Canada Law Journal.

VOL. XXI. JUNE 15, 1885. NO. 12.

DIARY FOR JUNE.

15. Mon.....Magna Charta signed 1215.
17. Wed.....Burton & Patterson, JJ.C., A., sworn in, 1874.
18. Thur.....Lord Dalhousie, Governor-General, 1820.
20. Sat.....Accession of Queen Victoria.
21. Sun.....*3rd Sunday after Trinity.* Galt, J., sworn in, 1869.
22. Mon.....Hudson's Bay Terr. transferred to Dominion, 1870.
28. Sun.....*4th Sunday after Trinity.* Queen Victoria crowned, 1837.
30. Tues.....John B. Robinson, Lieut.-Governor, Ont., 1880.

TORONTO, JUNE 15, 1885.

WE have not heard very much lately of abolishing the death penalty in cases of murder. In Minnesota it has recently been restored. A liberal use of the halter by Judge Lynch made life possible on the western frontier not many years ago, and the same view is being taken in the more civilized portions of the United States.

THE world keeps moving on. So far the lay press only, and until very recently only a very small part of that, has indulged in pictorial aids to add interest to its columns, to add subscribers to its subscription list, or to convey information. The last departure, for some one or more of the reasons aforesaid, is on the part of the *Central Law Journal*, which leads off with a portrait of the well-known legal author Joel Prentiss Bishop, and in a subsequent issue portrays the less comely lineaments of Mr. Broadhead, the first President of the American Bar Association. We confess that we received a shock at the time, but Indian imperturbability becomes the man of the last half of the nineteenth century—expect anything, and be surprised at nothing.

THE defeat of Mr. Justice Cooley who was recently a candidate for the Supreme Bench of Michigan has again brought into prominence, not to say disrepute, the elective system. Judge Cooley is said, by an exchange, "as a constitutional lawyer, to take rank by the side of Story and Marshall; as a writer upon constitutional law he is superior to Story. His legal judgments surpass those of Story in brevity and diction; they equal those of Marshall in diction and massive reasoning, and greatly surpass them in learning," etc. Yet this eminent man and jurist of world-wide celebrity was defeated "by a political combination having at the head of their ticket a man unknown to the legal profession outside of Michigan."

FROM the case of the *Bank of British North America* v. *The Western Assurance Co.* recently heard by way of appeal from the taxation of the local taxing officer at Brantford, it appears that the Legislature have not succeeded in giving unlimited powers over counsel fees to the local taxing officers, as was possibly intended by 48 Vict. c. 13, s. 22. That section provides that "subject to any rules of Court which may hereafter be made in this behalf, the deputy clerks of the Crown, local

masters of the Supreme Court, and local registrars respectively, shall, in actions begun or pending in their offices, be entitled to tax all bills of costs, including counsel fees; subject only to appeal to a judge of the High Court." This, the Chancellor held, does not give the local officers power to allow increased counsel fees beyond $20 to senior counsel and $10 to junior counsel. Whenever increased fees are sought the fiat of one of the taxing officers in Toronto must be obtained, as prescribed by item 164 of the tariff. We understand that the taxing officers in Toronto have come to the conclusion not to grant any fiats for increased fees except upon notice to the opposite party.

ADMINISTRATION OF REAL ASSETS.

A BILL has been introduced in the British House of Commons providing for the administration of real assets. The bill provides that "when any person shall die seized of, or entitled to any estate or interest in any lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether freehold, copyhold, or of any other tenure, the same shall, notwithstanding any testamentary disposition, devolve upon and become vested in his legal personal representative from time to time, and subject to the payment of his debts." It further provides that the executor or administrator "shall have power to dispose of, and otherwise deal with, all real property vested in them by virtue of this Act, with all the like incidents, but subject to all the like rights, equities and obligations as if the same were personal property vested in him."

Bills having a similar object, it will be remembered, were introduced by the Attorney-General and Mr. Ermatinger, M.P.P., during the recent session of the Provincial Legislature, and met with the concurrence of all parties in the House. And a bill founded on both of these bills actually passed a second reading; but, at the last moment, for some unexplained reason, the Attorney-General suffered it to drop.

It is quite clear that the present mode of devolution of real estates on the death of the owner is not satisfactory; more especially as regards the claims of creditors. As between the claims of heirs and devisees on the one hand, and those of creditors of the deceased owner on the other, we think there can be no difference of opinion as to the right of the latter to payment of their debts out of the assets of their deceased debtor, whether real or personal, being entitled to paramount consideration. As the law at present stands, however, it places the devisee or heir of the deceased debtor in the same position as the debtor. If they can effect a *bona fide* sale of the lands descended, or devised, it will hold against creditors and the latter are left to their personal remedy against the heir or devisee for the amount of assets so received by them, which may prove in many cases worthless.

In the case of *Spackman* v. *Timbrell*, 8 Sim. 253, a debtor devised his estate to his son in fee. After the testator's death the son settled the devised estates on his marriage on his wife and children; the son was a bankrupt, and the result was the creditors lost all claim on the land, and the personal remedy against the devisee was of course worthless. This case was decided as long ago as 1836. To the same effect are *Kinderley* v. *Jarvis*, 22 Beav. 1, and *Reid* v. *Miller*, 24 U. C. Q. B. 610. No one can reasonably pretend that this is a satisfactory condition of the law. The reason frauds of this kind (if such a term can properly be applied to a proceeding which is sanctioned and protected by the law) are not more frequently

perpetrated than they are, is due, we believe, to the fact that people for the most part assume that the law really is what their common sense notion of justice tells them it should be.

The English *Law Times* fears that a law framed on the lines of the bill in question would give rise to much litigation. This is, however, merely saying in other words what has been often before recognized as a truism, "it is far easier to conceive justly what would be useful law, than so to construct that same law that it may accomplish the design of the lawgiver." The principle of the proposed law is, we conceive, incontestably sound. We do not deny, however, there are difficulties in the way of framing it so that it may adequately carry out the end in view. In Newfoundland for fifty years past all real estate has been made chattels real by legislative enactment, and is administered in the same way as personal estate. The distinction between real and personal property so far as its devolution on death is concerned has been practically swept away, and no inconvenience has been found to result. Lawyers who were opposed to the change of the law (notably ex-Chief Justice Hoyles) have by practical experience of its working for many years been brought to the conclusion that it is a real and substantial improvement in the law, and devoid of any evil effects.

CHOSES IN ACTION.

To give a correct definition of the meaning of a word or phrase, and especially any word or phrase used for the expression of ideas concerning the law, is proverbially difficult. All lawyers are familiar with the words "chose in action," but it seems they are not by any means agreed as to what is a correct definition of that expression. Mr. Kehoe, in his little work on "Choses in Action," has selected from standard authors three definitions which are given in the introductory chapter, all of which differ from each other. The first is taken from Blackstone, who considers that a "chose in action" is property in action dependent upon contract express or implied. His definition is to this effect: "Property in action is such where the man hath not the occupation, but merely the bare right to occupy the thing in question, the possession whereof, may, however, be recovered by a suit or action at law, from whence the thing so recoverable is called a thing or 'chose in action,'" . . . "all property in action depends entirely upon contract either express or implied, which are the only regular means of acquiring a 'chose in action.'" The second is from the "Termes de la Ley," in which it is said "a chose in action" is where a man hath cause, or may bring an action for some duty due to him as upon an obligation for breach of covenant, for trespass, or the like; and indeed, wherever a thing is not in possession, but when for recovery of it, a man is driven to his action (and consequently enjoys a right merely) such thing is called a "chose in action."

From Abbott's Law Dictionary the third definition of the term is taken, and is as follows: "'A chose in action' is any right to debt or damages, whether arising from the commission of a tort, the omission of a duty or the breach of a contract. A 'chose in action' includes all rights to personal property not in possession, which may be enforced by action, demands arising out of torts, as well as contracts. 'Chose in action' is a phrase which is sometimes used to signify a right of bringing an action, and at others, the thing itself, which forms the subject matter of the right, or with regard to which that right is exercised; but it more properly includes the idea both of the thing itself and of the right of action annexed to it.

Thus, when it is said that a debt is a 'chose in action,' the phrase conveys the idea, not only of the thing itself, *i.e.*, the debt, but also of the right of action, or of recovery, possessed by the person to whom the debt is due."

We think it doubtful whether any of these definitions can be considered correct or satisfactory. Much of the difficulty in arriving at a proper idea of the true legal signification of the term is due, no doubt, to the fact that the expression "chose in action," is an attempt to express an abstract idea, something in *posse* and not in *esse*, by an expression applicable only to that which is essentially concrete. "A thing in action:" the word "thing," in its ordinary signification, implies something of a tangible and corporeal nature; whereas what is intended to be expressed by the words "chose in action" is something of an intangible and incorporeal character.

One of the commonest illustrations of a "chose in action" is a promissory note. But the piece of paper on which the note is written, together with the characters with which it is written, do not constitute the "chose in action;" the "chose in action" is that intangible and impalpable thing which the paper and writing are merely the evidence of the existence of, viz.: the promise to pay, and the money to be received in fulfilment of the promise; hence it was that at common law a promissory note was not the subject of larceny; hence too, if a note is lost or destroyed the "chose in action" of which it was the evidence, is not gone, and it may be recovered by action notwithstanding the loss or destruction of the paper.

The use of the word "thing" as applied to such rights, is, to say the least, confusing, and we may agree with the late John Austin: "that if it were expelled from the language of the law much confusion would be avoided."

Difficulty is also created by the manner in which some text-writers place a "chose in action," in opposition to a thing in possession. For instance, "property in action" is described as being "where a man has not the enjoyment (actual or constructive) of the thing in question, but merely a right to recover it by suit or action at law, whence the thing so recoverable is called a thing or "chose in action." Stephen's Coms., vol. 2.

Now, suppose A wrongfully take B's horse, according to this definition the horse so long as it wrongfully remained in A's possession would be a "chose in action" of B. But the writer who uses this expression, himself declares a little further on that "a 'chose in action' is a thing rather in *potentia* than *in esse*," and there is no doubt we think that the latter is the true idea of a "chose in action," and one which would therefore prevent the application of the term to any specific thing *in esse*.

Abbott's definition, as we have seen, comprehends under the head of "choses in action" all rights to personal property not in possession which may be enforced by action. This appears obviously too broad, and would include the right to recover personal property by proceedings *in rem*. That there is an obvious distinction between chattels out of the possession of the owner, and "choses in action," may be well illustrated by a reference to the law which formerly governed the right of husbands in the personal property of their wives. As regards her chattels he was entitled to them whether reduced into possession or not during the coverture, but as regards her "choses in action" he was not entitled to them unless reduced into possession during the coverture, and yet, according to Abbott's definition, the wife's chattels not in the possession of the husband would be "choses in action." Personal property recoverable by proceed-

ing *in rem* is therefore to be excluded from the definition of a "chose in action."

While in some respects Abbott's definition seems more correct than Blackstone's in that it does not confine the term to those rights of action which spring from contract, it is yet apparently defective in seeking to extend the term generally to all rights to personal property not in possession in respect of which a right of action may exist.

One of the most satisfactory definitions we have met with is that given in Sweet's Law Dictionary, viz.: "'A chose in action' is a right of proceeding in a court of law to procure the payment of a sum of money, *e.g.*, a bill of exchange, a policy of insurance, an annuity or a debt, or to recover pecuniary damages for the infliction of a wrong, or the non-performance of a contract," but even this does not include all those rights which in law are termed "choses in action," for instance, the right of presentation to which a patron dies entitled if there be a vacancy at the time of his death, is considered in law a "chose in action (Co. Lit. 90 *b.*). Sweet's definition, it will be observed, although it excludes property recoverable by action *in rem*, does not include such rights as those last mentioned. He confines the definition to pecuniary demands, whereas we are inclined to think it is properly applicable to all personal rights recoverable or enforceable by proceedings *in personam*.

If A's horse be wrongfully taken the horse does not thereby become a "chose in action" of A, notwithstanding A may be put to his action of detinue or replevin to recover it; but A's right to recover damages for the wrongful taking or detention would be a "chose in action," the actions of replevin and detinue being actions *in rem*, while the action for damages is an action *in personam*.

If we are correct in what we have said above then we think the following would be a tolerably correct definition:

A "chose in action" is any personal right or demand which may be enforced or recovered by an action *in personam*; it includes not only the right of action but also the right or demand to be enforced or recovered; at the same time the right or demand when enforced or recovered *ipso facto* ceases to be a "chose in action." When such right or demand was formerly enforceable or recoverable in a court of law it is a legal "chose in action," when it could formerly only be enforced or recovered in a Court of Equity it is an equitable "chose in action."

Possibly some of our learned readers may think we too have failed in giving a satisfactory definition of this puzzling phrase.

SELECTIONS.

THE LATE LORD CAIRNS.

On January 26, 1844, Mr. Cairns was called to the English Bar at the Middle Temple, and he rapidly acquired an extensive practice in the Courts of Equity. In 1852 Mr. Cairns contested Belfast; he was returned for that borough, and continued to represent it in the Conservative interest until his elevation to the judicial bench. In 1856 Mr. Cairns was appointed one of Her Majesty's counsel and a bencher of Lincoln's Inn. Lord Derby being called to form an Administration in February, 1856, Mr. Cairns was offered the appointment of Solicitor-General which he accepted, under Sir Fitzroy Kelly as Attorney-General, being knighted on the occasion. In the following session the new law officer gave an earnest of his intentions as a law reformer. He introduced two measures, one of which was designed to simplify titles, and the other to establish a registry of landed estates. His lucid exposition of these measures very favourably impressed the House; but unfortunately a Ministerial crisis and the abrupt conclusion of the session pre-

vented the bills from being carried. In June, 1859, Sir Hugh Cairns resigned office with the Conservative Ministry. In February, 1868, Lord Derby relinquished the Premiership in consequence of failing health. Mr. Disraeli now became the head of the administration, and among other changes which took place in the Ministry Lord Cairns became Lord Chancellor in the room of Lord Chelmsford, and was succeeded as Lord Justice by Sir W. Page Wood, afterwards Lord Hatherley. He went out of office with his party in December of the same year, and became leader of the Opposition in the House of Lords. In 1869 he resigned that position, but on the opening of the session of 1870 he consented to resume it. Mr. Gladstone having retired from office in February, 1874, Mr. Disraeli was summoned by the Queen to form a new Administration, and Lord Cairns again became Lord Chancellor. He continued to hold that office until April, 1880, when Lord Beaconsfield went out of office. Although his health has prevented him taking that part either in the judicial or legislative functions of the House to which his position entitled him, Lord Cairns, down to the time of his death, has made occasional appearances in the House of Lords. He was attached to the Evangelical principles of the Church of England, but was ready to co-operate on all occasions with other workers in the religious field. He appeared on many platforms in the metropolis as an advocate of measures, social and religious, for the amelioration of the masses. In Dr. Barnardo's Homes for Destitute Children, at Stepney and Ilford, he took a special interest. When the management of these homes was subjected to a good deal of criticism, and when a board of arbitration had decided that unjust accusations had been brought against the director, Lord Cairns came forward and expressed his readiness to assume the office of president of a committee formed to assist Dr. Barnardo in the further development of his work. The coffee-house movement, also, and many other such movements and organisations, Lord Cairns enouraged not only by his name, but by his personal labours and influence. He was a supporter of several of the local institutions of Bournemouth, and notably the Young Men's Christian Association.

The place which history will assign to Lord Cairns will probably be that of the greatest lawyer on the English Bench of his generation. The late Mr. Benjamin, whose capacity for passing a judgment and impartiality in the matter will not be questioned, pronounced Lord Cairns the greatest lawyer before whom he had ever argued a case, and Lord Bramwell is known to have a very high estimate of his powers. The attribute in which Lord Cairns excelled was lucidity. The most complex legal problem presented no difficulty to him, and it passed out of his hands placed by his mere statement in so simple and clear a light that the wonder was why there could ever have been any difficulty about it. Readers of his judgmeuts are like those who look for the first time on a simple mechanical contrivance producing great results:—

> The invention all admire, and each, how he
> To be the inventor missed; so easy it seemed
> Once found, which yet unfound most would have [thought
> Impossible.

Lord Cairns made no display of a depth of reading like that of a Willes or a Blackburn, although he was far from deficient in learning. Case-law a man of his powers could afford to despise, and even when at the Bar he was in the habit of citing no cases until he had exhausted the principles of the argument, when he would mention the names of the authorities illustrating his proposition. Much of the logical precision which distinguished him in the statement of legal propositions was due to the fact that, in the chambers of the late Mr. Thomas Chitty, at 1 King's Bench Walk, he was well grounded in the practice of common law pleading, a training of which students at the present day are unfortunately deprived. Lord Cairns on the Bench was not, like the late Sir George Jessel, fond of bringing his own individuality to the front, or of exposing in his judgments the processes by which he arrived at them. In delivering judgment, he was like an embodiment of the voice of the law, cold and impersonal, and suggested an intellectual machine upon which no sophism could make any impression, and which stamped the seal of the law upon what was obviously reason-

able and just. Perhaps Lord Westbury was his equal in penetration and in clearness of expression; but either from his matter or his manner he did not carry the same inexorable conviction. An example of the high estimate he had of the dignity of judicial proceedings was supplied at the time of the addition of the lords of appeal to the House of Lords. One of the new lords of appeal had acquired in a Court, in which speed was considered rather than orderliness, the habit of interrupting the arguments by questions in the nature of "posers." On his reverting to this habit in the House of Lords, Lord Cairns interposed from the woolsack before the question could be answered, with the words: "I think the House is desirous of hearing the argument of counsel and not of putting questions to him."

In the House of Lords, on Monday, the 13th April, Lord Granville, after adverting feelingly to the blow inflicted by the death of Lord Cairns, said: "I hold in my hand a letter from the Lord Chancellor (Selborne) which, after a touching allusion to the great calamity which he himself has sustained, goes on thus: 'I should like you to say that I am among those who feel this loss deeply, both upon public and private grounds, and if I were not myself suffering under the severest affliction, I should desire, from my place in the House to endeavour to pay that tribute to the late earl's great qualities and great virtue, for which nearly forty years of constant intercourse on terms of friendship never interrupted might perhaps have qualified me.' I feel that these are words which all your lordships will indorse, and it seems to me that in these sad circumstances it is singularly pathetic and strikingly indicative of the character of the two men—this simple tribute from Lord Selborne to his friend and rival who has passed away."

Lord Salisbury, after referring to the acuteness of the bereavement of the Conservative party and the greatness of Lord Cairns as a lawyer, statesman and legislator, said: "No one but those who have sat in council and worked with him can thoroughly appreciate the inestimable value of his calm, judicial mind, even on the most burning questions, and the wonderful grasp with which he perceived at once all the bearings of the most complicated facts and the lucidity with which he marshalled the arguments and elucidations to which it was necessary to give attention, and which fell from his mouth, as it seemed, at once naturally and without effort into their proper place.

Lord Coleridge also testified to the public loss sustained, and added that Lord Cairns had a mind powerful enough to throw light and order into the most intricate and complicated facts, while he could unweave the subtlest web of argument; and yet he never wasted time or words, but grasped more firmly than most men the subjects with which he had to deal. He could make them more intelligible and clear than others, and at times he rose to an eloquence severe, but always elevated and striking.—*Law Journal.*

INTERNATIONAL RESPONSIBILITY FOR DYNAMITE WARFARE.

The American people, with few exceptions, sympathize profoundly with Mr. Parnell and his followers in their effort to secure for Ireland that legislative independence and local self-government which have been fruitful of so many blessings to us. But with scarcely an exception, they look with equal abhorrence upon the attempt of another section of Irish agitators to achieve the same end by resorting to what are termed "the resources of civilization." The recent dynamite explosions in the Lobby of the English House of Commons and in the Tower of London, followed by an attempt on the part of an English woman in the city of New York to assassinate a man who is supposed to be one of the principal leaders in this new species of warfare, call up sharply the question whether we are not neglecting the duty which we owe to Great Britain as a friendly nation, in permitting these plots to be concocted and these expeditions to be fitted out upon our shores. We assume what we suppose no well informed American doubts, that these assaults upon public buildings and upon public persons are concocted outside of England, and that the principal nests of

conspirators who concoct them are to be found within the limits of the United States, where they burrow like serpents, and direct in secret their hostile expeditions against the government and people of England, including defenceless women and children. We assume also, that the act of one or more men in attempting to destroy public buildings, or to kill public officials, for the purpose of changing the political condition or conduct of a nation, is an act of private war against that nation, and that it is none the less an act of war because large numbers are not openly engaged in it, or because armies are not in motion under insurrectionary standards. If, then, one of these secret dynamite expeditions is fitted out within this country, and departs hence to England to do its fiendish work there, it is substantially the same in principle as though a military expedition had been fitted out in this country, and had sailed for the purpose of making an attack upon the military and naval forces of Great Britain. Now, we understand it to be a principle of international law that one friendly nation owes a duty to every other friendly nation—not, indeed, that of an insurer against the fitting out and departure of warlike expeditions against such friendly nation—not an obligation to prevent such a result absolutely and at all events, but a duty to use reasonable diligence to that end. It was upon this ground that the Geneva Arbitration awarded damages to this country as against England, for allowing the Confederate cruiser, the Alabama, to escape from one of her ports for the purpose of preying upon our commerce. The question which the recent occurrence of these dynamite outrages presses upon us at the present time is, Have we performed our duty to England in this regard? It is difficult to say that we have. Funds have been publicly collected in this country for years, by O'Donovan Rossa and his gang, for the avowed purpose of attacking England by secret expeditions of this kind. It is idle to say that we perform our duty to a friendly nation when, having every reason to believe that such expeditions are furnished and fitted out in this country, we take no measures to discover and arrest them. It is no answer to England that our laws do not enable our officials to arrest and punish such conspirators. What concern has England with the state of our municipal law? When we allege the defects of our laws as a reason for not performing our duty to a friendly power, that power is entitled to make answer in the thunder of cannon. With shameful negligence, in 1867, we allowed a military expedition to organize in the northern part of the State of New York, with the greatest publicity, for the purpose of invading Canada. It did invade Canada. A battle was fought with it on Canadian soil, in which a number of Canadians were killed. A monument stands in the city of Toronto with their names inscribed upon it. It will stand for ages as a monument of American bad faith and shame. Some things, it is true, were to be said in our favour then. The Alabama claims were unsettled. The St. Albans raid was fresh in our memories. But our duty was plain and unmistakable. The St. Albans raid was a secret affair, for which the Canadian government was not responsible. The Canadian people had no more to do with the escape of the Alabama than the people of Australia or Cape Town had. They were neighbours, Christians and honest people, who had not offended us, and we owed them, on common principles of honesty and humanity, the duty of seeing that a body of men were not permitted to organize on our side of the River St. Lawrence for the purpose of crossing over and killing them. Plainly, we have not discharged our duty in regard to this dynamite business, and unless we wake up to a sense of that duty, we shall forfeit the right to a decent position in the family of civilized nations.—*Central Law Journal.*

REPORTS.

CANADA.

CHANCERY DIVISION.

(Reported for the LAW JOURNAL.)

SNIDER v. SNIDER.

SNIDER v. ORR.

Irregularity—Statement of defence—Filing defence after cause set down for hearing in default of defence.

Where a defence was filed after the action had been set down to be heard on motion for judgment in default of defence,

Held, the defence was irregularly filed, and that it should not be allowed to remain on the files, except upon the terms of payment of all costs occasioned to the plaintiff by the defence not having been filed in due time.

[Boyd, C.—June 11, 1885.

E. D. Armour, for plaintiff, moved for judgment in default of defence in both of the above actions.

C. Y. Holman, for defendant. A statement of defence has been filed in each action since they were set down, and therefore the plaintiff cannot now obtain judgment as for default of defence. *Gill* v. *Woodfin*, 25 Ch. D. 707.

E. D. Armour, in reply. The defences are filed too late and therefore are irregular, *Clarke* v. *McEwing*, 9 P. R. 281; if allowed to stand, the defendant should be ordered to pay all costs occasioned by his default.

BOYD, C.—The defence, being filed after the time limited, is irregular. If the defendant, within ten days, pays to the plaintiff all costs occasioned by the setting down of the action to be heard on motion for judgment in default of defence, the statement of defence may be allowed to remain on the files. If these costs are not paid within the time I have named the defences must be struck out, and judgment must go in each case in accordance with the prayer of the statement of claim.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Boyd, C.] [April 22.

KITCHEN v. DOLAN.

Purchase of land—Evidence of agency—Statute of Frauds.

D. agreed to purchase certain lands as agent for K., and accordingly executed an agreement for the purchase of the same in her own name.

Held, that the evidence of D.'s agency was receivable though not evidenced by writing.

Quære, whether *Bartlett* v. *Pickersgill*, 1 Cox 15, is still to be regarded as good law?

W. Cassels, Q.C., and *Matheson*, for the plaintiff.

Martin, Q.C., and *Livingstone*, for the defendant.

Full Court.] [May 21.

COOK v. EDWARDS.

Farm lease—Covenants—Right to increase the arable land.

A lease of a farm contained the covenant that the lessee "shall and will, at his own costs and charges repair and keep repaired the erections and buildings, fences and gates erected or to be erected on the premises, the said lessee finding or allowing on the said premises all rough timber for the same, or allowing the said lessee to cut and fell so many timber trees upon the premises as shall be requisite."

Held, that the above words must be read as if "hereby" was inserted before "allowing." It was intended to intimate by that clause that the lease permitted the use as occasion arose of the timber for such purposes. There was nothing in it to indicate that the landlord was to control the use of the timber so that he might limit it to the buildings, fences and erections existing at the date of the lease.

Held, further, that the proper construction of the lease in question implied that the lessee was at liberty to bring further parts of the demised premises into cultivation without the landlord's assent, and to fence the same without his assent. That is to say, if it was a reasonable and proper thing to do in the course of good and judicious husbandry so to enlarge the arable area of the farm, the right to do this existed without the lessor's assent.

Judgment below affirmed with costs.

J. K. Kerr, Q.C., for the plaintiff.

Falconbridge, for the defendant.

Full Court.] [May 21.

GRAHAM v. WILLIAMS.

Mechanics' lien—Right of lien-holder against tenant to charge the land of the landlord—R.S.O., c. 120.

Judgment of BOYD, C., noted *supra* p. 36, affirmed.

It requires something more than mere knowledge of the work being done to bind the owner under R. S. O. c. 120. The priority and assent must be in pursuance of an agreement, for otherwise a reversioner after a long lease might be held bound by the contracts of the tenants if he saw and did not disapprove of the buildings being erected by the tenants.

R. S. O. c. 120, gives priority to the lien-holder to the extent of the increased value over a mortgage existing or created before the commencement of the work, but not over subsequent mortgages, so as to create a lien against the interest of a subsequent mortgagee.

J. Maclennan, Q.C., for the appeal.

J. J. Gormully, contra.

Full Court.] [May 21.

MAGEE v. KANE.

Contract of sale—Statute of Frauds—Possession as evidence of part performance.

When a person came into possession of property as tenant, and it was shown by unequivocal facts that his tenancy was afterwards relinquished, and that his possession being changed by parol contract to purchase, was continued as that of vendee.

Held, that the possession thus changed was such part performance as took the contract out of the Statute of Frauds.

The new fact showing the change in the character of the possession in this case was part payment of the purchase money evidenced by the receipt in terms therefor; and the possession continuing under the newly created relationship between the parties was held to be an act of part performance affecting the land, solely referable to the contract to purchase, operating by and against both, and to enforce which either one could be the actor.

Judgment below affirmed with costs.

W. Cassels, Q.C., for defendant.

J. J. Gormully, for plaintiff.

Boyd, C.] [May 23.

COLEMAN v. KING.

Deed—Mortgage—Construction according to true intent—Family arrangement—Inconsistency.

When W. H. conveyed his farm to his son, and took back from him a mortgage on it, which contained a proviso for redemption on payment of $4,000, in manner following: to pay W. H. and A. H., his wife, during their joint lives $300 a year, and to continue to make the said payments to the survivor after the death of either during the life of the said survivor; and one year after the death of both to pay his brothers and sisters $300 each at the times therein mentioned, which words were inserted in writing, the rest of the instrument being printed.

Held, that it being impossible to give literal effect to all the parts of the mortgage, the defeazance clause upon payment of $4,000 without interest being quite irreconcilable with the particulars regarding the payments, the Court must regard the general intent of the deed, and give it such construction as supported that general intent. The primary intention evidently was to arrange the terms of an annuity for the joint lives of the father or mother and of the survivor. But the $4,000 would be consumed at the end of thirteen years, and the instrument could not be construed as embodying such an improvident arrangement as that no further maintenance

was to be given in case either parent lived for, say fifteen years afterwards. On the other hand, if W. H. and A. H. died in a short time the defendant would have the farm for small value. The conclusion seemed irresistible that the defendant was willing to take his chances in this transaction, thereby gaining a good farm at small cost if death soon lightened his financial burden, and at any rate gaining it on reasonable terms (as the evidence of its value showed) even if the lives of his parents were prolonged. Such seemed the general scope and intent of the instrument, and as such it must be construed, and the son therefore could not succeed in his present contention that he was not in any event to pay more than $4,000.

D. Armour, for the plaintiff.

C. Moss, Q.C., for R. Hill.

Boyd, C.] [May 26.

EXCHANGE BANK v. STINSON.

Winding up proceedings—Payment of cheques on deposit accounts after suspension of bank—45 Vict. c. 23.

The bank suspended payment September 15th, 1883. Winding up proceedings were commenced November 23rd, and an order made December 5th. R. and G. H. purchased a stock of hardware held by the bank, on which they owed $14,000 at the time of the suspension. The bank wishing to close the account sold the balance of the stock to A. H. & Co. for $5,700, and agreed to accept in payment cheques of the defendant drawn on his deposit account, and which were drawn on and accepted by the bank on October 31st. For these cheques A. H. & Co. gave their acceptances, which were duly paid. Before the stock was delivered R. and G. H. settled the balance of their debt.

In an action by the liquidators of the bank against the defendant to recover back the amount thus paid on the defendant's cheques under 45 Vict. c. 23, it was

Held, that the plaintiff could not recover.

The defendant also owed A. H. & Co. a debt, and gave his cheque on the bank for $92 in part payment thereof, which the bank accepted from A. H. & Co. on October 23rd in retiring an overdue bill.

Held, that that amount could not be recovered back. On November 19th defendant sold his cheque for $320 to his uncle C., who was the local head of the bank, which cheque was negotiated and accepted by the bank on November 23rd (after winding up proceedings had commenced).

Held, that although it probably was an invalid transaction, as far as the person who received the money was concerned, there was no payment to the defendant of anything within the scope and meaning of the 75th sec. of the Act.

Maclennan, Q.C., and *Bain*, Q.C., for the plaintiffs.

E. Martin, Q.C., for the defendant.

Boyd, C.] [May 26.

PELLS v. BOSWELL ET AL.

Corporation by-law passed in private interest—Injunction.

Corporations are trustees of their powers for the general public, and when they prostitute them for the benefit of an individual at the cost of another, the general public not being interested, their action will be restrained by the Courts.

P. was the owner of a small piece of land at the south side of Johnson's lane, which had been reserved when the lane was laid out. Johnson's lane extended half way between Adelaide and King Streets, in the city of Toronto, and M. and T. were the owners of the property extending from Johnson's lane to King Street, and were desirous of obtaining access to Adelaide Street through the lane and over P.'s reserved part, and tried to purchase it but failed.

A by-law to open up Johnson Street, initiated by the petition of M., T. and others, reciting that "they were desirous of securing communication between King and Adelaide Streets for vehicles, by means of the above street and certain lanes to the south thereof," but only providing for the opening up to M. and T.'s properties was passed by the City Council and about to be sealed, when P. brought his action

to restrain the Council from further proceeding with the same. It was

Held, that P. was entitled to succeed, and the injunction was granted with costs.

H. D. Gamble, for plaintiff.

Foster and *McWilliams*, for the defendants.

Boyd, C.]] May 26.

EXCHANGE BANK v. COUNSELL ET AL.

Winding up proceeding—Payment to creditors—45 Vict. c. 23, s. 75.

The bank suspended payment September 15, 1883. Winding up proceedings were commenced November 23, and an order made December 5. The defendants, C. and S., being depositors in the bank, drew a cheque for $4,000 on November 1 on their deposit account, which was given to D., a debtor of the bank on notes maturing the following December and January. D. gave mortgage security for the cheque on October 31. The arrangement was all made about October 5, although the security was not given until the 31st, and the cheque was not presented to the bank until November 23, when it was accepted as payment of the maturing notes.

In an action by the liquidators of the bank against the defendants, to which D. was not a party, to recover the amount thus paid on the cheques as having been paid after the winding up proceedings were commenced. It was

Held, that the defendants could not be proceeded against to make them account for the $4,000 upon a statement of claim alleging that there was an illegal payment of that sum upon their cheque in the circumstances above stated. Upon the facts there was no payment by the bank to the defendants.

C., who was being sued by the bank, obtained defendants' cheque for $2,118, giving security therefor on November 21, and retired the notes in suit on November 23.

Held, that the defendants could not be ordered to repay the amount of the cheque as being a wrongful payment under 45 Vict. c. 23, s. 75.

Maclennan, Q.C., and *Bain*, Q.C., for the plaintiffs.

E. Martin, Q.C., for the defendants.

Boyd, C.] [June 10.

WILLIAMS v. ROY.

Remuneration to executors.

A testator willed as follows: "I hereby authorize and direct my said executors to retain for their own use and benefit the sum of $200 each in lieu of all charges, for their services in performing the duties hereby imposed on them as executors of this my will."

An action having been instituted for construction of the will and administration, the executors, who had retained the said sum of $200, claimed the further sum of $580 as compensation for their services.

It was admitted by all parties that it would be proper for the executors to retain the said further sum if not prevented by the express clause in the will.

Held, that the executors could not have more than the sum fixed by the testator.

In 1874 the Legislature, by the 37 Vict. c. 9, laid down the principle that the Court is not to fix the allowance to trustees when the testator has himself provided what it shall be. This is a most reasonable rule, not requiring a parliamentary declaration as to its propriety.

Lash, Q.C., for the Girls' Home.

Hoyles, for the executors.

H. Murray, for the Orphans' Home.

Lefroy, for the Boys' Home.

Boyd, C.] [June 11.

BARCLAY v. ZAVITZ.

Will—Devise of mortgage—Maintenance of wife—Principal and interest.

G. H. Z. in his will provided as follows: "With respect to a certain mortgage . . . my will is as follows,—I give and bequeath out of the proceeds of said mortgage to each of my daughters (naming them) the sum of $200, to be paid them respectively when the youngest of my said children reaches the age of twenty-one years, and if any of my said children shall not have been married before that time the child or children being then unmarried shall not receive their shares until such times as she or they shall marry.

Provided that my executors may pay such part or parts of said legacies . . . if they

can do so without interfering with the proper support of my wife and family. Provided if any of my daughters die without issue the legacy . . . shall be divided among their surviving sisters.

The balance of the proceeds of said mortgage I give and bequeath to my said wife to have and to hold the same for her use and benefit, and for the use and benefit of the unmarried members of my family during the natural life of my said wife, after which my will is that the balance of proceeds of said mortgage still remaining be equally divided among my daughters then surviving.

Held, that the widow held in trust during her life for herself and her unmarried daughter, and that she was bound during her life to apply the proceeds of the mortgage for the proper support of herself and that daughter while unmarried, treating the principal and interest of the mortgage as a blended fund, and what remained was to be divided, and that the widow had the right to draw *bona fide* from the proceeds of the mortgage, even if it consumed the whole of the *corpus*.

A matter involving the proper construction of a will cannot be brought upon petition under R. S. O. c. 107, s. 35.

Moss, Q.C., for plaintiffs.

J. Hoskin, Q.C., for infant.

PRACTICE.

Q. B. Div. Ct.] [May 27.

MOXLEY v. CANADA ATLANTIC RAILWAY COMPANY.

Affidavit of documents—Motion for better affidavit.

The decision of ROSE, J. (*ante*, p. 12), was reversed on appeal.

The rule laid down in *Jones* v. *The Monte Video Gas Co.*, 5 Q. B. D. 556, may be accepted as the general rule on the subject of production of documents, but it should be read in conjunction with *The Attorney-General* v. *Emerson*, 10 Q. B. D. 191.

The affidavit of documents filed in this case stated that the defendants objected to the production of the documents in question because "they are in constant use in the business of the defendants, and are necessary for that purpose."

Held, that the affidavit was wholly insufficient, and that the books must be produced.

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

Lefroy, contra.

C. P. Division.] [May 30.

MALONEY v. MACDONELL ET AL.

Trial—Evidence—Exclusion of witnesses.

At the beginning of the trial of the action all witnesses were ordered out of Court, but the parties to the action were not requested to retire. Judgment having been given dismissing the action against the defendant P., his co-defendant M. entered upon his case and called P. as a witness. P. had remained in Court and heard the whole of the evidence adduced by the plaintiff.

Held, that the evidence of P. was improperly rejected, and a new trial was ordered with costs to be costs in the cause to the defendant.

Aylesworth, for the defendants.

Cattanach, for the plaintiff.

Rose, J.] [June 1.

WOODRUFF v. MCLENNAN.

Judgment under Rule 80, O. J. A.—Delivery of statement of claim.

Held, that the practice of moving under Rule 80 O. J. A., for leave to enter final judgment after delivery of a statement of claim is not one to be encouraged, although in some cases it may be allowable.

Under the circumstances of this case such a motion was refused.

Masten, for the plaintiff.

Holman, for the defendant.

Boyd, C.] [June 8.

THE BANK OF B. N. A. v. THE WESTERN ASSURANCE COMPANY.

Powers of local taxing-officers—Administration of Justice Act, 1885.

The Administration of Justice Act, 1885, (48 Vict. ch. 13, s. 22, O.) has not conferred upon local registrars of the High Court the power of taxing counsel fees to any greater amount than they are allowed to tax under the the tariff of the 10th September, 1881.

In this case an appeal from the taxation of the local registrar at Brantford was allowed, and the items in dispute were referred to one of the taxing officers at Toronto.

G. Tate Blackstock, for the appeal.

Holman, contra.

Boyd, C.] [June 8.

RE HARNDEN, HANDEN v. HARNDEN.

Bringing in accounts—Motion to commit—G. O. Chy. 201 and 296.

G. O. Chy. 201 and 296 are still in force in the Chancery Division.

Upon a motion to commit the defendant (an administrator) for neglecting to bring in his accounts by a day named pursuant to the direction of the Master,

Held, that personal service upon the defendant of the Master's direction and of the notice of motion to commit was not necessary.

Watson, for the motion.

Shepley, contra.

Boyd, C.] [June 10.

COLE v. CANADA FIRE INSURANCE CO.

Setting cause down for June—Certificate of counsel—G. O. Chy. 420.

The certificate of counsel necessary under G. O. Chy. 420, in order to set down a cause for argument in the Chancery Division during the month of June, may be given by counsel for a party other than the party setting the cause down.

Holman, for the plaintiff.

Bain, Q.C., for the defendants.

Boyd, C.] [June 11.

SNIDER v. SNIDER.

Delivery of statement of defence.

A statement of defence in an alimony action was delivered after the proper time and on the same day on which the plaintiff set the action down to be heard on motion for judgment.

Held, that the defence was irregular, and it was ordered that it be struck out and judgment granted as prayed by the statement of claim, unless the defendant paid the costs of setting down the action and of the motion for judgment within a limited time.

E. Douglas Armour, for the plaintiff.

Holman, for the defendant.

Boyd, C.] [June 11.

DARLING v. THE MIDLAND RAILWAY CO.

Ontario and Dominion Railway Acts—Procedure—Appeal from award.

Certain land was expropriated by defendants in 1876, and proceedings to obtain compensation therefor were begun in August, 1884. On the 25th May, 1883, the defendants' railway became by statute a Canadian road, and subject to the legislative authority of Canada, having previous to that date been an Ontario road.

Held, that the procedure provided by the Dominion Consolidated Railway Act, 1879, applied, and that an appeal from an award could therefore not be prosecuted under the Ontario Railway Act.

Lash, Q.C., for the defendants.

G. Tate Blackstock, for the plaintiff.

BOOK REVIEWS.

Leading Cases in Constitutional Law, briefly stated, with Introduction and Notes, by Ernest C. Thomas, Esq., late Scholar of Trinity College, Oxford, and Bacon Scholar of the Hon. Society of Gray's Inn. 2nd edition. London: Stevens and Haynes, 1885.

Constitutional Law will always be an important study to a people watchful of their political rights, for within its definitions may be found the limits of the public authority of the three great departments of government—legislative, executive and judicial. In the British Constitution, according to Blackstone, "absolute despotic power, which in all governments must reside somewhere," is centred in Parliament, yet that body has ever regarded as supreme and unrepealable those constitutional enactments of its early predecessors which declare themselves to be "the law of this realm forever," or which eloquence affirms are "enshrined in the sacred ark of the constitution." And yet, the sovereign, in whose name as the sole legislator that supreme despotic power enacts its laws, is in all the qualities of sovereignty subject to the law, as was deftly and boldly stated by Lord Coke to James I.:—Thus wrote Bracton; Rex non debet esse sub homine, sed sub Deo et Lege; and as Coleridge, J., declared in *Howard* v. *Gossett*, 10 Q. B. 386: "The law is supreme over the House of Commons and over the Crown itself."

But neither in jurisprudence nor text-books does English Constitutional Law take the same high stand that American Constitutional Law takes, or which Canadian Constitutional Law is rapidly taking. Very little philosophic or scientific law is to be found in the judgments of English judges. They deal with the case in hand and the dry statute or common law applicable to it. Rarely, except in Colonial or Indian appeals, do we meet with judgments dealing with the questions of a general or limited grant of sovereignty or legislation, or reviewing the varied rules applicable to the interpretation of a constitution which gives a general power or enjoins a particular duty with "implied powers of legislation," which may be resorted to for the exercise of the one or the enforcement of the other.

The work before us gives little aid in such a study. Its title, "Leading Cases," is misleading. But as a useful digest of cases on Constitutional Law it will be of value to students, and its usefulness as such has been proved by the issue of a second edition. It could be made more valuable if it contained further cases illustrating the jurisdiction of the Courts to review executive acts of the Crown, as in *The Parlement Belge*, 4 P. D. 129; *Attorney-General* v. *Manchester*, L. R. 3 Eq. 436; *Long* v. *Bishop of Capetown*, Moo. P. C. N. S. 411, as well as cases like *Reg.* v. *Burah*, 3 App. Cas. 889, and *Hodge* v. *Reg.*, 9 App. Cas. 117, which define colonial legislative powers.

ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

Rights in percolating water.—*Law Journal*, February 21.

Privilege of solicitor in relation to criminal issues.—*Ib.*, March 28.

Liabilities of municipal corporations for damage to private property caused by public works.—*Central L. J.*, April 17.

The present law of payment for goods.—*Ib.*

Actions for services rendered without any mention of compensation having been made—Quantum meruit.—*Ib.*, April 24.

Counter-claims in actions ex delicto.—*Irish Law Times*, March 7.

Preferences in compositions with creditors.—*Ib.*, May 15.

The effect of taking security upon a lien.—*Ib.*, May 22.

The ratification by corporations of the unauthorized acts of their agents.—*Ib.*

Jurisdiction of the Court of Chancery over wills.—*Albany L. J.*, March 21.

Rules as to the privileges of witnesses.—*Ib.*, April 4, 25; May 2, 16.

Attorney's liens upon the cause of action.—*Ib.*, April 18.

Lost wills.—*Ib.*, May 9, 16.

Liability of company on forged or fraudulent share certificate.—*Irish L. T.*, March 7.

Breach of contract when goods are sold to be delivered by instalments.—*Ib.*

Manslaughter through negligence.—*Ib.*, March 14.

Passengers' luggage—Liability of carriers.—*Ib.*, March 21.

Actions for bets.—*Ib.*

Marriage settlements induced by fraudulent misrepresentations.—*Ib.*, March 28.

Liability of joint guarantees.—*Ib.*, April 4.

The maintenance of infants.—*Ib.*, April 25.

Married woman's consent to breach of trust.—*Ib.*, May 2.

Liability of solicitor for partner's misappropriation of securities.—*Ib.*, May 9.

On the assignment of debts and other choses in action.—*Ib.*

Validity of contracts in restraint of trade.—*American Law Register*, April, May.

Indictment of corporations—Law and practice of, considered.—*Criminal Law Magazine*, May.

FALL ASSIZES.

HOME CIRCUIT.

MR. JUSTICE GALT.

Milton	Tuesday	Sept. 15
Brampton	Monday	Sept. 21
Toronto, Civil Court.	Monday	Sept. 28
Toronto, Crim. Ct..	Tuesday	Oct. 27

EASTERN CIRCUIT.

MR. JUSTICE ARMOUR.

Kingston	Tuesday	Oct. 27
Brockville	Tuesday	Nov. 3
Cornwall	Tuesday	Nov. 10
L'Orignal	Monday	Nov. 16

MR. JUSTICE ROSE.

Pembroke	Monday	Oct. 26
Perth	Monday	Nov. 2
Ottawa	Thursday	Nov. 5

WESTERN CIRCUIT.

MR. JUSTICE ARMOUR.

London	Tuesday	Sept. 15
St. Thomas	Wednesday	Sept. 23
Chatham	Tuesday	Sept. 29
Sandwich	Monday	Oct. 5
Sarnia	Thursday	Oct. 8
Goderich	Tuesday	Oct. 13
Walkerton	Tuesday	Oct. 20

NIAGARA CIRCUIT.

MR. JUSTICE ROSE.

Hamilton	Thursday	Sept. 10
Barrie	Monday	Sept. 21
Welland	Wednesday	Sept. 30
St. Catharines	Monday	Oct. 5
Orangeville	Monday	Oct. 12
Owen Sound	Monday	Oct. 19

MIDLAND CIRCUIT.

MR. JUSTICE O'CONNOR.

Napanee	Monday	Sept. 14
Picton	Monday	Sept. 21
Whitby	Thursday	Sept. 24
Lindsay	Thursday	Oct. 1
Peterborough	Thursday	Oct. 8
Belleville	Thursday	Oct. 15
Cobourg	Thursday	Oct. 29

OXFORD CIRCUIT.

CHIEF JUSTICE CAMERON.

Guelph	Monday	Sept. 14
Stratford	Monday	Sept. 21
Woodstock	Monday	Sept. 28
Berlin	Monday	Oct. 5
Cayuga	Monday	Oct. 12
Simcoe	Monday	Oct. 19
Brantford	Monday	Oct. 26

FLOTSAM AND JETSAM.

AMALGAMATION OF THE PROFESSION.

The Smoking Concert given by the Law Cricket Club took place at the Freemasons' Tavern, on February 6, according to the announcement in our last issue, and was a great success. The feature of the evening was a paper read by a member, entitled, "A Bill for the Fusion of Barristers and Solicitors."

Whereas many persons have supported energetically the fusion of the two branches of the profession, And whereas these persons believe themselves to be incapable of error, and it is accordingly apprehended that they must be right: And whereas the object cannot be satisfactorily accomplished without some small assistance from Parliament:

Be it therefore enacted as follows:—

1. *Short title.*—This Act may be cited as the B, and S. Fusion Act, 1885.

2. *Interpretation of word.*—In this Act the word "fusee" shall mean a person fused under this Act, and shall not include the odoriferous article or thing used for igniting tobacco, unless the context imperatively requires it.

3. *Provision for fusion.*—From and after the 1st day of January, 1886, barristers and solicitors shall be fused.

4. *Prohibition of certain practices.*—The fusion of barristers and solicitors hereby provided for shall not extend to render lawful any of the following acts:—

(*a*) A barrister fusing with a solicitor's wife, his sister, his cousin, or his aunt, without the previous consent in writing of such solicitor, to be filed in the office two clear days previously at least.

(*b*) A solicitor taking a barrister's silk umbrella from a stand or other place of deposit, and leaving in substitution for the same an inferior gingham, with intent to deceive.

(*c*) A solicitor fraudulently holding himself out as having been a member of the bar prior to the 31st December, 1885. Provided that this clause shall not apply to any solicitor making such representation who shall, in fact, have practised regularly at any duly licensed bar for a period of seven years at least.

5. *Objections to fusion.*—Any barrister or solicitor who shall object to be fused shall state the grounds of his objection in writing on or before the said 31st of December, 1885. The document shall be on cream-wove foolscap paper, and written on one side only, with a margin of one inch, and

impressed with a £25 stamp, and shall be headed with the words, "In the matter of A. B.; a proposed fusee.—Not if he knows it." Every such document shall be entered in a list, and be open for inspection at all reasonable times on payment of a shilling, but no further or other notice shall be taken of it.

6. *Consequences of fusion.*—Upon the fusion provided for by this Act taking place, the following consequences shall follow:—

(*a*) All persons who, on the 31st of December, 1885, shall be barristers or solicitors, shall, on and after the 1st of January, 1886, be called barristicitors, and shall, when professionally engaged, wear in front of some convenient part of their chests a circular badge of not less than six or more than twelve inches in diameter, with the word "Barristicitor" painted on it in two coats of good oil paint in legible white characters upon the black ground. Provided that—

(*b*) Barristers who shall, on the 31st day of December, 1885, have been Her Majesty's counsel or serjeants-at-law shall wear the said badge at the back instead of in front.

(*c*) No barristicitor shall wear any wig, gown, or (save for the badge aforesaid) other distinguishing mark, but it is hereby expressly declared that tourist suits, paper shirt fronts concealing flannel beneath, masher collars, and other similar abominations to outsiders shall and may be lawfully worn when addressing the Court. Provided that nothing in this Act contained shall render it unlawful for a person who, on the 31st of December, 1885, shall be a bald barrister or solicitor from wearing a chestnut wig, or prevent any person who, on that date, shall be a barrister from continuing to wear his wig and gown at fancy dress balls or private theatricals, or when entertaining friends at dinner, or when disguising himself for the purpose of effecting an escape from justice.

7. *As to fees and costs due on 31st December*, 1885.—All fees and costs respectively due to barristers and solicitors on the said 31st day of December, 1885, shall be collected and got in by them with all reasonable despatch, and shall as and when realized be paid into court to the credit of an account, to be entitled "The Barrister and Solicitor Spoliation Account." All sums paid into such account shall be expended by the Lord Chancellor and the Lord Chief Justice of England upon such objects, deserving or otherwise, as they shall think proper.

8. *Fees.*—The following fees shall and may be lawfully taken by and allowed to barristicitors:—

	£	s.	d.
Where the subject-matter in dispute shall exceed £1,000 000. For conducting the case through all its stages, inclusive of advocacy at the trial	1	5	0
In all other cases.....	0	12	6
And for every day on which the trial of an action shall last beyond one full day, a further allowance of			6

These fees shall be exclusive of court fees, stamps, and other disbursements, properly incurred, but shall include law stationers' charges, cab hire, tips to ushers, and bribes to witnesses in running-down cases.

Provided that in any case on application to the judge at the trial, and if it shall appear to him that by reason of the difficulty of the case, the number of witnesses bribed, the heat of the weather, or other special circumstances, the said allowance shall be insufficient, he may, in his discretion, grant a certificate for a further allowance not exceeding one shilling and ninepence.—*Pump Court.*

THE *American Law Review* so long as it sticks to *law* is very good. When it touches upon matters affecting any country not *American* it is strangely at fault; but what it is when discussing matters theological may be described by the remark of our better half when we read her some extracts from an article on the disposition of the body after death. "What rubbish are you reading? You have got hold of the ravings of a lunatic." One sentence reads thus: "A great many years ago, before common sense had suggested any doubt as to the certainty of the resurrection of the human body in its original flesh and blood." If the resurrection is looked upon as a miracle it is absurd to discuss it as a matter of "common sense." On the other hand it is generally supposed to be common sense to expect an ear of a wheat from a grain of wheat sown in the ground. Common law is said to be common sense. This apostle of cremation is certainly not a common lawyer. The "original flesh and blood" theory is new, We never heard of it being taught in any school of theology in christendom. Again, when contrasting cremation and burial, the article says: "It is a process of combustion in any case. In the case of earth burial, the fire burns at the greatest possible disadvantage, prolonging in the most horrible way the agony and grief of the ones who love." A "common sense" writer should not allow his imagination to run away with him.

Law Society of Upper Canada.

OSGOODE HALL.

During Michaelmas Term the following gentlemen were called to the Bar, namely:—John Alexander MacKintosh, Adam Carruthers, Arthur Burwash, Henry Herbert Collier, James D. S. C. Robertson, John Douglas, James Alexander Hutcheson, Joseph Alphonse Valin, James Cæsar Grace, David Thorburn Symons, Dyce Willcocks Saunders, William Torrance Allan, Edmund Weld, Thomas Bulmer Bunting, William Travis Sorley, Isaac Norton Marshall, Frank Russell Waddell, Thomas James Decatur, Alexander George Frederick Lawrence, George Weir, William James Nelson, William David Jones, William Acheson Proudfoot, David F. McArdle; and the following gentlemen were admitted to the Society as Students-at-Law, namely:—Graduates: Frank Ambridge Drake, George Watson Holmes, Arthur Stevenson, Herbert Langell Dunn, John Frederick Dumble, Nicholas Ferrar Davidson, Clement Rowland Hanning, Edward Holton Britton. Matriculants: Alexander Clarke, Henry Augustus Wardell, Herbert Ferdinand Bonzé, Duncan Henry Chisholm, Fergus James Travers, John Thomas Hewitt, Richard Vercoe Clement, James Alexander Haight Campbell, Robert Lazier Elliott, Robert Gordon Smyth. Juniors: George Carnegie Gunn, Herbert William Lawlor, James Arthurs, William Pinkerton, George Davey Heyd, Forbes Begue Geddes, Robert Elliott Lazier, Frederick Forsyth Pardee, William Locklin Billings Lister, Reginald Murray Macdonald, Ernest Edward Arthur Duvernet, Frank Stewart Mearns, Arthur Trollope Wilgress, Stephen Dunbar Lazier, Robert Segsworth, James Henry McGhie.

During Hilary Term, 1885, the following gentlemen were called to the Bar, namely:—Frank Hedley Phippen, Francis R. Powell, Henry John Wickham, John Workman Berryman, Richard Henry Hubbs, Henry Lawrence Ingles, William Albert Matheson, John Bell Jackson, Norman N. A. McMurchy, Frederick Luther Rogers, John Lawrence Murphy, Thomas Irwin Forbes Hilliard, Hume Blake Elliott, Richard M. C. Toothe, Alexander Campbell Shaw, Joshua Denovan, E. A. Miller, Frederick W. Hill, Duncan Charles Murchison, Thomas Moffat, Manly German, George McLaurin, and the following gentlemen were admitted as Students and Articled Clerks, namely: Graduates, John Henry Cosgrove, Alexander Henderson, Jr.; John Arthur Tanner, Francis Alexander Anglin. Matriculants: Alfred E. Cole, Dioscore J. Hurteau, William Charles Mikel. Juniors: William Henry Moore, George Washington Littlejohn, Arthur St. George Ellis, George Smith McCarter, William Albert Smith, Ernest Napier Ridout Burns, Edmund Sheppard Brown, John Patrick O'Gara and William Walton passed the Articled Clerk's examination.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- 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.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

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.
1884—Souvestre, Un Philosophe sous le toits.
1885—Emile de Bonnechose, Lazare Hoche.

or Natural Philosophy.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

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.

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; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

For Certificate of Fitness.

Taylor 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. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jusisprudence; Theobald on Wills; Harris' 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 examinations are subject to re-examination on the subjects of Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

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 Socity 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, six 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 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.

9. 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.

10. 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.

11. 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.

12. Articles and assignments must be filed with either 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.

13. 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.

14. Service under articles is effectual only after the Primary examination has been passed.

15. 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 six

months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

16. 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.

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

18. 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.

FEES.

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	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

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890

Students-at-law.

CLASSICS.

1886.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Cæsar, Bellum Britannicum.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. VI.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B G. I. (vv. 133.)
- 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. (vv. 1-33)

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

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.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical reading of a Selected Poem:—

1886—Coleridge, Ancient Mariner and Christabel.

1887—Thomson, The Seasons, Autumn and Winter.

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.

1886, 1888, 1890 } Souvestre, Un Philosophe sous le toits.

1887, 1889 } Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886: and in the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, 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.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.