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THE Michaelmas sittings of the Queen's Bench Divisional Court will end on November 30th, owing to two of the Judges having been assigned to other cases.

WE would remind the profession that the annual fees to the Law Society must be paid on or before December 7th to avoid the fine. All cheques must be marked. The Supreme Court reports are sent free to those of the profession whose annual fees are paid.

THE following telegram has been received from London by the Registrar of the Supreme Court, at Ottawa, in regard to the case of *Virgo* v. *The City of Toronto*, 22 S.C.R. 447. The wording of the telegram has been extended to make it more intelligible:

"In the case of *The City of Toronto* v. *Virgo*, on appeal to the Privy Council from the Supreme Court of Canada, judgment was delivered to-day. Their lordships thought that there was a marked distinction to be drawn between prohibition or prevention of a trade, and the regulation or governance of it, and that the question was one of substance, and should be regarded from the point of view of the public as well as that of the hawkers. They regarded the effect of the by-law to be practically to deprive residents of buying goods or trading with the class of traders in question. Their lordships' conclusion was that it was not the intention of the Act to give the corporation the prohibitory powers claimed under the by-law, and, agreeing with the majority of the judges of the Supreme Court, they dismissed the appeal with costs."

THE EXTRADITION ACT.

The judgment of the Court of Appeal *In re Murphy*, 22 A.R. 386, though affirming the judgment of the Common Pleas Divisional Court, nevertheless discloses the fact that the members of the court are divided in opinion on one important point arising in the construction of the Extradition Act.

Two of the judges (Hagarty, C.J., and Maclennan, J.A.), agreeing with the court appealed from, are of opinion that it is unnecessary to show in extradition proceedings instituted by the United States authorities that the prisoner is liable to conviction for the crime alleged according to the law of the United States; whereas Burton and Osler, JJ.A., consider that it must be made out that the prisoner has committed an act which is a crime according to the law of the United States, and which would also be an indictable offence of the same name if committed here. The latter judges were in favour of discharging the prisoner on the ground that the crime alleged was not shown to be forgery according to the law of the United States; and Burton, J.A., was of opinion that, even if it were, it was not forgery according to the law of Canada, and on that ground also the prisoner was entitled to be discharged.

As the learned Chief Justice of Ontario points out, "The high contracting parties treat such crimes as murder, forgery, rape, larceny, etc., as crimes well known to both, and especially as between nations using the same language, and laws based on generally similar principles." At the same time, it cannot be supposed that the crimes specified in the Act were intended to have a fluctuating meaning, and it appears to us that in the construction of the Act technical words used therein can receive no other construction than that which they bear according to the law of this country.

In the interpretation clause of the Act, R.S.C., c. 142, s. 2 (*b*), we find that "the expression 'extradition crime' may mean any crime which, if committed in Canada or within Canadian jurisdiction, would be one of the crimes described in the first schedule to this Act; and in the application of this Act to the case of any extradition arrangement means any crime described in such arrangement, whether comprised in such schedule or not." The expression "extradition arrangement" is by the previous subsection defined to mean an extradition treaty. We take the mean-

ing of subsection *b* to be this: that where a crime mentioned in an extradition treaty is one of those which is also included in the schedule, then whether the offence charged constitutes one of the crimes referred to in the schedule must be determined by Canadian and not by the foreign law; but where a crime is mentioned in the treaty which is not included in the schedule then it is a crime for which the offender is liable to extradition, though the crime be not one of those specified in the schedule. Section 11 also provides that the prisoner may be committed when "such evidence is produced as would, according to the law of Canada, subject to the provisions of this Act, justify his committal for trial if the crime had been committed in Canada." That the crimes specified in the schedule must be taken to be only such offences as come within the class of offences known by the names specified, according to Canadian law, seems to be tolerably clear from section 24, which enacts that "the list of crimes in the first schedule of the Act shall be construed according to the law existing in Canada at the date of the alleged crime, whether by common law or by statute, made before or after the passing of this Act, *and as including only such crimes of the descriptions comprised in the list as are under that law indictable offences.*"

One would infer from the sections we have referred to that the obvious intention of the Act is that where an application is made for the extradition of a fugitive offender, it should be shown that he has committed some act in the foreign country which, if committed within Canada, would be an offence of the character of some or one of those specified in the first schedule, or in the particular treaty sought to be enforced. The question is not whether the offence is called by the same name in the foreign country as it is in Canada, but whether, if it had been committed in Canada, it would be an offence in Canada coming within any of those specified in the first schedule. This view the learned Chief Justice of the Common Pleas very clearly brings out in his judgment, and it seems to us the better opinion, with all due deference to the members of the Court of Appeal who differed from him. It is true that Wills, J., *In re Bellencontre*, (1891) 2 Q.B., at p. 140, says "that there should be a *prima facie* case made out that he (the prisoner) is guilty of a crime under the foreign law, and also of a crime under English law"; but this, we may observe, does not necessarily imply that

it must necessarily be shown that the offence is called by the same name in both countries; and, moreover, this opinion appears to be but an *obiter dictum*, and one that does not seem to have been concurred in by Cave, J., who, in his judgment at pp. 136, 137, treats the question as simply turning on whether an offence has been established which, if committed in England, would be a crime under English law of the character of any of those mentioned in the Act. And we may observe that although the English Extradition Act includes a similar provision to s. 2, s-s. (*b*), of the Canadian Act, it does not appear to include any similar provision to that contained in s. 24.

The weight of opinion seems to us to be in favour of the view that under the Canadian Extradition Act the question of liability to extradition turns on whether or not the offence charged is one which, if committed in Canada, would come within any of the crimes specified in the first schedule, or, if not included in those, whether it would be a crime in Canada of the nature of any other crime specifically mentioned in the Extradition treaty under which the extradition is claimed.

It may be said that in this view of the Act a person might be extradited for having committed an act which, though constituting a crime in Canada, if committed here, might, nevertheless, not be a criminal act at all in the United States, but that is a contingency that is hardly possible; but it is quite possible that a crime which is designated by one name in Canada might go by another in the United States, and *vice versa*. Take, for instance, the crime of larceny, which has now, under the Canadian Criminal Code, disappeared from our criminal law, and become merged in "theft"; but even in this case, although the name of larceny has disappeared, the criminal act which constituted larceny is still indictable as formerly, although under another name; and we apprehend that a prisoner accused of larceny in the United States might still be extradited, notwithstanding that the offence, if committed in Canada, is now called "theft."

In view of the changes effected in the criminal law by the Code it is, however, desirable that the Extradition Act should be amended so as to conform to its phraseology, and thus exclude the possibility of offenders escaping justice on any technical grounds.

At page 393 Burton, J.A., puts the case of an offence being

"forgery," according to the law of the United States, but only "obtaining money by false pretences" according to Canadian law; in such a case he thinks it clear that though the accused might be tried in the States for forgery, he could not be extradited, because the crime is not forgery according to Canadian law. But in the case he puts we venture to think that the accused might very properly be extradited on the ground that "obtaining money by false pretences" is one of the crimes included in the first schedule, and it seems to us to be a quite immaterial circumstance that the offence is designated by another name in the United States. But assuming that "obtaining money by false pretences" were not included in the first schedule, then it seems to be reasonably clear that it could not be made an extraditable offence by calling it "forgery," or by any other name mentioned in the schedule. The Act is not to be construed as though the crimes enumerated were mere names; on the contrary, it must be construed on the principle that the names of the crimes specified indicate the commission of certain specific acts; and if it is established that the act has been committed which any of the specified crimes indicate, then, we submit, it becomes immaterial to our courts by what specific name the offence, which the commission of such act constitutes, is known in the foreign country.

Burton, J.A., also expresses the opinion that where a case is "forgery" according to Canadian law, but not according to the law of the States, the prosecution of the person for "forgery" in the States must necessarily fail; but it does not follow necessarily that he must be prosecuted for "forgery" in the States; what is to hinder his being prosecuted for whatever the law of the States may call the offence which he has committed? Of course every prosecution is liable to fail, but we do not see that the possible failure of the prosecution can be any good ground for refusing the extradition where a *prima facie* case is made out.

As the law stands at present, if a court of first instance were to adopt the view of the minority of the Court of Appeal it would prevail, and could only be reversed by an appeal to the Supreme Court, that is, assuming that the judges of the Court of Appeal remain of their present opinion. This is an unfortunate state of things, it seems to us, and may lead to a failure of justice.

CURRENT ENGLISH CASES.

The Law Reports for October comprise (1895) 2 Q.B., pp. 441-497, and (1895) 2 Ch., pp. 549-602.

GAMING—LOTTERY—"COUPON COMPETITION."—(CR. CODE, SS. 197, 204, 205).

Stoddart v. *Sagar*, (1895) 2 Q.B. 474, was a case stated by a magistrate. The defendants published a newspaper containing an advertisement of a coupon competition, which was to be carried on by means of coupons to be filled up by purchasers of the paper with the names of horses selected by the purchasers as likely to come in first, second, third, and fourth in a race. For every coupon filled up after the first the purchaser paid a penny, and the defendants promised a prize of £100 for naming the first four horses correctly. They were indicted, under the Act for the Suppression of Lotteries, for opening and keeping an office to exercise a lottery; for selling tickets and chances in a lottery, and for publishing a scheme for the sale of tickets in a lottery (see Cr. Code, ss. 197, 205); and under the Betting Act, 185_ (see Cr. Code, s. 204), for opening and keeping and using an office for the purpose of money being received as consideration for an undertaking to pay money on events and contingencies relating to horse races, and for receiving money as deposits or bets on condition of paying £100 on the happening of events or contingencies relating to horse races. And the question was whether the facts warranted a conviction under either of these statutes. Pollock, B., and Wright, J., held that no offence was proved, and that the transaction was neither betting nor a lottery.

CRIMINAL LAW—AIDING AND ABETTING—FELONIOUS WOUNDING—CONVICTION OF PRINCIPAL FOR UNLAWFUL WOUNDING—(CR. CODE, S. 61. SS. 241, 242).

The Queen v. *Waudby*, (1895) 2 Q.B. 482; 15 R. Oct. 284, involves a question which, under the Criminal Code of Canada, s. 535, can hardly arise, as by that section the distinction between felony and misdemeanour was abolished. In this case the question turns to some extent on the distinction which still exists in England between felony and misdemeanour. The facts were that two prisoners were indicted, the one for felonious wounding, and the other for aiding and abetting; the principal was convicted of the misdemeanour of unlawfully wounding, and

the question was whether the other prisoner could, on the indictment, be also convicted of aiding and abetting him in that offence. Lord Russell, C.J., and Pollock, B., and Grantham, Lawrance, and Wright, JJ., held that he could, and affirmed his conviction.

CRIMINAL LAW—LARCENY—ANIMUS FURANDI—JURY.

In the case of *The Queen* v. *Farnborough*, (1895) 2 Q.B. 484, a question of very considerable importance was raised, as to the relative functions of judge and jury in a trial for larceny. In this case the jury announced that they were unable to agree upon a verdict, and the judge then asked them if they believed the evidence for the prosecution, which they said they did; the judge thereupon directed a verdict of guilty to be entered. Counsel for the prosecution declined to argue in support of the conviction, and it was quashed by Lord Russell, C.J., and Pollock, B., and Grantham, Lawrance, and Wright, JJ., the court holding unanimously that the question whether the goods were taken *animus furandi* was one of fact for the jury, and upon that question the jury had not found.

COMPANY—DEBENTURES—FLOATING SECURITY—PRIORITY—MORTGAGE OF ASSETS COVERED BY FLOATING SECURITY.

Government Stock Co. v. *Manila Ry. Co.*, (1895) 2 Ch. 551, was a contest for priority between two sets of bondholders of a joint stock company. The plaintiffs were holders of debentures charged by way of "floating security" on all the assets of the company; but by a condition indorsed on the debentures it was provided that, notwithstanding the charge thereby created on the assets, the company should be at liberty in the course, and for the purpose of its business, to use, employ, sell, lease, exchange, or otherwise deal with, any part of its property until default should be made in the payment of any interest thereby secured for the period of three calendar months after the same shall have become due, or until order or resolution for winding up. After an instalment of interest on the debentures had fallen more than three months in arrears, but before the debenture-holders had taken any steps to enforce their security, the company issued a set of bonds and mortgaged a specified part of its assets to secure their payment, and it was between these latter bondholders and

the debenture-holders that the question of priority arose. North, J., decided in favour of the debenture-holders; but the Court of Appeal (Lindley, Lopes, and Rigby, L.JJ.) reversed his decision, on the ground that after the interest on the debentures was three months in arrears they still continued "a floating security" until the debenture-holders took steps to enforce them. This result was reached owing to the fact that, although the condition in the bonds expressly enabled the company to deal with its assets untll the interest should be three months in arrears, it was silent as to what was then to be done; and the Court of Appeal was of opinion that it would be unjust to creditors of the company if it were still permitted to carry on business and contract debts after the three months, and that then the creditors could be told that none of them could be paid, although the company was still carrying on business. This Lindley, L.J., characterized as a "monstrous result."

LESSOR OR LESSEE—PEACEABLE RE-ENTRY—FORFEITURE OF LEASE—RELIEF AGAINST FORFEITURE—CHOSE IN ACTION—C.L P. ACT, 1852 (15 & 16 VICT., C. 76), S. 212—(R.S.O., C. 143, S. 22)—JUDGMENT, FORM OF.

In *Howard* v. *Fanshawe*, (1895) 2 Ch. 581, the plaintiff was equitable mortgagee of two houses for ninety-nine years. The lessee had became bankrupt, and the trustee assigned to the plaintiff all the bankrupt's interest in the lease. Three-quarters' rent being in arrear, the defendants, the lessors, had entered and taken possession of the premises, which were vacant. Subsequent to this the plaintiff tendered the rent in arrear, which the defendants refused to accept. The action was brought to obtain relief against the forfeiture of the lease, the plaintiff relying on the provisions of the C.L.P. Act, 1852, s. 212 (see R.S.O., c. 143, s. 22), which provides that where a lessor brings an ejectment for non-payment of rent in arrear the tenant, or his assignee, may at any time before trial pay up arrears and costs, and all further proceedings shall be stayed; and if the lessee obtains equitable relief against the forfeiture, he is to hold the premises according to the lease and without any new lease thereof. The question was raised whether this applied where, as in the present case, possession had been secured without action. Stirling, J., came to the conclusion that relief might be granted on those terms, although possession had been secured without

action. Without deciding whether the plaintiff, as mortgagee, would have been entitled to relief from the forfeiture, he held that as assignee of the lease from the trustee in bankruptcy he was clearly entitled to relief, and that the right to such relief was a chose in action which passed to the trustee, and he had power to assign it to the plaintiff.

INDUSTRIAL DESIGNS — REGISTRATION — INFRINGEMENT — PATENT DESIGNS AND TRADE MARKS ACT (46 & 47 VICT., C. 57)—(R.S.C., C. 63, S. 22)—IDEA UNDERLYING DESIGN NOT PROTECTED.

Harper v. *Wright*, (1895) 2 Ch. 593, was an action brought for the infringement of a registered design. The plaintiff's design in question was in the form of a church window of a particular style of architecture, with tracery above and below, which they applied to the sides of stoves sold under the name of the "Cathedral Stove." Defendants also sold similar stoves, to which they applied a similar design of a church window, with tracery above and below, but of an entirely different style of architecture from that of the plaintiff's stove, and the tracery above and below was different. The stoves bore a resemblance to each other. Kekewich, J., held that this did not constitute an infringement, that all that was protected by the registration was the actual design, and that the idea of applying that kind of ornamentation to stoves was not protected.

Reviews and Notices of Books.

Negligence in Law. Being the second edition of Principles of the Law of Negligence, re-arranged and re-written by Thomas Beven, of the Inner Temple, Barrister-at-Law. 2 volumes. London: Stevens & Haynes, Law Publishers, 13 Bell Yard, Temple Bar, 1895.

Notwithstanding some defects in these volumes which we shall have occasion to refer to, the profession are greatly indebted to Mr. Beven for a second edition of his valuable work on the Law of Negligence.

As the author states in the preface, these volumes may be regarded as a second edition of his Principles of the Law of Negligence in so far as the subjects treated of in both books are the same; and the materials collected for the one have been used

without reserve for the other. As to anything beyond this the present is a new work. The arrangement is altogether different from that previously adopted. Nearly one-half of the contents of the present volume is new, and of the remainder there is very little which has not been materially modified, if not in substance, yet in expression.

The work is divided into seven books, under the following titles: I., Constitutive principles. II., Authorities specially constituted for exercising control. III., Duty to exercise control over property. IV., Duty to answer for one's own and others' acts. V., Bailments. VI., Skilled labour. VII., Unclassified relations. These divisions are subdivided into numerous chapters and sub-headings.

A recent writer, in discussing modern law treatises, divides them into three classes: hack writers, who write so many pages for so much money; those who consider that a law treatise should be an improved digest; and theorists. The last two, being skilfully combined, may make a good text-book. It may not be possible to give all decided cases, but the leading authorities have to be carefully selected and analyzed, and it is necessary to take sufficient space to distinguish between the opinions of judges and the author's own views of what the law is or should be; that is to say, the reader should have the matter so presented that he may be able easily to distinguish between the views of the author and the opinions of the courts. Then as to those who purchase law books the largest number are not lawyers who have expensive libraries and purchase everything, but, rather, practitioners whose libraries are very limited, and who, either from necessity, not having reports to refer to, or from laziness or want of time, accept text-books without questioning what they find stated therein. The writer referred to speaks of the most common defect being the hasty manner in which text-books are written, the author not examining recent authorities, but often taking his cases largely from other text-books, the result being that the majority of modern text-books are superficial, or, so to speak, machine-made. We all know the sort of text-book we should like to have, but to produce an ideal law treatise would manifestly require a prodigious amount of labour, and the author must not only be a good all-round lawyer, but thoroughly familiar with the law he seeks to elucidate.

The book before us is admirable in many respects and one of the best and most readable of modern text-books,and its defects—of course, it has some—are more in connection with what is unnecessarily inserted and out of place than what is omitted. What we allude to here is that Mr. Beven has a weakness for taking up the discussion of subjects which do not properly come within the scope of a work on negligence, though they might be appropriate in treatises on other branches of the law. He also introduces occasional little "side-shows," which are very pleasant reading, but are out of place in a book intended for the use of hard-headed and hard-worked practitioners in this end of the nineteenth century. For example,on p. 29,he takes space to speak of Cæsar's intense sensibility during a crisis of impending dangers, his incomparable fertility in expedients, and almost supernatural coolness, etc. It would seem unnecessary also for him to discuss the history and merits of an Italian painter, as he does on p. 1369. As another example, a good many pages are wasted in the discussion of matters connected with medical men, common carriers, and other classes of persons, matters which may indirectly lead up to the subject of negligence, but at so great a distance as to be of no practical value and only encumber the work.

We should have expected to see in a work of this size much more space devoted to the subject of negligence in regard to the use of electricity, but, so far as we can see, half a page covers the only reference to the matter, apart from that which is included under the heading of Telegraphs. We are aware that the cases in England on complications arising from the use of electricity are not, as yet, very numerous, but there are plenty in the United States and elsewhere, and it would have been well in such an exhaustive book to have taken up the discussion of the greatest power of modern times, and given all that could be said about it within the scope of the work. Whilst feeling compelled to call attention to these matters, we are, nevertheless, quite aware that it is very much easier to find fault than it would be to produce such an excellent treatise as that of Mr. Beven, which is recognized as a standard work, of the excellence of which there can be no question.

In all the et ceteras which make a volume pleasant to the eye and its contents acceptable, nothing can be said but words of praise. The table of cases is very complete, giving references to all the reports wherein they appear. The index is full, giving references both to the text and to the notes, and the printers' work, as might be expected from such a house as Stevens & Haynes, is excellently well done.

DIARY FOR NOVEMBER.

1. Friday.....All Saints' Day.
2. Saturday .....John O'Connor, J., Q.B.D., died, 1887.
3. Sunday .....*21st Sunday after Trinity.*
5. Tuesday.....Sir John Colborne, Lieut.-Gov. U.C., 1838. Gunpowder Plot.
7. Thursday.... .T. Galt, C.J. of C.P.D., 1887.
9. Saturday.....Prince of Wales born, 1841.
10. Sunday.. .....*22nd Sunday after Trinity.*
11. Monday.....Battle of Chrysler's Farm, 1813.
12. Tuesday.....Court of Appeal sits. J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868.
13. Wednesday.....Adam Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Thursday.....W. G. Falconbridge, J., Q.B.D., 1887.
15. Friday.....M. C. Cameron, J., Q.B., 1878.
17. Sunday.....*23rd Sunday after Trinity.*
18. Monday.....Michaelmas Term begins. Q.B. and C.P. Divisional Courts. Convocation meets.
19. Tuesday.....J. D. Armour, 14th C.J. of Q.B.D., 1887.
21. Thursday.....J. Elmsley, 2nd C.J. of Q.B., 1796.
22. Friday.... .....Convocation meets.
24. *24th Sunday after Trinity.* Battle of Fort Duquesne, 1758.
25. Monday... ....Marquis of Lorne, Governor-General, 1878.
27. Wednesday.....Frontenac died at Quebec, 1698.
29. Friday. .....Convocation meets.
30. Saturday.....St. Andrew. T. Moss, C.J. of Appeal, 1877; W. P. R. Street, J., Q.B.D., and H. MacMahon, J., C.P.D., 1889.

Reports.

ONTARIO.

ASSESSMENT CASE.

IN RE LARKWORTHY'S APPEAL.

Assessment for sewers—Who should make—Local improvement tax—Frontage system.

Held (1) the assessment for sewers in cities, towns, etc., under the local improvement clauses of the Municipal Act, 1892, should be made by a properly qualified civil engineer, or P. L. S., who can furnish proper data to enable the Court of Revision and the judge in appeal to estimate the correctness of his conclusions.

(2) Lands not benefited by the construction of a sewer cannot be taxed therefor: and, where taxable, the measure should be the benefit derived therefrom reduced to a per foot frontage where possible.

(3) Cases are easily conceivable where the frontage system (so called) could not in case of sewers be made to apply at all.

[STRATFORD, October 26th, 1895. WOODS, Co.J.

This was an appeal by George Larkworthy, sr., against the assessment of his property for a proposed sewer on the street on which it was situated.

The only evidence given was that of the appellant. He said that he had near the east limit of the city a parcel of land containing 10 acres, with a frontage

on Ontario street of 660 feet, which was wholly used for farming purposes, and worth about $500. He further said he could reap no possible benefit from the sewer, and that the natural drainage is northeast to the Avon, nearly in an opposite direction to the sewer. The assessor had not examined the land to see if it would be benefited by the proposed sewer, but applied the "so-called" frontage tax theory to the frontage, assessing Larkworthy for $270.50. He further stated that his land was not saleable otherwise than as farm lands; had not been built upon, and was not now. No evidence was called to refute Larkworthy's statement.

G. G. McPherson for the appellant.

Idington, Q.C., for the city.

WOODS, Co.J.: I am of opinion that the local improvement works referred to in the Consolidated Municipal Act, ss. 569 to 624, inclusive, are contemplated to be under the direction, and that the assessments required should be made by a properly qualified engineer or surveyor. I think the different sections of the statute almost irresistibly point to that conclusion, and, in any case, it is quite clear that it is good practice to follow such a course. I have no reflection to cast upon the assessor named in the by-law, but he has not the special skill necessary for the task cast upon him, and his assessment is certainly not carried out on any principle in accordance with the views of the counsel either for the appellants or the respondents.

The assessor was not sworn, but he stated that his assessment was made on the frontage system, meaning thereby, as I understood him, that it was so much per foot frontage, irrespective of any benefit received by the land, which is the position the city solicitor contends is the correct one. Later on he explained the low assessment of a particular lot, because of the expenditure of the owner already made in drainage: see s. 569, s-s. 11 (*a*), of the Consolidated Municipal Act; but in another property, in which it is said that very large expenditure had been made and effectual drainage obtained, he admitted that he had made no inquiries, but assessed on the "frontage basis," that is, as construed in argument to-day, an arbitrary asesssment for the sewer in question of so much a foot, irrespective of the benefit derived by the land abutting.

If that argument is correct, then the Court of Revision and the court to which an appeal lies are, if not ornamental, simply useless appendages, or, at any rate, only placed to see that the assessor correctly measures up the ground frontage.

If it is not correct, then both the Court of Revision and the judge have real duties to perform, and in such cases it is most important that they should be furnished with data that can only be supplied by a properly qualified engineer or P.L.S.

I am of opinion that the duties of the Court of Revision and the judge are not so limited. I refer to s. 569, s-ss. 10, 11, 12, 13, 14, 15, and 16. These do not refer to sewers, but do indicate the scope of the powers of the court. Section 612 is "for providing the means of ascertaining and determining what real property will be immediately benefited by any proposed work or improvement, the expense of which is proposed to be assessed . . . upon the real property benefited thereby, and of ascertaining and determining the proportions in

which the assessment of the cost thereof is to be made," and there is given the right of appeal to the Court of Revision, and from that to the County Judge, "as is provided for by s. 569 of this Act."

The by-law under which this assessment was had is said to have been passed under s. 616, viz., by petition. There is no reference in that section to appeal from the assessment, but it was not contended that there is no such appeal. It must as to that come under either s. 612, to which I have already referred, or to s. 613, s-s. 5, under the head "Publication of notice," which again gives the same right of appeal to the Court of Revision and to the judge as is given by s. 569 before referred to, which, as well as the general Assessment Act, contemplates and gives the power to these courts to alter and vary any assessment by whomsoever made according to the evidence and according to right.

Under s. 623 (*a*): "Whenever in cities and towns an appeal lies from the Court of Revision to the County Judge under ss. 569 to 623 inclusive, the said County Judge shall, in addition to his other powers under this Act and the Assessment Act, have the power to inquire and determine what other lands (if any) than those included in the assessment appealed from are or will be specially benefited by the proposed work or improvement appealed from, and to add such lands to the assessment, notwithstanding any such lands, or any part thereof, may not have been specified in any notice of appeal to said judge and the said judge shall cause all parties to be affected by the addition to the assessment of their lands to be notified of the time and place when the said appeal and matter will be considered, and may for that purpose adjourn the hearing of the said appeal from time to time."

It comes to this, then, that if I were to give effect to the contention referred to, I should be obliged to hold that while I have power under the section just cited to add without appeal persons who should originally have been added, and so readjust the whole assessment, the words, "in addition to his other powers,' are limited to the duty of seeing that the assessor holds his tape line straight that I have no power to strike off the name of a person whose lands are, according to evidence, obviously not benefited, or to adjust an unequal or unjust assessment. As I have said before, I hold the contrary. Moreover, it is obvious that in fixing the assessment of land so added for a sewer it must be on the basis of the benefit received, for cases may easily be conceived wherein the question of frontage would not arise at all.

It was said in argument that the law is very clear, and that I must follow the statute (which I have been endeavouring to do), and I was invited to explain the meaning of the words, "The special rate to be so assessed, and, if levied, shall be an annual rate according to the frontage thereof upon the real property fronting or abutting upon or extending to within six feet of the street or place whereon or wherein such improvement or work is proposed to be done or made."

It is to be observed that these words do not occur in s. 616, but assuming that they apply to that section, as I think they do, it does not follow that the assessment shall be on a hard and fast line, on an equal charge per foot on the whole line of sewer.

I am not sufficiently familiar with the minutiæ of the subject and the details of the working out of assessment to say just why the section should have

been passed, but s-s. 2 seems to suggest that it would make an increased assessment, if necessary, more easy of accomplishment, and, again, it may have been thought that in case of sales by a large proprietor the sewer rate being fixed by frontage rate according to the benefit derived by the land would facilitate the ascertainment of the exact sum charged on any particular portion.

I am not, however, much concerned about that; it is an isolated section, though there are others in the Act referring to the same matter, which if apparently difficult to reconcile with other sections cannot be allowed to antagonize the principle underlying the whole of these local improvement clauses.

There is this to be said: If Larkworthy had sold a strip of eight feet off the front of his ten-acre lot, and if the views which I take are incorrect, or, rather, the views put forward in argument are correct, there might be great difficulty in assessing him at all, no matter how much his lands might be benefited, except under s. 623 (*a*).

On the state of facts set out here I direct the appellant's name to be struck out, as a person whose lands will, on the evidence placed before me, not be benefited directly, specially, or otherwise, by the proposed sewer.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

(Ontario.] [May 6.

O'CONNOR *v.* HAMILTON BRIDGE COMPANY.

Negligence—Use of dangerous machinery—Orders of superior—Reasonable care.

O. was employed in a factory for the purpose of heating rivets, and one morning, with another workman, he was engaged in oiling the gearing, etc., of the machinery which worked the drill in which the rivets were made. Having oiled a part, the other workman went away for a time, during which O. saw that the oil was running off the horizontal shaft of the drill, and called the attention of the foreman of the machine shop to it, and to the fact that the shaft was full of ice. The foreman said to him, "Run her up and down a few times and it will thaw her off." The shaft was seven feet from the floor, and on it was what is called a buggy, which could be moved along it on wheels. Depending from the buggy was a straight iron rod, into the hollow end of which was inserted the drill secured by a screw, and attached to the buggy was a lever over six feet long. O., when so directed by the foreman, tried to move the buggy by means of the lever, but found he could not. He then went round to the back of the spindle, and, not being able then to move the buggy, came round to the front, put his two hands upon the jacket around the spindle, and put the weight of his body against it; it then moved, and he stepped forward to recover his balance, when the screw securing the drill caught him about the middle of the body, and he was seriously injured. In an action against his employer for dam-

ages, it was shown that O. had no experience in the mode of moving the buggy; that the screw should have guarded, and that the mode adopted by O. was a proper one.

Held, affirming the decision of the Court of Appeal (21 A. R. 596), and of the Divisional Court (25 O.R. 12), GWYNNE, J., dissenting, that the jury were warranted in finding that there was negligence in not having the screw guarded; that as the foreman knew that O. had no experience as to the ordinary mode of doing what he was told, he was justified in using any reasonable mode; that he acted within his instructions in using the only efficient means that he could; and that under the evidence he used ordinary care.

Appeal dismissed with costs.

Bruce, Q.C., for the appellants.

Staunton for the respondents.

Ontario.] [May 6.

VICTORIA HARBOUR LUMBER COMPANY *v.* IRWIN.

Contract—Sale of timber—Delivery—Time for payment—Premature action.

By agreement in writing, I. agreed to sell, and the V.H.L. Co. to purchase timber to be delivered "free of charge where they now lie within ten days from the time the ice is advised as clear out of the harbour, so that the timber may be counted. . . . Settlement to be finally made inside of thirty days, in cash, less 2 per cent. for the dimension timber which is at John's Island."

Held, affirming the decision of the Court of Appeal, that the last clause did not give the purchasers thirty days after delivery for payment; that it provided for delivery by vendors and payment by purchasers within thirty days from the date of the contract; and that if purchasers accepted the timber after the expiration of thirty days from such date, an event not provided for in the contract, an action for the price could be brought immediately after the acceptance.

Appeal dismissed with costs.

Laidlaw, Q.C., and *Bicknell* for the appellants.

McCarthy, Q.C., and *Edwards* for the respondent.

Ontario.] [June 24.

ROBERTSON *v.* GRAND TRUNK R.W. CO.

Construction of statute—Railway Act, 1888, s. 246 (3)—Railway company—Carriage of goods—Special contract—Negligence—Limitation of liability for.

By s. 246 (3) of the Railway Act, 1888 (51 Vict., c. 29 (D.)), "every person aggrieved by any neglect or refusal in the premises shall have an action therefor against the company, from which action the company shall not be relieved by any notice, condition, or declaration, if the damage arises from any negligence or omission of the company or of its servants."

Held, affirming the decision of the Court of Appeal (21 A.R. 204) and o the Divisional Court (24 O.R. 75), that this provision does not disable a railway company from entering into a special contract for the carriage of goods and

limiting its liability as to the amount of damages to be recovered for loss or injury to such goods arising from negligence. *Vogel* v. *Grand Trunk R.W. Co.* (11 S.C.R. 612) and *Bate* v. *Canadian Pacific R.W. Co.* (15 A.R. 388) distinguished.

The G.T. R.W. Co. received from R. a horse to be carried over its line, and the agent of the company and R. signed a contract for such carriage, which contained this provision: "The company shall in no case be responsible for any amount exceeding one hundred dollars for each and any horse," etc.

Held, affirming the decision of the Court of Appeal, that the words "shall in no case be responsible" were sufficiently general to cover all cases of loss, howsoever caused, and, the horse having been killed by negligence of servants of the company, R. could not recover more than $100, though the value of the horse largely exceeded that amount.

Appeal dismissed with costs.

Moss, Q.C., and *Collier* for the appellant.

Osler, Q.C., and *W. Nesbitt* for the respondent.

Ontario.] [June 24.

BELL *v.* WRIGHT.

Solicitor—Lien for costs—Fund in court—Priority of payment—Set-off.

In a suit for construction of a will and administration of testator's estate, where the land of the estate had been sold and the proceeds paid into court. J., a beneficiary under the will and entitled to a share in said fund, was ordered personally to pay certain costs to other beneficiaries.

Held, reversing the decision of the Court of Appeal (16 P.R. 335), that the solicitor of J. had a lien on the fund in court for his costs as between solicitor and client in priority to the parties who had been allowed costs against J. personally.

Held, also, that the referee before whom the administration proceedings were pending had no authority to make an order depriving the solicitor of his lien, not having been so directed by the administration order, and no general order permitting such an interference with the solicitor's *prima facie* right to the fund.

Appeal allowed with costs.

Armour, Q.C., and *McBrayne* for the appellants.

Lefroy and *Beck* for the respondents.

Ontario.] [June 24.

VALAD *v.* TOWNSHIP OF COLCHESTER SOUTH.

Practice—Reference—Report of referee—Time for moving against—Notice of appeal—Con. Rules 848, 849—Extension of time—Confirmation of report by lapse of time.

In an action by V. against a municipality for damages from injury to property by the negligent construction of a drain, a reference was ordered to an official referee "for inquiry and report pursuant to section 101 of the Judicature Act, and Rule 552 of the High Court of Justice." The referee reported that the drain was improperly constructed, and that V. was entitled to $600

damages. The municipality appealed to the Divisional Court from the report, and the court held that the appeal was too late, no notice having been given within the time required by Con. Rule 848, and refused to extend the time for appealing. A motion for judgment on the report was also made by V. to the court, on which it was claimed on behalf of the municipality that the whole case should be gone into upon the evidence, which the court refused to do.

Held, affirming the decision of the Court of Appeal, that the appeal not having been brought within one month from the date of the report, as required by Con. Rule 848, it was too late; that the report had to be filed before the appeal could be brought, but the time could not be enlarged by delay in filing it; and that the refusal to extend the time was an exercise of judicial discretion with which this court would not interfere.

Held, also, GWYNNE, J., dissenting, that the report having been confirmed by lapse of time and not appealed against, the court on the motion for judgment was not at liberty to go into the whole case upon the evidence, but was bound to adopt the referee's findings and to give the judgment which those findings called for. *Freeborn* v. *Vandusen* (15 P.R. 264) approved of and followed.

Appeal dismissed with costs.

Wilson, Q.C., for the appellants.

Douglas, Q.C., and *Langton*, Q.C., for the respondent.

Ontario.] [June 24.

LUNDY *v.* LUNDY.

Will—Devise—Death of testator caused by devisee—Manslaughter.

In an action for a declaration as to title to land the defendant claimed under a deed from his brother, who derived title under the will of his wife, for causing whose death he had been convicted of manslaughter and sentenced to imprisonment.

Held, reversing the decision of the Court of Appeal (21 A.R. 560), TASCHEREAU, J., dissenting, and restoring the judgment of Mr. Justice FERGUSON in the Divisional Court (24 O.R. 132), that the devisee having caused the death of the testator by his own criminal and felonious act could not take under the will, and that in such case no distinction could be made between a death caused by murder and one caused by manslaughter.

Appeal allowed with costs.

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

Aylesworth, Q.C., and *Murphy* for the respondent.

ONTARIO.

SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

From Co. Ct. York.] [Sept. 25

DOULL *v.* KOPMAN.

Assignments and preferences—Exclusive right of action—R.S.O., c. 124, s. 7 (2)—Release.

A creditor may, after an assignment for the benefit of creditors, and after the execution by him and the other creditors of the assignor of a release of their debts in consideration of the payment of a composition, bring an action in the assignee's name to recover goods fraudulently concealed by the assignor at the time of the assignment.

Such an action may be brought with the assignee's consent in his name without any order under subsection 2 of section 7 of the Assignments and Preferences Act, but without such an order the recovery will be for the benefit of the estate.

Judgment of the County Court of York reversed.

F. J. Roche for the appellants.

J. Shilton and *J. B. McLeod* for the respondents.

From Ch. Div.] [Sept. 25.

MCNAB *v.* CORPORATION OF THE TOWNSHIP OF DYSART.

Municipal corporations—By-law—Road allowance—R.S.O., c. 184, ss. 551, 552.

Where a mill, erected partly on an unused road allowance with the permission of the township council, was afterwards pulled down by their orders, on the ground that the terms upon which the erection had been consented to had not been complied with, no by-law for its removal being passed, the owner was held entitled to damages. The pulling down of the building, if, under the circumstances, justifiable at all, would be so only if authorized by by-law.

Judgment of the Chancery Division affirmed.

Watson, Q.C., for the appellants.

W. Steers for the respondent.

From Co. Ct. York.] [Oct. 27.

WEESE *v.* BANFIELD.

Bankruptcy and insolvency—Composition agreement—Resolution of creditors—Fraud.

A resolution passed and signed by creditors at a meeting called to consider the debtor's position, that the debtor "be allowed a settlement at six, nine, and twelve months, at the rate of twenty-five cents on the dollar, in equal payments,

without interest," does not in itself operate as satisfaction of their claims. Payment in accordance with its terms is essential.

A creditor who assents to and signs the resolution, but, before doing so, makes a secret bargain with the debtor for payment of his claim in full, can, notwithstanding the fraudulent bargain, sue the debtor for the original indebtedness upon default in punctual payment, according to the terms of the resolution, HAGARTY, C.J.O., dissenting on this point.

Per HAGARTY, C.J.O.: The general doctrine as to "fraud on compositions" applies to a case of this kind, although there is no formal release under seal.

Judgment of the County Court of York reversed, HAGARTY, C.J.O., dissenting.

F. J. Roche for the appellants.

G. G. Mills for the respondents.

From Co. Ct. York.] [Oct. 29.

CANADA PERMANENT LOAN AND SAVINGS COMPANY *v.* TODD.

Bills of sale and chattel mortgages—Affidavit of bona fides—Designation of commissioner—Solicitor's power to take affidavit—Growing crops—Currency of mortgage.

An affidavit of *bona fides* in a chattel mortgage sworn before a person who is, in fact, a "commissioner authorized to take affidavits in and for the High Court," but who places after his signature in the jurat only the words "A Com'r, etc.," is good.

Such an affidavit may be made before a solicitor employed in the office of the mortgagees' solicitors.

Crops to be grown may be covered by a chattel mortgage, and a chattel mortgage of "crops which may be sown during the currency of this mortgage" covers crops sown after the mortgage falls due, but remains unpaid, OSLER, J.A., dissenting on this point.

Judgment of the County Court of York affirmed.

J. W. McCullough for the appellant.

George A. Mackenzie for the respondents.

From Q.B. Div.] [Oct. 29.

HAIST *v.* GRAND TRUNK RAILWAY COMPANY.

Accord and satisfaction—Damages—Negligence—Trial.

Payment to a person injured by an accident on a railway of the sum of ten dollars, and a receipt signed by him of "the sum of ten dollars, such sum being in lieu of all claims I might have against said company on account of an injury received on the 6th day of May, 1893," may constitute accord and satisfaction.

An issue as to the effect of the payment and receipt and its procurement by fraud may be tried by the judge presiding at the trial of an action to recover damages for the alleged injury, and need not necessarily be left to the jury.

Judgment of the Queen's Bench Division, 26 O.R. 19, reversed.

McCarthy, Q.C., for the appellants.

Aylesworth, Q.C., for the respondent.

From C.P. Div.] [Oct. 29.

HAUBNER *v.* MARTIN.

Contract—Sale of goods—Statute of Frauds—Memorandum in writing—Denial of agent's authority.

A letter referring to the terms of the contract, but denying the authority of an alleged agent to make it, is a sufficient memorandum within the Statute of Frauds.

Judgment of the Common Pleas Division affirmed, BURTON, J.A., dissenting.

Robinson, Q.C., and *D. Macdonald* for the appellant.

Cassels, Q.C., and *W. H. Blake* for the respondents.

From ARMOUR, C.J.] [Oct. 29.

CANADA BANK NOTE COMPANY *v.* TORONTO RAILWAY COMPANY.

Contract—Sale of goods—Work, labour, and materials—Statute of Frauds.

A contract to print debentures in a special form, on paper supplied by the printers, is a contract for the sale of goods and chattels, and not a contract for work, labour, and materials, and is within the Statute of Frauds.

Judgment of ARMOUR, C.J., affirmed.

McCarthy, Q.C., and *W. M. Douglas* for the appellants.

Laidlaw, Q.C., and *J. Bicknell* for the respondents.

Practice.

MEREDITH, C.J.] [July 17.

SMITH *v.* HARWOOD.

Costs—Solicitor and client—Action—Reference—Taxation—R.S.O., c. 147, s. 32—Costs of unsuccessful application—Costs paid to opposite party—Counsel fees—Quantum—Discretion.

By the judgment in an action it was ordered that the plaintiffs should recover against the defendant whatever amount should be found due to them on the taxation of their solicitors' bills of costs of certain litigation, as between solicitor and client, and certain bills were referred for taxation between solicitor and client.

Upon appeal from the taxation,

Held, that it was to be treated as if it had been directed on an application, under s. 32 of the Solicitors' Act, R.S.O., c. 147, by the defendant as the person chargeable, and was a taxation between the solicitors and their clients, the plaintiffs.

(2) That the decision of the taxing officer allowing the solicitors the costs of an unsuccessful interlocutory application, undertaken in the exercise of an honest and fair discretion, should not be interfered with.

(3) That the payment by the solicitors to the opposite party in the litigation of a sum for interlocutory costs which the plaintiffs were ordered to pay, while not properly such a disbursement as should be included in the bill of the costs of the action, was a proper payment on behalf of the clients, to which

payments credited on the reference might have been applied, and should be treated as so applied.

(4) That, notwithstanding the provisions of the tariff, the taxing officer was justified in taxing larger counsel fees upon this taxation than had already been allowed between solicitor and client for the same services.

Re Geddes and Wilson 2 Ch. Chamb. R. 447, and *Re Totten*, 8 P.R. 385, followed.

(5) That the discretion of the taxing officer as to the amount of counsel fees should not be interfered with.

J. Bicknell for the defendants.

O'Heir for the plaintiffs.

STREET, J.] [Nov. 11.

MAY *v.* DRUMMOND.

Judgment—Recovery of land—Ancillary claim—Joinder of causes of actions—Motion for judgment.

The plaintiff, without leave, indorsed his writ of summons with a claim for recovery of land and to set aside a conveyance. The writ was personally served, and, the defendant not appearing, the plaintiff delivered a statement of claim, and, on default of defence, moved the court for judgment. It appeared from the statement of claim that the setting aside of the conveyance mentioned in the indorsement was sought by the plaintiff as a part of what was necessary to establish his title.

Held, following *Gledhill* v. *Hunter*, 14 Ch.D. 492, that the action was to be treated as one for the recovery of land merely, in which judgment for default of appearance could have been entered without a motion; or, if not, that the plaintiff had improperly joined another claim with a claim for the recovery of land, without leave; and in either case the motion must be refused.

J. A. Donovan for the plaintiff.

No one appeared for the defendant.

STREET, J.] [Nov. 11.

MAJOR *v.* MACKENZIE.

Security for costs—Insolvent plaintiff—Want of beneficial interest—Parties—Consent—Amendment—Discretion.

In order to entitle a defendant to security for costs, it is not sufficient to show that the plaintiff is a man of no means and has no beneficial interest in the subject-matter of the action; it must be shown that it is really the action of some other person.

Gordon v. *Armstrong*, 16 P.R. 432, explained and followed.

The defendant sought, in the alternative, to have the persons alleged to be really beneficially interested added as plaintiffs.

Held, that they could not be added without their consent in writing: Rule 324 (D.).

Leave given to amend the defence by setting up that these persons were necessary parties.

Semble, however, that the court has a discretion, under Rule 319, to proceed in the absence of some of the persons interested in the question under adjudication.

J. J. Warren for the plaintiff.

J. T. Small for the defendant.

Appointments to Office.

SUPERIOR COURT JUDGES.

Province of Quebec.

The Honourable John Joseph Curran, Q.C., to be a Judge of the Superior Court of the Province of Quebec.

William White, Q.C., of the City of Sherbrooke, to be a Puisne Judge of the Superior Court of the Province of Quebec, *vice* the Honourable Mr. Justice Brooks, resigned.

CORONERS.

County of Brant and City of Brantford

Frederick Carleton Heath, of the City of Brantford, M.D.

County of Halton.

David Robertson, of the Town of Milton, M.D.

County of Lennox and Addington.

Harold Symes Northmore, of the Village of Bath, M.D.

Julien Donald Bissonette, of the Town of Napanee, M.D.

County of Peel.

Marshall Sutton, of the Village of Cooksville, M.D., in the stead of John Barnhardt, M.D., removed from the county.

City of Toronto.

Bertram Spencer, of the City of Toronto, M.D.

County of Welland.

Silas Proctor Emes, of the Town of Niagara Falls, M.D.

CROWN ATTORNEYS AND CLERKS OF THE PEACE.

District of Rainy River.

Henry Langford, of the Town of Rat Portage, to be Crown Attorney and Clerk of the Peace.

POLICE MAGISTRATES.

District of Addington.

James Aylsworth, of the Village of Tamworth, to be Police Magistrate for the Electoral District of Addington, as constituted for the purposes of the Legislative Assembly of the Province of Ontario.

Provisional County of Haliburton.

William Fielding, of the Village of Minden, Esquire, to be a Police Magistrate.

District of Rainy River.

Charles Joseph Hollands, of the Village of Fort Francis, to be a Police Magistrate for a portion of the territory of the District of Rainy River.

DIVISION COURT CLERKS.

County of Lambton.

Robert R. Dickey, of the Town of Forest, to be Clerk of the Fifth Division Court, in the stead of T. R. K. Scott, resigned.

District of Muskoka.

Robert Kelk Sharpe, of the Town of Gravenhurst, to be Clerk of the Second Division Court, in the stead of W. R. Tudhope, resigned.

District of Nipissing.

Jean Baptiste Alphonse Pigeon, of the Village of Nosbonsing, Gentleman, to be Clerk of the Fifth Division Court.

County of Wentworth.

John Charles Moore, of the Village of Stony Creek, Gentleman, to be Clerk of the Fifth Division Court, in the stead of Alva G. Jones, deceased.

DIVISION COURT BAILIFFS.

County of Huron.

Richard Somers, of the Village of Blyth, to be Bailiff of the Twelfth Division Court, in the stead of James Davis, resigned.

United Counties of Leeds and Grenville.

William J. McCarney, of the Village of Merrickville, to be Bailiff of the Fifth Division Court, in the stead of Joseph Quinn, resigned.

County of Lennox and Addington.

Hiram Wesley Huff of the Town of Napanee, to be Bailiff of the First Division Court.

District of Manitoulin.

Simon M. Fraser, of the Village of Gore Bay, to be Bailiff of the First Division Court, in the stead of H. L. McLean, resigned.

County of Middlesex.

Edward Mara, of the Village of Lucan, to be Bailiff of the Third Division Court, in the stead of G. W. Hodgins, resigned.

District of Muskoka.

Francis Fowler, of the Village of Port Carling, to be Bailiff of the Fourth Division Court, in the stead of E. M. Davidson, resigned.

Elijah Field Stephenson, of the Town of Bracebridge, to be Bailiff of the First Division Court, in the stead of W. G. Hill, resigned.

District of Nipissing.

Joseph Louis Manseau, of the Village of Nosbonsing, to be Bailiff of the Fifth Division Court.

County of Oxford.

Andrew Sutherland, of the Town of Ingersoll, to be Bailiff of the Fifth Division Court, in the stead of W. H. Cody, resigned.

County of Renfrew.

Henry Mitchell, of the Town of Pembroke, to be Bailiff of the First Division Court, in the stead of George Mitchell, deceased.

United Counties of Stormont, Dundas, and Glengarry.

Andrew Redmond, of the Village of South Mountain, to be Bailiff of the Seventh Division Court, in the stead of Andrew Barclay, resigned.

County of Victoria.

William Robinson Given, of the Village of Bobcaygeon, to be Bailiff of the Third Division Court, in the stead of Thomas Cheetham, removed.

County of Welland.

Reuben Law, of the Village of Niagara Falls South, to be Bailiff of the Fourth Division Court, in the stead of J. D. Fralick, resigned.

County of Wentworth.

Horace Combes, of the Township of Saltfleet, to be Bailiff of the Fifth Division Court, in the stead of John Charles Moore, resigned.

Jacob C. Springstead, of the Village of Stony Creek, to be Bailiff of the Fifth Division Court, in the stead of J. C. Moore, resigned.

County of York.

John Perryman Wheeler, of the Village of East Toronto, to be Bailiff of the Ninth Division Court, in the stead of W. Luke, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS.

City of Montreal.

Beaumont Shepherd, of the City of Montreal, to be a Commissioner for taking affidavits for use in the courts of Ontario.

Town of Belmont (Manitoba).

Walter Beaven Axford, of the Town of Belmont, in the Province of Manitoba, to be a Commissioner for taking affidavits for use in the courts of Ontario.

OFFICIAL REFEREE AND ARBITRATOR.

Province of Ontario.

James Albert Proctor, of Toronto, Barrister-at-law, to be Official Referee and Official Arbitrator for any city or cities, in the Province of Ontario, containing a population of 100,000, or over.

ASSESSORS.

Province of Ontario.

John Jacob Withrow, of Toronto, to be Assessor for any city or cities, in the Province of Ontario, containing a population of 100,000, or over.

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

WALTER BARWICK; JOHN HOSKIN, Q.C.; Z. A. LASH, Q.C.; C. MACDOUGALL, Q.C.; F. MACKELCAN, Q.C.; EDWARD MARTIN, Q.C.; W. R. RIDDELL; C. H. RITCHIE, Q.C.; C. ROBINSON, Q.C.; J. V. TEETZEL, Q.C.

THE LAW SCHOOL.

Principal, N. W. HOYLES, Q.C.

Lecturers: E. D. ARMOUR, Q.C.; A. H. MARSH, B.A., LL.B., Q.C.; JOHN KING, M.A., Q.C.; MCGREGOR YOUNG, B.A.

Examiners: A. C. GALT, B.A.; W. D. GWYNNE, B.A.; M. H. LUDWIG, LL.B.; J. H. MOSS, B.A.

ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled.

Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School in some cases during two, and in others during three, terms or sessions is made compulsory upon all who desire to be admitted to the practice of the Law.

The course in the School is a three years' course. The term or session commences on the fourth Monday in September, and ends on the first Monday in May, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day.

Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk, before being allowed to enter the School, must present to the Principal a certificate of the Secretary of the Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term.

Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practice in Ontario, are allowed, upon payment of the usual fee, to attend the lectures without admission to the Law Society.

The students and clerks who are exempt from attendance at the Law School are the following:

1. All students and clerks attending in a Barrister's chambers, or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889, so long as they continue so to attend or serve elsewhere than in Toronto.

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

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

Provision is made by Rules 164 (*g*) and 164 (*h*) for *election* to take the School course, by students and clerks who are exempt therefrom, either in whole or in part.

Attendance at the School for one or more terms, as provided by Rules 155 to 166 inclusive, is compulsory on all students and clerks not exempt as above.

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. See new Rule 156 (*a*).

Under new Rules 156 (*b*) to 156 (*h*) inclusive, students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and thier attendance upon the third year's lectures between the fourth and fifth years of there attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lecture. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceeding year has been duly passed, and a student clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year;

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

On Fridays two moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court.

At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept.

At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, a special report is made upon the matter to the Legal Education Committee. The word "lectures" in this connection includes moot courts.

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. Printed schedules showing the days and hours of all the lectures are distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance.

As far as practicable, students will be provided with room and the use of books for this purpose.

The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

The Rules which should be read for information in regard to attendance at the Law School are Rules 154 to 167 both inclusive.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the currriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society.

The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the School course respectively.

The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper.

Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

Students whose attendance upon lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations, either in all the subjects or in those subjects only in which they failed to obtain fifty-five per cent. of the marks obtainable in such subjects. Those entitled, and desiring, to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time of such examinations, of their intention to present themselves, stating whether they intend to do so in all the subjects, or in those only in which they failed to obtained fifty-five per cent. of the marks obtainable, mentioning the names of such subjects.

The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

HONORS, SCHOLARSHIPS, AND MEDALS.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

In order to be entitled to present themselves for an examination for Honors, candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third of the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of he aggregate marks obtainable on the papers in each subject on both examinations

The scholarships offered at the Law School examinations are the following:

Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact.

The medals offered at the final examinations of the Law School are the following:

Of the persons called with Honors the first three shall be entitled to medals on the following conditions:

The First: If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal.

The Second: If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal.

The Third: If he has passed both intermediate examinations with Honors, to a bronze medal.

The diploma of each medallist shall certify to his being such medallist.

The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.—Smith on Contracts. Anson on Contracts.

Real Property.—Williams on Real property, Leith's edition. Deane's Principles of Conveyancing.

Common Law.—Broom's Common Law. Kerr's Student's Blackstone, Bks. 1 & 3.

Equity.—Snell's Principles of Equity. Marsh's History of the Court of Chancery.

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

SECOND YEAR.

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

Real Property.— Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone.

Personal Property.—Williams on Personal Property.

Contracts.—Leake on Contracts.

Torts.—Bigelow on Torts—English Edition.

Equity.—H. A. Smith's Principles of Equity.

Evidence.—Powell on Evidence.

Canadian Constitutional History and Law.—Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

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

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

THIRD YEAR.

Contracts.—Leake on Contracts.
Real Property.—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles.
Criminal Law.—Harris's Principles of Criminal Law. Criminal Statutes of Canada.
Equity.—Underhill on Trusts. Kelleher on Specific Performance. De Colyar on Guarantees.
Torts.—Pollock on Torts. Smith on Negligence, 2nd ed.
Evidence.—Best on Evidence.
Commercial Law.—Benjamin on Sales. Smith's Mercantile Law. Maclaren on Bills, Notes, and Cheques.
Private International Law.—Westlake's Private International Law.
Construction and Operation of Statutes.—Hardcastle's construction and effect of Statutory Law.
Canadian Constitutional Law.—Clement's Law of the Canadian Constitution.
Practice and Procedure.—Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of Courts.
Statute Law.—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

NOTE.—In the examinations of the second and third years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.
