Canada Law Journal.

VOL. XVII. MARCH 1, 1881. NO. 5.

DIARY FOR MARCH.

1. Tues...Co. Ct. sitt. for York begin. Ct. of Appeal sitt. begin.
5. Sat.....Osler J. appointed.
6. Sun....Quadragesima Sunday. Name of York changed to Toronto, 1834.
11. Fri.....First London daily paper, 1702.
13. Sun.....2nd Sunday in Lent.
17. Thurs..St. Patrick's Day.
18. Fri.....Princess Louise born, 1848.
20. Sun.....3rd Sunday in Lent.
23. Wed....Sir George Arthur, Lieut.-Governor U. C., 1838.
27. Sun.....4th Sunday in Lent.
28. Mon...Canada ceded to France, 1632.
30. Wed...B. N. A. Act assented to, 1867.
31. Thurs..Lord Metcalfe, Governor-General, 1843.

TORONTO, MARCH 1st, 1881.

THE judicial and administrative officers for the new County of Dufferin are as follows :—County Judge, T. A. M. McCarthy ; Sheriff, Thomas Bowles ; Registrar, James McKim. Orangeville is the county town.

WHAT we have to expect after next August may be guessed from the opening sentence of an editorial in the *Solicitors' Journal* of Jan. 29 :—"The law as to costs under the Judicature Act appears to be, with respect to certain questions, in a most lamentable state of doubt and confusion."

SIR RICHARD COUCH, formerly Chief Justice of Bombay, and lately Chief Justice of Calcutta, has been appointed a member of the Judicial Committee of the Privy Council in succession to the Right Hon. Montague Bernard, who has resigned. We also note that Lord Gifford, one of the judges of the Scotch Court of Sessions, has resigned on account of ill-health.

WHEN the bill to abolish the Supreme Court came up for discussion, an effort was made to postpone it until Mr. Girouard's bill to limit the appellate jurisdiction of that court should come before the House.

The attempted postponement, however, proved a failure ; whereupon Mr. Mills moved the six months' hoist, which was after a rather lengthy debate carried by a vote of 88 to 39, the leaders on both sides of the house voting for the amendment.

Mr. Girouard's bill is as follows :

1. The Appellate Jurisdiction of the Supreme Court of Canada is abolished in all cases where the matter in dispute relates to property and civil rights in any of the Provinces, and generally as to matters of a merely local or private nature, and coming within the exclusive jurisdiction of the Legislature of any of the said Provinces, according to the meaning of the British North America Act of 1867 and acts amending the same.

2. This Act shall not apply to cases decided by the Exchequer Court of Canada, nor to cases where the matter in dispute affects the constitutionality or validity of any Act or Statute of any of the said Provincial Legislatures, which cases shall continue to be subject to appeal to the said Supreme Court, as now is, or hereafter shall be provided for.

The subjects prescribed by the Law Society for the primary examinations furnish food for melancholy reflection to our esteemed contemporary, the *Albany Law Journal*. We quote its comments, even at the risk that the spirit of some budding Eldon may be "sicklied o'er with the pale cast of thought" by their perusal. If our national patriotism should rebel at the idea of using Mr. Evarts' speeches in the way suggested by our contemporary, a "select sentence "of equal length

and complexity to any penned by the great American jurist might perhaps be culled from the pages of our Supreme Court Reports.

"The Legal Education Committee of the Benchers of Canada recommend that for the years 1882, 1883, 1884, and 1885, students at law and articled clerks shall be primarily examined in Xenophon, Homer, Cæsar, Cicero, Virgil, Ovid, The Deserted Village, The Task, Marmion, and Gray's Elegy. This is an eminently respectable course, but very mournful. There is something almost significantly prophetic, in these English titles, of the inevitable course of the average barrister; a deserted village, a hard task, a heroic struggle, a country churchyard. It lacks nothing but the supplement of Paradise Lost. Perhaps it was not so intended. There is nothing in the selected classics to lighten it up much. Ovid's Art of Love is not included. Why have the Benchers omitted the time-honored and generally inevitable Spectator, Course of Time and Essay on Man? We fear these Benchers have shed their intellectual kneepans. If they really want to test the pupil's efficiency, let them set him at Browning's Ring and the Book, Carlyle *passim*, Ruskin of late, or a select sentence of three pages from one of Mr. Evarts' speeches. If they can make head or tail of these they will succeed in their chosen profession."

PROTECTION V. FREE TRADE.

Our attention has been called to the advertisement of a solicitor residing in Toronto who advertises in the daily papers his willingness to do "conveyancing at one half usual charges, cash." The Discipline Committee of the Law Society will probably be called on at an early day to discuss the subject in detail. There is, however, one feature of the case which it is well to observe before going into these details.

One's feeling of disgust at seeing a professional man condescend to the tricks of those "impudent invaders," whose ignorance is their only excuse, is somewhat mitigated by the consideration that the advertiser may, in a certain sense, be acting in self-defence. Utterly objectionable as such an advertisement is, it is possible to suppose that having a keen sense of humor, he is possessed by a desire to bring forcibly before the Benchers the position of those of his brethren who are to a great extent dependent upon fees derived from conveyancing for a living. We are not prepared to say that the Law Society has, as a body, any right to bring the delinquent to book, inasmuch as its government has never made any effort to prevent the evil which this person may now, in a miserable, short-sighted way, we admit, be endeavoring to protect himself against. It is not, of course, a matter of any moment to the "eminent counsel" and leaders of the Bar, who in the main compose that body, whether the conveyancing business of the country passes into the hands of ignorant quacks or not. It cannot be supposed for a moment that an explanation of this remissness is to be found in the fact that the untying of the knots produced by the practice of these unlicensed gentry affords profitable employment to our legal magnates in their chambers and in Court, for a more highminded body of gentlemen individually, it would be impossible to find in any country; but neither has it occurred to them, apparently, that they are placed there to protect, or at least to endeavour to protect, the interests of others in a matter which is to the latter a question of vital interest.

We have so far alluded to a difficulty which we are sure will present itself to many, should this advertisement be brought before the committee, on the supposition that it was intended as a means of meeting the attack of the class referred to; if, however, the intention of the advertiser was to attract clients to his own office at the expense of his brethren in the profession, we can only say that he is unworthy of being ranked amongst those who as a class, both at the Bar and on the Bench, have earned an honorable reputation, and fostered a spirit of respect for, and obedience to the laws, without which no country can eventually prosper.

A large field of inquiry is opened up by even a cursory glance at the subjects and interests involved, too large, however, for present discussion. It is one, however, that must be taken up some day by those whose duty it is, and we can assure them that it is of interest to so many as to require careful and full consideration at an early day. We at least have endeavoured to do our duty in the matter, and shall so continue.*

DIGESTS AND DIGEST-MAKING.

This subject is pleasurably brought to our notice by the fact that the long expected and much-sighed-for Digest of Ontario Reports has at length made its appearance in the shape of two portly volumes, wherein are classified and epitomized all the reported decisions of the Superior Courts of law and equity in this Province from their foundation up to the present time.

Before, however, making any more detailed reference to the special features of the new Digest, it may not be without interest to notice briefly its predecessors in the same field, so far as this Province is concerned. The first of these was published in 1840 by the late Mr. John Hillyard Cameron. Many of the cases contained in this work had not previously appeared in print, as the regular series of Queen's Bench Reports did not commence till some years later. Up to that time printed reports were few and far between, a state of things which the practitioner of to-day will perhaps find it difficult to realize. In 1852 appeared Robinson and Harrison's Digest, which taking for its starting-point the commencement of Taylor's Reports in 1823, brought the cases up to the end of vol. 7 U. C. Reports. This compilation was mainly due to the industry of that indefatigable worker, the late Chief Justice Harrison, then a student in the office of Mr. (now Sir James) Lukin Robinson, under whose supervision it was prepared.

Next in order comes Harrison and O'Brien's Digest, which was published in 1863, and included over 3000 cases contained in 35 volumes of reports which had appeared since the publication of its predecessor. The preparation of this work was entrusted entirely to Mr. Henry O'Brien, Mr. Harrison's time being then fully occupied with the many things his busy hands found him to do. It was necessarily a much larger volume, and therefore involved more labor than its predecessor, and what we say is of general application, for any one who has had anything to do with digest-making knows how much each additional case adds to the difficulty of the work, often leading to an entire re-arrangement of one or more headings, or further subdivisions or classifications.

But meritorious and indispensable as these compilations undoubtedly were in their day, they are now completely superseded by the work that lies before us, a necessary result of that *sæva necessitas*, which sooner or later consigns all digests, when their usefulness is gone, to an honorable and rarely disturbed retirement on the top shelves of legal libraries.

The general plan adopted by the editors is the same as that of Fisher's Digest of the English Reports. That splendid monument of legal industry is itself, as is well known, founded on the Analytical Digest of the late Hon. Samuel Bealey Harrison, formerly judge of the county of York in this Province. Not the least of the claims which that most estimable and accomplished man has on the grateful remembrance of his professional brethren, alike of the English and the Ontario Bar, is that he was the first author of a thoroughly good Digest, which was not only best in his own day, but the direct ancestor of the best in ours. Had there been no "Harrison," there would have been no "Fisher," and worse still

* After the above article was in type, we received the *resume* of the proceedings of the Benchers for last Term, from which it appears that a committee has been appointed to consider this question. We are sure that the profession at large will heartily welcome this evidence of awakening interest in a matter of such vital importance.—[EDS. L. J.]

to an Ontario lawyer at least, no "Robinson and Joseph." The principles on which these Digests have been constructed, and on which it is safe to say that all good Digests to the end of time will be constructed, can nowhere be found more clearly laid down than in the opening words of the preface to the first edition of Mr. Harrison's work, which was published in 1836. The passage will bear quotation, and we therefore reproduce it:—"The considerations to be attended to in the construction of a work like the present are;—that it should be a faithful and correct epitome of the several cases of which it purports to give the substance; that it should contain *all the cases* determined within the period of time which it professes to embrace; that the period at which it commences should be judiciously determined upon; and that the arrangement should include both the analysis of science and the technicality of practical habit, so as to suit with equal readiness every branch of a profession which has almost every grade of intellectual acquirement."

Applying these theoretical tests, thus clearly enunciated, to the work under review, we think it will be found in a very marked degree to satisfy their requirements—the grand, crucial test of the practical experience of the profession has been constantly applied to it for several years back, and we have yet to hear of one amongst the many who have used it, whatever his "grade of intellectual acquirement," who has complained that it did not assist his inquiries, or that it gave them a wrong direction.

The starting point is the best possible—the commencement of the Reports, and the cases have been collected, as the preface informs us, from 125 volumes of Reports, and some twenty volumes of the LAW JOURNAL, with references to various Statutes discussed in the cases digested. When, in addition to these facts, we mention that the completed work, including the addenda, contains over 4,400 double-column pages, and about 14,000 cases, many of which are cited four or five times over or even more frequently in connection with different heads of Law, some idea may be formed of the enormous amount of labor involved in the compilation of this Digest, and of the patient, untiring energy which could alone have enabled the editors to grapple with the difficulties of their task, and bring it to a successful issue. The care of the editors has included all decided cases, not even excluding those, which though obsolete as to their main scope and effect, may still be useful for purposes of reference or comparison; the substance of the cases is in general correctly and succinctly given; and, in connection with this feature of the work, we may say that scissors and paste are by no means the only agencies which have been employed upon the head-notes, which have been in many cases remodelled and shortened. The labor of this alone has been immense, and to it the senior editor himself applied his great experience as a reporter, his thorough knowledge of the cases, and the resources of a mind peculiarly accurate and logical in thought and clear in expression. The necessity for this revision will be evident to any one who critically examines some of the head-notes of the cases in the earlier reports.

But it is not only in these particulars that the work is admirable; the excellent arrangement of the cases is that which most strongly impresses the reader. To borrow the apt words which we have already quoted, it seems to satisfy the demands alike of the "analysis of science and the technicality of practical habit." The man of well trained and logical mind, who can grasp the main idea involved in some legal point and divest it of its accidents, will find that his correct habits of thought facilitate his search of cases, which will generally be found ranged under the titles most appropriate to their real substance. But those whose logical powers may have grown rusty, or never taken on a very fine edge, will find their mental infirmities greatly assisted by the system

of cross-references which has been adopted in this work. Thus, he who in quest of authorities resorts to titles expressive of what is formal, or accidental, or of secondary importance in the subject-matter of his inquiries, will find that the editors have anticipated such intellectual deficiencies on the part of their weaker brethren, and provided an adequate remedy therefor by a reference to the proper title. In this connection, mention should be made of the analytical table of contents which is prefixed to every important title, by means of which a sort of bird's-eye view is obtained of the whole law bearing upon the subject. The advantages of this arrangement are so great and so obvious, and are so fully exemplified in the works of Harrison and Fisher already referred to, that we must confess our surprise that the editor of so recent and important a Digest as that of the English Law Reports has completely neglected to avail himself of it. And here we may remark that of all the bad legal work we know, nothing has exceeded the badness of the digests to the Law Reports. If, for example, the title "Contract" in the last-named publications is referred to, the inquirer will find that no attempt has been made to classify the cases according to the various topics and relations connected with contracts, but must content himself with ranging over a myriad of sub-heads, whose only connection with each other is an alphabetical one. The alphabetical system must necessarily be adopted in arranging the titles of a Digest or an Index, but the attempt to carry out that system in the details of each particular title is one which we should have expected to originate in a Chinese rather than in an English intellect.

If, on the other hand, this title or any other important one is referred to in "Robinson and Joseph," the reader finds what may be called an analytical sub-digest of the head of Law in question, occupying in some cases two, three or four columns, in which the leading topics are arranged in their natural order and displayed in capital letters, so as to catch the eye at once, while the minor divisions coming under each of these topics with their sub-heads, if any, are indicated by the use of italic type, indented lines and numeral and literal references. The result is that case-hunting in this Digest is relieved in great measure from the irksomeness and uncertainty which many associate with that not too fascinating pursuit. It will, we think, occur to many that the analysis of the authors is so correct and exhaustive that it might well be applied to serve a purpose quite unconnected with its primary design, and that the young student or practitioner at all events might derive material benefit from perusing the cases in connection with such analysis almost in the same way as he would a treatise.

It is no part of our design in this article, nor have we the requisite space, to enter into any criticism of the details of this work. It seems, moreover, almost superfluous to single out any particular titles for comment, when the treatment of all is so similar in its principle and so uniform in its success. Reference may, however, be made to the titles, Evidence, Mortgage, Railways, and Municipal Corporations, as models of lucid arrangement and accurate analysis. In the preparation of the last-mentioned title, Mr. Joseph probably derived great benefit from the experience acquired in the preparation of his excellent edition of the late Chief Justice Harrison's Municipal Manual. Municipal law, as administered in Ontario, is of such vast and constantly increasing importance, and its distinctive peculiarities are so marked, that we think the authors deserve special credit for the world of pains they have evidently taken in the collection and arrangement of the cases bearing on this difficult subject.

We must not omit to mention the references to Statutes, and concise summaries of their effect, which are introduced here and there throughout the work—they are so good and useful that one is tempted to wish there were more of them. Nor will the possessor of this work fail to

note with interest the lists prefixed to the first volume, where are found, in the order of their appointment, the names of those distinguished men whose *dicta*, in a highly concentrated form it is true, constitute the subject-matter of all that follows. The reporters also, past and present, if they should feel aggrieved by the liberties taken with some favorite head-note, may find consolation in the fact that their names also appear in such excellent company as that of the Ministers of Justice, and Attorneys-General, both of Ontario and of the Dominion. The dates of appointment appear in connection with the names in each case, and the whole forms an appropriate and suggestive memorial of the men whose labors in their respective spheres form the foundation of the Digest, and could alone have rendered such a work possible.

It is not necessary for us to refer at length to the peculiar qualifications of the editors for the work which has engaged their energies during the past six years. The reputation of the chief editor of the Ontario Reports cannot be increased by anything we might say, and his coadjutor, Mr. F. J. Joseph, has long been known to the profession as an experienced aud successful worker in various departments of legal literature. We once more felicitate the editors and our readers on the fact, that this most important work is "done," and "well done," if not altogether "done quickly," and will conclude by expressing a hope that the same hands which have laid the foundation so well, may also raise the superstructure by the issue of supplementary Digests hereafter at suitable intervals.

We must not omit to say a word as to the way in which printer and publisher have done their part—very important considerations, especially in the case of a work which will be so constantly in the hands of the profession. It will be sufficient to say that in our opinion the new Ontario Digest will compare most favorably in its general appearance and in all its typographical details with any work of the kind, American or English; a fact which reflects the greatest credit on the publishers, Messrs. Rowsell & Hutchison. In its outer form, as in its inner substance, it is very similar to the work of Fisher, which has probably served as a model in the one respect as well as the other; it must be a source of gratification to every professional man in the Province that Canada at length possesses a Digest which is in every way worthy to take its place on his shelves side by side with its transatlantic prototype.

LAW SOCIETY.

HILARY TERM, 44TH VICTORIÆ.

The following is the *Resumé* of the proceedings of the Benchers during this Term, published by authority:

MONDAY, Feb. 7th, 1881.

Present,—Messrs. Read, Crickmore, Maclennan, Benson, McMichael, Richards, Bethune, Osler, and Irving.

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

The minutes of last meeting were read and approved.

The reports of the Examiners and Secretary on the examinations for Call to the Bar were read, and ordered to be considered on Tuesday, February 8th.

The reports of the Examiners and Secretary on the examinations for Certificate of Fitness and on the papers and service of the candidates, were received and read.

Ordered, that Messrs. Allan, Dickson, Nesbitt, Cumberland, Doherty, Campbell, Carroll, O'Heir, White, Buchanan, Bishop, and Mulkern, be granted Certificates of Fitness forthwith, and that Messrs. Crawford, McKillop, Drayton, and Smith do receive their certificates on the completion of their papers to the satisfaction of the Secretary.

The reports of the Examiners and Secretary on the Intermediate Examinations were received and read.

Ordered, that the following gentlemen be allowed their first intermediate examination as students and articled clerks, namely:—

Messrs. Short, Lilly, Martin, Clark, Mahaffey, Haultain, Kappelle, Sweet, Wallace, McKay, Ponton, Godfrey, Dickson, Danks, Hanna, Anderson, Porteous, Lee, Tyrrell,

Barber, McCrae, Parker, McMillan, Witherspoon, Livingston, Ball, Lees, Gordon, Code, and Dunbar.

Ordered, that the following gentlemen be allowed their second intermediate examination as students and articled clerks, namely:—

Messrs. Stuart, Oliver, Plaxton, Kitson, Creswicke, Gorham, McVittie, Geddes, Staunton, Stinson, Thompson, Binckley, Lee, Donahue, Robinson, Boun, Coffee, Keys, Cassidy, Fuller, Jelfs, McDougall, Weir, Dancey, Hewson, Wallace, Switzer, Ashton, Parkes, Meyers, Thompson, McMichael, Reddick, and Williams.

The reports of the Examiners on the Honor Examinations were read.

Ordered, that these reports be referred to a committee composed of Messrs. Crickmore, Benson, Ferguson, Leith, Hoskin, Robertson, Smith, and Maclennan, for examination and report.

The report of the Examiners on the examinations for call with honors, was read and referred to the same committee for examination and report.

The report of the Finance Committee, accompanied by the balance sheet for 1880, and the estimates for 1881, was read and ordered for consideration on the 8th inst.

The further report of the Finance Committee on the increased consumption of water, recommending that apparatus be provided for the purpose of utilising the condensed steam; also on the application of Mr. Lowe and Mr. Inglis for the return of certain fees was received and read.

Ordered for immediate consideration, and adopted.

The secretary laid before Convocation lists of persons who have, and also who have not up to the present time taken out certificates to practice for the year 1881, pursuant to order of Michaelmas Term, 1879.

Moved by Mr. Irving, seconded by Mr. Crickmore, That the solicitor be required to make on Saturday next a return to Convocation of the action which he has taken in reference to certificates not taken out for the present year, according to the list given to him by the Secretary this day.

Carried.

Mr. Irving gave notice for Saturday, 12th instant, that he would move a rule that an annual return shall be made by the solicitor on the first Saturday of Hilary Term of all attorneys who shall have neglected to pay their annual fees up to the last day of the vacation, after the Michaelmas Term preceeding; and that on said day a return shal be laid before convocation of attorneys who are in arrears for previous years.

Attention having been called to the lamented death of Chief Justice Moss, Mr. Read, Q. C. moved, and Mr. Benson, Q. C. seconded the following resolution:

"That Convocation desires to place on record the deep sense of loss which it, in common with the whole country, feels by reason of the death of the Honorable Thomas Moss, Chief Justice of Ontario, and to offer to his widow and family its respectful sympathy for them in their sad bereavement.

In his death the Law Society loses one, who, in the years of his presence in Convocation as a Bencher, rendered most valuable service to the profession and the country by the energy and wisdom which he brought to the promotion of legal education, and to whom in later years it could ever look for encouragement and advice. His courteous urbanity of manner, and amiability of disposition, won to him the hearts of those who enjoyed the privilege of his friendship, while his profound scholarship, his unimpeachable integrity, and his eminent ability, commanded universal respect and admiration.

In him the Province has lost one of its ablest and most distinguished sons, and one of its most erudite and brilliant judges." Carried.

Moved by Mr. Crickmore, seconded by Dr. McMichael,—

That a copy of the foregoing resolution be engrossed and sent by the Secretary to Mrs. Moss.

TUESDAY, Feb. 8th, 1881.

Present—Messrs. Crickmore, Irving, Moss, Benson, Mackelcan, Maclennan, Read, Meredith, Richards, McMichael, Martin.

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

The minutes of last meeting were read and approved.

The Reports of the Examiners and Secretary, on the examinations for Call, and the papers of the candidates were read.

Ordered, that Messrs. Allan, Nesbitt, Cumberland, Drayton, McKillop, Campbell, Doherty, Armstrong, Curran, Boultbee, Buchanan, Skinner, and Sheppard be called to the Bar forthwith, and that Messrs. Dickson, Dawson, Mulkern, Gibson, White, Harley and Wilkes be called when their papers are completed. Messrs. Allan, Nesbitt, Cumber-

and, Drayton, Campbell, Doherty, Armstrong, Curran and Sheppard were called to the Bar accordingly.

The Report of the Legal Education Committee on the Primary Examinations was received and read as follows:

Hilary Term, 1881.

The Legal Education Committee beg leave to report that the following gentlemen are to be entered on the books as Students-at-Law.

GRADUATES.

Henry Gordon Mackenzie.

MATRICULANTS OF UNIVERSITIES.

James M. Knowlson, Edwin M. Henry, E. W. Boyd, W. A. Campbell, A. L. Rundle, Frederick Laing Frazer.

JUNIOR CLASS.

James F. Williamson, John Thacker, E. W. H. Vanallen, R. G. Code, W. R. Smythe, W. N. Irwin, E. H. Ambrose, G. E. Martin, J. S. Meek, A. McKechnie, W. H. Tweedale, T. F. Johnson, S. C. Mewburn, G. H. Esten, W. L. Lesslie.

The following gentlemen were passed for articled clerks:

A. W. Benjamin, Matriculant of Victoria College; J. Hambly, J. J. Berry.

(Signed)

JOHN CRICKMORE,
Chairman.

8th February, 1881.

The report of the Legal Education Committee on the case of D. F. McWatt was received and read. Ordered that no action be taken.

The petition of J. Gordon Jones, an English barrister, was referred to a Committee consisting of Messrs. Crickmore, Mackelcan, and Meredith, with instructions to report forthwith.

The Committee reported that Mr. Jones was entitled to be called to the Bar.

Ordered accordingly.

A letter from Mr. E. J. Hooper was referred to Finance Committee with power to act.

The consideration of the report of the Finance Committee, Balance Sheet and Estimates, ordered for to-day, was adjourned to Saturday, 12th instant.

Messrs. Dawson, White, Dickson, Wilkes, Boultbee, Gibson and Jones were called to the Bar.

The Consolidated Rules of the Society were read a second time, and ordered for a third reading on Saturday next, when printed in book form.

Mr. Mackelcan gave the following notice of motion for Saturday, the 12th instant:—

That in view of the largely increased cost of the Supreme Court reports amounting to $5,000 a year, he would move on Saturday, the 12th Feb., the adoption of a rule repealing the existing rule for the purchase of these reports, and providing that a sufficient number only be purchased for the Library, for the Judges of the Court of Appeal, and Superior Courts, and the Judges' Library, the Judges of the County Courts and the County Libraries receiving aid from the Law Society.

SATURDAY, Feb. 12th.

Present—Messrs. Irving, Crickmore, Moss, Hoskin, Mackelcan, Maclennan, Read, and Bethune.

Mr. Maclennan was appointed Chairman.

The minutes of last meeting were read and approved.

The Special Committee to which was referred the consideration of the Honor Examinations in connection with the Intermediate Examinations reported:

That the following gentlemen had passed their first Intermediate Examination with honors, namely, Messrs. T. C. Short, Joseph Martin, G. Kappelle, E. Sweet, F. G. Lillie, A. S. Clark, F. W. A. G. Haultain.

That the following gentlemen are entitled to scholarships, namely:

Mr. T. C. Short, to the first scholarship.
" Jos. Martin, " second "
" G. Kappelle, " third "

That the following gentlemen had passed their Second Intermediate Examination with honors, namely:

Messrs. C. W. Oliver, C. W. Plaxton, T. A. Gorham, A. Stuart, A. E. H. Creswicke, W. A. Geddes, and E. E. Kittson.

That the following gentlemen were entitled to scholarships, namely:

Mr. C. W. Oliver, to the first schol'ship.
" C. W. Plaxton, " second "
" T. A. Gorham, " third "

The same Committee reports on the examination for call with honors as follows:

That the following gentlemen had passed with honours, namely,—

1st, Mr. W. J. T. Dickson; 2nd, Mr. J. A. Allan; 3rd, Mr. W. Nesbitt; and were entitled to medals as follows:

Mr. Dickson, to a gold medal; Mr. Allan, to a bronze medal; Mr. Nesbitt, to a bronze medal.

Mr Hoskin presented the report of the Discipline Committee, on the case of Mr. D. W. Dumble, which was adopted.

Mr. Hoskin reported a Draft Bill, to define the disciplinary powers of Convocation.

Ordered, that the Discipline Committee communicate with the Attorney-General, with a view to obtaining any legislation that may be necessary.

Letters received from Messrs. Campbell and Wilson relative to fees, were read.

A letter from Mr. Becher, relative to the Call of Ontario Barristers to the English Bar, was read.

Ordered, that it be acknowledged.

The Report of the Finance Committee, on the Balance Sheet for 1880, and the estimates for 1881 was adopted.

On motion made,

Resolved that the quorum of the Building Committee appointed by Convocation on 29th June, 1880, be five, and that the Committee have power to elect their own chairman from time to time.

Mr. Moss moved, seconded by Mr. Hoskin,

That Mr. Read and Mr. Crickmore be appointed to act with the Treasurer as Scrutineers at the next election of Benchers, and that Mr. Maclennan act as and for the Treasurer in case he should be absent during the meetings of Scrutineers to count the votes, and that each of the Scrutineers be paid the sum of twenty dollars for each day's attendance.—Carried.

Mr. Mackelcan moved pursuant to notice:

That, in view of the largely increased cost of the Supreme Court Reports amounting to $5,000 a year, the existing rule for the purchase of these Reports be repealed, and that in lieu thereof a rule be adopted providing that a sufficient number only be purchased for the library of the Judges of the Court of Appeal and Superior Courts, for the Judges' libraries, the Judges of the County Courts and the County Libraries receiving aid from the Law Society.—Lost.

For the motion,—Messrs. Mackelcan, Crickmore, and McMichael.

Against the motion,—Messrs. Hoskin, Moss, Bethune, and the Chairman.

Mr. Moss gave notice that he would on Friday, the 18th February, move a resolution with reference to the practice of conveyancing by uncertificated persons.

Attention having been called to the absence during three consecutive terms from Convotion of Mr. W. H. Scott and Mr. John Bell,

Ordered, that their seats as Benchers be declared vacated.

The report of the Solicitor as to defaulters was received.

Mr. Ellis was appointed Auditor for 1881, at the same salary as during 1880.

The Consolidated Rules were read a third time and adopted.

FRIDAY, Feb. 18th, 1881.

Present—Messrs. Maclennan, Crickmore, Benson, Ferguson, Kerr, Moss, Irving, Hoskin, Britton, Richards, Bethune.

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

The minutes of last meeting were read and approved.

Mr. Crickmore presented report of the Legal Education Committee on proposed changes in the curriculum.

Ordered to be considered on first Saturday of next term.

Mr. McKillop, Mr. Buchanan, Mr. Skinner, and Mr. Harley were called to the Bar.

A petition from Mr. C. J. Fuller was received and referred to Finance Committee with power to act.

A letter was received from Mr. Joseph respecting the publication of the triennial digest.

Ordered that Mr. Joseph be informed that Convocation will hear any objections to the present plan for a digest to be submitted in writing by himself and Mr. Robinson.

Mr. Kerr presented the Report of the County Libraries Aid Committee which was received, ordered for immediate consideration, and adopted.

The Chairman of the Reporting Committee laid before Convocation the Returns sent in by the Réporters of the several Courts.

A second letter from Mr. Becher on the subject of Call to the English Bar was ordered to be acknowledged.

Mr. Moss moved, seconded by Mr. Britton,—

That Messrs. Hoskin, Benson, Smith, Bethune, and the mover and seconder be a Committee to consider some means of putting an end to the performance of conveyancers' work by uncertificated or unlicensed persons.—Carried.

Convocation adjourned.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT.

February 1881.

THE QUEEN, *Appellant*, v. BELLEAU, ET AL., *Respondents.*

North Shore Quebec Turnpike Bonds issued under authority of 16 Vict. c. 235—Liability of Canada for the debts of the late Province of Canada.

The Respondents by Petition of Right before the Exchequer Court set forth in substance: That the Province of Canada had raised, by way of loan, a sum of £30,000 for the improvement of Provincial highways situate on the North Shore of the River St. Lawrence, in the neighbourhood of the City of Quebec—and a further sum of £40,000 for the improvement of like highways on the South Shore of the River St. Lawrence—that there were issued debentures for both of the said loans, signed by the Quebec Turnpike Road Trustees, under the authority of an Act of Parliament of the Province of Canada, passed in the sixteenth year of Her Majesty's reign, intituled: "An Act to authorise the Trustees of the Quebec Turnpike Roads to issue debentures to a certain amount and to place certain roads under their control"—that the moneys so borrowed came into the hands of Her Majesty, and were expended in the improvement of the highways in the said Act mentioned—that no tolls or rates were ever imposed or levied on the persons passing over the roads improved by means of the said loan of £30,000—that the tolls imposed and collected on the highways improved by means of the said loan of £40,000 were never applied to the payment of the debentures issued for the said last mentioned loan in interest or principal—that the Trustees accounted to Her Majesty, as well for the said loans as for the tolls collected by them—that at no time had there been a fund in the hands of the said Trustees adequate to the payment, in interest and principal, of the debentures issued for said loans—that the Respondents are holders of debentures for both of the said loans to an amount of $70,072, upon which interest is due from the 1st day of July, 1872—that the debentures so held by them fell due after the Union, and that Her Majesty is liable for the same under sec. 111 of British North America Act, 1867, as debts of the late Province of Canada existing at the Union.

In his defence to this Petition, Her Majesty's Attorney-General did not deny the liability of Her Majesty for the debts of the late Province of Canada, but he denied that the debentures in question were debentures of the Province of Canada—that the moneys for which they were issued were borrowed and received by Her Majesty—that there was any undertaking or obligation on the Province of Canada to pay the whole or any part of the said debentures.

Held, affirming the judgment of Exchequer Court, that the debentures in question were debentures of the late Province of Canada—therefore under the provisions of the British North America Act, the Dominion of Canada was liable, but for the capital only of the said debentures, it being provided by c. 235, sec. 7, that no money should be advanced out of the Provincial funds for the payment of the interest.

RITCHIE, C. J., and GWYNNE, J., dissented.

Lash, Q. C., and *Church*, Q. C., for appellants.

McCarthy, Q. C., and *Irvine*, Q. C., for respondents.

JONAS, *Appellant*, v. GILBERT, *Respondent.*

By-law—Power to impose license tax—Discrimination between residents and non-residents—Ultra vires of 33 Vict., c. 4, N. B.

This was an action against the Police Magistrate of the city of St. John, for wrongfully causing the plaintiff (Jonas), a commercial traveller, to be arrested and imprisoned on a warrant issued on a conviction by the Police Magistrate for violation of a by-law made by the Common Council of the city of St. John, under an alleged authority conferred on that body by 33 Vict., c. 4, passed by the Legislature of New Brunswick. The by-law in question authorized "the Mayor or his Deputy, as aforesaid, to demand and receive from any and every such person to whom license shall be granted, as aforesaid, for the use of the Mayor, Aldermen and Commonalty of the said City, the sum of money hereinafter men-

tioned and specified, according to the following scale, namely:—

Professional men, as Barristers, Attorneys, Notaries, Physicians, Surgeons, Practitioners in Medicine or any art of healing, Dentists, if resident, twenty dollars, $20. If transient persons, not having taken up a residence, forty dollars, $40.

Wholesale or retail Merchants or Dealers or Traders, Forwarding or Commission Merchants, Lumber Merchants or Dealers, the Agents of merchants or traders, Express Agents, General Brokers, Manufacturers,, Apothecaries, Chemists and Druggists, if resident, twenty dollars, $20. If transient persons, not having taken up a resident, forty dollars, $40.

Persons not having their principal place of business in this City, selling, or offering for sale, goods, wares, and merchandise of any description by sample card, or any other specimen, and the agents of all such persons, forty dollars, $40.

Persons using any art, trade, mystery or occupation, or engaged in any profession, business or employment within the city, not coming under any of the before-mentioned, if resident, twenty dollars, $20. If transient persons, not having taken up a residence, forty dollars, $40.

Held, that assuming the Act 33 Vict., c. 4 to be *intra vires* of the Legislature of New Brunswick, the by-law made under it was invalid, because the act in question gave no power to the Common Council of St. John, of discrimination between residents and non-residents such as they had exercised in this by-law.

Bethune, Q. C. and *Maclaren*, for appellants: *Tuck*, Q. C., for respondent.

DEWE, *Appellant*, v. WATERBURY, *Respondent*.

Slander—Public officer—Privileged communication.

The appellant having been appointed Chief Post Office Inspector for Canada, was engaged under directions from the Post Master General in making enquiries into certain irregularities which had been discovered at the St. John post office. After making inquiries, he had a conversation with the respondent alone in a room in the post-office, charging him with abstracting missing letters, which respondent strongly denied. Thereupon the Assistant Postmaster was called in and the appellant said: "I have charged Mr. W. with abstracting the letters. I have charged Mr. W. with the abstractions that have occurred from those money letters, and I have concluded to suspend him." The respondent having brought an action for slander, was allowed to give evidence of the conversation between himself and appellant. There was no other evidence of malice. The jury found that appellant was not actuated by ill-feeling toward the respondent in making the observation to him, but found that he was so actuated in the communication he made to the Assistant Postmaster.

Leave being reserved to enter a non-suit or verdict for the defendant, the verdict was for the plaintiff, and the jury assessed the damages at $6,000.

Held, on appeal, that the appellant was in the due discharge of his duty and acting in accordance with his instructions, and that the words addressed to the Assistant Postmaster were privileged.

Lash, Q.C., for appellant.

Tuck, Q.C., for respondent.

GALLAGHER, *Appellant*, v. TAYLOR, *Respondent*.

Marine policy—Total loss—Sale by master—Notice of abandonment.

This was an action brought by the respondent against the appellant to recover as for a total loss, the amount insured by the appellant, as one of the underwriters, upon a marine policy issued by the Ocean Marine Insurance Association of Halifax, upon the shallop "Susan," belonging to the respondent, alleged to have been totally lost by a peril insured against. The vessel stranded on the 6th July near Port George, in the County of Antigonish, adjoining the County of Guysboro', where the owner resided. The master employed surveyors, and on their recommendation, confirmed by the judgment of the master, she was advertised for sale on the 7th July, and sold on the 11th July. The captain had telegraphed to the agents of the vessel in Halifax, who informed defendant's company, but he did not give any notice of abandonment, and did not endeavor to get off the vessel.

The vessel, valued at $1,200, insured for $800, was sold for about $105 on the 11th July, and was immediately got off, and afterwards used in trading and carrying passengers.

Held, that the sale by the master was not justifiable, and that the loss was not such a loss as to dispense with notice of abandonment in claiming for a total loss.

Rigby, Q. C., for appellant.

Gormully and *Graham*, for respondent.

ELECTION APPEAL.

CIMON, *Appellant*, v. PERRAULT, *Respondent.*

Colorable employment by agent—Acts of sub-agent—Public peace.

The charge upon which this appeal was decided was one of bribery by Pamphile Allard and Joseph Israel Tarte, agents of the respondent, by payments of money to A. Bouchard, Samuel Boivin, Israel Gagnon and Jean Gagnon, all of whom were electors. By the evidence it was shown that Tarte was the respondent's general agent for that part of the country, and that Allard was specially requested and given money by Tarte, and induced by him to advance money to employ a certain number of men without specifying any particular persons to be so employed, for the alleged purpose of preserving the public peace on polling day. It was not in evidence that Tarte had applied to the proper authorities or otherwise complied with the law in order to secure the peaceful conduct of the election, but the reason assigned by him for ordering the employment of policemen was that he had received information by telegrams and letters that roughs were coming down from Quebec to Bay St. Paul to interfere with the voting of the electors. No person came, and the polling took place without any interference. The above named four persons were known to be supporters of the appellant, and swore that they voted for respondent because they received from Allard each the sum of two dollars.

Held, (TASCHEREAU & GWYNNE, JJ. dissenting)—(1) That the respondent was responsible for the acts of bribery committed by Allard, a sub-agent appointed by his general agent. (2), That the employment of a number of men to act as policemen on polling day by direction of Tarte, without his having previously taken the means provided by law to secure the public peace, was a colorable employment, and therefore respondent, through his agent, Tarte, was guilty of a corrupt practice.

Davidson, Q. C. for appellant.

Angers, Q. C., and *Pelletier*, Q.C., for respondent.

ELECTION APPEAL.

LARUE, *Appellant* v. DESLAURIERS, *Respondent.*

Sup. Court Act, sec. 4—Right to send back record for further adjudication—Corruption—Insufficiency of return of election expenses—Personal expenses of candidate to be included.

The original petition came before Mr. Justice McCord for trial, and was tried by him on the merits subject to an objection to his jurisdiction. The learned judge having taken the case *en delibere* arrived at the conclusion that he had no jurisdiction, declared the objection to his jurisdiction well founded, and "in consequence the objection was maintained and the petition of the petitioner was rejected and dismissed." This judgment was appealed from and the now respondent under sec. 48 of Sup. Ct. Act limited his appeal to the question of jurisdiction, and the Supreme Court allowed the appeal.

Held, that Mr. Justice McCord had jurisdiction and ordered that record be transmitted to the proper officer of the lower court to have the said cause proceeded with according to law.

Held, that the court could not, even if the appeal had not been limited to the question of jurisdiction, have given a decision on the merits, and that the order of this court remitting the record to the proper officer of the court *a quo* to be proceeded with according to law, gave jurisdiction to Mr. Justice McCord to proceed with the case on the merits and to pronounce a judgment on such merits, which latter judgment would only be properly appealable under sec. 48, S. and E. C. Act.

FOURNIER & HENRY, JJ., dissented.

The charge upon which this appeal was principally decided is that of the respondent's bribery of one David Apelin. During the election canvass the respondent gave Apelin, at whose house he stopped two or three times $5 for the trouble he gave him. Apelin swore it was not worth more than one dollar.

This amount, together with other amounts paid out by the appellant during the election canvass was not furnished to his agent as part of his personal expenses, and did not appear in the official statement of the legal expenses of the appellant furnished to the returning officer.

Held, that the candidate is bound to include in the published statement of his election expenses his personal expenses, and as appellant had not included in the said return the said amount of $5, and Apelin had not earned more than $1, the paymentof $4 to Apelin by respondent more than was due, was an act of personal bribery.

Judgment of Mr. Justice McCord [6 Q. L. R. p. 100] on the other charges also was affirmed.

Langellier, Q. C., for appellant.

Amyot, for respondent.

MCGREEVY, *Appellant*, v. PAILLE, *Respondent*

Answers to interrogatories—Arts. 228, 229 C. P. C.

The Superior Court at Three Rivers, by its judgment, which was confirmed by the judgment of the Court of Queen's Bench, condemned the appellant McGreevy to pay to the respondent the sum of $3,090.89, for the balance due on the price and value of railway ties made and delivered to the appellant, in accordance with a contract signed by his brother, R. McGreevy, and the respondent. In answer to certain interrogatories which referred to all the matters in issue between the parties, the appellant answered, either "I do not know," or "I have no personal knowledge."

Held, that such answers are not categorical, explicit, and precise, as required by arts. 228 and 229 C. P. C., and that the facts mentioned in these interrogatories must be taken as *pro confessis*, and sufficiently proved the plaintiff's case.

Irvine, Q. C., for appellant.

Hould, for respondent.

RYAN, *Appellant*, v. RYAN, *Respondent*.

Statute of Limitations—Possession as caretaker—Tenancy at will—Finding of the Judge at the trial.

The plaintiff's father, who lived in the township of Tecumseh, owned a block of 400 acres of land, consisting respectively of lots 1 in the 13th and 14th concessions of the township of Wellesley. The father had allowed the plaintiff to occupy 100 acres of the 400 acres, and he was to look after the whole and to pay the taxes upon them, but to take what timber he required for his own use, or to help him to pay the taxes, but not to give any timber to any one else or allow any one else to take it. He settled in 1849 upon the south half of lot 1 in the 13th concession. Having got a deed for the same in November, 1864, he sold the 100 acres to one M. K. In December following he moved on the north half of this lot No. 1, and he remained there ever since. The father died in January, 1877, devising the north half of the north half, the land in dispute, to the defendant, and the south half of the north half to the plaintiff. The defendant, claiming the north fifty acres of the lot by the father's will, entered upon it, whereupon the plaintiff brought trespass, claiming title thereto by possession. The learned judge at the trial found that the plaintiff entered into possession and so continued, merely as his father's caretaker and agent, and he entered a verdict for the defendant. The evidence showed an entry on the land within the last seven years, and thereby created a new starting-point for the statute, and a new tenancy at will.

Held, that the evidence shows that the respondent at first entered and continued in possession of the land in dispute as agent or caretaker for his father; and he subsequently acknowledged himself to be and agreed to be tenant at will to his father, within ten years; and therefore respondent had not acquired a statutory title.

Appeal allowed.

King, for appellant.

Bowlby, for respondent.

In the following cases from Ontario—

WALKER v. CORNELL,

THE SYNOD OF THE DIOCESE OF TORONTO v. DEBLAQUIERE,

NASMITH v. MANNING—(Ritchie, C. J., and Gwynne J., dissenting,)

LONDON LIFE INS. CO. v. WRIGHT—(Ritchie, C. J., and Taschereau J. dissenting,)

the appeals were dismissed, and the judgments of the Court of Appeal for Ontario were confirmed.

QUEEN'S BENCH.

HILARY TERM, 1881.

THE QUEEN v. HOODLESS.

Recognizance—Irregularity.

In a recognizance taken before a Police magistrate pursuant to 32-33 Vict., cap. 30, sec. 44, following the form given in schedule (Q2) to the Act, the words "to owe" were omitted in the printed form which was used.

Held, that the omission was fatal and an action brought upon the same as a recognizance could not be maintained.

Osler, Q. C., for the crown.

Richards, Q. C., for defendant.

SMITH v. FAUGHT.

Ejectment—Will—Restraint upon alienation.

Held, that the direction in a devise in fee simple to A. F. F. by her father that she should "not sell or cause to be sold the above named lot or any part thereof during her natural life, but she shall be at liberty to grant it to any of her children whom she shall think proper," was a valid restraint upon alienation.

Held, also, that the giving of a mortgage by the devisee was not a violation of the restraint, and that the plaintiff, who was mortgagee, was entitled to recover, his mortgage being in default, as against the devisee's son, who claimed by statutory deed from his mother subsequent to the mortgage.

Delamere, for plaintiff.

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

GRIFFIN v. PATTERSON.

Husband and wife—Separate estate—Tenants by entireties.

Action for the price of household goods supplied in 1877 by plaintiff to the female defendant, who was married in 1856 without a marriage settlement and who resided with her husband and family. The husband and wife were seised by entireties under a devise made in 1866. In 1874 the sheriff affected to sell the husband's interest under an execution to the wife.

Held, that the wife's interest in the real estate was not of such a quality as to entitle the plaintiff to a remedy against it.

Held, also, (ARMOUR, J., dissenting), that she was not liable to the plaintiff for the goods supplied.

Per HAGARTY, C. J. The fact that a married woman living with her husband and family orders household goods, raises no implied promise to pay or to bind her separate estate or any presumption save that she acts as her husband's agent.

The interest of the husband being inalienable was not saleable under execution pursuant to R. S. O., cap 66, sec. 39.

Per ARMOUR, J. (1) That whatever might be the effect of the sheriff's sale it should be treated according to the effect ascribed to it by the plaintiff and female defendant by their conduct, viz., as having vested the estate in her.

(2) That there should be a new trial to ascertain whether the plaintiff's claim was the debt of the wife incurred by her in respect of any employment or business in which she was engaged in her own behalf, or whether it arose by virtue of her own contract or was her separate debt. But from the evidence as it stood, it appeared a fair inference that the claim was the separate debt of the wife, part of it being incurred by her in respect of the business of farming in which she appeared to be engaged on her own behalf; that she had contracted in respect of separate personal estate appearing to be hers, and that the name of the husband should be struck out and a verdict entered for the amount against the wife.

Quære, as to the effect of the Married Woman's Acts upon an estate by entireties.

Beck, for plaintiff.

Edmison, for defendants.

COOPER v. HAMILTON.

Ejectment—Statutes of limitation.

John C., being owner in fee of the land in question, some time after 1854 placed his brother James C., in possession to occupy the same rent free. In 1867, defendant having married a

daughter of James C., went to live with the latter and occupied a part of the house in obedience to John C., who desired his niece to remain in the house to take care of her infirm mother, who, however, objected to this arrangement. John C. died on the 2nd September 1874 and devised the land to the plaintiff. James C. died in 1873 or 1874, and his wife about a year afterwards. In 1875 one G., with the plaintiff's husband entered and went through the house with the view of renting it, when the defendant said if it was going to be rented he would rent it himself, and pay as much for it as any one, or would buy it. The action was commenced on the 30th March, 1879.

Held, that the plaintiff was entitled to recover as against the defendant who set up the Statutes of Limitations.

Per HAGARTY, C. J.. The defendant was never tenant to John C. during the lifetime of James C. and his widow, and that the statute would not begin to run in his favor till a year after the death of the latter.

Per ARMOUR, J. The entry of defendant in 1867 under John C.'s authority, determined the tenancy at will of James C. theretofore existing, and a new tenancy at will thereupon commenced. Upon the death of James C.'s widow, the defendant became tenant at sufferance to the plaintiff, and her entry by her husband with G. acquiesced in by the defendant, was a sufficient entry to create a new tenancy at will and stop the running of the statute.

Ferguson, Q. C., for plaintiff.

Robinson, Q. C., for defendant.

BARR v. DOON.

Deceit—Fraudulent representations as to mortgage—Duty of purchaser of.

The defendant was mortgagee of the plaintiff's farm, and the latter being unable to pay the mortgage, asked the defendant to buy it, and the defendant offered him therefor some cash and a mortgage for $619, representing to him that the mortgage was a second mortgage, and that any money lender would readily cash it at a small discount, and so induced the plaintiff, an ignorant man, to accept it, when in fact the defendant knew that it was a fourth mortgage, and was almost worthless. The jury found for the plaintiff, on motion for a non-suit.

Held, that there was no obligation cast upon the plaintiff as a matter of law to examine the title or search the registry office, but that his omission to do so was matter for comment only.

Semble, that on sustaining the verdict, a reconveyance of the mortgage to the defendant might be ordered.

Nothing was said as to the amount of the prior mortgage, but the jury having found that the representation was false to the knowledge of the defendant, and was made with intent to deceive the plaintiff, and the verdict not being moved against on the weight of evidence, the Court refused to disturb the finding.

Hagel, for plaintiff.

McCarthy, Q. C., for defendant.

CLARK v. CREIGHTON.

Feme covert—Promissory note—Separate estate.

Action on a promissory note made by the defendant to a feme covert married after 2nd March, 1872, without a settlement, and C. her brother as trustees under their father's will for the purpose of raising money to pay some insurances on the trust estate.

The testator devised his real estate to his trustees, in trust to sell portions to pay debts, invest residue, and expend income in maintenance of the trustees and his other children, until the youngest should attain the age of 21, and on the youngest attaining that age, an equal division to be made amongst all the children, issue of deceased children to represent the parent.

Held, that until the coming of age of the youngest child, C. had no separate estate available in execution, and that she was not liable on the note.

ARMOUR J. dissented, holding that the true construction of the Married Woman's Property Act is impliedly to enable a feme covert to incur debts, to make engagements, and to enter into contracts as if she were a *feme sole*, and that the remedy in respect of any such debts, engagements, contracts or torts, should be against her personally, and should not depend upon whether she ever had any separate estate or not.

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

W. Nicholas Miller, for defendant.

COMMON LAW CHAMBERS.

Osler J.] [Feb. 19.

REG. *ex rel.* KELLY v. ION.

Municipal Councillor—Qualification—Value.

This was a *quo warranto* summons, calling on John Ion to show cause why he should not be removed from the office of councillor for the village of Oakville, on the ground of want of property qualification. The property on which the defendant qualified was assessed at $1,600, and upon it there was a mortgage for $1,500. The relator contended that under 43 Vict., ch. 24, sec. 5, the property qualification was clearly insufficient.

Tizard, for defendant, put in affidavits to show that the real value of the property was $2,800. He contended that the amount of the mortgage should be deducted from the real value, and not from the assessed value, in order to arrive at the amount of the defendant's property qualification, and that the oath of qualification never having been changed but referring still to the actual value, the intent of the legislature was clear to base the qualification on the real value after deducting incumbrances. He cited *Reg. ex rel. Bole* v. *McLean*, 6 Prac. R. 249.

Davidson, contra, cited *Reg. ex rel. Flater* v. *Van Velsor*, 5 Prac. R. 319.

OSLER J. *held* that under the Rev. Stat. O., ch. 70, sec. 70, it is clear that the assessed value of the property only can be looked at in arriving at the amount of the property qualification. Summons made absolute to unseat defendant, with costs, and for a new election.

CHANCERY

Proudfoot V. C.] [Jan. 1

BURRITT v. BURRITT.

Appeal from Master's Report—Liability of co-trustees—Foreign securities.

A testator who, by his will, expressed the fullest confidence in C. (one of his trustees), directed them to be guided entirely by the judgment of C. as to the sale, disposal and re-investment of his American securities, and declared that his trustees should not be responsible for any loss to be occasioned thereby. C. having made investments of these moneys which proved worthless, the Master charged his co-trustee R. with the amount thereof.

Held, that even if at the suit of creditors R. might have been chargeable, yet as against legatees he was exonerated.

J. Hoskin, Q.C., for plaintiff.

Boyd, Q.C., contra.

OWENS v. TAYLOR.

Patent for invention—Novelty—Royalties payable under void patent.

The mere attaching of the support of the handle of a pump higher or lower in position than that formerly in use, is not the subject of a patent; but P. having obtained a patent therefor which he assigned to the plaintiff who again assigned to the defendant subject to certain royalties,

Held, that notwithstanding the invalidity of the patent he was entitled to recover the amounts payable to him under the agreement during the currency thereof.

Boyd, Q.C., for plaintiff.

Moss, contra.

SCHOOL TRUSTEES OF THE TOWNSHIP OF HAMILTON v. NEILL.

Officers of corporation—Irregular appointment.

One T., who acted in the capacity of Secretary-Treasurer of the plaintiffs, who had not been appointed in writing, and had not given security as required by the Statute in that behalf, absconded with certain moneys which had been received by him as such Secretary-Treasurer from the defendants. The plaintiffs had recognized T. as their Secretary-Treasurer by intrusting him with the custody of their books and papers, by allowing him to receive moneys for them, by auditing his accounts and receiving and approving of the auditor's reports.

Held, that R. S. O. cap. 204, sec. 99, which provides that, in the case of a rural school section corporation, the resolution, action or proceeding of at least two of the Trustees shall be necessary in order lawfully to bind such corporation, does not apply to acts of duty of the Secretary-Treasurer.

Held, also, that, if a person acts notoriously

as the officer of a corporation, and is recognized by it as such officer, a regular appointment will be presumed, and his acts will bind the corporation, although no written proof is, or can be, adduced of his appointment.

Moss, for plaintiffs.

Boyd, Q.C., contra.

WALMSLEY v. RENT AND GUARANTEE CO.

Corporation—Ultra vires—Liability of directors and shareholders.

A Company, receiving money on deposit, which is placed to its credit at a bank, is liable for the money so received, though the taking of money by deposit be *ultra vires*; and if the officers of the Company use such moneys in other *ultra vires* transactions, that may be a proper matter for the shareholders to charge those officers with, but it is not one with which the depositor has anything to do.

One E. advanced $4,000 to I. & M., on the guaranty of the defendant Company, clearly acting *ultra vires*, who obtained, as security for such guaranty, an order from I. & M., on the Water Works Company, for the amount. I. & M. afterwards induced the defendants to give up the order on replacing it by orders for half the amount. E. recovered judgment by default against the defendants, and by *sci. fa.* realized the amount of his loan.

Held, 1. Affirming the master's report, that B. who was one of the directors of the defendant company, and who had been instrumental in procuring the above guaranty, was properly charged with the amount the defendants had lost through the delivery up of the order on the Water Works Company; but that he was not liable for the balance of the claim of E., since it had been made up to the defendants by the moneys realized on the orders by which the order so delivered up had been replaced.

2. That before directors can be charged for an act *ultra vires* the act must be shown to amount to a want of *bona fides*, and not merely a mistake or error of judgment.

Semble 1. That when such transactions are laid before shareholders at a public meeting, they are equally liable with directors.

2. That there may be contribution between parties to acts *ultra vires*, as distinguished from illegal acts.

3. That the judgment of a stranger against a Company is not *res adjudicata*, as between directors and shareholders, and does not prevent the latter from showing that the transactions giving rise to the suit were *ultra vires*.

W. A. Foster, for plaintiff.

Spencer, and *W. Cassels*, for Company.

Maclennan, Q.C., *Moss*, and *Bain*, for other parties.

Spragge, C.] [Feb. 15.

ADAMSON v. ADAMSON.

Statute of limitations—Equitable remainder—Practice—Dismissal of former bill—Reading evidence in former suit—Secondary evidence.

The plaintiff, who was a *cestui que trust* in remainder, acquired the legal estate three years after the death of the tenant for life. It was attempted to be shewn by the defendant who, with her husband, had been in possession by herself or her tenants for eleven years when the tenant for life died, in 1875, that she was entitled to the land by length of possession.

Held, that the facts in the case would no support such a contention, as no laches could be imputed to the plaintiff for not having compelled the trustee to take proceedings to obtain possession at an earlier date, as his right had only been acquired on the death of the tenant for life, and therefore his right to the land was not barred.

A former suit had been instituted by the plaintiff, which had been dismissed as the plaintiff had not acquired the legal estate until after the bill was filed.

Held, (1) that under such circumstances the question was not *res judicata*; (2) and that the evidence taken in the former suit was admissible in the present one, the issue being practically the same.

The deed declaring the trusts upon which certain lands were held, a true copy of which was produced at the hearing, was traced into the hands of certain parties and every search therefor had been made, but without success:

Held, that sufficient was shewn to entitle the plaintiff to give secondary evidence of the instrument.

Mowat, Q.C., and *Maclennan*, Q.C., for plaintiff.

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

Spragge, C.] [Feb. 15.

GREENSHIELDS v. BRADFORD.

Statute of limitations—Care-taker—Pleading—Purchase for value.

B. entered into possession of a small portion of a lot of land which was in a state of nature, and upon the agent of the owner discovering him to be so in possession, he having fenced and cultivated the same, suffered B. to remain in such possession, and B. agreed to look after the property in order to protect the timber and B. subsequently sold his interest to T. On a bill filed by the owners,

The Court, [SPRAGGE, C.], *held* that under the circumstances the statute of limitations did run in favor of B. so as to give him a title by possession, and that T. was not entitled to the benefit of the defence of "purchase for value without notice," he having omitted to allege that B. was seised; that T. believed he was seised; that B. was in possession and that the consideration for the transfer by B. to himself had been paid.

Spragge C.] [Feb. 15.

LARIO v. WALKER.

Conveyance in fee—Repugnant limitations—Pleading—Demurrer.

The grantor conveyed certain lands to the grantee, his heirs and assigns, and by a proviso at the concluding part of the deed declared, "nevertheless, that the above L. shall have no right to sell, alien, or dispose in any way whatsoever of the above mentioned premises, but have only the use during his life-time, after which his children will have full right to the said property above mentioned."

Held, on demurrer that such proviso was repugnant to the grant and *habendum* in fee and therefore void.

The bill stated that the plaintiff was grandson of L. who had died intestate.

Held, that this sufficiently stated the title of the plaintiff.

Boyd, Q.C., for plaintiff.

Caswell, contra,

CHANCERY CHAMBERS.

HUGHES v. HUGHES.

Referee.]

Proudfoot, V. C.] [Feb. 14.

Examination proceeding pending before Court—Filing bond—G. O. 268.

A surety in an appeal bond may be examined on his affidavit of justification before a special examiner under G. O. 268, the filing of such bond being a "proceeding" before the Court within the terms of that order.

Donovan, for appellant.

G. Morphy, contra.

Spragge C.] [Feb. 15.

LONDON v. EVERITT.

Foreclosure—Infants—Day to show cause.

A final order of foreclosure should reserve a day for infant defendants to show cause. The Court (SPRAGGE C.) declined to change this practice, but for the sake of putting an end to litigation and to the evil of leaving estates tied up for perhaps many years, expressed an opinion that it would be well for the practice to be altered.

Arnoldi, for plaintiff.

Plumb, contra.

MASTER'S OFFICE.

The Master.] [Jan. 24.

MOORE v. BOYD.

Examination of a co-defendant adverse in interest—Construction of G. O. 138.

A defendant whose interest is identical with that of the plaintiff is a party adverse in interest to her co-defendant, and may be examined by such co-defendant under G. O. 138. Where the plaintiff's solicitor is present at such examination it may be read at the hearing against the plaintiff.

G. H. Watson, for plaintiff.

Moffatt, for defendant.

REPORTS.

(Reported for the LAW JOURNAL.)

RATHBURN v. BURGESS.

Mechanic's lien—Demurrer—Pleading.

A bill to establish a mechanic's lien should allege that there was no agreement that the plaintiff was not to have a lien for the price of the work or materials in respect of which the lien is claimed.

Quære, whether a suit to establish a mechanic's lien for an amount within the jurisdiction of a County or Division Court must be brought in such County or Division Court, and not in the Court of Chancery.

Proudfoot, V. C.] [Jan. 19.

A bill was filed to establish a lien for $71, the price for materials furnished for and used in the construction of a house on lands of defendant. The bill did not allege that there was no express agreement to exclude the lien. The defendant demurred for want of equity.

Langton, for the demurrer. The lien exists if at all by virtue of sec. 3 of Rev. Stat., c. 120, and unless the bill negatives the existence of an agreement excluding the lien, a case is not made out within the Act.

Sec. 13 of the Act shews that it is only in cases other than those within the jurisdiction of a County or Division Court that the lien is to be realized in the Court of Chancery.

Henderson, (Belleville) contra. If there is any agreement that is a matter to be raised by answer.

The inherent jurisdiction of the Court of Chancery is not taken away by the clauses of the Act which confer jurisdiction in certain cases upon County and Division Courts. The language of sec. 12 is permissive only.

PROUDFOOT, V. C., without expressing any opinion as to the question of jurisdiction, held that as the right to a lien was a new one existing only under the Act, a case should be brought strictly within the terms of sec. 3, and the bill should therefore allege that there was no agreement that the plaintiff was not to have a lien for the price of the materials furnished. He allowed the demurrer with costs, giving the plaintiff liberty to amend generally.

Demurrer allowed.

LAW STUDENTS' DEPARTMENT.

LEGAL EDUCATION.

The ideal lawyer is an embodiment of all the virtues and attainments of Coke, Bacon, and Erskine. He should combine the mastery of the technicalities of law with that universal knowledge which Bacon took for his province, and with the ability to enforce his own propositions and remove the prepossessions of others.

It is no royal road that leads to the attainment of an ideal so high and so difficult, and therefore no means should be neglected whereby its difficulties may be lessened, and the path of the travellers to "Fame's proud temple" rendered more easy. Amongst these means education professedly stands pre-eminent, and the enquiry is therefore a pertinent one why in a province like Ontario where its claims are so universally acknowledged in other departments of knowledge, there is no regular system of legal instruction.

There are two plausible reasons which may be urged against the introduction of such a system—one is that there is no necessity for it, and the other—probably the only other—is that there are no funds available for its foundation and support. Is either of these objections applicable? Does any one question the difficulties to be encountered by all law students in the acquisition of the learning necessary to the practice of the profession? Has it ever been suggested that of all courses of study, that of law stands out as so pre-eminently easy that no such assistance in it is requisite? Or does any one assert that lectures or oral instruction are of little value if given by competent teachers? It has indeed sometimes been argued that lectures are principally valuable where experiments are necessary; but it is not doubted that apart from such cases, lectures, if given by well-read men with a dash of enthusiasm in their composition, render most valuable assistance to the student. This principle has been recognized and acted upon in almost all countries where law has reached an advanced stage of development. There is no need, however, for going from home for recognition of the principle. It is recognized in all departments of study except law, and it has several times asserted itself and found acceptance. Perhaps the most crucial

test, however, of the value of oral instruction to a law student would be to supply lectures, the attendance at which should be purely voluntary, and the benefits from which should not consist in prizes or the shortening of the period of service, but merely in the assistance in their studies which the students felt themselves to be receiving. If the time could be better spent in reading, or if the pleasures of other engagements outweighed the benefit received, then the lectures would be delivered to empty benches. If, on the other hand, they were found to be useful, the advantage would probably be a sufficient incentive to the expenditure of the time and effort necessary to a large attendance.

This test has been supplied during the present winter by The Osgoode Literary and Legal Society. A course of lectures was arranged and proceeded with for some time without the promise or expectation of any rewards other than advancement in legal education. The result was an attendance far beyond the capacity of the examination room at Osgoode Hall. Even standing room was, on some occasions, not to be found ; and late comers found themselves sometimes unable even to get near enough the door to hear what was being said. The Law Society afterwards very properly proposed that if the Literary Society under certain regulations would at the close of the Session hold examinations, a sum of $100 would be spent in providing prizes for the successful competitors. This proposition was accepted, but the fact remains that without this inducement the attendance was large and enthusiastic. If the students are the best judges in this matter, and their decision is such as has been indicated, further argument is unnecessary.

Then as to the other objection. Is there no fund for the foundation and support of some system of legal education? Nearly one half of the revenue of the Law Society is derived from fees paid by the law students. If the Law Society requires these fees for its other purposes, perhaps this fact would be without significance. But when it is known that the revenue of the Law Society is beyond its power of disbursement, it is a fact which forms a complete answer to this second objection.

Are there any other objections? It has been said that there is a jealousy of Toronto. This is not an objection, and would not be urged as such, no matter how actively it might assert itself in forming opposition to any scheme which might be proposed.

It has also been said that the Ontario Bar has produced many men, accomplished and able, without any such scheme. This is no answer to what has been said. The statement must go further to be of any value, and show with what additional expenditure of time and labor these men reached their positions, and how many have failed to reach eminence because of the lack of such aids to legal attainment.

Are there any other objections? We know of none. Shall we then see some system introduced, or must the matter be left to the Osgoode Literary and Legal Society to cope with as best it can? We trust the former alternative will prevail, and commend the matter to the Ontario Government and the Law Society.

We understand that the name of W. White, in the list of gentlemen called to the Bar last term, should in order of merit have appeared immediately after that of P. Mulkern.

FLOTSAM AND JETSAM.

There are several ways of stating one's disagreement with the views of another. The following strikes us as peculiarly neat. It appears that a certain "Col." Tom Buford murdered Judge Elliott of Kentucky. The *Albany Law Journal* says: "It seems that the Colonel was insane. He is probably now enjoying a lucid interval which will last during the remainder of his useless and accursed life unless interrupted by more seasons of debauchery and bad temper, and a fresh grudge against somebody who may offend him"

TO CORRESPONDENTS.

A. G M. — It was not contended in *Robins* v. *Clarke et al.* that the chattel mortgage was within the statute, in fact it could not be. This case therefore could be no authority in *Nisbet* v. *Cook* on the point you refer to.

J. and R.—We are indebted to you for two cases o interest which will appear in due course. We agree with you that one is right, but much doubt as to the other.

Printed by BENGOUGH, MOORE & Co., 35 Adelaide St. West