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A LUDICROUS result seems to have been reached in *Anderson* v. *Morden*, a case lately before the Court of Appeal. The action was for the administration of an estate and the construction of a will. This will was a peculiar one, the testator not contemplating the possibility of his widow outliving his grandchildren. The Court of Appeal was evenly divided, two of the Judges holding that the estate had vested in the grandchildren, and two of them holding that there was an intestacy. The judgment of the court below was that the estate did not vest, but the question of intestacy was not argued or considered in that court. All the Judges of the Court of Appeal agreed that the judgment in the court below was wrong, but as they themselves could not agree upon the judgment to be given, the appeal was dismissed, and the judgment which every Judge of the Court of Appeal believed to be erroneous, stands as the decision in the case.

FEDERAL GOVERNMENT IN CANADA.

The publication of Mr. Bourinot's lectures upon "Federal Government in Canada," at the Johns Hopkins University, gives to the public a clear, concise and very readable summary of the constitutional history of Canada, and of the form of government now established throughout the Dominion. These lectures, which were intended for the information of persons knowing but little of our history or constitution, contain a good deal that is, or should be, familiar to every Canadian; they are valuable, nevertheless, as a means of instruction for those who are ignorant of the past and present condition of our affairs, and for reference by those who have been better instructed. The lectures are four in number. The first gives an historical outline of our political development; the second treats of the general features of the Federal system under which we are governed; the third enters in detail into the special relations which exist, under the British Parliamentary system, between the administration and the Parliament; and the fourth deals with the government and legislatures of the Provinces composing the Confederation.

The first lecture begins by describing the condition of the early settlements in New France prior to the conquest; he then refers to the second period in our history, lasting from the conquest to the passage of the Constitutional Act of

1791, during which, amid much discontent and many difficulties, the foundation of our present system was being established; the third period, ending with the Act of 1841, saw the development of Responsible Government and the union of the Provinces; the fourth brings our history down to the establishment of confederation in 1867; the result of the many years of political agitation through which Canada has passed being, according to Mr. Bourinot, that "no country in the world enjoys a larger measure of political liberty or greater opportunities for happiness and prosperity under the liberal system of government which has been won by the sagacity and patience of her people." So it might be, and so we would it were, but recent events have led us to think that, while we have been complacently admiring the political structure so pleasingly described, certain persons within it, taking advantage of the shelter it gives, have been secretly possessing themselves of such coigns of vantage as enable them to usurp entire control in defiance of the rules laid down for its management. In place of religious freedom we see one ecclesiastical system dominating over all others, interfering in public affairs, and subserviently obeyed by contending factions. In place of political equality we see privileges allowed to some and denied to others as party interests seem to require. We see a Society, semi-political, semi-religious, incorporated, endowed, and legally recognized, the very existence of which is a menace to civil and religious liberty. And lastly, we see the great power of disallowance, vested in the supreme government for the protection of minorities, the restraint of aggressive majorities, and the negation of any Provincial legislation that may injuriously affect the public weal, used or withheld simply as a weapon of party warfare.

We boast of our freedom from interference or oppression on the part of any tyrant, foreign or domestic, while we allow the despotism of party spirit so to stifle individual independence of thought and action as to make us an easy prey to any unscrupulous faction, which, holding the balance of power, can compel either party in turn to obey its behests, and serve its interests in defiance of the "vital principles of political freedom and religious toleration" which we are assured we so largely enjoy.

Mr. Bourinot explains very clearly the rules that should govern the several jurisdictions of the Imperial, the Dominion, and the Provincial Governments, in their relations to each other, and to their own internal affairs, especially in those complex matters where concurrent powers exist, or the line which divides them is so finely drawn as to be hardly discernible. As regards the power of disallowance, with which he deals very cautiously, the lecturer evidently leans to the opinion that it would be more safely vested in a judicial than in an executive body, though clearly were such a solution of the difficulty adopted, and the only question to be considered was whether the passing of a Provincial law was within the power granted by the British North America Act, the power to contravene legal but injurious legislation would cease to exist, and the confederation become a mere alliance of sovereign States. This has been clearly brought out in the recent discussions on the Jesuits' Estates Bill, to which Mr. Bourinot refers in a note, and in nothing have party leaders so decidedly shown their desire to keep

on good terms with the hierarchy than in the recent avowals, altogether inconsistent with the practice of past years, that the exercise of the power of veto is dependent upon the object being within or without the power of the Legislature.

The British North America Act clearly intended the power of disallowance to be exercised, as it has hitherto been exercised by both parties, in cases where the Provincial legislation was *intra vires* of the Legislature, but, for some reason or other, contrary to the general policy, or injurious to the general interests, of the Dominion. That it was so meant to be used is clear, not only from the terms of the Act, but from the recorded opinions of leading men who took part in the framing of our constitution. Sir George Cartier had it in view in the interests of his own church and race, whose representatives would be the first to demand its exercise were those interests assailed in any of the Provinces. It suits them to stand up for the doctrine of Provincial rights when the legislation of Quebec is found fault with. They would like to have that doctrine stretched to the utmost, that they might pursue unchecked their scheme of creating or fostering a purely French Canadian nationality, and, in furtherance of that object, maintaining and extending in every possible way the influence and power of the Roman Catholic ecclesiastical system. But there is no doubt that the power of disallowance would be invoked by them should their interests be affected by Provincial legislation outside of Quebec. Apart, however, from any special application, the doctrine of Provincial rights, as expounded by Mr. Mills, and as evidently favoured by Mr. Bourinot, would bring about in the confederation the same results which the doctrine of State rights brought about in the United States—results which the authors of confederation in British North America clearly foresaw and were careful to avert. The Dominion Government hold this power, as they hold all other powers, by virtue of their responsibility to Parliament, and Parliament, representing all parts of the Dominion, will see that this power is exercised only when the general interests require that it should be exercised, not for party purposes, or to gain a party triumph, but for the public good. Parliament, on the other hand, is equally bound to see that it is not put in force for any unworthy object—to thwart any Province in the reasonable use of its legitimate powers, or from caprice, or a desire to injure political opponents. And neither Government nor Parliament can rid themselves of this power or this responsibility, simply because the majority feel at any time that its due exercise will involve them in difficulty, or be injurious to the interests of a party. The risk to confederation from too hasty or too frequent use of the power of disallowance is slight as compared with the certain danger that would arise from its being set aside altogether, as it virtually would be were the extreme theory of Provincial rights to prevail, or the power to be vested altogether in a judicial rather than an executive body.

In the fourth lecture, which deals with the Provincial Governments and Legislatures, Mr. Bourinot gives a very interesting sketch of the different Provinces, their Legislatures, municipal institutions, judiciary, etc.; and, in the concluding reference to the racial and religious difficulties which lie in the path of unity and progress, he expresses the opinion, in which we may all heartily con-

cur, that by "mutual compromises and mutual forbearance" great possibilities are open to us. All we stipulate for is that the compromises and forbearances shall be mutual, and that all rights and privileges shall be equally enjoyed.

W. E. O'BRIEN.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for September comprise 23 Q.B.D., pp.261-372 and 42 Chy.D., pp.1-92.

MALICIOUS PROSECUTION—ISSUE OF WARRANT—JUDICIAL ACT.

In *Lea* v. *Charrington*, 23 Q.B.D., 272, which we noted, *ante* p. 425, when the case was before the Divisional Court, the judgment of the latter Court was affirmed by the Court of Appeal (Lord Esher, M.R., Cotton and Lindley, L.JJ.) who, without deciding whether the case of *Hope* v. *Evered*, 17 Q.B.D., 338, on which the Court below had proceeded, applied, were of opinion that there was on the facts proved at the trial, no evidence to go to the jury of want of reasonable and probable cause.

PRACTICE—DISCOVERY——AFFIDAVIT OF PARTY AS TO DOCUMENTS CONCLUSIVE.

In *Morris* v. *Edwards*, 23 Q.B.D., 287, a point of practice is discussed by the Court of Appeal (Lord Esher, M.R., and Cotton and Lindley, L.JJ.) The action was for recovery of land, and the defendant had filed an affidavit on production of documents in which he stated that he had in his possession a bundle of documents marked with the letter A, which he objected to produce, on the ground that they related solely to his own title, and did not in any way tend to prove or support the plaintiffs' title. The plaintiffs then administered an interrogatory, asking whether such documents did not include a particular document mentioned and relied on in the plaintiffs' statement of claim. This interrogatory the defendant refused to answer, whereupon the plaintiffs' applied for an order to compel the defendant to answer it, and on the application sought to read an affidavit in contradiction of the affidavit of documents. The Divisional Court (Denman and Charles, JJ.) made the order, but it was held by the Court of Appeal that the latter affidavit was inadmissible, and that the plaintiffs were not entitled to an answer to the interrogatory, and the order of the Divisional Court was therefore reversed. Their Lordships in appeal reiterate the rule laid down in *Jones* v. *Monte Video Gas Co.*, 5 Q.B.D., 556, that it is only when it appears from the affidavit of documents itself, or from the documents referred to therein, or from an admission in the pleadings of the party from whom the discovery is sought, that the affidavit is insufficient, that an order for a further affidavit can be properly made. The insufficiency cannot be made out by a contentious affidavit.

ACTION AGAINST PUBLIC BODY—NOTICE OF ACTION—JURISDICTION—DAMAGES AWARDED IN LIEU OF AN INJUNCTION, EFFECT OF—(R.S.O., c. 44, s.53, s-s. 9.)

In *Chapman* v. *Auckland*, 23 Q.B.D., 94, the Court of Appeal have carried the previous decisions one step further in regard to the circumstances under which a notice of action against a public body may be dispensed with. In the previous case of *Flower* v. *Leyton*, 5 Chy.D., 347, it had been held that where damages were claimed as auxiliary to the plaintiff's claim for an injunction, no notice of action was necessary. In the present case (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) held that when the plaintiff brings his action *bona fide* for an injunction, but at the trial the Court, under Lord Cairns' Act (see R.S.O., c. 44, s. 53, s-s. 9), awards damages instead of an injunction, still no notice of action is necessary.

HABEAS CORPUS—RETURN—DELIVERY OF PERSON OF INFANT BY DEFENDANT TO A THIRD PERSON, AFTER LAWFUL DEMAND, BUT BEFORE WRIT—CONTEMPT—ATTACHMENT—"CRIMINAL CAUSE OR MATTER."

In the *Queen* v. *Bernardo*, 23 Q.B.D., 305, an application was made to quash a return to a *habeas corpus* issued at the suit of the plaintiff, the parent of a child, against a well-known philanthrophist to whom the child had previously been delivered by its mother. Prior to the application for the writ a demand had been made on the defendant for the delivery up of the child, which he refused to comply with, and had, instead, handed the child over to a French lady, who had removed it to France with a view to conveying it to Canada. After this the writ issued, and the defendant set up the above facts as an excuse for not delivering up the child. But Matthew and Grantham, JJ., quashed the return, and their decision was affirmed by the Court of Appeal (Lord Esher, M.R., and Cotton and Lindley, L.JJ.) On the hearing of the appeal a preliminary objection was taken that no appeal would lie because the proceeding was "a criminal cause or matter," but this objection was overruled. Lord Esher, M.R., says regarding the merits at p. 312, "The question of law is in substance whether a person who is bound to bring a child before the court can say by way of excuse, 'I have wrongfully given up the child to some one else.' In my opinion that is no valid excuse for not obeying the writ. Whether the person to whom he has handed over the child is within the jurisdiction or not, he must take the consequences, for it was his wrongful act which prevents him from obeying the writ."

HUSBAND AND WIFE—ANTE NUPTIAL DEBT OF WIFE—JUDGMENT AGAINST WIFE, WHETHER BAR TO ACTION AGAINST HUSBAND—STATUTE OF LIMITATIONS.

The case of *Beck* v. *Pierce*, 23 Q.B.D., 316, is another contribution to the law relating to married women. An action had been brought and judgment recovered against a married woman for an *ante* nuptial debt. This judgment being unsatisfied because there was no separate estate of the married woman out of which it could be realized, a second action was brought against her husband, who had acquired property from his wife exceeding the amount of the debt. It was contended that the previous judgment against the wife was a bar to the present

action, but the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) overruling Grantham, J., held that it was no bar. This case also decides that the husband cannot be made liable for *ante* nuptial debt of his wife which accrued against the wife more than six years before the commencement of the action, and a judgment recovered against the wife does not affect the husband so as to prolong the period of limitation.

PRACTICE—PRODUCTION OF DOCUMENTS—PRIVILEGED COMMUNICATIONS.

Lowden v. *Blakey*, 23 Q.B.D., 332, is a decision of Denman and Charles, JJ., upon a question of practice. The defendant in the action had been a successful plaintiff in a prior action to restrain an infringement of his trade mark, and at the conclusion of the action he drafted an advertisement of the proceedings for publication in a trade journal; before publication the draft was submitted to counsel, and, as settled by him, was published. One of the defendants in the prior action brought the present action for an alleged libel in the advertisement so published, and he claimed the right to inspect the draft advertisement settled by counsel. But the Court considered that on the authority of *Minet* v. *Morgan*, 8 Chy., 361, the document was privileged from production as being a confidential communication to counsel.

PRACTICE—COSTS—JURISDICTION OF JUDGE TO DEPRIVE SUCCESSFUL PLAINTIFF OF COSTS—"GOOD CAUSE"—LETTERS WRITTEN "WITHOUT PREJUDICE."

In *Walker* v. *Wilsher*, 23 Q.B.D., 335, a verdict was entered for the plaintiff by consent for £100. In disposing of the question of costs, Huddleston, B., took into account letters and conversations which had passed between the parties "without prejudice." This the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) held that he should not have done, and that they could not constitute "good cause" for depriving the plaintiff of costs.

PRACTICE—THIRD PARTY NOTICE—SERVICE OUT OF JURISDICTION—O. XVI. R. 48—(ONT. RULE 329.)

In *Dubout* v. *Macpherson*, 23 Q.B.D., 340, A. L. Smith, J., decided that where an action is brought for a breach within the jurisdiction of a contract which, according to the terms of it, ought to be performed within the jurisdiction, and the defendant claims indemnity from a third party, the Court may allow service of notice of such claim on the third party out of the jurisdiction.

INSURANCE (MARINE)—IMPROPER NAVIGATION.

In *Canada Shipping Co.* v. *British Shipowners Mutual Protection Association*, 23 Q.B.D., 342, the Court of Appeal (Lord Esher, M.R., Lindley and Bowen, L.JJ.) unanimously affirmed the judgment of Charles, J. (22 Q.B.D., 727), which we noted *ante* p. 361.

BILLS OF EXCHANGE—FRAUD IN NEGOTIATION—EVIDENCE—ONUS OF PROOF—BILLS OF EXCHANGE ACT, 1882, (45 & 46 VICT., C. 61), S. 30, S-S. 2.

Tatam v. *Haslar*, 23 Q.B.D., 345, is a decision under the Bills of Exchange Act, s. 30, s-s. 2, which was doubtless intended to be declaratory of the law as it previously existed, and which provides that "every holder of a bill is deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill." In this case the question arose, fraud being proved, whether the plaintiff had sufficiently discharged the onus that lay on him by merely showing that he had paid value, without also proceeding to show that he had acted *bona fide* and without notice of the fraud. Denman and Charles, JJ. (reversing Field, J.), were of opinion that the plaintiff did not comply with the statute by merely proving that he had given value, because the statute requires him to show not only that, but also that it has been given "in good faith."

PRACTICE—DISCONTINUANCE OF ACTION—ORD. XXVI., R. 1—(ONT. RULE 641.)

Spincer v. *Watts*, 23 Q.B.D., 350, is a decision of the Court of Appeal (Lindley and Lopes, L.JJ.,) on the construction of the Rule from which Ont. Rule 641 is taken. The action was by the holder against the drawer and acceptor of a bill of exchange. The acceptor paid money into court in satisfaction of the claim, while the drawer delivered a defence denying liability, and set up a counter claim. The plaintiff then paid into court the amount of the counter claim and took out of court the amount paid in by the acceptor, and then gave notice of discontinuance; and the question was, whether the notice of discontinuance had been delivered after defence "before taking any other proceeding in the action." The Court of Appeal (overruling Pollock, B., and Manisty and Mathew, JJ.) held that it had. As the Lords Justices explain the Rule it means that the notice must be given "before taking any proceeding with a view to continuing the action against a person served with the notice of discontinuance."

CRIMINAL LAW—FALSE PRETENCES—OBTAINING VALUABLE SECURITY ON REPRESENTATION THAT ADVANCE WOULD BE MADE—24 & 25 VICT., C. 96, S. 90—(R.S.C., C. 164, S. 78).

In the *Queen* v. *Gordon*, 23 Q.B.D., 354, the prisoner was convicted on an indictment charging that by the false pretence to the prosecutors that he was "prepared to pay them or one of them" £100, he did then unlawfully and fraudulently induce the prosecutors to "make a certain valuable security," to wit, a promissory note for £100, with intent thereby to defraud them. The prisoner, it appeared, was a money lender, and had promised to make an advance of £100 to the prosecutors on the security of their stock. At the time fixed for the completion of the transaction, the prisoner took from the prosecutors an acknowledgment of the receipt of £60, and an agreement to pay back £100,

£40 being for interest, and also a promissory note for the £100, payable by instalments. These documents were not read over to the prosecutors, and when they received the £60 they expostulated with the prisoner that it was not what they were to receive, and subsequently tendered back the money, which the prisoner refused to take. The Court of Criminal Appeal (Lord Coleridge, C.J., Matthew, Cave, Wills, and Grantham, JJ.) were unanimously of opinion that the prisoner was rightly convicted, and that his representation that he was prepared to advance the £100 was a false pretence of an existing fact.

COMPANY—DIRECTOR—GIFT BY PROMOTER—CONTRACT PENDING BETWEEN COMPANY AND PROMOTER—FIDUCIARY POSITION OF DIRECTOR—EXTENT OF LIABILITY.

Eden v. *Ridsdales' Ry. Lamp & Lighting Co.*, 23 Q.B.D., 368, was an action by a director of a company to recover fees alleged to be due to him as a director of the defendant company, in which the company not only denied liability for the claim of the plaintiff, but claimed by way of counter claim from the plaintiff an account of 200 shares of the company which had been given to him by a promoter of the company, whilst there were questions open between the company and the promoter. Grantham, J., decided in favour of the plaintiff upon both claim and counter claim; but the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.) reversed his decision as regarded the counter claim, and held that the company was entitled either to claim the thing given, or its highest value whilst held by the director.

COMPANY—WINDING UP—CONTRIBUTORY SHARES—ISSUE AT DISCOUNT.

In re Licensed Victuallers' Mutual Trading Association, 42 Chy.D., 1, was an appeal by a person placed upon the list of contributories of a company in course of being wound up. After the formation of the company and before its shares had been fully offered to the public, the appellant, a stock broker, who traded under the name of Holloway & Co., by letter agreed with an agent of the company to "underwrite" 10,000 shares "at 15 per cent. discount," and "to pay the application money upon any balance of shares required to make up the 10,000." In pursuance of this agreement, and without any further application by the appellant, 8,555 shares were allotted to him. He returned the allotment notice, and wrote declining to take the shares. The company shortly afterwards went into liquidation, and the liquidator entered the name of the appellant on the list of contributories. Chitty, J., was of opinion that the appellant was properly chargeable as a contributory, but that the agreement to issue the shares at a discount was *ultra vires* of the company. On the appeal to the Court of Appeal (Cotton, Lindley, and Bowen, L.JJ.), that Court required expert evidence to be given to explain the meaning of the expression "underwriting" as applied to shares in a public company. According to this evidence, it appeared that before the issue of a company's shares to the public, persons who were willing for a consideration to guarantee the subscription to the stock would by contract in writing agree with the company for a specified commission, that in the event

of the whole issue not being subscribed for by the public, they would take an allotment of the remainder in proportion to the amount specified in the agreement, and that this was what was meant by "underwriting." On this evidence the Court of Appeal held that the agreement must be treated not merely as a guarantee, but as an application for an allotment of so many of the 10,000 shares as should not be applied for by the public, and that this agreement authorized the secretary to issue the allotment to the appellant. They, however, differed with Chitty, J., as to the meaning of the word "discount" in the agreement, and held that it must be construed as "commission." So that the agreement was not one to issue shares at a discount and was therefore valid.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

TRINITY TERM, 1889.

The following gentlemen were called to the Bar during the above term, viz.:

September 2nd.—John Garner Kerr, with honours, and silver medal, James Ross, with honours, and bronze medal, George Ross, and Walter Scott MacBrayne, with honours, James McCullough, Alfred Edmund Lussier, George William Bruce, Frederick MacBain Young, John Wesley Roswell, John Howard Hunter, John Gordon Gauld, Angus MacNish, George Frederick Henderson, Horace Bruce Smith, George Luther Lennox, Herbert Holman, Joseph Frederic Woodworth, Henry Warrington Church, Alexander Stuart, Charles Daniel Macaulay, William Woodburn Osborne, Daniel Sharp Kendall, Frank Sangster, Henry Herbert Johnston, Owen Ritchie, Robert McDowall Thomson, Frederick Rohleder, John William Seymour Corley, Andrew Elliot, Francis James Roche.

September 3rd.—Walter Dymond Gregory.

September 13th.—Magloire Routhier.

The following gentlemen were granted Certificates of Fitness as Solicitors, viz.:—

September 2nd.—J. G. Kerr, A. E. Lussier, G. Ross, F. Reid, C. D. Macaulay, J. G. Gauld, J. F. Woodworth, T. Graham, W. W. Osborne, T. A. Rowan, D. S. Kendall, H. Miller.

September 3rd.—F. H. Keefer, G. N. Beaumont, J. A. Chisholm, J. Ross, H. Holman, J. W. S. Corly, H. H. Johnston, D. M. Robertson, J. W. Roswell, F. M. Young, G. W. Bruce.

September 7th.—O. Ritchie, J. A. Ritchie.

September 13th.—A. W. A. Finlay.

The following gentlemen passed the Second Intermediate Examination, viz.:

E. B. Ryckman, with honours, 1st scholarship, W. Wright, with honours, 2nd scholarship, D. A. McKillop, with honours, 3rd schoiarship, A. G. Mackay,

and W. H. Nesbit, with honours, F. Pedley, R. C. Gillet, W. G. Richards, H. L. Drayton, R. M. Graham, D. O'Brien, S. E. Lindsey, H. J. Minhinnick, W. E. L. Hunter, A. Crozier, J. P. Dunlop, J. A. Ferguson, W. McBrady, G. S. Kerr, J. H. McGhie, F. B. Mosure, T. A. Beament, A. C. Boyce, J. J. Hughes, J. H. Cooper, W. J. Kidd, E. M. McIntyre, H. L. Puxley, W. H. Kennedy, M. R. Allison, H. Carpenter, J. J. Drew, W. L. Morton, C. Murphy, and J. McKean.

The following gentlemen passed the First Intermediate Examination, viz.:—

T. C. Thomson, with honours, 1st scholarship, A. T. Hunter with honours, 2nd scholarship; W. E. Gundy, with honours, 3rd scholarship; J. G. Harkness, C. L. Crasweller, T. M. Higgins, B. S. Lefroy, G. Wilkie, W. F. Robinson, N. P. Buckingham, and H. D. Leask with honours; W. T. Elliott, E. Pirie, C. F. Gilchriese, L. G. McCarthy, J. B. Ferguson, W. A. Cameron, J. A. Harvey, W. A. Baird, H. F. MacLeod, G. H. D. Perryn, W. H. P. Walker, N. Kent, S. S. Reveler, J. Lennon, J. Kerr, T. L. W. Porte, J. O. Dromgole, G. R. Sweeny, C. Pierson, and W. M. Shaw.

The following gentlemen were entered on the books of the Society as Students-at-Law, viz.:—

Graduates—Francis King, Percy Mahood, George Edward Jefferson Brown, Walter McClellan Allen, Ed. Washington Drew, Robert James Gibson, John Henry Henderson, John Strachan Johnston, D'Arcy Richard Charles Martin, Jas. Henry MacGill, Fletcher Cameron, Snider, John Donald Swanson.

Matriculants—Benj. Morton Jones, John Gilmour Hay, Alf. Erskine Hoskin, Geo. Just Reiner, Henry Campbell Small.

Juniors—Chas. Merritt Marshall, Geo. Hamilton Pettit, Wm. Thomas Henderson, Walter Gow, Wm. Norman Tilley, Ralph John Slattery, Henry Joseph Patterson, John Pierce Stanton, Corsellis Hodge, Wm. Farquhar Gurd, Alphonso McFarlane, David Elroy Smith, Ed. Chanay Attrill, Wm. Duncan Moss, Evan Stevenson, James Cashman, William Alexander Douglas Grant, James White Graham, John Robert Logan, Samuel James Cooley, Norman St. Clair Gard, Covert Emerson Jarvis.

Articled Clerks.—Thos. Kingston Allan, Jas. Gilchrist Burnham.

The following is a *resume* of the proceedings of Convocation during Trinity Term.

MONDAY, September 2nd.

Convocation met.

Present—Messrs. Beaty, Irving, Mackelcan, Morris, Moss, Osler, and Shepley.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

The Report of the Legal Education Committee on the curriculum of the Law School was received, read, and ordered for consideration to-morrow.

Ordered that Messrs. Irving, Meredith, and Moss be a special committee to draft a resolution suitable for the occasion of the death of the Hon. T. B. Pardee, Q.C., and that the Committee be requested to report to Convocation on Saturday, the 7th of September.

Ordered that a call of the Bench be made for Friday, 13th September, next, for the purpose of electing a bencher in place of the late Hon. T. B. Pardee, Q.C.

The Principal of the Law School reported upon the extent of building accommodation required, in pursuance of the order of Convocation of the 8th of June last, requiring him to report.

The report was read, and ordered for consideration on Saturday, 7th inst.

A letter dated 21st of August, 1889, complaining of the conduct of a solicitor was referred to the Discipline Committee to report whether said complaint discloses a *prima facie* case.

A letter to the Law Society, dated 13th of August, 1889, was read, and the Secretary was directed to reply and state that Convocation can only entertain specific charges, and that Convocation fails to see that the complainant has made any specific charge against the solicitor charged.

The Committee to whom was referred the question of honours and medals reported as follows:

They find the following candidates, viz., Messrs. J. G. Kerr, J. Ross, G. Ross, and W. S. McBrayne, are entitled to be called with honours, and that Mr. Kerr is entitled to receive a silver medal, and Mr. James Ross is entitled to receive a bronze medal.

The Committee further find that none of the candidates above named passed both the Intermediate Examinations with honours, and therefore none were eligible for a gold medal.

All which is respectfully submitted.

(Signed) CHARLES MOSS.
B. B. OSLER.
GEO. F. SHEPLEY.

The report was adopted, and it was ordered accordingly.

The resignation of Mr. E. D. Armour, dated 22nd July, 1889, as examiner, was received and accepted.

The Library Improvement Committee reported as follows:

"That they have ordered the improvements now about to be completed to be made in the library during vacation under the supervision of the architect, and they ask that their action in the matter as an emergency may be confirmed by Convocation."

The report was adopted.

Ordered that the action of the Committee be confirmed.

TUESDAY, September 3rd.

Convocation met.

Present—Messrs. Beaty, Bruce, Cameron, Irving, Lash, Martin, Morris, Moss, and Shepley.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

Mr. Lash gave notice that he would, at the next meeting, move for leave to introduce a rule to amend Rule 167 of the Rules of the Society, by adding thereto the words, "and such term if duly attended shall be allowed as part of his term of attendance in chambers or service under articles, provided that he passes the examination prescribed for such term," or other words to that effect.

The report of the Legal Education Committee on the proposed curriculum was taken up, and on the motion of Mr. Moss, seconded by Mr. Lash, was adopted.

Ordered that a call of the Bench be made for Friday, 13th of September, for the purpose of appointing lecturers and examiners.

Ordered that the Secretary give the proper notice by advertisement of the intention of the Society to make these appointments.

Mr. Moss gave notice that on Saturday next he would move to increase the salaries of lecturers and examiners.

Mr. Martin gave notice that he would at next meeting introduce a rule to allow students or articled clerks now exempt from attendance at the Law School, the option of coming under the rules and taking the examinations prescribed for the school terms at the dates thereby fixed, instead of the examinations otherwise applicable to their cases.

Mr. Moss, on behalf of Mr. Martin and himself, who, with the Principal of the Law School, recently visited some of the law schools of the United States, suggested that it was desirable that certain acknowledgments of the attention paid them on their recent visit should be made by Convocation, and further suggested as follows:

That a copy of the R.S.O., 1887, a Dominion Law List, two copies of Read's Lives of the Judges, and two copies of Rules of the Society, be sent to H. Arnold, Esq., Harvard Law School.

That two copies of Read's Lives and two copies of the Rules be sent to E. H. Bennett, LL.D., Boston Law School.

That the same and a photograph of the Hall be sent to Hon. F. Wayland, LL.D., Yale Law School.

That a copy of Read's Lives and the Rules be sent to Prof. Geo. Chase, Columbia Law School.

Ordered accordingly.

The Special Committee appointed to deal with the report of the Examiners on the First and Second Intermediate Honour Examinations presented their report:

That T. C. Thomson, A. T. Hunter, W. E. Gundy, J. G. Harkness, C. L. Crassweller, T. M. Higgins, B. S. Lefroy, G. Wilkie, W. F. Robinson, N. P. Buckingham, and H. D. Leask are entitled to be passed with honours in the First Intermediate Examination, and that T. C. Thomson is entitled to the first scholarship of one hundred dollars, A. T. Hunter to the second scholarship of sixty dollars, and W. E. Gundy to the third scholarship of forty dollars.

That E. B. Ryckman, W. Wright, D. A. McKillop, A. G. Mackay, and W. H. Nesbit are entitled to be passed with honours in the Second Intermediate Examination, and that E. B. Ryckman is entitled to the first scholarship of one hundred dollars, W. Wright to the second scholarship of sixty dollars, and D. A. McKillop to the third scholarship of forty dollars.

(Signed) CHARLES MOSS.
A. BRUCE.
G. F. SHEPLEY.

The report was adopted and ordered accordingly.

Mr. Shepley gave notice for next meeting of Convocation of the introduction of a rule to make amendments to Rules 160 to 165 inclusive, to provide for

abolishing a distinction between country and town students to the disadvantage of country students.

SATURDAY, September 7th.

Convocation met.

Present—Messrs. Bell, Cameron, Foy, Irving, Lash, Mackelcan, Martin, Meredith, Moss, Murray, Osler, and Shepley.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

Ordered that the examiners who conducted the Trinity Term examinations be each paid one hundred and fifty dollars for the term's work.

The following resolution was unanimously adopted by Convocation:

"The Benchers of the Law Society present at this meeting of Convocation desire to express the general feeling of regret at the death in July last of the late Honourable Timothy Blair Pardee, a member of their body since Easter Term, 1871, and one of Her Majesty's Counsel.

"Mr. Pardee was called to the Bar of this Province in Hilary Term, 1861, and was continuously a member of the Legislative Assembly of Ontario from its first session in 1867 to the day of his death.

"From the year 1872 until he retired in the present year on account of ill-health, he filled the office of Commissioner of Crown Lands for the Province of Ontario. In 1876 he was appointed Queen's Counsel for Ontario.

"Convocation orders that this record of his career and their loss be entered on the minutes of their proceedings, a copy of which, with the expression of their deep sympathy, they direct to be transmitted to his family."

A letter from the Solicitor of the Society was read, stating that in consequence of the appointment of Mr. W. A. Reeve, Q.C., as Principal of the Law School, he (Mr. Reeve) will be unable to hold the briefs in the cases of *Hands* v. *Law Society* and *Re McDougall and Law Society*.

Ordered that Mr. Marsh, already retained in the Hands case, be retained in the McDougall case.

The report of the Princ pal on the accommodation required for the Law School was considered, and it was referred to a Special Committee composed of the members of the Legal Education Committee and Messrs. Martin, Shepley, Irving, Murray, and Osler, to report as to temporary and permanent accommodation for the Law School, and also to report upon the propriety of erecting in connection therewith consultation chambers for the use of such members of the Society as may desire to rent such chambers, and that the Committee were also authorized to obtain the assistance of Mr. Storm, the architect.

Pursuant to notice the following rule was passed: That Rule number 51 be amended by substituting the words "be fifteen" for the words "not exceeding eight."

Ordered that in addition to the five hundred dollars to be paid the examiners under Rule 52, the examiners be each paid two hundred dollars for the year ending 1st of October, 1890, to cover the examination of students under Rule 171.

Mr. Shepley moved, pursuant to notice, seconded by Mr. Mackelcan, that the words following in Rule 161 be struck out, viz.: "In attendance or under service in Toronto."—*Carried.*

The notices of motion given at last meeting by Mr. Martin and Mr. Lash were ordered to stand for next meeting of Convocation.

A new advertisement was ordered to be published, stating that the Benchers in Convocation have fixed the salaries of the lecturers to be appointed next Friday, the 13th inst., at the rate of fifteen hundred dollars per annum each, and that the salaries of the examiners to be appointed will be five hundred dollars per annum each, and in addition the sum of two hundred dollars each for the year ending 1st of October, 1890, to cover the examination of students under Rule 171.

FRIDAY, September 13th.

Convocation met.

Present—Sir Alexander Campbell, Sir Adam Wilson, and Messrs. Beaty, S. H. Blake, Britton, Bruce, Cameron, Foy, Fraser, Guthrie, Hoskin, Irving, Lash, Morris, Moss, Murray, Purdom, Robinson, Shepley, and Smith.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

Convocation proceeded to the election of a Bencher in the place of the late Hon. T. B. Pardee.

Mr. Colin Macdougall, Q.C., of St. Thomas, was elected a Bencher.

Ordered that the appointment of lecturers and examiners be now proceeded with, the date of the commencement of their duties and emoluments to be settled by the Legal Education Committee.

Convocation then appointed Mr. A. H. Marsh and Mr. E. D. Armour, lecturers, and Mr. P. H. Drayton and Mr. R. E. Kingsford, examiners.

Ordered that it be referred to the Legal Education Committee to ascertain what modifications should be made in respect to the attendance of students at the Law School, and to report to an adjourned meeting of Convocation on Saturday, the 21st of September, at 11 a.m., of which special notice shall be given, specifying the object of the meeting.

Mr. Moss from the Special Committee to whom was referred the question on building accommodation for the Law School, presented their report.

They have conferred with Mr. Storm, the architect, who is to report with respect to a proposed addition to the building now known as the Old Boiler House, but in view of the probability of Convocation making further directions at its next meeting, the Committee deferred further action in the meantime.

Ordered that the report be taken into consideration at the special meeting of the 21st inst.

The notices of motion given by Messrs. Martin and Lash were ordered to stand for consideration at the adjourned meeting on the 21st of September.

SPECIAL MEETING.

(Subject to confirmation at next meeting of Convocation.)

SATURDAY, September 21st.

Convocation met.

Present—The Treasurer and Sir Adam Wilson, and Messrs. Britton, Bruce, Foy, Irving, Lash, Macdougall, Mackelcan, Martin, Meredith, Morris, Moss, Murray, Osler, and Robinson.

The minutes of last meeting were read and approved.

Mr. Moss, from the Legal Education Committee presented their report:

The Legal Education Committee beg to report as follows:

They have, as directed by Convocation, considered the question of modifications to be made to the rules in respect of the attendance of students at the Law School, and they recommend the following, viz.:—

Students-at-law and articled clerks in attendance or under service in Toronto, who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, shall attend the Term of the School for 1889-1890, and the examination at the close thereof, if passed by such students or clerks, shall be allowed to them in lieu of their First or Second Intermediate Examinations, as the case may be.

The Legal Education Committee may, under special circumstances, relieve any student or clerk from the operation of the preceding provision.

Students-at-law and articled clerks in attendance or under service elsewhere than in Toronto who are entitled to present themselves either for their First or Second Intermediate Examinations in any Term before Michaelmas Term, 1890, may attend the term of the School for 1889-1890, and upon proof of such attendance and of passing the examination at the close thereof the same shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be.

Honours and scholarships in connection with the Intermediate Examinations shall be awarded only in connection with the Law School Examinations held at the close of the School Term.

In view of the abrogation of honors and scholarships for the First and Second Intermediate Examinations of Michaelmas and Hilary Terms next at the first Law School examination the scholarships shall be for each Intermediate Examination as follows:—

One of one hundred dollars.

One of sixty dollars.

And five of forty dollars.

The Committee further recommend that a rule or rules embodying the above recommendations be forthwith passed.

The Committee think that some slight amendments only will require to be made to Rules 160 to 164 inclusive.

The report was read, considered, and adopted.

Ordered that leave be granted to introduce a rule founded on the report of the Committee.

The rule was carried unanimously, and the same is as follows:

Students-at-law and articled clerks in attendance or under service in Toronto, who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, shall attend the term of the School for 1889-1890, and the examination at the close thereof, if passed by such students or clerks, shall be allowed to them in lieu of their First or Second Intermediate Examinations, as the case may be.

The Legal Education Committee may, under special circumstances, relieve any student or clerk from the operation of the preceding provision.

Students-at-law and articled clerks in attendance or under service elsewhere than in Toronto who are entitled to present themselves either for their First or Second Intermediate Examinations in any Term before Michaelmas Term, 1890, may attend the term of the School for 1889-1890, and upon proof of such attendance and of passing the examination at the close thereof the same shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be.

Honours and scholarships in connection with the Intermediate Examinations shall be awarded only in connection with the Law School Examinations held at the close of the School Term.

In view of the abrogation of honours and scholarships for the First and Second Intermediate Examinations of Michaelmas and Hilary Terms next at the first Law School examination the the scholarships shall be for each Intermediate Examination as follows :—

One of one hundred dollars.

One of sixty dollars.

And five of forty dollars.

To the extent and for the time which may be necessary to give effect to the foregoing rules the operation of all rules inconsistent with them is hereby suspended or modified.

Ordered that Mr. Colin Macdougall be appointed a member of the Committee on Journals and Printing, in the place of the late Hon. T. B. Pardee, deceased.

Ordered that Mr. Martin's motion do stand adjourned to the second day of next Term.

Mr. Lash moved for leave to withdraw his motion.—*Carried.*

Ordered that the day for opening the Law School be Monday, the 7th of October next.

Pursuant to order, the report of tne Special Committee on building accommodation was taken up.

The plan by Mr. Storm, the architect, was laid on the table.

Ordered that the Special Committee be instructed to proceed with the alterations in general accordance with the plan of Mr. Storm.

Convocation adjourned.

Notes on Exchanges and Legal Scrap Book.

VEHICLES.—The Supreme Court of Rhode Island in *State* v. *Collins*, decided that a bicycle is a "carriage" or "vehicle," within the meaning of the Public Statutes of Rhode Island, c. 66, s. 1, requiring every person travelling with any carriage or other vehicle, on any highway or bridge, to turn to the right on meeting another person so travelling. We are of the opinion that it is a carriage or vehicle which carries a person mounted upon it, and which is propelled and driven by him. The word "vehicle" is certainly broad enough to include any machine which is used and driven on the travelled part of the highway for the purpose of conveyance upon the highway. The purpose of the section is to prevent accident or collision, and such accident or collision may happen from a bicycle and other carriage meeting, unless the rule laid down in the section is observed. In *Taylor* v. *Goodwin*, L.R., 4 Q.B.D. 228, it was decided that a bicycle is a carriage, within the Act which forbids the driving of any sort of carriage "furiously, so as to endanger the life or limb of any passenger."—*Albany Law Journal.*

FAILURES OF JUSTICE.—The following remarks were made by Hon. J. T. Brooks at the last annual meeting of the Ohio State Bar Association, in reference to what is amongst our neighbours a growing evil—the miscarriage of jus-

tice in criminal matters: "The devices of the profession in criminal practice are the scandal of the age. Murder is committed in open day for greed, hate, or revenge. The astute lawyer pleads emotional insanity, or finds justification in the barbaric instincts which still linger in the human breast, and the murderer goes unhung. The constant acquittal of criminals, through technical objections to the record, and by emotional appeals to the jury, are the deepest stain on the profession. A few years ago a school teacher in Chicago, standing in his home, in the presence of his wife, in broad daylight, was shot dead by a ruffian who bore against him a personal grievance, and had come to his home for the express purpose of murdering him. Eminent counsel was retained for the defence, and an acquittal secured. It was spoken of as a great professional triumph. But the assassin should have found a grave beneath the gallows, and the lawyer expelled from the Bar. A few years ago the Chief Justice of Kentucky was murdered by a man against whom the Supreme Court had affirmed a judgment. The assassin is free, but, unfortunately, murder is so common there, that the fact of his freedom is no reproach to the State. But these cases are but two in hundreds. Shall a prisoner then be tried without counsel? No; but if guilt is certain, let the facts and the law be stated, and the accused put upon the mercy of the court. The law should be vindicated, even at the expense of an ancient legal maxim; and if I can secure that dominion of the moral sense for which I contend I will risk the lawyer doing justice to his client when there is reasonable doubt of his guilt. There are omens in the air which indicate that the people are not satisfied with certain conditions of law, nor with the present course of the administration of justice. Most of them may be traced to the want of moral purpose and patriotic spirit among lawyers. It is well that we should heed them."

TELEGRAMS AS EVIDENCE.—In the case of *The Anheuser-Busch Brewing Company* v. *Hutmacher*, 21 North-Western Rep. 626 (Ill.), Judge Bailey in delivering the judgment of the court uses the following language: "The position taken is that the papers delivered by the telegraph company to the plaintiff are only copies, the originals being the telegrams signed by the defendant, and delivered by it to the telegraph office from which the message was sent, and it is urged that such originals should have been produced, or some proper foundation laid for the introduction of secondary evidence of their contents. The application of the rule of evidence here contended for must depend upon whether the messages delivered by the telegraph company to the plaintiff, or those delivered by the defendant to the telegraph operator, are, as between the parties in this suit, to be deemed the originals. In *Durkee* v. *Railroad Company* (29 Vt. 127) the rule which we consider the most reasonable one is laid down, viz.: That the original, where the person to whom it is sent takes the risk of its transmission, or is the employer of the telegraph, is the message delivered to the operator; but where the person sending the message takes the initiative, so that the telegraph company is to be regarded as his agent, the original is the message actually delivered

at the end of the line. The fact that the defendant took the initiative in sending the telegrams, thus employing the telegraph company as its agent, is clearly shown by its letters to the plaintiff read in evidence. Having thus employed such agent to convey communications to the plaintiff, it must be held to be bound by the acts of its agent, to the extent at least of making the messages delivered originals, thereby constituting them primary evidence of the contents of the messages sent. It should be observed that there is no suggestion that any of these messages were erroneously transmitted, and the case, therefore, does not present the question upon which there is some conflict in the authorities, whether the sender of a telegram makes the telegraph company its general agent, so as to become responsible for the acts of such agent, where there is a departure from the authority actually given, by transmitting the message incorrectly."

FIXTURES.—Where a railroad company dug a well, and put in a pump and a boiler for the purpose of filling its tank on the line of its railroad, and used the same for several years, believing the well and attachments were on its own land, when it is discovered that they are on another's land the company can remove the pump and boiler without paying the owner of the land therefor. There is scarcely any kind of machinery, however complex in its character, or no matter how firmly held in its place, which may not with care, be taken from its fastenings, and moved without any serious injury to the structure where it may have been operated, and to which it may have been attached. That the simple fact of annexation to the realty is not the sole and controlling test of whether a certain article is a fixture or not, is very well illustrated by the fact that trees growing in a nursery, and kept there for sale, are personal property, while trees no larger, if transplanted to an orchard, become real estate. On the other hand, there are very many things, although not attached to the realty, which become real property by their use—keys to a house, blinds and shutters to the windows, fences and fence-rails, etc. It can readily be seen that one of the tests of whether a chattel retains its character or becomes a fixture is the uses to which it is put. If it be placed on the land for the purpose of improving it, and to make it more valuable, that is evidence that it is a fixture. Applying this criterion to the boiler, we are led to inquire whether this benefited the land of plaintiff. The real estate upon which this boiler was placed was a narrow strip in the city of Burlingame, and it cannot be contended that this well, boiler, and the attachments could have greatly benefited this small tract of land. They were not placed there for the purpose of enhancing its value. Ordinarily it would not enhance the value of such property in a city as this small piece of ground, by digging a well thereon like the one in question; and the only value added thereto by placing a pump, boiler, and boiler-house like those in controversy would be what they were worth as chattels. The test of whether real state is benefited by the act of annexation has been repeatedly applied by the courts to determine whether the chattel annexed became a fixture or not. 11 Alb. L.J. 151; *Woollen*

Mill Co. v. *Hawley*, 44 Iowa 57; *Taylor* v. *Collins*, 51 Wis. 123; *Huebschmann* v. *McHenry*, 29 *id.* 655; *Minnesota Co.* v. *St. Paul Co.*, 2 Wall. 645, note; *Railroad Co.* v. *Canton Co.*, 30 Md. 347; *Wagner* v. *Railroad Co.*, 22 Ohio St. 563. It has been held that before personal property can become a fixture by actual physical annexation, the intention of the parties and the uses for which the personal property is to be put must all combine to change its nature from that of the chattel to that of the fixture. *Teaff* v. *Hewitt*, 1 Ohio St. 511; *Ewell Fixt.* 293; *Woollen Mill Co.* v. *Hawley*, *supra*. It is conceded that the railroad company was a trespasser, yet it was not a wilful one. It dug the well, put in the pump and boiler, and erected the boiler-house under the belief it was occupying its own land, and only discovered its mistake after some years of occupation. There is nothing to show that it wished to gain anything by digging the well where it was located rather than on its own land. In fact it is stated that two feet of the well is upon its own land. It can be safely presumed that the well would have been as good a one if it had been placed on the defendant's side of the division line instead of the plaintiff's. It dug the well, put in the pump and boiler, for the sole purpose of operating its railroad, and not to improve the land where the property was placed. The company began condemnation proceedings to obtain the land, but did not follow them to a conclusion. If it had it would have been compelled to only pay for the land, and not for its own improvements thereon. This rule is well established by authority. *Cohen* v. *Railway Co.*, 34 Kans. 158; *Justice* v. *Railroad Co.*, 87 Penn. St. 28; *Daniels* v. *Railroad Co.*, 41 Iowa 52; *Lyon* v. *Railroad Co.*, 42 Wis. 538; *Greve* v. *Railroad Co.*, 26 Minn. 66; *Wagner* v. *Railroad Co.*, *supra*; *Schroeder* v. *De Graff*, 28 Minn. 299. While it is the general rule in regard to annexation made by a stranger with his own materials on the soil of another, without his consent, that the owner of the materials loses his property because he is presumed to have parted with it, and dedicated it to the owner of the land, yet the peculiar circumstances under which this well was dug would indicate there should be a modification in this instance. *Lowenberg* v. *Bernd*, 47 Mo. 297. If he had placed it there, even under a mistake, for the purpose of ultimately improving the real estate the law might under this state of facts have held it to have been the property of the owner of the real estate, but under the agreed statement it was placed there solely for the purpose of better operating its own railroad. If it had been placed on its own right of way, and that afterward abandoned, then under a respectable list of authorities it would have been permitted to have taken away the pump, boiler, and boiler-house. We can see no reason for a distinction that would have allowed any compensation to plaintiff if condemnation proceedings had been instituted after occupation and placing improvements upon the land, and prosecuted to a conclusion, and an action brought in the way this one was. Kans. Sup. Ct., June 7, 1889. *Atchison T. & S.F.R. Co.* v. *Morgan*. Opinion by Holt, J.—*Albany Law Journal.*

DIARY FOR NOVEMBER.

1. Fri.....All Saints' Day. Sir Matthew Hale born 1609.
2. Sat.....Last day for filing papers and fees for Final Exam.
3. Sun.....*Twentieth Sunday after Trinity.* O'Connor, J.Q.B.D., died 1887.
5. Tues...1st Intermediate Examination.
7. Thu.....2nd Intermediate Examination.
9. Sat.....Prince of Wales born, 1841.
10. Sun.....*21st Sunday after Trinity.* J.H. Hagarty, 12th C.J. of Q.B, 1878. Richards, 10th C.J. of Q.B., 1869. J.
12. Tues...Court of Appeal sits. Solicitors' Exam.
13. Wed...Barristers' Examination.
14. Thu....Falconbridge, J., Q.B.D., appointed 1887.
15. Fri.....Sir M. C. Cameron, J., Q.B., 1878. Macaulay, 1st C.J. of C.P., 1849.
17. Sun.....*22nd Sunday after Trinity.* Lord Erskine died 1823, æt 78.
18. Mon....Mich. Term commences. High Court Justice Sttings begin.
19. Tues...Armour, J., gaz. C.J., Q.B.D., 1887. Galt. J., gaz. C.J., C.P.D., 1887.
21. Tues...J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
24. Sun.....*23rd Sunday after Trinity.*
25. Mon....Marquis of Lorne, Governor-General, 1878.
30. Sat.....Moss, J.A., appointed C.J. of Appeal, 1887. Street, J., Q.B.D., and McMahon, J., C.P.D., appointed, 1887.

Reports.

ONTARIO.

ONTARIO VOTERS' LISTS, COUNTY OF ELGIN.

(Reported for THE CANADA LAW JOURNAL.)

RE THOMAS, AN INDIAN.

The Manhood Suffrage Act—Unenfranchised Indians—Property qualification—Who are British subjects—Distinction between Negro and Indian.

This was an appeal to the County Judge's Court of Revision for the Township of Yarmouth, under the Manhood Suffrage Act, by an unenfranchised Indian, to have his name added to the Provincial Voters' List. The applicant is without property qualification.

Held, that the second section of the Act does not apply to him because his case is excepted, and he is in a different position under the Act from a negro.

[HUGHES, CO.J., ST. THOMAS.

The tribe of Indians, known as the Oneidas, residing on their own lands in the township of of Delaware, in the County of Middlesex, about forty years ago left their reserves in the State of New York and divided themselves into two bands, one part going to settle at Green Bay and the other coming to this Province. They purchased lands from British subjects with their own money; the title to their lands was not taken in their own individual or corporate names (as it might have been). They caused the owners from whom they purchased to surrender their titles to the Crown, to be held by our Government in trust for their benefit and use. They occupy the lands in common.

Under the Indian Act they are recognized as a band of Indians who own or are interested in Indian lands in common, of which the legal title is vested in the Crown, and the expression "Indian" means any male person of Indian blood, reputed to belong to a particular band.

The subject of this appeal is an Indian who held an allotment on the lands held in trust by the Crown for his band, which allotment he had leased to his brother, and left the reserve to live on the farm of a land holder in the township of Yarmouth, in this county. He has resided under the occupancy of a domicile in that way for three years past, and has adopted all the habits of an industrious labouring man. He is a native of the Province, and a British subject of full age. It was claimed by the appellant that he has the same right to the Manhood Franchise as any other man possessing the qualifications under the Manhood Franchise Act, because he has abandoned the Indian life, and is in all respects entitled as much as a white man to be entered on the list.

HUGHES, J.—The expression "enfranchised" Indian means any Indian who has received letters patent granting to him in fee simple any portion of the reserve which has been allotted to him by the band to which he belongs, or who has received letters patent for an allotment of the reserve.

The Manhood Suffrage Act abolishes property and income qualification for voters as respects the Legislative Assembly of this Province, except as therein provided, viz.:

Unenfranchised Indians, not residing among Indians, or on an Indian reserve, in view of legal enfranchisement, must have the same property qualification in order to entitle them to vote as was required before the passing of the Manhood Suffrage Act.

Enfranchised Indians, like other persons, are entitled to vote without having a property qualification.

The subject of this appeal is not an enfranchised Indian within the meaning of the Indian Act. We must look to that Act for the proper interpretation of what the Manhood Franchise Act means by "enfranchised" and "un-

enfranchised" Indian. If he were the former no doubt could exist; the claim to place his name on the list would be beyond dispute; and whilst I do not see any particular definition of the latter expression, we must take it to mean an Indian who has not received letters patent granting to him in fee simple any portion of the reserve which has been allotted to him or to his wife and minor children, by the band to which he belongs; or an unmarried Indian who has not received letters patent for an allotment of the reserve.

He is an Indian because he comes within the purview of section 2 (h) of the Indian Act, and because he is reputed and acknowledged to belong to this particular band, whose lands are held for the band in trust by the Crown.

The second section, sub-sec. 2, of the Manhood Fanchise Act excepts him as not residing among Indians or on an Indian reserve unless he has the property qualification, or rather gives him in lieu of legal enfranchisement (which must mean what it is defined to be under the Indian Act) the right to vote, but requires the property qualification as then before required, and without that he is not entitled to vote.

I find myself obliged to hold that he is not entitled to vote in the same way as other men are, whose parents sought asylum in this Province from slavery or other wrongs done to their parents whether as Indians or negroes in the United States, because he is an unenfranchised Indian, not possessed of the necessary property qualification. He is a man of full age, a subject of Her Majesty by birth, an industrious man, working as other labouring men ought to work, possessed of a domicile in this township, has resided in the Province all his life, and continuously in the township for three years, but stands at a disadvantage in so far as his franchise is concerned, with negroes and other men of colour—who are not Indians—because he does not possess the necessary qualifications as to property.

It is not for me to criticise but to interpret, and when needful, to administer Acts of Parliament as I find them. It seems an anomaly under the Act that a worthy hard-working tiller of the soil, as this Indian is represented to be, should stand at a disadvantage on account of the peculiar shade of his complexion or the texture of his hair compared with, and whilst the most worthless and indolent negro or mulatto —who is circumstanced in every other respect just as he is—is entitled without property qualification to be ranked as an elector.

I am, I confess, very regretfully obliged to dismiss this appeal.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

HOLMES *et vir v.* CARTER.

Seizure of bank shares in trust—Onus probandi—Res judicata.

The respondent, having obtained judgment against A.M., served a writ of *saisie-arret* upon Molson's Bank. The Bank, through its manager, declared they held 115 shares of the capital stock of the Molson's Bank, and the dividends accrued thereon since 1879 standing in the name of Alex. M. in trust for R. A. M. *et al.*

E. A. M. intervened, and claimed that the shares were her property and that the seizure should be set aside. The respondent contested the intervention, contending that the shares had been purchased with the monies of A.M., and so placed in trust to prevent his creditors having any remedy against these shares, and moreover pleaded *res judicata*, the Privy Council having already decided that the dividends of a certain number of the shares seized and standing in the same account in trust, were not the property of E.A.M. *et al.*

The evidence at the trial established that E. A.M. was the wife duly separated as to property of A.M., and that she had means of her own, and that the shares in question had been originally purchased by A.M. as her duly authorized agent. There was no evidence to prove that the shares had been purchased with A.M.'s monies. The decision of the Privy Council was that E.A.M. had no right to claim the interest of 33 shares under the will of the late Hon. W. Molson, nor to rank as a creditor on her husband's estate as creditor on the grounds of insolvency.

Held, reversing the judgment of the Court of Queen's Bench, that the shares seized being held by the Bank in trust for E.A.M. *et al.*, the onus of proof was on the respondent to show that the shares had been purchased with A.M.'s

monies when insolvent. *Sweeney* v. *Bank of Montreal* followed, 12 App. Cas. 617.

2. That as the appellant in the case which was decided by the Privy Council had only claimed the dividends of other shares as forming part of an estate in which she was interested as substitute, and that she now claims the *corpus* and dividends of these 115 shares as her own property, the plea of *res judicata* was not available to the respondent. Art. 1241 C.C.

Appeal allowed with costs.

Laflamme, Q.C., and *Robertson*, Q.C., for appellants.

H. Abbott, Q.C., for respondent.

STEPHEN H. THOMPSON *v.* THE MOLSON'S BANK.

The Banking Act—R.S.C., c. 120, secs. 53 and seq.—Warehouse receipts—Parol agreement as to surplus—Effect of—Locus standi—Art. 1031, C.C.

The Molson's Bank took from one H. several warehouse receipts as collateral security for commercial paper discounted in the ordinary course of business, and having a surplus from the sale of the goods represented by the receipts after paying the debts for which they were immediately pledged, claimed under a parol agreement to hold that surplus in payment of other debts due by H. H. having become insolvent, T. (appellant) brought an action against the Bank under art 1031 C.C., claiming that the surplus must be distributed rateably among the creditors generally. H. was a member of the firm of H. & H., and they were not parties to the suit.

Held, affirming the judgment of the courts below, that the parol agreement was not contrary to the provisions of the Banking Act, c. 120, s. 52 and seq., and that after the goods were lawfully sold, the money that remained after applying the proceeds of each sale to its proper use, was simply money held to the use of H., subject to the terms of the parol agreement. (RITCHIE, C.J., dubitante, and FOURNIER, J., dissenting.)

Per TASCHEREAU, J.—That H. & H. ought to have been made parties to the suit.

Appeal dismissed with costs.

Robertson, Q.C., and *Falconer* for appellant.

H. Abbott, Q.C., for respondents.

J. H. MITCHELL *v.* CHARLES HOLLAND, *es qual.*

C.C.P., Art. 19—Right of suit by trustees—Promissory notes given as collateral—Prescription of notes will not prescribe the debt.

The appellant, who was trustee for certain creditors of Robert Mitchell & Sons, sued the respondent, alleging a transfer to him by notarial deed dated the 1st of Dec., 1877, by John Ross Mitchell, of a sum of $4,720.20 due by the respondent as and for the price of certain immovable property in the City of Montreal, sold to him by the said John Ross Mitchell by notarial deed on 5th of January, 1877, and registered, and also a transfer to him of certain promissory notes, signed by the said respondent for the same amount and representing the said price of sale.

The respondent was a party to the deed of trust, and declared himself subject to the conditions therein contained.

To this action the respondent pleaded that appellant had no action as trustee under art. 19 C.C.P., and that the price had been paid by the two promissory notes which were now prescribed.

Held, affirming the judgment of the Court below, that art. 19 C.C.P. was not applicable to trustees in whom property has been vested by a registered deed and to which deed the defendant was a party.

Burland v. *Moffat*, 11 Can. S.C.R. 76 and *Browne* v. *Pinsonneault*, 3 Can. S.C.R. 102, distinguished.

2nd. That the notes in question were given merely as collateral for the price of sale of the property, and therefore the plea of prescription cannot be maintained.

Appeal dismissed with costs.

McCord for appellant.

H. Abbott, Q.C., and *Lonergan* for respondent.

CANADIAN PACIFIC RAILWAY CO. *v.* COLLEGE OF STE. THERESE.

Expropriation of land—Order by Judge in Chambers as to monies deposited—Not appealable—R.S.C., c. 135, s. 28—42 Vict, c. 9, s. 9, s-s. 31—Persona designata.

The College of Ste. Therese having petitioned for an order for payment to them of a sum of $4,000, deposited by the appellants as

security for land taken for railway purposes, a judge of the Superior Court in Chambers after formal answer and hearing of the parties granted the order, 42 Vict., c. 9, sec. 9, s-s. 31. The railway company appealed against this order to the Court of Queen's Bench for Lower Canada (Appeal side), and that court affirmed the decision of the judge of the Superior Court. On appeal to the Supreme Court of Canada it was

Held, that as the proceedings had not originated in the Superior Court of the Province of Quebec, the case was not appealable. R.S.C., c. 135, s. 28.

2. That the judge of the Superior Court when he made the order in question acted as a *persona designata.*

Appeal quashed with costs.

H. Abbott, Q.C., and *Ferguson* for appellants.

Pagnuelo, Q.C., for respondents.

THE EXCHANGE BANK OF CANADA *v.* GILMAN.

Art. 451 C.C.P.—Retraxit—Subsequent action—Document not proved at trial—Inadmissible on appeal—Lis pendens and res judicata—Pleas of.

The Exchange Bank of Canada in an action they instituted against G., filed a withdrawal of a part of their demand in open court, reserving their right to institute a subsequent action for the amount so withdrawn. The court acted on this retraxit, and gave judgment for the balance. This judgment was not appealed against. In a subsequent action for the amount so reserved, it was

Held, reversing the judgment of the Court below, that the provisions of art. 451 C.C.P. are applicable to a withdrawal made outside and without the interference of the court, and cannot affect the validity of a withdrawal made in open court and with its permission.

2nd. That it was too late in the second action to question the validity of the retraxit upon which the court had in the first action acted on and rendered a final judgment.

3rd. That a document relied on in the Court of Queen's Bench not proved at the trial, as setting aside the final judgment rendered in the first action, cannot be relied on or made part of the case in appeal.

Montreal L. & M. Co. v. *Fauteux*, 3 Can. S.C. 433, and *Lyonnais* v. *Molson's Bank*, 10 Can. S.C.R. 527 followed.

4th. That under the circumstances the defendant's pleas of *lis pendens* and of *res judicata* could not be maintained.

Appeal allowed with costs.

Macmaster, Q.C., for appellant.

Gilman for respondent.

DUFRESNE *et al. v.* DAME MARIA DIXON.

Action en nullite de decret—Registration of deed—Art. 2089 C.C.—Preference between purchasers who derive their respective titles from the same person.

D. *et al.*, judgment creditors of one W.A.C., seized and sold a lot of land situate in the City of Montreal, as belonging to his estate. This lot had originally belonged to Dame M.D., who sold it to W.A.C. *et al.*, and subsequently W.A. C., who became the registered owner of the lot, re-assigned it to Dame M.D. The property was occupied by Dame M. D. through her tenant at the time of the seizure.

The sheriff's sale took place on the 3rd of October, 1884. Dame M. D. registered her deed of re-assignment on the 28th of November, 1884, and on the 4th of May, 1885, the purchasers registered their deed of purchase.

The respondent by petition to the Superior Court prayed for the setting aside of the sheriff's decree.

Held, affirming the judgments of the courts below, that respondent having been for a long time in open, peaceable, and public possession of her property, and notably so at the time of the seizure, the sheriff's seizure and sale thereof at the instance of the appellant, was null, as having been made *super non domino.*

2nd. That notwithstanding the adjudication by the sheriff on the 3rd of October, 1884, the title not having been granted until the 4th of May, 1885, respondent, who had registered her deed of retrocession on the 28th of November, 1884, was entitled to the conclusions of her petition.

Appeal dismissed with costs.

Pagnuelo, Q.C., and *Geoffrion*, Q.C., for appellant.

Lacoste, Q.C., and *Grenier* for respondent.

[June 14.

MILLER *v.* STEPHENSON.

Goods sold and delivered—Evidence—To whom was credit given—Direction to jury—Withdrawal of evidence from jury—New trial.

In an action against McK. and M. for goods sold and delivered, the plaintiff swore that he had sold the goods to the defendants, and on their credit, and his evidence was corroborated by the defendant McK. The defence showed that the goods were charged in plaintiff's books to C. McK. & Co. (the defendant McK. being a member of both firms), and credited the same way in C. McK. & Co.'s books, and that the notes of C. McK. & Co. were taken in payment, and it was claimed that the sale of the goods was to C. McK. & Co.

The trial judge called the attention of the jury to the state of the entries in the books of the plaintiff and of C. McK. & Co., and to the taking of the notes, and to all the evidence relied on by the defence, and he left it entirely to the jury to say as to whom credit was given for the goods.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the case was properly left to the jury, and a new trial was refused.

Appeal dismissed with costs.

Weldon, Q.C., and *C. A. Palmer* for appellant.

McLeod, Q.C., and *A. S. White* for respondent.

[June 14.

CANADIAN PACIFIC RAILWAY *v.* WESTERN UNION TELEGRAPH CO.

Telegraph Company—Incorporated in United States—Power to operate line in Canada—Sole right of operating over line of Canadian railway—Agreement therefor—Violation of railway charter—Restraint of trade.

In 1869 the European and North American Railway Co. entered into an agreement with the Western Union Telegraph Co., a company incorporated in the State of New York with the right of constructing lines of telegraph and operating the same in the State, by which agreement the telegraph company was granted the exclusive right of constructing and operating for 99 years a line of telegraph over the road of the railway company from Boston, Mass., to St. John, N.B. In 1888 the latter road was operated by the New Brunswick Railway Co. under lease from the St. John and Maine Railway Co., and the Canadian Pacific Railway in that year undertook to establish a telegraph line from Montreal to St. John, and run the same over that portion of the road controlled by the Western Union lying between Vanceboro', Maine, and St. John. The Supreme Court of New Brunswick sitting in equity grant aed perpetual injunction restraining the Canada Pacific Railway and New Brunswick Railway Co. from interfering with their exclusive right in building the said line. On appeal to the Supreme Court of of Canada from the decree ordering the issue of such injunction,

Held, GWYNNE, J., dissenting, that the fact of the company being a foreign corporation, empowered by its charter to construct and operate telegraph lines in a foreign country does not prevent it from enforcing the agreement for an exclusive right of operating such lines in Canada, and the injunction should be maintained.

Per GWYNNE, J.—That such a power vested in a foreign corporation might be very prejudicial to the interest of the inhabitants of Canada, and should not be recognized nor given effect to in the courts of this country.

Held, also, that the agreement with the telegraph company did not create a monopoly in favour of that company, and was not an agreement in restraint of trade and commerce.

Appeal dismissed with costs.

Weldon, Q.C., and *Ferguson* for the appellants.

Hector Cameron, Q.C., and *Barker*, Q.C., for the respondents.

[June 14.

WALKEN *v.* HIGGINS.

Libel—Innuendo--Damages-Unnecessary appeal—New trial.

W., a judge of the Supreme Court of British Columbia, and formerly premier of the province, brought an action against H., editor of a newspaper published in Victoria, B.C., for publishing in said paper the following article, alleged by W. to be libellous, copied from an Ottawa paper:

"Extract from *The Daily British Colonist*, published at Victoria, B.C., on the 20th day of November, 1885:

THE MCNAMEE-MITCHELL SUIT.

"In the sworn evidence of Mr. McNamee, defendant in the suit of *McKenna* v. *McNamee*, lately tried at Ottawa, the following passage occurs: 'Six of them were in partnership (in the Drydock contract) out in British Columbia, one of whom was the premier of the province.' The premier of the province at the time referred to was Hon. Mr. Walkem, now a judge of the Supreme Court. Mr. Walkem's career on the Bench has been above reproach. His course has been such as to win for him the admiration of many of his old political enemies. But he owes it to himself to refute this charge. We feel sure Mr. McNamee must be laboring under a mistake. Had the statement been made off the stand it would have been scouted as untrue; but having been made under the sanctity of an oath it cannot be treated lightly, nor allowed to pass unheeded."

The innuendoes alleged to be contained in this article were, shortly, that W. corruptly entered into partnership with McNamee while holding offices of public trust, and thereby unlawfully acquired large sums of public money; that he did so under cloak of his public position and by fraudulently pretending that he acted in the interest of the Government; that he committed criminal offences punishable by law; and that he continued to hold his interest in the contract after his elevation to the Bench.

On the trial a verdict was found for the plaintiff, with $2,500 damages, and the defendant obtained from the full court two rules *nisi*, one for leave to enter a non-suit, or judgment for him, and the other to have the judgment entered on the verdict, set aside and a new trial ordered. Both rules were discharged, and the defendant, by order of a judge of the court below, brought two appeals to the Supreme Court of Canada.

Held, that though the article was libellous it was incapable of all the innuendoes attributed to it, and the consideration of these innuendoes should have been distinctly withdrawn from the jury, which was not done.

Per STRONG, FOURNIER, TASCHEREAU and GWYNNE, J.J., that though the case was improperly left to the jury, yet he suffered no prejudice thereby, other than that of excessive damages, and the verdict should stand on the plaintiff's filing a consent to have the damages reduced to $500.

Per RITCHIE, C.J., that there had been a mistrial, and in order to avoid a new trial the consent of both parties to the reduction of damages was necessary.

Per GWYNNE, J., that two appeals were not necessary, and in any event the appeal on the rule for leave to enter a non-suit should be dismissed with costs, and only one bill of costs should be taxed.

Christopher Robinson, Q.C., and *Bodwell* for the appellant.

S. H. Blake, Q.C., and *Gormully* for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

HAY *v.* BURKE.

In the note of this case in our last number the printers accidentally omitted two lines, and as the note still made sense the omission escaped notice. The second paragraph of the note should read as follows:

"Where a place has been so designated, the holder of the instrument may send notice to the party at that place, even if he has reason to think, or even knows, that that place is not the party's place of residence or place of business."

Re HARVEY AND PARKDALE.

Municipal corporation—Expropriation of one foot strip of land across street—Quantum of damages—Local improvements.

H. & M., the owners of a block of land in Parkdale, laid it out in building lots, dedicating as a street called D. Street a portion of it running through it from a street on the east to within one foot of its west limit, the one foot being reserved because at that time W., the owner of the land adjoining on the west, refused to dedicate any portion of it for the purpose of carrying D. Street through to the next street to the west. Subsequently W. laid out his land in building lots, dedicating as a street, also called D. Street, a portion of it running (in the same line as the portion dedicated by H. & M.) through it from the street on the west to within one foot of its east limit, the one foot reserved by him immediately abutting on the

strip reserved by H. & M. Subsequently H. & M. sold all their land except the one-foot strip, and afterwards the corporation expropriated the two strips to make D. Street a thoroughfare, and H. & M. were allowed merely nominal damages for their strip.

Held (BURTON, J.A., dissenting), that this was right, there being no evidence that the property had any market value in the hands of the owners, or was worth anything except for the purpose of opening the street, or that it was capable of being put to any other use whatever. The higher price that H. & M. might have obtained for their lots if the street had been made a thoroughfare before the lots were sold, or the price that the residents on the street might be willing to give to have the obstruction removed could not be considered as elements in fixing the damages.

Per OSLER, J.A.—Where works are done under the local improvement clauses of the Municipal Act, compensation for property expropriated is to be ascertained in the same manner, and by the application of the same principles, as in cases where the corporation are not acting under those clauses, and this whether the corporation initiate the proceedings or they are put in motion by the petition of the parties who desire the improvements to be made. There is nothing to justify the notion that in the latter case more is to be paid for the work than if the cost had to be borne by the corporation.

Judgment of BOYD, C., 16 O.R., 372, affirmed.

The Attorney-General for Ontario (*Mowat*, Q.C.), for the appellants.

J. H. Macdonald, Q.C., and *C. R. W. Biggar* for the respondents.

FINCH *v.* GILRAY.

Landlord and tenant—Payment of taxes by tenant—Rent—Tenant acquiring title by possession—Real Property Limitation Act—R.S.O., c. 111, s. 5, s-s. 6—Acknowledgment of barred debt.

A tenant agreed to pay for certain premises six dollars a month and taxes, and for some eighteen years remained in possession, paying the taxes to the municipality and paying nothing else.

The tenant, after the expiration of this period, gave to his landlord an acknowledgment of indebtedness for rent for the whole period.

Held, that a payment of taxes was not a payment of rent within the meaning of the Real Property Limitation Act, and that the tenant, although he had always intended to hold merely as tenant, had acquired title by possession, and could not make himself liable for rent accruing after the expiration of the statutory period by giving to the landlord an acknowledgment of indebtedness in respect of it.

Judgment of the Queen's Bench Division reversed, and that of STREET, J., at the trial restored. See. 16 O.R., 393.

J. B. Clarke for the appellant.

W. M. Douglas for the respondent.

MCINTYRE *v.* HOCKIN.

Master and servant — Wrongful dismissal—Condonation—Province of jury.

In an action of damages for wrongful dismissal tried with a jury, it is for the judge to say whether the alleged facts are sufficient in law to warrant a dismissal, and for the jury to say whether the alleged facts are proved to their satisfaction.

If good cause for dismissal exists, it is immaterial that at the time of dismissal the master did not act or rely upon it, or did not know of it, and acted upon some other cause in itself insufficient. When the master has full knowledge of the nature and extent of misconduct on the part of his servant sufficient to justify dismissal, he cannot retain him in his employment and afterwards at any distance of time turn him away for that fault without anything new, but this condonation is subject to the implied condition of future good conduct, and whenever any new misconduct occurs the old offences may be invoked and may be put in the scale against the offender as cause for dismissal. Condonation is a question of fact for the jury if in the opinion of the judge there is any evidence of it to be laid before them.

Judgment of the County Court of Elgin affirmed.

Moss, Q.C., for the appellant.

J. M. Glenn, for the respondents.

ROBB *v.* MURRAY.

County Court—Jurisdiction—Claim over $200—Liquidated or ascertained amount—R.S.O., c. 47, s. 9, s-s. 2.

Pending negotiations for the sale by the plaintiff to the defendant of a certain business

as a going concern, the defendant entered into possession, made sales and received moneys, entering the receipts in a cash book. The negotiations fell through, and the plaintiff brought this action in the County Court to recover $271.03, the return of moneys received by the defendant belonging to the plaintiff, being proceeds from sales of goods in plaintiff's shop, as follows: setting forth the sums received on each day by the defendant.

Held, that this sum was not ascertained by its receipt by the defendant and the bringing of the action by the plaintiff for the sum so received. The increased jurisdiction applies only in the comparatively plain and simple cases where by the act of the parties or the signature of the defendant the amount is liquidated or ascertained *as being due* from one party to the other on account of some debt, covenant or contract between them, such ascertainment of the amount by the act of the parties being something equivalent to the stating of an account between them.

Judgment of the County Court of Middlesex affirmed.

Magee for the appellant.

R. M. Meredith for the respondent.

IN THE MATTER OF THE LONDON SPEAKER PRINTING CO. PEARCE'S CASE.

IN THE MATTER OF THE SPEIGHT MANUFACTURING CO. BOULTBEE'S CASE.

Company—Subscription before incorporation—Allotment—Ontario Joint Stock Companies' Letters Patent Act—R.S.O. c. 157, s. 2, s-s. 6—Contributory—Ontario Winding-Up Act—R.S.O., c. 183.

P. signed an instrument purporting to be a subscription for shares in a company "proposed to be incorporated" under the Ontario Joint Stock Companies' Letters Patent Act.

B. signed an instrument purporting to be an agreement to accept shares in a company not at the time incorporated.

P. and B. were not corporators named in the Letters Patent and no shares were in fact ever allotted to them, but they were entered in the books as shareholders, and notices of meetings and demand for payment of calls were sent to them, and in winding up proceedings they were placed on the list of contributories.

Held, that there being no company in existence when the instruments in question were signed, they did not constitute binding contracts to take shares so as, without more, to make P. and D. liable as contributories.

In re The Queen City Refining Co., 10 O.R., 264, explained.

Orders of the County Court of Middlesex and of the County Court of York reversed.

A. C. Jeffery for the appellant P.

H. J. Scott, Q.C., for the appellant B.

MacMillan and *Gregory* for the respective respondents.

LINFOOT *v.* LINFOOT.

Infant—Guardian—R.S.O., c. 137, s. 10.

This was an appeal from the Surrogate Court of Peel.

A contest arose as to the guardianship of two children of William France Linfoot, deceased, between the stepmother of the children and their uncle, and the learned Judge of the Surrogate Court appointed the uncle guardian, holding that he was bound so to do under the authority of *In re Irwin*, 16 Gr., 461, although he was personally of opinion that it would be better for the children that the stepmother should be their guardian.

The stepmother appealed, and the appeal came on to be heard before this court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.), on the 18th of October, 1889.

The Court allowed the appeal, holding that the Judge had the right to exercise a discretion in appointing a guardian, and should take into consideration what was most likely to promote the real benefit of the infants, and was not bound to appoint the uncle in preference to the stepmother. The matter was referred back to the learned Judge, the costs of the appeal to be disposed of by him.

T. J. Blain for the appellant.

E. G. Graham for the respondent.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

GALT, C.J.] [October 18.

IN RE COOKE AND VILLAGE OF NORWICH.

Municipal corporations—By-law for contracting debt—Bonus to manufactory—Debentures not

payable within twenty years—Municipal Act R.S.O., c. 184, secs. 340, 334, 351, 352—Time for moving to quash—Promulgation of by-law—Registry of by-law.

Motion to make absolute an order *nisi* obtained and served on the 20th of September, 1889, to quash a by-law of the village of Norwich to raise the sum of $1,700 by way of bonus to aid an industry in the village.

The by-law was finally passed by the council, after having been voted on by the electors, on the 3rd of June, 1889, and was promulgated on the 10th of June, 1889. It was registered on the 14th of August, 1889.

The by-law stated on its face that it was to come into force on the 2nd of July, 1889, and authorized the issue of three debentures payable at twenty years after the date of issue, and provided that the date of issue should be the 1st of October, 1889.

Held, that the period of payment exceeded twenty years, and the by-law was therefore in contravention of sec. 340, sub-sec. 2, of the Municipal Act, R.S.O., c. 184, and should be quashed.

Held, also, that this by-law was not a by-law by which a rate was imposed, and was therefore not subject to the provisions of sec. 334 of the Act, requiring an application to quash to be made within three months from promulgation; but was a by-law for contracting a debt, and was therefore subject to the provisions of secs. 351 and 352, requiring an application to quash to be made within three months from the registry of the by-law, and this application was therefore in time.

C. J. Holman for the applicant.

Aylesworth for the village.

GALT, C.J.] [Oct. 7.

IN RE WHITAKER AND MASON.

Municipal corporations—Warrants for salary of officer—Refusal of mayor to sign—Application by officer for mandamus—Remedy by action.

An officer of a municipal corporation applied for a mandamus to compel the mayor to sign warrants for the applicant's salary, which the mayor had been called upon to do by a resolution of the municipal council.

Held, that the applicant could maintain an action against the corporation for his salary, and as he had that remedy, a mandamus would not be granted at his instance.

W. H. P. Clement for the applicant.

Aylesworth for the mayor.

Chancery Division.

Div'l Ct.] [June 12.

MCINTYRE *v.* THE EAST WILLIAMS MUTUAL FIRE INSURANCE CO.

Insurance—Further insurance without consent—Notice to company—Payment of assessment—Estoppel—Damages—Amount of Judgment.

Plaintiff on Feb. 1, 1886, insured with defendants for $1,000. He changed his mortgage on the insured property from one loan Company to another, and the latter refused to accept the defendant's Mutual policy, and insured in the L. Assurance Co. for the same amount, and notified plaintiff by letter, who in Dec., 1886, showed the letter to the defendant's Sec.-Treas., and was then told it was all right, and that there was nothing further necessary for him to do. Plaintiff paid defendants assessments in Dec., 1886, and March, 1887. The fire occurred June 30, 1887, and the loss was $2,200. Defendants' by-laws provided that they would not pay more than two-thirds of the actual loss sustained, and that not more than $2,000 would be taken in one risk. The L. Assurance Co. paid their $1,000.

Held, that the showing of the letter to the Sec.-Treas. did not fulfil the requirements of the statute R.S.O. (1877), c. 161, s. 40, so as to charge the defendants.

Held, also, that the receipt of assessments by the defendants after the officer was aware of the other insurance, operated an estoppel on the Co., and must be treated as an exercise of the directors' option to treat the policy as valid.

Held, also (affirming FALCONBRIDGE, J.), that the proper way to arrive at the damages was, first, to deduct the $1,000 paid by the L. Assurance Co. from the $2,200 amount of the loss, and then take two-thirds of the remaining $1,200, making the judgment $800.

R. M. Meredith and *W. Nesbitt* for the plaintiffs.

W. R. Meredith, Q.C., for the defendants.

Div'l Court.] [June 12.

QUAINTANCE *v.* THE CORPORATION OF THE TOWNSHIP OF HOWARD.

Municipal corporation—Agreement subject to passing of a by-law not executed by corporation—Work done under it—Mandamus to raise the money.

Plaintiff entered into an agreement in writing with defendants to do certain work, which contained this clause: "Notwithstanding anything hereinbefore contained to the contrary this agreement . . is made subject to the final passing . of the said by-law . . and in the event of the said by-law not being passed . . then this agreement shall be null and void"

At the trial it was proved the by-law was never finally passed and the agreement was produced to prevent the plaintiff recovering as on a *quantum meruit.*

Held, (reversing FERGUSON, J., and FERGUSON, J., dissenting), that the defendants were bound by the contract; the stipulation as to the agreement being subject to the final passing of the by-law, must receive a reasonable construction. The defendants' right to refuse to pass the by-law must be confined to the case when the plaintiff has not performed his work properly. The plaintiff, on showing that he had complied with the terms of the contract, is entitled to a mandamus to compel the defendants to raise money to pay him; but as he neglected to furnish a preliminary certificate of an engineer, a new trial was granted to enable him so to do.

Douglas, Q.C., for the appeal.

Aylesworth contra.

Div'l Ct.] [Sept. 6.

JOHNSTON *v.* DENMAN *et al.*

Will—Devise—Legacies charged on real estate.

The testator, after devising certain pecuniary legacies and a home to two of his children until they came of age, provided as follows: "And I will and bequeath unto my daughter, C.J., all my real estate and the remainder of my personal estate after the above legacies are paid."

Held (affirming ROBERTSON, J.), that the legacies were charged on the real estate.

Idington, Q.C., for the plaintiff.

Shepley for the infant defendant.

BOYD, C.] [Sept. 11.

ARGENTINE *v.* SCHRIER.

Will—Construction—Specific bequests—"Home"—Maintenance.

A testator bequeathed to his daughter "a home as long as she may remain single" in his dwelling house.

Held, that though in the case of an infant "home" would probably include maintenance, yet that the legatee in this case being of age, and there being no express words giving her maintenance after minority, she was not entitled to maintenance under the above bequest.

The testator also bequeathed to his wife "the full control of all my real and personal estate, stock and implements during her life-time," and willed that at his wife's decease "all the stock, of whatever kind, with the farming implements on the farm at my wife's decease shall be equally divided between my sons."

Held, that the bequest to the widow of the stock and farm implements was specific, and therefore exempt from the payment of the pecuniary legacies.

Hoyles for the plaintiff.

Moss, Q.C., *J. Hoskin*, Q.C., *J. M. Clark*, and *W. D. McPherson* for various defendants.

Full Court.] [Sept. 12.

REYNOLDS *v.* JAMIESON.

Action for breach of promise—Nonsuit—Release by promisee.

Action of breach of promise of marriage. Plaintiff set up a promise to marry in October, 1885, and a repudiation of it by the defendant in March, 1886. The promise was duly proved, and the evidence of the plaintiff was that in March, 1886, the defendant visited her and told her: "I never asked you to marry, or came to marry you. I never was promised to you." Whereupon she got vexed at him, and ordered him out of the house; that he wanted the engagement renewed and she would not consent to it.

The trial judge nonsuited the plaintiff on the ground that this amounted to an absolute release, and that the relationship between the parties was terminated.

Held, however, that the matter was one which should have been left to the jury; that there

was evidence of the defendant having broken the contract before the interview of March, 1886, and the plaintiff's action was one of the consequences flowing from that breach. The jury might have reasoned that the plaintiff chose to consider the connection at an end, the defendant having previously violated his engagement, and that she was not willing to subject herself to the pain and mortification of being again deceived. There must be a new trial.

Edwards for the plaintiff.

Douglas for the defendant.

BOYD, C.] [Sept. 26.

RE HAMILTON.

Will—Construction—Devise to one for life, then to issue in fee simple—Shelley's case.

Vendor and purchaser petition.

A testator devised lands to his daughter; "to her own use for the full term of her natural life, and from and after her decease to the lawful issue of my said daughter to hold in fee simple."

The daughter contracted to convey in fee simple to a purchaser.

Held, that the court would refrain from making any order on the petition, for that the law on this head seemed to be in a state of uncertainty, if not of transition, and any experiment had better be made in a contested case when all parties interested were represented.

Semble, that the direction that the issue should hold the property in fee simple appeared incompatible with an estate tail in the mother.

Shepley for the vendor.

BOYD, C.] [Oct. 2.

SPAHR *v.* BEAN.

Married woman—Action of libel—In name of married woman only—Married Woman's Property Act, 1884.—R.S.O., c. 132, s. 3—Demurrer.

A married woman may bring an action of libel in her own name without joining her husband as plaintiff.

The omission of the words "either in contract or in tort or otherwise," found in the Married Woman's Property Act, 1884, from sec. 3, R.S.O., c. 132, does not limit the legal effect and operation of that section.

Hoyles for the demurrer.

J. D. King contra.

BOYD, C.] [Oct. 9.

RE CLARK AND CHAMBERLAIN.

Registry Act—Numbers—Letters—Discharge of mortgage—Synonymous names of parties—Uncertainty of grantee.

Vendor and purchaser petition.

A discharge of mortgage referred to the mortgage as 5764, whereas the mortgage was registered as 5764 C.W.

Held, that it was a valid discharge properly registered; the Registry Act, though requiring every instrument to be numbered, says nothing about adding letters, which appear to be only arbitrary marks adopted by the officials for convenience of reference.

A discharge was required by Eliza Switzer, whereas the mortgage purporting to be discharged was made to Elizabeth Switzer.

Held, that this was no valid objection for the identity of the person signing was established by affidavit to the satisfaction of the registrar, and as a matter of family usage the names are synonymous and interchangeable.

In one of the conveyances in the chain of title the grant was to the party of the third part, whereas there were only two parties to the conveyance, and the party of the second part did not execute it.

Held, that this was a valid objection; though the instrument would be at once corrected or reformed as against the grantors; or could be cured by another conveyance drawn with proper certainty.

S. R. Clarke vendor in person.

W. M. Clark for the purchaser.

Practice.

FERGUSON, J.] [Oct. 16.

CANADIAN BANK OF COMMERCE *v.* WOODCOCK.

Married woman—Judgment against—Rule 739—Necessity for proving separate estate.

Upon a motion by the plaintiffs for summary judgment against a married woman under Rule

739, an officer of the plaintiffs swore that the married woman was made a party to the note because he, the deponent, was informed by her husband and believed, and had no doubt, that she had separate estate of her own, and that there was no doubt, so far as she was concerned, that she contracted with respect to her separate estate when she endorsed the note.

The note was made and matured and all the material facts occurred before the passing of the Married Women's Property Act, 1884.

Held, following *Moore* v. *Jackson*, *ante* p. 409, that the plaintiffs were bound to prove the existence of some separate property at the time of entering into the alleged contract, and that this was not shown by the affidavit; and the motion for judgment was refused.

John King for the plaintiffs.

J. M. Clark for the defendants.

GALT, C.J.] [Oct. 17.

PETERS *v.* STONESS.

Rules of court—Construction—Heading—Rules 5, 1008—Summary order for sale of equitable interest in land—Reference.

Rule 5 of the Consolidated Rules provides that "The division of these rules into chapters, titles, and headings is for convenience only, and is not to affect their construction."

Held, that Rule 1,008, notwithstanding the heading "Summary Inquiries into Fraudulent Conveyances" is not limited to cases of equitable interests arising from fraudulent conveyances, but applies to a case where a judgment creditor is seeking to make available the interest of his debtor under an agreement for the purchase of land.

A reference was directed to ascertain what interest the debtor had in the land in question.

Wood v. *Hurl*, 28 Gr. 146, not followed, owing to the change in the law by Rule 5.

Langton for the judgment creditors.

W. M. Douglas for the judgment debtor.

STREET, J.] [Oct. 19.

IN RE SHIBLEY AND THE NAPANEE, TAMWORTH, AND QUEBEC R.W. CO.

Costs—Railway company—Application for warrant of possession—51 Vict., c. 29, s. 165.

Where a railway company, having a right to expropriate land, obtains under s. 163 of the Railway Act, 51 Vict., c. 29, a warrant for immediate possession, and the amount subsequently awarded to the land-owner is not more than he was previously offered by the company as compensation, the costs of the application for the warrant should, under s. 165, be paid by the land-owner.

Delamere for land-owner.

Aylesworth for company.

Appointments to Office.

COUNTY JUDGES.

Prescott and Russell.

P. O'Brian, of L'Original, to be Judge of the County Court of the united Counties of Prescott and Russell, and also to be a Local Judge of the High Court of Justice for Ontario.

Prince Edward.

E. Merrill, of Picton, to be Judge of the County Court of the County of Prince Edward, and also to be a Local Judge of the High Court of Justice for Ontario, *vice* R. P. Jellett.

LOCAL JUDGE H.C.J.

Grey.

S. G. Lane, Judge of the County Court of the County of Grey, to be a Local Judge of the High Court of Justice for Ontario.

POLICE MAGISTRATE.

Muskoka and Parry Sound.

W. H. Spencer, of Monck, to be Police Magistrate for the District of Muskoka; save the town of Bracebridge and the Townships of Macaulay and Draper, and also for certain portions of the District of Parry Sound.

CORONERS.

Lanark.

F. McEwen, M.D., of Carleton Place, to be an Associate-Coroner for the County of Lanark.

Lambton.

D. McEdwards, M.D., of Thedford, to be an Associate-Coroner for the County of Lambton, *vice* T. Ovens, M.D., removed from the locality.

Perth.

J. A. Devlin, M.D., of Stratford, to be an Associate Coroner within and for the County of Perth.

DIVISION COURT CLERKS.

Leeds and Grenville.

L. S. Lewis, of Newboro', to be Clerk of the Eighth Division Court of Leeds and Grenville, *vice* H. Kilborn, resigned.

BAILIFFS.

Northumberland and Durham.

John Grimison, of Port Hope, to be Bailiff of the Third Division Court of N mberland and Durham, *vice* T. O. Monaghan, resigned.

Hastings.

John H. Gordon, of Belleville, to be Bailiff of the First Division Court of Hastings, *vice* Geo. W. Sills, resigned.

Miscellaneous.

Lawyers not unfrequently come to ride in their own conveyances from the clever way in which they have managed the conveyances of their clients.

PROGRESS OF INVENTIONS SINCE 1845.—In the year 1845 the present owners of the *Scientific American* newspaper commenced its publication, and soon after established a bureau for the procuring of patents for inventions at home and in foreign countries. During the year 1845 there were only 502 patents issued from the U.S. Patent Office, and the total issue from the establishment of the Patent Office, up to the end of that year, numbered only 4,347.

Up to the first of July this year there have been granted 406,413. Showing that since the commencement of the SCIENTIFIC AMERICAN there have been issued from the U. S. Patent Office 402,166 patents, and about one-third more applications have been made than have been granted, showing the ingenuity of our people to be phenomenal, and much greater than even the enormous number of patents issued indicates. Probably a good many of our readers have had business transacted through the offices of the SCIENTIFIC AMERICAN, in New York or Washington, and are familiar with Munn & Co.'s mode of doing business, but those who have not will be interested in knowing something about this, the oldest patent soliciting firm in this country, probably in the world.

Persons visiting the offices of the SCIENTIFIC AMERICAN, 361 Broadway, N. Y., for the first time, will be surprised, on entering the main office, to find such an extensive and elegantly equipped establishment, with its walnut counters, desks and chairs to correspond, and its enormous safes, and such a large number of draughtsmen, specification writers, and clerks, all busy as bees, reminding one of a large banking or insurance office, with its hundred employees.

In conversation with one of the firm, who had commenced the business of soliciting patents in connection with the publication of the SCIENTIFIC AMERICAN, more than forty years ago, I learned that his firm had made application for patents for upward of one hundred thousand inventors in the United States, and several thousands in different foreign countries, and had filed as many cases in the Patent Office in a single month as there were patents issued during the entire first year of their business career. This gentleman had seen the Patent Office grow from a sapling to a sturdy oak, and he modestly hinted that many thought the SCIENTIFIC AMERICAN, with its large circulation, had performed no mean share in stimulating inventions and advancing the interests of the Patent Office. But it is not alone the patent soliciting that occupies the attention of the one hundred persons employed by Munn & Co., but a large number are engaged on the four publications issued weekly and monthly from their office, 361 Broadway, N.Y., viz.: The SCIENTIFIC AMERICAN, the SCIENTIFIC AMERICAN SUPPLEMENT, the Export Edition of the SCIENTIFIC AMERICAN, and the Architects and Builders Edition of the SCIENTIFIC AMERICAN. The first two publications are issued every week, and the latter two, the first of every month.