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The following changes in the judiciary of the province of Ontario have just been announced: The vacancy caused by the resignation of Chief Justice Hagarty has been filled by the appointment of Hon. Mr. Justice Burton. His place will be taken by Mr. Charles Moss, Q.C., than which no better appointment could have been made. It is not yet known who is to be the fifth judge of the Court of Appeal under the statute of last session to that effect.

CHIEF JUSTICE HAGARTY.

The Chief Justice of Ontario and President of the Court of Appeal has resigned his office and retired from the Bench. The public and the profession will see no more in a judicial capacity one whose learning, brilliancy and kindly courtesy have graced the Bench of the Province for over forty years.

John Hawkins Hagarty, Q.C., was first appointed to the Bench as a puisne judge of the Common Pleas on February 5th, 1856. Here he remained (his colleagues being Draper, C.J., and Richards, J.) until March 19th, 1862, when he was transferred to the Queen's Bench, vice McLean, J., who was promoted to the Chief Justiceship of the Queen's Bench. In that Court he remained as puisne (his colleagues being first McLean, C.J., and Connor, J., and subsequently Draper, C.J., and Adam Wilson, J., and later Morrison, J.) until March 12, 1868, when he was made Chief Justice of the Common Pleas, his colleagues being successively John and Adam Wilson, and Gwynne and Galt, JJ. On November 13th, 1878, on the death of the late Chief Justice Harrison, he became Chief Justice of the Queen's Bench, having for his puisnes the present Chief Justice of the Queen's Bench and the late Sir

Matthew Cameron. On May 6th, 1884, he was made Chief Justice of Ontario, vice Chief Justice Spragge, deceased. It is conceived that the latter position, though full of responsibility, was more congenial than the one he previously occupied as Chief Justice of the Queen's Bench. One can well suppose that it was not always a bed of roses. His brethren of that Court were both masterful men, frequently differing in opinion, and neither of them easily persuaded against his convictions, which they were accustomed to state with much freedom and force of expression.

With his retirement from the Bench a list is closed of able and distinguished men, who in the past adorned the Bench of this province, and of whom the late Sir John Beverley Robinson was facile princeps. To the older practitioners who have seen Chief Justice Robinson, and Justices McLean and Burns, Chief Justice Draper, and Justices Richards and Hagarty, Chancellor Blake, and Vice Chancellors Esten and Spragge, sitting in the old Courts of Queen's Bench, Common Pleas and Chancery respectively, it must indicate the inexorable flight of time when they see the last of that band of eminent lawyers retire from the Bench.

The learned Chief Justice has lived to see every judicial office in the province filled, not only once, but in some instances many times during his judicial career, and though always considered to have a somewhat delicate constitution, has outlived all his contemporaries of the period of which we have spoken, and many of those who succeeded them, who were not only younger men, but to all outward appearances more vigorous than himself. In now retiring from the Bench after his long and laborious service, he is obtaining that otium cum dignitate which is the fitting close of such a career.

He will always be remembered by the Bar as a learned, able and conscientious judge, thoroughly versed in the fundamental principles of law, with no ambition to extend the area of "judge-made" law, but, on the contrary, sincerely solicitous of administering the law as he found it, without usurping or encroaching on the functions of the legislature. The bent of his mind was on the whole conservative, not

prone to think of the past as likely to be wrong, but rather the reverse—inclined to follow in the beaten track, rather than make new paths for himself. The test of appeal is not always a safe one as to the correctness of a judgment, but if it were, his decisions have stood the ordeal probably better than those of any other judge now on the Bench.

In his conduct of business he has been uniformly courteous to the Bar (would that the same could be honestly said of all judges), and at the same time properly mindful of the dignity of his office and the respect due thereto. But his dignity has not been of the oppressive order which could not admit of a gleam of sunshine, and many a wearisome case has been redeemed from dullness by some sparkling jeu d'esprit on his part, of which his playful reference in 15 A.R. 347 to "Mr. Davies' donkey, whose memory is embalmed in the delightful pages of 10 Meeson & Welsby," may be cited as an instance. He who would make a collection of the many good things said by Chief Justice Hagarty, would deserve well of his brethren at the Bar, and confer a lasting favor upon all those who can appreciate a keen wit, playing with lightning rapidity, but in the kindliest way. If he had a fault as a judge, it arose from his remarkable quickness of apprehension. He saw the end from the beginning with a swiftness often quite disconcerting. Nor was the learned lawyer unknown on Parnassus. It is to be hoped that there may be made in due time a collection of the poems, both grave and gay, which it has been his pleasure to write in leisure moments. Some one has said that in making him a lawyer a poet was lost to the world. But the Chief's career proves the saying that "good things are hard to spoil."

It may possibly have occurred to some that the learned Chief Justice should follow the custom which seems to have grown up in England for retiring judges to have a public leave-taking of their brother judges and the Bar. This, however, might be a somewhat painful ceremony for the Chief Justice, accompanied as it would be by the very sincere regrets at the severance of those ties which have for so many years endeared him to the profession. We can, here, at least,

give expression to the feelings of the profession by tendering him this valedictory. In bidding him farewell we may safely and most sincerely voice the feelings of the Bar in wishing that his declining years may be passed in peace and comfort as free as may be from those troubles which so often afflict poor mortals; but whatever the future may have in store for him, he may be assured that he will always enjoy the sincere respect and esteem of the public whom he served, and of the profession he adorned.

IMPORTANT NEGLIGENCE ACTION

AN UNREPORTED CASE.

The judgment in the case *Connacher* v. *City of Toronto*, decided by the Queen's Bench Division March 4, 1893, was apparently not considered of sufficient importance to be embodied in the Ontario Reports, and counsel, since the decision was given, have been compelled to cite the authority in manuscript. No more important judgment, from a practical standpoint, than that delivered by Armour, C.J., in the *Connacher* case, has been given for many years.

The legal question involved is one of no great complication, but the finding of the Court on the evidence taken at the trial with relation to the question of negligence, is of the utmost practical value. Not only so, but the solid foundation upon which the judgment rests must commend the decision to those who care more for substance than technicalities in negligence actions. In placing the principal part of the judgment before the profession, it will be necessary to deal later on with a Supreme Court decision, in *Grinsted* v. *Toronto Ry. Co.*, 24 S.C.R., 570, given subsequently, and which, it has often been argued, materially qualifies the *Connacher* judgment.

The judgment of Chief Justice Armour sets forth the facts, which are briefly as follows: The plaintiff and his family resided in a house at the foot of Brock street close to the Bay, and near which three sewers were discharged into the Bay, one 73 feet from the plaintiff's house, one 109 feet,

and one 142 feet. From the latter a large quantity of sewage was deposited in the bay, and owing to the lowness of the water, it became exposed for a large area during 1891, and up to the time of the illness in the plaintiff's family. There was an intolerable smell from the sewage, and the whole thing was beyond doubt a serious nuisance of the foulest character. The plaintiff had, prior to 1891, been supplied by the defendant with disinfectants to spread over the accumulation, and afterwards it had been dredged away, but in the year in question nothing seems to have been done towards abating it.

Diphtheria was alleged to be the result; three children died, and the father and mother were both taken sick with the same disease, but recovered. Medical evidence stated that the condition of the deposit at the outlet of the Brock street sewer was a condition that would favor the development of the disease and the propagation of the germs of diphtheria, and that the disease could only be communicated by a germ. Other medical testimony was given to show the probability of these germs having been transmitted from this exposed sewage into the air, and thence to the plaintiff's family. Upon this state of affairs the jury found for the plaintiff. The judgment in question was delivered on the motion for a non-suit, or for judgment for the defendant, or for a new trial.

The following is the leading portion of the judgment of Armour, C.J.:—

"The plaintiff's case is not put, in the statement of claim, upon the ground that the defendants had no legal right to conduct the sewage of the city into the waters of the Bay, and to thereby pollute such waters, and that they were guilty of a public nuisance in so doing, and that the sewage so conducted and deposited at the outlet of the Brock street sewer was a public nuisance for which the defendants were responsible. But the case is put as if the defendants had a legal right to so conduct the sewage into the waters of the Bay, and were only liable for an alleged breach of duty in not cleansing and disinfecting the outlets of the sewers.

"Assuming, however, that the case were put most strongly against the defendants and that they were guilty of

a nuisance in conducting the sewage through the Brock street sewer and depositing it or allowing it to be deposited at the outlet of that sewer, as was shown by the evidence, we are unable to hold that there was any evidence from which the jury might fairly or reasonably infer that the sickness with which the plaintiff's family was afflicted was caused by such sewage. There is in every case triable by a jury a preliminary question of law for the Court, whether or not there is any evidence from which the fact sought to be proved may be fairly inferred; and, as was said by the Lord Chancellor in *Metropolitan Railway Company* v. *Jackson*, 3 App. Cas. 193, 'the judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred; the jurors have to say whether from those facts when submitted to them negligence ought to be inferred.'

"The medical testimony showed that diphtheria, the sickness with which the plaintiff's family was afflicted, is caused by a germ; that this germ may be received into the throat by food, by drink, or by inhalation; that after infection it takes from five to seven days for the disease to develop. The theory upon which the plaintiffs relied was that there might have been the germs of diphtheria in this sewage; that part of it might have been exposed so as to have been sufficiently dried by the sun and the warmth of the atmosphere to have been taken up as dust into the air; that in the matter so taken up there might have been some of these germs; and that some of the germs so taken up might have been carried by the air into such proximity to the plaintiff's family as to have been inhaled by them; and that thus the plaintiff's family became infected with the disease. The difficulty in supporting this theory is that there was no evidence that there were any germs of diphtheria in this sewage; that, if there were, that any portion of this sewage became sufficiently dry to be taken up into the air; that, if it were, that any of such germs were so taken up; and that, if taken up, they were wafted by the air into proximity to the plaintiff's family; and that they were inhaled by them.

"There is no doubt that the condition of the outlet of this

sewer was filthy and malodorous in the extreme; that with sufficient warmth in the atmosphere the condition at the outlet of this sewer, if there were germs there, was very favorable for their propagation; but it was said by Dr. Bryce that it was scarcely warm enough at the time the plaintiff's family was infected for them to multiply, and that the only probable way in which they could have come from this sewage was by being sufficiently dried to be taken up into the air and wafted into proximity to the plaintiff's family, and being inhaled by them. It was only, however, by rejecting every other theory as to the origin of the germs that infected the plaintiff's family that this theory was arrived at, and Dr. Bryce said that nothing positive could be affirmed as to their origin—that it was mere matter of speculation. Diphtheria had been alarmingly prevalent throughout the city in the month of November, and had continued to be so until February, when it abated somewhat, and again began to increase about the time that the plaintiff's family became infected with it. Whence the germs came which infected the plaintiff's family seems to us to be wholly conjectural, and that they came from this sewage to be entirely guess-work. These germs being capable of transmission into the human body in so many ways—in food, in drink, and in inhalation of air—it is impossible to say with any sufficient certainty in which way the plaintiff's family became infected, and, if in inhalation of air, whence they came in their journey through the air. We think that there was no evidence from which a jury might fairly or reasonably infer that the germs which infected the plaintiff's family came from this sewage, and that the plaintiff's action must be dismissed; but, as the defendants were wrong-doers in conducting the sewage of the city into the Bay and polluting its waters, thereby causing a public nuisance and one calculated to produce disease, thus endangering the health and lives of the public, there will be no costs."

When the above case is cited, it is usually met with *Grinsted* v. *Toronto Railway Co.*, 24 S.C.R., 570, and it is argued that the latter authority practically overrules the former. A careful scrutiny shows that this is not the fact. In

the *Grinsted* case, there was a proximate relation between the cause and alleged result. King, J., refers in his judgment to the "uncontradicted statement of the physician, that the act of exposure operating upon a person in an excited and overheated state would be sufficient to induce such an illness." The plaintiff's condition when he was put off the car was such as to predispose him to the injury likely to result from his being suddenly exposed to a low temperature. It was for the jury "to see if there was any intervening independent cause. Finding none sufficient to satisfy them, they were entitled to refer the illness to the only thing referred to in the evidence as a sufficing cause." The illness was the natural and probable result without the intervention of any independent cause. Gwynne, J., dissents, and his judgment agrees with the principle of the *Connacher* case.

It is worthy of note that the late Chief Justice of the Court of Appeal (Hagarty, C.J.), 21 A.R., p. 578, agrees with Gwynne, J. See also *Hobbs* v. *London and S.W.R.W. Co.*, L.R. 10 Q.B. 111, cited in the dissenting judgments and relied on.

In the *Connacher* case there was no such proved connection of cause and effect. It might as well be said that typhoid is due to noxious vapors escaping from adjacent sewers, when the evidence shows that the disease may be equally attributable to drinking bad water, eating unhealthy food, etc. This very case came lately before Ferguson, J., in *Shields* v. *City of Toronto*, at the Toronto Assizes, and he non-suited the plaintiff on the ground that the evidence failed to connect the act of the corporation of Toronto in charge of the sewers with the illness of the plaintiff. Generally, the defect in the evidence in these cases consists in the weakness of the medical testimony. The gist of the question, it occurs to me, necessary to be put, is, "Can you say that the illness was reasonably and probably the result of the act of negligence complained of, and not the result of some other cause?" It will be seen how difficult it would be for a medical man to answer this, when so many other apparent causes are not excluded by the evidence, but are in fact put in evidence as a rule by the

medical witnesses for the plaintiff on cross-examination. The connection is too indefinite and problematic, and the causes of disease generally too numerous in these cases to warrant a positive opinion, and just so long as this condition exists, there will be difficulty in the way of the plaintiff recovering.

In the *Grinsted* case there was really only one reasonable and probable cause suggested, whereas in the *Conacher* case there were half a dozen other possible and probable causes that might have resulted in the disease. These other causes were not negatived so as to reduce the case to the one cause complained of as the defendant's act of negligence.

The test may be shown by mal-practice cases. The question there is, "Did the present condition of the plaintiff arise from the improper act of the surgeon?" If "yes," there is evidence to go to a jury. If the answer is only problematic, or if it resolves itself into one of chance or possibility, it is clear that the case should be withdrawn from the jury and a non-suit entered, as other independent causes may have intervened.

A plaintiff who brings his action for damages should have more than mere conjecture and the sympathy of a jury to support his contention before he should be allowed to recover damages against a corporation, otherwise every attack of diphtheria, typhoid, and kindred diseases, will breed as many actions as there are germs in the supposed noxious gases or deleterious matter.

E. F. B. JOHNSTON.

It may be useful to Ontario practitioners to call attention to the notice recently posted up in the Court of Appeal relative to the binding together of appeal books with paper fasteners. These must be put through from the back to the front of the book, in order that the points may protrude on the inside, where they will be less likely to injure the hands of the judges and others who may have occasion to use them. The rule issued on the authority of the judges, and the Registrar is empowered to refuse appeal books which do not comply with it.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

The Law Reports for March comprise (1897) 1 Q.B., pp. 245-432; (1897) P. pp. 57-64; and (1897) 1 Ch., pp. 193-324.

MUNICIPAL LAW—PROHIBITION OF OBSCENE OR PROFANE LANGUAGE—BY-LAW FOR "GOOD RULE AND GOVERNMENT," AND "PREVENTION AND SUPPRESSION OF NUISANCES"—VALIDITY OF BY-LAW.

In *Mantle* v. *Jordan*, (1897) 1 Q.B. 248, a municipal corporation having statutory power to pass by-laws inter alia for "good rule and government," and "the prevention and suppression of nuisances" passed a by-law that "no person shall, in any house, building, garden, land or other place abutting on, or near to, a street or public place, make use of any violent, abusive, profane, indecent or obscene language, gesture or conduct, to the annoyance of any person in such street or public place," and the question submitted to the Court (Wills and Wright, JJ.) was whether it was valid, and the Court held that the by-law was valid. It will be noticed that it is so worded as to remove the objections which were held to be fatal to a by-law passed for a similar purpose, which was in question in *Strickland* v. *Hayes*, (1896) 1 Q.B. 290 (noted ante vol. 32, p. 351).

ESTOPPEL—MATTER OF RECORD—MISTAKE.

Joint Committee of River Ribble v. *Croston*, (1897) 1 Q.B. 251, turns upon the doctrine of estoppel. The defendants had consented to an order of a County Court declaring them to have committed a statutory offence of permitting sewage to flow into a stream, and ordering them to execute sewage works for the purpose of rendering such sewage harmless. The defendants having been subsequently summoned for breach of this order, sought to show that they had consented to the order under a mistaken belief that the Act applied to

the stream in question, and they sought to show that it did not, in fact, so apply, but the Court (Wills and Wright, JJ.) held that the order of the County Court was equivalent to a judgment, and estopped the defendants from now setting up, as a reason for not obeying it, any ground which might have been taken when the order was applied for, and that if there had been any mistake the defendants' only remedy was by action to get it rectified. See *Ainsworth* v. *Wilding* (1896), 1 Ch. 673; ante. vol. 32, p. 471.

GAMING—PLACE USED FOR BETTING—"BETTING WITH PERSONS RESORTING THERETO"—PAYMENT OF BETS MADE ELSEWHERE—BETTING ACT, 1853 (15 & 16 VICT., C. 119) S. 1—(CR. CODE, S. 197.)

Bradford v. *Dawson*, (1897) 1 Q.B. 307, was a case stated by a magistrate under the Betting Act, 1853 (15 & 16 Vict., c. 119), and the question raised thereby was whether the defendant's attendance at the bar of a beerhouse on several days at the same hour in the evening and paying there bets made with him elsewhere, to persons who had won the same—was a using of the bar for the purpose of betting with persons resorting thereto, within the meaning of sec. 1 of the Act from which Cr. Code s. 197 (a) is derived. The case was argued before a Court of five judges, viz., Hawkins, Cave, Wills, Wright and Kennedy, JJ., and they were unanimous that the attendance at the bar for the purpose of paying bets made elsewhere was not using the place for the purpose of betting; as Wills, J., succinctly put it, "the payment of a bet made and lost is not 'betting.'" Wright, J., expressed some little doubt, but as the Act was penal, agreed that it must be strictly construed. See, however, *Reg.* v. *Giles*, 26 O.R. 586.

INTERPLEADER—ORDER FOR SALE OF GOODS—TITLE OF PURCHASER.

In *Goodlock* v. *Cousins*, (1897) 1 Q.B. 348, it was determined by Wills and Wright, J.J., on appeal from a County Court, that where a sale of goods taken in execution is ordered on an interpleader proceeding, the purchaser acquires a good title as against all the parties to the proceedings, no matter what may be the result of the issue.

PRACTICE—MOTION—SECOND MOTION ON AMENDED PROCEEDINGS—RES JUDICATA—MOTION FOR JUDGMENT—RENEWAL OF APPLICATION.

Dombey v. *Playfair*, (1897) 1 Q.B. 368, involves a neat point of practice. A plaintiff moved for speedy judgment under Ord. xvi., r. 1 (Ont. Rule 739) and the defendant was granted unconditional leave to defend, on the ground that the action appeared to be defective for want of parties. The plaintiff then amended his proceedings by joining as defendants the parties who were considered necessary, and then made a further motion for judgment under Ord. xvi., r. 1; this was resisted on the ground that the matter was res judicata; but the Court of Appeal (Lord Esher, M.R., and Lopes, L.J.) agreed with Laurence, J., that the defect existing when the first application was made having been amended, there was nothing to prevent the renewal of the motion, and the order allowing the plaintiff to enter judgment was affirmed. Lord Esher, M.R., says the matter adjudicated on was not the action but merely a step in the action.

CRIMINAL LAW—PLEADING—CORONERS' INQUISITION, SUFFICIENCY OF.

The Queen v. *The Clerk of Assize of the Oxford Circuit*, (1897) 1 Q.B. 370, was a somewhat unusual proceeding, namely, an application to quash a coroner's inquisition, which had been returned to the Clerk of Assize, on the ground that on the face of it it disclosed no offence against certain persons named therein. The inquisition in question stated that the cause of the death of the deceased was injury resulting from falling into a quarry, and that "by neglect of" (three named persons) "to fence or cause to be fenced the said quarry, the said deceased fell therein, and that therefore the said (three persons) did feloniously kill" the deceased. Wright and Bruce, JJ., held it to be insufficient in law, and ordered it to be quashed. Wright, J., applies the test that if a jury had returned a special verdict showing no more than the inquisition, it would be obviously bad, no duty to fence being alleged; and Bruce, J., says that there were words in the inquisition which, if they stood alone, would have been sufficient, but those words could not be separated from the words which precede them, connected as they were by the

word "therefore," and as the inquisition disclosed the facts on which the conclusion was based, and those facts were insufficient to support it, the inquisition might properly be quashed as being bad on its face.

JUSTICES—SEARCH WARRANT—INFORMATION—(CR. CODE, s. 569).

Jones v. *German*, (1897) 1 Q.B. 374, is an appeal from the decision of Lord Russell, C.J., (1896) 2 Q.B. 418, noted ante, p. 102; and the Court of Appeal (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) have affirmed that decision.

MUNICIPAL LAW—BREACH OF BY-LAW—MASTER AND SERVANT—MASTER, LIABILITY OF, TO PENALTY FOR BREACH OF BY-LAW BY HIS SERVANT.

Collman v. *Mills*, (1897) 1 Q.B. 396, is a case on the same lines as *Commissioner of Police* v. *Cortman*, (1896) 1 Q.B. 655, noted ante vol. 32, p. 508. In the present case the by-law in question was made under statutory power for the regulation of slaughter houses, and the breach consisted in the defendant's servant having, contrary to the defendant's orders, and the provisions of the by-law, slaughtered a sheep in the pound and in sight of other animals. Wills, J., while pointing out that it is a principle of common law that a person cannot be made criminally responsible for acts done by his servant without his knowledge or consent, and that as a rule by-laws cannot be validly made which are repugnant to the common law, except in pursuance of an express statutory power: yet he goes on to show that there is a well recognized distinction between things criminal in themselves—that is, things morally wrong—and things made criminal and prohibited under a penalty simply for the public good; and that even apart from that consideration the statutory powers were sufficient to authorize the making of the by-law in question, and that being the case it must receive a natural construction and the defendant must be held responsible not only for his own acts, but also for the acts of his servants, as otherwise the legislation would be useless. Wright, J., also points out that there is no obligation upon a person to come under the by-law and take out a license; and that if he does take one he must see that the conditions are obeyed by his servants as well as himself.

PRINCIPAL AND AGENT—AGENT, LIABILITY OF—WARRANTY OF AUTHORITY OF AGENT—CONTRACT MADE BY PUBLIC SERVANT ON BEHALF OF THE CROWN.

Dunn v. *Macdonald*, (1897) 1 Q. B. 401, was an action in which the plaintiff claimed that he had been employed by the defendant, who was a servant of the Crown and Her Majesty's Consul-General for the Oil Rivers Protectorate, to enter his service and serve under him in the Protectorate for three years certain, and claiming salary and allowances as damages for wrongful dismissal before the end of the three years. The plaintiff had previously filed a petition of right, claiming damages for wrongful dismissal against the Crown, but in that proceeding it had been held that his appointment was during pleasure, and his petition was therefore dismissed: *Dunn* v. *The Queen*, (1896) 1 Q.B. 116 (noted ante, vol. 32, p. 188). He now claimed to recover on the ground that the defendant had impliedly warranted that he had authority to engage him for three years certain, and *Collen* v. *Wright*, (1857) 8 E. & B. 647, was relied on: Charles, J., however, decided that it would be against public policy to extend the doctrine of that case to contracts made by persons acting as servants of the Crown. He says: "It would, of course, be going too far to say that because a man is a servant of the Crown he cannot enter into any personal liability; but when he is acting in his public character he cannot in my opinion be sued upon an engagement into which he enters, because it is against public policy that he should in such a case incur personal responsibility." The action therefore failed.

MANDAMUS—ALTERNATIVE REMEDY.

The Queen v. *Charity Commissioners*, (1897) 1 Q.B. 407, deserves to be briefly noted here, for the fact that it affords an illustration of the principles governing the exercise of judicial discretion in granting or refusing the writ of mandamus. The application was made for the writ to compel the defendants to hear and decide on an objection made by the Governors of a public school to accept the nomination of the School Board of London, and to appoint a lady as representative of the School Board on the governing body of the

school. The Court (Wright and Bruce, JJ.) refused the application, both because they doubted whether the defendants had jurisdiction to decide the objection, and also because it appeared that the applicants had alternative and convenient and effectual remedies, either by proceeding under the Charittable Trusts Act, or by ordinary action against the defendants.

LANDLORD AND TENANT—DEMISED PREMISES OUT OF REPAIR—NEGLIGENCE—LANDLORD, LIABILITY OF, FOR INJURY CAUSED THROUGH WANT OF REPAIR.

Lane v. *Cox*, (1897) 1 Q.B. 415, is a case somewhat similar to *Mehr* v. *McNab*, 24 O.R. 653. The defendant had let an unfurnished house, the stairs of which were in a dangerous condition; he was under no obligation to repair, or keep the premises in repair, and the plaintiff, a workman, at the request of the tenant was employed to carry some furniture in the house, and while so employed was injured through the stairs breaking down under him. The Court of Appeal, (Lord Esher, M.R., and Lopes and Rigby, L.JJ.) agreed with Lord Russell, C.J., that the defendant was not liable: See *Brown* v. *Toronto Hospital*, 23 O.R. 599, and *Miller* v. *Hancock*, (1893) 2 Q.B. 177, noted ante, vol. 29, p. 555.

PRACTICE—CONSOLIDATION OF ACTIONS—APPLICATION BY PLAINTIFF TO CONSOLIDATE ACTIONS—ORD. XLIX., R. 6 (ONT. RULE 652).

In *Martin* v. *Martin*, (1897) 1 Q.B. 429, an application was made by the plaintiff to consolidate the action with certain other actions brought by him. It was contended that consolidation of actions can only be ordered on a defendant's application, but the Court of Appeal (Lord Esher, M.R., and Lopes and Chitty, L.JJ.) upheld the order of Cave, J., notwithstanding the wording of the Rule which seems to keep alive the practice prior to the Judicature Act on this point, the Court being of opinion that the object of the Rule being to save expense, it was proper to give it a broad and liberal construction.

ERRATA.—P. 282, 10th line from bottom, for "insurance" read "severance"; p. 320, 14th and 24th lines, for "rule 572" read "rule 57, sub-sec. 2."

CORRESPONDENCE.

PROBATE LAW IN NOVA SCOTIA.

To the Editor of the Canada Law Journal.

SIR,—In reading up arrears of the LAW JOURNAL, I find a letter in No. 5 (March 1), of the present year, under the above heading. There seems to be an undercurrent of anxiety in the letter which is very difficult to account for, as the writer is evidently a person out of the current of modern affairs, and out of touch with legal business.

He speaks of the Judges of Probate in Nova Scotia, one in each county, as being "paid by fees aggregating from $400 to $800 each." The fact is that there are twenty Judges of Probate in the eighteen counties of Nova Scotia, and that their fees ranged, in the year 1896, from $20.18 (in Victoria county) to $1,042 (in Halifax county). Of the twenty judges, fourteen received less than $400 during the year, three received between $400 and $500, two received between $500 and $600, and one received over $1,000. The figures vary slightly from year to year. In the county in which this is written, the Judge's fees average over $500 a year, and the contentious business occupies on an average ten half days in a year. In the other two counties, constituting with this a County Court district, the combined fees of the Judges of Probate amount to a trifle over $300, and the contested business is about half what it is in this county.

The actual working days of our County Court Judge, without the Probate jurisdiction, average rather less than sixty in the year, as nearly as the members of the legal profession can calculate. Whatever your correspondent "Jus." may think, it seems to me that the County Court Judges should welcome the addition of a little Probate business to their present light work. Their salaries are larger than their previous professional incomes, as a rule, and they should not be allowed to rust in idleness.

JUSTITIA.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] [Jan. 25.

CITY OF KINGSTON *v.* DRENNAN.

Municipal corporation—Negligence—Snow and ice on sidewalks—By-law—Construction of statute—55 Vict., c. 42, s. 531—57 Vict., c. 50, s. 13—Finding of jury—Gross negligence.

A by-law of the city of Kingston requires frontagers to remove snow from the sidewalks. In carrying it out the snow was allowed to remain on the crossings, which were therefore higher than the sidewalks, and when pressed down by traffic an incline more or less steep was formed at the ends of the crossings. A young lady slipped and fell on one of these inclines, and being severely injured brought an action of damages against the city, and obtained a verdict.

The Municipal Act of Ontario makes a corporation, if guilty of gross negligence, liable for accidents resulting from snow and ice on sidewalks; notice of action in such case must be given, but may be dispensed with on the trial if the Court is of opinion that there was reasonable excuse for the want of it, and that the corporation has not been prejudiced in its defence.

Held, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that there was sufficient evidence to justify the jury in finding that the corporation had not fulfilled its statutory obligation to keep the streets and sidewalks in repair: *Cornwall* v. *Derochie*, 24 S.C.R. 301, followed, that it was no excuse that the difference in level between the sidewalk and crossing was due to observance of the by-law: that a crossing may be regarded as part of the adjoining sidewalk for the purpose of the Act; that "gross negligence" in the Act means very great negligence, of which the jury found the corporation guilty; and that an appellate court would not interfere with the discretion of the trial judge in dispensing with notice of action.

Appeal dismissed with costs.

Walkem, Q.C., for the appellants.

Hutcheson, for the respondent.

Nova Scotia.] [Feb. 20.

MACKENZIE *v.* MACKENZIE.

Title to land—Beneficial interest—Parties in pari delicto.

In 1875, G. M. entered into an agreement with the owner to purchase two lots of land in Halifax and enter into possession, and commenced to build a house on one of said lots. In 1877 he was called upon to carry out his agreement and pay the purchase money, the house not being completed, but sufficiently so to enable him to occupy it. At that time G. M. had become finan-

cially embarrassed and could not make the payment. He applied to a building society for a loan, but as there were judgments recorded against him which would have priority, he caused the deed to be executed in the name of W. M., his nephew, and then procured the loan. W. M. afterwards took possession of the property and an action was brought against him by G. M. to compel him to execute a conveyance and for an account of rents and profits. The trial Judge held that the deed was taken in the nephew's name to hinder, delay and defraud creditors, and refused the relief asked for. The Court en banc reversed this judgment and ordered W. M. to convey the property to G. M.

Held, affirming the decision of the Supreme Court of Nova Scotia, that it did not appear from the evidence that G. M. in having the deed made in the name of his nephew had the intent of defrauding his creditors, who were not prejudiced and have not complained; that the parties were not in pari delicto, and G. M. was entitled to relief as the more excusable of the two.

Appeal dismissed with costs.

Whitman, for the appellant.

Silver, for the respondent.

Quebec.] [Feb. 26.

DEMERS *v.* BANK OF MONTREAL.

Appeal—Commercial case—Trial by jury—Refusal of—Interlocutory matter.

By Arts. 448, 449 and 450 C.C.P., trial by jury may be had in actions on debts, promises and agreements of a mercantile nature at the option of either party. In this case the trial judge held that the action was not mercantile and refused a jury, and his decision was affirmed by the Court of Queen's Bench. On motion to quash an appeal to the Supreme Court,

Held, that the judgment of the Queen's Bench was interlocutory only, and the appeal did not lie.

Appeal quashed with costs.

Fitzpatrick, Q.C., Solicitor-General, and *Ferguson*, Q.C., for the motion.

Lane, contra.

Ontario.] [March 10.

CANADIAN COLORED COTTON MILLS CO. *v.* TALBOT.

Negligence—Employer and employee—Accident—Proximate cause—Evidence for jury.

T. was employed as a weaver in a cotton mill and was injured, while assisting a less experienced hand, by the shuttle flying out of the loom at which the latter worked and striking her on the head. The mill contained some 400 looms, and for every 46 there was a man, called the "loom fixer," whose duty it was to keep them in proper repair. The evidence showed that the accident was caused by a bolt breaking by the shuttle coming against it, and as this bolt served as a guard to the shuttle, the latter could not remain in the loom. The jury found that the breaking of the bolt caused the accident, and that the "loom fixer" was guilty of negligence in not having examined it within a reasonable time before it broke. T. obtained a verdict which was affirmed by the Court of Appeal.

Held, GWYNNE, J., dissenting, that the "loom fixer" had not performed his duty properly; that the evidence as to negligence could not have been withdrawn from the jury; and that though the mill was well equipped, as the jury had found the accident due to negligence, there being evidence to justify such finding, the verdict should stand.

Held, per GWYNNE, J., that the finding of the jury that the negligence consisted in the omission to examine the bolt was not satisfactory as there was nothing to show that such examination could have prevented the accident and there should be a new trial.

Appeal dismissed with costs.

Martin, Q.C., for the appellants.

Tate, for the respondent.

Nova Scotia.] LUNENBURG ELECTION CASE. [March 24.

KAULBACH *v.* SPERRY.

Election petition—Preliminary objections—Affidavit of petitioner—Bona fides—Examination of deponent—Form of petition—R.S.C., c. 9—54 & 55 Vict., c. 20, s. 3.

By 54 & 55 Vict., c. 20, s. 3, amending the Controverted Elections Act (R.S.C., c. 9), an election petition must be accompanied by an affidavit of the petitioner "that he has good reason to believe, and verily does believe, that the several allegations contained in the said petition are true." The petitioner in this case used the exact words of the act in his affidavit.

Held, that the respondent to the petition was not entitled to examine him as to the grounds of his belief; that the act made the deponent the judge of the reasonableness of such grounds; and that the affidavit was not part of the proof to be passed upon at the trial of the petition.

It is not necessary that the petition should be identified in the affidavit as in case of an exhibit. The affidavit is presented merely to comply with the statute.

It is no objection to an election petition that it is too general, no form being prescribed by the Act. Moreover, the inconvenience may be obviated by particulars.

W. A. B. Ritchie, Q.C., for appellant.

Russell, Q.C., and *Congdon*, for respondent.

Prince Edward Island.] [March 24.

WEST PRINCE (P.E.I.) ELECTION CASE.

HACKETT *v.* LARKIN.

Controverted election—Corrupt treating—Agency—Trivial and unimportant act—54 & 55 Vict., c. 20, s. 19.

During an election for the House of Commons, a candidate took C., a supporter, with him in driving out to canvass a particular locality. They stopped at a house where three voters lived, and C. took a bottle of liquor out of the wagon and went into the woods with two of the voters, and remained

some five minutes, afterwards taking the third voter into his barn, where he gave him two or three drinks out of the bottle, and urged him to vote for the candidate with him. It did not appear that the latter saw C. take out the bottle, or knew it was in the wagon. The candidate having been elected a petition was filed against his return, and he was unseated on the charge of corrupt treating by C., and acquitted on all other charges.

Held, that the act of C. in giving liquor to the voter in the barn and urging him to support his candidate, was corrupt treating under the Elections Act.

C. was a member of a political association for a place within the electoral district supporting the candidate elected. There was no restriction on the members of the association to be confined in their work to the limits of the place for which it was formed, and the candidate admitted on the trial of the petition that he expected them to do the best they could for him generally.

Held, that the members were agents of their candidate throughout the whole district, and C. was therefore his agent.

Though the only act of corruption of which the sitting member was found guilty was trivial and unimportant in character, he was not entitled to the benefit of 54 & 55 Vict., c. 20, s. 19, as he had not used every means to secure a pure election. There were circumstances attending the commission of the corrupt act by C. which should have aroused his suspicions, and he should have cautioned C. against the commission of the act. Not having done so he had not brought himself within the terms of the above Act.

Appeal dismissed with costs.

McCarthy, Q.C., and *Stewart*, Q.C., for the appellant.

Peters, Q.C., Atty.-Gen. of P.E.I., for the respondent.

Manitoba.] MARQUETTE ELECTION CASE. [March 24.

KING *v.* ROCHE.

Appeal—Preliminary objections—R.S.C., c. 9, ss. 12, 50—Dismissal of petition —Affidavit of petitioner.

A petition under the Controverted Elections Act (R.S.C., c. 9) against the return of the respondent at the election for the House of Commons on June 23rd, 1896, was served on July 30th, and in September the petitioner was examined under s. 14 of the Act. Notice of motion was afterwards given to strike the petition off the files of the Court on the ground that the affidavit of the petitioner was false, it having appeared from his examination that he had no knowledge of the truth or otherwise of the matters sworn to in the affidavit. The Judge who heard the motion dismissed it, holding that the matter should have come up on preliminary objections filed under s. 12 of the act. His judgment was reversed by the full Court, and the petition struck off.

Held, that the Court had no jurisdiction to entertain an appeal from this decision. That an appeal only lies from a decision on a preliminary objection (s. 50), and that means a preliminary objection filed, under s. 12 within five days from the date of service of the petition.

Appeal quashed with costs.

Howell, Q.C., and *Chrysler*, Q.C., for the appellant.

Tupper, Q.C., for the respondent.

Manitoba.] [March 24.

WINNIPEG ELECTION CASE.
MACDONALD *v.* DAVIS.

MACDONALD ELECTION CASE.
BOYD *v.* SNIDER.

Election petition—Preliminary objections—Status of petitioner—List of voters

On the hearing of preliminary objections to an election petition to prove the status of the petitioner, a list of voters was offered with a certificate of the Clerk of the Crown in Chancery, which, after stating that said list was a true copy of that finally revised for the district, proceeded as follows :

"And is also a true copy of the list of voters which was used at said polling division at and in relation to an election of a member of the House of Commons of Canada for the said electoral district . . . which original list of voters was returned to me by the returning officer for said electoral district in the same plight and condition as it now appears, and said original list of voters is now on record in my office."

Held, that this was, in effect, a certificate that the list offered in evidence was a true copy of a paper returned to the Clerk of the Crown by the returning officer as the very list used by the deputy returning officer at the polling district in question, and that such list remained of record in possession of said Clerk. It was then a sufficient certificate of the paper offered being a true copy of the list actually used at the election. *Richelieu Election Case*, 21 Can. S.C.R. 168, followed.

Appeals dismissed with costs.

Tupper, Q.C., for the appellants.

Howell, Q.C., and *Chrysler*, Q.C., for the respondents.

North West Territories.] [March 24.

WEST ASSINIBOIA ELECTION CASE.

DAVIN *v.* MCDOUGALL.

Election petition—Preliminary objections—Delay in filing—Order-in-Chambers—R.S.C., c. 9, ss. 12 and 50—Appeal to Supreme Court.

By the Controverted Elections Act, R.S.C., c. 9, s. 12, preliminary objections to an election petition must be filed within five days from the service of the petition, and by s. 50 an appeal can be taken to the Supreme Court from a judgment, rule, order or decision on such objections, the allowance of which has, or which if allowed would have, put an end to the petition. Preliminary objections were filed with the Clerk of the Court at 2.30 p.m., on Aug. 3, the fifth day after the petition was served. By Jud. Order No. 6 of 1893, s. 17, sub-sec. 1, the office of the Clerk is to be closed at 1 p.m. during the summer vacation, comprising July and August. Mr. Justice Richardson in Chambers, on return of a summons calling upon the member elect to show cause why the objections should not be struck out or otherwise disposed of, held that the five days expired at 1 p. m. on Aug. 3rd, and that the objections were not properly filed.

Held, that this decision was not one on preliminary objections, nor could any disposition of the matter put an end to the petition. Consequently no appeal would lie to the Supreme Court.

Appeal quashed with costs.

McIntyre, Q.C., for the appellant.

Howell, Q.C., and *Chrysler*, Q.C., for the respondent.

Province of Ontario.

COURT OF APPEAL.

From ROBERTSON, J.] [March 2.

REGINA *v.* BONNER.

Crown—Administration—Will—Probate—R.S.O. c. 59.

When a person possessed of real and personal estate dies leaving no known relatives within the province, the Attorney-General, on behalf of Her Majesty, may maintain an action to set aside letters probate of that person's will, executed without mental capacity, and in that action may obtain an order for possession of the real estate; but a grant of administration should be obtained by a separate proceeding.

Such an action under the statute, R.S.O. c. 59, is not for the purpose of escheating, but to protect the property for the benefit of those who may be entitled.

Judgment of ROBERTSON, J., affirmed.

From ARMOUR, C.J.] [April 12.

SOMMERBERGER *v.* CANADIAN PACIFIC R. W. Co.

Evidence—Negligence—Bodily injuries—Exhibition to jury—Surgical testimony—Inflammatory address to jury—Absence of objection at trial—Excessive damages.

In an action by two plaintiffs for damages for injuries sustained by them owing to the alleged negligence of the defendants, the jury awarded one $6,500, and the other $500.

Held, that it was within the discretion of the trial Judge to allow a plaintiff to exhibit to the jury his injured limb for the purpose of having the nature and extent of the damage explained to the jury.

Review of American authorities on this subject.

Held, also, that the trial Judge was right in rejecting evidence offered in regard to another man whose leg had been injured. It was asked that this might be exhibited on the part of the defendants as a sort of offset to the other; but the trial Judge refused to let this be done unless competent evidence was forthcoming to explain the nature of the injury which that man's leg had sustained; and in this he was right, if indeed the evidence was admissible under any circumstances.

Held, as to the contention that the counsel for the plaintiffs at the trial had improperly inflamed the minds of the jurors by addressing remarks to them as to the great wealth of the defendants, etc., that objection should have been lodged by the defendants at the time the remarks were made, and the intervention of the trial Judge claimed while the alleged transgression was being committed; and this not having been done, that the Court could not interfere upon appeal.

Held, lastly, as to the amount of the damages, that the Court could not interfere; they were substantial, but the injuries were severe and caused much suffering, so that the jury were not so obviously wrong that the verdict should be disturbed.

Judgment of ARMOUR, C.J., affirmed.

W. Nesbitt, for the appellants.

C. J. Holman, for the plaintiffs.

HIGH COURT OF JUSTICE.

GALT, C.J., ROSE, J., MACMAHON, J. [June 27, 1891.

HALLENDAL *v.* HILLMAN.

Life insurance—Assignment of policies to creditor—Absolute sale—Rights under assignment—Conditions imposed by company.

Two policies of life insurance were assigned by the assured to the defendant. The contract was one of absolute sale of the assured's interest and rights under the policies, the assignment was absolute in form, and the defendant had made actual money advances to the assured upon the security of the assignment. A condition was imposed by the insurance company that a legal insurable interest must be shown by all claimants at the time of claim thereunder, and that claims by any creditor or assignee should not exceed the amount of the actual bona fide indebtedness of the assured to the claimant. This condition was attached to the assignment of one of the policies. When the defendant agreed to buy the other, a new policy was issued to him as a creditor, and the condition, in addition to the words above set out, contained the provision "that this certificate or policy of insurance as to all amounts in excess thereof shall be void."

Upon this action being brought by the administrator of the estate of the assured against the company and the defendant to recover the balance of the insurance moneys after payment of the amounts advanced by the defendant, the company paid into Court the amount of the insurance and declined to raise any question as to their liability, and an order was thereupon made striking their name out of the proceedings and discharging them from liability to the plaintiff or defendant.

Held, that the conditions were available only at the instance of the company, and did not limit the contract or the effect thereof as between the assured and the defendant; and the latter was entitled to the whole of the insurance moneys.

Vezina v. *New York Life Ins. Co.*, 6 S.C.R. 30, *Worthington* v. *Curtis*, 1 Ch. D. 419, and *Dalby* v. *India and London Life Assurance Co.*, 15 C.B. 365, specially referred to.

Judgment of MEREDITH, J., reversed.

A. G. Browning, for the plaintiff.

Watson, Q.C., and *Latchford*, for the defendant.

ROSE, J.] [Aug. 26, 1895.

NEWSOME *v.* COUNTY OF OXFORD.

Municipal corporations—Equipment of Courts of Justice—Offices—"Furniture"—Stationery—Liability—Authority—County Council—R.S.O., c. 184, ss. 466, 470.

By s. 466 of the Municipal Act, R.S.O., c. 184, it was enacted that the county council shall "provide proper offices, together with fuel, light and furniture, for all officers connected with the Courts of Justice, etc."

Held, that "furniture" must include everything necessary for the furnishing of the offices referred to in the enactment, for the purpose of transacting such business as might properly be done in such offices; and the word therefore included stationery and printed forms in use in the Courts.

Ex parte Turquand, 14 Q.B.D. 643, followed.

Held, also, upon the facts of this case, that a local officer of the Courts, who had ordered supplies of stationery and forms from the plaintiffs for his office, was duly authorized by the defendants' counsel to do so, pursuant to the provisions of s. 470 of R.S.O., c. 184.

Fullerton, Q.C., for the plaintiffs.

Osler, Q.C., for the defendants.

[In the Consolidated Municipal Act, 1892, s. 466 has been amended by inserting the word "stationery" before "furniture" in an earlier part of the section; but the part above quoted has not been altered.]

MEREDITH, C.J.] [Feb. 11.

ROBINSON *v.* SUGARMAN.

Action—Defamation—Trade libel—Action on the case—Pleading—Particulars—Slander—Examination of party.

The plaintiff, a tradesman, claimed damages for injury to his credit and business by reason of the defendant having sent certain hand-bills issued by the plaintiff, advertising his business to various wholesale creditors of the plaintiff, and having written and published letters to such creditors falsely and maliciously charging that the plaintiff was advertising his business and unduly forcing sales, with the view of selling and disposing of his goods to defeat and defraud his creditors.

Held, that the action was for libel, and not in case for disturbing the plaintiff in his calling, and the defendant was entitled to have the words of the alleged libel set out in the pleading.

Flood v. *Jackson*, (1895) 2 Q.B. 21, and *Riding* v. *Smith*, 1 Ex. D. 91, specially referred to.

The plaintiff also alleged that at a certain city, in a certain month and year, the defendant falsely and maliciously spoke and published of the plaintiff certain specified words.

Held, that the defendant was entitled to some particulars as to the times when and the places where, the defamatory words were used, and as to some of the persons in whose hearing they were alleged to have been spoken.

Winnett v. *Appelbe*, 16 P.R. 57, distinguished.

Held, also, that the plaintiff, before delivering particulars, should have leave to examine the defendant, in order to enable him to furnish them.

W. H. Douglas, for the plaintiff.

W. H. P. Clement, for the defendant.

FERGUSON, J.] [Feb. 27.

CHISHOLM *v.* LONDON & WESTERN TRUSTS CO.

Alienation—Restriction against—Validity of.

A testator after devising two parcels of land to his two sons provided as follows: "I will that the aforesaid parcels of land shall not be at their disposal at any time until the end of ten years from the date of my decease. And further I will that the same parcels of land shall remain free from all encumbrances, and that no debts contracted by my sons W. C. and H. C. shall by any means encumber the same during twenty-five years from the date of my decease."

Held, a good and valid restriction so far as it is a restriction against selling and conveying the lands or encumbering them by way of mortgage.

Decisions of our own Courts followed in preference to English cases.

Hypothetical question not answered.

A. B. Cox, for the plaintiff.

M. D. Fraser, for the defendants.

ARMOUR, C.J., FALCONBRIDGE, J., STREET, J. } [March 11.

ELMSLEY *v.* HARRISON.

Amendment—Pleading—New case made at the trial—Statute of Frauds.

In an action by a lessor against an assignee of the lease, brought after the expiry of the lease, to recover possession of the demised premises and for cancellation of the lease and for relief from any claim of the defendant for renewal under a covenant in that behalf, the defendant set up in his defence the covenant to renew and alleged that he and the plaintiff had never been able to agree upon a new rent, but that he had always been ready and willing to have it fixed by arbitration, as required by the lease, and had since action notified the plaintiff of the appointment of an arbitrator. In reply the plaintiff alleged that the defendant had made a written offer to renew at a named rental; that the plaintiff had accepted the offer; but that the defendant had not carried out the arrangement so made. There was no further pleading. At the trial the evidence showed a written offer made by the defendant, but

only a conditional acceptance by the plaintiff, who, however, gave uncontradicted evidence of a subsequent verbal renewal by the defendant and acceptance by the plaintiff of the terms of the former written offer.

Held, FALCONBRIDGE, J., dissenting, that by the conditional acceptance of the written offer, it was in effect refused, and had ceased to exist when the subsequent verbal agreement was made; it was not necessary for the defendant to plead the Statute of Frauds in rejoinder to the reply, as he was able to show that his offer had been refused; and when the plaintiff was allowed at the trial to give evidence of a subsequent renewal by parol of the terms of the lapsed written offer, the defendant should have been allowed to set up the Statute of Frauds; upon which he was entitled to succeed.

Judgment of MEREDITH, C.J., reversed.

E. T. English, for the plaintiffs.

E. D. Armour, Q.C., for the defendant, Harrison.

MACMAHON, J.
Trial of actions.

[March 15.

HULL *v.* STEVENSON.

Mortgage for purchase money—Covenant against incumbrances—Claim under prior mortgage—Set-off.

Denne sold land to Stevenson, who gave a mortgage back for part of the purchase money. Stevenson then sold and conveyed part of the land to Hull, covenanting against incumbrances, and Hull gave him back a mortgage for the purchase money, which mortgage Stevenson assigned to Daubuz. Neither Hull nor Daubuz searched the registry office, and did not have actual notice of the existence of the prior mortgage from Stevenson to Denne.

Held, that Hull had no right to have any sum that he might be forced to pay in respect of the mortgage to Denne, set-off against the amount of his mortgage to Stevenson now held by Daubuz.

W. Nesbitt and *R. R. Hall*, for the plaintiff.

Moss, Q.C., *Watson*, Q.C., *Poussette*, Q.C., *S. S. Smith*, *W. A. F. Campbell*, *Hayes* and *Dennistoun*, for various defendants.

Mr. Cartwright,
Official Referee.

[March 29.

WALTERS *v.* DUGGAN.

Security for costs—Vacating order—Property within jurisdiction.

Motion by plaintiff to discharge præcipe order for security for costs, on two grounds: (1) That action being on a covenant in a mortgage, the material shows a good ground for the application of the principle in the cases of *Duffy* v. *Donovan*, 14 P. R. 159, and *Thibaudeau* v. *Herbert*, 16 P.R. 420; (2) the plaintiff has been shown to be possessed of sufficient property in Ontario to entitle him to succeed.

Held, that plaintiff is not entitled to succeed on the first ground because defendant's affidavit shows "prima facie a good defence" within the decision of FERGUSON, J., in *Feaster* v. *Cooney*, 15 P.R. 290.

Held, also, on the second ground that plaintiff can only vacate the order "by plain and uncontrovertible proof that he is in possession of sufficient property standing in his own name, of which he is beneficial owner, and which is easily exigible"; and that such has not been shown.

Motion dismissed with costs to defendant, and in any event.

R. H. R. Munro, for plaintiff.

W. R. Smyth, for defendant.

[Affirmed on appeal to a Judge in Chambers.]

MEREDITH, C.J.] [April 5.

DICKERSON *v.* RADCLIFFE.

Action—Defamation—Trade libel—Action on the case—Trial by jury—Judicature Act, 1895, s. 109.

An action for words written and published relating to articles of the plaintiffs' manufacture, and the rights of the plaintiffs under certain letters patent, by virtue of which they claimed a monopoly of the manufacture and sale of the articles, is not an action of defamation properly so called, but an action on the case for maliciously acting in such a way as to inflict loss upon the plaintiffs, and does not come within s. 109 of the Judicature Act, 1895, so as to be triable only by a jury, unless by consent.

J. Bicknell, for the plaintiffs.

J. B. Holden, for the defendants.

ARMOUR, C.J., FALCONBRIDGE, J., STREET, J. } [April 8.

O'DONNELL *v.* GUINANE.

County Court appeal—Order setting aside judgment on terms—Finality of.

In a County Court action the defendant made a motion to set aside a judgment by default as irregular, but the Judge held it regular, and, while he set aside the judgment, he did so upon terms of the defendant paying costs. The defendant appealed from this order upon the ground that the judgment should have been set aside unconditionally.

Held, that the order was not "in its nature final," within the meaning of s. 42 of the County Courts Act, R.S.O., c. 47, and the appeal did not lie.

W. J. Clark, for the plaintiff.

Boland, for the defendant John Guinane.

MEREDITH, C.J.] [April 9.

CAUGHELL *v.* BROWER.

Security for costs—Rule 1243—"Proceeding for the same cause"—Award—Motion to set aside—Appeal—Action—Matters not included in award.

The word "proceeding" in Rule 1243 means a proceeding in Court.

An appeal from an order dismissing a motion to set aside an award made upon a voluntary submission is not a "proceeding for the same cause," within

the meaning of Rule 1243, as an action to recover moneys in respect of certain matters included in the submission, but not dealt with by the award; and, although the costs of such appeal are unpaid, security for costs of the action will not be ordered.

J. M. Glenn, for the plaintiff.

D. Armour, for the defendant.

FALCONBRIDGE, J.] [April 12.

MCLEAN *v.* MCLEAN.

Pleading—Statement of claim—Matters arising pending action—Joinder of causes of action—Recovery of land—Assignment of dower—Leave Rule 341.

A plaintiff cannot set up in his statement of claim matters arising pending the action.

An action for assignment of dower is an action for the recovery of land.

Where leave is necessary under Rule 341 to join other causes of action with an action for the recovery of land, it must be obtained before the writ of summons is issued, unless under very exceptional circumstances.

W. H. P. Clement, for the plaintiff.

F. A. Anglin, for the defendants.

Province of Nova Scotia.

SUPREME COURT.

Full Court]

MCLEAN *v.* MILLS.

Election petition—Motion to set aside—Order for service—Carriage of proceedings where petitioner presents petition and abstains from serving it.

Application was made to the Court on behalf of B. and H., who claimed the right to be heard in a motion before the Court to set aside as void the service of the election petition against the respondent.

Held, that no one but the petitioner could apply for an order touching the mode or time of service, and until the time prescribed by s. 32 for the intervention of third parties had expired, the petitioner had the entire control and carriage of proceedings upon the petition, subject to those applications which the statute enables any other party to the petition to make

Semble, that if a petitioner should present a petition and abstain from serving it, there is no machinery provided by either the Act or the rules to compel him to effect service, and none to enable any other person to assume or direct the matter of service.

F. J. Congdon, for petitioner.

W. B. A. Ritchie, Q.C., for respondent.

H. McInnis, for applicant (Brent).

Full Court.]

HAWKINS *v.* SNOW.

Malicious prosecution—Resentment held to constitute malice—Honest belief in the truth of charge will not excuse where proceedings are actuated by a motive constituting malice—Slight mis-s ement made by judge in charging jury not ground for setting aside verdict otherwise justified by evidence.

Plaintiff, one of the coroners for the County of Halifax, went to the premises of defendant, an undertaker, and demanded possession of a body that was lying there, for the purpose of holding an inquest. Defendant having refused to comply with plaintiff's request, plaintiff returned subsequently, in defendant's absence, and made a second demand, and having been again refused, he entered the building by force and removed the body in the casket in which it had been placed, and proceeded to hold the inquest. Defendant thereupon caused plaintiff to be arrested, charged with feloniously entering defendant's premises and stealing the casket.

In an action brought by plaintiff against defendant for malicious prosecution, the trial Judge instructed the jury, in effect, that if the motive of defendant was resentment, that would amount to malice.

Held, that he was right in doing so.

At the argument it was contended on behalf of defendant that the presiding Judge should have directed the jury that if defendant honestly believed in the truth of the charge he laid before the magistrate, that would negative the existence of any indirect or improper motive on his part.

Held, that this contention was clearly wrong, as defendant might believe in the truth of the charge and at the same time be actuated by vindictiveness or spite, or some other improper motive which would constitute malice in law.

Held, further, that it was not sufficient ground for setting aside the verdict, that the presiding Judge, in addressing the jury, expressed himself strongly in favo. of a verdict for plaintiff, where he, at the same time, instructed the jury that they were not bound to follow his opinio and that the responsibility of finding the facts was theirs.

Held, further, that it was not sufficient ground for setting aside the verdict that the presiding Judge, in addressing the jury, described as an admission made by the defendant an answer made by defendant which, without being a specific admission, indicated a belief on his part that plaintiff merely took the casket as a convenient way of taking the body, the verdict appearing in other respects to be entirely justified by the evidence.

Per MCDONALD, C.J., dissenting, that while a Judge presiding at the trial of a case has a right to state to the jury his own view of the evidence, he has no right to impress his views upon them in such a way as to prejudice the free exercise of their own individual opinions.

F. J. Congdon, for plaintiff.

H. McInnes, for defendant.

Full Court.]

DEMPSTER *v.* FAIRBANKS.

Suit by assignee of chose in action—Defective statement of claim—Amendment by trial judge—Costs.

In an action brought by plaintiff as assignee of W. H. H. against defendant, the statement of claim read as follows: "That the said W. H. H. duly assigned the said debt to the plaintiff."

The trial Judge was of opinion that on the merits as disclosed by the evidence plaintiff was entitled to recover, but he sustained an objection made to the statement of claim under c. 61, viz., that it was not alleged that the assignment was made in writing, which was necessary to entitle plaintiff to sue in his own name, and gave judgment accordingly.

Held, that it was the duty of the trial Judge on the facts as found by him, to have made the amendment necessary to enable plaintiff to recover, and that as he had failed to do so, the case was clearly one for the interference of the Court.

Amendment ordered, and judgment directed to be entered for plaintiff with costs of trial, but no order made as to costs of appeal.

W. F. MacCoy, Q.C., for plaintiff.

F. J. Congdon, contra.

Full Court.]

MALZARD *v.* HAR .

Interpleader—Evidence taken before commissioner—Same weight not be attached to findings of Judge as if he had heard the witness personally—At same time substantial reason must be shown for reversing.

The evidence on an interpleader issue was taken before a commissioner and afterwards submitted to the trial Judge, whose finding was in favor of the defendant.

Held, that under these circumstances the same weight was not to be given to the finding of the trial Judge as if the witness had been examined before him in open Court, the Court being in as good a position as the trial Judge to form an opinion as to the credibility of witnesses and the weight to be given to their evidence.

Held, per MEAGHER, J., RITCHIE, J., concurring, nevertheless that there must be some substantial reason for reaching a different conclusion, before the Court of Appeal would be justified in interfering with the finding of the trial Judge.

Held, also, that as no such reason had been shown in this case, the judgment appealed from should stand.

R. E. Harris, Q.C., for plaintiff.

A. MacKay, for defendant.

RITCHIE, J., In Chambers. [April 2.

HESSLEIN *v.* WALLACE.

Appeal to Supreme Court of Canada—Extending the time—Jurisdiction.

The time for appealing to the Supreme Court of Canada from a decision of the Supreme Court in banco dismissing an appeal of the defendant having expired, counsel for the defendant moved to extend the time for perfecting the appeal to the Supreme Court of Canada. The motion was opposed on the ground that the Judge in Chambers had no jurisdiction so to extend the time: see *News Printing Co.* v. *McRae*, 26 S.C.R. 695.

Held, that the application must fail from want of jurisdiction, following the decision of the Registrar in the case above cited.

J. B. Kenny, for the application.

J. A. Chisholm, contra.

Province of New Brunswick.

SUPREME COURT.

VAN WART, J. In Chambers. [April 10.

MASSEY-HARRIS CO. *v.* CRANDELL.

Lien note—Valid only as agreement for sale—Pledge of collateral security—Bills of Exchange Act.

Held, that the following instrument is not a promissory note under the Bills of Exchange Act:

"St. John, N.B., Sept. 20, 1893.

"On or before the first day of July, 1895, for value received, I promise to pay Massey-Harris Company (Limited) or order, at Peoples Bank, Fredericton, $8 (eight dollars), and one per cent. interest per month after due until paid.

"Given for one side hill plow . . .

"I am to have possession and use of the above property for which this note is given, at my own risk, but the title therein shall remain in the Massey-Harris Co. (Limited) until full payment of the purchase price, or of any obligation given therefor or any part thereof. I further agree to furnish security satisfactory to the company at any time, if required, and if I fail to furnish such security when demanded, or if for any reason the Massey-Harris Company (Limited) should consider this note or any renewal or renewals thereof insecure, it has full power to declare this and all other notes made by me in its favor due and payable at any time, and suit therefor may be then entered, tried and finally disposed of in the Court having jurisdiction at St John, N.B., and also to take possession of the above property and hold it until this note or any renewal or renewals thereof, and any other notes given by me in payment of the above property, are paid, with interest, or sell it at public or private sale, the

proceeds thereof to be applied on the amount of the purchase price unpaid after deducting all expenses connected with such taking possession and sale, but the taking and sale of said property shall not be a release of my liability for the balance of the purchase price still unpaid after such sale."

Under the provisions of the Bill of Exchange Act, s. 82, sub-sec. 3, the pledge of collateral security with authority to sell must have reference to property which the pledgor has an interest in and some title to. It cannot mean property to which the pledgor has no title whatever, and has no right to the possession of, except for such time as the vendor sees fit to allow.

A. J. Gregory, for plaintiff.

A. R. Slipp, for defendant.

See *Kirkwood* v. *Smith*, 1 Q.B. 582 (1896); *Dominion Bank* v. *Wiggins*, 21 Ont. A.R., 275; *Sawyer* v. *Pringle*, 18 Ont. A.R., 218; Byles on Bills, 15 ed., page 13.

TUCK, C.J.
In Chambers.

[April 12.

EX PARTE LABELLE.

Liquor License Act, 1896—Jurisdiction of Parish Court Commissioner.

The Liquor License Act, 1866 (59 Vict., c. 5) does not give jurisdiction to a Parish Court Commissioner to try offences within it.

Montgomery, for prisoner.

McLatchey, contra.

COUNTY COURT.

FORBES, Co.J.
In Chambers.

[April 12.

WILLIAMS *v.* WASHINGTON.

Practice—Application by administratrix for time to plead—Appearance.

Where an action was brought against an administratrix on a debt by the intestate,

Held, that she could apply for time to plead without having appeared to the action.

S. Skinner, for defendant.

W. H. Trueman, for plaintiff.

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.] [April 7.

IN RE BAIN AND CHAMBERS.

Limitation of actions—The Real Property Limitation Act, R.S.M., c. 89, s. 4—Mortgagor and mortgagee—Foreclosure—Tax sale—Assessment Act, s. 194—55 Vict., c. 26, s. 8 (M. 1892.)

This was an application to settle the right to the surplus proceeds of land sold for municipal taxes in 1888, and paid to the treasurer in November, 1890.

The money was claimed by the representative of a mortgagee, but the assignee of the equity of redemption claimed that the rights of the mortgagee and his representatives were barred by The Real Property Limitation Act, R.S.M., c. 89, s. 4. The last instalment of the money secured by the mortgage fell due on 23rd December, 1885, and the application for the money had not been made until after 23rd December, 1895.

It was shown, however, that judgment against the mortgagor had been obtained upon the covenant contained in the mortgage, and that the personal representative of the mortgagee in a suit against the mortgagor had in 1887 obtained a final order of foreclosure, but afterwards he had renewed and replaced in the sheriff's hands a writ of fieri facias issued upon the judgment refered to, thus opening the foreclosure.

Held, that the representative of the mortgagee had not lost his right to recover the land as against the holder of the equity of redemption, or to continue successfully the suit for such recovery which was pending when the money in question was paid to the municipal treasurer, and that consequently he was still entitled to such money, being the proceeds of the land in question.

Quaere, whether s. 194 of the Assessment Act, as amended by 35 Vict., c. 26, s. 8, giving the right to apply for the money to the person who, at the expiration of the time for redemption from the tax sale, held an incumbrance on the land, does not furnish a new point of departure and operate to bring to an end the running of the period fixed by the Statute of Limitation.

Perdue, for petitioner.

Phippen, for respondent.

Province of British Columbia.

SUPREME COURT.

McColl, J.] [Feb. 18.

TETLEY *v.* THE CITY OF VANCOUVER.

Municipal law—Construction of statute—"Action of council."

The plaintiff having some time previous to December 29th, 1890, been appointed to the office of city accountant at a monthly salary less than $125, had such salary increased to that amount by resolution of the council passed on that day. The plaintiff continued to hold the office until some time subsequent to the expiration of one month after February 19th, 1894, on which day another resolution was passed by the council fixing his salary at $100 per month. The plaintiff during the time he thereafter continued in office, received his reduced salary under protest, claiming that the second resolution was illegal because 40 Vict. 32, s. 150, sub-sec. 13, which enacts that "no previous action of the council on any matter shall be rescinded unless by a two-third vote of the members of the council then present, and no decision or ruling of the mayor or presiding officer while in the chair shall be overruled except by a vote of two-thirds of the members of the council present." S. 154 of the Act provides that the engagement of any officer appointed by the council may, notwithstanding any agreement to the contrary, be terminated by one month's notice in writing, given by either party to the other.

Held, that the latter section applied to the present case, and that the resolution in question was not illegal merely because of not having received a two-thirds vote of the members of the council present when it was passed.

Davis, Q.C., for plaintiff.

Hamersley, for defendant.

Davie, C.J.] [March 30.

STEVES *v.* MUNICIPALITY OF SOUTH VANCOUVER.

Municipal corporation—Highway—Nuisance—Independent contractor.

This was an action by the widow of Walter Herbert Steves on behalf of herself and two children, to recover damages from the corporation on account of the death of her husband, which occurred on the 23rd of December, 1895. The jury found that the deceased was killed by a falling tree whilst lawfully travelling on a public highway within the limits and under the control of the municipality; that previously to the action the ground around the trees had been excavated away by order or permission of the defendants to such an extent as to remove the support of the roots, and that the falling of the tree was due to or precipitated by the excavating, also that the tree stood within the limits of the municipality; that its presence in its standing condition was a dangerous nuisance and a visible menace to the public safety; and that the defendants had notice or knowledge of the existence of the danger reasonably long enough to remove the nuisance or otherwise protect travellers on the highway against the danger, and awarded the plaintiff $10,000 damages, $2,000 of which amount was to go to the infant children. An application for non-suit was made

and reserved at the trial, on the ground that the road work in course of which the excavation took place was conducted under contract which limited the contractor in taking gravel to a point some fifteen feet away from the tree, and that the corporation was not liable for the way in which the contractor carried out his contract.

Held, that even if the finding of responsibility for excavating around the tree and precipitating its fall were insufficient to support the verdict, the additional finding that the tree was a dangerous nuisance and that the corporation had notice of its dangerous condition sufficiently long to have removed the nuisance, was sufficient.

Hunter and *Shaw*, for plaintiff.

Davis, Q.C., and *MacNeill*, for defendants.

North-West Territories.

SCOTT, J.] [Feb. 26.

RE MEWBURN AND MEWBURN.

Land Titles Act, 1894—Power of attorney.

This is a reference by the Registrar of the South Alberta Land Registration District under s. 111 of The Land Titles Act, 1894 on an application to register a power of attorney.

SCOTT, J.: The power in question is a general one and it is not in the form S in the schedule to the Act. It authorizes the attorney among other things to sell and absolutely dispose of the principal's real estate, lands and hereditaments, and to execute and do all such assurances, deeds, covenants and things as shall be required for that purpose, but it does not contain a description of any lands in respect of which it may be exercised. The question submitted is whether the power substantially complies with the provisions of s. 87 of the Act so as to entitle it to be registered. In my opinion it does not comply with the provisions of that section and it cannot be registered under the Act.

The form S of power of attorney prescribed by s. 87 shows that it is intended to contain a description of the lands to which it is applicable, and s. 87 itself provides that the power shall be registered and that the registrar shall make a memorandum on the certificate of title and the duplicate thereof of the particulars therein contained and of the time of its registration. These provisions appear to me to render it necessary that the power should contain a description of the lands, because it would otherwise be impossible for the registrar to comply with them. There is the further fact that s. 87 provides that until the power is revoked the right of the owner to transfer or otherwise deal with the land shall be suspended. If a description in the power of the lands to which it is applicable is unnecessary, how is the registrar to ascertain whether or not the owner of any lands has by giving such a power debarred himself from dealing with them? He cannot ascertain this by reference to the certificate of title nor by reference to any book or record which he is directed by the Act to keep, except (perhaps) the day book, and yet it would be his duty to ascertain that fact before registering any transfer executed by the owner.

J. P. J. Jephson, for the applicant.

The Registrar in person.

Book Reviews.

The Yearly Abridgment of Reports of 1896, by ARTHUR T. MURRAY, B.A., Oxon.; of Lincoln's Inn, Barrister-at-law, 1897, London: Butterworth & Co. Toronto: Canada Law Journal Company, Canadian agents.

The Yearly Abridgment forms one of the well known series of yearly legal practice books published by Butterworth which include Stone's "Justice's Manual" and Pitt-Lewis' "Yearly County Court Practice," and is a digest of the law of the year arranged alphabetically according to the name of the case instead of the subject matter, the latter being classified by a very complete index with references to the page of the abridgment, upon the same plan as an index to a text book. By this system cross-references are eliminated and all the points of a case are brought under one head. All cases cited on the argument of the case abridged are referred to in the Abridgment, thus making a convenient means of reference to previous decisions upon similar questions.

Grant's Law of Banking, fifth edition, by C. C. M. PLUMPTRE and J. K. MCKAY, of the Middle Temple, Barristers-at-law; 1897. London: Butterworth & Co. Toronto: Canada Law Journal Company.

Bankers and bank solicitors will welcome a new edition of this valuable standard work just from the press, under date of February, 1897. The necessary alterations and additions to the former text and an enlarged and improved index now make a volume of 800 pages, and the whole range of banking rights and liabilities is covered. Great care has evidently been given to the preparation of this edition, and the reported decisions in England and Scotland are brought down to the present year. We can heartily recommend the book to all mercantile lawyers.

The Law of Circumstantial Evidence, by ARTHUR P. WILL. Philadelphia: T. & J. W. Johnson & Co. Canada Law Journal Company, Canadian agents, Toronto: November, 1896.

This is undoubtedly the best work extant on the law applicable to criminal cases. Not only is "circumstantial evidence" fully discussed in the technical meaning of the term, but the law as to "motive," "malice," "threats," "confessions," "expert testimony" and "presumptions," is fully gone into. The work embodies 500 pages, and is one which no lawyer practicing in the Criminal and Magistracy Courts of Canada can afford to be without, for the low price asked ($5.50).

The Law of Receivership, as established and applied in the United States, Great Britain and her Colonies, by JOHN W. SMITH, of the Chicago Bar: 1897 (800 pages), Rochester, N.Y., the Lawyers Co-operative Publishing Company. Canada Law Journal Company, Canadian agents.

The constant growth of remedial jurisprudence is well exemplified by the development of both theory and practice in regard to receivers. Its present extended application is largely a result of the great increase in the number of mercantile corporations in recent years. The volume gives evidence of careful research, and it is claimed that the citations, which cover 4,000 cases in England, the United States and Canada, are brought down to January 1st, 1897.

Lewis' Blackstone, Vol. 1, No. 4, by WILLIAM DRAPER LEWIS, Ph.D., Dean of the Department of Law of the University of Pennsylvania, 1897. Toronto: Canada Law Journal Company, sole agents for Canada.

This number, pp. 1423-1820, covers the law of Public Wrongs and the original Blackstone text of Book the Fourth, supplemented by Doctor Lewis' admirable notes showing the application of the text to the law of to-day, with references to the English, Canadian and American decisions. It will form a most admirable handbook for use with the Canada Criminal Code, showing as it does the development of the English criminal law upon which our code is founded. Criminal pleading process and practice are thoroughly discussed, and Dr. Lewis is to be congratulated in having given to the profession a most excellent annotation, which brings the commentaries up to date.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1897.

TUESDAY, Feb. 2.

Present, between ten and eleven a.m., the Treasurer and Messrs. Strathy, Moss, Britton, Macdougall, Bayly, S. H. Blake, Edwards, O'Gara, Martin, Wilkes, Idington, Bruce, Maclennan, Kerr, Osler and Riddell, and in addition, after eleven a.m., Messrs. Ritchie, Watson, Shepley, Douglas, Gibbons and Hoskin.

The minutes of Friday, Dec. 4th, 1896, were read and confirmed.

Ordered that Mr. J. M. Laing be called to the Bar and receive his certificate of fitness.

A deputation from the Osgoode Athletic Association were heard on the subject of encouragement to the Association.

The Secretary reported: That in pursuance of the order of December 4th, 1896, the name of Mr. Charles Cyrus Grant, student-at-law, has been removed from the Roll of the Society, upon which his name had appeared as a student-at-law of the Matriculant Class.

Ordered that Mr. L. H. Dickson, a solicitor of over ten years standing, be called to the Bar.

Miss Clara Brett Martin and Messrs. J. M. Laing and L. H. Dickson were then called to the Bar.

The petition of Messrs. S. V. Blake, E. Mortimer and F. A. C. Redden was read which sets forth that these gentlemen are solicitors and barristers of this province, now resident in England and desirous of being admitted as solicitors in England. They submit that it would be a convenience to Ontario practitioners to be able to employ as agents in England persons conversant with the laws of Ontario and Canada. In the ordinary course, they would have to serve five or three years, as the case may be, in order to be admitted in England, but legislation is in contemplation by the Imperial Parliament whereby solicitors of a colony such as Ontario may be admitted in England without further service, and with or without examination, on condition that the regulations of the colony provide for the admission of English solicitors to practice in the colony on like terms. The petitioners ask Convocation to move the Ontario Legislature to dispense with or give Convocation power to dispense with the condition of further service and examination as a preliminary to the admission of English solicitors to practice in Ontario, in consideration of the reciprocal legislation of the Imperial Parliament.

There were also submitted the letter of the Hon. A. S. Hardy, Attorney-

General, to the Treasurer, dated the 1st Feb., 1897, letters from the Under Secretary of State to the Lieutenant-Governor of Ontario, dated 30th June, 1896, and January 9th and 10th, 1897, accompanied by copies of letters dated June 2nd and 4th, 1896, from the High Commissioner to the Minister of Justice, and of a letter dated May 22nd, 1896, from the Colonial Office to the High Commissioner, accompanied by a draft of the proposed Bill to be introduced during the then next session of the Imperial Legislature.

It was ordered that the matter be referred to the Legal Education Committee for consideration, and report to Convocation.

The Treasurer communicated the letter of the Hon. the Attorney-General, of 29th January, to him, begging to resign his membership of the County Libraries Committee. The resignation was accepted, and on motion of Mr. Martin, Mr. A. J. Wilkes was placed on the County Libraries Committee in the place thus made vacant.

Mr. Shepley then presented the report of the Librarian to the Library Committee for the last year. The report was read and ordered to be circulated among the profession with the next number of the Reports.

Ordered that Mr. Eakins be appointed Inspector of County Libraries for 1897, and that he be paid $200 for his services, which sum is to include all his expenses.

Mr. Osler, from the Building Committee, reported that the work and improvements ordered in the East Wing have been completed to their satisfaction, and within the estimates and grant given by Convocation.

Ordered that the report of the Discipline Committee upon the complaint of Mr. R. L. Fraser against Mr. John MacGregor, be taken into consideration on Friday, Feb. 12th, 1897.

Mr. Watson, from the Finance Committee, presented the annual statement of the revenue and expenditure for the year 1896. Ordered that the statement be distributed to the profession pursuant to the statute and rule in that behalf.

Pursuant to the order of Dec. 4th, 1896, Convocation resumed consideration of the report of the Discipline Committee upon the complaint of John O. Connors against Mr. T. C. Robinette. Mr. Robinette appeared, as did also Mr. Lamport, counsel for complainant. Both made statements and withdrew. Ordered that the report be adopted and action thereon deferred until the first day of Trinity Term, 1897. Mr. Robinette was called in, and the Treasurer informed him that owing to the serious nature of the charge which has been proved against him, Convocation had deferred taking action in the matter until the first day of Trinity Term next.

Mr. Osler then moved that Convocation take into consideration the plan to be pursued for the compilation of a Consolidated Digest of the Canadian Reports from the earliest period, to end with the year 1899, or for any modified plan for a digest over any less period.

Mr. S. H. Blake then moved: That it is expedient to publish a digest of all the Ontario Reports, including the Practice Reports, the Exchequer Reports and the Election Reports from the earliest period to the close of the century, also the Supreme Court Reports and such reports in the Privy Council as deal with Canadian cases, at such price as may seem expedient to the Reporting and Finance Committees, who are to settle the details of such digest, and report to the next meeting of Convocation as to the price and such other details as may seem to them proper. Carried.

Mr. Watson, from the Finance Committee, reported: They have had under consideration the question of the annual grant made under the resolution of December 7th, 1894, whereby a sum equal to the income of the fund bequeathed by the late Mr. Phillips Stewart for the purposes of legal education, is annually placed at the disposal of the Legal Education Committee for the purchase of books for "The Phillips Stewart Library." Your Committee consider that the reason for making such annual grant no longer exists, inasmuch as the Students' Library is now on such a footing that it is possible to

maintain it without any further expenditure upon it than the sum earned by the bequest as annual income, upon the investment thereof, amounting to about $265. Your Committee therefore submit that the annual grant for the purpose aforesaid is no longer necessary, as in the early period of the establishment of this library, and they recommend that the annual grant be discontinued. Adopted and ordered accordingly.

The Finance Committee have had under consideration the payments for publication of early notes of cases made to the Canada Law Journal and the Canadian Law Times, and the Committee recommend that the same be discontinued. The consideration of this portion of the report was deferred.

Ordered that the time for the presentation of the report from the Special Committee appointed in respect to the question of allowances to Benchers for travelling expenses, be extended until Feb. 12th.

The letter of the Secretary of the Frontenac Law Association asking that books be loaned from the library at Osgoode Hall to members of the profession, was read. The Secretary was directed to say that such a plan would be impracticable.

Convocation then rose.

WEDNESDAY, Feb. 3.

Present: The Treasurer and Messrs. Hoskin, Douglas, Osler, Strathy, Moss, Gibbons and S. H. Blake.

The minutes of the meeting of Convocation held on 2nd February were read and confirmed.

Upon the reading of the minutes of yesterday's meeting of Convocation the chairman of the Legal Education Committee explained that he had received no previous intimation of the motion in reference to the cessation of the grant to the Students' Library, and it also appearing from the statements of the other members of the Legal Education Committe present, that no knowledge of such motion had been brought before such Committee, it was moved by Mr. Strathy, and carried: That the question be re-opened, and the matter of same be considered at the next meeting of Convocation.

Convocation then rose.

FRIDAY, Feb. 12.

Present: The Treasurer, and Messrs. Proudfoot, Martin, Hoskin, Strathy, Osler, Guthrie, Bell, Shepley, Britton, Bruce, Moss, Idington, Wilkes, Watson, Edwards and Aylesworth.

The minutes of the meeting of the 3rd February were read and confirmed.

Mr. Moss, from the Legal Education Committee, reported upon the application of Mr. C. K. Graham to be admitted as a student-at-law, as of Trinity Term, 1896, that they are unable to recommend his admission at this late date. Ordered accordingly.

Mr. Moss, in accordance with Rule 151, laid on the table a copy of the regulations adopted by the Legal Education Committee for the conduct of the examinations in the Law School, Easter, 1897, and the regulation for the use of pseudonyms by the candidates.

Mr. Moss, from the Legal Education Committee, stated that he was directed to inform Convocation in regard to the matter of the petition of Messrs. F. A. C. Redden, S. V. Blake and E. Mortimer, and the letter of the Hon. the Attorney-General, with reference to establishing a plan of reciprocity for the admission of English solicitors to practice in Ontario, and Ontario solicitors to practice in Great Britain and Ireland, which had on the 2nd inst. been referred to that Committee for consideration and report, that the Committee had had the matter under consideration and had procured some information additional to that contained in the papers submitted, but it was found that it would be desirable that further information which the Committee had

not yet been able to procure since the reference was made, should be obtained, and they ask to be allowed to report next term. Ordered accordingly.

Ordered that the report of the Discipline Committee on the complaint of Mr. R. L. Fraser against Mr. John MacGregor be considered on Tuesday, May 18th, 1897, at noon, and that Mr. John MacGregor do show cause why the report should not be adopted and acted upon; and it was ordered that a copy of the report be delivered to Mr. MacGregor personally, and that he be notified to attend the meeting of Convocation on the day and at the hour above mentioned, that a copy of the report be delivered to Mr. Delamere, counsel for the complainant, and that he also be notified to attend if he thinks proper. It was further ordered that a special call of the Bench be made for that day and hour to deal with the said matter.

Mr. Martin stated that in view of the large expenditure which may have to be incurred in relation to the proposed Consolidated Digest, he would withdraw his notice of motion as to supplying the profession with the statutes.

Ordered that the report of the Finance Committee in relation to the discontinuance of the annual grant to the Students' Library be referred back to them for further consideration, with a request to them to invite the Legal Education Committee to reconsider the matter jointly with them, and to report thereon.

Mr. Osler was appointed convener of the Joint Committee, composed of the Finance and Reporting Committees, in respect of the details of the proposed Consolidated Digest.

The report of the Finance Committee, presented to Convocation on Feb. 2nd, recommending the discontinuance of payments to the Canada Law Journal and the Canadian Law Times, for publication of notes of cases, was then adopted.

Mr. Watson, from the Special Committee, appointed on the 4th December, 1896, to enquire into and report on the probable outlay to the Society and the powers of Convocation in relation to the payment of allowances to non-resident members of Convocation, and to report upon the question of the days and times of meeting of Convocation, reported as follows: "That at a meeting of the Committee the questions submitted were considered. Appended hereto is a memorandum of expenses that would be incurred if all the outside members of Convocation attended every meeting of Convocation and also every meeting of the several Committees. The Committee is of opinion that Convocation has jurisdiction to provide for such remuneration, but in view of all the surrounding circumstances and having regard to the financial report presented to Convocation for the last preceding year, and the large expenditure contemplated for Century Digest, and to the custom which has so long prevailed under the constitution: Your Committee is of opinion that no provision should be made at present for the remuneration or reimbursement of expenses to the outside members, and that the resolution in favor of such payment by the Law Society should be rescinded. The Committee also recommends that no change be made at present in the number and times of meeting of Convocation."

Ordered that the report be taken into consideration on Tuesday, 18th May, and that a copy of the report be sent to every member of Convocation and that the notices of motion given by Mr. Watson and Mr. Bayly in reference to the rescission of the resolution of the 15th September, 1896, providing for the payment of allowances to non-resident Benchers, do stand until said 18th of May.

Mr. Moss, from the Legal Education Committee, reported as follows: They have had under consideration the subject of exemption of students in the Law School who have failed in their examination, from further attendance on lectures in the year in which they have failed; and are of opinion that no change should be made in the existing rules with reference to the matter.

Mr. Martin then moved that the report be not adopted, and that rule 179 be rescinded. Lost. The report was then adopted.

Convocation then rose.