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DIARY FOR DECEMBER.

18. Fri.....First Lower Canadian Parliament met, 1792.
20. *Sun*.....*4th Sunday in Advent.*
23. Wed.....Christmas vacation, H. C. J., begins.
25. Fri .....Christmas Day.
26. Sat .....Upper Canada made a Province, 1791.
27. *Sun* .....*1st Sunday after Christmas.* Spragge, V.C., Chancellor, 1879.
31. Thur.....Revised Statutes of Ontario came into force, 1877.

TORONTO, DECEMBER 31, 1885.

WE publish, as usual with this number, the Index of Subjects, Table of Cases, etc., for the past year. The Sheet Almanac for 1886 will come out in the beginning of the new year.

WE did not refer at the time to the appointment of Mr. Edward Morgan to the junior judgeship of the County of York, inasmuch, as practising in a small country place, it was difficult to speak with any certainty as to his qualification for the position. Now, however, that there has been a better opportunity of forming an opinion, it is a pleasure to know, as well as a pleasant duty to record, that so far as his short term of duty has as yet extended, Mr. Morgan has given much satisfaction to the profession, and to those of the public who have appeared before him as litigants. Of Judge McDougall, his senior, we need only say that the high opinion we expressed, as to his judicial capacity when he was first appointed, is amply confirmed by experience.

MR. JUSTICE MORRISON.

THE death of one so well-known for many years was not an unexpected event. The whole profession will, nevertheless, mourn the loss of one with whom there always existed the most pleasant relations, and his many warm personal friends will be sad at losing one so much liked for his cheery nature and genial hospitality.

Mr. Morrison was born in Ireland on the 20th August, 1816, and came to this country in 1832 with his brother Angus and the rest of the family. In 1839 Joseph Curran Morrison, the deceased judge, was called to the Bar, and became an active member in the then well-known firm of Blake, Connor & Morrison. In 1848 he entered Parliament as a Liberal, but subsequently joined the Conservative ranks, and was for about seven years a member of Sir John Macdonald's Government as Solicitor-General. For a short time he was Registrar of the city of Toronto, but on 19th March, 1862, was raised to the Bench, taking the place of Mr. Justice Hagarty in the Court of Common Pleas, the Hon. James Patton becoming Solicitor-General. Mr. Justice Morrison was subsequently, in December, 1877, moved to the Court of Queen's Bench, in which he remained until made one of the judges of the Court of Appeal, in the room of Thomas Moss, who became chief of that Court. This position Mr. Morrison held until his death.

As a judge, though it cannot be said that Mr. Justice Morrison was a lawyer of the depth of learning, or of the intellectual calibre or power of expression of some of his associates, he had an intuitive perception of the rights of a case, strong com-

mon sense, a good knowledge of human nature and an intimacy with business affairs and commercial matters, which made him a very valuable addition to the Bench; and, whether or not his reasons for his judgment were always sound, he was singularly correct in the result. As a *nisi prius* judge he was admirable.

With commercial law the late judge was exceedingly familiar, and in any reference of his judicial career this cannot be overlooked. An illustration of this knowledge and of his sound common sense will be found in the important case of *Cross* v. *Currie*, 5 A. R. 31, in which he saved the Court of Appeal from committing itself to the extraordinary result it had almost arrived at, as may be seen by the opinion of the other members of the Court.

For some time past Mr. Morrison, though he struggled cheerfully and bravely to perform his judicial duties, had been compelled to give up work, and the remorseless hand of death has prevented a resignation which failing health would soon have rendered necessary.

SELECTIONS.

WHAT IS A MANUFACTURER.

An interesting case of definition is *Evening Journal Association* v. *State Board of Assessors*, 47 N. J. Law, 36, holding that a company printing and publishing a newspaper is not a "manufacturer," but one doing the business of job printing, engraving, electrotyping, etc., is a "manufacturer." The Court said: "Lexicographers define 'manufacture' to be 'the process of making any thing by art, or reducing materials into a form fit for use, by the hand or by machinery.' Worcester's Dict., tit. 'manufacture.' Mr. Brande defines 'manufacture' as a term employed to designate the changes or modifications made by art or industry in the form or substance of material articles, in the view of rendering them capable of satisfying some want or desire of man; and manufacturing industry to consist in the application of art, science or labour to bring about certain changes or modifications of already existing materials. He includes under the term 'manufacture' all branches of industry with the exceptions of fishing, hunting, mining and such industries as have for their object to obtain possession of material products in the state in which they are fashioned by nature. He says that the term is generally applied only to those departments of industry in which the raw material is fashioned into desirable articles by art or labour without the aid of the soil; but that there is no real good reason for such limitation, and that it is obvious from the slightest consideration that agriculture is nothing but a manufacture, for the business of the agriculturist is so to dispose of the soil, seed, manure or other materials, that they may supply him with other and more desirable products. Brande's Encyclopædia, tit. 'Manufacture.' The etymological or scientific meaning of words is useful in the construction of statutes, and sometimes is decisive. A gas company is a manufacturing company. *Nassau Gas-light Co.* v. *City of Brooklyn*, 89 N. Y. 409. An aqueduct company is not a manufacturing company. *Dudley* v. *Jamaica Pond Aqueduct Co.*, 100 Mass. 183. Nor is a mining company. *Byers* v. *Franklin Coal Co.*, 106 id. 131. The reason for this distinction is apparent. Illuminating gas is an artificial and not a natural product, produced by the modification of natural substances by art and industry. A company engaged in producing gas is a manufacturing company in its strictest sense. A water company or a mining company manufactures nothing. Such a company applies labour and machinery simply in obtaining and making merchandise of natural products without any change of substance. Its business has none of the qualities of a manufacturing business. But the technical or scientific meaning of words does not always control in the construction of statutes. The cardinal rule in the construction of legislative acts is that words in common use are to be taken

in their ordinary signification. In *Parker v. Great Western Railway Co.*, 6 E. & B. 77, the charter of a railway company which authorized the company to charge a certain rate 'for all cotton and other wools, drugs and manufactured articles,' was under consideration. The Court held that the term 'manufactured articles,' must be understood in its popular sense; that it did not mean all articles produced from the raw state by manual skill and labour, but those articles only which are made in what are, in popular language, called manufactories. To call a farmer, who cultivates his land and reaps and markets his crops, a manufacturer—as he is in the scientific signification of the term—would do violence to language in the construction of a statute, and yet the owner who cuts down the trees which are the growth of his land, and prepares from them lumber for sale in the market, and engages in it as a business is, in a popular sense, and therefore in a legal sense, a manufacturer. Such a person was held to be a manufacturer within the meaning of the Bankrupt Act. *In re Chandler*, 1 Lowell, 478. . . The Federal Court in the Territory of Utah in 1872, decided that the publishers of a daily newspaper, who also conducted in connection therewith a book and job printing office, in which are manufactured cards, notes, bill heads, blank books, posters, show bills, etc., were manufacturers within the meaning of the Bankrupt Act. *In re Kenyon & Fenton*, 6 Nat. Bank. Reg. 238. In a later case, decided in 1877, the Supreme Court of the District of Columbia decided that the publisher of a weekly newspaper was not a manufacturer within the meaning of the Bankrupt Act. *In re Capital Publishing Co.*, 18 Nat. Bank. Reg. 319. In the last case referred to, *In re Kenyon & Fenton* was cited and commented on. It was there observed that in the earlier case the decision was placed upon the ground that the bankrupts were manufacturers of books, bill heads, etc., and it was declared that in that respect they were undoubtedly manufacturers within the meaning of the Act. This observation was well founded, and all that was necessary to the decision of the territorial Court was that the parties were in fact engaged in some business which made their transactions amenable to the bankrupt law. The rest of the opinion was *obiter dictum*, and was disapproved. We agree with the reasoning and with the conclusion of the Court in *In re Capital Publishing Co.*, that the publisher of a newspaper is not, in a legal sense, a manufacturer. It is true that in the production of his papers, which he sells, he employs manual labour and mechanical skill. But so does the sculptor who produces, as the result of his handiwork and genius, the statue; so does the painter who executes his painting with his palette and his brush; so does the lawyer who prepares his brief, or the author who writes a book. But neither the sculptor nor the painter is classified as a manufacturer by reason of his works; nor would the lawyer or the author be regarded as a manufacturer though they employed a printer—the former to print his brief, and the latter his book. In the ordinary and general use of the word, 'manufacturer,' the publishing of a newspaper does not come within the popular meaning of the term. As was said by the Court in the case last cited, no definition of the word 'manufacturer' has ever included the publisher of a newspaper, and the common understanding of mankind excludes it. . . . It gives employment to printing presses, types and editors, and yet in the whole history of newspapers from the close of the seventeenth century, this word 'manufacturer' has never been applied to them, or appropriated by them in the whole range of English literature. No author has ever so used it, and it is never so applied by any statute or any authority except by way of opinion in the solitary case from Utah. A newspaper has intrinsically no value above that of the unprinted sheet. Indeed, it has less value, considered intrinsically, as a mere article of merchandise. Its value to its subscribers arises from the information it contains, and its profit to the publisher is derived, in a great measure, from the advertising patronage it obtains by reason of the circulation of the paper, induced by the enterprise and ability with which it is conducted. Neither in the nature of things nor in the ordinary signification of language, would a newspaper be called a manufactured article or its publisher a manufacturer." But on the other branch, "both the cases cited from the Federal Courts agree that a person engaged in

such a business is a manufacturer in a legal sense. And in *Seeley* v. *Gwillim*, 40 Conn. 106, it was held that a person who carried on the business of a book-binder and making blank books was a manufacturer. In this view we concur. A person who is engaged in such a business would be appropriately denominated a manufacturer in the popular sense of that term, and he would fall within that designation in its scientific sense, for by his skill and labour he adds to the intrinsic value of the materials used, which gives them a merchantable value in the market as merchandise." See Browne's Common Words and Phrases, tit. "Manufacturer." —*Albany Law Journal.*

REPORTS.

ONTARIO.

(Reported for the Canada Law Journal.)

LIFE INSURANCE CASE.

Re Andrews.

Trustee for infants—Insurance moneys—Security—47 Vict. ch. 20.

Application upon petition for the appointment of a trustee under 47 Vict. c. 20 sec. 12, and amendment, to receive the shares of infants under a life policy. The petition set out that letters of guardianship had been issued to the petitioner, one A. S. Wilcox, by the proper Court of Dakota, U. S., and affidavits filed showing his fitness.

Held, upon satisfactory evidence being furnished that the petitioner had given substantial security on his appointment as guardian in Dakota according to the practice of that Court, that he must be considered he was a fit and proper person to be appointed trustee for the purpose of receiving the shares of the infants herein without giving further security.

[Ferguson, J., Sept. 5, 1885.

Geo. Andrews was insured by a policy in Canada Life Assurance Company. The policy was subsequently endorsed in favour of his children, two being minors. He died intestate without appointing any trustee to receive their shares. The company admitted the claim and paid the shares of the adult children, and the guardian of the children, who resided in Neche, Dakota, petitioned for the appointment of a trustee under sec. 12 of 47 Vict. c. 20.

C. L. Ferguson, for the petitioner. The infants are willing that their guardian should be appointed trustee; he has given proper security in the foreign Court and should not now be required to give security here, which it would be impossible to do. This is distinguishable from *re Thin*, 10 Prac. R. 490, where no security was given. Petitioner is entitled to his costs: 47 Vict. c. 20 sec. 15.

W. F. Burton (Hamilton), for the insurance company. The very object of the statute is to enable the company to pay and discharge the claim by paying to a trustee appointed by this Court. It appears that there is "no one competent in this Province" to receive the shares of the infants. The order should provide that payment to the trustee shall be a sufficient discharge to the company.

Ferguson, J., directed an order to issue appointing the guardian trustee on satisfactory evidence being furnished that he had given substantial security in Dakota, according to the practice of that Court, without further security being given here. This being done, it was ordered that payment to the trustee should discharge the company; costs to both parties out of the fund.

ENGLAND.

RECENT PRACTICE CASES.

Rawstone v. Preston.

Production—Shorthand notes—Transcript.

The corporation of P. having taken land of R. compulsorily, at an arbitration to ascertain the sum to be paid to R. therefor, R. claimed a right of way over other land, and such alleged right had to be considered in fixing the price. At the arbitration R. employed a shorthand writer to take notes of the evidence and arguments, and afterwards had them transcribed. Subsequently he brought an action to compel the P. corporation to remove material which they had put on the land over which he had claimed the right of way. The relevancy of the notes was admitted, but R. objected to produce the transcript, on the ground that it was privileged, as the notes were taken at R.'s expense, and in anticipation of the proceedings.

Held, that the transcript was not privileged.

[30 Chy. D. 116.

Kay, J. . . . "When the facts are stated it must be seen at once that the transcript does not come within any of the cases of privilege, the principles of which are recognized, and I therefore order the production of the transcript, but I will reserve the costs of the motion until the trial of the action."

DYKE v. STEPHENS.

Production—Infant—Next friend.

The Court refused either to order the next friend of an infant plaintiff to make an affidavit as to documents or stay the action till he made such affidavit.

Higginson v. *Hall*, 10 Ch. D. 235, dissented from.

[30 Chy. D. 189.

PEARSON, J. . . . "The next friend is not a party to the action, he is just there simply to protect the interest of the infant, and to show that the interest is of such nature that he is willing to guarantee costs, and in making himself liable for costs he is in no way a party to the action, and I have no jurisdiction to make an order on him as if he were a party. Mr. Wilkinson asks that an order may be made staying the action, unless the plaintiff's next friend makes an affidavit as to documents. . . . To do so would be to make the rights and interests of the infant depend on the conduct of the next friend; that is what the Court never does." Speaking of the case of *Higginson* v. *Hall*, 10 Ch. D. 235, the learned judge said: "All I have to remark on in that case is that counsel for the lunatic consented, and almost invited the order, and I cannot help thinking that if the case had been properly argued the Vice-Chancellor would have seen that the order ought not to have been made."

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

Wilson, C. J.]

MAY v. ONTARIO AND QUEBEC RY. CO.

Railway company — Negligence — Railway employe—Common employment—Dominion Railway Act, 42 Vict. ch. 9 s. 27 (D.)—Limitation of action—"By reason of the railway."

The statement of claim alleged that the plaintiff was employed by the defendants to work at track laying; that while so employed the defendants directed and required him to assist in bringing railway supplies to the place where they were being used; that they also directed and required him to be carried, as part of his employment, on the defendants' trains; that accordingly he was received by the defendants "to be safely carried" on a train; and that owing to the defendants' negligence he was, while so travelling, thrown off the train and injured.

Held, (1) That if the plaintiff accepted a different employment from that originally contemplated he became the defendants' workman in that new employment, just as he had been in his former employment.

(2) That the statement that the plaintiff was received on the train "to be safely carried" did not imply that a special bargain was made "to safely carry," but only that the plaintiff was to be safely carried as one of their workmen in the course of his employment, and that there was no cause of action.

The defendants set up that the injuries complained of happened more than six months before the action brought, and that the action was barred by the 27th section of the Consolidated Railway Act, to which the plaintiff demurred.

Held, that any damage done through negligence upon a railway in the carriage of passengers and the like is damage done "by reason of the railway": *Brown* v. *Brockville and Ottawa Railway Co.*, 20 U. C. R. 202; *McCallam* v. *G. T. Ry. Co.*, 31 U. C. R. 527; and *Kelly* v. *Ottawa Street Ry.*, 3 A. R. 616, referred to and followed.

Semble, that the concluding words of the 27th section of the Consolidated Railway Act, viz., that "the defendants may prove that the same (that is the damage) was done in pursuance of the authority of this Act and the special Act," should be read as meaning "in the course and prosecution of their business as a railway company, constituted in pursuance of," etc.

F. E. Hodgins, for demurrer.

R. M. Wells, contra.

Wilson, C. J.]

LONDON AND CANADA LOAN AND AGENCY CO. v. MORPHY ET AL.

Sequestration—What exigible thereunder—Member's seat on stock exchange.

The plaintiffs, having recovered a judgment against the defendants for a large sum, obtained an order from a judge in chambers ordering defendants to pay the amount due upon such judgment to the sheriff, to whom executions had issued against defendants' goods, or to the plaintiffs, by a day certain, and in default that a writ of sequestration should issue. Default having been made, a writ of sequestration issued accordingly.

Held, that though the writ could not have issued to enforce the judgment, which was for the payment of money, without limiting a time certain, yet that the judge's order was a judgment, for disobedience of which the writ might issue, and that the writ was regularly issued.

Defendants were members of the Toronto Stock Exchange (a corporation), and had seats at the stock board thereof, shown to be of considerable value, and to be saleable by the defendants on compliance by them with certain by-laws of the corporation, which, among other things, provided for a written application to the Exchange by any member wishing to sell his seat for leave to sell, submitting at the same time the name of the proposed purchaser; and if the purchaser was in such a case acceptable, or had theretofore been accepted, the leave would be granted. A party desiring to become a member of the Stock Exchange could not, under the by-laws, be admitted a member of the Exchange, unless he has been previously an attorney to a broker, member of the Exchange, for six months in Toronto, and had, upon his own application, been accepted by the Exchange as a member; the vote for his acceptance to be by ballot, and four black balls to exclude. After being accepted he might purchase a seat from some one already a member, or pay an entrance fee of $4,000 to the Exchange, and by such payment make a seat for himself. The total number of seats to be at the board was limited to forty, whereof thirty-three were taken up by the thirty-three members of the Exchange at the present time. The sequestrator having applied for an order under this writ of sequestration to sell the defendants' seats at the Exchange,

Held, that such seats were the property of the debtors, and should be saleable under process; that the Court could implement its execution by ordering the defendants to do any act necessary to effect, or to refrain from any act to obstruct, a sale of the same seats, and would do so; but that, inasmuch as the Court could not control the exercise of the ballot by the members of the Exchange, no effectual order for sale of the seats could be made.

Semble, that this was a failure of justice, and that there should be legislation to extend the operation of the writ of sequestration to meet such cases; and the application was therefore refused without costs.

Arnoldi, for plaintiffs.

Geo. Morphy, contra.

CHANCERY DIVISION.

Ferguson, J.] [September 5.

IN RE ANDREWS AND THE CANADA LIFE ASSURANCE COMPANY.

Life insurance—Payment of claim to guardian appointed by foreign Court—47 Vict. cap. 20, sec. 15 (O.).

A guardian of infants appointed by the Probate Court of the Territory of Dakota, U.S.A., petitioned for payment to him of certain money to which the infants were entitled, under a policy of insurance issued by the Canada Life Assurance Company, instead of having the money paid into Court as provided by 47 Vict. cap. 20, sec. 15. The company did not object to pay the money over as prayed, provided such payment would be a discharge to them under the Act. *Re Thin*, 10 P. R. 490, was cited.

Held, that inasmuch as it was satisfactorily shown to the Court that the foreign guardian had already given proper and sufficient security to the satisfaction of the Court appointing him, the order might go for payment over of the amount due less the company's costs of the

application, and discharging the company from all further liability.

C. L. Ferguson, for the petition.

W. F. Burton, for the company.

[A fuller report of this case will be found on p. 428, *ante*.]

Boyd, C.] [October 30.

IN RE THE QUEEN CITY REFINING COMPANY OF TORONTO (LIMITED).

Winding up proceedings—Contributories—Stockholders by subscription or allotment—R. S. O. c. 150.

In the winding up proceedings of the Q. C. R. Co. the Master placed the subscribers to the stock-book upon the list of contributories. The contributories appealed upon the ground that although they were subscribers for stock, still no stock had ever been allotted to them by the directors.

Held, that the Master was right, that the contract signed was an unqualified taking of shares, and that the Act R. S. O. c. 150, contemplates two modes of acquiring stock, one by subscription and the other by allotment.

A. Hoskin, Q.C., and *Foster*, Q.C., for the appeal.

S. H. Blake, Q.C., and *Meyer*, contra.

Proudfoot, J.] [November 11.

ROBERTSON V. PATTERSON.

Agreement to give covenant to build—Refusal to execute—Specific performance.

In an agreement for the sale of land from R. to P., the terms were inserted in these words: "price $1,000, $200 cash and balance in five yearly payments, interest at seven per cent., and covenant of P. to build houses worth not less than $4,000, to be commenced in a year from date, and finally completed in two years . . ." The $200 was paid down, and R.'s solicitor prepared and tendered the deeds (in which was inserted a covenant to build) and the mortgage to P. for execution. P. refused to execute them, and R. brought an action for specific performance, which P. defended on the ground that the covenant to build was too vague, and would not be enforced by the Court.

Held, that the plaintiff was clearly entitled to the performance of the defendant's agreement to give a covenant to build houses of a certain value within a specified time.

Wood v. *Silcock*, 50 L. T. N. S. 251, distinguished.

Moss, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *Wilson*, for the defendant.

Divisional Court.] [December 3.

MORRISON V. MORRISON.

Will—Construction of—R. S. O. cap. 106, sec. 26—Devise of after acquired realty—"Contrary intention."

The will of D. M., dated 19th May, 1873, contained the following devise:—"I give and bequeath to my brother, Robert Morrison, $500, and the property on Hughson Street. I give, devise and bequeath all the rest and residue of my estate, real, personal and mixed, which I shall be entitled to at the time of my decease, to my nephew, Alexander Morrison." The testator died 8th March, 1883. At the time of making the will the testator was possessed of one property on Hughson Street, which was known as the Red Lion Hotel, but he subsequently acquired, and owned at the date of his death, other properties on the same street, but unconnected with the hotel and upon the opposite side of the street. The action was brought to determine whether, upon a true construction of the will, the subsequently acquired properties passed under the devise of "the property on Hughson Street," or under the residuary devise.

Held, affirming the decision of BOYD, C. (PROUDFOOT, J., dissenting), that the residuary clause conveyed all property acquired by the testator subsequent to the date of the will, and that a "contrary intention" was sufficiently displayed by the will to render the statute inapplicable.

James Parkes, for defendant Robert Morrison.

E. Martin, Q.C., *Waddell* and *Furlong*, for other parties.

Divisional Court.] [December 12.

CLOSE v. THE EXCHANGE BANK.

Interpleader—Jurisdiction of Divisional Court—Appeal from order of County Court—Interpleader Act, 44 Vict. cap. 7 (O.)—Marginal Rule 2. O. J. Act.

Upon a writ of execution issued out of this Division to the sheriff of the County of York, a seizure was made of goods which were subsequently claimed by a third party. The sheriff thereupon applied for and obtained an interpleader order upon an affidavit which stated the nature of the goods seized and taken in execution, and that their value was less than four hundred dollars; and the order thereupon directed the issue to be tried in the County Court of the County of York. The issue was tried without a jury and a verdict entered for the plaintiff by the Judge of the County Court. The defendant thereupon appealed to the Divisional Court from the decision of the Judge. No motion was made to strike the cause off the list, but upon the appeal coming on to be argued a preliminary objection was taken by the respondent (plaintiff), that the appeal should have been to the Court of Appeal, and not to this Court, inasmuch as the procedure was governed by the Interpleader Act, under which the interpleader order was made, and this Court had no jurisdiction to entertain the appeal.

Held (1), that Rule 2 of the O. J. Act establishes a code of practice and procedure for all cases of interpleader, whereby interpleading procedure in all branches of the High Court is assimilated, superseding any variant or inconsistent practice theretofore existing; (2) that this Rule 2 is to be so read and applied as to regulate the proceedings in all matters of interpleader, which are to be conducted under R. S. O. cap. 54, as extended by the statute 44 Vict. cap. 7 (O.); (3) That inasmuch as the affidavit filed by the sheriff stated the value of the property seized to be under $400, as well as its nature, it was clearly to be intended that the interpleader order was made under the statute, rather than under the old practice of the former Court of Chancery; (4) That the statute provides that the appeal should be to the Court of Appeal; and that the Divisional Court has no jurisdiction.

Barker v. *Leeson*, 9 P. R. 107, distinguished, and cause struck out; but without costs (following *Wansley* v. *Smallwood*, 10 P. R. 233), as the objection was taken at the hearing for the first time.

Semble, that the jurisdiction of the old Court of Chancery in matters of interpleader is now practically obsolete, being superseded by the remedy provided by statute.

Bain, Q.C., for the appellants.

Shepley, for the respondent.

PRACTICE.

Wilson, C.J.] [October 30.

ALEXANDER v. SCHOOL TRUSTEES OF GLOUCESTER.

Party and party costs—Taxation—Items in bill.

Upon appeal from the taxation of the plaintiff's costs of the action, as against the defendant, by the Deputy Clerk of the Crown at Ottawa;

Held, (1) A fee settling plaintiff's reply to counterclaim should have been allowed.

(2) The costs of a similiter with jury notice were properly disallowed, on the ground that the notice might have been served with one of pleadings.

(3) Instructions for examination of plaintiff, $2, should have been allowed, where the defendants were examining the plaintiff for discovery.

(4) Instructions for examination of defendant by plaintiff, $2, should have been allowed.

(5) Attendance to bespeak copies of plaintiff's and defendants' depositions on examinations for discovery should have been allowed.

(6) The plaintiff was not bound to rely on admissions made by the defendants on their examination for discovery before trial, and therefore, should have been allowed the costs of subpœnaing a witness to prove a fact then admitted.

(7) A fee for attending to hear judgment should have been allowed for each attendance, where judgment was twice deferred by the judge.

(8) The discretion of the taxing officer as to to counsel fee at the trial should not be interfered with.

(9) Where the judge at the trial directed the plaintiff to put in writing, before judgment should be delivered, reasons why the judgment should be in his favour, charges for drawing, engrossing, and settling reasons should have been allowed.

(10) A telegram to defendant's solicitors advising them of the result of the judgment when delivered, sent by direction of the judge, should have been allowed.

(11) Instructions for affidavit of disbursements were properly disallowed, as it was not a special affidavit.

(12) Witness fees for fourteen days attendance at the trial should have been allowed, as, where there is no peremptory list, it is necessory to keep the witnesses in attendance from the first day of the assizes till the case is reached.

Holman, for the appeal.

Alan Cassels, contra.

Boyd, C.] [November 30.

MCCALLUM v. MCCALLUM.

Taxation—Local registrar—Certificate—Notice of appeal—Counsel fees—Instructions.

Where no formal certificate of the result of a taxation between party and party of the costs of the action by a local registrar was filed, but where the bill of costs, with a memo. at the end showing the result of the taxation, signed by the registrar, was filed in the local office and forwarded to Toronto for the purposes of an appeal, and where it was admitted that execution had been issued upon such memo.

Held, that the absence from the files of a more formal certificate should not bar the appeal.

Two clear days' notice of such appeal is sufficient.

A counsel fee of $5 for each necessary and proper enlargement of a Court motion should be taxed.

Where charges for a brief are allowed, instructions for brief should also be allowed.

Holman, for the appeal.

Douglas Armour, contra.

Osler, J. A.] [Dec. 5.

KELLY v. THE IMPERIAL LOAN CO.

Security for costs of appeal—Distribution of fund ratably amongst parties entitled.

This was an application made on behalf of the Imperial Loan and Investment Company for payment out of certain moneys in Court under the following circumstances:

The plaintiff, on appealing from the judgment of the Court of Appeal for Ontario (11 Ap. R. 526) to the Supreme Court of Canada, deposited the usual sum of $500 by way of security. The above company and William Damer were the defendants.

The plaintiff's appeal was dismissed with costs on Nov. 16th, 1885.

The above company's costs in the Supreme Court were taxed at $257.70, and Damer's costs were taxed at $300.85.

Brown, for the company, contended that where there are two separate respondents the security in Court must be regarded as applicable in equal portions, half for one respondent and half for the other.

A. C. Galt, for the respondent Damer, argued that the amount in Court should be apportioned amongst respondents in proportion to the costs taxed, and referred to the following authorities by way of analogy, in administration proceedings: *Thompson* v. *Cooper*, 2 Collyer 87; Holmested's Orders, Vol. I. p. 284; Snell's Equity, pp. 40 and 41.

On Dec. 14th his lordship gave judgment, holding that the fund should be apportioned according to the amounts taxed, so that the deficiency might be borne ratably by both respondents.

Divisional Court.] [December 12.

CLOSE v. EXCHANGE BANK.

Interpleader issue—County Court—Appeal—Divisional Court—Court of Appeal—44 Vict. ch. 7 sec. 1 (O.).

An interpleader order made in an action in the High Court of Justice, Chancery Division, directed the trial of an issue in a County Court pursuant to 44 Vict ch. 7 sec. 1 (O.).

Held, that an appeal did not lie from the judgment of the County Court upon the issue to the Chancery Divisional Court, but to the Court of Appeal..

Shepley, for the plaintiff.

Bain, Q.C., for the defendants.

OSGOODE HALL LIBRARY.

The following is a list of books, new and old, received at the Library during the months of June, July and August, 1885:

Stephen's Quebec Law Digest. Montreal, 1882.
Patrick's Election Reports. Toronto, 1851.
Wicksteed's "In Memoriam, Sir G. E. Cartier."
Chitty's Archbold, 14th ed. London, 1885.
Stephen's Nat. Biography, vols. 1 and 2. London, 1885.
Daniel's Chy. Forms, 4th ed. London, 1885.
Broom's Constitutional Law, 2nd ed. London, 1885.
Story's Equity Jurisprudence, 1st Eng. ed. London, 1884.
Stephen's Digest of Evidence, 4th ed. London, 1881.
Lownde's Marine Insurance, 2nd ed. London, 1885.
Daniel's History of Law Reports. London, 1884.
Monckton's Metaphysical Aspect of Nature. London, 1885.
Annual Register. London, 1885.
Lilly's Modern Entries or Select Pleadings. London, 1791.
Woddeson's Lectures. London, 1792.
Wells on Questions of Law and Fact. New York, 1876.
Hall's Jurisdiction of the Lords. London, 1796.
Laperriere's Speaker's Decisions. Ottawa, 1872.
Macgregor's Letters Patent. London, 1856.
Harris' Hints on Advocacy. St. Louis, 1881.
Brandt's Gaming Laws. London, 1873.
Round's Law of Domicile. London, 1861.
Civil Code of Louisiana. N. Orleans. 1838.
Creasy's Constitutions of British Empire. London, 1872.
Roper on Husband and Wife. Philad., 1841.
Tomlin's Digest (Criminal). New York, 1823.
Petersdorf on Bail. London, 1824.
Collier's Law of Contributories. London, 1875,
Clifford on Elections. London, 1802.
New Brunswick Sup. Ct. Reports. St. John, 1885.
Albany Law Journal, vol. 31. Albany, 1885.
Law Times—Law and Lawyers, vol. 78. London, 1885.
Nova Scotia, Sup. Ct. Reports, vol. 4. Halifax, 1885.
Geological Survey—Report of Progress. Montreal, 1885.

The following were received at Osgoode Hall Library during the months of September, October and November, 1885.

Crim. Laws of Canada, 1769-1881. Ottawa, 1881.
U. S. Patent Office Gazette, vol. 30. Washington, 1885.
Quebec Statutes 48 Vict. Quebec. 1885.
Central Law Journal, vol 20. St. Louis, 1885.
Federal Reporter, vol. 23. St. Paul. 1885.
P. E. Island Statutes. Charlottetown, 1885.
N. Brunswick Statutes, 1885. Fredericton, 1885.
B. C. Statutes, 1885. Victoria, B. C., 1885.
Encyclopedia Britannica, vols. 1-19.
Wiltsie on Mortgage Foreclosures. Rochester, N.Y., 1885.
Kelly's French Law of Marriage. New York, 1885.
Chamberlain's Stare Decisis. New York, 1885.
Abbot's Trial Brief. New York, 1885.
Myer's Fed. Decisions. St. Louis, 1885.
Wentworth's System of Pleading, 10 vols. London, 1797.
Newfoundland Legis. Acts, 1885.
North-Western Reporter (U. S.), 23 vols.
Pacific Reporter, 6 vols. (U. S.)
Admiralty, Jurisdiction and Procedure—Henry. Philad., 1885.
Deering's Codes and Statutes, California. San Francisco, 1885.
Thompson on Highways by C. R. Mills, 3rd ed. Albany, 1881.
Sinclair's Div. Ct. Act, 1885. Hamilton, 1885.
Toronto Memorial Volume. Toronto, 1884.
Frend's Perexigera, or Land Transfer. London, 1885.
Thomas' Constitutional Cases.
Lewin's Trusts, 8th ed.
Bunyan's Fire Insurance, 3rd ed. London, 1885.
Markby's Elements of Law, 3rd ed. Oxford, 1885.
Ferguson's International Law, 3rd ed. London, 1884.
Paterson's Licensing Law. London, 1885.
Powell's Law of Evidence, 5th ed. London, 1885.
Trotter's Appeals from Conviction. London, 1884.
Whitely's Licensing Laws. London, 1874.
Lely and Foulkes' Licensing Laws. London, 1874.
Stephen's Nat. Biography. London, 1885.
Webster's Law of Rivers and Canals. London, 1885.
Pollock on Contracts. 4th ed. London, 1885.
Laws of Minnesota. St. Paul, 1885.
Minnesota Ex. Documents. St. Paul, 1885.
Statutes of Canada, 48 & 49 Vict. 1885.
Law Times Reports. Vol. 1. 1884-5.
Fisher's Patent Cases. 1868-1874. Cincinnati, O.
Banning &, Arden's Patent Cases. 1881-1883. New York.
Eastern Reporter. Vol. 1.

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