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The BARRISTER

A. G. MACDONELL, D.C.L., Editor.

CONTENTS.

	PAGE.
Editorial—Bench and Bar in 1896	1
The Detention of Accused Persons	4
An Honourable United States Opinion Concerning the Behring Sea Dispute	6
Recent English Decisions	8
Osgoode Hall Notes	15
Recent United States Cases and Notes of Cases of Interest	16
Correspondence	22
The Voice of Legal Journalism—Extracts from Exchanges	23
Book Reviews	27
New Rules—High Court of Justice of Ontario—Divisional Courts	29
Recent Ontario Decisions	30

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The Barrister.

Vol. III. TORONTO, JANUARY, 1897. No. 1

EDITORIAL.

Bench and Bar in 1896.

Under the above heading the *Law Journal* gives a very interesting resume of what has been done or what has been left undone during 1896 in the English legal world. Applying the title of the article to Ontario we are safe in saying that little of special interest has occurred in legal circles in the province during the past year. At one time it was expected that the year would become famous in the annals of the profession by the publication of the new rules, in which radical changes would, it was thought, be introduced into the procedure of the Courts. The Rule Commission was engaged in preparing them before the beginning of the year, and for months past members of the profession have been asking one another and the members of the commission, When will the new rules be issued? But the year has been allowed to sink into the past without very much being accomplished.

The commissioners were appointed to consolidate the rules of practice by 58 Vict. c. 13, s. 42, and 59 Vict. c. 18, s. 15, and on the 20th December last a draft of the proposed consolidation was issued for distribution amongst the profession and others, with a view to obtaining suggestions in regard to the consolidation and amendment of the rules. Mr. Thos. Langton, Q.C., is the secretary of the commission. The draft has been widely distributed, but we fail to see that much benefit can be expected by its circulation, nor do we expect that suggestions will come in very freely. The delay in issuing the new rules necessarily prevents the publication of the new edition of Holmstead and Langton's Practice and Procedure. The absence of this work inflicts a greater loss on the profession than that caused by the delay in issuing the rules themselves.

The Canadian Bar Association owes its birth to the year just past. The promoters of this association deserve credit and encouragement for their efforts and the success they have met with. We fear, however, that the cart has been put before the horse in this matter, as, in our opinion, provincial bar associations should precede the formation of a Dominion association. The latter should be a federation of the local associations of the provinces. But the good work has commenced, let it go on; reforms will come when and where necessary.

The province was honoured during the year by a flying visit from the Lord Chief Justice of England, Lord Russell of Killowen. It was thought at the time that so distinguished a personage should have received a more fitting reception than was accorded him. From a certain standpoint this is true, and from another point of view there is room for another opinion. The Lord Chief Justice came here in vacation, when both Bench and Bar were largely out of town. His Lordship's visit to the United States was a formal one to attend the meeting of the American Bar Association. His visit here was a rest and recreation. It was a bit of vacation which we trust was enjoyed by his Lordship after a period of more or less anxiety among our good neighbours, who entertained him most handsomely.

We are happy to mention the fact that the grim reaper has not made a very bountiful harvest among the Bench and Bar during '96. No prominent members of the Law Society have been removed by death. The Chief Justice of the Court of Appeal has, it is true, obtained leave of absence; but we trust he will long be spared to us, even after he retires from his official duties.

A new crop of Benchers bloomed and blossomed in the spring days of last May. Quite a raid was made upon the Toronto Benchers by the members of the profession outside. The cry was got up in the country that everything legal was being centralized too much in Toronto. Although this was merely a cry without any apparent merit, it nevertheless succeeded, and we regret to record the fact that several of the most experienced and hard-working Toronto Benchers were not re-elected. The proportion of elected Benchers resident in Toronto is now altogether too small. One evil result of the election of so many outside men has already manifested itself (at least if we are correctly informed by Mr. Nobody). We understand it has been suggested that the travelling expenses of non resident Benchers should be paid. This is too startling for anything. After about a century of honourary services rendered by the Benchers of the Law Society of Upper Canada. Travelling expenses! ! ! Will the out-of-town

Benchers file an affidavit at each meeting of convocation with the secretary that they were necessarily absent "going to, staying at and returning from" convocation so many days? We think they should. What next—salaries? If the surplus funds must be spent, find another channel; eat two lunches, Mr. Bencher, every day when convocation meets instead of one only. Form a Solicitors' Benevolent Association similar to a very useful and influential organization of the kind in England, but relieve the profession from the odium attached to either submitting tamely to or protesting vigorously against the introduction of such a humiliating innovation. And, by the way, when speaking of a surplus, which we understand exists and is continually increasing, or being invested or expended in improvements, and so forth, when it reaches the mark allowed by law, why not reduce the annual fees? No one complains about these being burdensomely large, but if they are not required they are not necessary, and should be reduced or removed altogether. We do not intend this remark to apply to the admission and other fees payable by students, because we barristers have all had to pay these fees, and those entering the profession now should meet and surmount the same obstacles that we who have got there have experienced. Perhaps the student will cite the Bible instance of the labourers in the vineyard?

During the past year the Law School has done excellent work. Principal Hoyles is the right man in the right place. A man who is so popular with the students and so much respected by them at the same time must possess many of the qualities necessary for the position of principal. The same form lecturers, Messrs. Armour, Marsh, King and Young, were reappointed for the usual term. A competent staff of examiners was also appointed for the same period.

Another year has passed away without any change in the "personnel" of the Bench, notwithstanding the rumours of retirement and changes that were rife around Osgoode Hall during the year.

The ranks of Her Majesty's counsel have received no additions in this province. An order in council was passed by the late Conservative Government in June last which recommended the appointment of many members of the profession in this and the other provinces for this honour, but His Excellency the Governor-General refused to sanction the order in council, and the gentlemen whose names were included in the list still wear the "stuff." The Minister of Justice made a public statement giving his reasons for ad-

vising His Excellency to act as he did. The matter was then, with commendable promptness referred to the Courts. We ar all familiar with the text of the recently delivered judgment of the Court of Appeal for Ontario. We are not aware whether the case is going to be taken to the higher Courts. It was rather ludicrous to see the flag drop, and to hear the bugle blow indicating that the contestants "were off," only, however, to be called back and told that the start was a false one, and would have to be deferred for a time; till that time comes the profession is amusing itself by wondering if the wearers of the silk in the second attempt will be the same starters.

THE DETENTION OF ACCUSED PERSONS.

The death of the prisoner Kast in the course of his trial has added a new element to the public interest in the Russell-Scott libel prosecution. The legal result of the death of one defendant is, in the first instance, merely to remove a name from the indictment when a suggestion of death "pendente lite" has been entered upon the record. There will be no legal necessity for discharging the jury and beginning the trial over again. The only serious question from a legal point of view is that arising from the fact that this is the first case where one of a number of defendants, jointly indicted, and who are competent witnesses, has died in the course of a trial. Kast may, to a great extent, be regarded as a victim to the sanitary defects of the existing Old Bailey, and to the present system of detention of unconvicted persons, at least so says the *London Law Journal*. Kast, who was a young man, caught a severe cold after leaving the unwholesome atmosphere of the dock at the Old Bailey during the cold drive thence in the prison van to the cells at Holloway. The chief objects to be attained by the prosecution in the detention of accused persons are (1) to prevent escape, (2) to prevent the accused from directly communicating with each other on the subject of their case. The possibility of escape in these days of travel and communication is now so remote that the Crown might, with reason and good judgment, to say nothing of common humanity, relax the old-fashioned system of detaining persons merely accused of minor crimes, which had its origin and flourished in times when escape was frequently tantamount to an abandonment of the prosecution; but the extension of extradition treaties, electric communication, and the excellent police service of the civilized world of the present age, have done so much to aid the enforcement of criminal justice that we plead for a moderation of this ancient lock-up system. The maxim of our criminal law that an accused is presumed to be innocent until he is proven gulity, is now generally regarded as a mere fiction. The fact that two or more accused persons whom the law presumes to be in-

nocent, and who are, for that matter, the only persons in the world who are presumed to be innocent of the particular crime in question, should be cast into what is too often a pest-house, disgraced and frequently permanently injured in health and reputation, strikes one as being rather paradoxical. Police and police regulations are quite indispensable to civilization and morality, but nothing is more obnoxious to the ordinary Anglo-Saxon than a perversion of the principles of the due and proper enforcement of police law. Excessive zeal is too often exhibited by those whose avocation is the detection and hunting down of accused persons. Canada is, we regret to say, not free from obnoxious police law and Police Court abuse. Better judgment should be used, and a more just discretion exercised. The path between the criminal and the civil law is too narrow and too easily passed. The criminal law is too often invoked to enforce the collection of a debt or other civil demand; warrants are too easily obtained. Justices of the peace are almost invariably persons without any knowledge of law, and frequently without knowledge of any kind. In the majority of cases local or temporary or collateral influences have ample opportunity to expand themselves between the lines of a justice's warrant.

The lock-ups, even in large centres like Toronto, are wretched holes, almost invariably perishingly cold, and in severe weather damp and filthy. We recollect a case just a year ago which occurred in the Christian, morality-loving city of Toronto, and which is a scandal to Ontario justice. A young man, respectable and highly connected, returned to his father's home in Toronto to spend the Christmas season with his family; he had been residing in the United States for a year or two. Previous to his leaving Ontario he owed a merchant in an outside Ontario town an account amounting to about $100, for which the tradesman held his promissory note. This note had been reduced by sums paid on account by the young man from time to time during his absence. On Christmas Day the family became painfully aware of the fact that the house was being shadowed by police and detectives. This was explained later in the evening when police officers, accompanied by the constable of the outside town aforesaid, entered the house and arrested the young man, the house containing a number of guests and members of the family at the time. Our young friend was lodged in the cells with a number of others, including several drunk and riotous persons; bail was immediately applied for to Mr. Curry, the Crown attorney, at that gentleman's house. Mr. Curry was exceedingly kind and considerate, but explained that as the arrest had been made on a telegram from the police of an outside town no bail could be taken until the accused came before the magistrate in the morning. During the night the "accused" had to protect his life from repeated attacks by drunken fellow-prisoners. The following morning "a friend" of the complainant, who accompanied the village constable to town, approached the father of the accused with the usual yarn in such cases, "Just pay the debt and the matter will be dropped," etc., etc. This was done by the distressed

parent, and the prosecution was dropped, and the accused set at liberty, but in a wretched condition because of vermin and other disgusting surroundings. It was some time before the young man regained his reason, so great had been the strain upon him. It afterwards transpired that the magistrate who issued the warrant and the complainant were intimate personal friends. The magistrate and the family of the "accused" were not friends; no one connected with the prosecution (including the magistrate) was worth proceeding against, and so the matter dropped. We must not forget to add that the complainant was made aware of the return of the "accused" by a letter from the latter, saying that he was returning for a short time and would call upon him and make a settlement of the note. We have good reason to believe that cases of hardship equal to the above frequently occur. Good names are disgraced, futures ruined, and that ambition which is so truly called a virtue is forever cast aside by many, especially the young, when accused of crime and detained in prison. We plead for greater caution and safeguards in the issue of warrants of arrest, and for a relaxation of that ancient rigour of detaining in criminal cells those who are merely suspected or accused of the commission of crime.

AN HONOURABLE UNITED STATES OPINION CONCERNING THE BEHRING SEA DISPUTE.

A very able and instructive paper appears in the December issue of the *Western Reserve Law Journal*, of Cleveland, Ohio, entitled, "Some Recent Crises in the Diplomatic History of the United States." Mr. Frederick A. Henry, the author of the article, expresses the hope that in time soon to come all international disputes will be made the subject of arbitration, and adds: "It is a fitting tribute to the conservatism and discretion of the American people, that in spite of our lack of trained diplomats, such as have charge of the foreign affairs of the governments of Europe, in spite of our lack of experience and training in diplomacy, the foreign relations of the United States from the time of Adams and Franklin and Jay to the present, have been conducted in most cases with a discriminating judgment and with a gratifying success hardly equalled by the conduct of similar affairs of any other nation in the world. That there have been some exceptions to this rule, as in the case of our war with Mexico, in the case of our Chinese legislation, and in some more recent cases which it is my purpose to discuss, may be cause for regret."

The learned writer then proceeds to freely criticize the foreign policy of the United States in regard to the affair with Chili in the winter of 1890-91, the Hawaiian episode, the attempted application by the United States of the Monroe doctrine in the matter of the British-Venezuelan dispute.

In speaking of the Behring Sea difficulty, which concerns Canadians most intimately, and

which is still open and pending in so far as compensation is concerned, Mr. Henry gives the following short but interesting account, which is well worth reading, although the matter is still fresh in the minds of most of us:

"The next subject to which I invite your attention, is the Behring Sea dispute with England. That question had its origin in a far more laudable object than this government had in view in respect to the Hawaiian difficulty; namely, to prevent the extinction of the seals from Alaska. Moreover, our part in the controversy, unfortunate though it was in respect to its outcome, was prosecuted in the main by unobjectionable means. It is significant merely of the readiness with which some of our diplomats undertake to maintain entirely untenable positions when our material interests are supposed to be at stake.

"When, in 1867, Alaska was purchased by the United States from Russia, one of the principal grounds on which the treaty of purchase was defended against the popular clamour that we were purposing to pay $7,200,000 for an iceberg, and by which Senator Summer, with untiring energy and eloquence prevailed upon the Senate to ratify the treaty, was that the monopoly of the Alaskan seal industry which the United States would acquire by the purchase would of itself prove to be no mean recompense for our outlay. Yet it was the seal, entirely innocent though it is of the principles of international law, which, on account of its amphibious nature, and of its habit of wandering away from the mainland, and from the flag of the United States, into the sea, where the flags of all nations may waive, involved us in international complications.

"In 1823 Alexander I. of Russia, issued a ukase prohibiting foreign vessels from sailing, etc., within one hundred miles of Russian America. Our minister at St. Petersburg protested against this assumption of authority by Russia over the high seas, but no serious trouble arose therefrom until after our purchase of the territory. In the meantime it appears that the British Government had entered into a treaty with Russia which seemed to recognize Russia's authority in this behalf. But later on, when certain Canadian sailors availed themselves of the annual pilgrimage of the seals from the mainland of Alaska through Behring Sea to the Pribyloff Islands, to kill them while at sea, three of their vessels were captured by a United States revenue cutter and, by order of the District Court at Sitka, were confiscated, England, of course, protested against the alleged violation by the United States of her rights on the high seas, and by order of the President, the sailing vessels were restored to their owners. A long and bitter controversy followed, in which Great Britain denied the sovereignty of the United States over the waters of the Behring Sea outside of the recognized international limit of three miles; while, on the other hand, the United States contended that Behring Sea is a *mare clausum*, practically surrounded, as it is, by the territory of the United States. Behring Sea, it may be said, extends over nearly thirty degrees of longitude and ten degrees of latitude, and the claim of the United States that it is a *mare clausum*, or closed sea, was right-

ly ridiculed by England. While it is true, as contended by the United States, that the seals are useful animals; that it is necessary to the perpetuation of their species that they make their annual migration to the Pribyloff Islands, and that during this transit they cannot be indiscriminately killed without danger of extermination; yet the proper way of preventing so deplorable a result is plainly the adoption of a treaty by the parties concerned, recognizing their respective rights, if any, in the sealing industry, and limiting the prosecution of the business to such periods as shall not interfere with the perpetuation of seal life. The matter was finally submitted to an august tribunal of arbitration, which met in Paris in the winter of 1892-93, and which finally decided against the claim of the United States that Behring Sea is a *mare clausum*, although the force of the decision is softened by the further findings and recommendations of the Court in respect of the preservation of the seals. However uncomfortable for us the decision may be, it is gratifying to our pride that the sense of fair play which abides in the hearts of all our people has secured general recognition of the justice of the decision; yet it was feared during the pendency of this dispute that war might result to enforce our absurd claims. That it might easily have resulted had the controversy been with a lesser power than England is perfectly conceivable, and furnishes food for sober reflection."

RECENT ENGLISH DECISIONS.

High Court of Justice.

WYNNE v. TEMPEST.

[CHITTY, J.—Chancery Division.—16TH DECEMBER, 1896.

Practice—Parties—Third party—Following trust moneys—Partners of deceased co-trustee—Indemnity—Rules of the Supreme Court, Order XVI., Rule 48.

Action seeking to make the defendant liable for a breach of trust by him and his deceased co-trustee. The defendant alleged that the trust money was paid to the deceased as a member of a firm of solicitors, and obtained an order under Order XVI., Rule 48, giving him leave to serve a third-party notice against the surviving partners of the firm. They now moved to discharge the order.

It was contended in support of the order that the deceased having acted within the scope of his apparent authority as partner in receiving the money, the other members of his firm became liable; that the defendant was entitled to follow the trust money into the hands of the firm who had notice of the trust, and to charge the surviving partners with the amount.

Chitty, J., held that the notice was not within Order XVI., Rule 48. The claim of the defendant to bring the third parties before the Court was founded on an alleged right of indemnity. The right arose, if at all, not under any contract, but resulted from the relation of the parties. The defendant's claim to follow the trust money, and to charge the

third parties with the amount, was obviously not a claim to be indemnified by them against the plaintiff's claim in the action; it was not dependent on his being held liable to the plaintiff's claim, and could be asserted whether or not he was held liable thereto. As surviving trustee he was entitled to sue them to recover the trust moneys, and to such an action the circumstance that he was not personally liable to his *cestuis que trustent* would form no defence. Order discharged.

* * *

P. v. N.

[North, J.—Chancery Division.—12th December, 1896.

Presumption—Possibility of Issue—Old Man—Medical evidence Admissibility.

A fund in Court stood limited to a father for life, and on his death to such of his children as being sons should attain the age of twenty-one, or being daughters should attain that age or marry.

The father, who was now over seventy-two years of age, had three children, all of whom attained twenty-one. Two were still living. One had died a bachelor and intestate, and his father had taken out administration to his estate.

The father and the two living children now applied for payment out of the fund (after providing for incumbrances), asking the Court to presume that, having regard to the age of the father, the class of children would not be increased. They also tendered special medical evidence as to the father's state of health.

Edward Ford, for the petitioners, admitted that he could produce no authority for making such presumption in the case of a man.

North, J.—In the absence of authority I entirely decline to entertain the application or to look at the medical evidence. I foresee that if I were to make a precedent in this case it would be opening the door to hundreds of such applications.

* * *

BLUMBERG v. THE LIFE INTEREST AND SECURITIES ASSOCIATION.

[Kekewich, J.—Chancery Division—16th December, 1896.

Mortgagor and Mortgagee—Tender—Cheque—Solicitor's authority.

This was a motion by mortgagors to restrain the mortgagees from completing a sale of the mortgaged property.

The point argued on the motion was as to the validity of a tender of principal, interest and costs.

It appeared that Mr. Barnett, the mortgagor's solicitor, attended at the office of Mr. Stanley-Jones, the mortgagees' solicitor, and offered to Mr. Chapman, the managing clerk, £400 in cash and his (Mr. Barnett's) cheque for £50 7s. 10d., the total sum claimed for principal, interest and costs on behalf of the mortgagees, being £450 7s. 10d. The tender was made "under protest," and Mr. Chapman refused to accept the tender on this ground; but according to the view the Court took of the evidence, he was perfectly prepared to accept Mr. Barnett's cheque instead of cash.

It was now admitted that the tender was not invalid because made under protest, but it was contended that a mortgagee's solicitor had no authority to accept a tender by cheque, and that

there had therefore been no good tender as against the mortgagees.

Kekewich, J., said that he assumed that either Mr. Stanley-Jones, or Mr. Chapman in his place, had authority to accept a tender in cash; but it would be a mischievous extension of that authority to hold that they had any implied authority to accept a cheque by way of tender; that consequently, there had been no sufficient tender as against the mortgagees, and the motion must be refused.

* * *

COLLMAN (APPELLANT) v. MILLS (RESPONDENT).

[Queen's Bench Division (Magistrate's Case)—12TH DECEMBER, 1896.

Master and servant — Foreman slaughterman — Breach of by-laws under slaughter-houses, etc. (Metropolis) Act, 1874 (37 & 38 Vict. c. 67—Master's liability to penalties.

Case stated by a metropolitan police magistrate, who had dismissed two summonses against the respondent, the first charging that he, being the occupier of a licensed slaughter-house, did unlawfully slaughter certain sheep in the pound attached to the said slaughter-house; and the second charging that he did unlawfully slaughter certain sheep within the view of other sheep, contrary to the by-laws for regulating the conduct of the business of a slaughterer of cattle made in pursuance of the Slaughter-house, etc. (Metropolis) Act, 1874.

The by-laws were as follows: "No. 2. An occupier of a slaughter-house (a) shall not slaughter or permit to be slaughtered any animal in any pound, pen, or lair, or in any part of the premises other than the slaughter-house; (c) shall not slaughter or permit to be slaughtered any animal within public view, or within the view of any other animal."

It was proved or admitted that the respondent was the occupier of a slaughter-house; that on May 11, 1896, two sheep were slaughtered in the pound in the view of and close to eight or nine other sheep; that the slaughtering was done by one Alfred Brigden, foreman and slaughterman in the employ of the respondent, but who had no general authority to manage the business; that the respondent was absent when the slaughtering took place, and that he had forbidden his servants to do the acts complained of. Brigden was called as a witness, and acknowledged that he had disobeyed the respondent, and had done so to save himself trouble. The learned magistrate found that the acts complained of were done without the knowledge of the respondent, and dismissed the summonses on the ground that he could not be said to have "permitted" that which was done in his absence, without his knowledge, and against his express prohibition, and not done by any person who had general authority to manage the business, and referred the Court to *Somerset* v. *Wade*, 63 Law J. Rep. M. C. 126; L. R. (1894) 1 Q. B. 574.

The Court (Wills, J., and Wright, J.) held that the by-law must receive a rational construction so as to include the acts of servants, otherwise legislation on the subject would become inoperative. The case must be remitted. Appeal allowed.

[See a criticism on this case by *The Law Journal* (Eng.) at p. 25 of this number.—Ed.]

NEVILL v. FINE ARTS AND GENERAL INSURANCE COMPANY (LIMITED.)

[W. N. 171; 102 L. T. 131; 31 L. J. 676.

Libel—Privileged communication.

The agent of an insurance company resigned, and the secretary then sent out a circular to customers who had insured through that agent saying, "the west end office of this company has been opened at A street under B., and the agency of N. at C. street has been closed by the directors." N. sued for libel.

Held that the circular was not a libel, for the ordinary and natural meaning of the words in it did not impute anything discreditable to N.; and that, assuming the circular to be defamatory, it was a privileged communication, and would not be actionable without actual malice. (House of Lords, affirming, 72 L. T. Rep. 525.)

* * *

OGSTON v. ABERDEEN TRAMWAYS COMPANY.

[W. N. 175; 102 L. T. 154.

Tramlines—Injunction.

A tramway company, which had statutory powers to run a tram line in certain streets, was in the habit of removing snow from the tramlines to the sides of the streets by snow ploughs and of then putting salt on the lines. The local authority approved this method of dealing with snow.

Held, that a person dwelling in the town who suffered inconvenience from the heaping up of the snow at the side of the streets was entitled to an injunction. (House of Lords.)

Re McMURDO.—PENFIELD v. McMURDO.

[W. N. 171; 31 L. J. 678; 41 S. J. 114.

Solicitor—Interest on costs.

By Rule 7 of the Order under the Solicitors' Remuneration Act, 1881, a solicitor can charge interest on his disbursements and costs from the end of one month after the ordinary delivery of his bill of costs to the client. (North, J.)

* * *

PATTLE v. HORNBROOK.

[102 L. T. 133; 31 L. J. 691.

Written agreement — Parol evidence of condition precedent.

Parol evidence can always be given to show that a signed document, which appears to be a concluded contract, is not so in fact, by reason of a condition precedent which has never been complied with. (See *Pym* v. *Campbell* in Anson's Contracts, 8th edition, at 260, 261.)

H. employed a house-agent to find a tenant for his house. The agent wrote H. that there was a bona fide offer. H. arranged that the offeror should call on his solicitor. P. did so call, and was told he must satisfy H. as to his responsibility, and signed an agreement. The solicitor sent the agreement on to H., who also signed it. Then H. and P.'s brother met, and H. stipulated that A. and B. should become guarantors for the rent, and handed the agreement to his solicitor with instructions not to complete until A. and B. signed as security. A. and B. did not sign. P. sued for specific performance. Action dismissed. (Stirling, J.)

Re HANBURY.

[W. N. 172; 102 L. T. 133; 31 L. J. 678; 41 S. J. 114.

Costs—Solicitor and client—Taxation.

If a client changes his solicitor, and the new solicitor gets the usual order for delivery of a bill of costs and taxation—it is the duty of the old solicitor (1) to accept a tender of the amount which he claims, though such tender is not made in settlement, and (2) to deliver up the client's papers upon a proper receipt being given, but (3) the new solicitor must give an undertaking to return the papers if any sum is found due to the old solicitors on taxation, as in *Re Bevan*, 33 Beav. 439, and (4) the old solicitor is entitled to payment into Court of a proper sum to assure the costs of taxation (£100 was fixed in this case) as in *Re Gallard*, 53 L. T. Rep. 921. (Stirling, J.)

* * *

GOLD REEFS OF WESTERN AUSTRALIA v. DAWSON.

[L. J. 678; S. J. 111; W. N. 171; L. T. 132.

Has the Court jurisdiction, notwithstanding service of a notice of discontinuance, to hear a motion on the part of the plaintiff to have his name struck out of the proceedings?

North, J., considered that such an application could be made; for a notice of discontinuance has the same effect as, under the old practice, dismissing a bill with costs, and formerly such a motion could have been made, even after dismissal of the bill.

BRADFORD v. DAWSON AND PARKER.

[Queen's Bench Division—(Magistrate's Case.)—19TH DECEMBER, 1896.

Gaming—House used for payment of bets—Permitting house to be used for purpose of betting—Betting Houses Act, 1853 (16 & 17 Vict. c. 119), s. 3.

Case stated by a metropolitan police magistrate.

The case was argued before Wills, J., and Wright, J., on December 11, and referred by them to this Court. The respondent Dawson, a bookmaker, was summoned under the Betting Houses Act, 1853, s. 3, for using premises for the purpose of betting with persons resorting thereto, and the respondent Parker, a beerhouse keeper, for permitting Dawson to do so. It was proved that Dawson went to the beerhouse on several occasions and stood in the private bar. Persons with whom he had made bets elsewhere, and who had won, came to him and presented slips of paper, on receipt of which, if they corresponded with other slips in his own possession, he paid the bets. The magistrate dismissed the summonses against both the respondents.

W. O. Danckwerts, for the appellants, contended that the respondents ought to have been convicted, because the payment of bets, being an important part of the operation of betting, was intended by the statute to be included within the term "betting."

The Court dismissed the appeal.

Hawkins, J., said that the contract of betting having already been completed, the mere act of

payment was not an offence against the Act.

Wright, J., expressed some doubt, on the ground that the act was directed against the business of betting, of which the payment of bets was an important element. The Act being a penal Act, however, he did not feel sufficiently confident in his opinion to dissent.

Cave, J., Wills, J., and Kennedy, J., concurred with the judgment of Hawkins, J. Appeal dismissed.

* * *

PITTMAN v. PRUDENTIAL DEPOSIT BANK, LIMITED.

[T. 110 : S. J. 129.

If A. brings an action against B. to recover a debt of £1,000, and X. acts as A.'s solicitor, is an agreement between A. and X. that A. will, if successful, assign the judgment to X. binding?

No, said the Court of Appeal; the rule in *Simpson* v. *Lamb* (7 E. & B. 84) absolutely forbids a solicitor making any arrangement with his client concerning the subject-matter of the litigation which is being conducted by the solicitor until that litigation is over. The rule must, said Esher, M.R., be kept "as wide as possible."

* * *

SIMS v. TROLLOPE & SONS.

[W. N. 161 ; L. T. 84 ; L. J. 648 ; T. 57.

If the witness to a bill of sale, having no occupation, merely gives his name and address in the attestation clause, is the bill of sale void?

Yes, since by omitting the description the statutory form, which requires that the witness' name, address, and description shall be given, has not been complied with. In such a case the description should be stated as "gentleman." (S. 124.)

* * *

E. & G. HINDLE v. BIRTWISTLE.

[Queen's Bench Division—DECEMBER 16TH, 1896.

Factory and Workshop Acts—Dangerous parts of machinery—Omission to fence—Liability.

Case stated by the Recorder of Blackburn.

Messrs. Hindle, who were cotton manufacturers, were convicted by the magistrates of Blackburn for neglecting to fence a certain dangerous part of the machinery in their factory—to wit, the shuttles. It appeared that a shuttle flew out of one of the looms in the factory and injured a weaver, but the evidence showed that such an accident might arise either from negligence of the weaver or from some foreign substance accidentally getting into the shuttle race, or from some defect in the yarn. By section 5 of the Factory and Workshop Act, 1878, and section 6 of the Factory and Workshop Act, 1891, "all dangerous parts of the machinery" in a factory are required to be securely fenced.

The Recorder quashed the conviction.

The Court (Wills, J., and Wright, J.,) were of opinion that the above sections were not restricted to machinery which was dangerous in itself, but applied equally to machinery from which in the ordinary course of working, danger might reasonably be anticipated. They therefore remitted the case to the learned Recorder.

HOBSON v. GORRINGE.

[LORD RUSSELL, L.C.J., LINDLEY, L.J., SMITH, L.J.—Court of Appeal—10TH, 11TH AND 19TH DECEMBER, 1896.

Fixtures—Mortgagor and mortgagee—Article annexed to freehold—Article belonging to third person — Hire-purchase agreement—Mortgagee in possession.

Appeal from a decision of Kekewich, J.

On January 7, 1895, K., who was the owner in fee of a sawmill, entered into an agreement in writing with the plaintiff for the hire of a gas-engine for the purpose of being fixed on his premises. K. was to pay a certain monthly rent for the engine, and if he failed to pay the hire, or should (*inter alia*) commit any act of bankruptcy, or do anything whereby the engine might become liable to be taken in execution or under a distress, the agreement was to determine, and the plaintiff might repossess himself of and remove the engine. If at the expiration of ten months' hiring K. should have in all things performed the agreement, the engine was to become his property on the payment by him of a further sum of money.

The engine was placed by K. in his mill. It was fixed to a concrete foundation in the floor by means of four upright bolts projecting from the corners of the concrete and passing through holes in the bottom rim of the engine, nuts being screwed down on the bolts. In July, 1895, K. mortgaged his premises, together with the buildings thereon and the fixed machinery and fixtures, to the defendant. He did not pay all the monthly instalments of hire, and on January 17, 1896, he was adjudicated bankrupt. In March, 1896, the defendant entered into possession of the mortgaged property. The plaintiff brought this action claiming a declaration that the engine had not become part of the mortgaged property, but remained his property, and an injunction to restrain the defendant from selling it, or delivering it to anyone except the plaintiff.

Kekewich, J., held that the engine passed by the mortgage to the mortgagee, and could not, after he had entered into possession, be removed as against him.

The plaintiff appealed.

Their Lordships said that upon a mortgage in fee of land the mortgagee was, as between him and the mortgagor, entitled to all fixtures which might be upon the land; that, apart from the hire-purchase agreement, the engine, affixed as it was and for the purpose for which it was to K.'s freehold, became part of the freehold; that the true view of the agreement, coupled with the annexation of the engine to the soil, was that the engine became a fixture—that is, part of the soil —subject, as between the plaintiff and K., to the right of the plaintiff to unfix it and take possession of it in certain events; but that right was not an easement created by deed, nor was it conferred by a covenant running with the land, and it therefore imposed no legal obligation on a guarantee of the land from K., nor could it be enforced in equity against a purchaser of the land without notice. The defendant was in such a position, and the right could not be enforced against him either at law or in equity. The appeal must be dismissed.

OSGOODE HALL NOTES.

The Law School re-opened after vacation on Tuesday, January 5th. The students are now all engaged "plugging" for examinations.

* * *

The Literary Society held a business meeting on Saturday evening, January 9th. There was a small attendance. It was decided to hold the "at home" on Friday, January 15th, and committees were struck and contracts let. The Q. O. R. band and Glionna's orchestra were engaged for the occasion, and Webb secured the contract for refreshments. Mr. S. S. Sharpe brought forward a motion to change the constitution by providing that barristers and solicitors should hereafter only have votes for the presidency, instead of voting for a complete ticket. The motion was seconded by Mr. Perrin, and supported by Mr. McKinnon. Messrs. Church, Finlayson, McLean, Hassard, Joe McDougal, the president and others opposed the motion, which was voted down; failing to get the necessary two-thirds vote. Some old executive reports were also passed, and the meeting adjourned. It was decided to hold a mock parliament on Saturday, January 23rd and 30th.

* * *

It is said an effort will be made to have Mr. James A. Macdonald's mock trial, which produced such fun in the Literary Society last fall, put on the boards at the Princess. It would no doubt draw good houses under Mr. Macdonald's able direction.

The Osgoode hockey team defeated the Imperial Bank team on Victoria ice on Tuesday last by 18 goals to 2.

* * *

Osgoode has entered teams in senior, intermediate and junior series of the O. H. A. The Osgoode team has secured the Prince Albert Rink on the old U. C. C. grounds, corner of King and John streets, for practice. Mr. W. D. Henry has been elected captain of the first team.

* * *

The "at home" this year was a decided success. So much has been written in the daily press about it that it would be out of place here to dwell on it. The new Benchers' apartments were formally opened, and the "hall" never looked better for at home purposes. The library and convocation hall were used for dancing. The music was good, and Webb served an excellent supper. The financial statement will be ready in a few days.

* * *

The flash light photo taken at the Bar dinner is an excellent one. Copies can be had for 50c. at 75 Carlton street, or from Mr. Symons in the Law School. A copy of the picture is posted in the Law School.

* * *

Courtney Kingstone has been elected captain of the Osgoode Hall Rugby Football Club for next year. Ernest Burns is captain of the Association team, and Charlie Cross is captain of the lacrosse team.

The annual meeting of the Board of Directors of the Osgoode Hall A. A. A. was held on Wednesday, January 6th. The officers elected were:

President—Joe McDougal.

First Vice-president—T. L. Church.

Secretary—H. A. Burbidge.

Treasurer—David Mills.

Hon. President—C. H. Ritchie, Q.C.

Hon. Vice-presidents—N. W. Hoyles, Q.C., and E. D. Armour, Q.C.

A group photo of the present third year class will be taken during the coming month.

* * *

The date of the "exams" is an open question yet. Some students want them early and some desire them late. Mr. Hoyles, it is said, will likely split the difference and bring the exams on for Thursday, April 29th or Monday, May 3rd. The date will no doubt this year be a little earlier as the Law School closes on April 15th, two weeks earlier than usual.

RECENT UNITED STATES CASES AND NOTES OF CASES OF INTEREST.

HOLLEMAN v. HARWARD, ET AL.

[McIVER, J.—Appeal from Superior Court, Wake County — Supreme Court of North Carolina — Filed 24TH NOVEMBER, 1896.

Personal injury—Selling drug to wife—Husband's right of action.

An action for damages will lie at the suit of a husband against a druggist who, in violation of the express orders of the husband, has sold laudanum and similar preparations to the wife, in consequence of which she has become a confirmed subject of the opium habit, resulting in the loss of her services and companionship.

The plaintiff alleges in his complaint "that his wife by reason of the use of the drug as a beverage, had become a mental and physical wreck, and almost deprived of moral sensibility, unfitted and disqualified to attend to her household duties, or the care and nurture and direction of her children; and that by the means aforesaid so furnished by the defendants knowingly, wilfully and unlawfully, the plaintiff has been deprived of the society of his wife, of her services in her home, and his children have suffered from neglect and want of motherly care; that the plaintiff's family consists of his wife and six children, some of them very young, and all under age; that the plaintiff himself is dependent on his daily toil for a living, and the care of his household and children is dependent upon the services and attention of his wife; and that by the sale and use of laudanum she has become physically and mentally incapable of attending to her duties. The complaint further alleges that, but for the conduct of the defendants in selling and furnishing the plaintiff's wife laudanum, the plaintiff would have been able to have counteracted the habit, which was only forming at the time the defendants began to furnish her with the said deadly drug; and his

said wife, instead of being a burden from mental and physical and moral imbecility, would have been a comfort and a helpmeet. The question, then, is, can the plaintiff, upon the facts set out in the complaint, maintain an action? The action is a novel one. With the exception of the case of *Hoard* v. *Peck*, 56 Barb. 202, which, in its most important aspects, resembles the one before us, we have been able to find no precedent in the English Common Law Courts or in the Courts of any of our states. It does not follow, however, because the case is new the action cannot be maintained. If a principle upon which to base an action exists, it can be no good objection that the case is a new one. It is contended for the defendants, though, that there is no principle of the common law upon which this action can be sustained, and that our own statutory law gives no such remedy as the plaintiff seeks in this action for the wrong done to him by the defendants, and that the novelty of the action, together with the silence of the elementary books on the subject-matter of the complaint, while not conclusive, furnishes strong countenance to their contention. It is claimed for the defendants that while, in the abstract, such facts as are stated in the complaint would make the parties charged guilty of a great moral wrong, there would be no legal liability incurred therefor. It was argued for the defendants that there was no legal obligation resting upon themselves not to sell the drug, as is alleged, to the plaintiff's wife, or upon the wife not to use it; that many of the ancient restrictions upon the rights of married women had been repealed by recent legislation, or modified by a more liberal judicial construction; that a married woman was ordinarily free to go where she would, and that the husband could not arbitrarily deprive her of her liberty, nor use violence against her under any circumstances, except in self-defence, and that if he could not restrain her locomotion and her will, he could not prevent her from buying the drug and using it; that the wife's duty to honour and obey her husband, to give to their children motherly care, to render all proper service in the household, and to give him her companionship and love, was a moral duty, but that they could not be enforced by any power of the law if the wife refused to discharge them. But, notwithstanding the claim of the plaintiff, we think this action rests upon a principle—a principle not new, but one sound and consistent. The principle is this: "Whoever does an injury to another is liable in damages to the extent of that injury. It matters not whether the injury is to the property, or the rights, or the reputation of another." Story, J., in *Dexter* v. *Spear*, 4 Mason, 115, Fed. Cas. No. 3,867. And also in the third book of Blackstone's Commentaries (chapter 8, p. 123) it is written: "Wherever the common law gives a right, or prohibits an injury, it also gives a remedy by action." A married woman still owes to her husband, notwithstanding her greatly improved legal status, the duty of companionship, and of rendering all such services in his home as her relations as wife and mother require of her. The husband, as a matter of law, is entitled to her time, her wages, her earnings, and the product of her lobour, skill and

industry. He may contract to furnish her services to others, and may sue for them, as for their loss, in his own name. And it seems to be a most reasonable proposition of law that whoever wilfully joins with a married woman in doing an act which deprives her husband of her services and of her companionship is liable to the husband in damages for his conduct.

The defendants' counsel also insisted that the selling of laudanum is a lawful business, that it is on the same footing as the sale of spirituous liquors unrestrained by the statute. It is true that there is no statutory provision in North Carolina prohibiting the sale of laudanum as a beverage or as a medicine, but it does not therefore follow that a sale of it under all circumstances is lawful. As is well said in *Hoard* v. *Peck*, supra, "Its lawfulness or unlawfulness depends upon the circumstances of the sale, and the uses and purposes to which it is to be applied."

The habit she had formed was the direct result of the use of the drug, which the defendants sold to her in such large quantities, and they knew it and persisted in it, although repeatedly warned and entreated by the husband not to do so. His Honour erred in sustaining the demurrer. It ought to have been overruled. Error.

* * *

HARRY C. ADAMS (RESPONDENT) v. THE NEW JERSEY STEAMBOAT COMPANY (APPELLANT.)

[Court of Appeals, State of New York —Decided DECEMBER, 8TH, 1896.

Liability of steamboat company similar to that of innkeeper.

A steamboat company is liable to passengers for loss, without negligence on his part, of a sum of money reasonable and proper for him to carry upon his person to defray the expenses of his journey, stolen from his stateroom during the passage; and without any proof of negligence on the part of the company.

The liability of the company, in such a case, as an insurer of the property of its passengers, is similar to that which exists on the part of an innkeeper towards his guests.

Appeal from a judgment of the General Term, First Department, affirming a judgment in favour of the plaintiff.

O'Brien, J.—On the night of the 17th of June, 1889, the plaintiff was a cabin passenger from New York to Albany on the defendant's steamer "Drew," and for the usual and regular charge was assigned to a stateroom on the boat. The plaintiff's ultimate destination was St. Paul, in the State of Minnesota, and he had upon his person the sum of $160 in money for the purpose of defraying his expenses of the journey. The plaintiff, on retiring for the night, left this money in his clothing in the stateroom, having locked the door and fastened the windows. During the night it was stolen by some person who apparently reached it through the window of the room.

The plaintiff's relations to the defendant as a passenger, the loss without negligence on his part, and the other fact that the sum lost was reasonable and proper for him to carry upon his person to defray the expenses of his journey, have all been found by the verdict of the jury in favour of the plaintiff. The ap-

peal presents, therefore, but a single question, and that is, whether the defendant is in law liable for this loss without any proof of negligence on its part. The learned trial Judge instructed the jury that it was, and the jury after passing upon the other questions of fact in the case, rendered a verdict in favour of the plaintiff for the amount of money so stolen. The judgment entered upon the verdict was affirmed at General Term, and that Court has allowed an appeal to this Court.

The defendant has, therefore, been held liable as an insurer against the loss which one of its passengers sustained under the circumstances stated. The principle upon which innkeepers are charged by the common law as insurers of the money or personal effects of their guests originated in public policy. It was deemed to be a sound and necessary rule that this class of persons should be subjected to a high degree of responsibility in cases where an extraordinary confidence is necessarily reposed in them, and where great temptation to fraud and danger of plunder exists by reason of the peculiar relations of the parties (Story on Bailments, s. 464; 2 Kent's Com. 592; *Hulett* v. *Swift*, 33 N. Y. 571). The relations that exist between a steamboat company and its passengers, who have procured staterooms for their comfort during the journey, differ in no essential respect from those that exist between the innkeeper and his guests.

The passenger procures and pays for his room for the same reasons that a guest at an inn does. There are the same opportunities for fraud and plunder on the part of the carrier that were originally supposed to furnish a temptation to the landlord to violate his duty to the guest.

A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, is for all practical purposes a floating inn, and hence the duties which the proprietors owe to the passengers in their charge ought to be the same. No good reason is apparent for relaxing the rigid rule of the common law which applies as between innkeeper and guest, since the same considerations of public policy apply to both relations.

The defendant, as a common carrier, would have been liable for the personal baggage of the plaintiff unless the loss was caused by the act of God or the public enemies, and a reasonable sum of money for the payment of his expenses, if carried by the passenger in his trunk, would be included in the liability for loss of baggage (*Merrill* v. *Grinnell*, 30 N. Y. 594; *Merritt* v. *Earl*, 29 N. Y. 115; *Elliott* v. *Russell*, 10 Wend. 7; Brown on Carriers, s. 41; Redfield on Carriers, s. 24; Angell on Carriers, s. 80.)

It was held in *Carpenter* v. *N. Y., N. H. & H. R. R. R. Co.* (124 N. Y. 53) that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night, without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping-car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of

the common law in regard to carriers or innkeepers have not been extended to this new relation.

But aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked and otherwise guarded from intrusion. In the latter case, when he retires for the night, he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the innkeeper, since the two relations are quite analogous.

But the traveller who pays for his passage, and engages a room in one of the modern floating-palaces that cross the sea or navigate the interior waters of the country, establish legal relations with the carrier that cannot well be distinguished from those that exist between the hotelkeeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is to be as free from all intrusion as that assigned to the guest at a hotel. The two relations, if not identical, bear such close analogy to each other that the same rule of responsibility should govern.

We are of the opinion, therefore, that the defendant was properly held liable in this case for the money stolen from the plaintiff, without any proof of negligence.

The judgment should be affirmed.

All concur.

JAMES W. SMITH v. W. W. GRANT.

District Court of Colorado—First Division—Opinion filed 3RD DECEMBER, 1896.

Shadowgraphs as evidence.

Photographs made by the Cathode or X ray process will be admitted as secondary evidence upon the same grounds as maps, drawings, etc.

Lefevre, J.—"The defendant's counsel object to the admission in evidence of exhibits, the same being photographs produced by means of the X ray process, on the ground that, being photographs of an object unseen by the human eye, there is no evidence that the photograph accurately portrays and represents the object so photographed. This rule of law is well settled by a long line of authorities, and we do not dissent therefrom as applied to photographs, which may be seen by the human eye. The reason of this salutary rule is so apparent to the profession that as a rule of evidence we will not discuss it.

"We, however, have been presented with a photograph taken by means of a new scientific discovery, the same being acknowledged in the arts and in science. It knocks for admission at the temple of learning and what shall we do or say? Close fast the doors or open wide the portals?

"These photographs are offered in evidence to show the present condition of the head and neck of the femur bone, which is entirely hidden from the eye of the surgeon. Nature has surrounded it with tissues for its protection, and there it lies hidden; it cannot, by any possibility, be removed or exposed that it may be com-

pared with its shadow as developed by this new scientific process.

"In addition to these exhibits in evidence, we have nothing to do or say as to what they purport to represent; that will, without doubt, be explained by eminent surgeons. These exhibits are only pictures or maps, to be used in explanation of a present condition, and therefore are secondary evidence and not primary. They may be shown to the jury as illustrating or making clear the testimony of experts. The law is the acme of learning throughout all ages. It is the essence of reason, wisdom and experience. Learned priests have interpreted the law, have classified reasons for certain opinions which in time have become precedents, and these ordinarily guide and control especially trial Courts. We must not, however, hedge ourselves round about with rule, precept and precedent until we can advance no further. Our field must ever grow as trade, the arts and science seek to enter in.

"During the last decade at least, no science has made such mighty strides forward as surgery. It is eminently a scientific profession, alike interesting to the learned and the unlearned. It makes use of all science and learning. It has been of inestimable value to mankind. It must not be said of the law that it is wedded to precedent; that it will not lend a helping hand. Rather let the Courts throw open the door to all well considered scientific discoveries. Modern science has made it possible to look beneath the tissues of the human body and has aided surgery in telling of the hidden mysteries. We believe it to be our duty in this case to be the first, if you please, to so consider it, in admitting in evidence a process known and acknowledged as a determinate science. The exhibits will be admitted in evidence."

* * *

Eight-hour Law Declared Constitutional.

The State Supreme Court of Utah has just rendered a unanimous opinion sustaining the constitutionality of the eight-hour law. In accordance with the constitution of that state the Legislature enacted a law forbidding the employment of men in underground workings of mines more than eight hours per day, and making the enforced working of men for more than that time a misdemeanour punishable by fine.

William Hooley was compelled by Albert F. Holden to work for more than eight hours in a mine, and Holden was prosecuted, found guilty and fined $50. He refused to pay the fine and was committed to jail. He brought a suit of habeas corpus in the Supreme Court for his release, and on the writ the case was argued and decided.

The opinion was by Chief Justice Zane and concurred in by Justices Burtch and Miner. It reviewed the provisions of the state constitution, and also of the Federal constitution, which it was alleged were violated by the statute, and arrived at the conclusion that the Act was in contravention of neither the fundamental law of the state nor the nation. The right of the state to pass such a law was emphatically affirmed. The writ was therefore denied, and the plaintiff remanded to jail until discharged according to law.

This opinion settles a long discussion in Utah as to the merits of this measure. Its reasoning will doubtless be accepted as conclusive, and there can be no escape from the logical deductions of the eminent Chief Justice, who has so long expounded the law for Utah.

* * *

A young lawyer who lives in Cincinnati tells a story that reflects somewhat upon one of the older members of the Bar of that city. The older attorney was pleading a case before Judge Sage, and had talked incessantly for two hours. He had gone over and over the ground, and up into the air and down below the surface of the question, until it seemed as if nothing was left for him to say. He had talked and talked until most of the listeners were either asleep or wished they were, and those who were still awake were about making up their minds to rise in their might and throw chairs and things at him, when suddenly and unexpectedly the long-winded man stopped short and coughed.

"I should like a glass of water," said he to the Court attendant, and the man disappeared to get it for him.

For a moment there was a long-drawn sigh from the listeners, and then Judge Sage leaned forward to the young lawyer who tells the story and whispered:

"Why don't you tell your friend, Alfred, that it is against the law to run a windmill with water?"

CORRESPONDENCE.

To the Editor of THE BARRISTER.

Dear Sir,—The very recent decision of the Divisional Court, composed of Meredith, C.J., Rose, J., and MacMahon, J., on the 12th of January, in the Mechanics' Lien action of *Russell* v. *French* will, I think, be of interest to many of your readers, inasmuch as it is the first time that the Mechanics' Lien Act of 1896 has come before the Courts for review. The judgment of the Court was delivered at the close of the argument, so that our law reports may not contain any record of the case. As I was counsel for the appellant in the Divisional Court, I shall endeavour to give you the facts and the gist of the decision.

The owners entered into a contract with the contractor, under which the latter agreed to execute the masonry and brick work of three houses for the sum of $2,358. The contractor entered upon the work in pursuance of the contract, and at a time when he had done work to the value of $1,593, as certified to by the architect, and had been paid $1,275 on fortnightly certificates of the architect, he was dismissed from the job in pursuance of a term of the contract. The owners then entered into a new contract with a third person to complete the work at a cost of $933. The plaintiff supplied brick to the first contractor, and there remained $373 owing to him when the work was abandoned. The plaintiff claimed a lien to the extent of 20 per cent. of the value of work done at the time of the abandonment. The defendants,

the owners, sought to deduct from this 20 per cent. drawback the additional amount which it required to complete the work, over and above the first contract price; but the Court was unanimous in holding that under section 10 of the Act of 1896 the 20 per cent. therein directed to be retained by the owner is a fund set apart for the lienholders upon which a lien does attach notwithstanding that such percentage may never become payable to the contractor. The well known cases of *Goddard* v. *Coulson*, *Re Cornish* and *Re Sears & Wood* were held to be no longer applicable owing to the change made in the language of this section. The plaintiff was allowed the whole amount he claimed, viz., 20 per cent. of the value of the work done at the time of abandonment or dismissal. Section 13 of the Act, which seems to have been passed specially for the protection of wage earners, was held not to limit the right of the material man in this respect.

Yours truly,

J. H. DENTON.

Toronto, 13th January, 1897.

THE VOICE OF LEGAL JOURNALISM.

Extracts from Exchanges.

The judgment of the Court of Appeal in *Lane* v. *Cox*, affirming the decision of the Lord Chief Justice, lays down two rules. One is, that the landlord of a house let on a weekly tenancy is under no liability to the tenant to let or to maintain it in good repair. As to this, no lawyer probably felt any doubt. The other is, that the landlord is not responsible to a person who is in the house on the tenant's business for injuries caused by a structural defect in the premises which existed at the time of the letting. It must, however, not be supposed that a landlord who lets a house on a weekly tenancy is never responsible to a stranger for the result of the non-repair of the premises. He may, no doubt, be answerable when he has agreed to keep the house in repair, and *Bowen* v. *Anderson*, L. R. (1894) 1 Q. B. 164, shows that he can be sued for an injury to a passer-by on the highway due to a defect which dates from the time when the house was let. In *Sandford* v. *Clarke*, 57 Law J. Rep. Q. B. 507, the Court held that the landlord was liable to a stranger on the highway for injuries caused by a defect in a coal-plate, which was not proved to have existed at the beginning of the tenancy, on the ground that there had been a reletting at the end of each week—that is, after the nuisance was created; but in *Bowen* v. *Anderson* Mr. Justice Wills, who was a party to the judgment in *Sandford* v. *Clarke*, admitted that a weekly tenancy does not determine every week without notice, and that the case had been decided on wrong grounds. Fortunately for the public, the owner of a building, the different floors of which are let separately as

offices or chambers, is in a somewhat different position from the man who lets a whole house. When the staircase is in his possession and control, there is at any rate a duty on his part to the persons who come to the premises on business to keep the staircase in a reasonably safe condition.—*The Law Journal* (Eng.), 26th December, 1896.

* * *

Mr. Justice Williams on Liberty.

Mr. Justice Williams delivered his address as president of the Leeds Law Students' Society on December 10. His subject was "Law and Liberty in the Relation of Law to the Personal Liberty of the Subject." He said that in England liberty was not a law. There was no law proclaiming that people should be free. Frenchmen proclaimed at one period "liberty, equality and fraternity." In England there was no necessity to do that, as was clearly shown by a glance at the history of the English constitution. From time to time statutes had been passed to prevent any interference with the liberty of the subject. The liberty of England was proclaimed in the decisions of law Courts. That might be called common law, but there was no such thing as a written common law which they could study as a whole. Common law was really national instinct. That national instinct was sometimes expressed in the shape of statutes and sometimes in the shape of judgments. Whichever way it was expressed, it was the expression of the national instinct of liberty. The law of libel was as great an assertion of liberty as there had ever been. That instinct of liberty was illustrated by the fact that wherever Englishmen came in contact with any races of the world they immediately in their government extended to them the great principles of individual liberty and freedom and legal equality. As to India, our best defence and protection undoubtedly was the fact that we had been careful to extend to the people the well-known principle of equality, and he believed the people of India preferred to be governed by England rather than by any other people in the world. The moral influence of English justice had been seen in Egypt, where English officers had by their example turned men who scarcely deserved the name of soldiers into a gallant, capable army. As to the recent proceedings under the Foreign Enlistment Act, although it might be said that the persons concerned acted from an excess of patriotic feeling, yet because they had done a wrong to a nation of comparatively small power the sense of justice of Englishmen had brought about the conviction and punishment of the offenders. As to Lothaire's case, it was held that the judicial errors, as far as proved, did not destroy the official legality of the judgment under which Stokes was condemned, apparently because that judgment was guided by motives of conscience and probity. It was a dangerous thing for life and liberty if a defendant charged with offences against life and liberty could justify an illegal act by reliance on the goodness of his motives and previous good character. Referring to press criticisms on judgments, Mr. Justice Williams said that it would be absurd to suppose that a Judge was always entirely satisfied with his own

administration of justice, but it was just to concede to Judges an earnest desire to administer the law according to their views of it.—*The Law Journal* (Eng.), 26th December, 1896.

* * *

The new Canadian member of the Judicial Committee of the Privy Council is Sir Samuel Henry Strong, Chief Justice of the Supreme Court of the Dominion of Canada. He is well known in England, where he has spent many of his vacations. He was born in Dorsetshire, and is in his 71st year. He is the son of the late Rev. Dr. Strong, formerly the minister of the Church of England at Hull, in the Province of Quebec, and afterwards of Toronto. He was educated in Ottawa. He was admitted to practice in 1848 as an attorney and solicitor, and was called to the Bar in 1849, taking up principally the equity branch of his profession. In 1856 he was appointed a member of the Commission for the Consolidation of the Statutes of Canada and Upper Canada, and in 1863 he received "silk" and was raised to the Bench in the Court of Chancery as one of the Chancellors in 1869. He has never taken any decided part in politics. He was knighted in 1893, a year after he was appointed to the Chief Justiceship.—*Law Notes* (Eng.) for January.

* * *

Responsibility for Servants.

The case of *Collman* v. *Mills*, decided on December 14 by Mr. Justice Wills and Mr. Justice Wright, seems to mark an advance, if not an encroachment, in the law as to the criminal liability of masters for their servants' acts. The servant of a butcher, acting within the scope of his employment, killed a sheep in the view of another sheep. The servant was a slaughterman and not manager of the business. For this act of the servant the master was prosecuted under one of the by-laws in force in London as to the slaughter of animals, which prohibits the occupier of a slaughter-house from slaughtering, or permitting to be slaughtered, any animal in the view of any other animal. The master did not know of the act of his man, and had forbidden him to act as he did. Yet the Court held that the master had been properly convicted. To reach this conclusion they first decided the by-law to be consonant with the laws of England and the particular Act under which it was made. This is their first fallacy. We question whether it is consonant with the general principles of any system of law to make a man criminally liable for acts done by his servants in violation of his express orders. Where an Act of Parliament so prescribes in clear words or by necessary implication no more can be said by the Judges; but surely they are not justified in reading so exceptional a provision into a by-law. Where an act is forbidden absolutely a master may, perhaps, with justice be rendered an insurer for his servants; but when a by-law has the words "slaughter," or "permits to be slaughtered," the collocation of words seems in all fairness to require some act or knowledge by the master. The second fallacy of the Judges in this particular case seems to be in reasoning that because a by-law absolute in terms might be valid and render the master absolutely liable, there-

fore the particular words used had that effect. And Mr. Justice Wright uttered a dictum which seems to us to involve a further fallacy in saying that the licensing authority in granting a slaughter-house license could annex a condition that the applicant should be responsible for the acts of his servants. The breach of such a condition, if it could be lawfully annexed to the license, might perhaps justify refusal to renew it, but a man cannot contract to take criminal responsibility for the acts of others.—*The Law Journal* (Eng.)

[See report of case of *Collman* v. *Mills* at p. 10 of this number.—Ed.]

* * *

Law Notes (Eng.) for January, 1897, says: Two lawyers were discussing the other day the new rule at Ontario allowing women to practice at the Bar. One observed, "I don't see any objection to young women practising in Court. We have had lots of old women on the Bench; a few young ones at the Bar would be quite a nice change." We understand that he had just lost a case before Mr. Justice ——. Fill up the blank, readers, as you please.

* * *

New Corporations for the Year 1896 in the United States.

A statement as to the number of corporations organized during the year just past, and the gradual decrease in number from month to month, is undoubtedly of interest at this time. Within the last year there were 13,150 corporations organized in the United States as compared with 14,240 for the year 1895, a difference of about 1,000. Glancing at the table as below, it will be noticed that the number of corporations organized during the month of December was less than half of those organized in January of this year, there being a gradual decline in number. This probably being the result, to some extent, of the prospective election and the continued hard times, and also to changes in fee laws in the various states:

	1895.	1896.
January	1,386	1,530
February	1,139	1,478
March	1,242	1,789
April	1,268	1,189
May	1,110	1,164
June	1,318	1,239
July	1,089	975
August	932	810
September	1,142	857
October	1,010	721
November	1,388	698
December	1,216	700
	14,240	13,150

—*The National Corporation Reporter*, Chicago.

* * *

An attempt was made this week in an action for false imprisonment, which had resulted in nominal damages against one defendant and a verdict in favour of the other, to render the plaintiff's solicitor personally liable to the successful defendant for his costs. It failed, however, because, although the plaintiff was undoubtedly without means, the Judge was not satisfied that the action as against this defendant was frivolous and vexatious. There are numerous instances of a solicitor having been ordered to pay the costs of the opposite party. Most of them are cases in which the solicitor has brought an action without authority from the client, or has taken proceedings which must clearly be futile, either for an impecunious client

or for one out of the jurisdiction, or has guaranteed the client against the costs of the proceedings, and thereby made the action his own. The mere fact that a solicitor has undertaken an unsuccessful action for an impecunious client is not, and ought not to be, a reason for mulcting him in the other party's costs; but before beginning the action he may be obliged to satisfy himself by all reasonable inquiries of the worth of his client's case, and for having neglected to do so the solicitor in this particular litigation was refused his costs of successfully opposing the application. — *The Law Journal* (Eng.), 19th December, 1896.

BOOK REVIEWS.

Extracts from Sir Henry Cunningham's "Life of Lord Bowen."

"As for the law, it is of no use following it, unless you acquire a passion for it. He may not have one now for it. That is unimportant. I have known men develop a fondness for it, who never would have dreamed it possible that they ever could like it. But a passion in the end is necessary if he is to succeed. I don't mean a passion for its archaisms, or for books, or for conveyancing; but a passion for the way business is done, a liking to be in Court and watch the contest; a passion to know which side is right, how a point ought to be decided. This kind of 'professional' passion, as distinct from 'student' passion, is necessary." (Pp. 168-69.)

"Is it possible," he asked, "to introduce a gleam of sunshine and to furnish a silver thread to guide the law student through the tangled labyrinth of a law library? Wanted, then, a method of studying the law pleasantly. Now, I believe that there exists such a method, absolutely scientific, full of interest, capable of satisfying the finest intellect, because it affords a scope for every power. Law is the application of certain rules to a subject-matter which is constantly shifting. What is it? English life! English business! England in movement, advancing from a continuous past to a continuous future. National life, national business, like every other product of human intelligence and culture, is a growth—begins far away in the dim past, advances slowly, shaping and forming itself by the operation of purely natural causes." (P. 165.)

* * *

Cardinal Rules of Legal Interpretation. Collected and arranged by Edward Beal. London: Stevens & Sons, Ltd. 1896.

This is a new and valuable book, and we think the author's attempt to collect and arrange, in one volume, the Cardinal Rules of Legal Interpretation of all instruments, the *disjecta membra*, wherever found in reports and statutes, is justified by the result. His hope that the work may be of service to the profession and others, whether at home or in the colonies, will, we trust, be well founded.

We have been struck with the brevity and simplicity of the author's style. His plan is to lay down a cardinal rule in the simplest and briefest manner, and then, without comment, quote the very words from the heart of the decisions upon which he relies to sustain his statement. In most cases he has succeeded admirably.

After some practical remarks on the value of authorities, in which, by the way, he points out that the text books of living authors, even Judges, are not necessarily accepted as authorities in courts of justice, he gives the value to be attached to the leading reports, both ancient and modern. In this section we note, for example, the following:

"Decisions are the evidence of what is common law," and "The reason and spirit of cases make law."

We are told, under the heading of Statutes, that,

"Statutes made before the time of legal memory, viz., 1 Ric. I. (1189), are considered part of the common law, the statutes worn out by time."

The other principal headings of the book, after dealing with rules applicable to all instruments, are Contracts, Deeds, Mercantile Documents and Wills.

The portion dealing with Statutes occupies 107 pages, fully one-third of the book, and is really admirable. It is not intended to take the place of such books as Maxwell on Statutes, but will be very helpful, even with that well known work.

Having said this much in praise of the book, we may be permitted to point out that the portion of it dealing with Statutes affecting colonies scarcely appears to cover two pages.

Under that heading the rule is laid down that a valid Act of a Local Legislature has, as to matters within its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament, quoting from *Phillips* v. *Eyre*, (1870) L. R. 6 Q. B. 1, at pp. 18-20.

We had hoped that some of the more recent judgments of the Privy Council would, at least, have been referred to, such as *Hodge* v. *Queen*, (1883) 9 App. Ca. 117, where the notable statement occurs that when the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province and for provincial purposes, in relation to the matters enumerated in section 92, it conferred powers, not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and as ample, within the prescribed limits, as the Imperial Parliament, in the plentitude of its power, possessed or could bestow, and that within these limits the Local Legislature is supreme, and has the same authority as the Imperial or Dominion Parliament would have had under like circumstances, to confide to a body of its own creation, authority to make resolutions, etc., with the object of carrying the enactment into operation and effect.

In the case of *Powell* v. *Apollo Candle Company*, (1885) 10 App. Ca. 282, the Court, in dealing with a statute of New South Wales, said, referring to *Queen* v. *Burah* and *Hodge* v. *Queen*: "These two cases have put an

end to the doctrine which appears, at one time, to have had some currency, that the Colonial Legislature is a delegate of the Imperial Legislature. It is a Legislature restricted in the area of its powers, but, within that area, unrestricted, and not acting as an agent or delegate."

We trust that in a second editoin the author will give more attention to the empire beyond the seas, by reference to those cases before the Judicial Committee of the Privy Council, where, as Lord Watson remarked recently, "Really international questions between Canadian Governments come up for decision," of which he will find a treasury in Mr. Cartwright's Constitutional Cases.

We had expected a reference to the Colonial Boundaries Act, (1895) 58 & 59 Vict. c. 34, where a list of the eleven self-governing colonies of the Empire is given, Canada heading the list. Our readers will know the remaining ten.

NEW RULES.

High Court of Justice, Ontario—Divisional Courts.

The following rules were made by the Supreme Court of Judicature on the 9th January:

Rule 1429 is hereby repealed and the following substituted therefor:—

"218 (1) Unless otherwise ordered, sittings of the Divisional Courts shall commence on the first Monday in each month, and shall continue for two weeks, unless the business before the Court shall be sooner disposed of, subject to the following exceptions:

"(2) The Divisional Courts will not sit on any day falling in any vacation, nor upon any Saturday or public holiday.

"(3) Where the first Monday in a month shall fall in any vacation the Divisional Court will not commence its sittings until the first Monday after the expiration of such vacation; and where the first Monday in a month shall be a public holiday the Divisional Court will commence its sittings on the first juridical day thereafter, not being in vacation."

Rule 1484 is hereby repealed, and the following substituted:

"799 A. (1) Every motion to a Divisional Court against a judgment or for a new trial, or to set aside a verdict, or by way of appeal from a judgment or order of a Judge of the High Court, made at a trial or otherwise in respect of the judgment pronounced at a trial, shall be set down to be heard for, at the latest, the first sittings of a Divisional Court which commence after the expiration of one month from the date of the verdict or the pronouncing of the judgment (if any), unless otherwise ordered.

"(2) Every such motion shall be upon a seven clear days' notice, and the motion shall be set down two clear days before the commencement of the sittings of the Divisional Court for which notice is given, unless otherwise ordered.

"709 B. (1) Every motion to a Divisional Court by way of appeal from any judgment or order made by a Judge of the High Court sitting in Court, otherwise

than at a trial, or by way of appeal from any judgment or order made by a Judge of the High Court sitting in Chambers, which is appealable to a Divisional Court, shall be set down to be heard for the first sittings of a Divisional Court, for which due notice can be served after the expiration of four days from the pronouncing of the judgment or order complained of, unless otherwise ordered.

"(2) Every such motion shall be upon a two clear days' notice, and the motion shall be set down two clear days before the commencement of the sittings of the Divisional Court for which the notice is given, unless otherwise ordered.

"799 C. Every notice of motion or appeal to a Divisional Court shall set out the grounds of the motion or appeal."

RECENT ONTARIO DECISIONS.

Important Judgments in the Superior Courts.

Court of Appeal.

GORDON v. WARREN.

[OSLER AND MACLENNAN, JJ.A., MACMAHON, J.—13th JANUARY.

Judgment on appeal by defendant Agnes Warren from judgment of Street, J., at the trial at Whitby, in favour of plaintiff against appellant in an action upon the covenant for payment of the mortgage debt contained in a mortgage made by appellant and her husband to one McCuaig for part of the purchase money of land in the town of Toronto Junction, purchased by the husband, by whose direction it was conveyed to her, which mortgage was assigned to plaintiff. The appellant contended that she was merely the trustee or nominee of her husband, and that she did not contract with reference to any separate estate, for she had none when she entered into the covenant, unless the mortgaged land was her separate estate, and she contended that under the circumstances it was not, relying on *Gibbons* v. *Tomlinson*, 21 O. R. 489. The Court held that the judgment below was wrong; that the trust need not be expressed in writing to rebut the presumption of a gift; that the trust was sufficiently proved at the trial; that there was no estoppel; and that the plaintiff had failed to make out that the wife was entitled to separate estate. Appeal allowed, and action dismissed. Question of costs further reserved.

* * *

Divisional Court.

PARKYN v. AUER INCANDESCENT GAS LIGHT MANUFACTURING COMPANY.

[MEREDITH, C.J., MACMAHON, J.—13TH JANUARY.

Judgment on appeal by defendants from order of Armour, C.J., in Chambers, reversing order of Master in Chambers for security for costs. The plaintiff lives out of the jurisdiction, but the Judge in Chambers held that he has property in the jurisdiction sufficient to answer costs.

The property referred to consists of mantels, gas fixtures, etc., sent to this province for sale. Defendants contended that this was not substantial property readily available upon execution for costs. The Court held that the test in these cases is whether the property in question is such as to render it reasonably probable that it will be sufficient to answer the execution if plaintiff be unsuccessful in the action. It does not appear that the property here meets the test. Appeal allowed with costs, and order of Master restored. Costs of application before Master in Chambers to be costs in the cause. R. McKay for defendants. H. D. Hulme for plaintiff.

* * *

HARRIS v. ECONOMICAL MUTUAL FIRE INSURANCE COMPANY, OF BERLIN.

[ARMOUR, C.J., STREET, J., FALCONBRIDE, J.—19TH JANUARY.

Watson, Q.C., and Beynon, Q.C., for plaintiffs, moved to set aside nonsuit entered by MacMahon, J., in an action to recover loss by fire under an insurance policy tried at Brampton, and for a new trial. The nonsuit was upon the ground that defendants effected a subsequent insurance in the Manchester Fire Assurance Company without the assent of or notice to the defendants. Plaintiffs contended that defendants had waived their right to notice, and also that they had notice by reason of a clause in the application to defendants for insurance in which the intention to effect a concurrent insurance in the Waterloo Mutual Insurance Company was set out. This insurance was never, in fact, effected, but the insurance with the Manchester company was subsequently effected. A. Millar, Q.C., for defendants, showed cause. The Court held that there was no evidence of waiver, and that the subsequent insurance could not be substituted insurance, because there was no original insurance, to the knowledge of the defendants. Motion dismissed with costs.

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MARSHALL v. CENTRAL ONTARIO R. W. CO.

[ARMOUR, C.J., STREET, J., FALCONBRIDGE, J.—19TH JANUARY.

Clute, Q.C., for plaintiff, moved to set aside nonsuit entered by Rose, J., in an action for wrongful dismissal and slander, tried at Belleville, and for a new trial. The plaintiff was a roadmaster in the employment of defendants, and was dismissed on account of alleged drunkenness or drinking while on duty. It was shown at the trial that plaintiff while on duty went upon an engine of defendants and accepted a drink of whiskey from the engine-driver. The slander alleged was the accusation of drunkenness. Plaintiff contended that upon the facts shown the dismissal was not justified, and the case should have been allowed to go to the jury. W. R. Riddell and Monro Grier, for defendants, showed cause. The Court held that slander would not lie against a corporation. Judgment reserved as to the wrongful dismissal.

* * *

CAMERON v. McLEAN ; MONES v. McCALLUM.

[BOYD, C.—22ND JANUARY.

Judgment on appeal by plaintiff Cameron from order of Mr. Cartwright, sitting for the Master in Chancery, dismissing the appellant's application for leave to add the defendant McCallum as a party plaintiff in the first

action, and upon motion by Cameron (the receiver appointed in the second action), for authority to bring a new action in the name of McCallum. The appeal and motion were heard at the London weekly Court on the 19th January. The consent of the defendant McCallum was not filed, nor was he notified of the application. In the second action the receiver (appointed at the instance of the plaintiffs therein) was given leave to bring an action for administration, no opinion being expressed as to his status (17 P. R. 102). The first above named action was the action brought by the receiver pursuant to such leave. Held, that a receiver by way of equitable execution has no rights beyond those of the person for whom he is receiver, and that the act, whatever it is, which is to complete or render effective his powers to obtain payment, is to be taken by the judgment creditor. If the latter could not proceed to administer an estate in order to make available the interest of a beneficiary therein, who is also a judgment debtor, no more can the receiver. Apart also from other objections, Rule 324 (b) is conclusive against the appeal. *Stuart* v. *Grough*, 14 O. R. 257, 15 A. R. 309, and *McLean* v. *Allen*, 14 P. R. 200, commented on. *McGuin* v. *Fretts*, 13 O. R. 703, distinguished; *Allen* v. *Furness*, 20 A. R. 40; *Re Potts*, 100, Moo. B. C. 66, and *Flegg* v. *Prentiss* (1892), 2 Chy. 430, followed. Held, also, that the Court has no power to compel a defendant in an action to be a plaintiff in another in order that the judgment obtained against him in the former action may be realized by him in the second, for the benefit of his guardian opponent. *Bank of London* v. *Wallace*, 13 P. R. 176, distinguished. Appeal dismissed, and application refused with costs in the cause to defendant McLean. Idington, Q.C., for plaintiff Cameron. E. R. Cameron (London), for defendant McLean.

* * *

D'IVRY v. WORLD NEWSPAPER COMPANY.

[MEREDITH, J.—19TH JANUARY.

J. King, Q.C., for defendants, appealed from order of Mr. Cartwright, sitting for the Master in Chambers, dismissing a motion by defendants for increased security for costs. The plaintiff, living out of the jurisdiction, the defendants issued an order on præcipe for security for costs, and security was given, by payment into Court of $200. The referee held that defendants were concluded by their præcipe order, following *Trevalyan* v. *Myers*, 316 L. J. 284. H. M. Mowat, for plaintiff, contra. Appeal dismissed, the learned Judge holding that defendants had made their election by the præcipe order, and as a matter of discretion he should not allow them to depart from it. Costs to plaintiff in any event.

* * *

HENDERSON v. CANADA ATLANTIC RAILWAY COMPANY.

[FERGUSON, J.—14TH JANUARY.

Judgment on appeal by defendants from order of Mr. Cartwright, sitting for the Master in Chambers, directing the examination of a flagman of the defendants for discovery in an action for damages for negligence of defendants in that the flagman at their Elgin street crossing in the city of Ottawa did not warn plaintiff of approach of a train, whereby plaintiff was injured, etc. Held, that flagman is not

an officer of defendants, and, therefore, not liable to be so examined. Appeal allowed. Costs in cause. D. L. McCarthy for defendants. R. McKay for plaintiff.

* * *

MORTON v. MANNING.

[MacMahon, J.—17th January.

Judgment in action tried without a jury at Toronto, having been adjourned from Brampton. Action by James A. Morton against the executors of the late James Robinson to recover $1,200 upon the following document, signed by deceased: "Brampton, December 24th, 1894. Good to Mr. James Morton for the sum of twelve hundred dollars, payable after my death." He died on the 29th of September, 1895, not having paid the $1,200. The plaintiff was a nephew of the deceased. The learned Judge holds that there was no consideration for the promise; that there was not a good donatio motis causa; and that the plaintiff cannot recover upon the instrument without proving a consideration. Action dismissed with costs. Beynon, Q.C., for plaintiff. Justin (Brampton), for defendants.

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