THE

Canada Law Journal.

VOL. XXIX. FEBRUARY 16, 1893. No. 3.

DURING a recent argument in the Court of Appeal, the court intimated that their judgments delivered in *Blackley* v. *Kenney* (No. 2), 18 A.R. 125, ought to be reported *in extenso*, as they contained a collection and review of the authorities upon the subject of principal and surety, with special reference to mortgage transactions. The opinion of the court was expressed in the judgments of Osler and Maclennan, JJ.A., and we now give the profession the benefit of them in another place in this issue.

AMONG the very remarkable volumes published in that remarkable country, the United States, is the recently issued *American Annual Digest*, containing "all the decisions published in this country in the year ending August 31st, 1892." A reviewer of this *Digest* remarks: "So long as every cowboy judge on the limits of civilization thinks it his duty to re-write Blackstone in sections, so long must we endure this torrent of opinion. It is possible now to find in the United States decisions upon every branch of case law; and not only that, but to find a point decided probably both ways. The present volume contains twenty thousand decisions. Practitioners there must devoutly wish that all the case law in the country, barring that of the Supreme Court and a few of the State Courts of Appeals, had been collected in Chicago early in the year 1870, and that its great fire would recur at intervals of, say, ten years." There is, however, something to be said in favour of this great mass of case law, namely, that as there is so much of it practitioners pay very little attention to decided cases, and argue cases on first principles, and are thus also enabled to produce text-books in the first rank of Anglo-Saxon jurisprudence, and freed from the trammels of case law.

THE CRIMINAL CODE.

It is not as a matter of news we now refer to the open letter of Mr. Justice Taschereau, criticizing the various clauses of the Criminal Code which became the law last session, and which goes into force on the first day of July next. We cannot but regret that the learned judge has taken the course he has in this matter. Suggestions from one who has made a study of the subject of criminal law would doubtless have been gladly received by those who have the matter in charge at any time before the draft became crystallized into law; and notwithstanding the somewhat ungracious manner in which they have, at this late date, been presented, the Government will, doubtless, consider the alleged defects and deficiencies now pointed out.

One is at a loss to understand the reason which has animated the learned judge in the line he has taken. That he himself feels that his letter is open to adverse criticism is evidenced by the fact of his addressing the Attorney-General in these words: "Had it at all been possible for me to think for one moment that you were the author of this [code], I would certainly not have taken the liberty to address you these comments."

It scarcely needs to be stated that if an apology was necessary for the publication of this letter, the matter of the letter should have been communicated in an entirely different way. As to the statement that he does not blame the Attorney-General for the defects he claims to exist, it is idle to say that the latter is not responsible for them. Whether he drafted it, or any part of it, or suggested clauses, or revised the work or any part of it, is immaterial. He fathered it, and it is his. If it is defective and incomplete, as Mr. Taschereau comp. Sir John Thompson must bear the blame. We find, then, the position to be that a judge of Her Majesty's Supreme Court is calling public attention to his belief that Her Majesty's Attorney-General has given to Her Majesty's subjects a piece of bungling legislation, and that had he so desired he could have prevented this bungling by giving his suggestions to his brother functionary in ample time to have prevented these mistakes and defects; but he declined to do so. If the learned critic had not had an opportunity of examining the code until after it had been placed on the statute book, there would not be so much reason to criticize his action; but one is certainly at a loss to

account for the publication of this open letter at the present time, when it is remembered that the draft code was made public in 1891, was again distributed in 1892, and early last session was introduced after numerous alterations had been made and suggestions received from various parts of the country, and adopted.

In a matter of this kind, we are inclined to take the ground that it was a duty, and should have been a pleasure, for any one occupying the position of a judge, enjoying the confidence of the public, and receiving public money, so far as he conveniently could, the matter having come to his attention and being on a branch of the law of which he has special knowledge, to aid in making any legislation affecting it as complete as possible.

If we are told that it is immaterial as to the manner of the fault-finding, if there are faults to be remedied, we would say that we do not care to discuss in detail whether the criticisms of the learned judge are or are not justifiable; for the simple reason that we are satisfied that whatever of merit there may be in the objections taken, the Attorney-General is quite large-minded enough even now to carefully consider them, and make any alteration or amendment in the code which may seem desirable or necessary. Of course the code is not perfect. The age of miracles is past. We never heard of a code or any human production that was perfect. At the same time we confess that we have, with others, felt some natural pride in the Canadian Criminal Code. We think it is something of which the country at large may, on the whole, be proud.

There are many of the profession who, with ourselves, have preferred that any suggestions we could give, or criticism we could make, should be done unostentatiously, as a duty owed to the public by the profession. It should always be a pleasure to every true citizen to strengthen the hands of those who are honestly trying to do their best, and be willing that those who are responsible for the production of this most important and difficult work should receive the credit, and that the country should receive the benefit.

BENCH AND BAR.

If the Bar of Ontario complain occasionally of a judge who works them too hard, we hear of one in England who has recently been hauled over the coals for vagaries of an opposite character. The delinquent is a no less exalted personage than Chief Justice Coleridge, and so far as one can judge at this distance we should say, "Served him right." He seems to think he has a right to keep suitors, counsel, solicitors, witnesses, etc., waiting after the appointed time for holding courts until it suits his pleasure to appear. On a recent occasion he was due at court at 10.30 a.m., but did not appear until after 12. But then, as was remarked, he made it up by rising at 3.15 instead of 4 p.m., thus resurrecting the old joke of Charles Lamb, who, when rebuked for arriving late in the morning at the India office, promptly excused himself by saying, "But then, you see, I always go away so early in the afternoon." On this occasion the important matter that called him away was to propose a vote of thanks to the chairman of a meeting held in reference to the duty of the National Church toward the aged poor. A contemporary remarks hereupon: "We have no hesitation in declaring that Lord Coleridge would be far more profitably employed in considering his own duty towards suitors. He informed the distinguished company at Lambeth Palace that lawyers see too much of the weakness of humanity. We agree with his lordship; his own unpunctuality is a weakness that threatens to assume the proportions of a public scandal."

The *Law Gazette* thus alludes to a somewhat similar dereliction of duty: "When it was announced that the Lord Chief Justice would attend the jubilee banquet of the Early Closing Association, there was scarcely a member of the profession who did not immediately perceive a measure of appropriateness in his attendance. He has been given for some years to enjoying what in humbler walks of life are known as 'days off.' It was with something like keen regret, therefore, that the Bar heard of his lordship's inability to attend the banquet. His speech would have found many careful readers in the Temple, who would have recognized that his words were those of one in most hearty sympathy with the objects of the association. But Lord Coleridge expressed his sympathy in a far more effective fashion than by a speech. On the very day on which

the banquet was held, he might have been seen leaving the courts in a hansom at two o'clock. It sometimes happens that the list of cases to be tried in his lordship's court is a very short one—we will not pause to inquire the cause—and that he is able to complete it and leave the courts much earlier than the other judges. Not so, however, on the occasion to which we refer. The court rose in the midst of an important case urgently requiring decision.' The writer in the same journal concludes his remarks by drawing a contrast between the present Chief Justice and his predecessor, Lord Cockburn, who, he says, "Never once forgot what was due to the Bar of England, of which in his time he had been the official leader, and of whose high traditions, while himself a barrister, he was never unmindful. I do not believe that in the quarter of a century during which he presided over the Court of Queen's Bench, Cockburn ever once allowed any private engagement, however socially important, to interfere with the punctilious discharge of his public duties at Westminster Hall. I fail to see why Cockburn's immediate successor in the exalted seat of Lord Chief Justice of England should habitually treat the Bar of England with studied disrespect, or subordinate his official to his social life."

We conclude *our* remarks on this subject by returning for a moment to the complaints of our Hamilton brethren (referred to *ante* p. 1). One of them, after stating his view of the grievance, suggests that Parliament should interfere and define the hours of sitting, etc. It would, we think, be more satisfactory to the profession and the public for the presiding judge and the Bar to arrange such matters together, with due regard to the convenience of all, and according to the circumstances of each case. This was done in the days of such men as Robinson, Macaulay, McLean, and Draper. Why not now? Another correspondent writes as follows: "The Bar of this Province has always been loyal to the Bench, and have uniformly treated the judges with the utmost courtesy and respect, and they have a right to be treated properly." The writer did not say "properly," but something much more severe. Judges, however, have no opportunity of making any answer to strictures of this kind; so we take the liberty of substituting an expression which, in our opinion, is quite sufficient for the occasion. We trust that they will not be offended if we suggest to those of them to whom it may apply a little more consideration for the convenience and feelings of others.

We have a Bench which, as a whole, would be a credit to any country on earth. It would be greatly to be deplored if any member of that Bench should so act or speak as to call forth angry comments or raise hostile feelings on the part of a Bar, which would greatly prefer to treat it, if permitted, with most kindly respect and courtesy.

CURRENT ENGLISH CASES.

(Law Reports for December.—*Continued.*)

NEGOTIABLE INSTRUMENT—LAW MERCHANT—RAILWAY BOND PAYABLE TO BEARER —BONA FIDE HOLDER FOR VALUE—STOLEN BOND.

Venables v. *Baring*, (1892) 3 Ch. 527, was a contest between the plaintiff as *bonâ fide* holder of railroad bonds which had been stolen from the defendants, Baring & Co., as to the ownership of the bonds. The bonds in question were issued by an American railway company, and deposited by the company with the defendants, Baring & Co., as their agents for the sale of them. By each bond the company acknowledged itself to be indebted to two named trustees or "bearer" in a principal sum which would be due, and which the company would pay on the 1st May, 1903, at the defendants', Baring & Co's., office; and the company "further promised" to pay six per cent. interest thereon half-yearly, in accordance with coupons annexed, which were also payable to "bearer." The bonds also contained a statement that their payment was secured by a collateral mortgage on the company's property. This mortgage contained a proviso that in case of default of payment of the interest for ninety days, the principal on all the bonds should become payable. While the bonds in question were in the defendants', Baring & Co's., custody for sale, they were stolen in 1883. The defendants immediately advertised the loss. In 1891 the plaintiff, who carried on business as a banker, advanced a sum of money to a customer on security of some of the stolen bonds. The defendants, Baring & Co., having learned that the plaintiff was holder of the bonds, notified him that they were stolen and refused to pay the interest, and the present action was thereupon brought against the railway company and Baring & Co. to enforce payment. Kekewich, J., held that the bonds were negotiable instruments, and that notwithstanding the advertisement of the loss the plaintiff had not obtained them under such circumstances as disentitled him to claim as a *bonâ fide*

holder for value, following *Raphael* v. *Bank of England*, 17 C.B. 161. He also held that mere negligence on the part of the transferee to avail himself of the means at his disposal to detect the bad title of his transferrer was no defence to an action on a negotiable instrument.

COMPANY—MEMORANDUM OF ASSOCIATION—SUBSCRIPTION BY INFANT—CERTIFICATE OF INCORPORATION—INFANT—INCORPORATION, VALIDITY OF.

In re Laxon & Co., (1892) 3 Ch. 555, an important question was raised as to the validity of a certificate of corporation obtained under the Companies Act, 1862; the memorandum of association on which the certificate was granted having been signed, among others, by an infant, without whose subscription there would not have been the requisite number of subscribers to authorize the issue of the certificate of incorporation. Williams, J., while holding that the certificate of incorporation is not conclusive as to the sufficiency of the memorandum on which it was founded, was nevertheless of opinion that, as an infant's contract is good until avoided, an infant's signature must be taken to be that of a "person" for the purposes of the Companies Act, and would be valid to support the certificate of incorporation, even though the infant should afterwards repudiate the contract, as he had done in this case.

COMPANY—WINDING UP—DIRECTORS—MISFEASANCE—CONCEALED GIFT FROM VENDOR OF COMPANY—SECRET PROFIT.

In re Postage Stamp Automatic Delivery Co., (1892) 3 Ch. 566, Williams, J., held the directors of a company liable to account for the par value of shares, which they had received from the vendor of the company in pursuance of a secret bargain with him whereby they agreed to become directors, notwithstanding such shares never had any market value; on the ground that although the circumstances under which they received the shares in question were known to the actual shareholders of the company, there had been an intention to conceal those circumstances from the public, by omitting any reference thereto in the prospectus issued by the directors inviting the public to subscribe for shares.

COMPANY—DIRECTORS—MISFEASANCE OR BREACH OF TRUST.

In re New Mashonaland Exploration Co., (1892) 3 Ch. 577, directors of the company, which had power to lend money, and

promote other companies, passed a resolution authorizing a cheque for £250, to be drawn in favour of a Mr. Green, by way of loan on certain security. The cheque was drawn and handed to the company's solicitor, who gave it to Green without obtaining the security. The directors also passed another resolution authorizing the drawing of a cheque for £1000 to Green by way of loan on the security, *inter alia*, of a contract, the date of which, and the names of the parties to which, were left blank on the resolution. This cheque was also drawn and handed over by the solicitor of the company to Green, without the security being obtained. The £1000 was advanced to enable Green to bring out a company, the existence of which the directors considered would benefit their own company, and it was to the projected company the contract related. A judgment had been recovered against Green, but owing to his insolvency nothing could be realized thereon. Williams, J., held, under these circumstances, that the directors having exercised judgment and discretion were not liable for misfeasance or breach of trust. The learned judge appears to have come to this conclusion on the ground that the act of the solicitor in handing over the cheques without getting the security was done without the authority of the directors. Had they been parties to or concerned in his so doing, they would, in his judgment, have been liable.

WATERWORKS—EXERCISE OF STATUTORY POWERS—CONSTRUCTION OF WORKS UNAUTHORIZED BY STATUTE—INJUNCTION.

Herron v. *The Rathmines and Rathgar Improvement Commissioners*, (1892) A.C. 498, raised a very serious and important question involving, as Lord Halsbury, C., observed, a principle of construction of all private bill legislation. The defendants had procured the passage of an Act of Parliament empowering them to construct waterworks according to a certain specified plan, and for the purpose of constructing such works were empowered to interfere with the rights of private owners. In proceeding to construct the works in question, however, instead of following the plan laid down in the Act, they deviated therefrom in important particulars, and constructed a reservoir of a smaller size and placed an embankment in a different locality from that indicated in the statute. The plaintiffs, who were private owners who were affected by the defendants' works, brought the action to restrain the defendants

from taking or using the waters of the river, or from interfering with the flow of the river, otherwise than as authorized by the Act. This relief, though denied to them by the Irish Court of Appeal, the House of Lords (Lords Halsbury, C., Watson and Macnaghten) held they were entitled to, notwithstanding that the plaintiffs proved no actual damage to have resulted from the defendants' action. The decision, however, was not unanimous, Lords Morris and Hannen being dissentients, not from the general principle laid down by the majority of their lordships, but on the ground that the Act did, in fact, authorize some deviations from the plan laid down and that some of the work complained of was within the limits of the deviation thus authorized.

AMENDMENT—ACCIDENTAL SLIP IN JUDGMENT—JUDGMENT ON BOND—INTEREST ON BOND BEYOND PENAL SUM—(ONT. RULE 780).

Hatton v. *Harris*, (1892) A.C. 547, was an appeal from the Irish Court of Appeal. The appeal involved the question as to how far an accidental slip in a judgment, pronounced in 1853, could be amended. The facts which gave rise to the appeal were that, in 1842, the plaintiff's testatrix had recovered judgment on a bond for £1000, conditioned for payment of £500 and interest. Subsequently the claim on this judgment was proved against the debtor in a suit by other judgment creditors, in which, in 1853, a decree was made declaring the testatrix entitled to a charge against the land of the debtor for the amount of her judgment, with interest "until paid." It was contended, and practically conceded, that the judgment ought to have contained the words, so far as the testatrix's claim was concerned, "the principal sum and interest not to exceed the amount of the penalty on the bond"; and a subsequent incumbrancer on the debtor's land claimed that the decree of 1853 should be amended by the insertion of those words. The House of Lords (Lords Herschell, Watson, Macnaghten, and Field) unanimously affirmed the Irish Court of Appeal in granting this amendment, and held that the mistake was obviously an accidental slip within the meaning of the rule of the Supreme Court (Ireland), Ord. xxviii., r. 1 (Ont. Rule 780), and amendable notwithstanding the lapse of time.

MASTER AND SERVANT—NEGLIGENCE—INJURY TO WORKMAN, RESULTING IN DEATH AFTER ACTION BROUGHT—SECOND ACTION BY MOTHER—EMPLOYERS LIABILITY ACT, 1880.

Wood v. *Gray*, (1892) A.C. 576, although an appeal from the Scotch Court of Sessions, touches a question of law deserving careful consideration here. The facts were that a man named Darling was fatally injured whilst occupied in the business of his employers. Before his death he brought an action against the present defendants under the Employers Liability Act, 1880, for damages. He died before the action was tried. His mother then commenced the present action to recover damages for causing his death, which was dismissed by the Court of Sessions as not being maintainable. It would appear from this case that although Lord Campbell's Act is not in force in Scotland, yet by the Scotch common law a husband, father, wife, mother, or child of a deceased person is entitled to bring an action to recover damages for causing his death. The question therefore really was whether, when the deceased had himself commenced an action in his lifetime for the injury, an independent cause of an action for damages resulting from the same injury under the Scotch law vested in his mother. The House of Lords (Lords Watson, Halsbury, C., Herschell, and Morris) affirmed the court below in holding that no second action could be brought. The principle on which the Scotch court proceeded appears to be succinctly stated by Lord President Inglis in *Stevenson* v. *Pontifex*, 15 Ret. 129: "A single act amounting either to a delict or breach of contract cannot be made the ground of two or more actions for the purpose of recovering damages within different periods, but caused by the same act." How far the principle of this decision is applicable to our law is not quite clear. It seems to depend on whether the right of action given by Lord Campbell's Act (R.S.O., c. 135) is to be regarded in the same light as the right of action possessed by the relatives of the deceased under the Scotch common law. If it is not a separate and independent cause of action from that which the deceased person himself had, as *Read* v. *Great Eastern Ry.*, L.R. 3 Q.B. 555, and *Griffiths* v. *Earl of Dudley*, 9 Q.B.D. 357, would appear to show, then the principle of *Wood* v. *Gray* would apply. On the other hand, it may be observed that the Supreme Court has decided (not, it would appear, in a considered judgment) that the causes of action are distinct: *White* v. *Parker*, 16 S.C.R. 699.

BANKRUPT—ESTATE VESTED IN BANKRUPT UPON SECRET TRUST FOR OTHERS.

Heritable Reversionary Company v. *Millar*, (1892) A.C. 598, consumes twenty-seven pages of the reports to establish what might be thought the very elementary principle that when an estate is vested in a bankrupt by an absolute disposition registered in his own name, but which, it appeared, he held only as trustee for others to whom he had given an unrecorded acknowledgment of the trust, such estate does not vest in the bankrupt's trustee for the benefit of his creditors. But then, we may observe, the Scotch Court of Sessions had taken the opposite view.

EVIDENCE—HISTORICAL FACTS.

Read v. *The Bishop of Lincoln*, (1892) A.C. 644, although an ecclesiastical case dealing with questions of ritual to which it is needless to refer to here, also confirms a very important principle in regard to the law of evidence, and one which was only the other day applied by Boyd, C., in the *Queen Victoria Park Commissioners* v. *Howard*, viz., that when it is necessary to ascertain ancient facts of a public nature, the law permits historical works to be referred to as evidence thereof.

Notes and Selections.

MESMERISM.—The following curious and interesting question is asked by *Law Notes:* "If A. mesmerizes B. and induces him to disclose his most private affairs, can B. have a summons for assault against A.? A metropolitan magistrate the other day declined to grant one. What is the remedy—a civil action for damages?" It has struck us on several occasions of late that before very lo[ng] the difficulties of the magistrate and of the law may be very appreciably increased by the constant recurrence of questions connected with the conduct of hypnotizers, mesmerizers, and others of the kind toward patients, particularly females. The existence of a mysterious power for evil, in the nature of hypnotization, cannot be denied or ignored.—*Indian Jurist.*

THE difference between the English way of doing things and the Indian way of doing things in dealing with petty criminal cases is amusingly illustrated by a recent case that occurred at

Kumbhakonam, in the Tanjore District, Madras. Three men were charged before a bench of magistrates with having committed a common assault. There were no less than four hearings, and six magistrates took part in deciding the question, of whom four convicted two of the accused persons, whilst two acquitted all three. But as will be seen from the judgment of the High Court on revision, which we print further on, not one of these six magistrates had heard the whole of the evidence, whilst one of the four convicting magistrates had not heard any of the evidence at all. The convicted persons appealed to the divisional magistrate, who dismissed their appeal. Finally, the case came before the High Court. In England a single magistrate would have settled the matter in half an hour, and no appeal or revision would have been possible. But, then, he would have settled it honestly and sensibly.—*Indian Jurist.*

LAW OF WILLS.—We sympathize with the views of the *Irish Law Times* in their allusion to what appears to be a serious defect in English testamentary law: "No curb is placed by the law of England on the arbitrary power of testators. If a person is proved to have been of sound mind, and not under undue influence at the time of making his (or her) will, and if the will is correct in form, English law will not venture to set it aside, no matter how cruel, how unjust, or unnatural may be its provisions. Suppose, for instance, a man has conceived some unfounded antipathy against his wife and children—a thing that sometimes happens—there is nothing to prevent him, according to English jurisprudence, from leaving them penniless, although he happens to die a millionaire. He may give all his property to an utter stranger—to a mistress, for instance—and the law will not interfere with his will. As a text-book on Probate Law puts it, "However ridiculous or extravagant the dispositions of a will may be, still if the testator was, at the time, of sound mind, and not acting under undue influence, the will must be established." Many examples have been given of absurd and capricious wills which have been upheld by the English Probate Court. The will of an Englishman who had at different times, while residing in India, professed the Hindoo and Mohammedan faith, and who, to the exclusion of all his relatives, left the bulk of his property for the benefit of

the poor of Constantinople, was held to be perfectly valid (*Austen* v. *Graham*, 8 Moo. P.C.C. 493). In 1838, a man named Boys, a clerk and bookkeeper, by his will left all his property to a stranger, and directed his executors to cause some of his bowels to be converted into fiddle strings, others to be sublimed into smelling salts, and the remainder of his body to be vitrified into lenses for optical purposes. This extraordinary will was upheld. (*Vide Monthly Law Magazine* for 1838, p. 117.) But surely the sanity of this testator was, at least, open to suspicion. Some restraint should certainly be placed on the arbitrary power of disinheriting those who have a natural claim on the testator. It is easy to conceive a case where a father might reasonably punish a worthless son by leaving him merely the means of subsistence; but the law should be at liberty to set aside wills which are inofficious, or, to use a less technical word, unnatural. Nearly every code of laws, except the English, has limited the powers of testators in this respect. In the laws of ancient Rome there was a form of procedure known as the *querela inofficiosi testamenti*, whereby children or other persons who had without cause been excluded from the testator's will could seek to set it aside, even though it was formally perfect. Even brothers and sisters of half-blood were allowed to bring this suit by the laws of Justinian. It should, however, be mentioned that, if anything was left to a person by the will, he could not attack it as *inofficiosm*, but he had the right to bring the action in *supplementum legitimae*, to have that which was left to him made up, so as to equal the fourth part of what he would have taken *ob intestato*. The testator's power of disposition is greatly restricted in France and Spain. In France, if a man at the time of his death has only one legitimate child, he cannot dispose of more than a moiety of his goods; if he leaves two children, he can only dispose of a third; and if he leaves three or four, he can only dispose of a fourth. In Spain, he who has a child, grandchild, or other descendant, can only will one-fifth to strangers. If he has no legitimate offspring he may give all to his illegitimate children; and a woman may, in the absence of legitimate offspring, leave all she dies possessed of to illegitimate children, provided they are not the fruit of adultery. The Italian law has somewhat similar provisions. In Turkey there is no power of making a will, and the law disposes of a man's property. Of course, there is an exception in the case

of non-Turkish subjects residing in the Ottoman Empire. Nature, and the elementary principles of justice, demand that no man should have the power, through mere caprice or malice, of beggaring his wife and children. English law has failed to recognize this principle, and therefore it is desirable that, either by statute or otherwise, the powers of testators should be curtailed within reasonable limits."

Reviews and Notices of Books.

A Review of the Movement for Abolishing the Grand Jury System in Canada. By John Alexander Kains, Barrister-at-Law, Osgoode Hall, Toronto. *The Journal*, St. Thomas, 1893.

We have in this a very able, complete, and intelligent summary of the subject treated of. Mr. Kains has made the subject his own, and has succeeded in putting together in a scholarly manner a compilation which will be of great interest when future generations seek for the reasons why Grand Juries were abolished, and the history of the movement in that direction.

The heading of his first chapter is suggestive, it being, as he styles it, "The beginning of the end." This, with the next chapter, a short account of the early stages of the movement for the abolishing of Grand Juries in Canada, forms an introduction to the subject. He refers especially to an address to the Grand Jury in the City of Kingston in the year 1869 by Mr. Justice Gwynne, wherein he remarks that "It is a matter worthy of consideration whether relief might not, without danger to the liberty of the subject, be extended to the gentlemen who are called upon to discharge the duties of Grand Jurors to their own great inconvenience and with very little practical benefit." The addresses to the Sessions of the County of Simcoe by His Honour Judge (now Senator) Gowan, taking the same view, are also here referred to.

It may very properly be said that the father of the movement, from a practical standpoint, is Senator Gowan, whose address to the Senate in March, 1889, is given by Mr. Kains in full. The latter says, speaking of the ex-judge, "I think it will be admitted that there is none better qualified by ability, length of experience, and desire to serve his fellow-men to speak authoritatively on this

subject than the learned gentleman" referred to. We have on former occasions referred to his masterly and exhaustive address on this subject, delivered in the Senate. Mr. Kains makes this address, as he says, the groundwork of his review. The opinions of Hon. Sir John Abbott and Sir John Thompson are necessarily referred to, as also those of the various judges who, in response to the invitation of the Government, have given their opinion as to whether or not Grand Juries should be abolished. As our readers are aware, the judges differ very widely in their views, but the majority agree with Senator Gowan.

One cannot read this review without a feeling that the days of Grand Juries are numbered. The more consideration that is given to the subject, the clearer it becomes that their usefulness is gone, and that it is merely a question of time when something better adapted to the requirements of the age and less open to objection will be substituted in their place. We have ourselves ventured a suggestion as to what the new order of things should be. We at present know of no better suggestion, and we notice that Mr. Kains, in his summing up, practically adopts the scheme we then outlined.

It would not be possible in a compilation on this subject to ignore what has been said in these columns in reference to the question involved. Mr. Kains has, therefore (in complimentary terms, for which we thank him), copied at length the articles which have appeared in these pages, calling attention to the various matters arising in the discussion.

The writer, in one of his chapters, gives a summary of the reasons against the Grand Jury system as they occur to him, quoting in connection therewith an incident in the reign of King James, which, though of ancient date, is not inappropriate. On one occasion, whilst making a royal progress through England, the King was met outside the town gates of a certain borough by the mayor and aldermen; the mayor on approaching the King humbly apologized to His Majesty for not having had the bells rung as he neared the place, stating that there were seven reasons for the apparent slight. "In the first place, my liege," said he, "we have no bells." The King was thereupon graciously pleased to remark that that reason was quite sufficient, and that he need not state the others.

DIARY FOR FEBRUARY.

1. Wednesday..Sir Edward Coke born, 1552.
5. Sunday.....*Sexagesima Sunday.*
6. Monday.....Hilary Term begins. W. H. Draper, 2nd C.J. of C.P., 1856. Q.B. and C.P. Divs. H.C.J. sit. County Ct. Non-Jury sittings in York begin.
7. Tuesday.....Convocation meets.
9. Thursday....Union of Upper and Lower Canada, 1841.
10. Friday .....Convocation meets. Canada ceded to Gt. Brit., 1763.
11. Saturday....J. Robertson appointed to Chancery Div., 1887.
12. Sunday.....*Quinquagesima, Shrove Sunday.*
14. Tuesday.....Toronto University burned, 1890.
16. Thursday....Chancery Div. H.C.J. sits.
17. Friday.....Convocation meets.
18. Saturday....Hilary term and H.C.J. sittings end.
19. Sunday.....*Quadragesima. 1st Sunday in Lent.*
21. Tuesday.....Supreme Court of Canada sits.
26. Sunday.....*2nd Sunday in Lent.*
27. Monday.....Sir John Colborne, Administrator, 1838.

Reports.

ONTARIO.

COURT OF APPEAL.

BLACKLEY *v.* KENNEY (No. 2).

Mortgagor and Mortgagee—Surety—Extending time—Discharge—Notice of suretyship.

The facts of this case are fully stated in the report of the case below, and in the reports of previous appeals to this court in 16 A.R. 276 and 16 A.R. 522. The court allowed the appeal with costs upon the ground (not taken in the court below) that as there was no evidence whatever of the plaintiff's knowledge of the covenant under which the alleged suretyship arose, and as he had no reason to think that the relation of principal and surety existed, his dealings with the debtor did not work a release, assuming that that relationship did exist.

This was an appeal by the plaintiff from the judgment of ROBERTSON, J., reported in 19 O.R. 169, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on May 29th, 1890. The judgments have not been printed in the report of the case (see 18 A.R. 135), but it is thought desirable, for reasons stated in another place (*ante* p. 93), to publish the judgments of OSLER and MACLENNAN, JJ.A.

The case was argued in the Court of Appeal by

Aylesworth, Q.C., and *W. Macdonald* for the appellant.

A. C. Galt for the respondent.

OSLER, J.A.: Appeal by the plaintiffs from the judgment of ROBERTSON, J., allowing the defendants' appeal from the report of a referee. The action was a mortgage action claiming delivery of possession, and, in default of redemption, a sale of the mortgaged premises, with the usual accounts, etc., etc. The mortgage was made by defendant J. M. Kenney to the plaintiff as

trustee for D. McCall & Co., dated 17th January, 1883, to secure payment of certain cash advances and of all indebtedness then due or thereafter to become due from Kenney to them on account of purchases or cash advances made by or to him from or by the firm.

Margaret Kenney, wife of the mortgagor, was made a defendant as being the owner of the equity of redemption, under a conveyance from her husband, dated 1st September, 1884, which was expressed to be made subject to the plaintiff's mortgage, which mortgage the grantor Kenney expressly covenanted "to pay off and discharge when due." The defendant Ferguson was made a party as being the assignee for the benefit of creditors of defendant J. H. Kenney, under an assignment dated 26th April, 1887, and as claiming to be entitled to the equity of redemption on the ground that the deed to the assignor's wife was fraudulent and void as against him.

The defendants the Kenneys insisted upon the validity of the deed to Mrs. Kenney, and that it had been made with the knowledge and consent of the plaintiff and the firm of D. McCall & Co. They also attacked the plaintiff's mortgage on several grounds, but nothing turns on this. The defendant Ferguson pleaded the assignment to him for the benefit of Kenney's creditors, and "that, acting upon the instructions of the inspectors of the estate, he had taken proceedings on behalf of the creditors to set aside the deed from Kenney to his wife as being void as against such creditors." He sought, however, no relief in the present action. On the 18th October, 1887, an order was made in Chambers, referring it to an official referee, to inquire and report "whether there is any, and if any, what sum of money due to the plaintiff in respect of the mortgage security in question in the cause."

By his first report, 30th June, 1888, the referee found (1) that the amount due upon the mortgage to that date was $4083.52; (2) specially, at the request of the plaintiff, that defendant Ferguson was entitled to the equity of redemption; (3) specially, at the request of the defendant Mrs. Kenney, that in the action of *Ferguson* v. *Kenney* (the action mentioned in Ferguson's statement of defence) he had found that the deed from Kenney to his wife was wholly voluntary, and when given was fraudulent and void against Ferguson as trustee, and in consequence he had not considered what was due to the plaintiff, under his mortgage, from defendant Margaret Kenney. On appeal to this court, it was held that the first and second findings were wrong; that the defendant Mrs. Kenney was the owner of the equity of redemption under the deed to her of the 1st September, 1884; that the plaintiff, the mortgagee, having advised and assented to the making of the deed, was not in a position to impeach it as fraudulent against himself and other creditors of the husband; and on the authority of *Hopkinson* v. *Rolt*, 9 H.L.C. 514; *Bradford Banking Co.* v. *Briggs*, 12 App. Cas. 29, and cases of that class, that he could not charge the property in respect of any advances made under his mortgage after date of the conveyance to the wife.

The case was therefore sent back to the referee to proceed in accordance with these directions. When the case again came before the referee, the defendant's counsel for the first time took the point that inasmuch that Kenney has covenanted with his wife "to pay off and discharge the plaintiff's mortgage

when due," she stood, as regards the land, in the position of surety for him; and as the plaintiff, with notice of the deed, had received the notes current at its date for which alone the mortgage stood as security time had been given to Kenney, the principal debtor, without her consent, and in consequence the land was discharged.

No objection appears to have been made before the referee that this defence was not open on the pleadings. The referee gave no effect to it, and by his second report, upon which this appeal arises, found that for principal and interest there remained due to the plaintiff, in respect of advances up to the 1st September, 1884, the sum of $2,790.02, instead of $4,083.52, as stated in the former report. He also reported specially that all the promissory notes held by the plaintiff, which represented defendant Kenney's debt on 1st September, 1884, had been taken from the bank where they had been discounted, and cancelled as they fell due, and returned to Kenney on his paying the notes or renewing them for the amount remaining due on each, and that defendant Mrs. Kenney was no party to renewal, and that the plaintiff did not, when the renewals were taken, reserve any rights against her "other than any rights which he was entitled to under the mortgage security."

On the defendant's appeal from this report, the learned judge held that the identity of the debt secured by the mortgage was not altered by the renewal of the notes; but he also held that Mrs. Kenney had, in respect of the land, become surety for the mortgage debt as represented by the original notes; and that as the effect of renewing these notes was to extend the time for payment of the debt, the land was discharged from the lien of the mortgage. From that judgment the present appeal is brought.

It is well settled that the relation of a mortgagor who has covenanted with the mortgagee for payment of the mortgage debt, and who sells the equity of redemption subject to the mortgage, is that of surety to the purchaser for payment of the debt. He has entered into a personal contract with the mortgagee for payment of the debt, which debt, as between himself and the purchaser, the latter has assumed; and if the mortgagee deals with the purchaser in such a way as to affect the rights of the former to compel payment in the terms of the original contract, he discharges the mortgagee from his liability: *Mathers* v. *Helliwell*, 10 Gr. 172; *Campbell* v. *Robinson*, 27 Gr. 634; *Calvo* v. *Davies*, 8 Hun. (N.Y.) 222; *George* v. *Andrews*, 60 Md. 26; *Paine* v. *Jones*, 14 Hun. 577; *Barnes* v. *Mott*, 64 N.Y. 397; Jones on "Mortgages," ss. 740, 741. And when the land is not sold subject to the mortgage, and the mortgagor covenants with the purchaser to pay off and discharge the mortgage when due, the same principle applies conversely in favour of the latter, so that the mortgagor is to be regarded as the principal debtor, and the purchaser *qua* the land as his surety. The mortgagor is undoubtedly the principal, nay, the only debtor; for whatever may be said in favour of the extremely doubtful proposition that the mortgagee has recourse directly against the purchaser when the latter has expressly assumed the mortgage as part of the purchase money, or covenanted with the mortgagor to pay it as such, he clearly gets no additional right against the mortgagor where the latter undertakes with the purchaser to discharge the mortgage. And as two persons, originally principal debtors, may as the result

of subsequent dealings, to which the creditor is not a party, become as between themselves principal and surety, and the creditor with notice that such relation had arisen is bound to observe it: *Liquidators of Overend Gurney & Co.* v. *Liquidators of the Oriental Bank*, L.R. 7 H.L. 348; *Oakeley* v. *Pasheller*, 4 Cl. and F. 207; *Bailey* v. *Griffith*, 40 U.C.R. 418; *Swire* v. *Redman*, 1 Q.B.D. 536; *Birkett* v. *McGuire*, 7 A.R. 33 (reversed in Cassels' S.C. Dig., p. 332, not reported). There is no reason in principle why, in such a case as the present, the purchaser of the equity of redemption should not, in the absence of any other controlling circumstances, be regarded in relation to the lands as standing in the position of surety to the mortgagee. Of that opinion was MOWAT, V.C., in *Gowland* v. *Garbutt*, 13 Gr. 578. See also *Barnes* v. *Mott*, 64 N.Y. 397. As between themselves, the mortgagor is primarily and the land secondarily liable for the debt, and the case falls within that class of cases in which, without any contract of suretyship, "there is a primary and secondary liability of two persons for one and the same debt, the debt being, as between the two, that of one of them only, and not equally of both, so that the other, if he should be compelled to pay it, would be entitled to reimbursement from the person by whom (as between themselves) it ought to have been paid": (*Per* Lord Selborne in *Duncan, Fox & Co.* v. *N. & S. Wales Bank*, 6 App. Cas. 1-10.) I cannot see that the absence of a personal liability on the part of the purchaser to the mortgagee makes any real difference (as it does not in the converse case); the thing is that the debt is charged upon his property, or property which has become his, and therefore the case was properly compared, by the learned judge below, to one in which the owner of land has in the first instance directly mortgaged it as security for the debt of another, without himself covenanting for payment. I should, therefore, but for the fact which I shall presently mention, have been disposed to agree with the learned judge that as time for payment of the principal debt was extended by the renewal of the notes current at the date of the sale to the defendant, her position had been altered to her possible prejudice, and that she was therefore entitled to insist that the mortgage was no longer a charge upon the lands. In its circumstances the case is novel, but in principle it appears to me that this would be a proper conclusion. But it by no means follows that the result would have been the same if the covenant had been merely the ordinary covenant against encumbrances, the right of action upon which could hardly have been affected by any agreement between mortgagor and mortgagee to extend the time for payment of the mortgage. There are, however, two grounds, neither of which seems to have been brought to the notice of the learned judge, on which, in my opinion, it should be held that defendant is not entitled to set up the defence on which she has succeeded below. One is that it is nowhere found that the plaintiff had any notice of the existence of the covenant on which she bases her right to be considered as a surety for the mortgagor. It may be that this has been assumed from the undoubted fact that the plaintiffs were cognizant of, and approved of, the intention of this mortgagor to convey the equity of redemption to the defendant. But there is no evidence that they ever saw the deed or knew that so unusual a clause was intended to be, or had been, inserted therein. The other ground is one to which I have already alluded, that the deed to her

was a voluntary deed made without any consideration paid or intended to be paid by her Her claim to relief does not arise out of any contract of suretyship to which the creditor is a party. What she asserts is an equity to have her land discharged of the mortgage, on the ground that the creditor by his agreement with the mortgagor has tied his hands, so that her right of action upon the latter's covenant with her is delayed. But does such an equity arise in favour of a volunteer—an equity to deprive the creditor of her estate merely in consequence of his having, without her consent, extended the time for payment of the mortgage? I think there is great force in the observations of MOWAT, V.C., in *King* v. *Keating*, 12 Gr. 29, on this subject. There the defendant had made a voluntary settlement on his wife and children, void as against his creditors, and the plaintiff's execution creditors filed a bill to set it aside. It was contended that the *cestuis que trustent* had become to the extent of the property sureties for the debts of the settlor to which the property was liable; and that as these creditors had abandoned or negligently lost the right to enforce certain *fi. fas.* against other property of the settlor, the *cestuis que trustent* were released (as regards the settled property) from the debt. The learned judge said: "I am not prepared to hold that a creditor is shackled in his dealings with a debtor who has made a voluntary settlement by rules which affect the relation of principal and surety; and that the voluntary grantee is entitled to keep the property if the creditor has given a day's time to the debtor, or has varied in the slightest degree his contract with the debtor after the execution of the settlement. The rules which the defendants desire to invoke are considered necessary in order to do justice to sureties, but it does not follow that they would be just between voluntary grantees and the creditors of the grantor. I think they would be most unjust and entirely indefensible if applied in such cases, and no authority or dictum was cited to me in favour of so applying them." These observations appear to me to apply forcibly to the contention of the defendants in the present case. It may well be that the plaintiff is precluded from setting aside the deed, yet I do not think it follows that the defendants can invoke against him the strict application of the equity of a surety to be discharged by reason of time being given to the principal debtor, a doctrine which has been said to be a refinement of a court of equity, and which in a case like this would be productive of the highest in-equity. *Petty* v. *Cooke*, L.R. 6 Q.B. 790.

I refer also to *Clough* v. *Lambert*, 10 Sim. 174, from which I draw the inference that a wife cannot set up the husband's voluntary covenant in support of an equity, which would destroy the right of the creditor to enforce his mortgage.

(In strictness this defence is not open to the defendant on the pleadings, an objection which is taken by the reasons of appeal. It was not put forward on the first reference, and is quite inconsistent with the position taken by her in the former action of *Ferguson* v. *Kenney*, in which she repudiated the covenant, and swore that it was inserted in the deed without her assent, and that she neither claimed nor ever had claimed any rights under it. If she is now permitted to set it up *quantum valeat*, I should say it ought only to be upon the terms of admitting what may not have been strictly proved before the referee in

this suit, viz., her evidence in the former suit of *Ferguson* v. *Kenney*, as was there shown to be the fact, that the deed was made without any consideration paid or intended to be paid by her.)

The defendants' cross appeal as to some of the grounds of her appeal from the referee's report which were disallowed or not passed upon by the learned judge seems to me to be without foundation. These grounds substantially are that (1) by the cancellation of the original notes or the notes current at the date of the defendants' deed, and the acceptance of the renewal notes, the plaintiff and his firm had elected to abandon their rights in respect of the former notes, and that such notes had in effect been paid, and the mortgage was not security for the renewal notes. (2) That the payments made in cash by Kenney subsequent to the date of the defendants' deed amounted to $3,661.61; and after deducting them from the debt then due, viz., $4,375.14, there remained due only the sum of $713.53 secured by the mortgage, instead of $2,790.02 as found by the referee. This last objection is not noticed by the learned judge in his judgment, probably because the opinion he had formed on the principal questions rendered it unnecessary to do so. The errors, if any, in the referee's finding have not pointed out, and I can see no grounds for interfering with it.

On the other point, I agree with the learned judge. If the defendant is right, the defence would have been open to Kenney himself if he had not parted with the equity of redemption, and he would have been entitled to have his mortgage discharged on the grounds that the debt had been extinguished. But the taking of a renewal note is a mere suspension and not an extinguishment or a payment of the debt. That is the substance of such a transaction. In the absence of evidence, we cannot assume that the parties meant to treat the debt as paid by the renewals, and thus to destroy the security. That would be contrary to the usual course of business and to the purpose for which the mortgage was taken.

If the notes were not paid in fact, and there can be no doubt of that, the liability secured by the mortgage remained outstanding and covered by it. See *Cameron* v. *Kerr*, 3 A.R. 30. *The City Discount Co.* v. *McLean*, L.R. 9 C.P. 692; *Jagger Iron Co.* v. *Walker*, 76 N.Y. 521 (shows, too, that the mere discounting of the note by the payee not material so long as it was not a sale of the note), and the cases cited in the judgment. See also *Fenton* v. *Blackwood*, L.R. 5 P.C. 167.

On the whole, it appears to me that the appeal should be allowed, and the second clause of report of the referee, and so much of the fourth clause as finds that the defendant Margaret Kenney is entitled to the equity of redemption and to redeem on payment of the amount due on plaintiff's mortgage, $2,790.02, affirmed. There is no appeal from that part of the judgment below, which allows the appeal from the report in respect of the proof of claims by Ferguson for creditors of Kenney. Ferguson has, as we have twice decided, no *locus standi* to attack the defendant Mrs. Kenney's deed, and I find it impossible to understand how, in a mere mortgage action like this, he has been permitted to intervene.

MACLENNAN, J.A.: In this case I am respectfully of the opinion that the appeal should be allowed, and that the motion against the report of the referee

should be dismissed, but upon a ground that was not brought to the attention of the learned judge in the court below.

It is not disputed that although the conveyance of Kenney to his wife is expressed to be in consideration of the sum of $4,000, it was in truth a voluntary conveyance, and there was never any intention that any consideration whatever should be either paid or received. The conveyance was made on the 1st of September, 1884, and there was then upon the land the mortgage in question, which was made on the 17th January, 1883. And the intention of Kenney being to make a gift to his wife of this land with a mortgage upon it, the natural form of the transaction would have been to convey it to her subject to the mortgage, that is, to make a gift of it just as it stood; or, in other words, a gift of the equity of redemption. The effect of that would have been that the wife would have taken the estate with the burden of the mortgage upon it, and she could not have compelled her husband to pay it off. As between Kenney and his wife, if either became a surety by such transaction, it was Kenney and not his wife, and the creditors would not have been affected in any way by giving time to Kenney. The gift was not carried out in this way, however. Although the deed is expressed to be subject to the mortgage, the words are added, "Which the said party of the first part (the husband) hereby covenants and agrees to pay off and discharge when due." It appears by the evidence that the first intention of the parties was that the conveyance should be in the ordinary form, and that the wife was to take it subject to the mortgage, and I gather that it was actually drawn and executed in the first instance in that form. Afterwards, however, the solicitor who drew it suggested the alteration, and it was accordingly altered by inserting the covenant, and was re-executed. If the deed had remained in its original form, it is clear that the plaintiff's position as mortgagee would not have been affected in any way, and he could have dealt with Kenney in any way he pleased, for in that case Mrs. Kenney would herself be the person whose duty it was to pay the debt. This appears from the case of *Jenkinson* v. *Harcourt*, Kay 88, where Lord Hatherly uses the following language, speaking of a person who has mortgaged his land: "If he aliens the real estate in his lifetime to a volunteer, and more especially if he does so expressly subject to the mortgage, the natural inference from such a transaction, unless there be something in the instrument to indicate a contrary intention, is that the debtor did not mean to pay the debt out of his personal estate. If the alienation be made subject to the mortgage debt, whether the alienee be a volunteer or purchaser, then, in the absence . . . of a covenant in the settlement to pay the debt, the inference is that though as between his real and personal representatives his real estate was intended to be only a collateral security, yet from the moment of the alienation he has made that estate the principal debtor." Further on, in the same case, he says that instead of being the person as between himself and the voluntary donee to pay the debt, "the rights must be really just the converse, and supposing that the original debtor paid off the debt, being called upon under the covenant in the mortgage deed, he must be entitled to come upon those to whom he has transferred the estate, and insist upon being repaid by them." To the same effect are *Owens* v. *Braddell*, 7 Ir. Eq. 358 (1873), and *Seale* v. *Hayne*, 12 W.R. 239.

If, therefore, this had been a gift in the ordinary natural form, Mrs. Kenney would not have become, as between herself and her husband, surety for the plaintiff's mortgage debt, and it required the covenant, which was inserted at the last moment at the suggestion of the solicitor, to place her in that position. The husband covenanted to pay the debt, and to relieve the estate, which he had conveyed to her, from the burden. The question now arises, how is the plaintiff affected by the transaction as it was actually carried out?

Originally, and before the conveyance to Mrs. Kenney, the plaintiff was an ordinary mortgagee, Kenney was his debtor, and Kenney's land was his security, and in that state of things he could give whatever time he thought fit to his debtor without losing his security. In my judgment, both principal and authority require that in order that the creditor may be affected by the rules of law relating to suretyship, so as to be bound to treat what was originally a principal security as a surety merely, he should at least have notice that the relation has arisen, that the debtor has so dealt with the land that the creditor's position is altered, and that the new owner of the land is, as between himself and the debtor, a mere surety.

I think that such notice was necessary, and I do not find any evidence that the plaintiff had notice when he renewed the notes which were secured by the mortgage. I have read all the evidence over very carefully, and I do not find that the plaintiffs, or any of them, were ever informed that there was a covenant by the husband to pay the mortgage debt, or that as between him and his wife he was the person bound to pay it. The plaintiff's own evidence is that "his firm was on friendly terms with Kenney and his wife throughout, so much so that he advised Kenney to convey his property to his wife and protect her and his family," and, he adds, "the deed to her was to be subject to my mortgage." Kenney, in his evidence, says: "I executed the deed to my wife; the plaintiff advised me to do this before he was interested in my business." Mr. Bull says: "I had to do with drawing the deed; the plaintiff came over with Kenney at the time." Mr. Duggan says the deed was executed in Kenney's store, that it was drawn by Mr. Bull, and there was something put in by Mr. Kerr after the deed was drawn—it may have been the clause with reference to the mortgage. Mr. Kerr says the clause with reference to the mortgage was put in at his instance; does not recollect the deed being executed without such clause, and that a new deed was necessary. He knew a deed was drawn to Mrs. Kenney, and thinks he put in a clause as to the mortgage. He thinks McCall & Co. knew about the deed being made. Kenney gives the following evidence: "I spoke to the plaintiff and told him I wanted to transfer house to my wife, and he said he was very glad. McCall was spoken to about it, and he said, 'How are we to get paid?' Plaintiff said, 'Mrs. Kenney would have to sign all notes in the future.' Plaintiff then said, 'Come along, Kenney, and we will go over to Kerr & Bull's, and we went over there; the deed was drawn up and I signed it. I think the next day I received a letter from Kerr & Bull's, after I had signed the deed, asking me to come down to their office. When I went there my attention was drawn to an interlining which, I was told, Mr. Kerr thought would make the the deed better, and I signed the deed and left it there. The interlineation had reference to mortgage, I think, in left-hand corner of inside of deed." It is ap-

parent, from this evidence, that the plaintiff had no notice of the covenant in the deed, and had no reason to suppose that it was other than a deed subject to his mortgage, which would make the wife and the land the principal debtor instead of a surety, and it further appears that the covenant was an afterthought between the parties--indeed, a suggestion at the last moment made by the solicitor. Such being the fact, it is impossible to hold the plaintiff to be affected by a relation between husband and wife of which he was ignorant, and the existence of which he had no reason even to suspect.

For a principle so just, authority could hardly be required but the very highest authority is not wanting: *Oakley* v. *Pasheller*, 4 Cl. & F. 207; 10 Bl. 548; *Oriental Financial Corporation* v. *Overend, Gurney & Co.*, 7 Ch. 142, 152, S.C.L.R. 7 H.L. 348, 360, 361; *Swire* v. *Redman*, 1 Q.B.D. 538, 541.

For these reasons, which were not brought to the attention of the learned judge, I am of opinion that the judgment is wrong, and that the appeal should be allowed.

HAGARTY, C.J.O., and BURTON, J.A., concurred.

Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

TORONTO ADMIRALTY DISTRICT.

McDOUGALL, Local J.] [Feb. 2.

CHARLTON *v.* "COLORADO" & "BYRON TRERICE."

(Noted for THE CANADA LAW JOURNAL.)

Maritime law—Collision—Damages—Admissions in pleading—Right to begin—Cost of survey.

This was an action to recover damages incurred by reason of a collision on the early morning of August 12th, 1891, between the plaintiff's vessel, "The Starling," while moored to the dock at Windsor, and the defendant's barge "Colorado," in tow of the tug "Byron Trerice." The defendants in their pleadings admitted the collision, but claimed that the plaintiff's vessel was in fault, since there was no light on board and no stern line out, in consequence of which latter neglect "The Starling's" stern swung out into the stream as the tug and its tow were passing at a reasonable distance away from her, and that the collision was occasioned thereby. A survey of the damage done was made at the plaintiff's instance. Notice of intention to have a survey made was only given to the defendant by mailing a letter to his address on the day before the survey was made. Notice of the result was given to the defendant. There was also claimed demurrage, cost of survey, and towage to shipyard for repairs.

It was contended by plaintiff's counsel that the defendants should begin, since, having regard to their admissions, the onus was upon them to prove either that the collision was the result of unavoidable accident, or was occasioned by the fault of the plaintiff's vessel. (M.C.O. Rules, s. 139.)

Held, that the defendant having admitted that his vessels were moving and the plaintiff's vessel at rest, and that a collision occurred, he must begin on the question of liability for the accident, with a right to reply on the question of the amount of damage, if it should be necessary to go into that question.

Held, also, that negligence must be such as to contribute to the accident, and that as it was daylight at the time and the plaintiff's vessel was admittedly seen by the tug when more than one hundred feet away, and the tow was three hundred feet behind the tug, and, further, since the evidence showed that "The Starling" was properly and securely moored to the dock, the absence of a light did not constitute such negligence on the part of the plaintiff as contributed to the accident, and that therefore they were entitled to recover for the damages arising from the negligent navigation of the tug and her tow to the amount of the actual cost of the repairs, and also a sum (fixed at $7) for towage to the shipyard.

Held, also, that the cost of survey was not chargeable to the defendants, because reasonable notice was not given to enable them to be present or to be represented thereat.

Held, also, that demurrage should not be allowed, it being shown that "The Starling" was lying at the wharf awaiting commission (she being used as a lighter), and that as soon as a commission was secured the vessel went to work, although repairs were not then completed, and that no actual loss of earnings occurred by reason of the accident.

R. G. Cox for the plaintiffs.

J. G. Fraser for the defendants.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Full Court.] [Dec. 24.

IN RE TALBOT'S BAIL.

Criminal procedure—Recognizance of bail, form of—Notice to sureties—Estreat—Order of judge—Estreat roll, form of—Signature of clerk of court—Forfeiture of recognizance—Writ of fieri facias and capias, form of—R.S.O., c. 88—R.S.C., cc. 174, 179—Release of bail.

(1) A recognizance of bail is taken in open court by the clerk of the court addressing the parties, being then before him in open court, by name, and stating the substance of the recognizance; and the verbal acknowledgment of the parties so taken is quite sufficient without more.

(2) In this case a recognizance was drawn up which stated that the principal and sureties personally came before the clerk of assize, in open court, and acknowledged, etc.; and also stated that it was taken and acknowledged in

open court before the clerk of assize. As a matter of fact, the parties actually came before the court and properly acknowledged the debt to the Crown in open court.

Held, that the recognizance should have stated that the parties personally came before the court and that the recognizance was taken and acknowledged in open court, and that the name of the clerk should merely have been subscribed to it; but the errors made in drawing it up were not sufficient to avoid it.

(3) Notice to the sureties of the recognizance is not necessary where it is taken as and where this one was.

(4) The provision of R.S.C., c. 179, ss. 10 and 11, and R.S.O., c. 88, ss. 7 and 8, requiring the written order of the judge for the estreating or putting in process of a recognizance, applies only to recognizances to appear to prosecute, or to give evidence, or to answer for any common assault, or to articles of the peace, and does not apply to a recognizance such as the one here in question, whereby the bail became bound for the appearance of their principal to stand his trial upon an indictment for conspiracy.

(5) The estreat roll was sufficiently signed by the clerk when he signed the affidavit at the foot of the roll.

(6) It is no part of the duty of the clerk, in making up the roll, to instruct the sheriff as to what disposition he is to make of the money therein mentioned, when collected.

And where the clerk, in making it up, stated it to be made in acordance with a Provincial statute, and also with two Dominion statutes, thus leaving it uncertain whether the moneys were to be paid over to the Provincial Treasurer or to the Dominion Minister of Finance;

Held, that the words so used were surplusage, and did not affect the validity of the roll, and should be stricken out.

(7) The estreat roll, as drawn up, stated that it was a roll of fines, issues, amerciaments, and forfeited recognizances, set, imposed, lost, or forfeited, by or before the court, etc., commenced, etc., and contained the names of parties, residences, etc., with the amounts for which the bail were imposed filled in under the heading "amount of fine imposed."

Held, that the roll sufficiently showed the recognizance to have been forfeited, and that it was fairly entered and extracted on the roll as a forfeited recognizance.

(8) *Held*, that the proceedings to collect the debt due to the Crown under the recognizance were civil, and not criminal, proceedings, and were to be regulated by R.S.O., c. 88; and the writ of *fieri facias* and *capias* issued in this case, following the form given in the schedule to that Act, was not open to any objection.

(9) *Held*, that under the circumstances set forth in the affidavits, the court would not be justified in releasing the bail from their liability.

Aylesworth, Q.C., for the bail.

J. R. Cartwright, Q.C., for the Crown.

Div'l Court.]

POTTS *v.* TEMPERANCE AND GENERAL LIFE INS. CO. OF NORTH AMERICA.

Life insurance—Surrender of policy—Contract—Avoidance of—Fraud—Deceit—Evidence of fraud.

The rules which govern the purchase and sale of policies of insurance are the same which govern the purchase and sale of any other species of personal property; and it does not follow that, because contracts of insurance are said to be *uberrimæ fidei*, a contract for the purchase and sale of a policy is so too.

About two months before the death of the insured, when, as the insurers knew, he was very ill with heart disease, he surrendered to them a $5,000 policy, upon which premiums to the amount of $415.75 had been paid, and received $780 therefor, $250 in cash and the discharge of a debt of $530 for which the insured had pledged the policy. In an action by the executors of the insured to recover the full amount of the policy, it was contended that he was, at the time of the transaction, under the delusion that he would live a long time, and that the insurers permitted him to remain under that delusion knowing that he could not recover, and that this was such fraud as avoided the transaction. It appeared, however, that the insurers said and did nothing to induce or encourage such delusion.

Held, that the transaction could not be avoided on this ground, for the mere omission of the insurers to inform the insured that he was mistaken was not fraud or deceit.

Hill v. *Gray*, 1 Stark. 434, explained and distinguished.

Smith v. *Hughes*, L.R. 6 Q.B. 597, followed.

The manager of the insurers had stated to the insured that he would recommend what had been proposed, $250, for him, and that that was the best he could recommend to the committee. There was no evidence to show that this statement was not made in good faith, or that the insurers or their committee were prepared to give more, or that they were prepared to act in the matter at all except upon the recommendation of their manager, and it did not appear that the manager would have been willing to recommend anything more, had what he proposed not been accepted by the insured.

Held, that the statement of the manager was not evidence of fraud to go to the jury.

Jones v. *Keene*, 2 Moo. & R. 348, distinguished.

J. J. Maclaren, Q.C., for the plaintiff.

W. Cassels, Q.C., and *A. W. Anglin* for the defendants.

ROSE, J.] [Dec. 29.

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

Railways—Absence of cattle-guards—Animals killed—Liability—"Place where they might properly be"—51 Vict., c. 29, s. 271—53 Vict., c. 28, s. 2.

In an action for damages for the loss of horses killed on the defendants' railway, the statement of claim alleged that the horses "escaped" from the plaintiffs' farm, passed down a concession road to an allowance for road which

was intersected by the railway "on the level," then along the allowance for road to the point of intersection, and thence along the railway to the place where they were struck by a passing train. The only negligence charged was that the defendants had not constructed and maintained cattle-guards or fences. It was not alleged that the horses were in charge of any person.

Held, upon demurrer, that the horses being, contrary to the provision of s. 271 of the Railway Act of Canada, 51 Vict., c. 29, within half a mile of the intersection, and not in charge of any person, they did not get upon the railway from an adjoining place where, under the circumstances, they might properly be, within the meaning of 53 Vict., c. 28, s. 2, and therefore the defendants were not liable.

Watson, Q.C., for the plaintiffs.

H. S. Osler for the defendants.

Chancery Division.

Full Court.] [Jan. 16.

WEEKS *v.* FRAWLEY.

Receiver—Policy of life insurance—Order to sell—Equitable execution—Insurance for benefit of wife and children.

The plaintiff recovered judgment against the defendant for the sum of $300 and costs. An order was made appointing a receiver, and for the sale by him of a certain policy of insurance on the life of the defendant for $1000, upon which twenty out of thirty annual premiums had been paid, ten remaining to be paid if the defendant should so long live, after which there would be no more premiums payable. After the date of the order appointing a receiver, the defendant made an assignment or declaration under the Act to secure to wives and children the benefit of life insurance, purporting to secure the proceeds of the policy for the benefit of his wife and children.

Per BOYD, C.: No order to sell the policy should have been made against the will of the persons entitled under the assignment of the policy. They should have the opportunity of making payment under the semi-annual premiums so as to keep the policy on foot, and, if they did so, the policy should remain in the hands of the receiver till it could be realized upon the death of the insurer. If they fail to keep up the payments, it might then be proper (as the receiver had no funds wherewith to pay them) to negotiate with the company for the surrender of the policy, and the order should be modified accordingly. It was not necessary to consider the question of the rights of the wife and children, the matter having been argued on the footing that the act of the defendant in assigning the policy was subject to the charge created by the receiving order.

Per MEREDITH, J.: Whether there was power to make the order authorizing the sale of the policy or not, the case was not a proper one for the exercise of it, the plaintiff not having shown that the granting of it was necessary, having regard not only to his interests, but to the rights and interests of all parties and persons of a substantial character in the subject-matter. The order in question should therefore be set aside.

Per ROBERTSON, J.: It was competent for the defendant at any time to make the declaration for the benefit of his wife and children, and by such declaration the policy under the Act absolutely inured, and must be deemed a trust for the benefit of his wife for her separate use, and of his children, according to the intent so expressed or declared, so long as any object of the trust remained. And although the declaration was made after the receivership order, the plaintiff could not interfere with the policy so as to destroy the rights of the beneficiaries under it at the maturity of the policy, even supposing their rights to be limited to the residue after payment of the plaintiff's execution, which, *semble*, they were not.

Cameron for the appellants, the beneficiaries under the statutory declaration as to the policy.

Rowell for the plaintiff.

MEREDITH, J.] [Jan. 7.

IN RE HESS MANUFACTURING CO., SLOAN'S CASE.

Company—Promoter—Sale of property of promoter to company—Contributory.

Appeal from the decision of the Master in Ordinary.

Dr. Sloan, intending to promote the interests of a joint stock company for manufacture of furniture, became the purchaser of certain lands on which the factory was to be erected, for $3,000, which price, however, was not to be payable if the factory was actually built. The building of the factory was proceeded with, and Dr. Sloan contributed $7,300 for that purpose. The land being conveyed to him, he afterward obtained by a mortgage on it $7,000, thus repaying his advances except about $300.

The incorporation of the company was proceeded with, and a charter obtained, Dr. Sloan being one of the directors, and appearing as a subscriber for 150 shares, the shares being $50 each. At a meeting of shareholders, after he had ceased to be a director, but at which he was present by agent, an agreement was come to to purchase the property from Dr. Sloan for $25,000, payable by the assumption of the mortgage of $7,000, and the issue to Dr. Sloan of $18,000 of paid-up stock, which was to be held to include the $7,500 worth of stock for which he had subscribed. $18,000 worth of paid-up shares was accordingly allotted in the books of the company to Dr. Sloan.

The company being in process of winding up, the liquidator applied to have Dr. Sloan placed upon the list of contributories for 360 shares, representing the $18,000 in question. Prior to the winding-up order, Dr. Sloan had transferred 234 of the 360 shares, and was at the date of the winding-up order the holder of only 126.

Held, affirming the decision of the Master in Ordinary, that Dr. Sloan was liable to be placed on the list of contributories in respect to these 126 shares, but not of the remaining 234 shares, in view of the circumstances under which these latter had been transferred.

Per the MASTER IN ORDINARY: Dr. Sloan was disqualified from making any profit on his transferring that property to the company which he had assisted in creating for the purpose of using the property, and his obtaining

$18,000 worth of the capital stock of the company without giving any consideration in money or property was a breach of trust, as well as a breach of his contract to pay the value or price of those shares into the capital of the company.

Haverson for the appeal.

Hellmuth and *Raney*, *contra*.

Practice.

BOYD, C.] [Jan. 10.

EATON *v.* DORLAND.

Judgment—Delay in issuing—Application for leave to issue—Discretion.

In 1880 a bill was filed by the plaintiff for an account in respect of a mortgage, which had been assigned to the defendant as security for advances. A decree was pronounced in June, 1880, directing that the plaintiff might have an account if he desired it, and that the defendant should have his costs to the hearing. The decree was not then drawn up and issued, and in December, 1892, the plaintiff applied for leave to issue it.

The delay was not explained, except by saying that the plaintiff had been out of the jurisdiction, and no details were given of when he went away or when he returned. It appeared that the plaintiff had no beneficial interest upon the footing of the accounts as shown by the assignment and the answer. The defendant swore to the loss of one material witness through death.

Held, that the decree meant that the plaintiff should, within some reasonable time, exercise the option given him of having a reference to take the accounts, at the peril of losing it if changed circumstances worked any prejudice to the defendant; and that, under all the circumstances, the application should, in the exercise of a sound discretion, be refused.

Finkle v. *Lutz*, 14 P.R. 446, and *Kelly* v. *Wade*, *Ib.* 66, distinguished.

S. M. Jarvis for the plaintiff.

D. C. Ross for the defendant.

DELAP *v.* CHARLEBOIS.

Evidence—Examination of witnesses de bene esse—Rules 566, 588—Discretion—Appeal.

Rules 566 and 588 are in *pari materia*, and contemplate the examination of a witness *de bene esse* who is about to withdraw from Ontario, or who is residing without the limits thereof.

And where witnesses residing out of Ontario come within the jurisdiction and are about to return to their homes, an order may be made for their examination here before their departure.

Such an order is a discretionary one, and, where the witnesses have been examined under it, will not be reversed on appeal unless a very clear case of error appears.

Bristol for the plaintiffs.

Chrysler, Q.C., for the defendant Charlebois.

Masten for the defendants, the Commercial Bank.

BOYD, C.] [Jan. 31.

MOON *v.* CALDWELL.

Costs—Administration action—Unnecessary proceedings—Writ of summons or notice of motion—Set-off—Rule 1195—Jurisdiction of taxing officer.

In an administration action the plaintiff was allowed, upon taxation, only such costs as would have been allowed if he had begun his proceedings by a summary application for an administration order under Rule 965 instead of by writ of summons. The defendant urged that he should have taxed to him and set off his additional costs incurred by reason of the less expensive procedure not having been adopted. The defendant had not, in the action, admitted the right of the plaintiff to an account, but had pleaded a release, and had not protested against the increase of costs by the procedure adopted.

Held, that the defendant's additional costs had not been incurred by reason of the plaintiff's improper or unnecessary proceedings, but by the defendant's conduct in not admitting the right to an account, and in not objecting to the plaintiff's manner of proceeding at the earliest possible stage; and the case, therefore, did not come within Rule 1195.

Semble, it would have been proper to raise the question at the hearing; but the taxing officer had jurisdiction under Rule 1195, without an order, to "look into" it.

D. Armour for the plaintiff.

D. W. Saunders for the defendant.

IN RE COUTTS.

Infant—Maintenance—Fund in hands of administrator—Order for application—Jurisdiction—Summary application—Power of court over person or fund.

Where an infant's fund is in court or under the control of the court, a summary order may be granted for the application of it in maintenance upon a simple notice of motion, because the court is seized of the fund and can enforce its order. But if the money is outstanding in the hands of trustees or others, unless they submit to the jurisdiction, summary proceedings are inappropriate, because the court has no power over either person or fund.

And a summary application by the guardian of infants for payment to him or into court by the administrator of the estate of the infants' father of a fund in his hands was dismissed where it was opposed by the administrator.

Re Wilson, 14 P.R. 261, distinguished. *Re Lofthouse*, 29 Ch.D., at p. 929, followed.

Hoyles, Q.C., for the petitioners.

Patullo for the administrator.

F. W. Harcourt for the official guardian.

THE MASTER'S TREES.

(See *ante* p. 46.)

The Registrar explains that he
Is grieved that that old willow tree
Should make three judges disagree.
The reason, if in thought he stood
A moment, is extremely good:
The court was only "sawing wood."

Law Society of Upper Canada.

LEGAL EDUCATION COMMITTEE.

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

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

THE LAW SCHOOL.

Principal, W. A. REEVE, M.A., Q.C.

Lecturers: E. D. ARMOUR, Q.C.; P. H. DRAYTON; R. E. KINGSFORD, M.A., LL.B.; A. H. MARSH, B.A., LL.B., Q.C.

Examiners: A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON; FRANK J. JOSEPH, LL.B.

ATTENDANCE AT THE LAW SCHOOL.

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

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

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

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

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

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

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

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

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

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

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

A student or clerk who is required to attend the School during one term only must attend during that term which ends in the last year of his period of

attendance in a Barrister's chambers or service under articles, and may present himself for his final examination at the close of such term, although his period of attendance in chambers or service under articles may not have expired.

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

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

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

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

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

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

Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday, and Thursday. On Friday there is one lecture in the first year, and in the second and third years the moot courts take the place of the ordinary lectures. Printed schedules showing the days and hours of all the lectures are distributed among the students at the commencement of the term.

During his attendance in the School, the student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions, or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, students will be provided with room and the use of books for this purpose.

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

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

EXAMINATIONS.

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

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

Any student or clerk who under the Rules is exempt from attending the lectures of the School in the second or third year of the course is at liberty to pass his second intermediate or final examination or both, as the case may be, under the Law Society Curriculum instead of doing so at the Law School Examinations under the Law School Curriculum, provided he does so within the period during whhic it is deemed proper to continue the holding of such examinations under the said Law Society Curriculum. The first intermediate examination under that curriculum has been already discontinued, and that examination must now be passed under the Law School Curriculum at the Law School Examinations by all students and clerks, whether required to attend the lectures of the first year or not. It will be the same in regard to the second intermediate examination after May, 1893, after which time that examination under the Law Society Curriculum will be discontinued. Due notice will be hereafter published of the discontinuance of the final examinations under that curriculum.

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

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

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

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

On the subject of examinations reference may be made to Rules 168 to 174 inclusive, and to the Act R.S.O. (1887), cap. 147, secs. 7 to 10 inclusive.

HONORS, SCHOLARSHIPS, AND MEDALS.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for

competition in connection with the first and second intermediate examinations, and medals in connection with the final examination.

In connection with the intermediate examinations under the Law Society's Curriculum, no examination for Honors is held, nor Scholarship offered. An examination for Honors is held, and medals are offered in connection with the final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor.

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

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

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

The medals offered at the final examinations of the Law School and also at the final examination for Call to the Bar under the Law Society Curriculum are the following:

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

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

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

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

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

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

THE LAW SCHOOL CURRICULUM.

FIRST YEAR.

Contracts.—Smith on Contracts. Anson on Contracts.
Real Property.—Williams on Real Property, Leith's edition. Deane's Principles of Conveyancing.
Common Law.—Broom's Common Law. Kerr's Student's Blackstone, Bks. 1 & 3.
Equity.—Snell's Principles of Equity.
Statute L. Such Acts and parts of Acts relating to each of the above subject shall be prescribed by the Principal.

SECOND YEAR.

Criminal Law.—Kerr's Student's Blackstone, Book 4. Harris's Principles of Criminal Law.
Real Property.—Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone.
Personal Property.—Williams on Personal Property.
Contracts.—Leake on Contracts.
Torts.—Bigelow on Torts—English Edition.
Equity.—H. A. Smith's Principles of Equity.

Evidence.—Powell on Evidence.
Canadian Constitutional History and Law.—Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.
Practice and Procedure.—Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.
Statute Law.—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.

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

THE LAW SOCIETY CURRICULUM.

Examiners: A. W. AYTOUN-FINLAY, B.A.; M. G. CAMERON; FRANK J. JOSEPH, LL.B.

Books and Subjects prescribed for Examinations of Students and Clerks wholly or partly exempt from attendance at the Law School.

SECOND INTERMEDIATE.*

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44; the Rules of Practice, 1888, and Revised Statutes of Ontario, chaps. 100, 110, 143.

FOR CERTIFICATE OF FITNESS.

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

FOR CALL.

Blackstone, Vol. I., containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, and Statute Law, and Pleadings and Practice of the Courts.

Candidates for the Final Examinations are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

*The Second Intermediate Examination under this Curriculum will be discontinued after May, 1893.