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SIR JOHN THOMPSON's Criminal Code, which was introduced this session, as "The Criminal Law Act of 1891," has been distributed: nothing more, however, will be done about it during the present session.

ONE of the best edited and most interesting of our legal journals is the *Indian Jurist*, published at Madras. There is much truth in the remarks of the *Washington Law Reporter*, which says that our Indian contemporary "is a shining illustration of the capacity of our British cousins to adapt themselves to circumstances, and, like the Romans of old, to erect a civilization in strange lands and out of the most uncouth material. There, away out in British India, they have built up a body of law, superior in many respects, because untrammelled by ancient precedents, to that enjoyed by the Englishman on his native shore. They have their own legal literature and their own law reports, which latter, by the way, would be quite a curiosity to many of our readers. Think of having to report a case under the titie of *Sandashir Rayaji* v. *Maruti Vithal*; or *Easwara Doss* v. *Pungavanachari*; or *Fahi Abdulla and another* v. *Babaji Gungaji*, and having to state as a part of the syllabus that the case of *Rao Karan Singh* v. *Raja Bakar Ali Khan* and *Mohima Chunder Mozoomdar* v. *Mohesh Chundea Neogi* are explained!"

THE question as to whether the Law Society of this Province has the right to allow a woman to be entered as a student of the law as a step to becoming a member of the Law Society will shortly come up for decision. Miss Clara Brett Martin having made an application to be admitted as a student, her application was referred to a special committee of the Benchers, which, we understand, is of opinion that authority was not intended to be given to the Law Society to admit women as members thereof, and that the application should therefore not be granted. The matter will come before the Benchers for consideration on the 15th September next, when a battle royal may be expected, as doubtless the cause of this "mayden faire" will find some champion ready to enter the lists on her behalf. We reserve comment for the present. The following authorities and reviews will be of interest in this connection: *Bradwell's Case*, 55 Ill. 535; *Goodell's Case*, 39 Wis. 232; *Robinson's Case*, 131 Mass. 376; *Lady Sandhurst's Case*, 23 Q.B.D. 79; *Chorlton* v. *Lings*, L.R. 4 C.P. 374; 18 Irish Law Times, p. 306; 30 Albany Law Journal, p. 464; Sol. Journal, vol. 12, p. 762; American Law Review, N.S., vol. 4 (1883), pp. 670, 675, 6-7-8-9; Pump Court, April 25th, 1891, p. 2.

THE question was recently asked of the Government in the House of Commons as to whether the title of Q.C. is conferred upon advocates in the district of Quebec in view of their merits or professional success, or in consideration of political services. The Minister of Justice replied that the title was conferred in view of professional merit and he was not informed of the politics of the recipients, and that it was the intention to confer the title in the manner most equitable and in the best interest of the profession. We are convinced that Sir John Thompson is perfectly sincere in his utterance, and that he desires to act, and, so far as he has been a free agent, has acted in good faith in this matter. As to how the title has been conferred in Quebec, we are not in a position to judge; but if he includes the Province of Ontario, and if he is responsible for those who have been appointed in recent years, we are compelled to say that he has in many cases been grossly deceived by those who have brought names before him or recommended them to him. It is notorious that many of the appointments which have been made in this province were of men who not only had no professional merit, but some of whom were hardly professionally respectable; some never appeared in court, never were engaged in an important case, and were unknown to their brethren or the public except as political hacks, and of some the less said the better. What was once an honorable distinction has now become a professional joke. When Sir John Thompson knows the Ontario Bar as well as we do who live here, he will recognize the truth of what we say. We trust that the vicious system which the leaders of the political parties have countenanced so long (but for which the country does not hold the present Minister of Justice responsible), and which has brought such discredit upon the Dominion, is soon to receive its death blow; at least, the present disclosures at the capital have, we apprehend, disgusted the public as much as the distribution of silk has disgusted the profession. We regret to have to say it, but history will say that the late Premier did not exercise the supervision he should have done in this matter.

IT is said that we must go abroad to learn what is happening at home; for example in the *Green Bag*, of Boston, for last month (a periodical which gives *itself* the title of being a "useless but entertaining magazine for lawyers"), we have an interesting account of the Law School of Osgoode Hall, Toronto, by our old friend, D. B. Read, Q.C.

He begins at the beginning, taking us back to the meeting of the Law Society in the town of Newark on 17th July, 1797, where it was resolved, "That the two Crown Officers be nominated Benchers of the Law Society, together with four Senior Barristers, and that the Benchers, according to seniority, take upon themselves the Treasurership of the said Society annually."

The first thought of a Law School seems to have been in the year 1822. A voluntary association called the Advocates' Society was formed, made up of barristers and students, who, in imitation of the Law Society, elected one of their number to be Bencher, with other officers. We are told that there was a book kept of their proceedings which has been preserved and presented to the Law Society by Sir Adam Wilson, in which it is recorded that this Advocates'

Society, which Mr. Read says was in effect a Law School, or a *quasi* Law School, met on the 20th of January, 1823, and cases were argued and decided by the presiding Bencher; the counsel engaged on the day alluded to being the Hon. Robert Baldwin, Attorney-General of Canada, Mr. Notman, and Mr. Richardson

Mr. Read then carries us down from that time until the present, giving a full account of the various changes made from time to time. *En passant*, he refers to his recollection of the lectures given to their pupils by the late John Hillyard Cameron and ex-Chief Justice Sir Adam Wilson; and, previously to that, of having attended the lectures of the late Hon. William Hume Blake, then Professor of Law in King's College and afterwards Chancellor of Upper Canada —lectures which, he says, in point of matter and delivery, were not surpassed by a Story or a Kent.

As we know, the Law Schools which were opened in October, 1873, and again revived in 1881, both came to an untimely end. The need, however, for a Law School of some sort was so apparent that, in 1889, it was reorganized in its present form. We trust that it may be a success, and that the pen of the veteran writer, whose article we have been reading, may not have the opportunity of preaching its funeral sermon, even should he happily outspan the allotted "fourscore years."

We are glad to see in a recent number of the *Indian Jurist*, of Madras, some remarks which appeal to us most strongly, in reference to the so-called right of the parent to the custody and mismanagement of his offspring. It takes a long time, and perhaps we should be glad that it does so, for a Britisher to free himself from the prejudices and habits of thought of a bygone age. Dr. Barnardo, that most enterprising and devoted philanthropist, in his very clever and sensible defence of his conduct in the *Roddy Case*, has opened the eyes of many to the position of things in England in reference to the question of the custody of infants. The *Indian Jurist*, in reviewing his speeches before the judges of the Court of Appeal in the case referred to, uses the language quoted below, which must appeal to the common sense, if not to the hearts, of many readers. It is simply iniquitous that immoral parents, utterly regardless of their duties to their offspring, should, under nearly all circumstances, be allowed to keep the control of them as against those who, from the very highest motives, and in a common sense, practical way, seek the moral and temporal advancement of children who, but for their philanthropic efforts, would either perish miserably, or eventually become pests of society, hateful to themselves and injurious to the commonwealth. Our contemporary thus speaks:—"The ancient superstition in favor of leaving every precious infant to the tender mercies of ignorant and careless fathers and mothers tends, of course, to the destruction, year after year, of the bodies of numberless human beings, and in the cases of those whose natural guardians happen to be idle, dissolute, wicked, or more than ordinarily foolish, tends also to the destruction of their immortal souls; whilst in all but a very few exceptional cases, the work of rearing the young is badly done by amateurs, instead of being well done (as it might and should be) by professionals and experts. During generations to come, probably, great difficulty will be ex-

perienced by philosophers in convincing the well-to-do classes that they are quite 'unfit' to be trusted with the management of children, and even the masses will continue for a while to exhibit an ignorant impatience of state interference with the exercise of domestic rights. But some day good sense will prevail over foolish impulses, and individual instincts and yearnings give place to altruistic and patriotic aims and aspirations; and then at last children will have a fair chance of attaining, one and all, the sound mind in the sound body. In the meantime, we must possess our souls in patience while our little ones perish from neglect in myriads; and our boys fail to find a livelihood; and our army and navy are starved, though the finest material for them may be found in abundance in every street of our towns, ungathered and wasted; and our girls are left to the worst of fates. But every day it becomes more and more difficult for men of generous natures to maintain patience about this most weighty matter. The population of great Britain grows apace, and the question how best to deal with it presents constantly increasing difficulties. And so we have in fiction cases like 'Ginx's baby,' and in our law-courts cases like the *Roddy Case*. These two cases resemble one another very closely in some respects, and we are not sure but that, on the whole, the real case is more amusing and instructive than the imaginary case, to the properly philosophic mind. For in it the incomparable Doctor Barnardo has been good enough unconsciously to reveal to the public part at least of the riches of his inner self."

GRAND JURIES.

THE question of the abolition of the Grand Jury system has been brought before the Senate by the following motion by Mr. Senator Gowan: "That an humble address be presented to His Excellency the Governor-General; praying that His Excellency will cause to be laid before this House copies of all correspondence between the Department of Justice and the Judges in Canada charged with judicial functions in criminal matters as well as the Attorney-General of each province, respecting the expediency of abolishing the functions of the Grand Jury in relation to the administration of Criminal Justice."

The learned Senator, in making his motion, referred to the circular issued some time since by the Minister of Justice, and addressed to all the judges in Canada exercising criminal jurisdiction, and to the Attorney-General in each province, soliciting opinions on the subject, and thus referred to the result of the circular: "Over 100 replies were sent to the Department of Justice in answer to the circular. These replies are from some, and, in fact, nearly all leading legal minds in the country; I have not gone over them, but a summary that I obtained from the Department shows that no less than fifty of those who sent in answers are in favor of abolition, thirty-nine against, ten doubtful, and two who have declined to answer, so that on the whole, as far as numbers are concerned, a very considerable majority is in favor of abolition, and a very respectable minority against it. I have not seen, and have not analyzed, what they said on the subject. I have not been able to study the arguments used, but I notice, taking the

first three names, Judge Taschereau, one of the ablest lawyers in Canada, and a man who, although of French origin, has produced the very ablest book on criminal law now in use—one that is a *vade mecum* in every court in Canada—is the first of those who are in favor of abolition. The next is Mr. Justice Gwynne, also a very able criminal lawyer, one who was engaged for many years as Crown counsel, and afterwards sat for years on the bench of the Superior Court of Ontario, and now occupies a place in the Supreme Court of the Dominion. Then, there is Chancellor Boyd, whom we in Upper Canada all know to be a most eminent jurist. While on the other side, taking the first three in the order that I received the list, I find that Attorney-General Mowat, Chief Justice Hagarty, and Sir Thomas Galt, all able men, hold an opposite opinion, so far as I can make out. Perhaps I was not so much surprised with regard to one or two of the gentlemen named, but I certainly felt surprised when I saw the name of Hon. Mr. Mowat, Attorney-General of Ontario, opposed to this change; for he has been for many years (and I have admired his conduct in taking the course he did) a great law-reformer, and the obstacles in the way of justice which 'the wisdom of our ancestors' had placed in his way—all these technical absurdities, he bore down and toppled over without the slightest hesitation. He was most energetic in the way of reform—in fact, he was almost like a hippopotamus rushing through a cane-brake in his desire to make direct and plain the path of ready justice. When I see his views and the arguments he uses, I will perhaps be able to appreciate the reasons why he occupies the position that he does. At present all I can say is, I am somewhat surprised that so able a man and so valuable a man, as a law reformer, has taken the view that he appears, on this occasion, to have taken. What I ask is, that these papers be produced, and the reason I ask it is this: It is a very important question. It very seriously touches the administration of justice, and here we find one hundred men competent to form an opinion on the subject—men exercised in the office of justice, forming different opinions, some fifty on one side and some thirty-nine on the other, while some are doubtful. I have not gone into an analysis by provinces, but I find that in most of the provinces the judges are pretty equally divided, while in my own province the majority of the judges who have spoken on the subject is slightly in favor of abolishing the system. Now, while I admit, and, I think, would claim, that the greatest weight should be attached to their opinions, I must admit also that they are not infallible, and with the proper material before them intelligent laymen can as well dispose of such matters as perhaps the most astute lawyer. The condition being this, that a large number are for and a large number against, the majority, however, being in favor of the abolition of the grand jury, the material is there for every one capable of reasoning to form a correct conclusion on the subject. I do not intend to ask, nor do I expect, immediate action. I have the fullest confidence in the men who control public affairs, and I have no doubt that at the proper time they will take action. I do not propose to follow up this motion with any action this session, nor perhaps later, if I should be convinced that the reasoning is against me, but what I want is this: that that valuable contribution to the discussion should be within reach of every man, layman as

well as lawyer, judges and attorney-generals—that it should be in the hands of all, to enable every one who takes an interest in the subject to form an intelligent opinion, and to enable me, who has taken some pains on the subject, to get the views of those who differ from me."

No action will be taken this session in reference to this matter.

RESPECTING DIVORCES.

We can scarcely regret that the bill introduced into the Senate by Senator Macdonald, respecting divorce, has been withdrawn, at least in view of the present information on that subject. As explained by the introducer, the act did not contemplate the establishing of a divorce court, but would give jurisdiction to the superior courts of the various provinces to adjudge the dissolution of marriages or order judicial separations on the ground of adultery or desertion by the husband. One argument for the act was that we should have the best tribunal possible for hearing and deciding questions of such vast importance, and that no religious scruples should be allowed to interfere with the free course of law and justice, nor to stand in the way of enacting laws for the good of the subject, regulating the forces touching social life. It was also urged that religious precepts and example are not sufficient to control humanity in the paths of virtue and honesty, and that the strong arm of the secular law is necessary. It is true that the present parliamentary system, by reason of its expense and intricate formula, deters many from applying for divorce; but whilst this is so, it cannot, on the other hand, be denied that facilities in this direction have not conduced to morality either in England or the United States. We are, therefore, at present inclined to take the views expressed by the late Premier of Canada, who preferred the present system, inasmuch as it does thus offer considerable impediment to the granting of divorces. The remarks of Mr. Senator Gowan in opposing the second reading of the bill are in point:

"In entertaining applications for divorce and making a law to set the parties free to marry again—changing their status—Parliament can properly bring in view considerations of expediency or public advantage. A court of justice is necessarily restrained within fixed limits, and its procedure controlled by fixed rules, in matters assigned to it for adjudication between party and party. Parliament would be making a law, and the supreme power of the State (within constitutional limits, of course) would have to consider what would most tend to the public good. The courts but expound and administer law which Parliament enacts. The point is forcibly put by a learned writer on the sources of law; the functions of the legislator are in reality not legal but moral. With him the primary enquiry is, What ought to be? And he only enquires what is, to suit his provisions to the law, already in force. With the lawyer, on the other hand, what is, is always the primary enquiry, and there his enquiry stops.

"It is true, applications for divorce have always been based upon a specific charge, and the facts necessary to support that charge established by satisfactory evidence, and so far the proceeding is *quasi* judicial. Inquisition is made and the

truth or falsity of the facts alleged determined, and to that extent there is an analogy to the proceedings of a court. But whether, by reason of the facts proved, the prayer of the petitioner should be granted, opens considerations for Parliament which could not be permitted to judges when called upon to pronounce what the judgment should be. Further, in criminal cases the executive may be called upon to decide whether, in view of all the facts and circumstances, the judgment of the court should be carried in effect or modified. Now, Parliament may be said to unite in itself all these three duties and functions. It decides whether the charges are proved, whether they constitute such a case as should entitle the parties to a special act for relief, and what relief, if any, should be granted to the party, in view of all the circumstances; and Parliament may, and ought always, to have in regard, not merely the question as it affects the parties, but the effect in relation to morals and good order — the effect which the passing a particular law might have upon the well-being of the community. Parliament, as the supreme power, has its duties and responsibilities, and cannot compromise the well-being of society which has been entrusted to it under the constitution. These are the considerations which brought me to the conclusion that, in the present aspect of the question, any delegation of the power respecting divorce would be inexpedient."

Were it not *for* the determined opposition on religious grounds of a large number in the legislature, it is quite likely that we should legislate in the same direction as England and the United States; but whilst the argument in favor of a divorce court is both plausible and forcible from the standpoint of its advocates, we cannot be sorry that Mr. Macdonald, having felt the sense of the House, consented to withdraw his bill without a division.

COMMENTS ON CURRENT ENGLISH DECISIONS.

PRINCIPAL AND SURETY—RELEASE OF SURETY BY GIVING TIME TO PRINCIPAL—PROPERTY OF SURETY HELD AS SECURITY RELEASED WHEN SURETY IS RELEASED—PRACTICE—PARTIES TO REDEMPTION ACTION.

Bolton v. *Salmon* (1891), 2 Ch. 48, is a decision of Chitty, J., in which two points are discussed. The action was a redemption action, brought by a puisne mortgagee to redeem a prior mortgage. The mortgage which the plaintiff claimed to redeem was of two undivided one-fourth shares in a farm, and also of a charge in the entirety of the whole farm, and was made by Susan Booty and Sarah Buckenham. The plaintiff's mortgage was made by Sarah Buckenham and others. Susan Booty's share was not represented in the action, and it was held that the action was defective for want of parties. "Where a mortgage is made by two tenants in common, both of them must be parties to the action to redeem; one cannot redeem in the absence of the other," per Chitty, J., at p. 52.

The other point was this: Sarah Buckenham had joined in the mortgage under which the plaintiff claimed as surety for John Buckenham; time had been given to John Buckenham without the consent of Sarah, in consequence

of which it had been held that she was released from personal liability (see *Bolton* v. *Buckenham* (1891), 1 Q.B. 278, *ante* p. 104), and the question now raised was whether or not this had the effect of also discharging the property charged by Sarah as security. Strange to say, there was no direct authority cited on the point, the nearest case being *Hodgson* v. *Hodgson*, 2 Keen 704, where it was held that the release of one co-surety discharged the security given by the other; on principle, however, the learned judge had no difficulty in deciding that the discharge of the surety from personal liability also discharged the property given by the surety as security. That being the case, the plaintiff's right to redeem failed altogether.

COMPANY—WINDING UP—DISSOLUTION—ACTION BY CREDITOR AGAINST DIRECTORS.

Coxon v. *Gorst* (1891), 2 Ch. 73, was an action by a creditor of a company against the directors to recover dividends wrongfully paid by them out of the capital of the company. The company had been wound up, and under s. 111 of the Companies Act, 1862, an order had been made for the dissolution of the company. Under these circumstances, Chitty, J., held that the action could not be maintained, for even if such an action could be maintained by a creditor when the company is still *in esse*, of which he expressed doubt, the dissolution of the company in the absence of fraud being alleged he considered was an absolute bar to the action. We may observe that the Dominion Winding-Up Act contains no provision for enabling the Court to dissolve a company.

PRACTICE—MORTGAGE ACTION—ORDER FOR POSSESSION.

In *Thynne* v. *Sarl* (1891), 2 Ch. 79, North, J., held that an order for delivery of possession in a mortgage action ought to contain a specific description of the mortgaged lands. We may observe that this is contrary to the well-settled practice in Ontario, where it has always been held to be unnecessary to insert a specific description of the lands in the judgment or final order, it being deemed sufficient that it appears in the indorsement on the writ or statement of claim, if any.

PRACTICE—MORTGAGE ACTION—FORECLOSURE—DECEASED MORTGAGOR—REPRESENTATIVE FOR THE ACTION—RULE 68—(ONT. RULE 310).

Aylward v. *Lewis* (1891), 2 Ch. 81, was an action for foreclosure, in which the defendant, the mortgagor, died insolvent before foreclosure absolute. There was no legal personal representative of his estate, and an order was made in Chambers appointing one of his next of kin to represent his estate for the purposes of the action; but on the application for a final order, North, J., refused to make the order in the absence of "a properly constituted representative of the mortgagor."

INJUNCTION—DISMISSAL OF SCHOOLMASTER.

In *Fisher* v. *Jackson* (1891), 2 Ch. 84, the plaintiff was a schoolmaster of an endowed school, and was, under the deed of trust, subject to removal by the vicars of three specified parishes. Two of the vicars served on the plaintiff a

notice of dismissal, signed by themselves. No meeting of the three vicars had been summoned to consider the question of the plaintiff's dismissal, and he had not been heard in his defence, nor was there any evidence that the third vicar had been consulted in the matter. The plaintiff now applied for an interim injunction to restrain the two vicars who had signed the notice from removing or purporting to remove him from his office until the holding of a meeting of the vicars, and until the plaintiff should have had an opportunity of being heard at such meeting in reply to the charges made against him. North, J., after a careful review of the cases, decided that the plaintiff was entitled to the injunction, and that for defendants to dismiss the plaintiff without giving him an opportunity to be heard in his defence was contrary to the first principles of justice, and that it was also incompetent for the defendants to act without the third vicar having an opportunity of being present upon the discussion of the question of the dismissal of the plaintiff.

SOLICITOR AND CLIENT—ORDER FOR TAXATION—ORDER OBTAINED ON SUPPRESSION OF FACTS.

In re Webster (1891), 2 Ch. 102, a client having sued his solicitor for money received to his use, and the solicitor having delivered a bill of costs and filed a defence claiming a set-off in respect of such costs, the client took out an order of course to tax the costs; and this order having become inoperative by neglect of the client to proceed upon it, the client then applied for and obtained another order of course for taxation of the bill, suppressing the fact of the existence of the action and of the issue of the former order. On a motion to discharge this order for irregularity, North, J., held that there had been a suppression of material facts, and that a special application ought to have been made for the order; he, however, suffered the order to stand so far as it directed taxation, but struck out the clause directing payment of what might be found due, and reserved the question of payment and the costs of the action to be disposed of by the judge at the trial of the action.

VENDOR AND PURCHASER—CONDITION LIMITING TITLE TO LESS THAN 40 YEARS—OBJECTION TO ANTERIOR TITLE DISCOVERED BY PURCHASER—DELAY IN GIVING NOTICE TO VENDOR—RESTRICTIVE COVENANT.

In re Cox & Neve (1891), 2 Ch. 109, was an application under the Vendors and Purchasers' Act. The conditions of sale provided that the title should commence with a mortgage dated 29th July, 1852, and that the purchaser should within fourteen days after the delivery of the abstract deliver all his objections to the title, and that subject thereto the title should be deemed to be accepted. The abstract was delivered on 24th June, 1890. On the 8th July the purchaser delivered his objections. He was not satisfied with the vendors' replies, and on 23rd July he delivered further requisitions. On 9th August he commenced proceedings under the Vendors and Purchasers' Act, asking for a declaration that his objections had not been sufficiently answered. On the 16th October he filed an affidavit in support of the application, setting up for the first time the existence of a covenant in a deed of 3rd March, 1847, restricting the right of building on part of the property. This objection the Court held that the purchaser must

be deemed to have had notice of shortly before 23rd of July. On the part of the vendors, it was contended that the purchaser was too late in taking the objection; but North, J., was of opinion that the existence of the restrictive covenant constituted a valid objection to the title, and that the purchaser was not precluded by his delay from relying on it, and that he was entitled to be relieved from the contract.

VENDOR AND PURCHASER—VOLUNTARY SETTLEMENT—SALE BY TRUSTEES—TITLE—EVIDENCE OF SETTLEMENT.

In re Briggs & Spicer (1891), 2 Ch. 127, trustees claiming under a voluntary settlement sold the trust estate. The settlement was liable to be defeated by a trustee in bankruptcy in the event of the settlor becoming insolvent within ten years after the date of the settlement, unless it could be shown that he was solvent when it was made. This fact was held by Stirling, J., to constitute a valid objection to the title; and although the objection might possibly be removed by the settlor concurring in the sale, and by his conveying to the purchaser, and the latter paying the purchase money by the settlor's direction to the trustees, yet such a title could not be forced on an unwilling purchaser because the Court would not assist the settlor to get rid of his own settlement; and also because there was no means of ascertaining conclusively that the settlement was not in the first instance, or had not subsequently become, a settlement for value.

MORTGAGE—PAYMENT OFF BY PERSON SUPPOSING HIMSELF TO BE OWNER OF EQUITY OF REDEMPTION—EFFECT OF PAYMENT OF MORTGAGE AS AGAINST PARTIES CLAIMING ADVERSELY TO PERSON PAYING—PRESUMPTION OF INTENTION TO KEEP MORTGAGE ALIVE.

In re Pride, Shackell v. *Cobnett* (1891), 2 Ch. 135, a person claiming to be the owner of five-sixths of the equity of redemption in mortgaged property paid off the mortgage and took a reconveyance, and an assignment of the mortgage as to the one-sixth share which he did not claim to own; subsequently the conveyance of one undivided one-sixth share in the equity of redemption under which the payer claimed was set aside, and the owner of this share claimed that the mortgage had been discharged as against her, but Stirling, J., held that the person paying off the mortgage must be presumed to have intended to keep the mortgage alive as against this share.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE—PURCHASER IN POSSESSION AND TITLE ACCEPTED—PAYMENT OF PURCHASE MONEY INTO COURT—OPTION TO GIVE UP POSSESSION.

In *Greenwood* v. *Turner* (1891), 2 Ch. 144, which was an action by a vendor for specific performance of contract for the purchase of land, the plaintiff made an interim application to compel the defendant to pay his purchase money into Court *pendente lite* on the ground that he was in possession and had made no objection to the title. Kekewich, J., however, held that the defendant was entitled to a month in which to elect either to pay his purchase money into Court or give up possession; and that a purchaser in possession is always entitled to this option unless he has done something which interferes with the value of the property.

DEBENTURE HOLDER OF COMPANY—RECEIVER, APPOINTMENT OF, AT INSTANCE OF MORTGAGEE BEFORE DEFAULT—COMPANY—INSOLVENCY.

McMahon v. *North Kent Ironworks* (1891), 2 Ch. 148, was an action by a debenture holder of a limited company, whose security created a charge upon the assets of the company for the appointment of a receiver of the property and assets of the company, which had become insolvent. No default had been made in payment of principal or interest secured by the debentures. The only direct precedent for the application was an unreported decision of North, J., which Kekewich, J., followed and granted the application, appointing a receiver until judgment or further order.

MISTAKE OF LAW—OFFICER OF THE COURT—COMPANY—WINDING UP—ASSETS INCREASED BY HONEST MISTAKE OF SHERIFF—REPAYMENT BY OFFICER OF COURT OF MONEY RECEIVED THROUGH MISTAKE OF LAW.

In re Opera (1891), 2 Ch. 154, executions having been placed in a sheriff's hands against the goods of a limited company, the sheriff seized goods and chattels of the company. Subsequently a petition was presented for winding up the company, an order was made for winding up the company, and a liquidator was appointed without prejudice to the rights of the sheriff. After this the sheriff, erroneously believing himself entitled to do so, seized the money received at the doors of the company's theatre, and out of the moneys so received paid the execution creditors and his own fees, and delivered up the balance, together with the goods and chattels seized by him, to the liquidator. Subsequently, on the application of the liquidator, it was held that the sheriff had no right to seize the money taken at the doors after the winding-up order, and he was ordered to pay over the amount so received by him to the liquidator. The goods and chattels which had been under seizure by the sheriff, and which he might have sold to satisfy the executions in his hands notwithstanding the winding-up order, having been sold by the liquidator, the sheriff applied to be refunded out of the proceeds of the goods the amount paid by him to the execution creditors, and his own fees, and Kekewich, J., held that he was entitled to this relief, on the ground that the Court would not allow its officer (the liquidator) to take advantage of a mere mistake of law by retaining money to the prejudice of those who had an honest claim to it, notwithstanding that the mistake under which the liquidator received the money might be one which as between ordinary litigants could not be rectified by the Court.

CONVERSION OF CHATTELS—TRUSTEE, RIGHT OF, TO SUE FOR CONVERSION OF CHATTELS BY CESTUI QUE TRUST—AUCTIONEER, WHEN LIABLE FOR CONVERSION OF GOODS—EVIDENCE—PRACTICE.

Barker v. *Furlong* (1891), 2 Ch. 172, was an action for the conversion of goods and chattels. The plaintiffs were trustees for the goods and chattels in question, and had permitted the *cestui que trust* who was entitled to them for life to have the possession of them; the *cestui que trust*, with the assistance of his brother, sent the goods to an auctioneer, who sold them and handed them over to the purchasers. The action was brought by the trustees against the *cestui que trust*, his brother, and the auctioneer, for the value of the goods and chattels. The

principal point discussed was as to the liability of the auctioneer. Romer, J., although of opinion that where an auctioneer only settles the price of goods as between vendor and purchaser, and takes his commission, he is not liable as for conversion if the vendor has no right to sell, yet he held that when, as in this case, the auctioneer receives goods into his custody, and on selling them hands them over to the purchasers with a view to passing the property in them, then he is liable to the rightful owner; his case differing from that of a packing agent or carrier, in that the latter merely purport to change the position of the goods and not the property in them.

After the defendants' case had been closed, an application was made by the plaintiffs' counsel for leave to call as a witness one of the defendants, whom he expected would have been called in support of his (the defendant's) own case. But the learned judge, considering the plaintiffs' counsel had deliberately elected not to call the defendant, in the expectation that he would be called as a witness on his own behalf, and counsel admitting that he had not been misled by any representation that the defendant would be called, refused the application.

One other point was also raised, viz., whether the brother of the *cestui que trust* was bound to indemnify the auctioneer; but the Court held that no promise to indemnify could be implied. The brother had represented himself as acting by the authority of the *cestui que trust* and he had that authority, and the auctioneer knew that the goods were being sold by the latter's direction, and the claim of the auctioneer in this respect was therefore dismissed.

Notes on Exchanges and Legal Scrap Book.

STATEMENT OF COUNSEL NOT EVIDENCE.—Where a prosecuting attorney expressed to the jury his belief that the defendant was guilty, the Supreme Court of Illinois reversed the conviction in part on the ground of his having done so.—*Raggio* v. *People.*

WHO ARE A FIRST WIFE'S HEIRS?—American cases often contain novel points. Not long since a curious legal riddle was propounded at the Court of Allentown, Pennsylvania. A gentleman married, and his wife dying, left him all her property, merely stipulating that on his death it should revert to "our heirs." The gentleman subsequently married again, and then died himself, whereupon his widow claimed that she was entitled by way of dower to one-third of the property left by the first wife. The next-of-kin, however, disputed this claim, urging that they had a preferential right over a connection by marriage, and the judge supported this view, holding that the husband had only a life interest in his first wife's property, and, therefore, on his death the estate would have to pass to the relations of the first wife, to the exclusion *in toto* of the second wife.—*Law Journal.*

Absolute Privilege of Counsel.—In the recent and now celebrated case of *Cumming* v. *Wilson* one of the witnesses claimed, but without avail, the protection of the Court from certain remarks of the Solicitor-General. The Master of the Rolls in the case of *Munster* v. *Lamb*, 52 L.J. Rep. Q.B. 726, states very clearly the absolute privilege of counsel and the reasons therefor in these words: "A counsel's position is one of the utmost difficulty. He is to speak of that which he knows; he is not called upon to consider whether the facts with which he is dealing are true or false. What he has to do is to argue as best he can without degrading himself, in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If, amidst the difficulties of his position, he were to be called upon during the heat of his argument to consider whether what he says is true or false, or whether what he says is relevant or irrelevant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform. More than a judge, infinitely more than a witness, he wants *protection* on the ground of benefit to the public."

Distress for Rent.—A picture sent back by the purchaser to the artist to be touched up or altered is not exempt from distress for rent upon the artist's studio. So it was held by Mathew, J., sitting without a jury, in *Van Knoop* v. *Moss*, and the authorities as awhole seem fully to bear out his lordship's opinion. It has, indeed, been said (see *Parsons* v. *Gingell*, 16 Law J. Rep. C.P. 227) that if articles are sent to a place to remain there they are distrainable, but that if sent for a particular object, and if the remaining at the place be an incident necessary for the completion of that object, they are not. But the better opinion is that the exemption from distress arises solely for the benefit of trade and commerce (see *Lyons* v. *Elliott*, 45 Law J. Rep. Q.B. 159), as is shown by the exemption being held applicable to pawned goods at a pawnbroker's (*Swire* v. *Leach*, 34 Law J. Rep. C.P. 150), and to a carriage sent to a coachmaker for sale (*Findon* v. *M'Laren*), but not to horses and carriages standing at livery (*Francis* v. *Wyatt*, 1 W. Bl. 483), or even to a ship in the course of being built in a dock, as was held by the Court of Appeal in *Clarke* v. *The Millwall Dock Company*, 55 Law J. Rep. Q.B. 378. There is no doubt that the law of distress presses very hardly on the property of persons who are strangers to the landlord. Even their money, if contained in a sealed bag, may be seized for the rent of a friend with whom they may be staying, though money loose cannot be seized (see Bac. Abr. "Distress," B., citing 22 Ed. IV. 506). [The above is subject, however, so far as we are concerned, to R.S.O. cap. 143, s-s. 27, 28.]—*Law Journal.*

Evidence of the Sovereign.—In the *Berkeley Peerage Case*, so it is said in Taylor on Evidence, 8th edit., vol. ii., p. 1175, in reference, no doubt, to the case heard at the beginning of the present century, "counsel entertained some idea of calling the Prince Regent as a witness, but it ultimately became

unnecessary to do so." In the *Berkeley Peerage Case* which is now being heard before the Privileges Committee of the House of Lords, a letter signed by George IV. was held inadmissible, but without any direct overruling of *Abignye* v. *Clifton*, Hol. 213, in which the simple certificate of James I. as to what passed in his hearing was admitted in evidence *in the lifetime* of His Majesty. *Abignye* v. *Clifton*, however, is a case which has been very much questioned (see Best on Evidence, 7th edit., p. 185), and the better opinion seems to be that the evidence of the sovereign, if given at all, must be given on oath (see Taylor, citing 2 Lord Campbell's Lives of the Chancellors, 510). It is, of course, perfectly clear, as was pointed out by Baron Parke in *The Attorney-General* v. *Radloff*, 10 Ex. p. 94, that the sovereign cannot be compelled to give evidence, and we think it to be equally clear that the deduction of Baron Parke from this, to the effect that the sovereign cannot be a witness at all, was quite unsound. The fact, however, remains undoubted, that in no case has the sovereign yet appeared as a witness, and that Charles I. took upon himself to direct the judges of his day to leave the question of admissibility of his evidence an undetermined one in point of law.—*Law Journal.*

EVIDENCE OF A JUROR.—At the recent Bedford Assizes, a prisoner on his trial for rape, after giving evidence himself in denial of the charge, under the Criminal Law Amendment Act, 1885, proposed to call one of the jurors as a witness to his character. Mr. Justice Williams declined to allow the juror to be sworn, but said that he might give his fellow-jurors the benefit of his knowledge in deliberating on the verdict, and this having been done the jury acquitted the prisoner. We have much doubt whether the practice pursued was in accordance with precedent. It appears to be a settled rule (see Best on Evidence, 7th edition, p. 193) that a juryman may be a witness for either of the parties to a cause which he is trying, and "it is essential that this should be so, as otherwise persons in possession of valuable evidence would be excluded if placed on the jury panel, and might even be fraudulently placed there for the purpose of excluding their testimony." It is said, too (see Starkie on Evidence, 3rd edition, p. 542), that if a juror know any facts material to the issue he ought to be sworn as a witness, and if he privately state such facts it will be ground of motion for a new trial. The rule was applied to a criminal trial in *Regina* v. *Rosser*, 7 C. & P. 648; and though we can find no instance of its being applied to a witness merely to character, we cannot but think that it ought to be applied to such a witness, on the ground that the test of cross-examination cannot be properly employed to testimony privately given in the jury-box. It is true, no doubt, that witnesses to character are seldom cross-examined, but their liability to cross-examination is undoubted. Moreover, if evidence as to character be given privately in the jury-box, there will not be the same facility for the prosecution, under 6 & 7 Wm. IV., c. 111, giving evidence, if they should happen to possess it, that the prisoner has been previously convicted of felony.—*Law Journal.*

RECENT DECISIONS ON THE LAW OF INFANTS.—The decisions during the past year have touched upon most of the points usually giving rise to controversy in the Courts upon the law relating to infants—viz., Contracts, Maintenance, Custody, and Procedure, most of the decisions being those of the Chancery Division. The first two cases mentioned in the following article illustrate the principle of the mutuality of contracts. In *De Francesco* v. *Barnum* (No. 1), 59 Law J. Rep. Chanc. 151; L.R. 43 Chanc. Div. 165, an attempt to apply the rule laid down in *Lumley* v. *Wagner* to the covenants in an apprenticeship deed failed, Mr. Justice Chitty holding, on the authority of *Gylbert* v. *Fletcher* (Cro. Car. 179), that, inasmuch as no action could be brought against an infant upon a covenant to serve, the negative clauses in this apprenticeship deed could not be enforced by injunction; and in the second action, before Mr. Justice Fry, the covenants in the deed being held unreasonable, no action was maintainable against a showman for enticing the apprentice away from the plaintiff's employment. By the Infants' Relief Act (37 & 38 Vict., c. 62), s. 1, all voidable contracts by infants (1) for money lent or to be lent, or (2) for goods supplied or to be supplied (other than contracts for necessaries), and (3) all accounts stated with infants, are declared to be absolutely void. In the case of *Valentini* v. *Canali*, 59 Law J. Rep. Q.B. 74; L.R. 24 Q.B. Div. 166, the infant plaintiff had agreed to become tenant of a house and to pay a sum for the furniture therein. He occupied the house for some months, paid part of the agreed sum, and used the furniture. This contract, not being one of those mentioned in the above section, was held not to entitle the plaintiff to recover the sum paid to the defendant. In *Lowe* v. *Griffiths*, 1 Scott, 458, an infant was held liable for the lease of a dwelling-house suitable to his circumstances. Again, in *Duncan* v. *Dixon*, 59 Law. J. Rep. Chanc. 437; L.R. 44 Chanc. Div. 211, Mr. Justice Kekewich held that a marriage settlement made by an infant on his marriage in 1878 (since dissolved) was, as regards the infant, voidable, and not void by the section above referred to. The case of *Martin* v. *Martin*, L.R. 1 Eq. 369, had decided that maintenance should be allowed out of a legacy to an infant, whether vested or contingent, in the manner most beneficial to the infant, and Mr. Justice North's decisions in *In re Wells*; *Wells* v. *Wells*, 59 Law J. Rep. Chanc. 113; L.R. 43 Chanc. Div. 281, and in *In re Jeffery*; *Burt* v. *Arnold*, applied that principle. *In re Scott; Scott* v. *Hanbury* again before Mr. Justice North decided that section 2 of the Infants' Settlement Act (18 & 19 Vict., c. 43), which enacted that the death of an infant under twenty-one avoids any appointment or disentailing assurance executed under the Act, does not, unless the infant is tenant in tail, make the settlement void by reason of the infant having died while still an infant. In *In re Phillis*, 56 Law J. Rep. Chanc. 337; L.R. 34 Chanc. Div. 467, the Court had decided that a settlement can be made under the Act after the wife, having been married under the age of seventeen, has attained that age, provided the settlement is really made upon the occasion and for the purposes of marriage. *Regina* v. *Barnardo, Jones's Case*, affirmed the *prima facie* right of a mother to the custody of her illegitimate child, which *Regina* v. *Nash*, 52 Law J. Rep. Q.B. 442; L.R. 10 Q.B. Div. 454, had established. . . .—*Law Journal*.

THE DECISION OF QUESTIONS OF FACT.—The decision of questions of fact by judges and referees is often a disagreeable, though not usually a difficult, duty. It is disagreeable because it is frequently impossible to avoid seeming to cast suspicion upon reputable parties or witnesses. Where there is palpable perjury, it probably does not affect a magistrate's sensibilities in the least to say so. But the unpleasant cases are those in which the truth-stretching is largely unconscious. Many a controversy is decided against a party on the facts, apparently in the teeth of his solemn oath, when in reality his testimony was not deliberately untrue. He had started with a basis of fact in his mind, which had been gradually modified, exaggerated and colored by self-interest. His attorney, in all probability, had gone through a similar process, until at the time of the trial it would have been impossible for either of them to state the circumstances with anything like fairness. We are not referring merely to dishonest men or illiterate men. The best and wisest of us are subject to the deflecting influence of the personal equation. To aid in deciding issues of fact, there is first the feature constantly given as a reason for not reversing judgments as against the weight of evidence. The original tribunal sees the witnesses, hears them testify, and notices their manner. These, of course, are valuable helps in arriving at the actual circumstances. A skilful piece of cross-examination often makes the determination of the controversy a foregone conclusion almost from the start. If, however, both sides appear equally truthful under the ordeal of cross-examination, a reliable key to the problem is to be found in the admitted facts. The disputed facts are to be tried by the conceded facts, and rarely will this test fail to suggest presumptions so strong that they may safely be followed. Such process of weighing the probabilities is a strictly scientific one, analogous to a physician's method of diagnosis from physical symptoms or any other method of scientific inquiry. It cannot be said to demonstrate the truth of the conclusion, but it produces a high degree of probability, sufficient for all purposes in civil actions, and working out substantial justice in the large majority of cases. Science is only a higher form of common sense, and we believe that the mental process by which juries reach verdicts is essentially the same as that above outlined. In instances where there are no external helps from the manner or appearance of the witnesses, jurymen necessarily take the conceded facts as a touchstone, and decide which version of the disputed facts is more consistent with it. We do not say that such intellectual action is always deliberate or conscious; it is rather the instinctive course of a normal human mind in searching for truth. It is practicable, therefore, for the average man, without special education or professional training, to arrive at results on disputed facts which in most cases are correct. Juries, when they disagree, do not, as a rule, divide in the middle. Rarely will a jury stand 6 to 6, or 7 to 5, or even 8 to 4. In disagreements it is customary to find nine or more for one side, and one, two, or three for the other; and the majority is almost invariably for giving a verdict in accordance with the opinion, on the merits, of educated outsiders who have watched the trial or kept track of the evidence. The great hope of counsel on the wrong side of a cause is to capture one or more jurymen of not quite normal

mental constitution, or peculiarly open to sentimental considerations of some sort, and artfully play on such eccentricities. The suggestion often made, to allow verdicts in civil cases to be given by a vote of three-fourths of the jury, deserves to be kept constantly before the public. It is our opinion that in most trials nine jurymen out of twelve reach a just and truthful result by legitimate scientific methods, and that the best interests of the community would, in the long run, be subserved by doing away with the requirement for a unanimous vote.—*New York Law Journal.*

ITEMS FROM HINDOSTAN.—In this country our readers have doubtless noticed that when one pulls trigger at a snipe, a cooly instantly rises in the paddy fields beyond and receives the pellets in his manly bosom. When one levels one's trusty express at a herd of bounding antelope, a ryot with a yoke of oxen at once appears on the black soil in the horizon. When one goes to the range with the volunteers, a bullet is sure to hit the edge of the target and to go humming and zipzipping away into a group of fishermen on the beach. These things will happen, and therefore we have given at length (in December) the interesting case of *Stanley* v. *Powell* (1891), 1 Q.B. 86, where a beater, who lost his eye by a pellet that glanced from the branch of a tree, sued for damages. This propensity of people to get in the way of one's shot is a very old grievance, and troubled our forefathers. The earliest case is in the year book of 21 Henry VII., equivalent to A.D. 1506, before the battle of Flodden. Rede, J., remarked in the Norman jargon, which was then the language of English Courts: "*Mes ou on tire a les buts et blesse un home, coment que est incontre sa volonte, il sera dit un trespassor incontre son entent.*" In the following century was the well-known case of Abbott, Archbishop of Canterbury, who, shooting with a bow in the park, missed the deer but killed the keeper. It was gravely contended that the Archbishop had rendered himself "irregular" and incapable of performing any ecclesiastical functions.—*Indian Jurist.*

A curious case of murder was recently tried before the Kistna Sessions Court. The Kurnum of a village, with the station officer and a crowd of villagers, went to search the huts of some Yanadis for stolen property. One Yanadi was found in the huts, and in the excitement the Kurnum exclaimed, "Stab him!" A by-stander with a spear did stab him, and the unhappy Yanadi died. The Sessions Judge convicted the man who had used the spear and sentenced him to transportation for life. As for the Kurnum who exclaimed "Stab him!" the Judge held that the words may not have been seriously intended. The High Court served notice on the Kurnum to show cause why a new trial be not ordered, but, after hearing counsel on his behalf, Collins, C.J., and Weir, J., came to the conclusion that the judge's view was a possible view, and did not order a new trial. We are irresistibly reminded by this sad case of an incident that happened many, many years ago. We were out in camp with a collector, who was very sensitive to the least noise. A horse-keeper's infant cried shrilly. The collector groaned and called "Peon!" "Saheb?" replied the stalwart Dafadar, standing in the

tent doorway. "Choke that child!" said the collector. "Bahut achcha Saheb!" replied the Dafadar and disappeared. "By George! I hope he is not going to do it," said the collector.—*Ib.*

In a highly-placed official the crime of taking a bribe is one of enormous gravity, inasmuch as it tends to demoralise the whole community subject to his power and jurisdiction, and to destroy all commercial and social confidence. It is hardly too much to say of it that, in far-reaching evil effects and influences, this offence is even more noxious and atrocious than murder. It is terribly disappointing, therefore, to learn that the late Sub-Judge of Cocanada, being convicted upon his plea of guilty of taking a bribe of rupees 25,000, has been sentenced by the District Magistrate to eighteen months' simple imprisonment and a fine of rupees 1,000. The Sessions Judge should have given him three years' rigorous imprisonment and fined him half-a-lakh.—*Ib.*

At the February Sessions at Masulipatam two Yanadis were charged under section 401 with being members of a gang associated for the purpose of habitual theft. The evidence showed that this gang did commit many offences against property and had a very bad reputation, so much so that the police made a midnight raid on their camp in the jungle and succeeded in arresting these two men. The judge pointed out that they had their wives and children with them, and he expressed a doubt whether section 401 applies to a community such as this is. These Yanadis are born and bred in the gang. They know no other life. It may be that they steal, but that is an accident, as logicians would say. It is not the essential bond of union any more than theft is the purpose which assembles a community of gypsies in England. It were hard to punish a man because he has the misfortune to be born a Yanadi. The public prosecutor contended that the practice of the Godavari Sessions Court is to convict in such cases. One is reported at 6 Mad. H.C. Rep. 120. The Sessions Judge then yielded so far as to detain the two accused in custody and refer the point to the High Court under section 307, Criminal Procedure Code. The public prosecutor's citation of the practice of the Godavari Court reminds us of an anecdote we heard from Mr. J. Kelsall, late M.C.S. At the first sessions he held at Rajamundry a Yanadi was placed in the dock, the charge was read and the plea recorded. The public prosecutor then rose and said, "Your Honor, this man is a Yanadi." There was a lengthy pause, and the judge said, "Go on." Up jumped the Court Inspector: "Your Honor will permit me! Your Honor is new to this district. This man is a Yanadi. All Yanadis are thieves." "Sit down, Inspector," said the judge. "Mr. Public Prosecutor, please proceed." Then all the bar turned in their chairs and looked at this new judge, who was so ignorant as to pass lightly over the vital fact that the prisoner was a Yanadi.—*Ib.*

CARRIERS—WHAT CONSTITUTES BAGGAGE.—The case of *Oakes* v. *Northern Pacific Railway Co.*, 26 Pac. Rep. 230, decided by the Supreme Court of Oregon, is of interest on the subject of the liability of carriers for loss of baggage. It is

held that carriers of passengers are responsible for the carriage and safe delivery of such baggage as, by custom and usage, is ordinarily carried by travellers; and the payment of the usual fare includes, in legal contemplation, a compensation for the conveyance of such baggage: that they are insurers of such baggage in the same manner and to the same extent as for goods or freight; that baggage, within the rule of such liability, is confined to such articles as are usually carried as baggage, for the personal use of the passenger, or for his convenience, instruction or amusement on the journey, and does not include that which is carried for the purposes of business, such as merchandise or the like: that while the obligation of a carrier of passengers is limited to ordinary baggage, yet, if the carrier knowingly permit a passenger, either on payment or without payment of an extra charge, to take articles as personal baggage which are not properly such, it will be liable for their loss or destruction, though without fault. Lord, J., says, *inter alia:* "As to what constitutes 'baggage' in the legal sense or 'ordinary baggage,' or 'personal baggage,' as commonly used in England, it has been found by the courts difficult, if not impossible, to define with accuracy within the meaning of the rule of the carrier's liability." "It is agreed on all hands," said Earle, C.J., "that it is impossible to draw any very well defined line as to what is and what is not necessary or ordinary baggage for a traveller. That which one traveller would consider indispensable would be deemed superfluous and unnecessary by another. But the general habits and wants of mankind must be taken to be in the mind of the carrier when he receives a passenger for conveyance." *Phelps* v. *Railroad Co.*, 19 C.B. (N.S.) 321. In a general sense it may be said to include such articles as it is usual for persons travelling to take with them for their pleasure, convenience, and comfort, according to the habits and wants of the class to which they belong. In *Weeks* v. *Railroad Co.*, 9 Hun. 669, it is said that a passenger may carry with him "such articles of necessity and convenience as are usually carried by passengers for their personal use and comfort, instruction and convenience, or protection." In *Jordan* v. *Railroad Co.*, 5 Cush. 69, the rule is stated to be "that baggage includes such articles as are of necessity or convenience for personal use, and such as is usual for persons travelling to take with them." In *Johnson* v. *Stone*, 11 Humph. 419, the court said: "It is not practical to state with precise accuracy what shall be included by the term 'baggage.' It certainly includes articles of necessity and personal convenience usually carried by passengers for their personal use; and what these may be will very much depend upon the habits, tastes, and resources of the passenger." In *Railroad Co.* v. *Swift*, 12 Wall. 262, Mr. Justice Field said that the contract "to carry the person, only implies an undertaking to transport such a limited quantity of articles as are ordinarily taken by travellers for personal use and convenience, such quantity depending, of course, upon the station of the party, the object and length of his journey, and many other considerations." In *Macrow* v. *Railway Co.*, L.R. 6 Q.B. 612, Cockburn, C.J., said: "Whatever the passenger takes with him for his personal use and convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose of the journey, must be con-

sidered as personal luggage. This would include," he continues, "not only articles of apparel, whether for use or ornament, . . . but also the gun-case or fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of analogous character, the use of which is personal to the traveller, and the taking of which has arisen from the fact of his journeying. On the other hand, the term 'ordinary luggage' being thus confined to that which is personal to the passenger, and carried for his use and convenience, it follows that what is carried for the purpose of business, such as merchandise and the like, or for larger or ulterior purposes, such as articles of furniture or household goods, would not come within the description 'ordinary luggage' unless accepted as such by the carrier." See also 1 Amer. & Eng. Enc. Law. "Baggage," 1042; 2 Ror. R.R. 988; Hutch. Carr. ss. 677, 683, 686. So that it would seem that baggage, in the sense of the law, may consist of such articles of apparel as, through necessity, convenience, comfort, or recreation, the passenger may take for his personal use, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or the ultimate purpose of the journey. The question, what articles of property, as to quantity and value, contained in a trunk, may be deemed baggage within the rule, is to be determined by the jury according to the circumstances of the case, subject to the power of the court to correct any abuse. *Railroad Co.* v. *Fraloff*, 100 U.S. 24; *Bomar* v. *Maxwell*, 9 Humph. 622; *Brock* v. *Gale*, 14 Fla. 523; *Mauritz* v. *Railroad Co.*, 23 Fed. Rep. 765. As the contract of the carrier of passengers is to carry a reasonable amount of baggage for the accommodation of the passenger, it follows from the nature and object of the contract, as observed by Appleton, C.J., "that the right of a passenger is limited to the baggage required for his pleasure, convenience and necessity during the journey." *Wilson* v. *Railroad Co.*, 56 Me. 62. Articles of whatever kind that do not properly come within the description of ordinary baggage are not included within the terms of such contract, nor is the carrier liable for their loss or destruction, in the absence of negligence. Stage properties, costumes, paraphernalia, advertising matter, etc., are not articles required for the pleasure or convenience or necessity of the passenger during his journey, but are plainly intended for the larger or ulterior purposes of carrying on the theatrical business. They do not fall, therefore, under the denomination of "baggage," and in the absence of negligence, no liability can arise against the carrier for their loss or destruction unless accepted as baggage by the carrier. . . . While it is true that passenger carriers are not liable for merchandise and the like, when packed up with a traveller's baggage, if the baggage be lost, yet if the merchandise be so packed as to be obviously merchandise to the eye, and the carrier takes it without objection, he is liable for the loss. *Story, Bailm.* s. 499. Thus, in the case of *Railway Co.* v. *Shepherd*, 8 Exch. 30, Parke, B., said: "If the plaintiff had carried these articles exposed, or had packed them in the shape of merchandise, so that the company might have known what they were, and they had chosen to treat them as personal luggage, and carry them without demanding any extra remuneration, they would have been responsible for the loss. So, also, upon any limit in point

of weight, if the company chose to allow a passenger to carry more, they would be liable." And in *Marcrow* v. *Railway Co., supra*, Cockburn, C.J., said: "If the carrier permits the passenger, either on payment or without payment of an extra charge, to take more than the regulated quantity of luggage, or knowingly permits him to take personal luggage articles that would not come under that denomination, he will be liable for their loss, though not arising from his negligence." In *Sloman* v. *Railway Co.*, 6 Hun. 546, Gilbert, J., after stating and citing authorities to sustain the proposition that railroad companies are not liable for the merchandise delivered to them under the guise of baggage for transportation along with a passenger, said: "They are liable if they knowingly undertake to transport merchandise in trunks or boxes, which have been received by them for transportation, in passenger trains, unless the agent who receives the packages for that purpose violates a regulation of the company by so doing, and the passenger or owner of the goods has notice of such regulations;" citing *Butler* v. *Railroad Co.*, 3 E. D. Smith, 571, and other cases. See, also, 2 Wait, Act. & Def. 82. "Doubtless," said Mitchell, J., "if the carrier had actual notice of the nature of the property, and still received it as baggage, he would be liable." *Haines* v. *Railway Co.*, 29 Minn. 161, 12 N. W. Rep. 447. So, in *Railway Co.* v. *Capps*, 16 Amer. & Eng. R. Cas. 118, it was held that where a railroad company, through its baggage or ticket agent, receives articles for transportation as baggage, knowing at the time that such articles are not properly baggage, the company will be responsible therefor as a common carrier, and will be estopped from denying that the same was baggage. *Railroad Co.* v. *Conklin* (Kan.), 3 Pac. Rep. 762; *Minter* v. *Railroad Co.*, 41 Mo. 503. *Hoeger* v. *Railway Co.*, 63 Wis. 100, 23 N.W. Rep. 435.—*Central Law Journal.*

Correspondence.

HUSBAND AND WIFE.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Is *Re Parsons, Jones* v. *Kelland*, 14 Ont. P.R. 144, an authority that the husband, by renouncing his right to administration of the personal estate of his deceased wife, takes no interest in such estate, or that the money in court to secure dower was realty at the death of the wife, so that there being no issue the husband took no interest or estate by the curtesy, and became personalty on the death of the doweress for the purposes of distribution among the next of kin of the wife?

LAW STUDENT.

London, July 23rd, 1891.

[We are always delighted to afford the junior members of the profession any assistance in our power; but when students seek to pose us with questions, they should be careful to remember that the first duty of a lawyer is to acquire the

art of stating his case clearly and explicitly. That is what our correspondent, "Law Student," has not done. The only point for which *Re Parsons, Jones* v. *Kelland* is an authority is this, viz., that a personal representative of a deceased person is entitled to receive out of court any part of the personal estate of such deceased person which may be there, notwithstanding that some of the next of kin interested therein may be infants. So far as we can understand "Law Student's" question, we should say that the case is no authority for either proposition stated by him. The rights of the parties in the fund set apart to secure the dower upon the death of the doweress appear to have been adjudicated upon or determined in some other proceeding. So far as this decision is concerned, it seems to have been admitted that Jane Ann Jones' interest was personal estate, and as such passed to her personal representative, and the only question the judge had to decide was whether or not the infants' share should remain in court or be paid out to the personal representative.—Ed. C.L.J.]

JUDGE-MADE LAW.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Amongst the editorial comments in your issue of date 16th July last, is one charging the County Court Judge at Ottawa with going beyond his jurisdiction, and imputing mistaken zeal to a notary public. The editor must give "instant satisfaction" to these aggrieved parties by allowing them a few lines of print in their defence.

In THE LAW JOURNAL of April 16th, 1889, appeared a letter from a notary public showing the inconvenience arising from an oath of office not being taken by the notaries of Ontario, inasmuch as other commercial peoples of the world required it of their own notaries, whose duties and functions in no way differed from those of the notaries of Ontario. Also pointing out the security gained by the administering of an oath to any public functionary.

Many lawyers of Ottawa also being of opinion that notaries should be sworn, the Attorney-General of Ontario was applied to for amendment of the law in that direction: he replied that it was not expedient to alter the law, inasmuch as the functions of the notary in Ontario differed widely from those of notaries in other countries.

Issue being joined between the complainant and the legislator, the only recourse the former had was to a judge of a Court of Record, who was asked to administer an oath similar to the one administered in England to the notaries there.

The subject of debate is now shifted from the propriety of administering an oath to such functionaries to the question whether, in the silence of the statute law of Ontario on the point, it is within the jurisdiction of a county judge to make up this deficiency of the law of Ontario, which is thought to be highly improper, unusual, and inconvenient?

Bearing in mind that the act complained of by the editor consists in the judge supplementing, modifying, or altering, if you will, a point of practice of the law and not one of its principles—which will weaken the arguments derived from the citations given below against extending the prerogative of the judge, and strengthen those in its favor—let us note some of these dicta pro and con.

"*Judicis est jus dicere, non jus dare.*" "It is the province of the statesman, not of the lawyer, to discuss, and of the legislature to determine what is best for the public good, and to provide for it by proper enactments. It is the province of the judge to expound the law only: the written from the statutes; the unwritten law from the decisions of his predecessors and of the existing courts, or from text-writers of acknowledged authority, and upon the principles to be clearly deduced from them by sound reason and just inference; it is not, however, the duty of a judge to speculate on what may be most in his opinion for the advantage of the community." (*Egerton* v. *Brownlow*, 4 House of Lords cases, cited in Broom on Common Law.)

"The judge ought to be the most obedient servant of the law, for this slavery is of more value than liberty. If the law appears to him to be defective, he must first begin by causing it to be carried out, and then proceed to bring his own observations before the head of the judiciary so as to obtain from the legislator a salutary reform. Unhappy the judges who take upon themselves to correct the law; it is not permitted to them to do better than it does, so long as it remains unchanged." (Guyot, Verbo Judge.)

On the other hand, in support of the judge's extended prerogative, we find the following newer opinions:

"Although the judge is assumed to take the law from the legislative authority, yet, as the existing law never at any time contains provisions for all cases, the judge may be obliged to invent or create principles applicable to the case. This is called by Bentham and the English jurists judge-made and judiciary law." (Encyclopædia Britannica, verbo Judge.)

"Any judge permitted to make rules he (Austin) considers to be tacitly empowered to make laws." "That judges in England can and do make law, no one can deny." "Is there any rule of law which binds him (the judge) to the decision of the case in a particular way? If there is, he must apply it whatever he or others may think of the propriety of it. But if there is not, he must still give a decision; and he will naturally decide against that party whose conduct has been unusual, or unreasonable, or dishonest, or negligent." (Elements of Law, Markby.)

"Nothing which is pernicious to utility can be right. The principle of utility, in the negative form in which I have stated it, is embodied under the name of the *argumentum ab inconvenienti* in one of the fundamental maxims of our law; and there are few principles more frequently referred to and relied upon by jurists than this. The maxim, as given by Coke, is: *Argumentum ab inconvenienti plurimum valet in lege;* and he adds: "The law, that is, the perfection of reason, cannot suffer anything that is inconvenient"; and, therefore, he says: "*Nihil quod est*

inconveniens est licitum"; and that, "judges are to judge of inconveniences as of things unlawful." (The Law of Private Rights, by George H. Smith.)

The case at length of the county and the notary is now before your readers, with the arguments in support of their action; they can only hope that these readers—as being the court of the ultimate appeal—will reverse the decision of the single judge or editor in chambers.

The importance of the office of notary is the excuse for the length and number of the articles in support of the dignity and the freedom from suspicion demanded of this official. His duties, embracing the preparation of deeds, wills, etc., and the attestation of the same, all require that the public should be protected against unscrupulous or ignorant practitioners.

A dishonest or incapable lawyer is soon found out, and his work ceases; a dishonest or incapable notary or conveyancer may ruin thousands before his incompetence or treachery is discovered.

R. J. WICKSTEED.

[We are delighted to give our enterprising friend "instant satisfaction" by publishing his letter. He is not quite correct in saying that we charged the learned judge with going beyond his jurisdiction; it was rather a suggestion that possibly he had. We would desire, however, in a feeble way, to remark that these are holiday times, and that our fighting editor is absent. "Pistols for two" are good enough in a general way, but to be fired at in this way by a gatling gun in the "dog days" is unpardonable.—ED. L.J.]

DIARY FOR AUGUST.

1. Sat.......Slavery abolished in British Empire, 1834.
2. Sun......*10th Sunday after Trinity.*
3. Mon......Battle of Fort William Henry, 1757.
6. Thur....Thos. Scott, 4th C.J. of Q.B., 1804.
7. Fri.........Duquesne, Governor of Canada, 1752.
8. Sat.......Last day for filing notices for Call.
9. Sun......*11th Sunday after Trinity.* Fort William Henry capitulated, 1757.
11. Tues.....Battle of Lake Champlain, 1814.
13. Thur.....Sir Peregrine Maitland, Lieut.-Gov., 1818.
14. Fri........Battle of Fort Erie, 1814.
16. Sun.......*12th Sunday after Trinity.* Battle of Detroit, 1812.
17. Mon......Last day for Call and Admission notices. General Hunter, Lieut.-Governor, 1799.
19. Wed.....River St. Lawrence discovered, 1535.
23. Sun.......*13th Sunday after Trinity.*
24. Mon......St. Bartholomew.
25. Tues.....Francis Gore, Lieut.-Governor, 1806.
30. Sun......*14th Sunday after Trinity.*
31. Mon......Long Vacation ends.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

[June 30.

MCMICHAEL *v.* WILKIE.

Husband and wife—Separate estate—Contract by implication.

The implied obligation to pay off the incumbrance which, in the case of a conveyance of land to a person *sui juris*, is imposed by a Court of Equity is not enforcible against a married woman. It cannot be said to be a contract or promise in respect of separate property.

The practice as to giving relief to one defendant against a co-defendant considered.

Judgment of the Common Pleas Division, 19 O.R. 739, reversed.

E. D. Armour, Q.C., for the appellant.

W. H. P. Clement for the respondent.

IN RE TOWNSHIP OF ORFORD ET AL. AND TOWNSHIP OF HOWARD.

Drainage—Municipal corporations—Drain used by another municipality—R.S.O. (1887), c. 184, s. 590.

Section 590 of R.S.O. (1887), c. 184, applies only to drains strictly so called, that is, to such outlets as have been artificially constructed; and a municipality from which surface water flows, whether by drains or by natural outlets, into a natural water-course, cannot be called on to contribute to the expense of a drainage scheme, merely because the natural water-course is used as a connecting link between drains constructed under that scheme, and because the drainage scheme is in part necessitated by the large amount of surface water brought into the natural water-course by the municipality in question.

Judgment of ROBERTSON, J., affirmed.

M. Wilson, Q.C., for the appellants.

W. Douglas, Q.C., and *J. A. Walker*, for the respondents.

HAMILTON *v.* GROESBECK.

Master and servant—Negligence—Machinery—Unguarded saw—"Moving"—"Defect"—Factories Act, R.S.O. (1887), c. 208—Workman's Compensation for Injuries Act, R.S.O. (1887), c. 141.

A defect in the condition of machinery, etc., under s. 3 of the Workman's Compensation for Injuries Act, R.S.O. (1887), c. 141, means some defect with reference to the safe operation of the machine; and where a workman was injured by falling against an unguarded moving saw at a time when he was not working at it, and in such a manner that no reasonable guard would have prevented the injury, it was held that he was without remedy, and that the question whether the want of a guard might be a defect or not need not be considered.

The employer's duty, created by the Act, is merely to see that the machine is in such a condition that it may be worked with safety by a workman using reasonable care and caution.

There being no evidence as to the number of persons employed on the premises in question, the court declined to consider the questions raised as to the construction of the Factories Act, R.S.O. (1887), c. 208.

Judgment of the Queen's Bench Division, 19 O.R. 76, affirmed.

Aylesworth, Q.C., for the appellant.

J. A. S. Fraser for the respondent.

THE ATTORNEY-GENERAL EX REL. RICHARD HOBBS *v.* THE NIAGARA FALLS WESLEY PARK AND CLIFTON TRAMWAY CO.

Crown—Injunction—Breach of charter.

The defendants were incorporated by Letters Patent under the Street Railway Act, R.S.O. (1887), c. 171, which authorised them to construct and operate (on all days except Sundays) a street railway.

Held (MACLENNAN, J.A., dissenting), that an

action would not lie by the Crown to restrain the defendants from operating the road on Sunday, the restriction against their doing so being at most an implied one, and no substantial injury to the public or any interference with proprietary rights being shown.

Judgment of the Common Pleas Division, 19 O.R. 624, affirmed.

J. R. Cartwright, Q.C., and *A. M. Dymond*, for the appellant

A. G. Hill for the respondents.

CENTRAL BANK OF CANADA *v.* GARLAND.

Bills of exchange and promissory notes—Collateral hire receipts—Discount of notes.

This was an appeal by the defendant from the judgment of the Chancery Division reported 20 O.R. 142, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 1st of June, 1891.

G. H. Watson, Q.C., and *C. A. Masten*, for the appellant.

W. R. Meredith, Q.C., and *F. A. Hilton*, for the respondents.

June 30th, 1891. The appeal was dismissed with costs, this court agreeing with the reasons for judgment given in the court below.

UNITED COUNTIES OF LEEDS AND GRENVILLE *v.* TOWN OF BROCKVILLE.

Canada Temperance Act—Application of fines—49 Vict., c. 48, s. 2 (D).

This was an appeal by the plaintiffs from the judgment of the Queen's Bench Division reported 17 O.R. 261, and came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN) on the 13th of May, 1891.

W. R. Meredith, Q.C., and *J. H. Macdonald*, Q.C., for the appellants.

C. F. Fraser, Q.C., and *Aylesworth*, Q.C., for the respondents.

June 30th, 1891. The appeal was dismissed, the court being divided in opinion.

HAGARTY, C.J.O., and OSLER, J.A., thought that the appeal should be allowed for the reasons given by STREET, J., dissenting, in the court below.

MACLENNAN, J.A., agreed with the majority in the court below, while BURTON, J.A., thought that Brockville should recover, but through the medium of the Crown who should be added.

WHIDDEN *v.* JACKSON.

County Court—Jurisdiction—Equitable claim—Action—Assignments Act—R.S.O. (1887), c. 124.

An action asking for a declaration of right to rank on an insolvent estate is an action for equitable relief, and is not within the jurisdiction of the County Court.

Judgment of the County Court of Huron affirmed.

Garrow, Q.C., for the appellant.

J. H. Coyne for the respondent.

PEUCHEN *v.* CITY MUTUAL INSURANCE CO.

Insurance—Change of interest.

Where the business of a partnership is taken over by a limited liability company formed for that purpose, there is such a change of interest as to invalidate insurances held by the firm in the absence of notification of the change to, and assent by, the insurance company, though the members of the partnership hold nearly all the stock in the limited liability company.

Judgment of FALCONBRIDGE, J., reversed.

Gibbons, Q.C., for the appellants.

W. Nesbitt and *A. M. Macdonnell* for the respondents.

IN RE CENTRAL BANK OF CANADA. HOME SAVINGS AND LOAN COMPANY'S CASE.

Banks and banking — Shares — Transfers — Winding-up Act.

After a winding-up order has been made, it is too late for holders of shares, entered as such in the books of the bank, to escape liability by showing irregularities in transfers to more or less remote predecessors in title.

A loan company which advances moneys on the security of shares which are transferred to it and accepted by it in the ordinary absolute form cannot escape liability on the ground that it is merely a trustee for the borrower.

Judgment of ROBERTSON, J., affirmed.

Foy, Q.C., for the appellants.

W. R. Meredith, Q.C., and *F. A. Hilton*, for the respondents.

REGINA *v.* SLOAN.

Liquor License Act—Right of search—Refusal to admit officer—R.S.O. (1887), c. 194, s. 130.

The right of search given by section 130 of the Liquor License Act, R.S.O. (1887), c. 194, may be exercised without any preliminary state-

ment of the purpose for which the search is to be made. A formal demand of admittance is sufficient.

Judgment of the County Court of Frontenac reversed.

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

John McIntyre, Q.C., for the respondent.

GREENWOOD *v.* CROOME.

Evidence—Corroboration — Executors—R.S.O. (1887), c. 761, s. 10.

The fact of possession of certain promissory notes by one who sets up a claim to them under an alleged *donatio mortis causâ* is no corroboration of his evidence in an action by the executors of the deceased to recover back the notes, especially where for some time before his death the deceased was in a helpless condition and the claimant had free access to his papers.

Judgment of the Chancery Division affirmed.

V. Mackenzie, Q.C., and *DuVernet*, for the appellant.

Hoyles, Q.C., and *W. S. Brewster*, for the respondents.

IN RE TOWNSHIP OF ROMNEY AND TOWNSHIP OF TILBURY.

Drainage—Municipal corporations — Municipalities interested—Constitution of board of arbitrators—R.S.O. (1887), c. 184, s. 389.

Where in a drainage scheme initiated by one township assessments are made against more than one other township each township is "interested," within the meaning of section 389 of R.S.O (1887), c. 184, only in the question of its own assessment, and has no right to appoint an arbitrator to deal with other assessments.

The scheme of the Act is to make the total cost of the proposed work fall upon the initiating municipality, less such sums as may be properly chargeable against other municipalities for the benefits received by them respectively, and if benefit is disproved the attempted charge fails and does not appear to be re-imposed elsewhere.

Re Townships of Harwich and Raleigh, 20 O.R. 154, approved. *Re Essex and Rochester*, 42 U.C.R. 523, questioned.

Judgment of ARMOUR, C.J., reversed.

Atkinson, Q.C., and *C. J. Holman*, for the appellants.

W. R. Meredith, Q.C., *W. Douglas*, Q.C., and *J. A. Walker*, for the respondents.

WILLIAMS *v.* TOWNSHIP OF RALEIGH.

Drainage—Municipal corporations—Negligence—Action.

A corporation adopting and carrying out a drainage scheme without exceeding their powers and without negligence is not liable to an action for damages by one who suffers injury because of the inefficient character of the scheme.

Judgment of FERGUSON, J., reversed.

M. Wilson, Q.C., for the appellants.

W. Douglas, Q.C., and *J. A. Walker*, for the respondent.

TOWNSHIP OF STEPHEN *v.* TOWNSHIP OF MCGILLIVRAY.

Drainage—Municipal corporations—Adjoining municipality—Appeal against scheme—R.S.O. (1887), c. 184, s. 576.

An adjoining township cannot be charged under s. 576 of R.S.O. (1887), c. 184, with a proportion of the costs of drainage works which extend beyond the limits of the initiating township into the limits of a third township. It is only, if at all, when the works are done by a county council under the appropriate provisions of the Act that an adjoining township can under such circumstances, be assessed.

Objections to the legality of a drainage scheme may be taken by way of appeal under the arbitration clauses of the Act, but they need not necessarily be so taken, and it is not too late to set them up in answer to an action.

Judgment of ROSE, J., affirmed.

Moss, Q.C., and *M. Wilson*, Q.C., for the appellants.

W. Nesbitt and *A. W. Aytoun-Finlay* for the respondents.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [June 19.

IN RE TIPLING *v.* COLE.

Prohibition—Division Court—Judge reserving judgment without naming day—Garnishee summons—R.S.O., c. 51, s. 144.

By s. 144 of the Division Courts Act, R.S.O., c. 51, it is provided that the judge, in any case brought before him, shall openly in Court, and as soon as may be after the hearing, pronounce his decision; but if he is not prepared to pronounce his decision instanter, he may postpone

judgment and name a subsequent day and hour for the delivery thereof in writing at the clerk's office.

Held, that this applies to the judge's decision upon the hearing of a garnishee summons; that it is a most necessary and essential provision, and a strict compliance with it should always be observed and enforced.

And where the judge reserved judgment, endorsing the summons "judgment reserved till" but did not name a subsequent day and hour for the delivery thereof, nor adjourn the hearing or trial of the cause, prohibition was granted to restrain further proceedings.

Shepley, Q.C., for the primary creditor.

Douglas Armour for the garnishee.

Appointments to Office.

SHERIFF.

County of Renfrew.

William Moffat, of the Town of Pembroke, in the County of Renfrew, Esquire, to be Sheriff in and for the said County of Renfrew, in the room and stead of William Murray, Esquire, resigned.

REGISTRAR OF DEEDS.

County of Northumberland.

Francis W. Field, of the Town of Coburg, in the County of Northumberland, Esquire, to be Registrar of Deeds in and for the Registration Division of the West Riding of the said County of Northumberland, in the room and stead of William H. Eyre, Esquire, deceased.

County of Victoria.

Charles Denroche Barr, of the Town of Lindsay, in the County of Victoria, Esquire, to be Registrar of Deeds for the said County of Victoria, in the room and stead of Hartley Dunsford, Esquire, deceased.

REFEREE.

County of Frontenac.

Byron Moffatt Britton, of the City of Kingston, in the County of Frontenac, Esquire, one of Her Majesty's Counsel learned in the law of Ontario, to be Referee under "The Drainage Trials Act," 1891 (54 Vict., cap. 51, s. 2).

POLICE MAGISTRATE.

County of Kent.

Richard Lawrence Gosnell, of the Town of Blenheim, in the County of Kent, Esquire, Barrister-at-Law, to be Police Magistrate in and for the said Town of Blenheim, without salary.

ASSOCIATE CORONERS.

County of Kent.

James Samson, of the Town of Blenheim, in the County of Kent, Esquire, M.D.

County of Oxford.

Charles Reyno[illegible] Staples, of the Village of Princeton, in the County of Oxford, Esquire, M.D.

Andrew Mackay, of the Town of Woodstock, in the County of Oxford, Esquire, M.D.

DIVISION COURT CLERK.

United Counties of Stormont, Dundas, and Glengarry.

Dougald B. McMillan, of the Township of Lochiel, in the County of Glengarry, one of the United Counties of Stormont, Dundas and Glengarry, Gentleman, to be Clerk of the Second Division Court of the said United Counties of Stormont, Dundas and Glengarry, in the room and stead of J. A. McDougald, resigned.

DIVISION COURT BAILIFFS.

United Counties of Leeds and Grenville.

Joseph Quinn, of the Village of Merrickville, in the County of Grenville, one of the United Counties of Leeds and Grenville, to be Bailiff of the Fifth Division Court of the said United Counties of Leeds and Grenville, in the room and stead of Patrick Dowdall, resigned.

County of Victoria.

Archibald J. Smith, of the Village of Woodville, in the County of Victoria, to be Bailiff of the First Division Court of the said County of Victoria, in the room and stead of Malcolm McMillan, removed from office.

County of Wellington.

William Henry Mills, of the City of Guelph, in the County of Wellington, to be Bailiff of the First Division Court of the said County of Wellington, in the room and stead of Philip Spragge, resigned.

Flotsam and Jetsam.

A FIGHT taking place immediately outside a "meeting-house," the large majority of the congregation left to witness it. Held by the Supreme Court of North Carolina that "the congregation was not disturbed by the fuss."—*State* v. *Kirby*.

AN VETERAN JUDGE.—Yesterday the Hon. Henry W. Blodgett, Judge of the National District Court and one of the Justices of the Circuit Court of Appeal, celebrated his seventieth anniversary. Judge Blodgett received his commission from President Grant in 1871. His judicial service having covered a period of twenty years, the law gives him, at the age of seventy, the privilege of retiring on full pay. But Judge Blodgett will not avail himself of that privilege. His health is good; indeed, he never has been better equipped, mentally or physically, for the judicial service than he is now. Every secular day he makes a journey of seventy miles by rail, arriving in the city by 9 a.m. and departing for his home in Waukegan at 5 p.m., holding his court in the meantime four or five hours. It is said with truth that he is the most industrious Judge in Chicago. And yet, at the age of seventy, he realizes no need of the two or three months' vacation every summer that is necessary to enable the younger judges of the State courts to recuperate their exhausted energies. It is in this life of active occupation that the distinguished jurist finds his chief enjoyment. "I don't see how I could get on without my routine work," he says. "and the fact that I have gained the threescore and ten will not change my course at all."—*Chicago Legal Adviser.*

LITTELL'S LIVING AGE. The numbers of *The Living Age* for July 18th and 25th contain Social Aspects of American Life, and The Bombardment of Iquique, *Nineteenth Century;* Archbishop Magee, *Fortnightly;* A Diligence Journey in Spain, *National;* The Simian Tongue, *New Review;* Jewish Colonies in Spain, *Blackwood;* On the Swiss-French Frontier, *Cornhill;* Moltke as a Man of Letters, The Rise of British Dominion in India, by SIR ALFRED LYALL, and Extracts from some Unpublished Letters of Charlotte Bronte, *Macmillan;* Richard Jefferies, and The Marriage of Frances Cromwell, *Temple Bar;* Richard Jefferies, *Longman's;* The Inns of Court, *Gentleman's;* Statesmen of Europe: Austria, *Leisure Hour;* with instalments of "Two Old Men," "Melissa's Tour," "Miss Winter's Hero," and "Madame La Commandante," and poetry.

For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year) the subscription price ($8) is low; while for $10.50 the publishers offer to send any one of the American $4.00 monthlies or weeklies with *The Living Age* for a year, both postpaid. Littell & Co., Boston, are the publishers.

Law Society of Upper Canada.

THE LAW SCHOOL, 1891.

LEGAL EDUCATION COMMITTEE.

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

W. BARWICK	E. MARTIN, Q.C.
JOHN HOSKIN, Q.C.	W. R. MEREDITH, Q.C.
Z. A. LASH, Q.C.	W. R. RIDDELL.
C. MACDOUGALL, Q.C.	C. H. RITCHIE, Q.C.
F. MACKELCAN, Q.C.	C. ROBINSON, Q.C.

J. V. TEETZEL, Q.C.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society, copies of which may be obtained from Principal of the Law School, Osgoode Hall, Toronto.

Those Students-at-Law and Articled Clerks, who, under the Rules, are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing Curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be most necessary for the guidance of the student.

Curriculum of the Law School, Osgoode Hall, Toronto.

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

Lecturers:
- E. D. Armour, Q.C.
- A. H. Marsh, B.A., LL.B., Q.C.
- R. E. Kingsford, M.A., LL.B.
- P. H. Drayton.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. Admission is to be gained during Easter and Trinity terms only. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hilary Term, 1889.

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

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

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral

methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

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

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum :

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, Books 1 and 3.

Equity.

Snell's Principles of Equity.

Statute Law.

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

SECOND YEAR.

Criminal Law.

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

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

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

Statute Law.

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

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

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

Statute Law.

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

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be carefully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts. Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.