Bos. & P. N. R. 352.]

Mr. DALTON.—On the argument of the summons, Mr. Lyon resisted the application upon two grounds—(1) that a receiver having been appointed by the Court of Chancery, the application should have been made to that Court, and not here; (2) that in any event the defendant was not entitled to the order, and I think the authorities support both these contentions.

As to the first—In *Oliva* v. *Johnson*, 5 B. & Ald. 908, counsel for plaintiff says, *arguendo*: "Besides, it is a decisive answer to the present application, that this is an action brought in pursuance of liberty granted by the Vice-Chancellor, upon the hearing of a petition in bankruptcy, for the purpose of trying the validity of the commission." Counsel *contra* observed that this was an action brought, not by the *direction* of the Vice-Chancellor, but merely in pursuance of *liberty reserved*. The Court, in giving judgment, say: "The case of an action brought *by the direction* of the Vice-Chancellor differs widely from that of an action brought merely *in pursuance of leave or liberty reserved*. If this had been a case of the former kind it would have been *distinctly* within the authority of *M'Cullock* v. *Robinson*, but as it is the plaintiff may apply to the Vice-Chancellor for his directions as to security for costs being or not being required: we cannot take this case out of the general rule." The plaintiff's course in the present case was to have applied to the Court of Chancery in the suit pending there, and he may do so now if so advised.

As to the second point—In giving judgment in the *United Ports, &c.*, v. *Hill*, L. R. 5 Q. B. 395, Cockburn, C. J., says, at page 396: "The defendants ask us to apply the principle—that where an insolvent party is put forward as a plaintiff by a solvent person, the plaintif shall give security for the defendant's costs –to the present case, where insolvent plaintiffs are themselves suing in their own names and for their own debt. It is true it is under the directions of the official liquidator, but that can make no difference; and it is clear that if the company were not being wound up, and were suing of their accord, and not under the directions of the liquidator, they could not be compelled to give security for costs;" and Mellor, J., says, at page 397: "The defendants are in no worse position than any other defendant who is sued by an insolvent plaintiff, unable to meet costs if unsuccesful." This is exactly the present case, and is, I think, a clear and correct exposition of the law, and is entirely consonant with good sense.

I therefore discharge the summons on both grounds, but as the case of *Malcolm* v. *Hodgkinson* is not consistent with this view, I think the defendant was justified in making the application, and so I discharge it without costs to either party.

Order accordingly.

CHANCERY CHAMBERS.

(Reported for the *Law Journal* by N. D. BECK, Student-at-Law.)

FINNEGAN V. KEENAN.

Dismissal for want of prosecution—Filing replication—Undertaking to speed the cause—English Practice Lis pendens—Statute of Limitations—Mistake of Solicitor.

Held, confirming the judgment of the Referee:

1. That filing a replication after service of notice of motion to dismiss cannot be taken into consideration on the motion.

2. That though the delay be occasioned by the mistake of the solicitor, *per se* that will not warrant the Court in refusing the motion on an undertaking to proceed.

3. Nor will the mere fact that, if the bill be dismissed, the plaintiff's claim will be barred by the Statutes of Limitations.

[REFEREE, Jan. 9, BLAKE, V.C.—Jan. 28.

This was an appeal from the judgment of the Referee dismissing the bill for want of prosecution.

The following dates are material:—

30th June, 1876.—Bill filed—*Lis pendens* issued and registered.

9th Sept., 1876.—Bill served.

23rd Jan., 1877.—Answer filed.

29th Jan., 1877.—Defendant's affidavit on production filed.

31st Jan., 1877.—Demand of copy of affidavit on production served.

5th March, 1877.—Copy served.

20th March, 1877.—Spring sittings at Lindsay.

18th Sept., 1877.—Autumn sittings at Lindsay.

15th Dec., 1877.—Notice of present motion served.

20th Dec., 1877.—Replication filed.

The other material facts will appear from the arguments.

Appelbe for the appeal. Filing of the replication subsequent to the service of the notice of motion is an answer to the motion to dismiss; *Hughes* v. *Lewis*, 8 W. R. 292. The defendants have been guilty of great delay, and cannot take advantage of the delay of the plaintiff, who, accounts for his delay. As to the spring sittings—the defendant's answer was not filed until the 23rd of January, although the time for filing it expired on the 7th of October; and, although a demand for a copy of the defendant's affidavit on production was served on the 31st of January, it was not complied with until the 5th of March, fifteen days before the sittings, which made it impossible to have the case set down at Lindsay; and, moreover, the plaintiff was entitled to examine the defendant on his affidavit before going to a hearing. The non-compliance with the demand operated as a stay of proceedings. *Proudfoot* v. *Thompson*, 1 Ch. Cham. 367. As to the autumn sittings—the plaintiff's solicitors, in reply to a letter from defendant's solicitor, a short time before these sittings, wrote him, saying that they intended to set the case down, and they did send instructions to their agents at Lindsay to do so, and it was through some mistake of the agents that it was not done; yet, after this was discovered, the defendant's solicitor refused to consent to take short notice of hearing; this conduct on their part was unreasonable. The Court will not dismiss the bill where the delay has been occasioned by the mistake of the solicitor: *S. I. of W. & P. I. S. Co.* v. *Rawlins*, 13 W

R. 512; *Devlin* v. *Devlin*, 3 Ch. Cham. 491. If the bill be dismissed, the plaintiff's claims will be barred by the Statutes of Limitation, which the Court will not allow in a case like the present: *Dunn* v. *McLean*, 6 P. R. 156.

H. Cassells contra. Filing the replication is no answer to the motion: *Spawn* v. *Nelles*, 1 Chy. Ch. 270. Nor is the mere fact that the delay arose through the solicitor's mistake: *Winnett* v. *Renwick*, 6 P. R. 233. The defendant delayed filing his answer, while the plaintiff was endeavouring to get him to settle the suit, and as soon as these negotiations were at an end the answer was filed. The plaintiff's solicitors, if they had been anxious to proceed without delay, could have obtained a copy of the affidavit on production from the Clerk of Records and Writs. The real reason why the case was not set down for the spring sittings was the illness of one of plaintiff's solicitors.

Blake, V.-C.—A *lis pendens* has been registered in this suit. I have always understood that, where a party to suit obtains an injunction, he must proceed with the greatest possible expedition, and, a *lis pendens* being in effect an injunction, the same rule applies to the present case. Now, there has been great delay here on the plaintiff's part, and it has not been satisfactorily accounted for. Mr. Applebe contends, that the filing of the replication, pending the motion to dismiss, was an answer to the motion, and he cites several English cases in support of this contention; but these cases are not applicable; an entirely different practice prevails here. In England, the practice was to refuse a motion to dismiss for want of prosecution, upon the plaintiff undertaking to speed the cause or upon his actually proceeding; but, for the last ten or twelve years, in our Courts that practice has not been followed, our orders then altered the practice, and laid down a more strict rule than was theretofore in force here or in England. (See Con. Gen. Orders 276.) The plaintiff must account for his delay or the bill will be dismissed. Then, it is urged that this is done by showing that the delay occurred through the mistake of the solicitors or their agents, but this alone, as a general rule, is not sufficient; it is but an element for the consideration of the Court; something more must ordinarily be shewn before the Court will relax its rules; a plaintiff must, besides shewing this, either account for the delay, though perhaps not so clearly as where this element does not exist, or he must shew that he will suffer an irremediable injury of a serious nature, which is not shewn here, for the plaintiff has his remedy against the solicitor. Again, it is urged that the Court will not dismiss a plaintiff's bill, if his remedy is thereby barred by the Statute of Limitations; but, although in some cases where the delay has been to some extent explained, the circumstance of the not allowing the indulgence resulting in the loss of the claim by the Statute of Limitations intervening, is taken into consideration, yet in other cases, as in *Mulholland* v. *Brent*, 2 Ch. Chan. 31. it is said the want of diligence byt he plaintiff has resulted in the defendant's being entitled to a dismissal of the bill, and, although this works a bar of the plaintiff's claim, we shall not take from the defendant the double benefit he has procured through the laches of his opponent—the fact, that the non-prosecution of the suit with reasonable diligence might have resulted in the ultimate loss of the claim by the intervention of the Statute of Limitations, should have spurred the plaintiff on to greater diligence. I think this is a case in which the rule as laid down in *Mulholland* v. *Brent* should be followed, and dismiss the appeal with costs.

Appeal dismissed with costs.

ENGLISH REPORTS.

DIGEST OF THE ENGLISH LAW REPORTS FOR FEBRUARY, MARCH AND APRIL, 1877.

(*Continued from page 91.*)

NEGLIGENCE.

1. A railway train stopped at a station in such a way that the engine and part of the first car stood beyond the platform. A female passenger who wished to get down waited some time on the car-step for assistance, but finally, fearing the train would start, tried to alight alone. She had her hands encumbered with parcels, and fell and injured herself. On these facts, *held*, that there was sufficient evidence of negligence on the part of the railway company to go to the jury.—*Robson* v. *The North-Eastern Railway Co.*, 2 Q. B. D. 85.

2. A train on defendant's railway, on which plaintiff was a third-class passenger, ran by at a station, so that the car on which the plaintiff was, shot beyond the platform. Defendant's servants called out to the passengers to keep their seats, but plaintiff and others in the same car did not hear them. After a while, on the advice of a friend, and

seeing passengers from other cars descending, plaintiff, with some one's help, descended. In so doing she was injured. *Held*, that there was evidence of negligence on the part of the defendants to go to the jury—*Rose* v. *The North-Eastern Railway Co.*, 2 Ex. D. 248.

See Collision, 1.

Negotiable Instrument.

Plaintiff placed certain scrip certificates in the hands of a broker, for the purpose of having the instalments paid on them according to their tenor, and finally of converting them into stock. A usage was proved that among bankers and brokers such certificates were transferable by mere delivery. The broker made them over to the defendant for a debt of his own, and the defendant received them in good faith as his property. *Held*, that the defendant was entitled to them as against the plaintiff, the latter being estopped to deny that the certificates were transferable by delivery.—*Rumball* v. *The Metropolitan Bank*, 2 Q. B. D. 194.

Notice.—See Principal and Agent, 1.

Passenger.—See Common Carrier.

Petition of Right.

A sum of $3,000,000 was received by the British government from China on account of debts due British merchants from bankrupt Chinese merchants. *Held*, that a petition of right by a claimant of a portion of this sum would not lie, and that by virtue of a treaty with a foreign power the crown can never be a trustee or agent of a subject.—*Rustomjee* v. *The Queen*, 2 Q. B. D. 69; s. c. 1 Q. B. D. 487.

Pleading and Practice.

The court will not decide on a fictitious case, where the parties who would be affected by it are not *in esse*, and may never be, and when such decision would not be binding, and might cause trouble which would never arise unless the persons not now *in esse* should come into being.—*Bright* v. *Tyndall*, 4 Ch. D. 189.

See Conspiracy; Foreign Judgment, Jurisdiction, 1, 2.

Pledge.—See Mortgagor and Mortgagee.

Possession:—See Mortgagor and Mortgagee, 2; Vendor and Purchaser, 1.

Power of Appointment.—See Appointment.

Preference.—See Fraudulent Preference, 3.

Presumption of Death.—See Mortgagor and Mortgagee. 1

Principal and Agent.

1. A broker sold Consols which were trust property for cash, received the amount by check from the trustee who employed him, and deposited the check in his bank. At the same time, he bought with the proceeds of the Consols railway stock, which could only be transferred on the settling day, two days later. He had notice that the Consols were trust property. On settling day he failed, and there was a sum at his banker's to his credit. *Held*, that the proceeds of the Consols should be traced and claimed as being trust property, and that the trustees thereof need not come in merely as a general creditor.—*Ex parte Cooke. In re Strachan*, 4 Ch. D. 123.

2. Plaintiff offered to sell his colliery for £25,000 net. Defendant thought he could sell it for him, and after some correspondence plaintiff wrote defendant that if the latter could sell his colliery for £30,000, defendant might retain the extra £5,000, Defendant, on enquiries, thought the colliery could be sold for more, and entered into negotiations with one C., a law student, without means, and as a result C. got a purchaser at £40,000. The transaction was carried through; the plaintiff received £25,000, believing as alleged, that the property brought only £30,000. defendant got £5,000, and C. £10,000. The evidence before the Vice-Chancellor was very voluminous and conflicting, and the Vice-Chancellor held, on his view of it, that the defendant and C. were jointly and severally liable to the plaintiff for the £10,000. On appeal, *held*, without hearing appellant's counsel, by the court (James, L. J., Baggallay, J. A., and Lush, J. A.). that the transaction was perfectly legitimate, and that the plaintiff's bill must be dismissed with costs.—*Morgan* v. *Elford*, 4 Ch. D. 352.

Principal and Surety.

Defendant, D., contracted with plaintiffs for their surplus ammoniacal liquor. The amount was to be measured at the end of each month, and payment made within the next fourteen days, unless the plaintiffs allowed a longer time. P. and C. became D.'s sureties on this contract. He paid part of his July account, and, August 21, plaintiffs took his promissory note for the balance. He did not pay the August nor September dues. *Held*, that the sureties were discharged as to the amount for which the promissory note was taken, but not for the August and September dues. The contract was separable.—*The Croydon Commercial Gas Company* v. *Dickinson et al.*, 2 C. P. D. 46.

Privilege.—Ses Libel and Slander, 1, 2.

Privity.—See Telegraph.

Probate.

J. made his will, and then married. On the wedding-day he added a codicil, making provision for his wife. She died before him. On his death only the will without

the codicil could be found. He had been heard to say, just before his death, that he adhered to his will, and it was supposed he destroyed the codicil, with the idea that the will would be good without it. The will as proved by the original draft, with the codicil, was admitted to probate as the last will of the deceased.—*James et al.* v. *Shrimpton et al.*, 1 P. D. 431.

See Will, 2.

Railway.—See Negligence, 1, 2.

Ratification.—See Insurance.

Realty and Personalty.—See Mortmain.

Right of Way.—See Way.

Right, Petition of.—See Petition of Right.

Sale.

Blenkiron & Son, a well-known firm, did business at 123 Wood Street. One A. Blenkarn ordered goods, by letter, of the plaintiffs, from 37 Wood Street. The letters were signed in such a manner that the signature looked very much like A. Blenkiron & Co. A. Blenkarn had been convicted under an indictment for falsely pretending, in obtaining these goods, that he was Blenkiron & Son. Meantime the defendants had bought in good faith some of the goods of Blenkarn. *Held*, that there was no contract between the defendants and A. Blenkarn by reason of some mistake, and that the property in the goods never passed to A. Blenkarn.—*Lindsay et al.* v. *Candy et al.*, 2 Q. B. D. 96; s. c. 1 Q. B. D. 348.

See Bankruptcy; Contract, 4; Conveyance.

Set-off.

H. bought iron of A. & Co., supposing and having reason to believe that he was dealing with A. & Co. as principals, when in fact they were factors or agents of D. As result of other transactions, A. & Co. became indebted to H. for an amount larger than the price of the iron. H. then went into liquidation, and D. tried to prove his claim for the price of the iron. *Held*, that H. was entitled to set off the amount due him from A. & Co.—*Ex parte Dixon. In re Henley*, 4 Ch. D. 133.

Slander.—See Libel and Slander.

Specific Performance.

Grant by plaintiff to defendants on their application of the "seam of coal called the S. vein, and being about two feet thick, with the overlying and underlying beds of clay on and under the farm called L.," etc., for a certain term at a certain rent, with certain royalties on coal and clay mined, with liberty in the lessee to take any part of the farm for the same term, and an obligation on them to lay out a certain sum on a manufactory and works. "Way-leave for foreign clay and coal 1d. per ton." Defendants, one of whom was a mining engineer, entered and searched for coal and clay, and reported that they did not find the coal seam, and the clay was very poor, and that they must give up the whole thing. *Held*, that they were bound to specific performance, there being no warranty by the plaintiff that the coal-vein was there.—*Jefferys* v. *Fairs*, 4 Ch. D. 448.

See Vendor and Purchaser, 2.

Specifications.—See Patent.

Spiritualism.

The appellant gave "séances," at which there were various "manifestations," such as raps, winding up and playing musical boxes, etc., attributed by appellant to spirits. He was convicted as a rogue and a vagabond under a statute concerning persons "using any rabble craft, means, or device, by *palmistry* or *otherwise*, to deceive or impose on any of his Majesty's subjects." *Held*, that the conviction was valid.—*Monck* v. *Hilton*, 2 Ex. D. 268.

Statute of Frauds.—See Broker; Deed; Landlord and Tenant.

Statute of Limitations.—See Mortgagor and Mortgagee.

Stock Exchange.—See Conspiracy; Fraudulent Preference.

Telegraph.

Held, affirming *Playford* v. *United Kingdom Electric Telegraph Co.*, L. R. 4 Q. B., 706, and contrary to American cases that an action cannot be maintained against a telegraph company by the receivers of a telegram for negligence in the delivery thereof, in consequence of which negligence the receivers suffer damage.—*Dickson* v. *Reuter's Telegraph Co.*, 2 C. P. D. 62.

Tenant in Common.—See Appointment.

Time.—See Charter-party; Principal and Surety.

Trade.—See Covenant.

Treaty.—See Petition of Right.

Trusts.—See Executors and Administrators.

Trustee.

1. Testator stated that he desired his wife and all his children should be supported from a certain farm, to be carried on by her for that purpose; that upon her death all his property should be divided among all his said children; that the personal property of his children by a former wife should be brought into hotchpot, so as to form a common fund. He then appointed his wife and her two brothers, W. and R., executors and trustees, with power to manage and conduct his affairs, and everything relating to his real and personal property, for the benefit of his family in their discretion, with power of

sale of real estate. He directed his said executors to carry on the farm out of the assets, for the maintenance of his wife and children, and that, subject to said provision for maintenance, all his personal and real estate, and the proceeds thereof, should be held in trust for all his children. The interest of each child was to become vested on its attaining twenty-one. *Held*, that, after the death of the widow, the surviving trustees could give a good title to real estate under the will.—*In re Cooke's Contract*, 4 Ch. D. 454.

"2. Testator gave property to trustees to "pay, apply, and dispose" the annual income for the maintenance and support of his son S., and his present or future wife, and of "all and every or any of his children," who being sons should be under twenty-one, or being daughters should be under twenty-one and unmarried, "in such manner and such parts, shares, and proportions as such trustees should in their discretion think fit and proper, and without being answerable or accountable to any person or persons whomsoever for the way in which" they should apply the income, and after the decease of his son to pay and apply such income "in like manner unto and for the benefit of any widow whom he shall leave, for her life, and any such child or children as aforesaid." Testator died in 1847; the son S. died in 1849. In 1851 his widow married again, but the husband and wife had separated. On a suit by the husband to have his wife's income declared payable to him, *held*, that the trustees could in their discretion pay the income to the wife, as they had done.—*Austin* v. *Austin*. *Austin* v. *Boyce*, 4 Ch. D 233.

Ultra Vires.

A company, with 150,000 shares at £10, one-half paid in, found its affairs crippled, and a part of the shareholders dissatisfied and desiring to wind up the company. After various propositions had been made, designed to improve the company's condition, the directors voted to purchase at the market rate the shares—not exceeding 100,000—of those shareholders who were dissatisfied. At an extraordinary meeting of shareholders, this proposal was adopted, and it was provided that the shares so bought should not be reissued, except on the authority of an extraordinary meeting of shareholders. The plaintiff was a small shareholder, and opposed this scheme; and the shareholders' meeting voted that his shares be forfeited, under a clause in the articles of association, by which the shares of a shareholder who began or threatened any suit against the company or the directors should be forfeited, he being tendered the market value of his shares. The company was without power under its articles of association to deal in its own shares, and under the Companies' Act 1867, without authority to reduce its number of shares, without certain formalities, which were not resorted to. *Held*, that the plan was *ultra vires* and void, and the clause of forfeiture for threatening or bringing suit against the company or the directors was invalid.—*Hope* v. *International Financial Society*, 4 Ch. D. 327.

Valued Policy.—See Insurance.

Vendor and Purchaser.

1. By agreement, dated March 5th, 1868, plaintiffs were to purchase certain premises of defendants. It was agreed that the purchase should be completed and possession given Sept. 29, 1869; that previous to that date all outgoings should be paid by the vendors, after that date all rents and profits should be received by the purchasers, and the latter should pay interest on a fixed sum from Sept. 29, 1867, to the completion of the purchase. The purchase was not completed, through no fault of the purchassers, until March 13, 1876. The payments of purchase-money and interest were completed on that date. The purchasers got possession April 3, 1876. *Held*, that the vendors were liable for "rents and profits" from Sept. 29, 1869, to April 3, 1876.—*Metropolitan Railway Co.* v. *Defries*, 2 Q. B. D. 189.

2. By marriage settlement, real estate was granted to trustees to such use as C. and wife should appoint; in default of appointment, to pay the income to the wife, remainder to C. and his heirs and assigns. Plaintiff bargained for the real estate of C., and in the contract it was stated that the premises "are now settled to such uses as the vendor and his wife shall jointly appoint, and the vendor will procure a proper assurance to be executed by all proper parties." Consols were purchased by the plaintiff and put in the name of the trustees as purchase-money of the estate, but before the conveyance deeds were signed the wife died. The plaintiff brought an action for specific performance of an agreement in the form of conveyance agreed upon. *Held*, that the plaintiff could have compensation out of the funds purchased and placed by him in the hands of the trustees.—*Barker* v. *Cox*, 4 Ch. D. 464.

3. The trustees of a projected company agreed with A., that as soon as the company was formed it should buy A.'s lease of a brick-field for £8,000,—£6,000 cash, and £2,000 in paid-up shares in the company. The agreement was adopted by the company, and the deed of assignment recited that the consideration was £6,000 to be paid as follows: viz., fifty per cent of all

sums received or to be received by the company for shares, and fifty per cent upon all money by way of capital to be at any time borrowed by it, until the payments so made should amount to the said £6,000. Subsequently, 1,000 paid-up shares were assigned to A. The company never received any moneys in the ways named in the deed, and no more shares were ever sold. On winding up, *held*, that A. had no vendor's lien on the lease.—*In re Brentwood Brick & Coal Co.*, 4 Ch. D. 562.

See Contract, 3; Conveyance; Principal and Agent, 2; Warranty.

Volunteer.—See Marriage Settlement, 1

Wager.—See Contract 2.

Warranty.

Plaintiff bought of defendant a pole for his phaeton. The pole broke short off, by the swerving of the horses in driving, and the horses were damaged. The jury found that the pole was not reasonably fit for the carriage, and that the defendant was not guilty of any negligence; and awarded as damages the value of the pole. *Held*, on appeal, that the defendant was liable on an implied warranty that the pole was fit and proper for the specific purpose for which it was sold, and that the warranty extended to latent defects, and that the injury to the horses should be taken into account in awarding damages, in case the jury should find on a second trial that such injury was a natural consequence of the defect in the pole. *Readhead* v. *Mid. Ry. Co.*, L. R. 4 Q. B. 379; commented on.—*Randall* v. *Newson*, 2 Q. B. D. 102.

See Specific Performance

Way.

M. had a right of way, for agricultural purposes, over an occupation road to his field. He agreed to sell the surface of his field, reserving the mines, which had, however never been worked. The purchaser made the road unfit to use for mining purposes. *Held*, that the court would not order the obstructions in the road removed, especially as the vendor had no present intention of working the mines.—*Bradburn* v. *Morris*. *Morris* v. *Bradburn*, 3 Ch. D. 812.

Widow.—See Dower.

Will.

1. A testatrix attached a codicil to her will by a pin, and had the witnesses to the latter sign their names on the back of the will itself, in attestation of the codicil. *Held*, that the will and codicil be admitted to probate together.—*In the goods of Braddock*, 1 P. D. 433.

2. B. made his will, disposing of all his property. He subsequently married, and made a second will, in which he named the same executors, but gave the bulk of his property to his wife and children in trust. Then followed a provision, that, in case there were no children living at the death of his wife, the previous will was revived, and certain of its directions were to be carried out. The testator left a wife and child. *Held*, that the two wills should be proved together, and the first held to be incorporated in the second.—*In the goods of Bangham*, 1 P. D. 429.

See Appointment; Bequest, 1, 2; Class; Contribution 1, 2; Devise; Distribution; Probate; Trustee, 1, 2.

Witness.—See Libel and Slander.

Words.

"*Children.*"—See Appointment.
"*To do Justice,*" "*Relations.*"—See Bequest, 2.
"*Shipped.*"—See Contract, 1.
"*Cargo.*"—See Contract, 4.
"*Eldest Son.*"—See Construction, 1.
"*Die without Issue.*"—See Construction, 2.
"*In,*" "*Traveller.*"—See Innkeeper.
"*Works, Rents, and Rates.*"—See Mortmain.
"*Palmistry.*"—See Spiritualism.

—*American Law Review.*

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

HILARY TERM, 1878.

FIRST INTERMEDIATE.

Smith's Common Law, Con. Stats. U. C. Chaps. 42 *and* 44 *and Amending Acts.*

1. Define the terms *Assault* and *Battery*. Under what circumstances are they justifiable?

2. What authority has a Justice of the Peace to arrest in cases of felony and other breaches of the peace?

3. When can an executory agreement, not under seal, be shown to have been subsequently verbally waived or varied?

4. In case of a breach of warranty of an article which has been paid for, what remedy has the purchaser?

5. Define the term *Barratry*.

6. If an act done is both a tort and a felony, and therefore punishable both civilly and criminally, what would require to be done before proceeding with the civil action? Explain your answer.

7. What is the effect of making a promissory note expressing in the body of it that

it is payable at a certain bank *and not otherwise or elsewhere?* Give reasons for your answer.

SECOND INTERMEDIATE.

Equity.

1. What is meant by constructive notice? Illustrate.

2. Define "Reconversion."

3. At common law what interest has a a husband.
   (*a*) In the rent of his wife's lands?
   (*b*) In the wife's personalty in her possession at the time of the marriage?
   (*c*) In her choses in action?
   (*d*) In her legal chattels real?

4. What is a Bill of Peace?

5. Under what circumstances will Courts of Equity set aside voidable instruments?

6. What is a Ward of Court?

7. How may an executor proceed so as to be safe in distributing the assets of the estate amongst the legatees in case it should afterwards appear that there were outstanding unsatisfied debts of the testator.

CERTIFICATE OF FITNESS.

Leake on Contracts.

1. Under what circumstances can money deposited with a stake-holder upon an illegal wager be reclaimed.

2. Distinguish between the duties of the Court and the jury, in regard to a question of the annexation to a written contract of incidents by the intrinsic evidence of usage or customs of trade.

3. What is the effect of a person knowianly selling a chattel with a latent defect without disclosing it to the buyer? Will express stipulation make any difference as to this.

4. An insurance office having two departments, one for insurance and one for annuities, the latter department effects a policy of insurance with the former upon the life of a person to whom a loan had been made and who had covenanted to pay the premiums for insuring his life. Could the debtor be charged with the premiums and why? What general principle of the law of contracts is illustrated in your answer.

5. State and illustrate the distinction drawn between written and unwritten contracts as to the decision of the question whether the agent or the principal is the actual party to the contract.

6. Define the terms *champerty* and *maintenance.*

7. Can a written contract be altered or discharged under any, and if so, what circumstances, by parol agreement without writing?

8. Can a deed which has been avoided by an alteration be given in evidence for any, and if so, what purpose?

9. What is meant by *estoppel by Judgment?* Give an example of it.

10. Two parties A. and B. are jointly entitled under a contract after breach A. dies. Who wruld then be the proper party or parties to sue? Suppose that after the death of A, B. dies, who would then be entitled to sue?

CALL.

Stephen on Pleading, Byles or Bills, Common Law Pleading and Practice and the Statute Law.

1. Define *real, personal* and *mixed* actions. Why are the distinctions between these classes less important now than formerly?

2. Indicate the various statutory enactments which have had the effect of dimishing the frequency of pleas in abatement in our system of common law pleading.

3. Under what circumstances are judgments of *non-pros., nolle prosequi, retraxit* and *cassetur breve* respectively obtained?

4. Explain and illustrate the rule of pleading that *it is not necessary to allege circumstances necessarily implied.*

5. What are the two peculiar qualities of contracts on bills and notes as distinguished from other contracts in general?

6. In how far is a *dormant* partner liable on bills drawn, accepted or endorsed by his co-partners in the name of the firm (1) when bills are negotiated for the benefit of the firm, (2) when given by one of the partners for his own private debt?

7. On what instruments are days of grace allowed? What difference is there in the law with regard to days of grace in England and in Canada?

8. If a debtor refer his creditors to a third person for payment generally and takes a bill from such person, which is afterwards dishonoured, will the original debtor be discharged under any, and if so, what circumstances?

9. Within what time must suits under the Mechanics' Lien Acts be brought? Answer fully.

10. What statutory change has been

made in regard to the common law rule that husband and wife are inadmissable in evidence the one for the other? Give your answer fully, stating exceptions.

Dart on Vendors and Purchasers—Walkem on Wills—The Statute Law.

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1. What do you understand by *scintilla juris?* What was the necessity of it? What is the present law regarding it?

2. A testator bequeaths a sum of money to A; devises lands to a religious corporation; devises other lands to C and the heirs of his body; and gives the residue of his estate to B. A and C. die during the testator's lifetime, both leaving issue. The testator leaves several children him surviving. Show the interests of the several parties in his estate, and give your reasons.

3. What is the statutory meaning of the words "die without issue," occuring in a will?

4. To whom is registration of a conveyance of land notice of the existence of such conveyance?

5. There is a contract binding A to sell and B to purchase certain lands. Before completion, B dies. Afterwards, through some act of the vendor, he forgets his right to enforce payment of the purchase money. What was formerly the position of the heir of B in respect to the contract? Has any statute modified his rights? Give the statute which applies to analogous cases.

6. In questions of title between vendor and purchaser, what is the general rule as to presumptions?

7. After a conveyance by lease and release, the vendor acquires an estate in the lands which had been outstanding. Can the purchaser require a conveyance of such estate? Explain fully.

8. In what cases does notice to a solicitor not constitute notice to the client?

9. What is necessary to constitute land the separate estate of a married woman? What power has a married woman as to conveying such estate? Explain the origin and nature of that power.

10. One of the joint owners of a parcel of land has been absent and unheard of for some years, and it is uncertain whether he is alive or dead. Can any, and if so, what proceedings be taken to obtain a partition which will bind the interest of the absent party?

OSGOODE LITERARY AND DEBATING SOCIETY.

16th February, 1878.

After the usual Lecture on Chancery Practice by the President, the Society met this evening in the Class-Room, Osgoode Hall, at 8 o'clock. After the reading of the minutes of last meeting, Mr. T. P. Galt, the Second Vice-President, was requested to take the chair. Mr. Meyer then read a selection from Charles Dickens. "Law, Lawyers, and Law Students" were then discussed with special reference to their weaknesses by the Essayist, Mr. Dingman. The debate on a resolution to abolish Grand Juries was opened by Mr. T. E. Hodgins for the affirmative, followed on the same side by Mr. E. T. English, with Mr. Moberly and Mr. Harris for the negative. The Chairman, after summing up, decided for the affirmative. The programme for next meeting having been read, the meeting adjourned.

March 2nd, 1878.

After routine, Mr. Teetzel was elected an honorary member. Mr. Moberly read "The Picket of the Potomac," a poem founded on an incident of the American Civil War. The debate followed on the question of cumulative voting, the adoption of the system being opposed by Mr. McArdle and Mr. McHugh, and supported by Mr. Andrews and Mr. Maclise. The President gave his decision against its adoption. The Society then adjourned.

March 9th, 1878.

After routine, the following gentlemen were elected as honorary members: J. S. Fullerton, H. D. Gamble, P. C. Machie, L. A. Macpherson, and D. B. McTavish. A committee was then appointed to make and report arrangements for holding the annual dinner of the Society, immediately after the coming examinations. The programme for the evening consisting of an open debate on the subject, "Resolved that it is not desirable to change the system of exemptions in Municipal taxation." Mr. H. Morrison led off on the affirmative, and was replied to by Mr. Mills. An interesting discussion

followed, many members taking part. After summing up, the President decided in favour of the negative. After announcing the programme for the following meeting, the Society adjourned.

March 16th, 1878.

This evening, after a lecture on Chancery practice by the President, the Society was called to order. After the reading of the minutes, the Society proceeded with the election of honorary members, and enrolled amongst its members these gentlemen: H. Cassels, J. S. Tupper, J. T. Small, W. E. Hodgins, H. Symons, W. Barwick, C. J. Holman, A. C. Galt, H. J. Scott, and T. G. Blackstock. A motion to conduct the Society's annual dinner on temperance principles, stood over as a notice until next meeting. The subject of debate being an interesting one, we give it at length—

In 1872, A, who had a power of appointment over certain estate, made a will containing the following clause: "I devise all my real estate to B." The will contained no reference to the power. At the date of the will, A had no real estate, save that over which he had the power of appointment, and a parcel upon which he held an overdue mortgage; and being then aware that death was approaching, he had no expectation of acquiring any. Resolved, that the land over which A had the power of appointment passed by his will.

This was debated on the affirmative by Mr. Dingman and Mr. Christie, and on the negative by Mr. Moberly and Mr. Andrews. After some able speeches in which an appalling number of authorities were cited to elucidate the point, the President decided for the affirmative. The Society then adjourned.

CORRESPONDENCE.

Fusion of Law and Equity.

TO THE EDITOR OF THE LAW JOURNAL:

DEAR SIR,—It is matter for congratulation to find public opinion sufficiently alive to the importance of this subject to convince its opponents that they can no longer trust to their tactics of twenty years ago. This discussion has not on our side any object beyond facilitating speedy and effective legislation, and the proper understanding of the question in all its bearings before it is legislated upon; we therefore welcome, as I personally do, every communication, whether from friends or foes, which is temperately written and defines the views of any section of the profession. It is however difficult for us to understand how any section of the profession or the public can really be benefited by preventing (even if they could) a final and complete settlement of what is at present all doubt, dissatisfaction and uncertainty, neither fused nor distinct, and without any certain or intelligible lines of demarcation between what is and what is not fused; especially when we are not only willing but anxious to make the fusion, in whatever shape it shall appear best, most acceptable to every section of the profession, so far as is compatible with its being a measure acceptable to the public. Our idea is simply this—that there should be no law that is not equity, no useful equity that is not law.

I think, however, I may fairly, and I hope usefully, urge upon my opponents the inutility of occupying so much of their letters as they have done with what the late Artemus Ward would style "sarkasm." For this reason I may admit (as for argument sake I do) that they are all that could be wished for in personal satire, as innocent as a lamb and as playful as a monkey, and yet successfully contend that even so, it is as much out of place in such a discussion as this, in which nothing is of any value except what tends to establish a truth or dispel a mistaken illusion, as it would be in one of the problems of Euclid.

Passing on to the consideration of whatever else those letters contain, nothing can be found in that of "Humble Stuff" beyond this, that however desirable such a measure as we advocated might be, if attainable, we should not attempt it, because no one in Canada has sufficient mind or legal attainments to properly frame such an Act; and even if such an Act could be passed, and were passed, the Chancery Judges would in-

terpose their *vis inertiæ*, and thus render the measure, however good it might otherwise be, of no practical effect, notwithstanding the Statute, adhering to their old practice and refusing to adopt the new. That may be—and I do not dispute it—Mr. Humble Stuff's candid opinion of the Judges of his court, but in my opinion it is a very mistaken one. We all feel sure they would not attempt any such course, and if they did the measure recommended by us (see my letter in your issue of November last, pages 331 and 332) would effectually frustrate any such attempt. I have also there sufficiently disposed of his not very complimentary estimate of the legal mind of Canada to make it unnecessary here to say anything on that subject, unless he imagines that his assertion, that it took the English Legislature 118 "statutory pages" (whatever that may mean) to make the mistake described in that letter of mine, refutes all I there said in that behalf: as to this I shall merely observe that even if they had used seven thousand pages for that purpose that would not make it impossible for any one in Canada, by avoiding the now ascertained errors of the English law reformers, to accomplish, in twenty-five pages, more or less, all that those English law reformers aimed at, yet failed to accomplish. Further, to my mind that Statute comes the nearest of anything of the sort I can recollect to the ancient rhodomontade of the mountain long in labour, bringing forth at last nothing but a ridiculous mouse, for that act and its attendant rules of Court accomplish nothing, or almost nothing, beyond what Mr. Mowat's Acts and our Judges' Rules had previously done in much fewer pages of much less pretentious, but more intelligible language, as every one can satisfy himself by reading the outlines of those English Rules and Statutes in your issue of January last, pages 5 to 10. I am aware it is there stated that some person said that one of our Judges said those rules were "models of drafting." If our Judge said so I submit to his ruling; they are models of that peculiar style of drafting; but I further submit that, nevertheless, the magniloquence of that Statute and those Rules, compared with the meagreness of what they perform, suggests the idea of erecting the most costly and perfect steam machinery, driven by the best five hundred-horse power engine, and using all of it solely to crack peas, when, if that was all that was meant to be done with it, it could have been just as satisfactorily accomplished with a little thing resembling a pepper-mill, price fifty cents, screwed to the table and turned by a child.

As to "Equity," as he objects to my assuming "that those members of the profession who are accustomed to practise in the Court of Chancery are stout opponents, not only of a proper measure for bringing about fusion, but of the very principle itself," he must be considered, not as an opponent, but as an advocate of a proper measure of fusion, and as only finding fault with what he supposes to be our proposed plan of carrying it out, and probably he would not have written as he has if he had not been ruffled by my classing him, unintentionally, amongst the opponents of that measure, merely because he happens to be one of those who practise exclusively in Chancery. It gives me much pleasure to find that I made a mistake in placing all who so practise in Chancery amongst our opponents, and to apologize for that mistake, which shall not be repeated; especially as since the publication of my letter I have discovered that others of his class are even more with us than he is, and in particular, that the head of one of the oldest and most prominent Chancery firms in Toronto, a Q.C. and something more, and who stands very nearly, if not quite, on a level with the Attorney-General himself, holds fully as advanced views on this subject as I do.

"Equity's" letter, however, does not define as clearly as could be wished the plan of fusion he advocates. So far as I can make out, it would be shortly and simply this: In his belief the Court of Chancery, including its system of pleading, practice and procedure, is, and always was, not only superior to anything of the sort elsewhere, but also pure and absolute perfection; therefore nothing there should be interfered with, but all the

other courts should be made similar to Courts of Chancery in every respect. That is, beyond question, intelligible, logical, and what we all should join him in obtaining, provided always (but that is the rub) that what he so assumes to be facts are so; but it is equally clear every mere common-law man who has never known and never considered any other system than his own (and there are yet a few, though not many such) can and will, if allowed to similarly assume his alleged state of facts, come to the exact opposite conclusion by the self-same mode of reasoning. It therefore becomes necessary to test the correctness of "Equity's" assumed state of facts, which I propose doing as follows: I find no fault with the essential principles of equity nor with its system of pleading, but I join issue with "Equity" in his ideal estimate of the transcendent excellence of Chancery practice, and leave it to your readers, who do not regard that practice with the eyes of the fond devoted lover, who neither has any knowledge nor any wish to acquire any knowlege of any other, to judge between us.

I take it for granted "Equity" has not practised long enough in Chancery to know, or he would in his letter have candidly admitted the fact, that originally and for a long time the Court of Chancery had no other mode of enforcing its decrees for payment of money or costs than the cumbrous, dilatory processes of sequestration and attachment, and that when the more advanced Chancery practitioners endeavoured to borrow from common-law procedure, the now familiar equitable *fi. fas.* goods and lands, &c., the innovation was so strongly and bitterly opposed that it had to be forced upon the Court of Chancery, A.D. 1859, by Stat. 22 Vict. ch. 33, which Act also introduced from the Common Law other improvements in Chancery practice and procedure; and, although that Act left it optional for all practitioners to use the old or the new processes, yet the superiority of the new ones on the common-law plan was so great that they have in all ordinary cases wholly superseded the old ones. Of still greater benefit, especially to lawyers practising outside Toronto, were those further ideas imported from the Common Law into Chancery, also against their will, by Statute and Rules of Court—*i.e.*, decentralizing the proceedings in the Court of Chancery, by compelling its Judges to go circuit like the Judges of Assize, and to appoint the local masters and registrars outside Toronto, by analogy to the deputy clerks of the Crown and Pleas in the county towns; also the examination and cross-examination of witnesses *viva voce*, as at law, instead of as theretofore by affidavit and special commission in each case; besides the many other similar adaptations from common-law procedure and practice, which are well known to the older Chancery practitioners, but which I have neither time nor space at present to further particularize.

The above, however, by no means exhausts all that can be usefully done in that direction. Chancery practice and procedure is yet capable of being similarly still further simplified and improved in the following, among other, respects: We have in Chancery, motions, petitions, &c., all for practically doing the same sort of business, but which business is arbitrarily and unnecessarily cut up and separated into several branches, for each of which some one of those modes is considered the only appropriate remedy. To make matters worse, it often happens that the best minds will differ as to whether a particular case is within one or another of those branches; yet it is fatal to the application if the mode which shall be ultimately held the correct one be not the one adopted. Now, since the one by motion is almost analogous to moving at law by summons, or rule *nisi* on affidavits, and much the simplest and best of all the Chancery modes, why could not it, or a summons or rule *nisi*, be adopted in all the courts, especially after they are, by some fit and proper fusion Act, all made courts of law plus equity, and courts of equity plus law, and all other modes be abolished? Yet, even as to motions as Chancery practice now stands, some motions (and it is often hard to determine *a priori* which) must first be brought on affidavits, and notice of motion before some subordinate officer of the court, who, when he has heard the

motion on the affidavits, has no power to grant any relief, and can do nothing even if the motion be ever so clearly well founded, beyond giving the applicant leave to make his motion over again upon a new notice of motion before the court or a judge. Why should not the litigants be freed from the useless delay and expense of such double motions, one of which is about as useful as a fifth wheel would be to a mail-coach? Why not have, as at law, but one motion, before some one who could decide it, subject to some simple, inexpensive appeal from such decision? Again, as to fixing arbitrarily a few days each within which each of the unnecessarily numerous and somewhat circuitous steps of Chancery procedure must be taken, and then punishing the slightest slip in not moving in time, or in the precise mode prescribed, with such unreasonable consequences as total denial of relief, or of so much of the relief as the error relates to, or putting the erring, or often surprised or over-reached party, to as much trouble, delay and expense to obtain relief as would suffice to carry a common-law suit through a law court (which is what I presume "Equity" praises as a Chancery practice so framed as to allow as little delay as possible). These are, in my opinion, amongst the worst features of Chancery practice, and great sources of irritation. Why should not all such relief be obtainable in Chancery as at Law, with ease, celerity, and cheapness, and at any time while litigation is pending, in the same manner as relief is obtainable at law from snap judgments and such like mere interlocutory proceedings? Depend upon it, every saving of time thus gained is dearly purchased. What is it but one mode of running an ill-contrived machine at a rate beyond its proper capacity, by making it hop and skip over without performing what a simpler and better designed machine would, without hopping or skipping over anything, have perfectly accomplished in the same or less time? Nevertheless, I do not contend that there are not many things in Chancery which can be imported with advantage into the law courts at the present time, as was done in the past; nor that the importation should not be made as soon as possible; for instance, I acknowledge the unsatisfactory nature of the law affecting appeals from decisions on evidence pointed out by Moss, C. J. *Trompour* v. *Taylor*, 1 App. Rep. (Ont.) 108, and much prefer the rule in equity defined by Proudfoot, V.C. in *Armstrong* v. *Gage*, 25 Grant 38; but, instead of attempting to defend, we are trying to remedy all defects of Law as well as Chancery.

So far our Legislature has given the Court of Chancery full common-law jurisdiction, in addition to its own, but has only given the law courts a small portion of Chancery jurisdiction in addition to their own. We thus have the anomaly of complete fusion in the Court of Chancery, and of only very incomplete fusion in any court of law; while whatever fusion, more or less, any court of law has is upon this defective plan—that it fails to supply any court with anything beyond the practice and procedure it previously had. It does nothing towards supplying to any of them the machinery required to satisfactorily transact their new business, but leaves the judges of each court without re-assorting them, so as to place at least one equity and one common-law judge in each court, and thus fitting them, to some extent at least, for the task they were expected to perform, and without any legislative assistance whatever to grapple with the subject and endeavour to supply all needs by such rules of their own court only, as their own total want of familiarity with the new business thus thrust upon them might suggest. It is needless to say that that method has not attained the most appropriate machinery for any court. But all those mistakes can be remedied now by statute, by completely fusing law and equity in every court, re-assorting the judges as they ought to be, abolishing separate modes of procedure and practice in the several courts, and obliging them all to use but one uniform procedure and practice, and making that procedure and practice the best that can be devised. This can, I think, be done in this way: have but one bureau in Toronto, with branches in the counties, for transacting indiscriminately all the business of all the courts now separately carried on in their

separate offices; close all those separate offices, and distribute all the clerks and officers now in them throughout the several departments of the new bureau; equalize the business in all the courts on the same principle as that whereby it was equalized in the Courts of Q.B. and C.P. Either by the mode adopted as to those Courts, or supposing the form of Chancery pleading to be (as "Equity" considers it ought) adopted in every court, then don't entitle the bill in any particular court, nor address it to the judges of any particular court, but leave blanks for the court, which the clerk it would be filed with should fill in as he distributes the suits ratably amongst them. The statute might supply the general features of the new practice and leave the details to be arranged by all the judges of all the courts, with power to them all, or a majority of all of them, at all times, to make, repeal, and alter all rules at discretion; all rules to apply to every court equally, and no court to be capable of passing rules to apply to itself alone or otherwise than to every court, and as in such case every judge would, no doubt, borrow light as to what he least understood from his associates most familiar with it, yet not be so blinded by long professional bias as not to be able to see and point out to his fellow judges, and thus obtain the remedy of the imperfections of the system which was not originally his. All practice and procedure should thus soon be made, and always kept, not only uniform, but of as perfect a quality as human mind can devise; and we may, at all events, reasonably expect much better than at present.

As matters now stand, however, the complete fusion of law and equity in the Chancery Court enables it, when litigation is originated there, to settle all disputes, &c., &c., at law and equity, between the parties, and thus effectually prevents double litigations, one in Chancery and the other at Law—a result very favourable to that court and its practitioners; but it has been found that when a mere law suit is sued in Chancery, the delay and expense of working it out there is much greater than at Law—a result which could not happen if Chancery practice and procedure were as simple and economical as at Law; while, on the other hand, if the litigation be originated in a law court, its want of full and complete equitable jurisdiction frequently prevents its settling all the legal and equitable matters in dispute between the parties, and, as our appeal reports abundantly testify, thus causes double litigations—one at Law, the other in Chancery, and even sometimes causes this further bad result, that after a judgment at Law is recovered, another suit in Chancery is brought upon that judgment to enforce it; all which are results most unfavourable to the law courts and all practitioners in them; yet, notwithstanding the injury their defective equitable jurisdiction thus inflicts on the law courts, all Chancery business that can be there transacted (and they have been for years back transacting a great deal of equity business) is invariably transacted as speedily and economically and satisfactorily, as if it were mere common-law business—a result which could not happen if the principles of legal practice and procedure were not adaptable to Chancery business, and simpler and more economical than Chancery practice and procedure.

It is very clear our Legislature has thus treated the Court of Chancery as a fond mother would treat her own child, by giving it, if not all its wants, at least all she thought it wanted; and the law courts, as that mother, if she happened to be also a stepmother, might be expected to treat her step-children; but why that course was adopted is difficult to guess, unless the design was (as many suspect) to enable Chancery practitioners to draw business with both hands from the law courts, while practitioners in the law courts could only draw with one finger from Chancery.

I am aware that our opponents profess to excuse that course by asserting that the law courts received no more equity jurisdiction, because though the Chancery Judges were capable of mastering Common Law, the Judges of the Law Courts were not capable of mastering equity, or did not choose to take the trouble to learn anything new, and because the law courts had not the ma-

chinery to properly deal with it; to all which I answer, I neither believe the sincerity or truth of the excuse nor the assumed inferiority of the Judges of the Law Courts; but, supposing all were as they assert, why could not the Legislature have supplied the law courts with the required machinery? and what sort of a legislative measure is it which gives us a Court of Appeal—which tries appeals from Chancery and the Law Courts indiscriminately—yet is, and always was, composed of but one Chancery to three mere Common Law men: and if those one Chancery and three mere Common Law Judges have hitherto decided, and still decide, satisfactorily, all Chancery questions on appeal, why could not each law court, with proper machinery, given it by Statute, and one Equity Judge in it, equally well decide all equity questions, subject to appeal?

From the foregoing it will be seen I am not a madly zealous partizan of Chancery or Common Law, who cannot see the defects of both, or the good features which both undoubtedly possess, or who would not wish to improve all that can be improved in every court. My motto is fair play to all, favours to none; neither do I find any fault with the judges of any court. They have all done the best they could with the sort of machines supplied them. My aim is to increase their usefulness, by giving them better machines to work with. I yield to no man in my admiration of the essential principles of equity, but I know by experience that it is possible to so completely lose the essence of equity in a curiously entangled mass of red tape, that at least half its worth is thereby destroyed.

I have the honour to remain,
Yours, &c.,
Q.C.

REVIEWS.

The Magistrates' Manual. Being annotations on the various Acts relating to the rights, powers and duties of Justices of the Peace; with a Summary of the Criminal Law. By S. R. Clarke, Barrister-at-Law. Toronto: Hart & Rawlinson. 1878.

In olden days, in Upper Canada, one of the few law books of colonial origin was "Keele's Justice." By degrees this well-knowm compendium became obsolete by changes in the law, and in 1865 Mr. McNab, the County Attorney for the County of York, published his "Magistrates' Manual," and for years this was the *vade mecum* of those who administered "home-spun justice" in this Province. It was but little else, however, than a collection of statutes or statutory enactments, arranged under appropriate heads, with a number of forms. The volume before us is somewhat less in bulk, but is more ambitious, and an improvement in various ways upon its predecessors. At the present time the criminal law of Canada (and this book does not embrace the local laws of any Province) and the Acts respecting the duties of magistrates are in a comparatively compact shape, so that much of an author's work is done to his hand. But Mr. Clarke has, theoretically at least, made the subject his own by his research in preparing his edition of the "Criminal Laws of Canada," published a few years since, and has thus been enabled to give to the "Justicers" of the Dominion much valuable information in a convenient compass. The Acts relating to the Criminal Law are not given in full, but referred to in appropriate places. The Acts regulating the duties of justices in respect of various matters are given *in extenso*, with reference to decided cases, together with a summary of the Criminal Law of Canada, alphabetically arranged.

Digest of Ontario Reports. By C. Robinson, Q.C., and F. J. Joseph, Barrister.

Part XIII. contains, amongst others, the important titles of Pleading at Law; Pleading in Equity; Practice at Law; and Practice in Equity. The heaviest part of the work is now done, and a few more numbers will complete the Digest. We may well add that when it is done the compilers will have no need to be ashamed of their handy work.

Law Society of Upper Canada.

OSGOODE HALL,

HILARY TERM, 41st VICTORIA.

During this Term, the following gentlemen were called to the Bar, viz.:—

George Fergusson Shepley.
William James Clarke.
William Egerton Hodgins.
Jay Ketchum.
Robert Shaw.
Hamilton Parke O'Connor.
William Caven Moscrip.
James Joseph Robertson.

The following gentlemen were called to the Bar under 39 Vict. chap. 31. : —

Daniel O'Connor.
Joseph Bawden.

The following gentlemen were admitted into the Society as Students-at-Law and Articled Clerks :—

Graduates.

Alexander Dawson, B.A.
Thomas Dickie Cumberland, B.A.,
William Banfield Carroll, B.A.

Matriculants.

Francis Badgeley William Molson Gilbert Lilly.
Joseph Martin.
J. A. C. Reynolds.

Junior Class.

Hugh Archibald MacLean.
William Burgess.
Louis F. Heyd.
James Foster Canniff.
John Douglas Gansby.
George Corry.
Edmund Wallace Nugent.
Charles Patrick Wilson.
David McArdle.
Thomas Hislop.
William Alex. McLean.
Alexander Joseph Williams.
James Joseph Panton.
William Melville Shoebotham.
James Gamble Wallace.
George Morehead.
William George Shaw.
Robert Patterson.
Harry Hyndman Robertson.
James Alex. Shettle.
Moses McFadden.
Arthur B. Ford.
George Hiram Capron Brooke.

Articled Clerk.

Henry White.

PRIMARY EXAMINATIONS FOR STUDENTS-AT-LAW AFD ARTICLED CLERKS.

A Graduate in the Faculty of Arts in any University in Her Majesty's Dominions, empowered to grant such Degrees, shall be entitled to admission upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Classics.

Xenophon, Anabasis, B. I. ; Homer, Iliad, B. I. ; Cicero, for the Manilian Law ; Ovid, Fasti, B. I., vv. 1-300 ; Virgil, Æneid, B. II., vv. 1-317 ; Translations from English into Latin ; Paper on Latin Grammar.

Mathematics.

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

English.

A paper on English Grammar ; Composition ; an examination upon "The Lady of the Lake," with special reference to Cantos V. and VI.

History and Geography.

English History, from Queen Anne to George III., inclusive. Roman History, from the commencement of the second Punic war to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography: Greece, Italy, and Asia Minor. Modern Geography: North America and Europe.

Optional Subjects instead of Greek:

French.

A Paper on Grammar. Translation of Simple Sentences into French Prose. Corneille, Horace, Acts I. and II.

Or German.

A Paper on Grammar. Museaus, Stumme Liebe. Schiller, Lied von der Glocke.

Candidates for Admission as Articled Clerks (except Graduates of Universities and Students-at-Law), are required to pass a satisfactory Examination in the following subjects:—

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

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

All examinations of students-at-law or articled clerks shall be conducted before the Committee on Legal Education, or before a Special Committee appointed by Convocation.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination hall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery (C. S. U. C. c. 12), C. S. U. C. caps. 42 and 44, and Amending Acts.

The Subjects and Books for the Second Intermediate Examination shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law, C. S. U. C. c. 88, and Ontario Act 38 Vic, c. 16, Statutes of Canada, 29 Vic. c. 28, Administration of Justice Acts 1873 and 1874.

FINAL EXAMINATIONS.

For Call.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Leake on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Taylor on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

For Call, with Honours.

For Call, with Honours, in addition to the preceding:—Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Hawkins on Wills, Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law.

For Certificate of Fitness.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Leake on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

SCHOLARSHIPS.

1st Year. — Stephen's Blackstone, Vol. I., Stephen on Pleading, Williams on Personal Property, Hayne's Outline of Equity, C. S. U. C. c. 12, C. S. U. C. c. 42, and Amending Acts.

2nd Year. —Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Acts.

3rd Year.—Real Property Statutes relating to Ontario, Stephen's Blackstone, Book V., Byles on Bills, Broom's Legal Maxims, Taylor's Equity Jurisprudence, Fisher on Mortgages, Vol. I. and chaps. 10, 11, and 12 of Vol. II.

4th Year. —Smith's Real and Personal Property, Harris's Criminal Law, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice in this Province.

N.B.—After Easter Term, 1878, Best on Evidence will be substituted for Taylor on Evidence; Smith on Contracts, for Leake on Contracts.