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THE Consolidated Rules will not come into effect until the 1st of September next. This will give the profession ample time to become familiar with the changes which they make. The Rules have been published, and are now in the hands of the booksellers.

A MEASURE has been introduced into the House of Commons, which, if it becomes law, and is properly enforced, must have a most salutary effect on the public morals. We mean the bill introduced by Hon. Mr. Abbott, intituled "An Act respecting Gaming in Stocks and Merchandise." The preamble recites the immoral tendencies of gaming and wagering on the rise and fall in the value of stocks, etc., the increase of bucket shops, and the expediency of prohibiting these evils. The first section of the bill forbids contracts for the purchase or sale of stocks, goods, merchandise, etc., where there is no *bona fide* intention of acquiring the stock, goods, etc., or selling them as the case may be, and also declares the making of any such contract, in respect of which there is no actual delivery of the thing sold or purchased, to be a misdemeanour punishable by fine and imprisonment. The habitual frequenters of bucket shops are also to be held guilty of a misdemeanour. The burden of proof as to his intention to actually acquire or sell the shares, goods, etc., is thrown on the maker of the contract, as soon as its existence is established. All connected in any way with bucket shops are to be made liable to all the penalties of the Act respecting Gaming Houses. We can see no objection to gambling at poker or dice which does not apply with equal force to the "speculations" at which this Bill is aimed. We hope to see it enacted in its entirety, and enforced with vigour and diligence.

THE Supreme Court of the United States has suffered a heavy, almost an irreparable, loss in the sudden death of Chief Justice Waite. That court occupies an anomalous position amongst national tribunals, since its duty is not merely to decide the questions involved in private litigation, but also to maintain the proper balance between the State and Federal Governments, and between the legislative and executive departments of the latter. It is the supreme arbiter, controlling and regulating all other authorities within the limits of the law and the Constitution; hence, the great importance of having for its judges men distinguished for talent, learning, moderation and conscientiousness. On them may depend the stability and permanence of the nation itself. The judges who have occupied a place in this court, have been men worthy of the

trust reposed in them, and none, perhaps, more so than the late Chief Justice. He had that practical wisdom, in a large degree, which enabled him to measure justice rather than compare precedents. He was courteous, patient, candid, of the true judicial temperament; his dignity was that of simple modesty. In the words of an American contemporary, "he was the latest chief of a long line of public servants, who, for a century, have with singular purity, probity, and ability, administered the judicial branch of the Federal Government, and it is but bare justice to say that his character, public and private, will compare favourably with the best and ablest of that noble line."

WE wonder whether R. S. O., 1887, contains many such unexplained, and for all that appears unauthorized variations in the Acts consolidated as the following, which we have accidentally come across in the course of practice. The Dower Act of 1879, 42 Vict. c. 22, s. 5, provided as follows:—"In case of a suit for partition or administration or *any suit in which a partition or sale of land is ordered*, and in which the estate of any tenant in dower or tenant by the courtesy or for life is established, if the person entitled to such estate has been made a party to the proceedings, the court or judge shall determine whether such estate ought to be exempted from the sale or whether the same should be sold;" and then the section goes on to provide that the land may be sold and the estate and interest of such tenants in dower, etc., shall pass thereby, and a sum in gross out of the purchase money may be directed to be paid to the person entitled to dower, etc. Being about to proceed on the faith of this section in the case of an action on a mortgage on lands in which there was an outstanding estate in dower, proposing to ask for a sale and the setting apart of a sum in gross to provide for the dower, we took the precaution first to see how the section was consolidated. We find the only place where this portion of the section is consolidated is in R. S. O., 1887, c. 104, s. 49, being the Partition Act, and it thus appears: "In case of an action or proceeding for partition or administration in which a partition or sale of land is ordered and in which the estate of any tenant in dower or tenant by the courtesy or for life is established," etc., and then continues as in 42 Vict. c. 22. Nothing appears to show why the words in the original statute, "or any suit in which a partition or sale of land is ordered," were left out. Can it be that this was the work of some officious individual who hastily eliminated these words as surplusage, without thinking the matter out or foreseeing that he was taking away a substantial part of the enactment?

WE have seen an advance advertisement of a work to be published shortly on "The Lives of our Judges," by D. B. Read, Q.C. This work will, no doubt, commend itself to the Bar generally. Mr. Read's long connection with the Bar, and as a Bencher of the Law Society for twenty-nine years, well fits him for being the author of such a work. The prospectus which has been sent to the members of the Bar in a short form, delineates the scope of the work. There is

so much history connected with the judges having relation to events well nigh forgotten, that a writer who undertakes to unearth these events, will receive the thanks not only of the Bar, but of the general public. The prospectus states that "The writer has not confined himself to the judicial lives of the judges, but has given their political career whenever they have been engaged in politics, their military career when engaged in defence of their country, and generally their lives as citizens and judges."

Several of the older judges distinguished themselves in the war of 1812. The battles of Lundy's Lane, Queenston Heights, Fort Erie, and Chrysler's Farm, were so important in their results, that those engaged in them will never be forgotten by the people of Canada. "The Lives of the Judges," when published, will, no doubt, contain reference to these events, and the part taken by the Canadian judges who contributed their share in defence of the country.

It may be taken for granted that, under the pen of Mr. Read, the political career of the judges will be treated in an independent and impartial spirit.

Many of the profession, who have anecdotes and incidents of interest connected with the subject will, doubtless, avail themselves of this opportunity of making them public, and recorded for future reference.

A PROBLEM IN THE ENGLISH LAW OF ARBITRATION.

THE English law of arbitration is eminently ripe for legislative reform. Its irregular development, its endless intricacies, its seeming contradictions, almost justify the historic anathema pronounced by Hallam upon the whole system to which it belongs.

My object in this paper is a limited one. It is to offer an answer to the question, Under what circumstances can a voluntary—as distinguished from a judicial or compulsory—reference to arbitration be revoked at the instance, and by the will, of either party?

It is thought that the following propositions not inaccurately describe the present state of English law upon this subject:—

PROPOSITION I.—A submission to arbitration is said to be "particular" when the arbitrators are, and "general" when the arbitrators are not, named in the agreement to refer.

Authorities: (1) *Die Deutsche Springstoff Actien Gesellschaft* v. *Briscoe*, L. R. 20 Q. B. D., at pp. 180, 181, 1887: "Here the agreement to refer is certainly general in one sense, but it is not general with respect to the appointment of arbitrators" (per Justice Stephen). "In one sense, no doubt, there is a general agreement to refer all disputes or matters in difference, but in another sense the agreement is not general, because it is an agreement to refer to two named persons" (per Justice Charles). (2) *Piercy* v. *Young*, 14 Chy. D. 200, 1879, cf. Jessel, Master of the Rolls, at p. 203: "We are all clearly of opinion that a general agreement to refer matters in dispute to arbitration cannot be revoked."

His lordship then uses language which shows clearly what such "a general agreement" is not: "The authorities cited have no application. They all relate to cases in which the reference had been actually made to a particular arbitrator."

PROPOSITION II.—A particular submission is revocable when it does not, and irrevocable except by leave of the court when it does, contain a consent that the agreement to refer may be made a rule of court.

Authorities: (1) "Revocable when it does not," etc. *Re Rouse and Meier*, L. R. 6 C. P. 212; *Fraser* v. *Ehrensperger*, 12 Q. B. D. 310; *Thomson* v. *Anderson*, L. R. 9 Eq. 523. (2) "Irrevocable, except by leave of the court," etc. Statute 3 and 4 William IV. c. 42, s. 39.

PROPOSITION III.—A general submission, as above defined, is irrevocable, and may be made a rule of court and enforced as such on the application of either party thereto, unless the agreement to refer contains words purporting a contrary intention.

Authorities: (1) "A general submission is irrevocable." *Piercy* v. *Young*, 14 Chy. D. 200. (2) "And may be made," etc. Com. Law Proc. Act, 1854, s. 17. (3) "Unless the agreement," etc., *e.g.*, that the decision of the umpire shall be final and without appeal. Cf. *Wadsworth* v. *Smith*, L. R. 6 Q. B. 332.

PROPOSITION IV.—A general submission to arbitration made under seal between two companies within the meaning of the Companies Acts, or between a company and an individual, is irrevocable except by consent of both parties, and may be enforced *(semble)* without being made a rule of court.

Authority: Companies Act, 1862, ss. *72*, *73*, and Railway Company Arbitration Act, 1859.

The benefit of these provisions might perhaps be taken by insurance companies whose policies are issued under seal, but if the arbitration clause is merely one of "the conditions of assurance," it must be stated (*Stoneham* v. *The Ocean, etc., Co'y*, 19 Q. B. D.), or clearly implied (*Viney* v. *Bignold*, 20 Q. B. D.) to be a condition precedent.

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RAILWAY COMMISSION.

WE have just had the pleasure of perusing the report of the Royal Railway Commission laid before Parliament a short time ago, and as we believe the railway question to be one of the most important questions before the public at present, as it certainly is the most complex, we take the liberty of giving our views shortly on the recommendations of the Commission.

The Commission seem to have dealt very thoroughly and carefully with all the points referred to them, and have also collected a very large amount of useful information, not only from the United States, as to the working of the State and Interstate Commissions, but from English and other sources.

From the general tenor of the information, it would appear that in the United States the principle of Commissions as independent bodies was entirely in favour, the only question really being as to the extent and description of their power; and in this they differ to some extent in the various states, each state having complete power over the railways within its borders—the Interstate Commerce Commission only dealing with those railways running from state to state. This naturally causes a good deal of extra expense. In Canada, however, the Dominion Legislature has, speaking generally, the power to deal with the more important questions relating to railways, thus making the railway problem much more simple, and more easily managed.

The Railway Commission system has also been in force in England in various forms for many years, and there is now before the British Parliament a measure pointing to making the Commission permanent, with some changes, one of which is the appointment of a Superior Court Judge for each of the three parts of the empire, England, Ireland and Scotland, as *ex-officio* members, to be called in when any question of importance arises.

The Commission had under their consideration two systems under which the railways may be properly and fairly controlled; one of which was the independent Railway Commission, and the other using the Railway Committee of the Privy Council, through whom the necessary control could be obtained.

With regard to the first method, the Commissioners, apparently not wishing too hurriedly to advise a permanent Commission before the Interstate Commerce Commission has had another trial, as it has so far been less than a year in operation, and also to allow time for the passage of the proposed English Act making a permanent Commission, and also on the ground that none of the American Commissioners have sufficient power, and, for these reasons principally, do not recommend that a Commission of a permanent nature be at once appointed to deal with this all important question.

The second method before them was the extension of the powers of the Railway Committee of the Privy Council, who should hear and determine all disputes arising between railway companies, with power to appoint proper officers to take evidence locally.

The Committee itself to decide all questions of classification of freight tariff and uniform railway returns.

The Committee to have power to appoint officers in each Province to hear and determine all complaints against railway companies, subject to the power of reference by such officer of any point to the Committee, and also subject to the right of appeal by either of the parties to the Committee itself.

The Commissioners apparently recommend this latter course as only a temporary expedient, as they say, "They think it better to test the working of the proposed law by temporary provision for its execution, and after fair experience of the results of the Interstate Railway Commission, and of our own legislation, to consider whether such system should be made permanent."

The Commission, when recommending this latter course, candidly admit that it has very serious defects. These are thus stated:

1. The members cannot leave their duties at Ottawa, and must therefore delegate to subordinates much very important work.

2. They hold their offices by "political tenure," and are liable to sudden changes, whereby the value of their experience is lost.

3. They can scarcely be regarded by the public as so absolutely removed from personal or political bias as independent members of a permanent tribunal.

4. They cannot possibly give their exclusive attention to their railway duties, and in taking upon themselves the duties which would necessarily devolve upon them, they would, in fact, be performing judicial functions. "Those and other reasons," as the Commissioners say, occur against the selection of the Railway Committee of the Privy Council as the Railway tribunal; but they say, "it is believed they are outweighed by the consideration of general and ultimate advantage," thus proceeding with "extreme caution" in dealing with subjects affecting the entire community, while a material practical advantage is secured by the fact that any required changes in the law, or in its application, are secured, thus identifying the Government with its execution.

From the fair manner in which the evidence and information obtained by the Commission has now been laid before the country, it is quite open to those who choose to do so, to discuss this all-important question from every point of view, and thus get the benefit of the ideas of many whose opinions are valuable, and who otherwise might never come forward to give them.

Having for several years back heard of the proposal to appoint a permanent Commission for the adjustment of railway matters, we naturally looked forward to that being the channel through which this great problem would be solved. But, while gladly testifying to the good work done by the Railway Commission, and being satisfied that great benefit will be ultimately derived from the information obtained and the report of the Commission, we must confess a certain amount of disappointment. That which many thought would be best, and looked for, was the appointment of an independent Commission free from political bias or control, and able to give their whole and undivided attention to the great railway problems constantly arising for solution. We doubt whether anything short of this will put the railway question on a permanent and satisfactory footing. But such a tribunal must be composed of first-rate men, well paid, and made perfectly independent, with powers limited and defined in a specific manner.

The Government could scarcely do otherwise than follow the recommendation of the Commissioners in reference to this Railway Committee. But it certainly would be warranted, in view of the information now gathered together, and reported to the Governor-General, in at once considering the constitution of, and necessary details connected with the appointment of a permanent body, which would give its entire time and consideration to the subject, and which would be able, from time to time, to recommend such legislation as might be deemed necessary. We think this the more as from the position occupied by the personnel of the proposed Railway Committee of the Privy Council, and from the

very grave objections to it mentioned in the report, this Committee cannot be looked upon as a permanent body.

Railways all over the world are becoming such busy and important factors in the commerce of the different countries, that their vast and complex systems will in the future form a separate study by itself, and it is only those who can give the subject the greatest and most continuous attention who can at all expect to grasp this vast mass of apparent incongruities. Canada is comparatively young in railways, but from the experience of our neighbours and the Continental countries, it will be well for us not to sit still and wait until the skein gets too much tangled, so that we may have to damage it in the unravelling. Now is our time; we are in a fair way of doing something, let us do it well, and not have to go back on our work and have to commence *de novo*.

In conclusion, it is most important that the persons constituting the Committee should not be subject to frequent change. They have much to learn which only experience can teach. It will be impossible, moreover, for men occupying the highly important and engrossing positions of Minister of Railways and Minister of Justice to do justice to the work that would devolve upon them. This work must necessarily include much detail, taking and consideration of evidence, etc., and any lawyer knows how unsatisfactory a decision is from facts gained at second hand, and arrived at in a hurry, trusting much to subordinates. Then again, the political aspect of the situation is most important, as no tribunal composed of political leaders can command the confidence of all.

We are not prepared to say that the Commission we speak of would be perfect, nor that the experience in the United States is entirely satisfactory; the public, moreover, as a rule, only know where the shoe pinches, and are not in a position to judge of the remedy—at the same time we trust the Government will shortly see its way to the appointment of some independent tribunal on a well-considered plan.

COMMENTS ON CURRENT ENGLISH DECISIONS.

MANDAMUS—RETURN TO MANDAMUS OF COMPLIANCE—PLEA TO RETURN TO MANDAMUS.

The only point worth noticing in *The Queen* v. *King*, 20 Q. B. D. 430, is the decision with regard to a point of pleading involved. A mandamus had been obtained requiring the defendants to hold a further adjournment of their annual general meeting, to hear and determine the application of the prosecutor for a certificate to hold an excise license to sell wine by retail. The defendants returned in effect that they had unconditionally complied with the writ; to which return the prosecutor pleaded that the defendants were only entitled to refuse the application upon one or more of the four grounds specified in a statute; but that they had refused the applications on other grounds contrary to

the statute. The Court of Appeal (Lord Esher, M.R., Fry and Lopes, L.JJ.) held that this plea was good in law, as it must be taken to mean that in refusing the application the defendants had assumed to exercise a jurisdiction which they did not possess, and that they had therefore not substantially heard and determined the matter submitted to them. Lopes, L.J., neatly sums up the point thus, at p. 441: "I am of opinion that a return of absolute obedience to a mandamus to justices to hear and determine a matter can be questioned by a plea in certain cases. If the plea sets up that the justices had determined the matter wrongly, it would be bad. If, on the other hand, it said that the justices did not hear and determine the matter it would be good. If it set up that the justices declined to exercise a jurisdiction which they had, and professed to exercise another jurisdiction which they did not possess, that, I think, would be good."

COMPANY—WINDING UP—PROHIBITION AGAINST CARRYING ON BUSINESS.

The Hire Purchase Furnishing Co. v. *Richens*, 20 Q. B. D. 387, is a case upon the construction of s. 131 of the Companies Act, 1862, which provides that a company being wound up voluntarily, shall, from the date of the commencement of such winding up, cease to carry on its business except in so far as may be required for the beneficial winding up thereof. The plaintiff company having sued the defendants for breach of a contract made after the company had commenced proceedings for a voluntary winding up, and the contract and breach being duly proved, it was held by the Court of Appeal (Bowen and Fry, LL.J.), affirming Grantham, J., that it lay on the defendants to show that the contract was not required for the beneficial winding up of the company, and that in the absence of such evidence the plaintiffs were entitled to succeed.

EXECUTOR INTERMEDDLING WITH ESTATE BEFORE PROBATE—INJUNCTION—RECEIVER.

Turning now to the cases in the Probate Division, we find only two which we think it necessary to notice. *In re Moore*, 13 P. D. 36, before probate, an executor without the consent of his co-executor intermeddled with the estate, and upon the joint application of the co-executor and a residuary legatee, leave was granted to issue a writ of summons for an injunction to restrain the intermeddling executor from dealing with the property, and for the appointment of a receiver.

AMERICAN DIVORCE—DOMICIL—NULLITY.

The only other case is *Turner* v. *Thompson*, 13 P. D. 37, which was a petition for a declaration of nullity of marriage. The petitioner being a domiciled Englishwoman, in 1872 went through a form of marriage in England with an American citizen. She cohabited with him until 1879 in the United States, and in April, 1879, the Supreme Court of Columbia pronounced a decree dissolving the marriage on the ground of the husband's incapacity. She then returned to England and presented a petition to the Divorce Court there, praying a declara-

tion of nullity of marriage, and it was held that as the marriage was voidable and not void, the petitioner had acquired an American domicil, that the American court had jurisdiction to dissolve the marriage, and there being no longer a marriage in existence, the English court had no jurisdiction. On the authority of *Harvey* v. *Farnie*, 8 App. Cas. 43, the President determined that the marriage, though it took place in England, was *prima facie* an American marriage, because the husband was domiciled in the United States.

FRIVOLOUS APPLICATIONS, FORM OF ORDER TO PREVENT.

In *Grepe* v. *Loam*, 37 Chy. D. 168, the Court of Appeal settled a form of order dismissing a frivolous application, and to prevent any such application being renewed without the leave of the Court.

PRACTICE—INTERIM INJUNCTION TO RESTRAIN LIBEL.

The case of *Liverpool Household Stores Association* v. *Smith*, 37 Chy. D. 170, is an instructive case on the principles on which the court will exercise its jurisdiction to grant *interim* injunctions to restrain the publication of libels. The plaintiffs were a joint stock company formed for the purpose of carrying on co-operative stores. Certain anonymous letters having been published in a newspaper reflecting on the credit and solvency of the company, this action was brought against the publisher of the newspaper to restrain the further publication of similar articles reflecting unfavourably on the company, and this was a motion for an *interim* injunction. But Kekewich, J., to whom the application was made, refused it, because he considered it would be difficult to frame any injunction which would express the object of the Court and at the same time avoid prejudicing the question at the trial: and on appeal, the Court of Appeal (Cotton and Lopes, L.JJ.) affirmed his decision. Cotton, L.J., says, at p. 183:

"In no case do I find an injunction granted such as is asked for here, an injunction as regards future publication of statements coming under such an indefinite description. Supposing we were to grant the injunction against 'libellous' letters, then it would have to be decided, on motion to commit, whether what was published was libellous or not, and that would be a most inconvenient course to be adopted."

And Lopes, L.J., says: "It is clear that since the Judicature Act the Court has power to restrain the publication of libellous or slanderous matter, if it is immediately calculated to injure the person or trade of any one against whom it is directed, but whether the jurisdiction should be exercised or not is a matter for the discretion of the Court."

PRACTICE—DISCOVERY.

Fennessy v. *Clark*, 37 Chy. D. 184, was an action to restrain the sale of goods under an alleged infringement of the plaintiff's trade mark, and claiming damages for false representations by defendant, that his goods were goods of the plaintiff's manufacture, or in the alternative, an account of the profits, and in which it had been ordered that the issues of fact should be tried by a special jury before a

judge; and the question arose whether, before the trial, the plaintiff was entitled to a discovery of the sales effected by defendant, and a production of his books for that purpose. Kay, J., dismissed the application with costs, on the ground that it was premature; and the Court of Appeal (Cotton and Lopes, L.JJ.) agreed that until the plaintiff had obtained the verdict of the jury, establishing the questions of fact in the action, he could not get the discovery he sought. The judgment of Cotton, L.J., proceeds on the ground that the order had been made, not for the trial of the action, but merely of the questions of fact in the action, and that the plaintiff had not elected between his claim for an account of profits and his claim for damages, and though the question of damages was a fact in question in the action, it was not one of the facts referred for trial, the order being confined, in his opinion, to questions of fact on which the plaintiff's title to relief depended.

COMPANY—WINDING UP—SHARES ISSUED AT A DISCOUNT—SHAREHOLDER, LIABILITY OF —CALLS.

In re Addlestone Linoleum Co., 37 Chy. D. 191, an appeal was taken from a decision of Kay, J., refusing certain preference shareholders leave to prove in the winding up, for an alleged breach of the contract between them and the company, whereby they became shareholders. The company was a limited company, and part of its capital had been issued in £10 preference shares at par, every present shareholder to be entitled to one preference share at 25% discount for each ordinary share held by him. The shareholders in question accepted the allotment of shares on these terms, and paid up £7 10s. per share. Subsequently the company was ordered to be wound up, and they were placed on the list of contributories, and calls for the £2 10s. per share were made and paid by them: for these calls they now claimed to prove in the winding up proceedings as damages for breach of contract in respect of the issue of the preference shares. But the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.) were of opinion that the company had no power to issue shares at a discount; that the only remedy of the shareholders against the company, if any, was to have a rescission of the contract, but as that, owing to the winding up, could not now be had, they were without remedy. The cases of *Ince Hall Rolling Mills Co.*, 23 Chy. D. 545, and *In re Plaskynaston Tube Co.*, *ib.* 542, in which it was held that a limited company could issue shares at a discount were distinctly disapproved, as also *Mudford's Claim*, 14 Chy. D. 634, and *Ex parte Appleyard*, 18 Chy. D. 587.

PRACTICE—SERVICE OUT OF JURISDICTION—RES JUDICATA.

In *Société Generale* v. *Dreyfus*, 37 Chy. D. 215, an application had been granted by Pearson, J., to serve a writ out of the jurisdiction. After the order was made, litigation in reference to the subject matter of the action (which was a fund in the English Court) took place in the foreign country, which resulted in an adjudication that the defendants were entitled to the fund in question. On an appeal from the order of Pearson, J., the Court of Appeal held that the subject matter of the action being within the jurisdiction, the plaintiff's claim was one within

Ord xi., r. 1, yet the court had a discretion, and, under the circumstances, leave to serve the writ out of the jurisdiction should not be granted, and the order of Pearson, J., was therefore rescinded.

PRACTICE—MODE OF TRIAL—JURY—COUNTER-CLAIM.

In *Lynch* v. *Macdonald*, 37 Chy. D. 227 the action was for redemption of mortgaged shares. The defendant filed a counter-claim seeking relief incident to his position as mortgagee, and also damages for alleged fraudulent misrepresentations made by plaintiff to defendant. The plaintiff applied to have the action tried by a jury, which North, J., refused. The Court of Appeal (Cotton and Fry, L.JJ.) held that the case did not come within Ord. xxxvi. r. 6, so as to give the plaintiff the right to have the action tried by a jury, but that his proper course was to have applied to have the counter-claim for damages disallowed, or tried separately, as a claim which could not be conveniently tried in the action.

FOREIGN JUDGMENT, ACTION ON.

In re Henderson, Nouvion v. *Freeman*, 37 Chy. D. 244, the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.) decided that a judgment of a foreign tribunal upon which an execution may issue but which is not a final and conclusive judgment between the parties, according to the law of the foreign country in which it has been recovered, cannot be sued on in England, or enable the plaintiff to obtain administration of the defendant's estate, he having died.

DEBENTURE AND DEFINITION OF.

Perhaps the only point worth noticing in *Levy* v. *Abercorris Slate Co.*, 37 Chy. D. 260, is Chitty's, J., definition of the word debenture. He says at p. 264: "In my opinion a debenture means a document which either creates a debt, or acknowledges it, and any document which fulfils either of these conditions is a 'debenture. See, however, remarks of North, J., *Topham* v. *Greenside Fire-Brick Co.*, 37 Chy. D. 290.

PRACTICE—PARTICULARS—FRAUD.

Sachs v. *Speilman*, 37 Chy. D. 295, was an action by a principal against his stock broker to open settled accounts on the ground of fraud. The statement of claim alleged that the plaintiff was unable to give particulars before discovery. The defendant, before delivering a defence, applied for particulars. North, J., ordered the application to stand till a statement of defence had been put in.

WILL—GIFT OF INCOME TO A CLASS—ASCERTAINMENT OF CLASS.

In re Wenmoth, Wenmoth v. *Wenmoth*, 37 Chy. D. 266, Chitty J., decided that there is a distinction between the rule by which a class is to be ascertained, when the gift is of a *corpus*, and when the gift is of income merely; and while for convenience sake the class is to be ascertained in the case of a gift of a *corpus* when the first member of the class becomes entitled to his share, because the trustees could not otherwise ascertain what is the aliquot share of a member

of the class until the class closed ; yet in the case of a gift of income, there being a periodical distribution, that rule does not apply, and when the gift is to a class of children, who shall attain twenty-one, the date of the first attaining twenty-one is not the date for ascertaining the class, but that any child, at any time attaining twenty-one, would be entitled to a share of the income.

WILL—ADEMPTION—LUNACY AFTER MAKING OF WILL.

The only other case we think it necessary to notice is *In re Larking*, *Larking* v. *Larking*, 37 Chy. D. 310, in which North, J., decided that where a testator had bequeathed a policy on his own life in trust to pay two debts due by himself, and to pay the balance to his daughter, and subsequently paid off one debt, and then became a lunatic, and his committee voluntarily paid off the other: that the daughter was entitled to the money received on the policy less the debt paid off by the committee as to which there was no ademption, because the act of the committee without the authority of the court could not alter the right of the parties interested in the lunatic's estate on his decease.

Reviews and Notices of Books.

The Elements of Jurisprudence. BY THOMAS ERSKINE HOLLAND. Third Edition. Oxford: Clarendon Press.

The series of treatises to which this work belongs, and of which it is one of the older members, is an important and valuable contribution to the literature of Political Science. It includes such works as Stubb's "Constitutional History of England," Markby's "Elements of Law," Anson's "Principles of the English Law of Contract," and the last-named author's "Law and Custom of the Constitution." Alike in point of form as philosophical treatises, and, from a student's point of view, as useful text-books, these manuals seem to come as near to perfection as it is possible for treatises to come. As each of the subjects dealt with is a progressive department of one of the most progressive of sciences, it follows that even such works as these must sometime be superseded, but for the present they leave nothing to be desired in the sphere they aim at occupying.

The appearance of this third edition of Prof. Holland's treatise is the best proof that its value is appreciated, and from the author's own statement it is evident that its popularity is not confined to England, for in the preparation of this edition he has taken advantage of foreign as well as of home criticism. Nor is there anything in this to be surprised at, for the study of law has been, during the greater part of this century, carried on more scientifically in the United States than in England, and more scientifically in India than in either. The work done in the Harvard Law School, ever since Mr. Justice Story became associated with it, has exercised a most important and beneficial influence on

jurisprudence, and the methods pursued there are now avowedly followed by those who have in their hands the direction of legal education in England. When the time comes for taking a step forward in the matter of scientific legal training in Ontario, it is to be hoped that, in the light of the experience alike of England and the United States, it will be taken in the right direction.

There is one feature of Prof. Holland's work which seems to us a real defect, all the more to be regretted because it is easily removable. The nature of his subject requires him to give many definitions, and to cite many opinions from authors who have written treatises in other languages; and, in the great majority of cases, even where they occur as parts of the text, his citations are not translated. It is absolutely necessary in the interest of precision that when a quotation is given from Aristotle, or Savigny, or Cicero, or Vattel, it should be given in the original Greek, or German, or Latin, or French; but if the original is part of the text, a correct translation should be given as a foot-note, and if the quotation is given as a translation in the text, then the original should appear as a foot-note. Sometimes the difficulty of presenting both original and translation is overcome in a manner at once ingenious and effective, as when the author says (p. 67): "Law is something more than justice. Its ultimate object is, no doubt, nothing less than the highest well-being of society: and the State, from which law derives all its force, is something more than a 'Rechtsversicherungsanstalt,' or 'Institution for the protection of rights,' as it has not inaptly been described." Again, on p. 212: "Savigny's analysis of contract, substantially accepted by the majority of the more recent German authorities, is to the following effect. Its constituent elements are, he says, (i.) several parties, (ii.) an agreement of their wills (Sie müssen irgend Etwas, und zwar Beide dasselbe, bestimmt gewollt haben), (iii.) a mutual communication of the agreement (Sie müssen sich dieser Uebereinstimmung bewusst geworden seyn, das heisst der Wille muss gegenseitig erklärt worden seyn), (iv.) an intention to create a legal relation between the parties." The insertion of so much matter as is found here in foreign garb is not in this case any proof of pedantry, and is not therefore an offence against good taste. It seems to be due to the author's forgetting that law students are not all, in any English speaking country, able to read Greek, Latin, French, and German treatises in the original. Prof. Holland's work would be made at once more popular and more useful if this improvement were made.

The exact position of this admirable text-book in the bibliography of jurisprudence is easily determined. The labours of Bentham made it evident that the feudal customs and common law of England did not suffice as a foundation for a complete formal science of positive law. The first scholar to work upon, if not to clearly perceive, this fact was the late John Austin, who was in 1826 appointed professor of jurisprudence in the University of London. The lectures he delivered were published in 1832, and on the foundation he then laid Prof. Holland and others have built. As a formal treatise, Austin's work is extremely unsatisfactory, just as Smith's "Wealth of Nations" is to a modern student of political economy; but no excellence of any subsequent treatment can ever

overshadow the great value and importance of the work done by Austin—done, too, in the midst of suffering and discouragement which few pioneers of science are ever called on to endure. Holland's work is a systematization of Austin's, but it is a great deal more. He has, through his wide acquaintance with the works of the great jurists of Europe, been enabled to modernize as well as systematize the science, and he has conferred untold benefit on the student by the lucidity of his treatment, the correctness of his classification, and the perspicuity of his definitions. It is surprising that no one should have made any effort to supplement Austin's fragmentary work during the long period of twenty years or more which elapsed after the author's death, but it must be borne in mind that the scientific study of positive law was at a discount during much of that time, and that such treatises as Holland's and Markby's are the result, quite as much as the cause, of the infusion of a more scientific spirit into legal education.

One of the agencies at work in bringing about this great change for the better, was the rise of the historical school, of which the late Sir Henry Maine is the most distinguished English representative. His "Ancient Law," published about the time of Austin's death, marks an epoch in the history of legal learning and legal education. No more instructive task can be assigned to a law student than that of making a comparison between Maine's "Ancient Law" and Holland's "Jurisprudence." The one is almost entirely historical, the other almost purely analytical, in its treatment of the subject. The one is an admirable complement of the other, each of each, and together they are an indispensable part of a good law course, whether for university culture or professional training. Each treatise is all but perfect, perfect of its kind; and there is no other work in any language, so far as we are aware, that will serve so well the purposes they are intended to serve.

On one important point Holland has ventured to differ not merely from English specialists like Anson and Pollock, but also from so great an authority as Savigny, whose view of the subject is generally accepted abroad as well as in England. Savigny, in the passage quoted above in another connection, says that there must be an agreement of the wills of parties to a legal contract. Holland prefers the view that "the law looks not at the will itself, but at the will as voluntarily manifested," and he adds, "If, for instance, one of the parties to a contract enters into it, and induces the other party to enter into it, resolved all the while not to perform his part under it, the contract will surely be good nevertheless." This view, which in his first edition he puts forward "with some diffidence," is in this edition "re-stated with more confidence," as it has made converts in both England and Germany. It is not our place to decide when such men as Holland and Anson disagree, but those who desire to see what can be well said on each side should read Holland's remarks on p. 212 *et seq.* of this edition, and Anson's remarks on pp. 10–13 of his second edition. The point is one of practical, no less than of scientific, interest, and it is to Prof. Holland's credit that he has had independence enough to take a line of his own in the face of authorities so eminent and so generally deferred to.

It is needless to say that this work, like all others from the Clarendon Press, is a model of typographical accuracy and good taste.

Notes on Exchanges and Legal Scrap Book.

"I CANNOT TELL A LIE" (*Washington*).—The editor of that excellent periodical, the *Albany Law Journal*, thus soliloquises :—

"We seldom read our *Journal*—after reading the proofs. But casually taking up the last number and glancing over its contents, it struck us as a remarkably interesting number—no vanity, now, for it is not our fault—but it seemed to us to chronicle and comment on an unusually large number of novel and striking cases, to say nothing of the current topics, for which we are too modest to take any credit."

We are glad we came across this precedent. A similar thought struck us as we casually glanced at the last number of *our* JOURNAL. But for the simple candid boldness of our contemporary, our view of ourselves would have perished with us.

THE *Irish Law Times* tells of a novel decision by two of its fellow-countrymen, who are justices of the peace. The plaintiff brought an action to recover possession of a house and garden held by the defendant, as herd and caretaker of the late husband of the plaintiff. It was a term of the agreement that the defendant was to receive a fortnight's notice to quit. The plaintiff had sent this notice by a boy who could not read; the defendant produced the notice, and admitted the receipt of it; but said he also could not read. The justices held that, as the notice was not read to the defendant, and he could not read it himself, there was not sufficient notice, and dismissed the case. Under this decision, it seems to follow that a man who could not read, and in addition was stone deaf, would have a perpetuity of tenure under a like contract.

THE Act under which Mr. Justice Grantham sentenced two prisoners at Liverpool to six months' imprisonment, and to be twice whipped, is 7 & 8 Geo. IV. c. 28, s. 11, and the necessary conditions of such a sentence, are that the prisoner is convicted of felony for the second time. The term of imprisonment may be four years, and the sentence may include, in the case of a male, "that he be once, twice, or thrice publicly or privately whipped in addition." This drastic measure, as was said, has been long forgotten. The practice has been to give penal servitude for repeated offences, and not to act under a statute so obsolete in its application to existing modes and principles of punishment as to contemplate imprisonment for four years and public whippings. On further consideration, the learned judge has altered the sentence to the ordinary sentence of five years' penal servitude. It would be as well, now that attention has been drawn to the Act, that it should be formally repealed.—*Law Journal* (Eng.).

THE *Central Law Journal* of St. Louis, discusses the detective system in a recent editorial. The question is one which is of more than common interest in connection with the recent Montreal disclosures. The temptations to which detectives are exposed are numerous and trying, and the necessity of as much watching as from the nature of their employment it is possible to give them, is evident. Detectives, as a class, need, from the nature of their avocation, more supervision than they can possibly receive, and more thorough legal regulation and restriction than any legislature has as yet imposed upon them. This need is great with reference to regular legal officers of this class; *a fortiori* the need is much greater with reference to the numerous private "detective agencies," intelligence offices, etc., whose doings, like many other things in this world, "are past finding out." Why should not all such officers be directly under the control of the sheriff, and obliged to report at regular and frequent intervals to that officer concerning everything done by them in attempting to ferret out crime. The offering of large rewards for the discovery of crime, especially when they are payable only on conviction, is against public policy, and should be prohibited by law.

OF all justices itinerary the most locomotive are the Railway Commission. They have power to hear cases now in Ireland and now in Scotland, and, free from the trammels on adjournment which gave some trouble when the Tichborne case was adjourned across the street, they adjourn from Westminster to Willesden, carrying a case *sub judice* with no more difficulty than taking first-class tickets. If the convenience of the witnesses require it they are prepared to sit at night, so as not to take railway porters away from their work. We believe them capable, if it were consistent with the safety of the public, of taking depositions and cross-examining a witness in a signal box, utilizing the intervals between the passing trains. This is a revolution in the slow-moving habits of judicial tribunals, which usually look upon energy as inconsistent with dignity, and generally do not study the convenience of anyone, unless it happens to coincide with their own. The Railway Commission deserve every credit for inaugurating a new era of judicial alacrity. It is to be hoped that during the session they will obtain those further powers which are designed to give their energies greater scope.—*Law Journal* (Eng.).

THE JURY PROBLEM.—The March number of the *Columbia Law Times* has a leading article on jury reform and the law of unanimity. Having stated the functions of juries in regard to the facts as distinct from the law, the writer examines the causes of inefficiency in the performance of these functions. These causes are extrinsic and intrinsic. The intrinsic defect of the institution, in his opinion, is the requirement of unanimity. He contends that the requirement of unanimity affords no reasonable security which is not equally well afforded by a majority; that public confidence in the administration of justice would be in-

creased when the probability of trials being abortive, owing to the disagreement of juries, would no longer exist; that the extinction of the coercive element by the agency of close confinement would tend to greater candour on the part of individual jurors; and that the two ulcers of the jury system—bribery and jury-fixing—would speedily disappear. Corruption is much less practicable where a majority must be made to succumb to its influence. The desire of gain can no longer lead worthless jurors to seek profit from their position. The writer of the article recognizes the distinction, properly made, between civil and criminal cases. The former should be decided by the preponderance of probability, the latter demands reasonable certainty. In the former a majority of two-thirds or three-fourths should be sufficient for a valid verdict, in the latter unanimity is desirable.

CODE OF ETHICS.—A kind friend has sent us a copy of the Code of Ethics adopted by the Alabama State Bar Association, December 14th, 1887. The influence of professional training, example and opinion, we think, ought to be sufficient to so mould the views and conduct of all who become members of any learned profession, and to imbue them with so strong an instinctive feeling of what is becoming and honourable, that a code, such as this before us, would be a piece of useless lumber. Unfortunately such is not always the case; there are those in all professions who, by excess of zeal, lack of knowledge, or want of principle, transgress the limits, not merely of propriety, but even of fair play. For such people, rules and laws which cannot be transgressed without the loss of professional status, may be necessary. They may also be of service to indicate to those who are without the pale, the lines of conduct to which worthy members of the profession seek to conform, and the high ideal after which they strive. The public, too, have therein a criterion by which they may judge the conduct of those who are entrusted with the custody of their most valuable interests, and learn to esteem them according to their deserts. The code adopted in Alabama seems quite full and complete, and if the spirit of its rules pervades the conduct of those for the guidance of whom it is drawn, the legal profession in that State will be entitled to the respect of everybody.

THE decision of Mr. Justice Hawkins in *Wynn* v. *Lees* is not so important as his celebrated decision in *Read* v. *Anderson*, which decided that a man who bets on commission, loses and pays, can recover what he has paid from his principal. It is now decided that a man who bets for his friend, and wins, must hand over the winnings. The difficulty in *Read* v. *Anderson* was as to the effect of the defendant withdrawing his authority from the plaintiff before the plaintiff paid the money. No such difficulty exists when the winner is suing for a bet made on his behalf. When the case of *Read* v. *Anderson* came before the Court of Appeal, the Master of the Rolls differed from the majority of the judges, but in the case of *Bridger* v. *Savage*, 54 Law J. Rep. Q. B. 464, he agreed with his

brethren that a commission agent who wins must pay his principal, and the contrary view which had been taken by Vice-Chancellor Stuart in a Chancery case was overruled. The Wagering Act may therefore be eliminated from the present question, which is simply a question of contract. Suppose a man were to say to his friend that he will give him all his winnings on horses on which he bets in his name. In that case his friend could not recover the winnings because there was no consideration for the promise. But if two men agree that one shall bet for the other, the contractual relation of principal and agent arises, although the agent has no commission. The agreement by the principal to pay losses is a sufficient consideration.—*Law Journal* (Eng.).

Bickford v. *Menier* was a decision of the Court of Appeal of the State of New York, in regard to the law of principal and agent, reported in *The Central Law Journal*, from which we take the following synopsis of the points involved in the judgment:—

1. "A principal is bound only by the authorized acts of his agent.

2. The agent's authority may be proved by the instrument or verbal commission creating it; and, in addition thereto, it may be shown that the principal has held the agent out to the world in other instances than the one under inquiry, as having an authority which will embrace the particular act in question, but no act can be resorted to for the purpose of establishing a power not included within the terms of such instrument or commission, except those which are brought to the knowledge of his principal, and which are approved or acquiesced in by him.

3. Only a person who has dealt with an agent, and who believed, and had a right to believe, that such agent was acting within, and not exceeding, the scope of his authority, and who would sustain a loss if the act was not considered that of the principal, can hold the latter.

4. The principal is bound by the acts of his agent which are necessary for the exercise of all powers expressly authorized; or which are essential and necessary to the execution and performance of the express purposes described in his commission.

5. A naked power to receive property from abroad, sell it, and remit the proceeds to the principal sending the property, does not authorize an agent to borrow money to carry on his principal's business with, even though the agent be at the head of a regularly established store or place of business.

6. If the transaction of the business absolutely required the exercise of the power to borrow money in order to carry it on, then that power is impliedly conferred on an incident to the employment, but the fact that the act proposed is convenient or advantageous, or more effectual in the transaction of the business provided for, is not sufficient, it must be practically indispensable to the execution of the duties really delegated."

DIARY FOR APRIL.

1. Sun.....*Easter Sunday.*
2. Mon....Easter Monday. C.C. York sit. for motions begin
3. Tues ...C.C. non-jury sittings, except York.
7. Sat. ....C.C. York sittings for motions end.
8. Sun.....*1st Sunday after Easter.*
14. Sat. ....Princess Beatrice born, 1857.
15. Sun.....*2nd Sunday after Easter.*
17. Tues....C.C. non-jury sittings in York.
22. Sun.....*3rd Sunday after Easter.*
23. Mon....St. George's day.
25. Wed....St. Mark.
29. Sun.....*4th Sunday after Easter.*

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Street, J.] [Feb. 27

In re ROBERTSON AND TOWNSHIP OF NORTH EASTHOPE.

Municipal corporation—Drainage by-law—Municipal Act, 1883, ss. 570, et seq.—Majority of land owners — "Mechanical operations" — Notice — Allowance of lump sum for roads—Duties of engineer.

Upon a motion to quash a by-law providing for the assessment of certain owners of land for the cost of drainage work for the benefit of their land, under ss. 570 *et seq.* of the Municipal Act, 1883;—

Held, 1. That the petition of land-owners for such by-law should include a majority of all the persons whom the engineer finds to be benefited by the proposed work.

Re Romney and Mersea, 11 A. R. 712, and *Re Dover and Chatham*, 12 S. C. R. 321, followed.

2. That the engineer is at liberty to leave out of his scheme portions of the land mentioned in the petition, and the calculation as to the necessary majority should be made without considering the owners of such land.

3. That a petitioning land-owner has the right to withdraw his lands from the scheme before action has been taken under the engineer's report, and that if he does so he should not be reckoned as a petitioner in making the calculation, *Re Misener and Wainfleet*, 46 U. C. R. 457, followed.

4. But even where, applying these principles, it is determined that the proper proportion of persons interested have not petitioned, a by-law valid on its face, passed by the council without objection, and under a *bona fide* belief, concurred in at the time by all parties concerned, that they had been properly set in motion, should not be quashed.

5. The words "mechanical operations," in ss. 8, of s. 570, of the Municipal Act must not be read in their widest sense; the provisions of the sub-section, requiring a two-thirds majority, are not intended to apply to every case in which it may become necessary to build or heighten a bank at the side of a drain, or to strengthen it in places by the addition of timber or logs.

6. The applicants to quash the by-law, having followed in their application the notice given by the council under s. 572 to intending applicants, should not be prejudiced because that notice was incorrect; the council must be held to their own notice.

7. The allowance in the engineer's report of a lump sum as "chargeable to municipality for roads" was sufficiently definite, there being only one municipality concerned. *Re Essex and Rochester*, 42 U. C. R. 523, distinguished.

8. The engineer, having himself made an inspection of each lot, and estimated how much each would be benefited by the drain, might properly delegate to an assistant the duty of making a calculation upon the basis established by him.

Lash, Q.C., and *J. E. Harding*, for the applicants.

Idington, Q.C., for the township.

Armour, J.] [Aug. 11, 1887.

BOYD *v.* SULLIVAN.

Contract—Goods not all deliverable at once—Payment—When due—Refusal to pay for part delivered—Refusal to deliver remainder.

Plaintiff and defendant entered into the following contract:—

"To G. M. B. (plaintiff): Please deliver me, at Port Arthur, five head good steers on first 'City' up (first trip up to Port Arthur of boat

'City of Owen Sound'), and six steers and heifers on second trip 'City' up, and four cows on same trip; also 100 good lambs in lots of 15 or 20, of $3 each lamb, to dress not less than ten pounds per quarter—price of cattle, $3.50; weighed at Port Arthur."

Nothing was said as to time of payment.

Held, that the price was payable upon each delivery, and that the refusal of the defendant to pay for the part delivered justified the plaintiff in refusing to deliver the remainder.

G. T. Ware, for plaintiff.

A. R. Lewis, for defendant.

Full Court.] [Mar. 9.

ONTARIO LOAN AND DEBENTURE CO. *v.* HOBBS.

Landlord and tenant—Mortgage—Re-demise clause, construction of—Creating tenancy—8 Anne c. 14 s. 1.

In a mortgage of lands under the Short Forms Act there were the usual covenants and provisoes, except the attornment clause and the provisoes that the mortgagee may distrain for arrears of interest, and that until default the mortgagor shall have quiet possession, which were omitted; and there was a re-demise clause setting out that the mortgagees leased the mortgaged lands to the mortgagor from the date of the mortgage until the date provided in it for the last payment, the mortgagor paying in every year during the term on each of the days appointed for payment by the redemption clause such rent or sum as should equal the amount payable on such days according to such clause, such payments to be taken to be in satisfaction of the moneys payable under such clause.

There was no other provision in the mortgage which could be taken as creating a tenancy.

Held, that under the mortgage, without the re-demise clause, the mortgagor, upon the execution of the mortgage, became at most a tenant by sufferance; and the re-demise clause was void as a lease or as creating a tenancy, because it was for the whole term of the mortgagee's interest, and because being for a longer term than three years, it was not by deed, the mortgage not having been executed by the mortgagees.

As the mortgagor did not enter under the void lease, being already in possession, he could not be regarded as a tenant at will whose tenancy had been changed into one from year to year by virtue of payments made according to the intended lease, but must be considered as a mortgagor in possession.

Properly construed, the re-demise clause was merely a provision that the mortgagor should remain in possession until default.

Held, also, upon the evidence, that the relationship of landlord and tenant was never intended to be created in reality; and, not having been technically created, there was no tenancy in law or in fact, at a rent reserved, such as would, under 8 Anne c. 14, s. 1, entitle the mortgagees as to goods seized upon the lands in question to a preference over other creditors of the mortgagor.

Full Court.] [Mar. 9.

KENNEDY *v.* OLDHAM.

Specific performance—Contract for sale of land—Statute of frauds—Written offer by purchaser not addressed to vendor—Contract completed by correspondence and initials on offer book.

An offer to purchase land was written and signed by the defendant in an offer book kept by a firm of land agents who were authorized by the plaintiff to sell the land, and was verbally accepted by the agents.

The offer was not addressed to anyone, but the book was marked on the back with the initials of the agents. Previous to this offer letters had been written between the defendant and the agents, in which an offer at a lower price was made and refused for the same land. After the second offer was accepted the defendant's solicitors corresponded with the agents of the plaintiff about the title, referring in their first letter to the land which the defendant had purchased from the agents.

Held, that the initials on the book might be read into the offer to supply the name of the vendor, and that these, with the correspondence, constituted a sufficient agreement within the statute of frauds to bind the defendant.

Lefroy, for the plaintiff.

J. Maclennan, Q.C., and *D. Urquhart*, for defendant.

Chancery Division.

Rose, J.] [Nov. 24, 1887.

WHALLS *v.* LEARN *et al.*

Infancy—Exchange of lands by infant—Compromise of proceedings for benefit of infant the result of which was that she could not make restitution—Circumstances under which court will refuse to aid infant.

M. J. W., the plaintiff, being an infant married woman, borrowed money from the defendant G. on a mortgage of fifty acres of land owned by her, and with that money purchased ten acres of land, which was subject to a mortgage. She then made an exchange with the defendants L. and G., by which she conveyed to them her equity of redemption in the fifty acres in consideration of a release of the covenants of her and her husband in the mortgage, and a conveyance of three acres from L., which three acres were also subject to a mortgage. The mortgages on the ten acres and on the three acres having both come into the hands of one S. He made her a further advance, and a new mortgage was made to him for the whole amount, and the old mortgages discharged. S. then discovered that M. J. W. was under age, and took proceedings to have the discharges cancelled, and the old mortgages reinstated, in which proceedings the official guardian intervened on behalf of M. J. W. as an infant. The result of this was a compromise in the interest of the infant, and afterwards with the approval of the guardian, M. J. W. and her husband being unable to redeem, an order was granted vesting the equity of redemption in S. on the payment of $100, which was paid.

In an action to set aside the deed of the fifty acres, on the ground of infancy, it was

Held, following *McDougall* v. *Bell*, 10 Gr. 283, that although the suit in which the compromise was made, was not instituted by the infant, yet as the compromise was at her instance and for her benefit, and as she was not in a position to restore the defendants to their original position, she could not succeed.

Ermatinger, Q.C., for the plaintiff.
J. M. Glenn, for the defendants.

Full Court.] [Mar. 1.

WHALLS *v.* LEARN *et al.*

Married Woman—Infancy—Double disability—Seeking to avoid conveyance, must make restitution—Laches—Short delay.

The facts appear from the preceding note of this case.

Held, (reversing ROSE, J.) that the plaintiff should be allowed to recover back the fifty acres on payment of the mortgage money obtained from G. and interest, and the value of the three acres which she received as the consideration of the conveyance of the fifty acres, and that the short delay of two months and thirteen days should not, without more, bar the plaintiff.

Per BOYD, C.—By the law, the disability attaching to a *femme covert*, who is an infant, is not removed, so far as the infancy is concerned; in that respect both sexes are alike incompetent. But apart from infancy, she may deal with her land as a *femme sole*. The effect of the legislation is to give to the conveyances of married women (who are infants) the same characteristics as are by law attributed to the conveyances of male infants, *i.e.* if such deeds are of benefit to the infant, or operate to pass an estate or interest they are regarded as voidable only, and not mere nullities. The plaintiff cannot have the aid of the court without making complete restoration to the defendants of the specific or equivalent value of that which she received from them during nonage.

F. E. Hodgins, for the plaintiff.
J. M. Glenn, for the defendants.

Boyd, C.] [Feb. 14.

REINHART *v.* SHUTT.

Mechanics' lien—Mortgage—Prior or subsequent incumbrances.

The plaintiff worked on a barn of defendant's up to August 9, 1887, and did some further work on October 25 following. The defendant mortgaged his land to A. S., by mortgage dated October 21st, and registered October 24th. The plaintiff registered his lien October 25th, and having brought his action against defendant only, obtained the usual judgment,

with a reference to the Master. The Master made A. S. a party to the suit in his office, and A. S. petitioned to have the Master's order set aside.

Held, following *McVean* v. *Tiffin*, 13 A. R., that the mortgage was not a subsequent, but a prior mortgage as regarded the plaintiff's lien, and that the Master should not have added A. S. the mortgagee, as a party.

Field, and *W. M. Douglas*, for the petitioner.

Shepley and *E. O'Connor*, for the plaintiff.

Boyd, C.] [Feb. 14.

WEST *et al. v.* PARKDALE *et al.*

Damages, Measure of—Evidence—Injury to land—Injury to business—Prospective value of land.

The defendants having built a subway in front of the plaintiff's property, and in so doing lowered the highway so as to cut off the access thereto, which was previously enjoyed, and seriously injure the same, under the circumstances set out in 7 O. R. 270, 8 O. R. 59, 12 O. R. 393, 12 S. C. R. 250, and 12 App. Cas. 602, it was referred to an official referee to take an account of the damage, if any, sustained by the plaintiffs by reason of the wrongful acts of the defendants, and to fix the compensation proper to be paid in respect thereof. On such reference the referee ruled (1) that the measure of damages was the difference in value of the property before and after the construction, with interest added; (2) that the prospective capabilities, or value of the land, could not be taken into account, except so far as such elements enter into the computation of the then market value, or have regard to what would have been the present value of the property had the subway not been constructed; and (3) that the plaintiffs were not entitled to special damages for injury to their business. On an appeal from this ruling, it was

Held, that the corporation were liable as wrong-doers, who were not protected from the consequences of their tort by any statutory provision, and they should make good all damages sustained for which an action would lie for their unauthorized act, such damages being of a two-fold character, involving injury to the plaintiff's land and to his business. If, in the evidence, one injury could be discriminated from the other, it was competent to recover under both heads.

Held, also, that evidence might be received of the present value of the property, with a view to throw light on the prospective capabilities of the land at the date of the trespass, but not to form a basis for compensation on its present value. The evidence must be used to aid in fixing compensation for the detriment sustained at the date of the perpetration of the wrong, having regard to the then present and the potential value of the property.

Cassels, Q.C., and *H. Cassels*, for the plaintiffs.

Osler, Q.C., and *J. H. Macdonald*, Q.C., for the defendants.

Robertson, J.] [Feb. 24.

Re FRAGNOR AND KEITH.

Vendor and Purchaser Act—R. S. O. c. 109 (1887)—*Will—Devise—Estate limited "to heirs but not to assigns"—Fee simple.*

A devise in a will worded as follows, "I also will and bequeath to my daughter, L. A., the land and premises on which she now lives, and being all the land in said locality now owned by me, to her and her heirs, but not to their assigns." L. A. married, and had issue. In an application under the Vendor and Purchaser Act,

Held, that she took an estate in fee simple.

D. A. Givens, for vendor.

E. H. Britton, for purchaser.

Robertson, J.] [Feb. 24.

Re COLLITON *v.* LANDERGAN.

Will—Devise—Restraint on alienation—Estate tail.

A testator by his will provides as follows: "I leave and bequeath to my lawful wedded wife, M. E., all my personal property, as also the sole control and management of my real estate . . . Said estate being composed . . . I leave and bequeath the aforesaid estate to my son, J. C., after my wife's death . . . and the said estate is not to be sold or mortgaged by my son, J. C., but is to belong

to his heirs. Should my son, J. C., die without heirs then the estate . . . My daughters shall get their maintenance of said estate during . . . I also bequeath the sum of $80 to each of my daughters . . . To be paid out of the said estate by my said son, J. C." In an application under the Vendor and Purchaser Act it was

Held, that J. C. took an estate in fee tail in remainder after an implied life estate in his mother, M. E., subject however to the charges of the several legacies to each of the testator's daughters.

W. H. Moore, for the vendor.

L. M. Hayes, for the purchaser.

Full Court.] [Mar. 1.

WANTY *v.* ROBINS *et al.*

Mechanics' lien—Equitable interest in the land—Fraudulent scheme to evade lien—Notice—Registry Act—Innocent Purchaser.

A. and P. agreed to sell certain land to R., and one of the terms of the agreement was that R. should start building on the said lot at once. R. commenced to build, and W., the plaintiff, was his contractor, who did certain work, but had to cease working because he was not paid; the last of the work being done August 22nd. While this work was going on C. W. entered into negotiations with R. to purchase the rear part of the land, which fell through, but an understanding was subsequently arrived at by which R. was to release to A. and P. his right of purchase, and C. W. was to purchase the whole of the land from them, and at the expiration of thirty days convey the front part to R. The release was executed, and the deed from A. and P. was taken, not to C. W., but to the defendant, A. M. W., who was C. W.'s wife. The deed was dated August 30th, and registered the following day, and plaintiff's lien was registered September 15. It was found by the trial judge that C. W. and A. M. W. had notice of the plaintiff's claim before the date of the deed, and that the deed to A. M. W. was a scheme to defeat the plaintiff's claim.

Held (affirming ROBERTSON, J.), that the plaintiff's lien attached on the interest of A. M. W.

The law that a lien which arises by virtue of being employed, and doing work on land is, if not registered, liable to be defeated by the owner conveying to a subsequent purchaser, who registers his conveyance, must be restricted to an *innocent* purchaser, who is entitled to the protection of the Registry Act.

T. P. Galt, for the plaintiff.

Arch. McLean and *R. L. Fraser*, for defendant Wood.

Full Court.] [Mar. 1.

MCLEAN *v.* BROWN.

Contract for sale of goods—Material condition of shipment—Refusal to accept—Action for deposit and damages.

McL. Purchased lambs from B. to be shipped to McL., B. & McL., which condition he says he inserted "to help our business . . . and to help build the firm up," the firm being a new one. B. disregarded this condition, and shipped them to another name, and McL. refused to accept. In an action for the deposit paid at the time of the contract, and for damages, it was

Held (affirming ROSE, J.), that the term of the bargain as to the manner of consignment was a material part of it, material to the plaintiff, as the defendant well knew, and following *Bowes* v. *Shand*, L. R. 2 App. Cas. 455, that the plaintiff must succeed.

Mornington v. *Wright*, 115 U. S. Rep. 188, referred to and quoted.

McCarthy, Q.C. for the appeal.

Aylesworth, contra.

Divisional Court.] [Mar. 1.

BOYD *v.* SULLIVAN.

Contract—Goods not all deliverable at once—Payment—When due—Refusal to pay for part delivered—Refusal to deliver remainder.

Plaintiff and defendant entered into the following conttact:—

"To G. M. B. (plaintiff): Please deliver me, at Port Arthur, five head good steers on first 'City' up (first trip up to Port Arthur of boat 'City of Owen Sound'), and six steers and heifers on second trip 'City' up, and four cows on same trip; also 100 good lambs in

lots of 15 or 20, of $3 each lamb, to dress not less than ten pounds per quarter—price of cattle, $3.50; weighed at Port Arthur."

Nothing was said as to time of payment.

Held (reversing Armour, J.), that the price was not payable till completion of whole contract, and that the refusal of the defendant to pay for the part delivered did not justify the plaintiff in refusing to deliver the remainder.

Per FERGUSON, J.—The contract being entire, and containing no stipulation regarding the manner or time of payment, the defendant was entitled to refuse to pay for the part that had been delivered until the remainder should be delivered, and the refusal of the plaintiff to deliver the remainder was not justified, and was a breach of the contract.

Per BOYD, C.—If the contract is entire the price was not payable until all the deliveries were completed; if it is divisible *quoad* the cattle and the lambs, so as to be in effect two contracts, the failure to pay for the cattle by the one party would not excuse the other in not forwarding the lambs within the time limited. When there has been partial delivery and consumption of that part, and failure to perform the rest of the contract, the seller has the right to sue as upon a *quantum meruit*, and the purchaser has his cross-action or counter-claim for damages, and such is the position of affairs in this case.

Withers v. *Reynolds*, Q. B. & Ad. 882, considered and distinguished.

Aylesworth, for the appeal.

D. Morrison, contra.

Practice.

Q. B. Divisional Court.] [Mar. 9.

In re JOHNSON *v.* THERRIEN.

Prohibition—Division Court judgment against garnishee—Proof of amount due—49 Vict. c. 15, s. 12—Money paid into court.

Held, reversing the decision of STREET, J., in Chambers, that the judge of a Division Court has no jurisdiction to give judgment against a garnishee without proof of the amount owing by the garnishee to the judgment debtor, and for such a course prohibition will lie.

There is nothing in the sub-section substituted by 49 Vict. c. 15, s. 12, for R. S. O. (1877) c. 47, s. 136, ss. 2, which repeals the condition precedent in s. 132, to the judge's giving judgment against the garnishee.

Held, also, that, if necessary, the writ of prohibition should go to compel the repayment to the garnishee of money paid by him into the Division Court.

J. H. Ferguson, for the garnishee.

No one contra.

C. P. Divisional Court.] [Mar. 10.

WELLBANKS *v.* CONGER.

Costs—Certificate for—Action for libel—Nominal damages—Cause for depriving successful party of costs.

Where in an action of libel the plaintiff obtained a verdict for twenty cents damages.

Held, that no certificate or order for full costs was necessary, and that the plaintiff could be deprived of such costs for good cause only.

Wilson v *Roberts*, 11. P. R. 412, followed.

The court cannot look behind or beyond the finding of the jury as to the right of a party to recover a verdict, and therefore the cause here alleged for depriving the plaintiff of costs, viz., that he was really not entitled to recover, as shown by the result of a trial of substantially the same issues before another forum, was not to be regarded.

Ritchie, Q.C., for the plaintiff.

W. H. P. Clement, for the defendant.

C. P. Divisional Court.] [Mar. 10.

In re MCLEOD *v.* EMIGH.

Prohibition—Division Court—Married woman—Examination and committal as judgment debtor—Indorsement on judgment summons.

A judgment against a married woman by virtue of the Married Woman's Property Act, creates no general personal liability, but merely charges her separate estate; and the provisions of s. 177 of the Division Courts Act, R. S. O. (1877), c. 47, as amended by 43 Vict. c. 8, touching the examination of judgment debtors,

are not applicable to a married woman against whom judgment has been obtained in the Division Court; and, even if liable to be examined such a person is not liable to be committed to gaol under s. 182.

Metropolitan L. & S. Co. v. *Mara*, 8 P. R. 355, distinguished. A creditor's rights against a married woman debtor are determined by the statute at the time the debt is contracted, and cannot be enlarged by the debtor subsequently becoming a widow.

Held, also, following *Reg.* v. *The Judge of the Brampton County Court*, 18 Q. B. D. 213, that the judge's endorsement on the judgment summons was the order upon such summons and that a subsequent order was illegal.

Prohibition was ordered to restrain the enforcement of a warrant for the committal of the defendant, a married woman.

A. M. Grier, for the plaintiff.

Aylesworth, for the defendant.

C. P. Divisional Court.] [Mar. 10.

FERGUSON *v.* KENNEY.

Parties—Attacking fraudulent conveyance—Assignee for creditors under 40 Vict. c. 26. (O.)—Execution creditors.

In an action to set aside a conveyance by K. to his wife as fraudulent, brought by the assignee for the benefit of creditors of K., in pursuance of the powers conferred upon such assignees by 48 Vict. c. 26, s. 7 (O.), an order was made adding certain execution creditors of K. as parties plaintiff, upon the motion of the plaintiff, who desired that the action should not be defeated if, in other litigation pending, it should be determined that the Act was *ultra vires*.

A. C. Gait, for the plaintiff.

George Kerr, for the defendant.

MacMahon, J.] [Mar. 12.

RUSSELL *v.* MACDONALD.

Discovery—Examination of witness on pending motion—Production of books.

Upon a pending motion to restrain the defendant from receiving any monies due under a certain contract, and to appoint the plaintiff receiver of such monies, an affidavit of the defendant's partner was filed in answer, and he was cross-examined upon it by the plaintiff. He was unable to answer a number of questions with reference to the defendant's position in regard to the partnership, because he had not with him the books of the partnership, from which alone the facts could be ascertained, and he refused to produce such books.

Held, that he should be ordered to attend for further examination, and to produce the books required, at his own expense.

In re Emma Silver Mining Co., L. R. 10, c. 194, followed.

H. W. Mickle, for the plaintiff.

Bain, Q.C., for the defendant.

MacMahon, J.] [Mar. 12.

GUESS *v.* PERRY.

Writ of summons—Amending indorsement—Re-serving the writ.

The writ of summons was specially indorsed with a money demand, besides which the indorsement claimed damages for waste, etc. The plaintiff obtained an *ex parte* order, amending the indorsement by striking out the claim for damages.

Held, that judgment by default could not be entered after the amendment without re-serving the writ on the defendant.

James Smith, for the plaintiff.

C. R. W. Biggar, for the defendant.

Ferguson, J.] [Mar. 13.

KINCAID *v.* KINCAID.

Receiver by way of equitable execution—Motion for in court or chambers—Costs—O. J. Act, s. 17, ss. 8, Rule 399—Amount of judgment—Other remedies.

A motion for the appointment of a receiver by way of equitable execution is properly made in court, notwithstanding the language of O. J. Act, s. 17, ss. 8, and Rule 399, and the applicant will not be restricted to the costs of a chamber motion.

A judgment for $212.60 is not too small to justify the judgment creditor in moving for a receiver.

It is no answer to such a motion that the judgment creditor could make the amount of his judgment out of the defendants, by the sale under common law process of other property of the defendant, than that sought to be reached by the appointment of a receiver.

E. H. Britton, for the plaintiff.

A. H. Marsh, for the defendant.

Boyd, C.] [Mar. 19.

HURST *v.* BARBER.

Discovery—Rule 235—Preliminary issue.

In an action against the defendants, as executors and residuary legatees under a will, for a declaration that the will should not be admitted to probate on the ground that it was altered after execution, and for administration and partition.

Held, that the case came within Rule 235, and until the plaintiffs established the alteration charged, they were not entitled to discovery of instruments affecting the estate of the testator.

Rose, J.] [Mar. 22.

MCKAY *v.* ATHERTON.

Judgment debtor—Committal for unsatisfactory answers.

The defendant, a widow, upon her examination as a judgment debtor, admitted having lent her brother $300, and having in her house at the time of the execution $100, which she refused to hand over to apply on the judgment, because she had no other property with which to support herself and three children.

The judge, to whom an application to commit the defendant for unsatisfactory answers was made, held that the facts of the case did not bring it within the decisions in *Metropolitan L. and S. Co.* v. *Mara*, 3 P. R. 355, and *Crooks* v. *Stroud*, 10 P. R. 131, and without laying down any will, declined, in the exercise of his discretion, to order a committal without further information than was afforded by the examination.

J. B. Clarke, for the plaintiff.

No one for the defendant.

Boyd, C.] [Mar. 19.

ADAMSON *v.* ADAMSON.

Jury notice—Equitable issues—C. L. P. Act, s. 257—Disagreement of jury—New trial.

Where equitable issues are raised, a jury is not of right but of grace under s. 257 of the C. L. P. Act.

And where in an action brought under an order of the court made in a former action to try the plaintiff's right as against the now defendants to the possession of certain land recovered in that action, equitable issues were raised, and the case had been once tried before a jury, who had disagreed.

Held, that an order striking out the jury notice was properly made.

Ferguson, J.] [Mar. 20.

PEARSON *v.* ESSERY.

Contempt of Court—Attachment—Judgment debtor — Married woman — Judgment for costs.

Held, that the defendant was liable to committal for contempt in not attending to be examined as a judgment debtor, although she was a married woman, and the judgment was one for costs. Her imprisonment under such committal, would not be an imprisonment for non-payment of costs.

F. E. Hodgins, for plaintiff.

No one contra.

Osler, J. A.] [April 5.

ARCHER *v.* SEVERN.

Security—Appeal to Supreme Court of Canada—Amount—R. S. C. c. 135, s. 46.

The court has no discretion to increase the amount of security on appeal to the Supreme Court of Canada, fixed by R. S. C. c. 135, s. 46, at $500, because of the number of respondents, or for any other reason.

H. Cassels, for the appellants.

Snelling, *Walter Barwick*, and *W. M. Douglas*, for the respondents.

Law Students' Department.

IN this issue we continue the papers set at the examination before Hilary Term, 1888.

LAW SOCIETY EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.

REAL PROPERTY.

Honors.

1. Show clearly the distinction between a contingent remainder, and an executory devise.

2. What is meant by merger of estates, and what exception is there to the general rule?

3. State some of the changes made by modern legislation in the law respecting the property of married women.

4. What is a manor? Do they exist in Ontario? Why?

5. What is the Rule in Shelley's case? Give an example of its application.

6. What are the different parts of a modern conveyance?

7. What is meant by tacking? How it is affected by the Registry Act?

SMITH'S COMMON LAW.

Honors.

1. Define and distinguish *easement* and *profits à prendre.*

2. A, in France, draws a bill of exchange on B, who lives in England, and accepts it there. The bill is payable in Holland. By the law of what country are the obligations of the drawer and acceptor respectively determined?

3. In the case of the death of a person from injuries sustained in a railway accident caused by the negligence of the company, can his administrator recover damages for the *benefit of the estate?* If so, under what circumstances?

4. Explain the meaning and effect of *abandonment* in the law of insurance.

5. A and B are occupants of adjoining fields, divided by a fence belonging to A. What are their respective liabilities in the following cases: (*a*) A's cattle get over the fence upon B's land through the defective state of the fence; (*b*) A's cattle get over the fence upon B's land although the fence is good; (*c*) B's cattle get over the fence upon A's land through the defective state of the fence; (*d*) B's cattle get over the fence upon A's land although the fence is good? Explain the principles.

6. Are the admissions of a wife ever good evidence against her husband? If so, when?

7. Will the following be admissible as secondary evidence of the contents of a written instrument: (*a*) the evidence of a witness who has read the original, although a copy is in existence; (*b*) a copy of a copy? Reasons.

CONTRACTS—STATUTES.

Honors.

1. "A contract executed upon one side can be discharged before breach without consideration." Is this true? Explain fully.

2. Point out the distinctions which have been drawn between *representations*, *conditions*, and *warranties* in their effect on contracts.

3. In condition of certain services A verbally promises land to B. The services are performed, but A refuses to convey the land as promised. Can B compel A to convey? Why?

4. How were the common law rules as to assignment of contracts modified by equity?

5. A sells a sewing machine to B on trial with a right to return by a limited time, A making at the same time certain representations as to the prizes taken at fairs by such machines. These statements were untrue. While the machine is in B's custody it is damaged. He offers to return it within the limited time, but A refuses to accept it on account of the damage done. Who is right? Why?

6. Does a contract between two persons impose any duty on third persons? If so, what?

7. "A promise to be binding must be made in contemplation of a present or future benefit to the promisor." Discuss the proposition.

EQUITY.

Honors.

1. What declarations of trust require to be in writing? Are there any exceptions to such?

2. Is a contract obtained by fraud void, or voidable, and at whose election? Under what circumstances would the party plaintiff be

unable to succeed in having the contract set aside on the ground of fraud?

3. Define constructive fraud. Into what heads is it divided? Give an example of each.

4. A and B are trustees of an estate. The trust funds are in the hands of B, and he, against the remonstrances of A, places them in solicitors' hands for investment. The solicitors appropriate the moneys to their own uses. Is A liable? Give reasons for your answer.

5. In what respects does a "Donatio Mortis Causa" differ from a legacy and a gift "Inter Vivos" respectively?

6. A agrees to sell to B a farm. B wishes to have a written agreement drawn up, but A assures him that it is unnecessary, and that he will carry out the contract; he afterwards refuses, setting up the statute as a defence to an action for Specific Performance. Who should succeed, and why? Under what head of Equity would this case fall?

7. Discuss the application of remedial authority of Equity in cases of (1) non-execution of powers; (2) defective executions of same.

Miscellaneous.

OSGOODE HALL LIBRARY.

New additions:

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Davis on International Law, New York, 1887.
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Pomeroy (C. P.) Mercantile Law, San Francisco, 1887.
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Redfield on Railways, 6th ed., 2 vols., Boston, 1888.
Revised Statutes of Ontario, Toronto, 1887 (15 copies).
Rules of Practice and Procedure for Ontario, Toronto, 1888 (12 copies).
Saunder's Criminal Offences of Young Children, London, 1887.
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Shirley's Leading Cases in Common Law, Philadelphia, 1888.
Stark's Missouri Digest, 3 vols., St. Louis, 1887.
Steer's Parish Law, 5th ed., London, 1887.
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Wilson's Judicature Act, 6th ed.. London, 1887.

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Latest additions:

Canada, Revised Criminal Law of, Ottawa, 1887.
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Jones (L. A.) An Index to Legal Periodical Literature, Boston, 1888.
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AN APPROPRIATE PRESENT.—"Bigsley, the lawyer, does not seem to be very friendly to you." "No, he has shaken me off entirely." "Why is that?" "The other day I heard him making an argument before a jury, and I was so impressed by his talk that I sent him a present." "What was it?" "A set of gas fixtures."

"The typos," observes an Illinois paper, apologetically, "made us allude last week to our esteemed townsman, Mr. Polkemas, as a "villainous lounger.' We wrote 'versatile lawyer.' The error was overlooked by our proof-reader, a gentleman recently from Texas, who assures us, in exoneration of the oversight, that the two terms mean pretty much the same thing where he came from."

The following is a copy of the body of an indictment found by the grand jury of Lawrence County, Ky., at its October Term of the Criminal Court: "The grand jury of Lawrence County, in the name and by the authority of the Commonwealth of Kentucky, accuse —— of the offence of malicious mischief, committed as follows: The said ——, on the 10th day of September, A.D. 18—, in the county and circuit aforesaid, did unlawfully, wilfully and maliciously kill and destroy one pig, the personal property of George Pigg, without the consent of said Pigg, the said pig being of value to the aforesaid George Pigg. The pig thus killed weighed about twenty-five pounds, and was a mate to some other pigs that were owned by said George Pigg, which left George Pigg a pig less than he (said Pigg) had of pigs, and thus ruthlessly tore said pig from the society of George Pigg's other pigs, against the peace and dignity of the Commonwealth of Kentucky."—*Albany Law Journal.*

Law Society of Upper Canada.

HILARY TERM, 1888.

The following gentlemen were called to the Bar during Hilary Term, 1888, *viz.*:—*Feb. 6th*,—Francis Alexander Anglin, with honours, and awarded a silver medal; Francis Patrick Henry, William Howard Hurst, William Edward Sheridan Knowles, John Hood, George Ira Cochran, Edward Corrigan Emery, James Adam McLean, William Lyon Mackenzie Lindsey, John Williams Bennet, Jeffrey Ellery Hansford, Albert Edward Trow, John Henry Alfred Beattie, Thomas Hislop, Albert Edward Dixon, George William Ross, Clarence Russell Fitch, Colin Judson Atkinson. *Feb.* 7th.—Nicholas Ferrar Davidson, Arthur Edward Watts. *Feb. 11th*—Hugh Guthrie, Charles Edgar Weeks, George Smith. *Feb. 17th.*—George Nelson Weekes, Francis Ambridge Drake.

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

Nov. 22nd, 1887.—G. L. Lennox. *Feb. 6th*, 1888.—N. F. Davidson, F. A. Anglin, J. A. McLean, J. M. Mussen, A. Grant, A. E. Trow, W. W. Jones, W. L. M. Lindsey, F. A. Drake, H. Guthrie, H. A. Percival, C. R. Fitch, C. J. Atkinson, A. E. Dixon. *Feb. 7th.*—J. Hood, E. J. B. Duncan, W. J. Millican. *Feb. 11th.*—F. P. Henry, J. Carson, E. C. Emery, W. H. Wallbridge. *Feb. 17th.*—A. E. Watts, G. N. Weekes.

The following gentlemen passed the Second Intermediate Examination, *viz.*:—M. H. Ludwig, with honours and first scholarship; G. W. Littlejohn, with honours and second scholarship; W. S. McBrayne, with honours and third scholarship; and Messrs. S. H. Bradford and J. F. Gregory, with honours; E. O. Swartz, W. C. Mikel, E. E. A. Du Vernet, D. H. Chisholm, W. Pinkerton, H. B. Cronyn, O. Ritchie, E. P. McNeil, M. S. Mercer, F. B. Denton, A. E. Cole, F. Rohleder, G. D. Heyd, J. W. S. Corley, A. D. Scatcherd, A. E. Baker, A. S. Ellis, F. B. Geddes, D. A. Dunlap, C. D. Fripp, R. O. McCulloch, W. J. L. McKay.

The following gentlemen passed the First Intermediate Examination, *viz.*:—A. W. Anglin, with honours and first scholarship; J. B. Holden, with honours and second scholarship; R. E. Gemmill, with honours and third scholarship; and Messrs. J. Agnew, A. J. Armstrong, W. L. E. Marsh, D. W. Baxter, D. R. McLean, C. E. Lyons, A. F. Wilson, G. A. Cameron, W. Carnew, H. Macdonald, A. E. Slater, A. H. O'Brien, J. J. O'Meara, F. Harding, J. R. Layton, F. L. Webb, J. A. McIntosh, J. Porter, A. Crowe, F. W. Maclean, A. D. Crooks, A. Elliott, R. Barrie, W. H. Cawthra, W. Mackay, W. Yorke, J. F. Hare, D. Holmes H. Jamieson, W. Kennedy.

The following candidates were admitted as Students-at-law, *viz.*:—*Graduates*—M. Monaghan, E. G. Fitzgerald, C. J. Loewen. *Matriculants*—W. D. Earngey, J. E. O'Connor, J. C. Quinn. *Juniors*—J. Ballantyne, J. E. Varley, G. S. Morgan, J. R. Milne, D. B. Mulligan, L. Lafferty, A. J. Pepin, C. C. Fulford, P. F. Carscallen, W. H. Cairns.

CURRICULUM.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with Clause four of this curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the Subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be) on conforming with Clause four of this Curriculum, without any further examination by the Society.

3. Every other Candidate for admission to the Society as a Student-at-law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with Clause four of this Curriculum.

4. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, four weeks before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Bencher, and pay $1 fee; and on or before the day of presentation or examination file with the Secretary, a petition, and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:—

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday in June of the same year.

9. The First Intermediate Examination will begin on the second Tuesday before each Term at 9 a.m. Oral on the Wednesday at 2 p.m.

10. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

11. The Solicitors' Examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after the Primary Examination has been passed.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. When the time of an Articled Clerk expires between the third Saturday before Term, and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

19. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all Students entered on the books of the Society during any Term, shall be deemed to have been so entered on the first day of the Term.

20. Candidates for call to the Bar must give notice signed by a Bencher, during the preceding Term.

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

22. No information can be given as to marks obtained at Examinations.

23. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES.

Notice Fee	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM, For 1888, 1889, and 1890.

Students-at-Law.

1888.	Xenophon, Anabasis, B. I. Homer, Iliad, B. IV. Cæsar, B. G. I. (1-33.) Cicero, In Catilinam, I. Virgil, Æneid, B. I.
1889.	Xenophon, Anabasis, B. II. Homer, Iliad, B. IV. Cicero, In Catilinam, I. Virgil, Æneid, B. V. Cæsar, B. G. I. (1-33

1890. { Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.
Cicero, Catilinam, II.
Virgil, Æneid, B. V.
Cæsar, Bellum Britannicum.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

Arithmetic: Algebra, to end of Quadratic Equations: Euclid, Bb. I. II., and III.

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:—
1888—Cowper, The Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy, and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1888 / 1890 } Souvestre, Un Philosophe sous le toits.
1889 Lamartine, Christophe Colomb.

or NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics, and Somerville's Physical Geography; *or*, Pecks' Ganot's Popular Physics, and Somerville's Physical Geography.

Articled Clerks.

In the years 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and Cap. 117, Revised Statutes of Ontario and amending Acts.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

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

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

Trinity Term, 1887.