Canada Law Journal.

VOL. XX. MARCH 15, 1884. No. 6.

DIARY FOR MARCH.

16. Sun... *3rd Sunday in Lent.*
17. Mon... St. Patrick's Day.
18. Tue... Princess Louise born, 1834.
23. Sun... *4th Sunday in Lent.* Sir George Arthur Lieut.-Gov. U. C., 1838.
28. Fri... Canada ceded to France, 1632.
29. Sat... The Wills Act assented to, 1873.
30. Sun... *5th Sunday in Lent.* B. N. A. Act assented to, 1867.
31. Mon... Lord Metcalfe, Governor-General, 1854.

TORONTO, MAR. 15, 1884.

WE have received Vol. 1, of Mr. G. S. Holmsted's General Rules, and Orders of the Courts of Law and Equity, of the Province of Ontario, passed prior to the Ontario Judicature Act, 1881, and now remaining in force, comprising the Chancery Orders, and without presuming to write anything approaching a review of the work at this early stage, the perusal of some fifty pages is sufficient to justify us in speaking in the highest terms of the industry, ability and learning comprised in this work. To call it a compilation would be to display our own inability to appreciate what was involved in its composition. It involved in the first place a very thorough knowledge of the practice before the Judicature Act, and of the practice since the Judicature Act, and then the power of detecting how much of the former was left unaffected by the latter; and it requires very little reflection to comprehend the mental effort which must in very many cases have been gone through by the learned writer, before he could record an opinion that this rule or that rule is still in force, with this or that modification. In our opinion the book is a credit not only to Mr. Holmsted, but to the legal profession in Ontario generally, and, at all events, the gratitude of the latter is certainly due to the author for so valuable an addition to works on Practice. We look forward with, perhaps, greater interest to the publication of the second volume than we have to this one, and we venture to think its composition must be even a more difficult task than this has been. Be that as it may, it may perhaps be said that no legal work, at all events since Harrison's Common Law Procedure Act, has been published in this Province approaching these volumes of Mr. Holmsted in difficulty or in importance.

DIFFERENCES OF PRACTICE UNDER THE JUDICATURE ACT.

WE have on former occasions adverted to the fact that, notwithstanding the obvious intention of the Judicature Act was to bring about an uniformity of practice in the various Divisions of the High Court, the traditions of the past have been too strong to be overcome even by an Act of Parliament. Hence it is that we find in the Queen's Bench and Common Pleas Divisions, the new procedure is construed and worked as nearly as may be in accordance with the former practice at law, while in the Chancery Division the same rules are construed and worked in accordance with the former practice in Chancery.

To take a very common point of practice namely, the entry of judgments: under the former common law practice it was a well recognized rule that their could only be one final judgment in the action against the same defendant. In certain cases a judgment might be entered against one defendant at one time, and

against another defendant at another time, but only one final judgment could be entered against the same defendant. On the other hand in the Court of Chancery it was equally familiar practice that a decree could be pronounced against a defendant at one stage of the cause, disposing of part of the matters in controversy, and reserving further directions to a subsequent stage of the suit—usually after the Master had made his report as to certain matters referred to him—and upon the cause coming on again for hearing on further directions, the Court was accustomed to pronounce a further decree or judgment against the same defendant, either finally disposing of the remaining matters in controversy, or else disposing of some of them and again reserving "further directions" for future disposition. Thus, as often as the cause came on again, a fresh decree or judgment was pronounced; and in this way, in a Chancery suit, there might be several decrees or judgments pronounced in the same action against the same defendant before all the matters in litigation were finally disposed of, and this was necessary from the nature of the relief administered in Equity.

Now, in the Queen's Bench and Common Pleas Divisions, notwithstanding these Divisions are now in effect also Courts of Chancery, and have cognizance of purely equitable causes of action, the old common law theory, that there can be only one judgment, is still rigidly adhered to; while in the Chancery Division every decision rendered in an action, which under the former practice would be styled a decree, is now regarded as a judgment, and is so entered. Thus, in many cases in the Queen's Bench and Common Pleas Divisions, an order is issued, when, in the Chancery Division, in an exactly similar state of facts, a judgment is entered.

Then again when a motion for judgment is made under Rules 322 or 324, a wide difference of procedure prevails. In the Queen's Bench and Common Pleas Divisions an order is drawn up authorizing the judgment to be entered in accordance with the decision of the Court, and after this order is issued a judgment is then drawn up in accordance with the order, and entered. On the other hand, in the Chancery Division the decision of the Court upon the motion is not formulated into an order to enter judgment, but the decision is formulated as a judgment which is thereupon entered without any preliminary order.

Under Rule 80, an order to enter judgment in accordance with the indorsement on the writ is the practice expressly prescribed by the Rule. But when a motion for judgment is made under Rules 211, 322, 324, the Court pronounces the judgment, and it would seem more in accordance with the intention of the Act and Rules that the document to be drawn up should be the judgment pronounced, and not a mere order to enter judgment. The practice of the Chancery Division in this respect has certainly less of circumlocution and greater simplicity than that adopted in the other divisions.

This is by no means a solitary point of practice in which a difference exists, and we think it is to be regretted. There are numerous other points in the administration of the Judicature Act and Rules in which the officers of the Court, relying on their former traditions, are practically creating a different system of practice in the different Divisions, and these differences are for the most part at present beyond judicial control, from the fact that the questions of difference can rarely come under the attention of the judges, and therefore their opinion as to what is the proper practice of two divergent methods cannot be obtained.

We believe that it will be very difficult to remedy this state of things, until the

whole of the offices at Osgoode Hall are under one head having a certain amount of autocratic power to settle differences of this kind.

In the meantime, if one of the judges of the Supreme Court having sufficient familiarity with the former practice, both at law and in equity, were to be appointed authoritatively to settle the proper practice to be pursued in all the Divisions, wherever any divergence in practice is found to exist, we think it would be beneficial to the profession, and likely in the long run to lead to the much desired uniformity of practice in all the Divisions which the Judicature Act aimed to bring about.

LAW SOCIETY.

HILARY TERM, 1884.

The following is the *resumé* of the proceedings of the Benchers during Hilary Term, published by authority :—

During this term the following gentlemen were called to the Bar, namely: J. Bicknell, Jr., Gold Medallist, with honours, and G. W. Marsh, D. C. Ross, J. Y. Cruikshank, E. J. Hearn, W. C. Livingstone, R. W. Witherspoon, G. F. Cairns, F. S. Wallbridge, M. McFadden, F. A. Munson, D. Urquhart, E. G. Porter, J. Burdett, A. M. Grier, E. Campion, and J. J. MacLaren. These names are arranged in the order in which the candidates were called, and not in their order of merit.

The following gentlemen received certificates of fitness, namely: D. C. Ross, W. G. Thurston, G. H. Anderson, C. A. Masten, A. C. Muir, J. Y. Cruikshank, E. Sweet, G. F. Cairns, E. Guss Porter, J. W. Russell, J. Burdett, W. C. Livingstone, G. Smith, C. G. Jarvis, A. M. Grier, W. J. Wright, T. M. Best, J. Strange, A. C. Beasley, F. W. Garvin, W. A. Werrett, M. S. McCraney. These names are arranged in the order of merit.

The following gentlemen passed the first Intermediate Examination, namely: E. Bristol, 1st scholarship, with honours; A. E. Swartout, 2nd scholarship, with honours; G. H. Kilmer, 3rd scholarship with honours; R. H. J. Pennefather, G. W. C. Campbell, A. M. Lafferty, H. Macbeth, L. H. Baldwin, W. E. Tisdale, A. Dodds, D. H. Cole, R. Sharpe, Eli Hodgins, Walter Hunter, W. S. Herrington, Wm. Morris, J. A. McLean, G. McPhillips, A. A. McTavish, R. T. Sutherland, T. F. Johnson, G. W. Burton, S. C. Mewburn.

The following gentlemen passed the second Intermediate Examination, namely: A. C. Macdonell, 1st scholarship, with honours: W. E. S. Knowles, 2nd scholarship, with honours; J. F. Williamson, C. F. Farewell, J. Thacker, A. K. Goodman, F. E. Nelles, D. Alexander, G. E. Evans, G. E. Kidd, C. R. Atkinson, H. Brock, James Miller, L. M. Hayes, G. E. Martin, A. McKellar, D. Fasken, J. E. O'Meara, F. Lawrence, John Geale, J. McNamara, T. H. Stoddart, A. B. Shaw.

The following gentlemen were admitted into the Law Society as students-at-law, namely:

Matriculants of Universities.

J. F. Gregory, W. E. Kelley, W. W. Dingman, J. H. Hegler.

Junior Class.

M. H. Ludwig, F. Smoke, J. B. McColl, R. W. G. Dalton, J. J. McPhillips, F. Rohleder, P. K. Halpin, J. W. Coe.

MONDAY, 4TH FEB., 1884.

Present—Messrs. Hoskin, Murray, Mackelcan, J. F. Smith, Foy, Irving, Hon. C. F. Fraser, Moss, Cameron, McMichael, Britton. Mr. Irving in the chair.

Mr. Murray, on behalf of the Finance Committee, presented the following report of the Committee, together with the estimate for the current year and the balance sheet for 1883, referred to in it.

The Finance Committee beg leave to report as follows :—

1. The Committee beg to call the attention of Convocation to the very close approach to a balance of the income and expenditure. It is true that the whole amount of the charge of the Triennial Digest comes against the income of the year, while two thirds, if not the whole, of that amount

is properly a charge on the revenue of previous years.

But the Committee are of the opinion that the balance, considering the fluctuating character of the receipts and the possible expenditure connected with the fuel, light and water arragements for the future, is too small.

2. The cost of the reports has been greatly increased.

Convocation has established a Digest, the yearly charge for which is estimated at from $800 to $900. It has appointed an additional reporter at a salary of $1,200 —it is probable that this appointment will result in another volume of reports at a cost of $1,710, and the printing of the reports of the election cases will add to the charge for reports, so that in round figures, an increase of about $4,000 a year has been made on this head.

The Committee beg to renew the suggestion made some time ago that the reports of the Supreme Court should be discontinued, as these reports are those least valuable to the average practitioner, and their discontinuance will effect a saving of nearly $1,800 a year to set against the above increases.

It appears to the Committee that, in the face of such discontinuance, Convocation should subscribe for, say, eight copies for Osgoode Hall, and one copy for each county library, but should not pay for any officials.

It must be remembered that the cost will be greatly inhanced by the diminished subscription, and to pay for the copies for the judges would probably involve an expense of nearly $800 a year.

It is probable that conjoint action on the part of those members of the bench and bar who desire these reports, would result in their being obtained at a more moderate rate, and the reporters of the Law Society could be directed to publish abstracts of the important decisions of the Ontario Appeals to the Supreme Court and Privy Council.

It also appears to the Committee that the notes of cases if supplied to whichever of the two legal periodicals which would undertake to publish them promptly, or to both, if both would so undertake, might be published free of expense. They are of value to the journals. The expense last year was $490, and the Committee think that an effort should be made to save it.

3. The treasurer and the chairman of the Committee have been in communication with the Attorney-General, and it is believed that the wishes of Convocation, as to the termination of the present arrangement for supplying fuel, light and water to the Government part of Osgoode Hall will be accomplished.

The present estimates are made on this basis.

The extravagant charge for water supplied to the east wing during the last quarter has led the Committee to consider the advisability of obtaining an independent supply if no adequate redress can be obtained.

(Signed) D. B. READ,
Chairman.

ESTIMATES OF RECEIPTS AND EXPENDITURE FOR 1884.

Receipts.

Certificate and Term Fees..	$17,300 00	
Notice Fees	625 00	
Attorney Examination Fees	5,500 00	
Students' Admission Fees...	6,750 00	
Call Fees	8,500 00	
Interest and Dividends.....	2,500 00	
Government payment for heating, lighting and water	2,000 00	
Sundries:		
Commission and Fees on Telegraph and Telephone	275 00	
Reports sold including digest	950 00	
Fees on Petitions Diplomas and Certificates....	150 00	
		$44,550 00

Expenditure.

Reporting:		
Salaries	$8,600 00	
Postage	105 00	
Printing	7,850 00	
Supreme Court Reports..	1,800 00	
Notes, Law Journal	90 00	
Appropriation for Digest..	1,000 00	
Printing Digest	1.400 00	
Postage on Digest	100 00	
Insurance on Reports....	100 00	
		21,045 00
Examinations:		
Salaries	$3,200 00	
Scholarships	1,600 00	
Printing and Stationery..	250 00	
Medals	120 00	
Law School Prizes	50 00	
Examiners for Matriculation	300 00	
Law Journal account	100 00	
		5,620 00
Library:		
Books, Binding and Repairs		2,800 00
General Expenses:		
Secretary, Sub-Treasurer and Librarian	2,000 00	
Assistants	1,200 00	
Housekeeper	360 00	
		3,560 00
Lighting, Heating, Water and Insurance:		
Engineer and Assistant (5 months)	$425 00	
Gas	630 00	
Water	843 00	
Weighing Coal	5 00	
Fuel	853 00	
Repairs to Apparatus....	300 00	
Carting Coal and cutting. Wood	75 00	
		3,131 00

PROCEEDINGS OF HILARY TERM.

Grounds:		
Furnace Man, Gardener and Assistant	$500 00	
Tools	5 00	
Cartage	60 00	
Water for Lawn	34 00	
Snow Clearing	40 00	
		639 00
Sundries:		
Gas for Cook Stove	$50 00	
Auditor	100 00	
Postage	30 00	
Telephone Rent	100 00	
Clocks	10 00	
Ice	15 00	
Term Lunches	400 00	
Cleaning Windows	34 00	
Guarantee Co.	20 00	
Dusting Books	18 00	
P. O. Box	6 00	
Telephone Operator	432 00	
Telephone boy	96 00	
Telephone Messages	8 00	
Resumé	40 00	
Repairs to Furniture	50 00	
New Furniture	300 00	
Repairs to Walks in grounds	300 00	
Law Costs	1,000 00	
Removing Matting	40 00	
Unforeseen Expenses	200 00	
Stationary	240 00	
		3,489 00
Extraordinary Expenditure:		
Furnace for East Wing		400 00
County Library Aid:		
Brant	$178 00	
Ontario	276 00	
Hamilton	288 00	
Middlesex	240 00	
Bruce	206 00	
Frontenac	204 00	
Peterborough	224 00	
		1,616 00
		$42,300 00

ABSTRACT OF BALANCE SHEET FOR 1883.

Receipts.

Certificates and Term Fees	$17,040 00	
Less Returned Fees	98 75	
		16,941 25
Notice Fees		657 00
Attorneys' Examination Fees	8,139 00	
Less returned Fees	1,755 00	
		6,384 00
Students' Admission Fees	7,270 00	
Less Returned Fees	360 00	
		6,910 00
Call Fees	$12,070 00	
Less Returned Fees	3,130 00	
		8,940 00
Interest and Dividends		2,611 22
Government Payment for Heating, Lighting and Water		4,250 00
Amount received for Reports sold		392 44
Sundries:		
Telephone Commission and Fees on Telephone Messages		243 74
Fees on Petitions, Diplomas and Certificates of Admission		155 00
		$47,484 65

Expenditure,

Reporting:		
Salaries	$7,239 28	
Postage	103 00	
Printing	5,604 02	
Supreme Court Reports	1,800 00	
Notes for Law Journal	487 37	
Hodgins' Reports	3,260 00	
		18,493 86
Examinations:		
Salaries	3,200 00	
Scholarships	1,380 00	
Printing and Stationery	295 25	
Examiners for Matriculation	219 00	
Medals	49 25	
Prizes in Law School	25 00	
		5,169 50
Library:		
Books, Binding and Repairs		3,356 70
General Expenses:		
Secretary, Sub-Treasurer and Librarian	2,000 00	
Assistants	1,243 44	
Housekeeper	360 00	
		3,603 44
Lighting, Heating, Water and Insurance:		
Engineer and Assistant	680 00	
Gas	823 01	
Water	1,366 27	
Insurance	90 00	
Weighing Coal	10 00	
Fuel	3,078 58	
Repairs to Apparatus	63 48	
Carting Coal and cutting Wood	130 77	
		6,242 11
Grounds:		
Gardener and Assistant	340 00	
Tools	33 35	
Cartage	10 25	
Labour	242 50	
Snow Clearing	62 13	
Trees	9 00	
		697 23

Sundries:		
Postage	$26 32	
Advertising	258 75	
Stationery	233 70	
Law Costs,	1,233 57	
Repairs	472 65	
Furniture	130 25	
Term Lunches	737 82	
County Library Aid	1,616 00	
Guarantee Co	20 00	
Oiling Portraits	27 50	
P. O. Box	6 00	
Hay & Co	5 20	
Telephone Operator	4 32	
Messengers	147 81	
Labour	9 00	
Wilson	9 10	
J. Daly, as Substitute	280 00	
Hicks	12 65	
Staunton (screen)	6 00	
Bell Telephone Rent	100 00	
Sparrow	10 89	
Ellis (clocks)	18 00	
Crockery	100 55	
C. L. Journal	40 00	
Repairing Portrait	30 00	
S. E. Roberts	16 33	
P. Read	8 50	
Dusting Books	17 18	
Oiling Floor	16 25	
Cutlery	3 75	
Resume	5 00	
Auditor	100 00	
Petty Charges	31 27	
		6,162 04
Balance		3,750 77
		$47,484 65

Audited and found correct.
16th January, 1884.

(Signed) HENRY WM. EDDIS,
Auditor.

Ordered that the above report be considered on Saturday, 9th February.

The petition of Elgin Schoff and one hundred others, in reference to the conduct of the examinations, was referred to the Legal Education Committee.

Mr. David Haskett Tennant, who passed his examination in Trinity Term, 1883, was granted a certificate of fitness.

TUESDAY, 5TH FEB., 1884.

Present—Messrs. Foy, Hoskin, Kerr, Martin, Irving, Murray, Hardy, Maclennan.

Mr. Irving in the chair.

The report for 1883 of the Solicitor of the Society was received and read.

The report of the Library Committee was received and read.

A letter from Mr. Patteson, the Postmaster, proposing to place a collection letter box in Osgoode Hall, was read, and the secretary was directed to thank Mr. Patteson for the very convenient arrangement he proposed.

The secretary laid on the table the list of Benchers forming the standing committees, corrected to date, as follows:

Legal Education.—Alex. Leith, Esq., J. H. Ferguson, Esq., Chas. Moss, Esq., John Hoskin, Esq., James F. Smith, Esq., D. Guthrie, Esq., Hon. T. B. Pardee, F. MacKelcan, Esq., John Crickmore, Esq.

Finance.—J. J. Foy, Esq., John Crickmore, Esq., E. Martin, Esq., Hon. S. H. Blake, L. W. Smith, Esq., H. W. M. Murray, Esq., W. R. Meredith, Esq., Hon. A. S. Hardy, D. B. Read, Esq.

Library.—James Bethune, Esq., Hector Cameron, Esq., James Beaty, Esq., Dr. McMichael, J. H. Ferguson, Esq., Charles Moss, Esq., Hon. S. H. Blake, Æ. Irving, Esq., John Bell, Esq.

Reporting.—James Bethune, Esq., B. M. Britton, Esq., Hector Cameron, Esq., D. McCarthy, Esq., James F. Smith, Esq., E. Martin, Esq., James Maclennan, Esq., H. C. R. Beecher, Esq., F. MacKelcan, Esq.

Discipline.—Alex. Leith, Esq., James Maclennan, Esq., James Beaty, Esq., J. K. Kerr, Esq., Thos. Robertson, Esq., E. Martin, Esq., Dr. McMichael, John Hoskin, Esq., H. C. R. Becher, Esq.

County Library Aid.—A. Hudspeth, Esq., Hector Cameron, Esq., W. R. Meredith, Esq., Thos. Robertson, Esq., B. M. Britton, Esq., Hon. A. S. Hardy, E. Martin, Esq., J. K. Kerr, Esq., H. C. R. Becher, Esq.

Journals of Convocation.—Hon. C. F. Fraser, J. J. Foy, Esq., James Maclennan, Esq., Hon. T. B. Pardee, J. K. Kerr, Esq., John Hoskin, Esq., Charles Moss, Esq., D. McCarthy, Esq., B. M. Britton, Esq.

SATURDAY, 9TH FEBRUARY, 1884.

Present—Messrs. Crickmore, Moss, Maclennan, Murray, Foy, Irving, Bell, Kerr, Hoskin, Robertson, MacKelcan and Martin.

In the absence of the treasurer, Mr. Bell was elected chairman.

The Legal Education Committee, by the chairman, Mr. Crickmore, reported

on the case of Mr. W. E. S. Knowles recommending that he be awarded honours and the second scholarship of sixty dollars, and that he be allowed to present himself for certificate of fitness in the Michaelmas Term, 1884.

The report was read and received, ordered for immediate consideration, and adopted and ordered accordingly.

The Reporting Committee presented the following report, which was received and read.

The Committee on Reporting beg leave to report as follows:

1. The work of reporting is in a fairly satisfactory condition. There are still seventy cases in the Chancery Division unreported, in which judgment was given before the end of the year 1883, and twenty-five cases in which judgment has been given in the present year.

2. There are sixteen cases in the Court of Appeal unreported which should have been out months ago, but in other respects the Appeal reporting is now greatly improved.

3. The work in the other divisions is entirely satisfactory.

4. The Committee, after very careful consideration, recommend the discontinuance of the subscription to the Supreme Court reports on financial grounds. They advise the subscription for eight copies for the Osgoode Hall library and seven copies for the county libraries.

5. Your Committee also recommend on financial grounds, that only one thousand copies of the triennial Digest be printed, and that they be sold to the profession under the direction of the Reporting Committee at a cost not exceeding three dollars per copy.

6. Your Committee further recommend for the same reason to discontinue the contract with Mr. O'Brien for the publication of early notes after the expiration of the current quarter at the end of March. The Committee, however, recommend that the notes be furnished to Mr. O'Brien as heretofore in case he should desire to publish them free of charge to the Society.

7. Your Committee recommend that rule 114 be amended by providing for a quarterly instead of a monthly certificate by the editor.

All of which is respectfully submitted.

(Signed) JAMES MACLENNAN,
Chairman.

February 9th, 1884.

Ordered that the report be considered clause by clause.

First five clauses were carried. The following amendment was moved to the sixth clause, namely:

That the further consideration of the sixth clause be postponed till next term and that in the meantime the Committee be instructed and authorized to see what, if any, arrangement can be made with Mr. O'Brien for the publication in the LAW JOURNAL of early notes of Supreme Court decisions.

The amendment was carried.

The adoption of clause seven was then moved and was lost.

The consideration of the report of the Finance Committee appointed for to-day was then proceeded with, clause by clause.

The first clause was adopted.

The second clause was adopted subject to the expression or action of Convocation on the report of the Reporting Committee, adopted this day.

The third clause was adopted.

Ordered that the post-office box be discontinued and that a distribution box be placed in the hall.

The report of the solicitor of the Society was referred to the Finance Committee.

The report of the County Libraries Aid Committee was received and adopted.

On the motion of Mr. Martin, seconded by Mr. Maclennan, it was ordered that the estimates for the year 1884 be received and approved.

FRIDAY, FEBRUARY 15TH, 1884.

Present—Messrs. Britton, Hudspeth, Murray, J. F. Smith, Crickmore, Irving, McMichael, Robertson, Fraser, Kerr, Maclennan, Foy, Meredith and Moss.

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

The Treasurer, the Hon. E. Blake, entered the room.

Mr. Crickmore, from the Legal Education Committee, reported on the petition of Elgin Schoff and others as to the further examination of candidates who have failed on some subject, recommending that the prayer of the petition be not granted. Adopted.

Mr. Crickmore reported from the Legal Education Committee as follows:

"The Committee beg leave to draw the attention of Convocation to the fact that notices had been given of application to the Ontario Legislature for two private Bills, to authorize the Supreme Court to admit John Robertson Miller and Delos R. Davies to practise as solicitors."

(Signed) JOHN CRICKMORE.
Chairman.

The report was read and received, and ordered to be considered, and adopted.

Resolved unanimously that, in the opinion of Convocation, no special Acts should be passed authorizing calls to the Bar or admission to practise as a solicitor, but all calls and admissions should be authorized by Convocation, under the authority of the general law and under such general regulations as may be prescribed, and that the Legal Education Committee be appointed a committee to confer with the Attorney-General on the subject of this resolution.

The letters respecting a gentleman practising without authority were read, and ordered that they be referred to the Discipline Committee to make the usual enquiries and report.

Mr. Murray, pursuant to notice, moved as follows:

That the secretary be directed to place in the book case, for students, one copy of those books which are on the curriculum for the law examinations for degrees at the universities of Toronto and Trinity College, of which there are two or more copies in the library. The Library Committee to decide as to the books to be so placed and as to the length of time to be allowed for their perusal.

Ordered that the motion be referred to the Library Committee for consideration and report.

Mr. Hudspeth gave notice of a motion, for the first Tuesday of next Term with reference to Term Lunches.

Convocation adjourned.

J. K. KERR,
Chairman of Committee of Journals of Convocation.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEENS BENCH DIVISION.

Hagarty, C.J.] [Jan. 22.

REGINA v. HOWARD.

Municipal by-laws—Fire limits—Repairing wooden buildings—Ultra vires.

A city corporation passed a by-law under R. S. O. ch. 174, sec. 467, s.-s. 6, which defined fire limits, within which buildings were to be of incombustible material, the roofs to be of certain metals, or slate, or shingles laid in mortar not less than half an inch thick, and no roof of any building already erected within the fire limits was to be relaid or recovered except with one of the enumerated materials. The defendant was convicted of a breach of this by-law, for having laid new shingles on his wooden house within the fire limits, without laying them in mortar. The house had been standing for many years before the by-law was passed.

Held, that the by-law was *ultra vires*, in so far as it referred to existing buildings or ordinary repairs or changes thereof, not being additions thereto.

Clement, for defendant.

MacKelcan, Q.C., contra.

Wilson, C.J.] [January.

IN RE MACKENZIE AND THE CORPORATION OF THE CITY OF BRANTFORD.

Municipal council—Public Health Act—Powers thereunder—By-law—Validity of—Delegation of powers.

The members of the council of any municipality are Health Officers of the municipality by virtue of the Public Health Act, R. S. O. ch. 190, and as such they may enforce the provisions of secs. 3 to 7 of that Act without by-law, but if they delegate their powers to a committee, they must do so by municipal

by-law. They cannot, however, delegate any powers except those which they exercise under the Public Health Act.

A by-law was passed by the Municipal Council of the city of Brantford, regulating the cleansing of privy-vaults, and imposing a fine of not less than $1, nor more than $50 for a breach of its provisions.

Held, valid as the by-law was one under the Municipal Act, and not under the Public Health Act, which restricts the penalty to $20.

The by-law, as set out below, was objectionable as delegating to persons not members of the council, the Board of Health, the powers which as municipal matters belonged exclusively to the council.

Beck, for the motion.

Wilkes, contra.

IN BANCO.

ROBERTSON v. HAMILTON PROV. AND LOAN SOCIETY.

Mortgagor and mortgagee—Short forms Act—Distress for arrears—Leave and license.

Defendant company were mortgagees of plaintiff's land, under the Short Forms Act, the mortgage containing this clause: "Provided the Society may distrain for arrears of instalments." The principal and interest were added together, and, by the mortgage, the amount was repayable by equal annual instalments. There was also a covenant to pay interest in arrear and for interest thereon. The bailiff, by arrangement, sold the goods in plaintiff's shop from day to day, plaintiff assisting, a larger amount being thus realized than if sold by auction, and the balance over defendant's debt being paid plaintiff.

Held, affirming OSLER, J., that plaintiff, by the mortgage and his assent to the distress and sale, licensed the selling of the goods, though he was entitled to nominal damages for the sale of what was unnecessary; but that, as there was the right to distrain for instalments in arrear only and not for interest thereon, plaintiff was entitled to judgment for the difference between the instalment and the amount distrained for. Per OSLER, J., the substitution of "instalments" for "interest" in the Short Forms Act did not take it out of the statute.

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

Muir, contra.

HATELY ET AL. v. MERCHANTS' DESPATCH COMPANY ET AL.

Carriers—Bill of lading—Conditions—Negligence—Judgment against three defendants—Separate appeals.

Plaintiff consigned butter to his co-plaintiffs in England, shipping it by the defendant's company, under contract with defendant, Despatch Co.; on this bills of lading endorsed by plaintiff to his co-plaintiff in England, at a through rate, paid to defendants, Despatch Co., and apportioned by agreement amongst them. The butter was conveyed by the defendants, the G. W. R. Co., from London to New York, and there handed over sound on a vessel of the defendants, the G. Wes. Steamship Co., where it remained, through the latter's negligence, during some hot weather, causing damage, in which state it was when it reached the consignees. By the bill of lading it was provided that the consignees should see that they got their right marks and numbers, and that after the lighterman, wharfinger, or applicant for the goods had signed for the same the ship was to be discharged from all responsibility for misdelivery or non-delivery, and from all claims under the bill of lading. The learned judge (Osler, J.) who tried the case found for the plaintiff, giving a general verdict against all the defendants.

Held, per HAGARTY, C. J., affirming OSLER, J., that the condition on the bill of lading should, notwithstanding the general words at the end, be confined to cases arrising from misdelivery or non-delivery, and did not relieve the Steamship Co. from liability for actual negligence.

Per CAMERON, J.—The stipulation in the bill, by its concluding general terms, discharged defendants from liabilities for the negligence complained of.

Per ARMOUR, J.—Where there is a general judgment against several defendants, rule 510 does not enable them to sever and appeal to several courts, but they must all appeal to the tribunal to which the defendant taking the first step has appealed.

HERRING v. WILSON.

Distress for rent—Chattel mortgage—Seizure subject to.

A. leased to B., who assigned to C., and sold to him the goods on the premises subject to a chattel mortgage to plaintiff and others upon the goods to secure to them the purchase money thereof. Defendant on 1st Feb. took possession of the premises under a parol agreement with C. that C. should assign the lease to him, and it was so assigned on 4th June following. There was no evidence of what arrangement existed between C. and defendant as to the goods, which, however, remained on the premises without defendant's request. Plaintiff and his mortgagees afterwards took possession of the goods under their chattel mortgage; but on the same day, before they were removed, the landlord seized for rent, but withdrew on plaintiff's promise to pay the rent. Plaintiff having broken faith as to payment of the rent, the landlord sued him and compelled payment; and plaintiff then sued defendant to recover the sum so paid.

Held, that there being no privity of contract or estate between defendant and plaintiff, and the goods not having been originally placed on the premises at the tenant's request, and having, in fact, when seized, been in possession of plaintiff, defendant was not bound to protect them against seizure for rent.

Bethune, Q.C., for plaintiff.

Clute, contra.

SCOTT v. BENEDICT.

Vendor's lien.

W. S., indebted to R. & Co., who held a saw mill and timber license, etc., belonging to the former, in their own name, as security, wrote them that he had arranged with his son, W. A. S., for the transfer to him of his business; and, upon his arranging with R. and Co. the liability of W. S., that W. A. S. was entitled to be placed in the position of W. S. with respect to the property held by R. & Co., and that on settling that liability they were to convey to W. A. S. By subsequent agreement W. S. agreed with W. A. S. that the latter was to pay off the liabilities of W. S. in two years, upon which W. S. was to transfer to him other lands than those held by R. & Co. Subsequent advances were made by R. & Co. to W. A. S. The defendant, B., afterwards paid off R. & Co., and R. & Co. and W. A. S. joined in conveying to defendant B. the property in question. B. subsequently made advances to W. A. S. and his assignee on his becoming insolvent. To some of these plaintiff, the executor of W. S., agreed, under seal, stipulating that it should not affect their lien as against anyone but B. They then claimed a lien on the lands for the amount of the liabilities of their testator, W. S., which W. A. S. had agreed to pay as the consideration for the transfer to him of the business.

Held, affirming GALT, J. (CAMERON, J., dissenting), that no such lien existed, even if defendants had notice of the transaction between W. S. and W. A. S.

McCarthy, Q.C., for plaintiff.

Bethune, Q.C., and *Barwick*, contra.

WILCOCKS v. HOWELL.

Libel—Privileged communications—New trial.

The defendant and others signed a petition to the license commissioners of Hamilton that a license might not be granted to the plaintiff, stating his inn was one of the worst drinking holes in the country; that it was kept very disorderly, no suitable accommodation, and that the landlord was much addicted to drink.

Held, that the occasion of the presentation of the petition was privileged, but not absolutely so, and that it was for plaintiff to prove express malice.

Robertson, Q.C., for plaintiff.

Osler, Q.C., contra.

REGINA v. DODDS.

Lottery Act, C. S. C. ch. 95.

The defendant, being the proprietor of a newspaper, advertised in it that whoever should guess the number nearest to the number of beans which had been placed in a sealed glass jar in a window on a public street, should receive a $20 gold piece, the person making the next nearest guess a set of harness, and the person making the third nearest guess, a $5 gold piece; any persons desiring to compete to buy a copy of the newspaper and to write his name and the supposed num-

ber of the beans on a coupon to be cut out of the paper. The defendant was convicted of a contravention of C. S. C. ch. 95.

Held, that as the approximation of the number depended as much upon the exercise of skill and judgment as upon chance, this was not a "mode of chance" for the disposing of property within the meaning of the Act.

PER HAGARTY, C. J.—The Act applies to the unlawful disposal of some existing real or personal property. In this case there were no specific gold coins, nor was there any particular set of harness, to be disposed of, which might have been forfeited pursuant to section 3 of the Act, and therefore the conviction was bad on that ground.

Fenton, for the Crown.

Murdoch, for the defendant.

Rose, J.] [Dec. 31.

GRIGSBY v. TAYLOR.

Penalty—Forfeiture—Action for—Election Act of Ontario, R. S. O. ch. 10.

In an action under R. S. O. ch. 10, sec. 182, against an agent for the sale of crown lands to recover a penalty alleged to have been incurred by voting at an election of a member to the Legislative Assembly, contrary to sec. 4 of the Act.

Held, overruling a demurrer to the statement of claim, that, though forfeiture and penalties belong to the Crown unless otherwise disposed of, the sum declared to be forfeited by section 4 of the Act for a breach thereof, is a penalty within the meaning of sec. 182, sub-sec. 1, for which an action may be maintained by any person who will sue for the same.

Tilt, Q.C., for the demurrer.

Arnoldi, contra.

Hagarty, C.J.]

REGINA v. SMITH.

By-law for weighing and measuring wood—Delivery in specified waggons—Ultra vires.

The Municipal Council of the city of Hamilton passed a by-law that no person should, upon or after sale thereof, deliver any stove wood in or from any waggon, etc., otherwise than in or from a waggon, of a certain capacity, the sides of which should be constructed of slats of a certain width and a certain distance apart from each other. The defendant was convicted of a breach of the by-law.

Held, that the by-law was *ultra vires*, for, though the Council had the right, under the Municipal Act, R. S. O. ch. 174, sec. 466, to provide for the weighing or measuring of wood, they had no power to enforce delivery, upon or after sale, in a particular kind of waggon.

Clement, for applicant.

Mackelcan, Q.C., contra.

COMMON PLEAS DIVISION.

Rose, J.] [Feb. 21.

COUGHLIN v. HOLLINGSWORTH.

Claim—Counter claim—Balance in favour of defendant—Costs.

An action on an unsettled account to which there was a counter claim, also on an unsettled account, was referred. The referee found that there was a sum of $148.81 due the plaintiff on his claim, and $164.50 due the defendant on his counter claim, leaving a balance due defendant of $15.69; and he certified to entitle the defendant to full costs. It appeared that the statute of limitations was pleaded respectively to the claim and counter claim, and the items barred by the statute were in consequence disallowed; but that apart from the statute the balance would have been in plaintiff's favour. On motion to enter judgment the only question was as to the distribution of the costs.

Held, that the plaintiff was entitled to recover the costs of, and relating to his claim and proof thereof, including the reference and subsequent proceedings; and that the defendant was entitled to recover the sum of $15.69, with the costs of, and relating to his counter claim and the proof thereof, including the reference and subsequent proceedings; the master to decide as to items in common, and that judgment be entered for the party in whose favour the balance shall be found.

G. H. Watson, for the plaintiff.

French, for the defendant.

Rose, J.] [Feb. 21.

COSGRAVE BREWING CO. v. STAIRS.

Guarantee to firm—Death of partner—Notice determining guarantee.

By an agreement under seal made between C. & Co., a firm of brewers, consisting of C. and his two sons of the first part, Q. of the second part, and defendant of the third part, defendant agreed to become responsible in a continuing guarantee of $5,000 to C. & Co., or its members for the time being constituting the firm of C. & Co., for beer to be supplied to Q., so long as C. & Co. desire to sell and Q. to purchase same. On 6th September, 1881, C. died, Q.'s liability then being $5,248. By C.'s will he appointed his said two sons his executors. They continued to carry on the business, and shortly afterwards entered into partnership under the same name, C. & Co. On 2nd October, 1882, the assets of the then firm were conveyed to one D., in trust for a joint stock company to be formed, and on its incorporation on 13th December following the assets were conveyed to the company, the present plaintiffs. Q. continued to be supplied with goods, and on 1st June, 1883, when the action was commenced, the indebtedness was over $5,000, but that since C.'s death more than $5,248—the then liability—had been paid by Q. In an action against defendant under the agreement to recover the $5,000—the amount of his guarantee,

Held, by the death of C. a change in the firm was constituted, and the defendant was thereby released from any further liability under the agreement; and the evidence showed that the amount of indebtedness at C.'s death had been paid.

On 1st April, in consequence of Q. falling into irregular habits, defendant notified the then firm not to supply Q. with any more goods. The evidence showed that the firm was aware that Q.'s business was not in a satisfactory state.

Semble, that this would put an end to defendant's liability, if not before put an end to.

Osler, Q.C., and *Eddis*, for the plaintiffs.

Aylesworth, for the defendants.

CHANCERY DIVISION.

DIVISIONAL COURT.

[Feb. 21.

MCEWAN v. MILNE.

Fraud—Onus of proof.

The ordinary rule being that where there is "weakness on one side and extortion and advantage taken of that weakness on the other," the onus is upon the party likely to control the other to shew that the transaction was fair, just and reasonable, if it is impeached, and that, although the existence of confidence might be an ingredient in proving "influence" still "influence" is not to be presumed from the existence of confidence.

Held, that even if confidence had existed, which was not satisfactorily proved, it was not sufficient to throw the onus of proving that the sale and conveyance herein were not fraudulent or the effect of undue influence.

R. Meredith, for appeal.

Cassels, Q.C., contra.

SORENSON v. SMART.

Res Judicata.

A. having supplied B. with goods, and being in the habit of advancing money on cheques or orders on C., for whom B. was doing contract work, brought his action in 1880 for the amount due him, and among other items gave credit for $300 received on one of the orders. B. pleaded never indebted, *payment* and set off. At the trial B proved that in addition to the $300 order he had given a $475 order dated May 3, 1879, to A., and contended that both had been given as payment, while A. contended that he was only to give credit for what he received on the orders, and that he had received nothing on the latter. A verdict was entered and enforced in favour of A. for the amount he claimed.

B. now alleges that two days after the trial he discovered that A. had given another $300 which he had not given credit for, but he did not move to set aside or reduce A.'s verdict and brings this action to recover the $300 which he thus alleges A. has received twice, and sets up that he gave A. an order for $300

dated 15th January, 1879, and that $300 were paid on this order on the 18th of March, 1879, and that he gave another order (no date mentioned) for the balance coming to him, and that $300 were paid on this latter about April 10th, 1879, and that, as in the first suit only $300 were credited, he now claimed $300.

At the trial of the second action B. proved the giving of the first order in January, and swore that on the 18th March he endorsed a cheque or warrant for $300 to A., but no such endorsed warrant, nor any receipt for same, is produced although D., another witness, swore that he paid it that day. B. also swore that he gave A. another order, the date of which he did not remember, and that A. had received $300 on it on the 10th or 11th of April. D. also swore that the second payment was made on the second order, and a payment was proved by the production of an endorsed warrant or cheque that a $300 payment had been then made. Defendant swore that he never received a payment on the 18th of March, and that the payment made 10th or 11th of April was made on the January order, and that he never received anything on the $475 order.

Held (reversing the judgment of PROUDFOOT, J.), that A. was entitled to judgment on the defence of *res judicata*, the only issue in the first action necessary to be considered being that on the plea of payment, which, by the C. L. P. Act, sec. 113, is to be taken distributively.

Held, also, that such cases as *Sedden* v. *Tutop*, 6 T. R. 607, and *Chisholm* v. *Moore*, 11 C. P. 589 do not apply to such cases as this.

Bethune, Q.C., and *Jeffrey* for appeal.

Hoyles, contra.

SMITH v. SMITH.

Married women—Will—Estoppel.

L., a married woman, owner of certain land, at her death about 1830, assumed to devise it to her daughter P. and her husband O. for each of their lives, and thereafter to their children. T. went into possession of part of the land at the instance of O. about 1855. and built thereon and remained in undisturbed possession for over twenty-eight years. Those who claim in remainder under the will (the life estates having expired), ask to have the land partitioned, and T. claims his part by length of possession.

Held (reversing the judgment of FERGUSON, J.), that although T. might be estopped from denying the title of L., still he was not estopped from denying that L. had transferred her title to those now claiming, and that as they claimed under the will of M. (a married woman) made in 1828 before there was power to devise, and so void on its face, they had no title, and T. must succeed.

J. Hoskin, Q.C., for infants.

Ermatinger, for defendant, T. J. Smith.

McBeth, for other adult defendants.

CORBETT v. HARPER.

Reservation of timber—Construction of words.

In a conveyance the grantor "reserves to himself all the standing timber upon the said lands, excepting that which measures eight inches through."

Held (reversing the judgment of PROUDFOOT, J.), that all the standing timber eight inches in diameter passed to the grantee, while all over that size was reserved by the grantor.

Poussette, for appellant.

Hoyles, for respondent.

BEATTY v. O'CONNOR.

Mortgage.

A mortgagee selling under the power of sale in his mortgage may sell on time without the mortgagor's consent, but he must treat the mortgage taken from the purchaser as cash. If a mortgagee, when selling, obtains the consent of the mortgagor to take a mortgage for part of the purchase money, he cannot cash such mortgage and charge the mortgagor with the expenses and discount without a distinct bargain to that effect.

Held (reversing the judgment of PROUDFOOT, J.) that the mortgagee herein had no right to sell the mortgage at the expense of the mortgagor, and that, as against a second mortgagee who did not consent to a sale on time, the mortgage must be treated on a cash basis.

Held, also, that this Court cannot interfere with the costs of the actions at law, of eject-

ment and on covenant, which went to judgment there, and that the costs of exercising the power of sale under a statutory form of mortgage, are made a first charge upon the proceeds of sale R. S. O. p. 997, so that the mortgagee is entitled to them as a matter of contract.

Held, also, that G. O. 465, does not apply where there has been no proceeding in equity as to the costs which could give the Court jurisdiction to put the mortgagee to his election or warrant a disallowance of any of the bills.

Lennox, for plaintiff.

G. W. Lount, for defendant.

VAN EGMOND v. THE CORPORATION OF THE TOWN OF SEAFORTH.

Municipal Act—Drainage—Arbitration—Right to maintain action.

The defendants constructed a number of drains in their town, discharging into a creek running through the lands of the plaintiff, which drains conducted a quantity of brine or salt and refuse from salt manufactories in the neighbourhood into the creek and rendered the water filthy and unfit for drinking, and also corroded the machinery in plaintiff's woollen manufactory; and, having passed a by-law to deepen said creek, threw down plaintiff's fences, entered upon his land and threw up earth from the bed of the creek and left it there.

Held (sustaining the judgment of PROUDFOOT. J.), that the drains not being constructed under a by-law the plaintiff was entitled to maintain an action and was not compelled to seek his remedy for compensation by arbitration under the Municipal Act.

Held, also, that the damages for the trespass could be recovered by action, as the corporate powers under the by-law might have been exercised without the commission of the trespass.

Blake, Q.C., and *Holmsted*, for appellant.

Moss, Q.C., and *Garrow*, for respondents.

Boyd, C.] [Feb. 20.

RE L. U. C. TITUS, A SOLICITOR.

Misconduct—Striking off the rolls.

W., being about to be tried for a criminal offence, was impressed by T., her solicitor, that she was in great danger, and when consulting about her line of defence, was told by him that there were "other ways besides legitimate ways to manage these things." He subsequently sent her word that he wanted to see her, telling his messenger that he wanted some money "*to salt* the jury with." This message was delivered, and W., with another witness, called at his office and paid him $100, when the use of it in that way was talked of in the presence of both. On a subsequent occasion, being sent for again, she paid him another $100, because he said only three jurors had been fixed with the first $100.

In the Master's office, on a taxation of T.'s bill, he gave no account of how the money was disbursed, except that he had paid it over to a third person to secure his assistance in the defence, and he was, or pretended to be, unable to say what amount he had received.

On this application to strike him off the rolls, T. denied generally any conversations in reference to jury bribing, and alleged that the money had been paid to a third party to secure his assistance in W.'s defence; but B., the messenger, swore that when he was first sent for W., T. had broached the subject of "*salting* the jury" to him, and on the second occasion had told him "that three jurors had been fixed all right." W. and the witness who accompanied her on both occasions to T.'s office, swore that on the first, the use of the money in that way with the jury was talked about, and on the second, that T. repeated to them what he had told the messenger—*viz.*: that only three of the jurors had been secured with the first $100.

Held, that T.'s line of defence was not trustworthy, and that he had not vindicated himself, and an order was made striking him off the rolls.

J. Hoskin Q.C., for petitioner.

S. H. Blake, Q.C., contra.

Proudfoot, J.] [November 21.

CLARKE v. THE UNION FIRE INSURANCE COMPANY.

Claim of the Agricultural Insurance Company—Administration of Insurance Company's deposit—Receiver's schedule—Subsequent claims—R. S. O. c. 160, secs. 21-22.

This was a petition arising in connection with the administration of the deposits of the defendant's company in the hands of the Provincial Treasurer, under R. S. O. c. 160, secs. 21-22. The writ in the action in the administration was issued on November 29th, 1881, and an interim receiver appointed, who was continued in that capacity by judgment given on January 7th, 1882. The receiver prepared schedules in 1881, on which all policy holders were ranked. Afterwards, by agreement of January 21st, 1882, with the assent of all the policy holders, a re-insurance was effected with the Agricultural Insurance Company of the whole of the Union Company's risks other than one year risks. In consideration of such re-insurance the Agricultural Insurance Company took the note of the Union Company at three months from January 21st, 1882. This note was not paid, and the Agricultural Company now petitioned to be placed on the dividend sheet of the Union Company for the amount of the dividend already accrued, and for all future dividends.

Held, that they were entitled to the relief prayed, notwithstanding that in one sense their claim might be said to have arisen after the date of the receiver's schedule. But properly viewed the subject of their claim existed before the schedule though in a different shape. For, by the arrangement with them, made with the assent of persons entitled to rebate, the liability of the Union Company in respect to rebates was greatly reduced, and to that extent they should be taken to be subrogated to the position of the policy holders of the Union Company.

Proudfoot, J.] [January 9.

DORLAND v. JONES.

Land held in trust for religious body—Devolution thereof—Jurisdiction—R. S. O. 216, s. 10.

This was an action brought by the trustees of the Westlake Monthly Meeting of Friends suing on behalf of all the members thereof; claiming a declaration that they were entitled to certain lands in trust for the said monthly meeting, under a deed of 1821, whereby the said lands were granted in trust for the said meeting and their successors, and an injunction to restrain the defendants from interfering with them.

The defendants contended that the plaintiffs represented a faction which had seceded from the Westlake Monthly Meeting of Friends, and were not the Westlake Monthly Meeting of Friends, though they called themselves so; but that they themselves were the true and only Westlake Monthly Meeting of Friends, and the same body as the Westlake Monthly Meeting of Friends, as it existed at the time of the execution of the deed of 1821, inasmuch as they and not the plaintiffs were the members of the meeting who maintained the ancient and accepted doctrines and usages of the church called the Society of Friends.

Under an order for particulars the defendants specified the particulars of the doctrines, and articles of religious belief, usages, ordinances, and practices alleged to have been preached or taught by the plaintiffs, which are repugnant to those immemorially believed and observed by the Society of Friends.

Held, that, though it was no part of the duty of this or any civil Court to determine which of the conflicting views were true, yet, property being concerned, it was necessary to ascertain who were entitled to it, and for that purpose, but for that purpose only, to inquire into their religious opinions, according to the rule laid down by Lord Elden in *Craigdallie* v. *Aikman*, 1 Dowl. 1.

It is not correct to say that in a case of a trust such as this, a majority could determine the devolution of the property. To determine the devolution of property, there must be some certain rule to go by, and assuming it possible that it might become the property of a body at variance in many particulars from the original, associated in the profession of new principles evolved by the inner light, it must be requisite that the whole body should change. So long as anyone remained attached to the original faith and order, that one is the beneficiary.

Held, upon the evidence, that the defendants' monthly meeting continued to be the same body in doctrine, order, and discipline as the Westlake Monthly Meeting was at the time the trust was created, and were entitled to a declaration that

they, or some of them, hold the land in question in trust for the Westlake Monthly Meeting of Friends as represented by them, the defendants, and to an injunction restraining the plaintiffs from disturbing them in the use of the property.

Semble, R. S. O. c. 216, s. 10, as to the appointment of trustees of lands, by religious bodies does not require the mode of appointment to be determined at one meeting, and the appointment itself made at another. They may both be done at the one meeting.

J. Bethune, Q.C., and *Clute*, for the plaintiffs.

J. Maclennan, Q.C., *Arnoldi & Alcorn* for the defendants.

Full Court.] [February 21.

KITCHING v. HICKS.

Chattel mortgage—Registration—Book debts—R. S. O. c. 119.

Appeal by the plaintiff to the Divisional Court from the judgment of Proudfoot, J., noted *supra* vol. 19, p. 276 (see also *supra* vol. 19, p. 59.)

Judgment of Court delivered by Osler, J.

Judgment of Proudfoot, J., varied so far as the book debts were concerned, and the plaintiff held entitled to judgment as to them.

Apart from the existence of actual fraud, the instrument is only avoided by the non-registry in so far as the Act required its registration, if that part of it can be severed from the rest, as here it certainly could. The assignment or charge of book debts is separable from the assignment of the goods, and as to it, registry was not necessary.

Taylor v. *Whittemore*, 10 U. C. R. 440 cited and approved of.

The rule now is, that if the legal part of the contract in question can be severed from that which is illegal, the former shall stand good whether the illegality exist by statute or common law.

The operative part of the instrument in question was as follows:—

"The party of the first part doth assign unto the party of the second part all his right and claim to the goods and stock in trade in the store of the said party of the first part to an amount sufficient to reimburse the said party of the second part whatever he may pay in consequence of becoming such surety as aforesaid, and should there not be stock enough for that purpose in the store at such time, the balance after deducting the value of the said stock, shall be made up of the book debts then on the books of the party of the first part."

Held, that the terms of this agreement were not sufficiently comprehensive to cover the substituted, renewed or added stock in trade. Without adding words to the description, it could not be said that the stock secondly mentioned in the agreement was anything else than what might remain of that which had already been specifically assigned.

Akers, for the defendants, Clarkson, Huston & Co.

Ferguson, J.] [February 21.

KIDDER v. SMART.

Patent—Re-issue—Infringement—Laches.

Action for infringement of a patent.

Held, that the delay (without any excuse whatever) of a patentee for a period of nearly two years, after full notice and knowledge of an inadvertence or mistake in his original patent, and after professional advice on the subject, and after a re-issue of the same patent in the United States, founded upon the same alleged inadvertence or mistake (during which period manufacture has been carried on in the United States under a re-issue there), before the application for a re-issue in this country, is fatal to the validity of the re-issue in Canada.

It is not wrong to manufacture and sell an article in this country which has been patented in the United States, and put upon it a statement that it is so patented, as a recommendation of it, so long as there is no infringement of a valid existing patent in this country.

B. B. Osler, Q.C., and *Wardell*, for the plaintiffs.

C. Moss, Q.C., for the defendants.

PRACTICE.

Masters' Office,
Mr. Hodgins, Q.C.] [Jan. 8.

RE MUNSIE.

Administration order—Preliminary issue—Jurisdiction of Master—Setting aside will—Personal Representative—Executor's liability for chattels given for life and then to remainder-man.

The jurisdiction in Chambers to grant administration orders applies only to simple cases of account, and the Judge or Master in

Chambers may take the administration accounts in Chambers without referring them to the Master's office. But to all such references Chancery order 220 applies.

When on application for such order it appears that there is a substantial and preliminary question to be decided, such question should be decided before the reference is ordered and the Court may limit a time within which the parties may try the issue. But if the issue is not tried, or the order is made in Chambers without first directing such issue, the parties are held to have waived such preliminary question and cannot raise it in taking the account under such order in the Master's office.

The Jurisdiction of the Master's office is not co-extensive with that of the Court in inquiring into, and adjudicating upon, the validity of documents, and there is no authority to support any implied or assumed delegation of the functions of the Court to the Master. Nor is there any practice in the Master's office which allows parties to obtain a reference to the Master, so as to evade the ordinary judicial functions of the Court and then invoke those judicial functions in a tribunal of delegated and subordinate jurisdiction.

The plaintiffs, when taking accounts before the Master under the ordinary Chamber order for the administration of personal estate, sought to have it declared that a bequest to R., who was one of the witnesses to the will, was invalid.

Held, 1. That the Master had no jurisdiction under such order, and on oral pleadings to adjudicate upon the validity of the will.

2. That even if there was such jurisdiction it could not be exercised in the absence of a personal representative of R.'s estate.

Quare, whether since *Ryan* v. *Devereux*, 26 U. C. R. 100, such a bequest would be held to be invalid.

Where a will creates a life estate in chattels, the executor is discharged when he hands over such chattels to the tenant for life. The tenant for life, and not the executor, then becomes liable for them to the person entitled in remainder.

Boyd, C.] [Feb. 4.

MILES v. ROE.

Dominion election law—Penalties—Wilful delay.

Election to the House of Commons in the County of Lennox, 1882. An action to recover penalties for bribery at an election under Statute of Canada, 37 Vict. ch. 9.

The acts of bribery complained of were committed between the 13th and 23rd of June, 1882. The writ was issued on the 12th June, 1883, and was served on the defendant on the 27th Nov., thereafter. The defendant, on the 30th Nov., moved to dismiss the action for wilful delay in prosecution under sec. 119 of the Act, but the Master in Chambers refused to make the order, and an appeal was taken to BOYD, C.

Held, that such delay as would not expose an ordinary suit to dismissal may be fatal to an action under this Act under the special provision that such an action shall be carried on "without wilful delay."

The *onus* rests on the plaintiff to account for and satisfactorily explain this delay.

The plaintiff's solicitor swore that he was also solicitor for the petitioner in the Lennox Election Petition, at which election the acts of bribery complained of are alleged to have been committed, and in order not to endanger the success of that petition it was deemed advisable not to serve this writ until that petition was disposed of, which on account of objections to the jurisdiction was not tried till 10th Oct., 1883. He also, in an affidavit, explained the further delay in this way, that at the trial of the election petition an application was made for a summons against the defendant under 39 Vict. c. 9, to have the penalties for bribery imposed upon him, and that the application was not disposed of till the 23rd Nov., at which date the Judge declined to interfere.

Held, that there had been wilful delay not to be excused by the explanations given, and that the plaintiff was entitled, as of right, to have the action perpetually stayed or dismissed.

The order was made dismissing the action without costs for the reason that a *prima facie* case of bribery was established on the part of the defendant which he did not attempt to contradict.

Clement, for the defendant (appellant).

Bethune, Q.C., and *Aylesworth* for the plaintiff (respondent).

Boyd, C.] [Feb. 4.

RE DUMBRILL.

Lunacy petition—Husband and wife—Creditors—Costs.

A petition was presented by the husband of D. to declare his wife a lunatic which was opposed by her. Pending the hearing of the petition D. assigned her separate estate for the benefit of her creditors. The Court dismissed the petition.

Upon application by D.'s solicitor for an order for payment of his costs between solicitor and client by the assignee in priority to creditors claims,

Held, that the costs are to be classed as necessaries which the wife is liable to pay out of her separate estate and for which that estate is liable in the hands of her assignee.

The rule that provision should be made for maintenance out of the insolvent estate of a lunatic does not apply to these costs because the estate is not being administered in lunacy and because these costs cannot be put on the footing of maintenance. The costs should be paid ratably out of the assets, and costs subsequent to the assignment should not rank in competition with creditors before the assignment.

Lefroy, for the motion.

Shepley, contra.

RYAN V. FISH ET AL.

Striking out pleas in statement of defence—Reference as to damages without trial of issues on record—Jurisdiction of Master—O. J. A., secs. 47 and 48.

In an action for damages for detention of dower, defendants pleaded: (1) that the lands in question were wild, and plaintiff not entitled to sum obtained for damages, if any; (2) that plaintiff had assigned her claim for damages; (3) set-off for money expended in respect of said lands; (4) that they did not detain, but were always willing, etc.

On a motion in Chambers, after issue joined, for an order directing a reference as to the damages, under sec. 47 O. J. A., and upon evidence, both for and against the truth of the pleas, the Master made an order striking out second and third pleas and directing a reference.

Held, that the Master had no jurisdiction to make the order, and that the issues raised questions that were properly triable only at the hearing.

Lash, Q.C., and *T. King*, for plaintiff.

Hoyles and *Macnee*, contra.

Cameron, J.] [Feb. 14.

SMALL V. LYON.

Costs—Scale of—Tender—Payment into Court.

Appeal from the ruling of one of the taxing officers.

The defendant brought into Court with his defence a sum which he pleaded was sufficient to answer the plaintiff's claim, and the Judge at the trial, finding that it was sufficient, directed judgment to be entered for the defendant with costs. *Held* that the Judge at the trial had a discretion to deal with the question of costs, and, having exercised it, the taxing officer had no alternative but to tax to the defendant his full costs incurred, as well before as after the payment into Court.

Appeal dismissed with costs.

Shepley for the appeal.

Aylesworth Contra.

Rose, J.] [Feb. 22.

LEACH V. WILLIAMSON.

Interpleader issue—Attaching creditors.

Upon appeal from the order of the Master in Chambers, directing an interpleader issue to be tried between the plaintiff and certain attaching creditors as to the validity of the plaintiff's judgment and execution,

Held, that the issue directed was warranted by sec. 10 of R. S. O. c. 54 (the Interpleader Act).

The order appealed from provided for the trial of the question of the validity of the plaintiff's judgment as against creditors generally, and also provided that on the trial of the issue it should be open to the attaching creditors to shew that the plaintiff's judgment was void as against the attaching creditors for fraud, or as being a preference.

Held, that these provisions were warranted by sec. 3 of R. S. O. c. 54.

Appeal dismissed with costs.

Holman, for the appeal.

Aylesworth and *Shepley*, *contra.*

Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 47 Vict., 1884.

During this term the following gentlemen were called to the bar, namely:—

Messrs. James Bicknell, gold medallist and with honours; George Walker Marsh; Donald Cliff Ross, John Young Cruikshank, Edward James Hearn, Wilmott Churchill Livingston, Robert Walter Witherspoon, George Frederick Cairns, Francis Stewart Wallbridge, Moses McFadden, Frederick Augustus Munson, Daniel Urquhart, Edward Guss Porter, James Burdett, Alexander Monro Grier, Edmund Campion, John James Maclaren. The last three being under Rules in special Cases.

And the following gentlemen were admitted into the Society as Students-at-Law, namely:—

Matriculants — John Frederick Gregory, William Edward Kelly, William Wesley Dingman, John Hind Hegler.

Junior Class — Michael H. Ludwig, Franklin Smoke, John B. McColl, Robert Wilson Gladstone Dalton, James Joseph McPhillips, Frederick Rohleder, Patrick Kernan Halpin, John Wesley Coe.

BOOKS AND 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 Somervilles 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 Promisory 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 Gov-

ernment 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

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