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DIARY FOR SEPTEMBER.

1. Mon.....Long vacation ends.
2. Tues.....Ct. of App. Sittings.
4. Thur.....Divisional Court Sittings, Chan. Division, H. C. J., begin.
7. Sun.....13*th Sunday after Trinity.*
9. Tues.....County Court sittings (York), begin.
10. Wed.....Sebastopol taken, 1855.
11. Thur.....Peter Russell, President, 1796.
12. Fri.....Frontenac, Governor of Canada, 1672.
13. Sat.....Quebec taken by British, under Wolfe, 1759.
14. Sun.....14*th Sunday after Trinity.*

TORONTO, SEPTEMBER 1, 1884.

THE Judicial Committee of the Privy Council, referring to the Award made by Chief Justice Harrison, Sir Edward Thornton and Sir Francis Hincks in 1878, say: "Their lordships find so much of the boundary lines laid down by the Award as relate to the Territory now in dispute between the Province of Ontario and the Province of Manitoba, to be substantially correct, and in accordance with the conclusions which their lordships have drawn from the evidence laid before them."

LIFE is made up of little things, and as a little thing would tend to promote, as we think, the comfort of gentlemen of the profession, we would suggest that Osgoode Hall Library should possess a clock which strikes the hours and half hours. As it is, one may be absorbed in preparing for a case, while waiting for a certain time to arrive at which one must be in court, and take no heed of the march of the hands round the face of the clock, whereas if the hours were struck the attention would at once be called thereto.

A CURIOUS illustration of the strength of what may, perhaps, somewhat loosely be called aristocratic ideas in the old country is afforded by a recent case in the Birkenhead County Court. A gentleman having engaged some one as his coachman, noticed for the first time that his Jehu had the effrontery to wear a moustache, whereupon he at once said, "I expect you to shave." Jehu, however, or his sweetheart, the report does not specify which, cherished the objectionable moustache more than he respected his master's prejudices, and determined that if the moustache must go, he would go with it. Thereupon he was dismissed, and brought an action for wrongful dismissal. The learned judge, however, upheld the master on the ground that it was an implied term of the service that the razor should be used pursuant to the directions of the master.

THE COST OF TWO COUNSEL.—In the case of *Llanover* v. *Homfray* Mr. Justice Peason made the following observations with reference to the taxation of costs upon the employment of two counsel: "I beg to state most distinctly I regret very much that there seems to be a disposition at the present time to cut down the costs of two counsel. I have heard it stated by other judges—and I entirely agree with it—that if that is to be done, I neither know how the leading counsel are to do their business properly, nor do I know how the junior counsel (and I say so with all respect to them) are to learn their business. As far as I am concerned, except in cases where really no leading counsel ought under any circumstances to be retained, I am certainly not disposed to cut down two briefs on taxation."

WE cordially welcome the second edition of Mr. Maclennan's annotated edition of the

Ontario Judicature Act, 1881, by Thomas Langton, M.A., LL.B., of Osgoode Hall, Barrister-at-law. The well deserved reputation of the first edition, renders it almost unnecessary for us to say more than that the present one shows an increase in bulk. The work being by the same two gentlemen who produced the first edition, an increase of bulk will be rightly taken to imply an increase of value. The authors sum up the results of their labours in the preface, wherein they say: "The general form and arrangement of the former edition have been preserved, but in regard to some branches of procedure, which have now become better understood, the notes have been recast; and, in regard to many other branches, have been largely added to." At the commencement a tabular arrangement shows the relationship between the English rules of 1875 and 1883, and the Ontario rules. The supplemental Ontario rules have been added. Another useful feature is the notes appended to the Tariff of Costs, which is printed at length. These latter notes might no doubt have been made more extensive, but so far as they go they supply a *disideratum*. The Court of Appeal rules reappear with the latest decisions appended. A lengthy review of a new edition of so well-known a work as this is unnecessary. We can only hope that the industry of the authors will meet its fitting reward, not only in the gratitude of the profession, but also in the more substantial form of dollars and cents. It must, however, always be remembered that the pecuniary inducement to literary labour in legal matters is very small in this Province, and hence the more praise is merited by those whom industry and a love for their profession induce to embark upon them.

MATERIALS FOR A NEW BOUNDARY DISPUTE.

THE Order of the Imperial Privy Council defining the boundaries between the Provinces of Ontario and Manitoba has been published. The Order materially enlarges the territory of Manitoba beyond the limits given to it by the Dominion Act of 1881 (44 Vict. c. 14), notwithstanding that the Imperial Act of 1871 vests in the Parliament of Canada the legislative jurisdiction to enlarge or alter provincial boundaries with the consent of the Local Legislature of the Province concerned. The Manitoba Boundary Act of 1881, read in connection with the Keewatin Act of 1876, (39 Vict. c. 21), makes the eastern boundary of the enlarged Province of Manitoba *a straight line* running "due north from where the western boundary of Ontario intersects the international boundary line between Canada and the United States." Where that intersection of boundary lines occurs *de facto*, must be *de jure* the point from whence the straight line of the eastern boundary of Manitoba commences its due north course. This intersection the award of the Judicial Committee places at the north-west angle of the Lake of the Woods; therefore, according to the Manitoba Boundary Act, the eastern boundary of that Province should start from that as the governing point "due north" to the centre of the road allowance on the twelfth base line of the Dominion Land Surveys, which twelfth base line is by the Act made the northern boundary of Manitoba. The Judicial Committee may not have had these Acts before them, or may not have had the assistance of a Dominion Land Surveyor, as the Arbitrators of 1878 had. After following the "due north line" of the Act of 1881 as far as the Winnipeg or English River, they make the boundary line diverge to the eastward through the centre of the Winnipeg, English and Albany Rivers, Lac Seul, and Lake Joseph, "until it reaches a line drawn due north from the confluence of the Rivers Mississippi and Ohio, which forms the eastward boundary of the Province of Manitoba." This description gives a large extent of Dominion

territory to that Province not included in the Manitoba Boundary Act. From this it would appear that either the boundaries set out in the Dominion Act have been varied, without Imperial or Dominion or Local legislation, or a new judicial interpretation has been given to the statutory expression, "*due north line*," by which such a line may not be a straight line, but may be given partly a due north course, and partly an irregular easterly course through rivers and lakes, "until it reaches a line drawn due north from" a place some hundred miles to the east of that named in the statute, and which the Lords of the Judicial Committee solemnly declare "forms the boundary eastward of the Province of Manitoba"—the statute to the contrary nothwithstanding.

THE MARRIED WOMAN'S PROPERTY ACT, 1884.

ON the 1st July the Act passed at the last session of the Ontario Legislature, making further changes in the law regulating the rights of married women to their property, to which we adverted in our last issue, came into operation.

The Act is based as we have said mainly on the Imperial Statute 45 & 46 Vict. c. 75: it has however, some features peculiar to itself, and as it is an Act of great importance some further observation regarding its provisions and the changes it has wrought may be useful.

This Act repeals the R. S. O. chap. 125, and in effect considerably enlarges the rights of married women in respect to their property. The first section provides that a married women shall, in accordance with the provisions of the Act, be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property, as her separate property in the same manner as if she were a *feme sole*, without the intervention of any trustee. It moreover provides that she may "make herself liable in respect of, and to the extent of her separate property" on any contract; that every contract of a married women shall be deemed to be made with respect to, and to bind her separate property, unless the contrary is shown; and moreover, that her separate property shall be bound which she may have at the date of the contract, or which she may at any time thereafter acquire.

By giving to the married woman the power not only of holding, but also of disposing, of her property, it would seem that the difficulty formerly found in the way of holding that separate property held under the Statute is not so completely her separate estate as property settled to her separate use has been removed. (See *Royal Canadian Bank* v. *Mitchell*, 14 Gr. 412.)

The Act, however, it will be observed still limits the liability of a married women in respect of her contracts to her separate property, and she is still apparently relieved from any personal liability thereon, and her contracts can consequently only be enforced by judgment against her separate property. The absurd result which was reached in *Pike* v. *Fitzgibbon*, 17 Ch. D. 454, to the effect that, under the former Act, only the property that she had at the date of the contract, and might still have at the date of judgment, could be made liable for the satisfaction of the contracts of a married women, we are glad to see has been corrected by the present Act.

How far it is expedient to limit the liability of a married woman on her contracts, to the extent of her separate property, we think is open to doubt. Freedom from liability to arrest might no doubt be conceded; but beyond that we do not see why a married woman should not in all other respects incur the same personal

liability in respect of her contracts as a man.

It is no doubt to property of some kind or other that a judgment creditor of a married woman must look for the satisfaction of his judgment; the personal remedy in general amounts to nothing, but the effect of limiting the liability to her property has been found by past experience to put difficulties in the way of recovering judgment against a married woman on her contracts, which we much doubt whether the present Act has removed. The contract being proved, there ought to be no technical difficulty in the way of recovering judgment upon it; the question, as to whether or not the married woman has any property out of which it can be satisfied, is a matter that ought not to affect the right to judgment. The creditor should be allowed to enter his judgment and should be left to resort, from time to time as the occasion might present itself, to such property of his debtor, as he might discover, liable to satisfy his debt. The courts in the past, however, have held that, owing to the property only, and not the person, of a married woman, being liable for her contracts, the creditor before he can get judgment must allege, and if denied, must prove that the debtor actually has separate property liable to satisfy the debt before he can get judgment. We fear the same difficulty may still be found to exist in recovering judgment under the new Act, notwithstanding property acquired subsequent to the contract is now made liable.

In the eleventh section, which is adapted from the twelfth section of the English Act, we experience the inconvenience which sometimes result from the divided jurisdiction of the Provincial and Dominion Parliaments. The English Act in the twelfth section provides for the remedies, by way of criminal proceedings, which a wife may have for the protection of her property; but, owing to the Provincial Legislature not having jurisdiction in criminal matters, this part of the section is perforce omitted from the Ontario Act.

In the twelfth section of the Ontario Act we observe that a variance occurs between it and the thirteenth section of the English Act from which it is taken. The proviso at the end of the section that nothing in the Act shall operate to increase or diminish the liability of any woman married before the commencement of the Act for any debt, contract or wrong is in the English Act followed by the words "except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Act hereby repealed or otherwise if this Act had not passed"; but these words are, for some reason which we do not at present understand, omitted from the Ontario Act; and yet, it will be observed, the Act may very materially increase the right of married women to property. The Act repealed (R. S. O. ch. 125) was, as to women married on, or before, or since, 4th May, 1859, confined as regards personality to those married without a marriage settlement, and also as regards realty in the case of those married prior to 2nd March, 1872, to those who married without a settlement: in other words whenever there was a marriage settlement the Act gave no separate right of property to these two classes of married women. The Act of last session, however, practically removes this restriction, and gives all women, no matter when married, and whether with, or without, a settlement, right to property acquired subsequently to the passing of the Act; so that the omission of the exception in question from the end of the twelfth section appears to be a grave mistake.

The somewhat debated point as to whether, under the former Act, a married

woman could validly convey her real estate held under the Act without her husband being a party to the deed, has been set at rest by the repeal of that part of the R. S. O. ch. 127 sec. 3 which required the husband to be joined. That part of section 6 of R. S. O. ch. 126 which required the husband to join in a release of dower has also been repealed; but we observe section 7 of the same Act, which enabled a woman to give a power of attorney to release her dower, has been left unamended; this section concludes with the words "provided that the power of attorney is executed in conformity with said Act." The Act referred to bring the Married Woman's Real Estate Act, R. S. O. ch. 127, which requires the husband to be a party, unless an order dispensing therewith should be obtained. So that it may become a question, whether a husband is not still a necessary party to a power of attorney to release his wife's dower.

OUR ENGLISH LETTER.

(From our own Correspondent.)

Now that the Bradlaugh case has come to an end, there is reason for apprehension that, until after the long vacation, there may be nothing to divert us in the courts except the vagaries of Mrs. Weldon. This good lady occupies, and probably will continue to occupy until she dies, a very considerable proportion of the time of the courts. It will be indeed strange if some rash penny-a-liner does not ere long comment upon her in a manner which she deems to be libellous, and if any one does, an action is the certain consequence. Now your correspondent is, to a certain degree, an admirer of Mrs. Weldon's ability in argumentative and eloquent appeal. She undoubtedly marshals facts clearly, and, at times, speaks with great persuasive force. But she has one fatal defect, which is that she never can appreciate the difference between circumstances immaterial, and circumstances material, to her case. The consequence is that in every one of her actions her relations with M. Charles Gounod, and the unfortunate article in the Paris *Figaro* are dragged into unnecessary prominence. Hence it comes that Mrs. Weldon, when asked if she has any idea when she is likely to bring her case to a close, is generally compelled to answer, "My Lord, I never can tell." On the other hand she uses material facts cogently and well as the basis of sound argument.

A remarkable case was to-day exposed in the columns of the *Times*, illustrating in a strong way the infinite capacities for appeal of a common law case. One Mr. Smitherman, in an action against the South Eastern Railway, appears to have been twice successful in court of first instance, and twice to have been driven not only to the Court of Appeal, but also to the House of Lords. His present position is that a new trial has been ordered, and one really fails to see why there should ever be any end to the process. The strange thing is that the circumstances have been exposed, not by the plaintiff, but by the defendant's solicitor, who appears to feel much aggrieved at the fact that the plaintiff did not accept an offer made by the defendant's solicitor by way of compromise. Under the circumstances it is impossible not to think that some observations made by the Lord Chief Justice in the House of Lords last evening were apposite and necessary. In reference to a Judicature Acts Amendment Bill, he said that he was of opinion that the facilities given for appeal on the common law side were far too numerous. Nor was he without figures in support of his opinion, for he was able to show that since the Judicature Acts common law appeals had increased at least six-fold, while in

Chancery the appeals had only grown slightly.

Bankruptcy books continue to grow apace both in number and size. Two simultaneous second editions, one by Mr. Yate Lee and the other by Mr. Robson, are the biggest hitherto published, being very nearly as large as "Addison on Contracts." It is really a remarkable thing that the law upon one special subject should stand in need of so very much exposition, and yet one cannot say that there is an extra word in either work. But at this moment a remarkable document which purports to be an investigation into the operations of the new Bankruptcy Act. Coming as it does from the pen of the Inspector-General it necessarily eulogizes the recent enactment, but not even the ingenuity of an official of the Board of Trade speaking in Mr. Chamberlain's defence can get over the fact that in reality this precious new Act does not work at all. The cry against solicitors' costs under the ancient system is by this time become very stale, a sorry refuge for the desperate partisan, and Mr. Smith entirely fails to prove the main thing which is required of him, namely, that where the Board of Trade do the whole work formerly done by professional men, their charges are less than those which used to come out of the estate.

An uncommonly vulgar caricature of leading judges and barristers has been published, with a scriptural text to each name. Some of these quotations are exceedingly apposite.

LONDON, *July* 9.

THE Master-in-Ordinary has issued about thirty notices or warrants calling upon the litigants who appear to love "slow justice," to show cause, after vacation, why the delayed references in the Master's Office should not be deemed closed. The notices have been issued under General Order 584.

REPORTS.

ONTARIO.

(Reported for the CANADA LAW JOURNAL.)

COUNTY COURT OF YORK.

WALTON v. MURDOCK.

Creditor's Relief Act, 1880—*Duty of sheriff to give notice—Attachment.*

The plaintiff placed a writ of *Fi. Fa.* goods in hands of the sheriff, who seized. The defendant paid the judgment debt and costs before sale, but more than twenty days after seizure by sheriff. The sheriff retained the money, and entered the notice under sec. 5, of Creditor's Relief Act. At the time of payment by defendant of the debt, no other claims in sheriff's hands—nor had defendant been served with notice of claims. *Held*, that sheriff ought not to have entered the notice under sec. 5, and that having detained the moneys until other claims came in, he was liable to attachment in not returning money to plaintiff.

Motion in County Court term, for an order for the issue of a writ of attachment against the sheriff of County of Essex, for not returning a writ against goods in above suit though ruled to that effect.

The facts sufficiently appear in the judgment of McDougall, J.J.:

This is an application for the issue of a writ of attachment against the sheriff of the County of Essex for not returning a writ of *Fi. Fa.* goods in this case. The sheriff was duly served with the usual three-days' rule, directing a return of the writ. This rule was served on 22nd May last.

The facts of the case appear from the affidavits to be briefly as follows: The plaintiff's solicitors forwarded the writ of execution against the goods of the defendant who lives in the County of Essex, on the 2nd of April last. The sheriff received it on the 4th April (as appears by the affidavit of his deputy), and a seizure of the defendant's goods was made upon the same day. Immediately after the seizure, the sheriff was served with a notice on behalf of two mortgagees who held each a chattel mortgage upon the goods of defendant Thereupon, a correspondence ensued between the sheriff and plaintiff's solicitors, which resulted finally in the sheriff, on the 22nd of April, advertizing the sale of goods under seizure. The sheriff at the same time instructed his own solicitor to take proceedings to interplead. Notice of motion to that end was served by the sheriff's solicitor, returnable on the 29th April. On the 29th April, the sheriff was paid by the defendant (or by some one for him) the debt and costs called for by the writ of *Fi. Fa.* goods. The sheriff instead of returning

his writ, and sending the money to the plaintiff's solicitors, retained the money realized in the above manner and entered in his book the notice required by sec. 5 of the Creditor's Relief Act. After the 29th April and up to 29th May following, being within one calendar month, about six other claims made by other creditors of the defendant, were placed in his hands under the provisions of the Act. The question as to the rights of the parties, and the correctness of the sheriff's action in the premises are contested in this motion.

Section 5 of the Creditor's Relief Act, reads as follows: "In case a sheriff levies any money upon an execution against the property of a debtor, he shall forthwith enter in a book to be kept in his office for inspection without charge, a notice stating that such levy has been made, and the amount thereof; and such money shall thereafter be distributed ratably amongst all execution creditors, and other creditors whose writs or certificates given under this Act, were in the sheriff's hands at the time of such levy or who shall deliver their writs or certificates to the said sheriff, within one calendar month from the entry of such notice," etc.

Section 7 of the Act is to the following effect: "That if a debtor permits an execution issued against him to remain unsatisfied after seizure to within two days of the time fixed for sale or for twenty days after seizure, etc., then proceedings may be taken by creditors to lodge their claims with the sheriff under the Act, in the manner set out in Act.

Sub-section 32 of sec. 7, is in the following words: "In case the debtor without any sale by the sheriff pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment and no other claim has been served on the debtor or in case all executions and claims in the sheriff's hands are withdrawn, and any claims served are paid or withdrawn, no notice shall be entered as required by the 5th section of the Act, and no further proceedings shall be taken under this Act against the debtor by virtue of the executions having been in the sheriff's hands."

The first point to be determined is at what stage of the proceedings, where a writ of execution is placed in the sheriff's hands does it become incumbent upon him to enter the notice under the 5th section of the Act. After seizure, or after making the money upon his writ?

Now as I read the 5th section, the sheriff is not required to enter this notice at all until he has money in his hands made by him under and by virtue of proceedings under his writ, that is to say realized by means of a sale of the debtor's goods under his writ.

The words are "levies money upon an execution," and further, "such money shall thereafter be distributed," etc

Still more must this appear to be the meaning of the Act for sub-sec. 32, of sec. 7, expressly provides for the case of the debtor forestalling the action of the sheriff by paying the judgment debt and costs to him without a sale taking place under the writ. In such a case if there are no other claims in the sheriff's hands at the date of any such payment by the debtor it is expressly enacted that "no notice shall be entered as required by the 5th section of this Act."

It is quite true, that any creditor in this case could have commenced proceedings under the provisions of the Act, before the 29th April, because the debtor had allowed the writ to remain unsatisfied for more than twenty days after such seizure, (sec. 7) but so far as the affidavits and material before me show no steps were taken by any creditor prior to the payment by the debtor of the judgment debt and costs on the 29th April. The only writ or claim in the sheriff's hands at that date was the plaintiff's under his writ. I think it was the sheriff's duty to have returned the writ and money to the plaintiff forthwith and not to have made any entry of the notice required under section 5. All the claims which came in, came in subsequently and doubtless by reason of the sheriff's giving the notice under circumstances when the statute expressly says, he should not do so.

The language of the statute seems to me to be free from all reasonable doubt. The construction which I have placed upon it, is I venture to think, the only interpretation which will enable section 5 and sub-sec. 32 of sec. 7, to be read intelligibly together and at the same time render each clause operative, sensible and consistent, the one with the other.

I think the order should go, but proceedings thereunder may be stayed for one week. Unless the amount of the plaintiff's execution and the costs of this motion be paid by the sheriff to the plaintiff herein within that time, order to issue.

THIRD DIVISION COURT, COUNTY OF GREY.

SAUNDERS v. RAYNER.

Equitable assignment of debt.

Plaintiff sued as the holder of the following instrument, claiming that it had been delivered to him by M. for value: "I. O. U. the sum of sixty-eight dollars, value received to be paid on the first of March, 1884, (1/3/84) with interest at six per centum. P. N. RAYNER."

Endorsed, "F. CAMPBELL."

Defendant admitted that he had given the instrument to C. for value, but claimed that C. had delivered it to M. for a gambling debt, that before plaintiff had given value for it, C. notified plaintiff that it had been delivered to M. for a gambling debt and that he believed M. had cheated him and that he C. claimed the document and the debt evidenced thereby, that C. about the same time gave a similar notice to the defendant, and upon this suit being brought indemnified him against the costs. *Held*, upon the above statement of facts that there was a good equitable assignment of the instrument to the plaintiff, and that he was entitled to recover.

COUNTY COURT OF SIMCOE.

SPROULE v. FERRIER.

Striking out statement of defence—Breaches of contract complained of not sufficiently set out—Pleading "Common Counts"—Judicature Act—Order for further particulars.

Pleading the "Common Counts" is no longer admissible under the rules of pleading introduced by the Judicature Act.

[Barrie, January 25, 1884.

This was a motion for an order to strike out certain paragraphs of a statement of defence, and was made before the Junior Judge of the County of Simcoe, at Barrie. The facts are fully stated in the judgment.

H. Lennox, for plaintiff.

Lount, Q.C., for defendant.

BOYS, J.J.—The statement of claim sets out that the plaintiff built a house for defendant, as per contract, and also did certain work and provided certain materials for defendant not included in the contract and claims a balance due of $802.86 after allowing for admitted payments and goods supplied on account.

The defendant in answer puts in a "statement of defence and counter-claim," denying the allegations in the statement of claim and setting up payment and that the plaintiff agreed to perform the work in a good and workmanlike manner and to finish the same on or before a date mentioned, yet did not do so, causing the defendant great loss and damage. Also stating that by the contract sued on the plaintiff was to build the house on the same plan, of the same materials, and of the same size as certain houses named, with some exceptions also named, and the statement of defence then sets out "that the plaintiff failed to carry out the said undertaking and agreement and did not build the said house as agreed and did not have the said house finished by the said 1st day of September, 1882, whereby the defendant suffered loss and damages to the extent of not less than $400."

Then follows—"The defendant says that the plaintiff, at the commencement of this action, was indebted to the defendant in an amount equal to the plaintiff's claim for money due," etc., being the common counts under the former practice for money due, goods sold, money lent, money paid, etc., with the usual termination "which amount the defendant is willing to set off against the plaintiff's claim." And the statement of defence ends with a payment into court of $700.

I am now asked to strike out all the paragraphs of the defendant's statement of defence, except the one denying the allegations in the statement of claim, the one pleading payment, and the one pleading payment into court, on the grounds that the particulars in which the plaintiff failed to perform the work and the specific breaches complained of should be stated, and that the paragraph containing the common counts is defective in not being pleaded either as a defence or a counter-claim and as it does not give any particulars of the items of which it is composed and pleads matters of law instead of fact.

I think the paragraphs asked to be struck out are rather general in their allegations, but the remedy proposed by the plaintiff is too drastic considering the powers that exist to order amendments and the delivery of further particulars. The only doubt I have is regarding the common counts. At first I felt clear they could be allowed under the Judicature Act, but on further consideration it seems to me this feeling arose more from old familiarity and associations than from anything contained in the Act. Section 128, states that "Every pleading shall contain, as concisely as may be, a statement of the material facts on which the party pleading relies. . . Such statement shall be divided into paragraphs, numbered consecutively, and each paragraph shall contain, as nearly as may be, a separate allegation; dates, sums, and numbers shall be expressed in figures, and not in words" (and see sec. 134). Now, in the common counts there are a number of separate allegations in the one paragraph, they are not numbered consecutively and each shows a separate cause of action or set off, so that at the trial, evidence might be given under this paragraph of matters as widely different as goods sold and money lent, or money paid for the use of the opposite party at his request, and money found to be due on a stated account embracing long and various dealings. Nor can such a form of pleading be said to "contain, as concisely as may be, a statement of the material facts on which the party

pleading relies," for if money lent is relied upon, why mention goods bargained and sold? or if goods sold and delivered constitute the cause of action or set off, why introduce a statement about money paid for the use of the opposite party at his request? Any one of these statements may be as concisely made as possible, but if only one is going to be relied upon the introduction of the rest destroys the conciseness, and if more than one is, or the whole are, relied upon, then each should be divided into one or more paragraphs containing, "as nearly as may be, a separate allegation."

Then again, it seems to me that the O. J. Act contemplates such a concise statement of claim, set off or counter-claim, as will disclose with reasonable certainty and particularity, the material facts relied upon, such a statement at least which, if made upon a writ of summons, would amount to a sufficient special endorsement to enable final judgment to be entered in case of non-appearance. Now, a summons issued under the Judicature Act and endorsed with the common counts without dates or sums, would certainly not entitle the plaintiff, in case of non-appearance, to enter final judgment; for, as Cockburn, C. J., said in *Walker v. Hicks*, L.R. 3, Q.B.D. 8, "a party who is placed in the predicament of being liable to have a judgment signed against him summarily, is entitled to have sufficient particulars to enable him to satisfy his mind whether he ought to pay or resist," and I think the same reasoning applies to a set off or counter-claim. It should be pleaded with sufficient particularity to enable the plaintiff to satisfy his mind whether he ought to go on with the action. Can it be said that a set off which does not disclose whether it is founded on money lent, goods sold and delivered or a general account stated, and without any dates or amounts whatever, does this? I think not.

It may be noticed, also, that the forms given in the Act all contain full particulars of the nature of the claim with dates and sums. These forms are not imperative but they are given as examples and the intention of the Act may fairly be deduced from them as requiring pleadings to be something of a similar character. If otherwise, why were they given at all?

I must, therefore, conclude that the form of pleading, known as the "common counts," is not now applicable to the procedure introduced by the O. J. Act, and the questions arise under this motion, should I strike out this paragraph or will an order to amend, and for particulars meet the case? And who should pay the costs? I see no objection to allowing the defendant to amend by separating any or all the counts he relies upon into distinct paragraphs, with their proper consecutive numbers and adding thereto sums and dates and such other reasonable particulars as the nature of each claim will fairly admit of, and the order can also go for further particulars of the non-completion of the contract.

As to the costs, under ordinary circumstances a party pleading a statement of defence which is inadmissible, should pay the expense of having the statement struck out or amended, or of procuring an order for further particulars; but, as I understand, it has been usual to plead the common counts since the new procedure, and their admissibility has not been questioned before: the costs of the summons and order in this case will abide the event. On the question of costs each case will have, in a great measure, to be decided on its own merits, for there may be a difference between a pleading wholly made up of the common counts, and one in which the pleader, after having exhausted his facts and ingenuity in framing numerous statements of claim or defence, manifestly from force of habit, is unable to resist the temptation to throw in the common counts at the end, for what they are worth.

I see nothing in the objection to the common counts not being pleaded either as a defence or a counter-claim. The defendant's pleading is headed "statement of defence or counter-claim"; besides we have no rule requiring a party to state specifically that he relies upon any facts by way of set off or counter-claim, as they have in England.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

GREEN v. WATSON.

Patent—Assignment of patent right.

The Court being equally divided the judgment of Ferguson, J., 2 O. R. 627, stood affirmed, and the appeal therefrom dismissed with costs.

Robinson, Q.C., and *Bethune*, Q.C., for the appellant.

E. Blake, Q.C., and *Cassels*, Q.C., for the respondent.

PETRIE v. HUNTER.

GUEST v. HUNTER.

Mechanics' Lien—Contracts and sub-contracts.

The judgment reported 3 O. R. 233, affirmed with costs.

Reeve, for the appellant.

Black, for the respondent.

BEEMER v. OLIVER ET AL.

The judgment reported 3 O. R. 523, was affirmed on appeal.

Moss, Q.C., and *Fitch*, for appellant.

Cassels, Q.C., for respondent.

MCDONALD v. CROMBIE.

Fraudulent judgment—Preference.

The judgment reported 2 O. R. 243, affirmed on appeal.

J. H. Macdonald, for appellant.

D. E. Thomson, for respondent.

QUEEN'S BENCH DIVISION.

Applied Curran v. Grand Trunk Ry. Co. M.L.R. 5 S.C. 254.

CORRIGAN v. GRAND TRUNK RY. CO.

Negligence—Sufficiency of Railway Bill—Speed of trains in cities, etc.—Fencing track on highway—Contributory negligence.

By the Consolidated Railway Act, 1879, every locomotive engine shall be furnished with a bell of at least thirty pounds weight, which shall be rung at the distance of at least eighty rods from every crossing over a highway, and be kept ringing until the engine has crossed the highway. The learned judge charged the jury, that the object was that a person passing at the crossing should receive warning of the approach of the train, and the bell must be such a bell as would reasonably give that warning.

Held, a proper direction.

By the same Act no locomotive shall pass through any thickly peopled part of any city, etc., at a speed greater than six miles an hour unless the track is properly fenced.

Held, that this applies as well to the crossing of a highway as to other parts of a city, etc., and that the defendants were guilty of a breach of the Act in running a train at a greater speed than six miles an hour across a highway in a village where the only portion of the track not properly fenced, was that portion which crossed the highway.

The plaintiff was well acquainted with the locality in question, and had known it for many years as a dangerous crossing, but when approaching it in his waggon did not look along the track to see if a train was coming, though he could have seen the train in question in time to have stopped his horses before reaching the track. He did not see the approaching train until he was on the track, and it was too late to avoid being struck. The jury found for the plaintiff.

Held, that there was evidence of contributory negligence, and a new trial was directed.

KELSO v. BICKFORD.

Railway company—Claim by president for services—Resolution of directors—Contract with company—Consolidated Railway Act—Novation.

The plaintiff claimed a sum for services as President of the Grand Junction Railway Company, under a resolution of the Directors, and he alleged that the defendants had assumed the liabilities of the Company.

Held, that the Directors had no power to adopt such a resolution, it being a contract by the plaintiff, directly for his own benefit with the Company, and contrary to sec. 19, sub-s. 16 of the Consolidated Railway Act, 1879.

Held, also that, not being a valid claim against the Company, it could not be made a claim against the defendants by novation.

GILBERT v. GODSON.

Agreement to excavate gravel—Reservation of land adjacent to fences—Right to lateral support for reserved land.

The plaintiff agreed with the defendants that they should dig gravel from the plaintiff's pits, and the agreement contained the following clause: "I also reserve eight feet from line of fences to protect them."

Held, that the plaintiff was not entitled to lateral support for the eight feet so reserved, and, therefore, the defendants were not liable for damage caused by excavating up to, but not beyond, the eight feet limit.

Tilt, Q.C., for the plaintiff.

J. K. Kerr, Q.C., and *Neville*, for the defendants.

PORTEOUS v. MEYERS.

Gratuitous bailment—Negligence—Liability of bailee.

The plaintiff left a sum of money with the defendant, a shop keeper, for safe keeping. The money was put in a safe in the defendant's shop, but when the plaintiff applied for it the next day, the defendant told him that it had been taken out and he could not give it to him. On the evidence, the jury found, in answer to questions submitted to them, that the defendant was wanting in ordinary care and diligence in taking care of the money, in unlocking the drawer in which it had been placed, and leaving it unlocked while he went to the cellar to get goods for customers, who were then left alone in the shop, and that the money was lost through the defendant's negligence. They also found that the defendant wrongfully appropriated the money. Judgment was directed to be entered for the plaintiff upon these answers, and the court refused to disturb the judgment.

Idington, Q.C., for the plaintiff.

Smith, Q.C., for the defendant.

SRIGLEY v. TAYLOR.

Election—Disqualification for voting—R. S. O. c. 10, s. 4—Agent for the sale of Crown Lands—R. S. O. c. 24—The Public Lands Act, R. S. O. c. 23.

By order in council, the defendant was appointed agent for the location and sale of lands under the Free Grant and Homesteads Act, R. S. O. cap. 24. By letter from the Crown Lands Department, the defendant was instructed to enter upon his duties respecting the location of free grants, but not to sell lands or receive money until he had given the usual security. By R. S. O. cap. 10, sec. 4, all "agents for the sale of Crown Lands," amongst other persons, are disqualified from voting at elections for the legislature, under a penalty. The defendant, before he had given the necessary security, voted at an election for the Legislature.

Held, that he was an agent for the sale of Crown Lands within the meaning of the Act, R. S. O. c. 10, s. 4, and, therefore, liable to the penalty imposed.

Whether or not the defendant was such an agent is a question of law and not a question for the jury.

Arnoldi, for the plaintiff.

Osler, Q.C., for the defendant.

CHANCERY DIVISION.

Ferguson, J.] [June 12.

IN RE BIGGAR, BIGGAR v. STINSON.

Will—Construction—Heirs—Children—Guardian of legacy—Trust.

A testator bequeathed as follows: "I give and bequeath unto G. B. and her children the dwelling house they now occupy, the wife of C. R. B. and his children, appointing C. R. B. and G. B. joint guardians for the children above mentioned, and $500, all transactions to be null and void unless sustained in writing by both guardians."

Held, that the children meant were those of C. R. B. and G. B., and there was a simple gift to G. B. and her children, who took concurrently; and C. R. B. and G. B. were, by the above clause, made trustees for their children, and could give a good acquittance and discharge for the $500.

In another clause of his will, the testator willed and bequeathed "unto G. G. B.'s wife, E. B., $5,500. This bequest is under the joint management of G. G. B. and his wife for their heirs; should there be none, then, at their death, to revert back to my heirs to be equally divided."

Held, that there was a trust of the $5,500 reposed in G. G. B. and E. B.; that E. B. was entitled to the benefit of the trust during her life, and upon her death the benefit of it would go to any children there might be of G. G. and E. B., or any descendants there might be answering the description, "their heirs," and if there were no such children or descendants, then to the heirs of the testator to be equally divided amongst them.

Another clause was as follows:

"I will and bequeath unto M. R. B.'s wife and his heirs, $5,000, and appoint M. R. B. as guardian and manager of this bequest."

Held, that a trust of the $5,000 was thereby reposed in M. R. B., and "heirs" was merely descriptive of legatees intended. M. R. B.

was entitled to receive the fund and hold it in trust. During his life, his wife would be entitled to the whole benefit arising from the fund, and on his death there would be a distribution of it amongst his wife or her representatives, as the case might be, and those persons who would answer the description of heirs of M. R. B., and M. R. B. as such trustee was entitled to receive, and could give a good acquittance and discharge for the money.

Held, lastly, that under the will in question, the widow was not put to her election.

Smith, Q.C., for the plaintiffs.

MeKenzie, Q.C., for the adult defendants, other than the widow.

J. Hoskin, Q.C., for the infant defendants.

A. Hoskin, Q.C., for the widow.

Ferguson, J.] [June 13

BRYSON v. THE ONTARIO & QUEBEC RAILWAY COMPANY.

Contract—Improvidence—Married woman—Concurrence of husband—R. S. O. c. 125, s. 19—40 Vic. c. 7.

Where a railway company contracted for the purchase of certain land with B., a married woman, in the absence of her husband.

Held, that the railway company were not under any obligation to see that she had independent advice in the matter; and inasmuch as the price appeared not to be grossly inadequate, and B. appeared to be fully *compos mentis*, and no unfair advantage having been taken of her, the agreement could not be set aside.

B.'s marriage took place in 1876, and the land was held by her to her separate use.

Held, that the concurrence of her husband in the contract was unnecessary, nor was it necessary for him to join in the conveyance.

The real estate of a married woman after March 2nd, 1872, whether owned by her at the time of her marriage, or acquired in any manner during her coverture, may be conveyed by her without the concurrence of her husband; and her contracts respecting such real estate are binding upon her.

C. Moss, Q.C., and *Dumble*, for the plaintiffs.

Blackstock, for the defendants.

Ferguson, J.] [June 23.

MCCARTHY v. COOPER.

Contract — Incomplete conveyance — Statute of Frauds—Specific performance.

Action for the specific performance of an alleged contract for the sale of land.

It appeared that one W., whom C., the purchaser, supposed to be the owner of the land, but who was really only the agent of the owner, the present plaintiff, signed and sealed a conveyance of the land to the purchaser, similar to the ordinary short form of conveyance. This was also signed and sealed by C. There was no other note or memorandum of the alleged contract within the Statute of Frauds as would bind C. The deed acknowledged the receipt and payment of the purchase money, though the evidence showed it was not paid, but that only a deposit of ten per cent. was paid by C. It did not appear that the deed had ever been delivered.

Held, that the deed in question, though incomplete as a conveyance, yet was evidence of a contract of sale by the plaintiff, whose authorized agent, W., was shown to have been to C., sufficient to satisfy the Statute of Frauds, and the plaintiff was entitled to judgment.

Blackstock, for the plaintiff.

Black, for the defendant Cooper.

Murray, for the defendant Oliver.

Ferguson, J.]

THE PHŒNIX INSURANCE CO. v. CORPORATION OF KINGSTON.

Municipal law—Taxation of income of foreign corporation—Insurance—43 Vict. c. 27.

Action to recover the amount of certain taxes paid under protest to the Corporation of Kingston.

The plaintiff's company is a foreign corporation, with its head office in London, England, but carrying on the business of Fire Insurance in Canada, with an agency office at Kingston, Ontario, and head-office for Canada in Montreal. The question was whether the insurance premiums received at Kingston by the agent of the company there, for insurance business transacted through him as such agent, were assessable at Kingston as taxable income or personal property against the com-

pany and its said agent, or against the latter as the agent of the company, or against either of them.

Held, that the insurance premiums in question were personal property of the company, and, therefore, assessable under 43 Vict. c. 27, s. 3., and under that enactment, both the company and agent were properly assessed for the income, which the premiums constituted. And the fact that the premiums, having been previously sent by the agent, after collection, to the head-office in Montreal, were not in the municipality of Kingston, when the assessment was made, did not make any difference.

Britton, Q.C., for the plaintiff.

Walkem, Q.C., and *Agnew*, for the defendants.

Proudfoot, J.] [June 25.

BANK OF BRITISH NORTH AMERICA v. WESTERN ASSURANCE CO.

Marine Insurance—Condition precedent—Adjustment—Double insurance—Contribution.

Where by a certificate of insurance, representing and taking the place of a policy, it was provided, as the condition of payment, that all claims should be reported to the Union Marine Insurance Company of Liverpool as soon as the goods were landed or the loss known to be adjusted according to usages there, and the special condition of the contract of insurance.

Held, that the *adjustment* by the Marine Insurance Co. was not a condition precedent to the plaintiffs' right to recover. All that was required to be done by the insured was duly to report to that company the claim to be adjusted.

To constitute a double insurance there must be two or more insurances on the same subject, the same risk and the same interest, and variations in the several policies as to the extent of liability cannot be said to vary the risk.

If such concurrent policies have been taken, and subsequently cancelled without communication with and without the assent of another insurer, the remaining insurer is only liable for the rateable proportion of the loss. If, on the other hand, the several policies exist in full force at the time of action brought against one of the insurers, the defendant is liable for the whole amount of the loss, but has his remedy over against the other insurers for contribution.

S. H. Blake, Q.C., *Hardy*, Q.C., and *Wilkes*, for the plaintiffs.

Bethune, Q.C., and *R. M. Wells*, for the defendants.

Ferguson, J.] [June 30.

CARLING BREWING CO. v. BLACK.

Assignee in trust for creditors—Notice of creditor's claims—Distribution—Liability of trustee.

The defendant was assignee of B. in trust for creditors. After the assignment he got possession of B.'s books, and in the ledger saw that the plaintiffs were credited with a certain sum. B. also told him that the plaintiffs had sued him, and it appeared that writs of execution were in the sheriff's hands. The defendant inserted a notice in the local newspapers for creditors to send in their claims, and that he would distribute the estate on or before a certain day, having regard only to those claims of which he had notice. The plaintiffs did not send in their claim, but wrote to the defendant advising him of it, which letter the defendant admitted he received on the day of the distribution of the estate, but after he had sent off to the creditors bank drafts for their dividends. He made no effort to stop payment of the drafts.

Held, that the defendant had notice of the plaintiff's claim within the meaning of 46 Vict., cap. 9, sec. 1, and that he was liable to the plaintiffs for the amount of their dividend.

Street, Q.C., for the plaintiffs.

Meredith, Q.C., for the defendant.

Ferguson, J.] [July 2.

BECHER v. HOARE.

Will—Mortmain Acts—Charity—Imperfect assignment.

H. S., by his will, bequeathed certain pure and impure personalty to the London City Mission, voluntary charitable organization, and died in 1865. In 1866 A. S., his heiress and next of kin, sent a signed writing to the executor of the will, in which it was recited that doubts might arise whether the impure personalty passed to the executor in trust for the charity, declared her acquiescence, in what she said she knew had been the testator's intention, viz.: that the whole of the personalty, pure and impure, should be treated

by the executor as so passing to him, and renounced her rights thereto, and requested the executor to treat it all as so passing. In May, 1870, A. S. made a will devising and bequeathing all her real and personal property on certain trusts. In July, 1870, she informed the executor of H. S. that she had changed her intentions as to the matter referred to in writings of 1866 above mentioned, and she forwarded another will, dated July, 1870, in which she bequeathed all the property she had as heiress and next of kin to H. S. to J. R., and appointed the same person her executor as was executor of the will of H. S. J. R. died before A. S. In 1869, and in March, 1870, A. S. had written letters to the secretary of the London City Mission, in which she had expressed her intention of carrying into effect the intentions of H. S., as expressed in his will. A. S. died in 1877, and probate of her first will of May, 1870, was granted to the executors named in it.

Held, that the impure personalty could not pass by the will to the London City Mission, and the writing of 1866 and the letters to the London City Mission did not amount to such an assignment of it, as would pass it to the charity, inasmuch as the requirements of the Mortmain Acts were not complied with.

A gift by will of property that failed to take effect by reason of the Mortmain Acts, could not be aided or set up by the party entitled to the property by anything less than what would be required to constitute a good gift by such party of the same property to the party intended to be benefitted by the gift in the will.

There can be no marshalling of assets in favour of a charity.

As to the two wills of A. S., the bequest to J. R. by the second will lapsed by reason of her death before that of H. S., and the subject of it fell into the estate of A. S., so as to pass under the former will.

Street, Q.C., for the plaintiff.
McGee, for the defendant Hoare.
Macbeth, for the other defendants.

COMMON PLEAS DIVISION.

Rose, J.]

DURNIN v. MCLEAN.

County Courts—Amount liquidated by act of parties.

Action for $228.20 being for a balance of a claim for $1,828.20 the price of 8,310 lbs of butter at 22 cents per pound, less $1,600 paid on account, as the next verdict was rendered for the plaintiff for the balance claimed; and the court refused to certify for costs.

Held, that the amount was liquidated by the act of the parties within the meaning of sec. 19, sub sec. 2 of R. S. O. chap. 43, the County Court Act, and therefore the plaintiff without a certificate was only entitled to County Court costs.

A motion to a judge for an order directing the defendant to pay to the plaintiff full costs without deduction or set off, was dismissed with costs.

Osler, Q. C. for the plaintiff.
Aylesworth, for the defendant.

Rose, J.]

LUNEY v. ESSERY.

Reference—Official referee—Special findings—objections to—O. J. Act, sec. 47.

At the trial of an action a compulsory order of reference was made referring "all questions arising upon the pleading in their action between the parties, including all questions of account (if any)" to an official referee "for inquiry and report."

Held, that there was a reference under O. J. A., sec. 47.

Under sec. 47 the reference is not to be a final one, but for enquiry and report for the assistance of the court. The referee therefore had no power to give a general finding, but must especially find facts and all the questions referred.

In this case the referee having made a general finding for the plaintiff, the report was referred back to him to give its specific finding.

Held, also that objection to the special findings in a report must be raised by notice of motion.

Watson, for the plaintiff.
Shepley, for the defendant.

Rose, J.]

QUILINAN v. CANADA SOUTHERN RY. CO.

Pleading—Allegation—That work "negligently" done—Particulars—Mandamus—Compensation.

The plaintiff by this statement of claim, claimed damages from defendant for "unlawfully, negligently and wrongfully" depressing certain streets in the town of Niagara Falls, and thereby making it inconvenient and almost impossible for persons to approach the plaintiff's store for business; also for "negligently, unlawfully and wrongfully" blocking up and rendering almost impassable the same street in the neighbourhood of the plaintiff's store, and thereby "negligently, unlawfully and wrongfully" preventing customers or other persons coming to the plaintiff's store, and almost entirely destroying plaintiff's business. And statement of claim further claimed, if the depressing or blocking up should be found to be lawful, that a mandamus should be granted requiring defendant to proceed to arbitrate to ascertain the compensation payable to plaintiff; or that it be refered to the proper officer to ascertain and state such compensation.

Held, on demurrer that the statement of claim was sufficient; that it is alleged that the work was negligently done, and this gives a cause of action, even though the work itself be lawful; and that if fuller particulars be required of the acts complained, this should be by motion.

Quære, whether a mandamus would be granted, for if the plaintiff was entitled to compensation, the proper remedy would apparently be by reference to the proper officer, as asked by way of alternative relief; also, whether it is necessary to allege that defendant's railway touches or takes a portion of the plaintiff's land; and, also, whether under the Railway Acts, defendants are only liable to make compensation for lands taken. As to these latter points, as the learned judge's judgment could not be reviewed until after the case would come on for trial, these objections were enlarged before the judge at the trial.

Lash, Q.C., for the plaintiff.

N. Kingsmill, for the defendant.

Rose, J.] [June 27.

FEDERAL BANK v. HOPE.

Motion for immediate payment—Promissory note—Agreement to renew.

On the making of a promissory note it was agreed that the note should be renewed on payment of a named sum, "if the renewal notes are continued in the same form or names as at present." Since the making of the note the maker had died. In an action on the note the defendant set up as a defence such agreement, and alleged that he duly offered to perform the agreement so far as lay within his power by leaving the said note and liability of the maker and giving his own note in renewal as agreed as collateral to the said note, which tender the plaintiff refused to accept, and which the defendant is at all times ready and willing to carry out.

A motion for an order for immediate judgment under Rule 324 was dismissed, the judge refusing to decide as to the legality of the defence on such motion.

Cattanach, for the plaintiffs.

Nesbitt, contra.

PRACTICE.

The Master in Chambers.] [June 17.

MOORE v. MOORE.

Alimony—Costs—32 Vict. (O.) c. 18, sec. 2.

An application to compel the defendant to pay the costs of the plaintiff's solicitors of an action for alimony.

The action was settled before trial, the plaintiff returning to live with the defendant, and the defendant agreeing to pay the plaintiff's solicitors' costs.

Held, that before the Act 32 Vict. (O.) c. 18, the defendant would have been liable to pay costs.

Held, under the wording of sec. 2 of the above Act, that the plaintiff had not failed to obtain a decree for alimony, and that the defendant is, therefore, liable to pay costs.

Hoyles, for the application.

H. Cassels, contra.

LAW SOCIETY.

EASTER TERM, 1884.

During this term the following gentlemen were called to the Bar, namely:—David K. I. McKinnon, with honours and gold medal; Alexander Mills, with honours and bronze medal; Messrs. Alexander W. Ambrose, Alfred Craddock, Edmund Sweet, William J. Code, William A. Dowler, Andrew C. Muir, Edwin R. Reynolds, Thomas B. Shoebotham, Charles H. Cline, James W. Hanna, Robert N. Ball, Gerald Bolster, Robert Christie, William Cook, Robert A. Pringle, Jos. Walker, Arthur W. Morphy, John W. Russell.

The following gentlemen received Certificates of Fitness: J. Bicknell, jr., D. M. McIntyre, A. Mills, W. Lees, W. A. Dowler, C. W. Colter, A. F. Godfrey, R. Christie, W. J. Code, A. W. Morphy, S. F. Washington, W. Wardrope, G. W. Danks, W. Johnston, C. C. Ross, J. G. Forgie, J. H. Hammond, R. O. Kilgour, T. B. Sheabotham, E. R. Reynolds, W. F. Sorley, F. G. Lilly, H. G. MacKenzie, L. H. Dickson, and J. J. McLaren, (special case).

The following gentlemen passed first Intermediate Examination, namely: J. M. Clarke, with honours, 1st scholarship; R. H. Collins, with honours, 2nd scholarship; Messrs. D. G. Marshall, D. A. Givens, S. McKeown, S. A. Jones, J. Clarke, J. S. Campbell, E. W. Morphy, R. C. Donald, J. Elliott, A. J. Arnold, W. H. Dean, G. R. O'Reilly, A. B. Cameron, A. W. Lane, A. C. F. Boulton, H. E. Ridley, J. F. Cryer, D. Coughlan, H. H. Dewart, D. C. Hossack, J. D. O'Neil, E. H. Ambrose, J. L. Peters, J. H. Burnham, A. C. Camp, H. Clay, W. F. Holmes, G. A. Loney, J. A. Macdonald, G. A. Payne, J. R. Shaw.

The following gentlemen passed second Intermediate examination: A. McLean, honours and 1st scholarship; R. Armstrong, honours and 2nd scholarship; S. Love, J. Armstrong, R. A. Dickson, W. N. Irwin, H. J. Wright, S. D. Biggar, E. W. Boyd, E. G. Graham, H. C. Fowler, P. McCullough, W. H. Blake, H. T. Kelley, A. J. Flint, T. Moffatt, F. C. Powell, H. W. Mickle, J. Baird, H. V. Greene, D. F. McMillan, A. W. Wilkin, N. A. Bartlett, W. B. Raymond, E. A. Millar, J. A. McAndrew, W. C. Widdifield, E. Langtry, R. H. Hubbs, J. F. Grierson, W. D. McPherson, T. E. Griffith, S. J. Young, J. Shilton, R. J. Dowdall, H. L. Ingles, M. A. Evartts, E. W. J. Owens, J. Smith, G. H. Stephenson, J. M. Duggan, W. T. McMullen, A. G. Campbell, O. E. Fleming, T. B. Lafferty, W. G. McDonald, M. Mitchell, W. H. Robinson.

The following gentlemen were admitted in the Society as Students-at-law:—

Graduates.—C. I. T. Gould, S. C. Warner, W. T. Kerr, Ernest Heaton, F. M. Field, Jno. A. Davidson, H. H. Langton.

Matriculants.—A. A. McMurchy, J. F. Edgar, A. L. Baird, J. A. Macdonald.

Junior Class.—A. McDonell, J. G. Gauld, C. D. Scott, H. Scott, H. F. Errett, J. G. Kerr, T. Graham, W. J. McKay, H. Millar, W. B. Scane, D. T. K. McEwan, C. Pierson, E. M. Lake, R. M. Thompson.

Articled Clerk.—R. Segsworth.

MONDAY, 19TH MAY.

Present—The Treasurer and Messrs. Becher, Maclennan, Kerr, Read, Crickmore, Murray, MacKelcan, Irving, Beaty, Foy, Cameron, and Hoskin.

The several reports of the Legal Education Committee were received and acted upon.

The Report of the Library Committee, as to the appointment of a successor to Mr. Williams, the late junior assistant, was received and read.

Ordered for immediate consideration and adopted.

Ordered that J. Daley be appointed junior assistant.

The report of the Library Committee as to the lending of books to students was received and read.

Ordered for immediate consideration and adopted.

Ordered that it be referred to the Finance Committee, to consider whether it be advisable to arrange with the government for the latter to heat the Society's part of Osgoode Hall, and if thought advisable to make arrangements for that purpose.

The letter of complaint of Mr. J. A. Macdonell was received and read. Moved by Mr. Cameron, seconded by Mr. Maclennan:—That while Convocation condemns as highly improper the publications in the newspapers by Mr. J. A

Macdonell of the charge he has made against Mr. S. H. Blake, which he intended to bring before Convocation, yet as a grave charge is made by the communication laid before Convocation by the Treasurer, Mr. Macdonell be informed that he must submit the charge indicated by him in a formal shape, in writing, with such verification as he thinks fit, before any action by Convocation can be taken thereon. Carried.

A further communication and papers from Mr. J. A. Macdonell were received and read.

Ordered to be considered on Tuesday the 20th instant.

Mr. Leith's letter resigning his seat as a Bencher, was received and read.

Ordered that the resignation be accepted and that a call of the Bench be made for Friday, 30th May, to elect a Bencher in his place.

Mr. Maclennan called attention to the case of Mr. G. R. Sanderson who was called to the Bar when he (Mr. Maclennan) was chairman on 24th November, 1883. Mr. Sanderson's name was omitted by accident.

Mr. Maclennan now moves, seconded by Mr. Crickmore, "That Mr. G. R. Sanderson's name be inserted in the minutes of that day, as having been called to the Bar. Carried.

TUESDAY, 20TH MAY, 1884.

Convocation met.

Present—The Treasurer and Messrs. Crickmore, Read, Hardy, Pardee, J. F. Smith, Cameron, Hoskin, Bethune, Hudspeth, Kerr, Martin, Becher, Murray, MacKelcan, L. W. Smith, Irving, McCarthy, Ferguson, and Maclennan.

Mr. Hudspeth, moved the resolution of which he gave notice last term which was amended by consent and carried.

Mr. Murray, moved, pursuant to notice, that the following books, namely: Burton on Real Property, 1847; Sandars' Justinian, 1865; Main's Ancient Law, 1863; Kent's International Law, 1866; Lorimer's Institute's, 1872; MacKenzie's Roman Law, 1862; Powell's Law of Evidence, 1869; be placed in the book case to be lent to students under the general regulations.

On the letter of Mr. Macdonell, respecting certain proceedings in the Dominion Parliament during the last session thereof, being read it was moved by Mr. Hudspeth, seconded by Dr. L. W. Smith: That Convocation having heard read the letter of Mr. Macdonell, of 12th April, 1884. It is resolved that the Bench decline to deal with the matter under the statute or otherwise, no charge having been made by any person against Mr. Macdonell, and Convocation having no power or jurisdiction over the case. Carried unanimously.

SATURDAY, 24TH MAY, 1884.

Convocation met.

Present—The Treasurer and Messrs. Crickmore, Maclennan, Moss, Murray, Bethune, J. F. Smith, Read, and Kerr.

Mr. Read moved, seconded by Mr. Crickmore, that Mr. E. Blake be elected Treasurer for the ensuing year. Carried unanimously.

Mr. Moss moved and it was ordered that the chairman of the Standing Committees, and Mr. Moss be appointed a committee to select and report names of members of Convocation for the various standing committees of Convocation for the ensuing year.

FRIDAY, 30TH MAY, 1884.

Convocation met.

Present—The Treasurer and Messrs. Irving Crickmore, Meredith, Ferguson, Foy, Murray, Moss, L. W. Smith, Read, Martin, Maclennan, J. F. Smith, MacKelcan, Kerr, Hoskin, and McCarthy.

Mr. Crickmore presented the Report of the Legal Education Committee on the Law School, comprising the report of the lectures and the examinations which was received and read.

Mr. Maclennan, from the Committee on Reporting, presented their report as follows:—

The Committee on Reporting beg leave to report.

1. The returns of the reporting in the Court of Appeal and in the Queen's Bench and Common Pleas Division, shew that there are no arrears.

2. In the Chancery Division there are still forty-six cases unreported in which judgments were given prior to the year 1884, forty-eight judgments given in the present year, are also unreported, and twenty-six cases have been issued since last term; there is, therefore, necessity for more active diligence on the part of the reporters.

3. There are thirty-two practice cases unissued of a date prior to 1884, all of which are nearly ready but should have been published before this in order to comply with the rule of Convocation. There are forty-eight cases belonging to the present year in the printer's hands, and in a forward state of preparation.

4. The Committee regret that the expectation that the triennial Digest should have been published by this time should be disappointed, fifty pages are printed, seventy more in type, and its publication is confidently promised by the end of vacation.

5. The Committee have conferred with Mr. O'Brien on the subject of the early notes of cases in the Supreme Court in the same manner as he has heretofore done with the cases in the Ontario Courts, free of charge to Convocation so long as his present arrangement for printing notes of Ontario Cases is continued. Your Committee recommend the acceptance of Mr. O'Brien's proposal.

6. Mr. Grant has applied to your Committee for the sum of fifty dollars to pay for assistance obtained by him in completing volume tweney-nine of the Chancery Reports. And your Committee recommend that his request be granted.

All which is respectfully submitted.

(Signed) JAMES MACLENNAN.

May 30th, 1884.

The report was read and received.

Ordered for immediate consideration, paragraph by paragraph.

The first, second, third and fourth paragraphs were adopted.

On the fifth paragraph, Mr. Ferguson moved in amendment to substitute the following:—That the Reporting Committee be requested to negotiate with the Editors of both the LAW JOURNAL and the *Law Times*, for the purpose of securing the publication, under the direction of the Society, of Notes of Cases decided in Ontario Courts and Supreme Court at a price equal to one half that heretofore paid to the LAW JOURNAL for the Ontario Notes, nothing being payable for the Supreme Court Notes, and to conclude an arrangement on this basis, with either or both if possible. The amendment was carried, and the amended clause inserted.

Clause six was adopted.

And the report as amended was adopted.

Ordered—That the Secretary be directed to call the attention of Messrs. Lefroy and Boomer, to the large number of cases in arrears in the Chancery Division, and of Mr. Rolph, to the arrears in the Practice Reports, and to inform them that Convocation expects that these arrears will be cleared off forthwith, and that in future the work shall be kept up in accordance with the requirements of the Reporting Committee.

Mr. Maclennan, from the select Committee, to strike Standing Committees, reports the following Standing Committees for 1884.

Legal Education.—Messrs. J. H. Ferguson, Charles Moss, John Hoskin, James F. Smith, Hon. T. B. Pardee, F. MacKelcan, John Crickmore, D. Guthrie, H. C. R. Becher.

Library.—James Bethune, Hector Cameron, James Beaty, D. McMichael, J. H. Ferguson, Charles Moss, Hon. S. H. Blake, John Bell, Æmilius Irving.

Discipline.—Dr. Smith, James Maclennan, James Beaty, J. K. Kerr, Thomas Robertson, Edward Martin, D. McMichael, John Hoskin, Adam Hudspeth.

Finance.—J. J. Foy, John Crickmore, E. Martin, Hon. S. H. Blake, L. W. Smith, H. W. M. Murray, W. R. Meredith, Hon. A. S. Hardy, D. B. Read.

Reporting.—James Bethune, B. M. Britton, Hector Cameron, F. MacKelcan, D. McCarthy, James F. Smith, E. Martin, James Maclennan, H. W. M. Murray.

County Library Aid.—Adam Hudspeth, Hector Cameron, W. R. Meredith, Thomas Robertson, B. M. Britton, Hon. A. S. Hardy, E. Martin, J. K. Kerr, and D. Guthrie.

Journals of Convocation.—Hon. C. F. Fraser, J. J. Foy, J. Maclennan, Hon. T. B. Pardee, J. K. Kerr, John Hoskin, Chas. Moss, D. McCarthy, B. M. Britton.

The report was received and read.

Ordered to be considered forthwith and adopted.

The letter of Mr. S. J. Vankoughnet, enclosing a resolution passed at a meeting of the Bar, held on the occasion of the death of the late, Chief Justice Spragge, was read.

Mr. Irving moved, seconded by Mr. Maclennan. That the minutes of the Bar meeting, on the occasion of the death of of the late Chief Justice Spragge, and the communication transmitting same, be entered on the journal. Carried.

Mr. J. H. Morris, was elected a Bencher, in the place of Mr. Leith, resigned.

Mr. Murray, moved pursuant to notice, seconded by Mr. Moss, as follows:—That

the use of the large Hall be allowed to the Osgoode Legal and Literary Society for the purpose of their annual dinner, and also that the use of the lunch room be allowed them for quarterly dinners, applications to be made from time to time to the Finance Committee, who shall have power to make such rules in the matter as they consider necessary.

Mr. Read, moved in amendment to strike out all after the words "annual dinner."

The main motion as amended was adopted.

Mr. Crickmore moved that Mr. Moss be appointed to represent the Society on the Senate of the University. Carried.

Mr. Martin moved, pursuant to notice, seconded by Mr. Read, that the portrait of Chief Justice Cameron be painted for the Law Society. Carried.

Mr. Murray moved, seconded by Mr. Smith, that Mr. Berthon be the painter of the portrait of Chief Justice Cameron. Carried.

The Treasurer withdrew and Mr Maclennan was appointed chairman.

A letter was read from J. A. Macdonell, accompanied by a statutory declaration made by himself making certain charges of alleged misconduct against Mr. S. H. Blake. Moved by Mr. Murray, seconded by Mr. MacKelcan, and carried, that Convocation is of the opinion that the charge made by Mr. Macdonell against Mr. S. H. Blake is of such a character that it should be and is hereby referred to the Committee on Discipline to investigate and to report thereon to Convocation.

SATURDAY, JUNE 7TH, 1884.

Present—The Treasurer and Messrs. Moss, Murray, J. F. Smith, Maclennan, L. W. Smith, Morris, Hudspeth, Hoskin, Cameron, Foy, Ferguson, Kerr, Read, Irving, Bethune.

The report of the Legal Education Committee on the case of Mr. Murdoch was adopted.

Mr. L. W. Smith, pursuant to notice moved, seconded by Mr. Cameron. That notwithstanding any practice to the contrary the Secretary be instructed for the future, not to receive any notice after the period prescribed by the rules of the Society whether such notice be accompanied by the recommendation of a Bencher or otherwise. The motion was carried.

The following rule was read a first and second time.

Rule 25 is hereby amended by striking out the word "six" and substituting therefor the word "four."

The following rule was read a first, second and third time, and unanimously carried, namely :—

The Law School is hereby continued until the last day of Easter term, 1886, subject to the rules passed by this Society on the establishment of said School in Michaelmas Term, 1881, as amended by the rules passed in Easter Term, 1883.

The Treasurer withdrew.

Mr. Irving was appointed chairman.

Mr. Hoskin presented the report of the Discipline Committee which was adopted as follows :—

The Committee on Discipline to whom the complaint of Mr. Macdonell against Mr. S. H. Blake was referred for consideration, beg to report to Convocation that they notified these gentlemen to appear before them with their evidence, and that they appeared accordingly. Your Committee heard the evidence adduced, considered the matter and unanimously find that the complaint in question was utterly groundless, and that no case of professional or other misconduct has been made out against Mr. Blake.

All of which is respectfully submitted.

(Signed) JOHN HOSKIN, *Chairman.*

It was then moved by Dr. Smith, seconded by Mr. Bethune, and ordered,

That inasmuch as garbled statements of the proceedings before the Discipline Committee in the matter of the charges made against the Hon. S. H. Blake, seriously affecting that gentleman's position and standing, has found its way into the public press, the Secretary be authorized to furnish such of the papers as may desire to publish an authentic statement of the facts, a copy of the report of that Committee as adopted by convocation.

Mr. Hoskin from the Discipline Committee reported verbally on the case of the complaint against Mr. P. A. Hurd.

24TH JUNE, 1884.

Present—Messrs MacKelcan, Morris, Foy, Murray, Beaty, J. F. Smith, Mac-

lennan, Guthrie, Hardy, Ferguson, Moss, Read, Crickmore, Kerr, Dr. Smith.

The Legal Education Committee reported, recommending that Mr. L. H. Dickson receive his certificate of fitness, and that Mr. C. Potter be permitted to withdraw his application for admission as a junior, and to present himself for admission as a graduate next term.

The report was adopted.

The finance Committee presented their report respecting the fees of Mr. Hurd and other matters.

The first clause was adopted. The consideration of the second clause was defined. The third clause was amended and adopted in amended form.

The letters from the Treasurer and Mr. Edward Harrison, were read.

On the motion of Mr. Hardy, seconded by Mr. Beaty, it was ordered, that a certificate under the Seal of the Society, signed by the Treasurer and Secretary of the Society, be issued to Mr. Harrison, setting forth the date and facts of his examination upon which he was admitted as a member of the Law Society in terms as nearly as possible the same as those of the certificate granted him by the Society upon such examination, the said Harrison having as he alleges lost such certificate and having applied for a duplicate thereof, and that the fee for such certificate be four dollars.

A letter from Mr. J. A. Macdonell was received and read, asking for copies of the proceedings on his charge against Mr. S. H. Blake.

On motion of Mr, Read, seconded by Mr. Hardy, it was declared that the application be not granted.

Mr. Moss' rule amending rule twenty-five by striking out the word "six" and substuting therefore the word "four" was read a third time, and carried.

Mr. Bethune's notice of motion relative to the refusal of witnesses to give evidence before the Discipline Committee was directed to stand for the second day of next term.

Mr. Murray gave notice of motion to amend rule 119, section 2.

Mr. MacKelcan gave notice of a resolution to apply to the Legislature of Ontario for power to examine witnesses on oath and compel their attendence, and the production of documents in all investigations conducted under the direction of the Benchers of the Society.

Mr. Kerr gave the following notice of motion for the second day of next term :—That the Reporting Committee be instructed to take no further action upon the resolution passed at last session of convocation, respecting the publication of the notes of cases of Ontario Courts, and of the Supreme Courts, and that the 5th clause of the Report of the Reporting Committee then submitted be adopted.

Mr. Beaty gave the following notice of motion for the second day of next term namely :—That it be referred to a select Committee consisting of Messrs MacKelcan, Moss, J. F. Smith, Hardy and Foy (three of whom are to form a quorum) to consider and report what the practice has been or ought to be in reference to furnishing copies of petitions, evidence, and reports or any of them laid before any Committee of Convocation or Convocation to persons interested, who may apply for the same and on what conditions or terms if they should be furnished, or whether they or any of them should be furnished under any circumstances other than by the authority of a court.

Convocation adjourned.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Tenancy by the entirety.—*Central Law Journal*, March 7, and April 25.

Voluntary payments.—*Ib.*

Foreign judgments.—*Ib.*, March 14.

Workmen's risks on strangers' premises.—*Ib.*

Malicious prosecution of civil causes.—*Ib.*, March 28.

Proof of legitimacy.—*Ib.*, April 4.

Insanity in will contests.—*Ib.*, April 11.

Evidence in bastardy cases.—*Ib.*, April 18.

Mandatory injunctions.—*Ib.*, April 25, and May 2.

Assignment of life policies.—*Ib.*, May 2.

Argument of counsel.—*Ib.*, May 9.

Constructive notice.—*Albany Law Journal*, March 29, April 5.

Presumptions of negligence.—*Ib.*, April 12.

Common words and phrases.

Show—Indicate—Alley-way—Passenger ship—Live stock—Running at large—Abide—Appendage—Present time—Carriage—Business—Religious worship—*Albany Law Journal*, April 12.

Manual labour—Harvest—Actually dwells—Beach—Upon—Rape—*Ib.*, April 19.

Property in public lectures.—*Irish Law Times*, April 5, and 12.

Negligent custody of title deeds by legal mortgagee.—*Ib.*, April 26.

Legal costume.—*Ib.*