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MR. Robert Parkes, who for the past twenty years has been usher of the Chancery Court at Osgoode Hall, died on the 30th August last. Mr. Parkes was an obliging and attentive official, and his death will be sincerely regretted by the judges of the Chancery Division and those members of the profession with whom his official duties brought him in contact.

THE office of Master in Chambers, made vacant by the death of the late Mr. Dalton, has been filled by the appointment of Mr. John Winchester, previously Inspector of Legal Offices, and who has, as is well known, acted in the place of the late Master, both during his absence and his late illness, which continued for some months previous to his death. Mr. Winchester has already shown himself painstaking and assiduous in the discharge of the duties in Chambers, and this, added to his capacity and disposition for work, makes his appointment popular with the profession. He is succeeded in his late office by Mr. James Fleming, previously Registrar of Peel, who has acted on some occasions as deputy judge, as well as in other positions in that county, and we believe the appointment will be a good one.

THE new Liberal Government in England is to be congratulated on the promptitude with which it has given practical effect to one of the principles advocated by the Liberal party when it was in opposition, namely, that the law officers of the Crown should refrain from private practice whilst in office. We understand that both the new Attorney- and Solicitor-General have accepted office on the distinct understanding that during their tenure of office they will abstain from private practice. This is refreshing, for our experience of Canadian politics leads us to the conclusion that promises and principles made and advocated by a party in opposition are too often recklessly cast to the winds as soon as the party making them is placed in a position to carry them into effect.

A CASE of interest to insurance companies was adjudicated upon by the Privy Council on July 30th, on appeal from the Court of Queen's Bench, at Montreal. The defendant Kavanagh *(Connecticut Fire Ins. Co. v. Kavanagh, M.L.R., 7 Q.B. 323)* was the agent of two foreign insurance companies, and one of these instructed him to cancel a certain risk which he had taken for the company. Kavanagh then transferred the risk to the other company for which he

was agent at Montreal, but did not inform them that it had been refused by the first company. The transfer also was made without notice to or knowledge of the insured. On the very day, and shortly after the risk was transferred, a fire broke out in the premises insured, and the loss was paid by the company to which the risk had been transferred. In this action by the company against its agent for the amount of the loss which they allege to have paid upon false representations of the agent and without cause, the judge of first instance held that the transfer having been made in good faith, before the fire occurred, and in accordance with the custom of insurance brokers, the defendant was not liable. This decision was unanimously affirmed by the Court of Queen's Bench, and the appeal therefrom was dismissed by the Privy Council.

NOTHING is more surprising in English law than the new points which are constantly arising for adjudication. The law under 27 Eliz., c. 4, one would have thought had by this time been pretty well threshed out, and that almost every conceivable question that could arise would, within the past 300 years, have arisen and been settled, but it is not so; and we find on an appeal from New South Wales to the Privy Council an entirely new point under the statute is only the other day, for the first time, presented for adjudication. The case we refer to is *Ramsay* v. *Gilchrist*, 66 L.T.N.S. 806, and the question raised by that case was whether or not a voluntary conveyance in favor of a charity could be avoided under the statute by a subsequent conveyance to a purchaser for value. The judge of first instance held that it could, but the Supreme Court of New South Wales reversed his decision, and the Privy Council have affirmed the Supreme Court. It may, therefore, be now taken as settled law that a *bonâ fide* voluntary conveyance of land in favor of a charity cannot be defeated by the grantor making a subsequent conveyance of the same land to a purchaser for value having notice of the prior voluntary conveyance.

BEHRING'S SEA ARBITRATION.

It will be of interest to those of our readers who have not followed closely the international negotiations in relation to the matters in dispute concerning the seal fisheries in Behring's Sea, and to those who have not read the treaty or the *modus vivendi*, to be given some account of these and of the case to which they relate.

The treaty between Great Britain and the United States in relation to the arbitration regarding the seal fisheries in Behring's Sea was signed at Washington on February 29th, and the ratifications were exchanged at London on May 7th, 1892. The preamble to the treaty recites that questions have arisen concerning the jurisdictional rights of the United States in the waters of Behring's Sea, and concerning also the preservation of the fur-seal and the rights of the citizens of either country as regards the taking of such seals therein; and the governments of the two countries having resolved to submit to arbitration the

questions involved have appointed their respective plenipotentiaries, namely Sir Julian Pauncefote on behalf of the Queen of Great Britain, and James G. Blaine on behalf of the President of the United States, who have agreed to some fifteen articles, respecting such arbitration.

Article I. provides that the question shall be submitted to a tribunal of arbitration to be composed of seven arbitrators, two to be named by Her Britannic Majesty, two by the President of the United States, and one each by the President of the French Republic, the King of Italy, and the King of Sweden and Norway; the seven arbitrators so named to be jurists of distinguished reputation and acquainted with the English language.

Article II. "The arbitrators shall meet at Paris within twenty days after the delivery of the counter-cases mentioned in Article IV., and shall proceed impartially and carefully to examine and decide the questions that have been or shall be laid before them as herein provided on the part of the governments of Her Britannic Majesty and the United States respectively. All questions considered by the tribunal, including the final decision, shall be determined by a majority of all the arbitrators. Each of the high contracting parties shall also name one person to attend the tribunal as its agent to represent it generally in all matters connected with the arbitration."

Article III. provides for the delivery of the printed case, accompanied by the correspondence and evidence on which each party relies, to the arbitrators, within four months from the exchange of the ratifications. By Article IV., either party may within three months deliver a counter-case, and also additional evidence in reply, and for this purpose additional time may be had if necessary, but not to exceed two months. The next Article (V.) requires the agent of each party within one month after the time for delivering the counter-case to deliver to the arbitrators and agent of the other party an argument showing briefly upon what evidence his government relies.

Article VI. "In deciding the matters submitted to the arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points:

(1) What exclusive jurisdiction in the sea now known as the Behring's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

(2) How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

(3) Was the body of water now known as the Behring's Sea included in the phrase 'Pacific Ocean,' as used in the treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Behring's Sea, were held and exclusively exercised by Russia after said treaty?

(4) Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring's Sea east of the water boundary, in the treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that treaty?

(5) Has the United States any right, and, if so, what right, of protection or

property in the fur-seals frequenting the islands of the United States in Behring's Sea when such seals are found outside the ordinary three-mile limit?"

Article VII. "If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Behring's Sea, the arbitrators shall then determine what concurrent regulations outside the jurisdictional limits of the respective governments are necessary, and over what waters such regulations should extend, and to aid them in that determination the report of a joint commission, to be appointed by the respective governments, shall be laid before them, with such other evidence as either government may submit. The high contracting parties furthermore agree to co-operate in securing the adhesion of other powers to such regulations."

Article VIII. "The high contracting parties having found themselves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it; and, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, do agree that either may submit to the arbitrators any question of fact involved in said claims, and ask for a finding thereon, the question of the liability of either government upon the facts found to be the subject of further negotiation."

Article IX. provides for the appointment of two commissioners to make the report contemplated in Article VII., who shall investigate all the facts having relation to seal life in Behring's Sea and the measures necessary for its proper protection and preservation. Article X. provides that each government shall pay the expenses of its member of the joint commission above mentioned; and Article XI., that the decision of the tribunal shall, if possible, be given within three months from the close of the arbitration upon both sides.

Article XII. "Each government shall pay its own agent, and provide for the proper remuneration of the counsel employed by it and of the arbitrators appointed by it, and for the expense of preparing and submitting its case to the tribunal. All other expenses connected with the arbitration shall be defrayed by the two governments in equal moieties."

Article XIII. "The arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them."

Article XIV. "The high contracting parties engage to consider the result of the procedings of the tribunal of arbitration as a full, perfect, and final settlement of all the questions referred to the arbitrators."

The convention or *modus vivendi*, of which the following are the Articles, was signed at Washington on the 18th of April, 1892.

"Article I. Her Majesty's Government will prohibit, during the pendency of the arbitration, seal killing in that part of Behring's Sea lying eastward of the line of demarcation described in Article I. of the treaty of 1867 between the United States and Russia, and will promptly use its best efforts to insure the observance of this prohibition by British subjects and vessels.

Article II. The United States Government will prohibit seal killing for the same period in the same part of Behring's Sea, and on the shores and islands thereof, the property of the United States (in excess of 7,500 to be taken on the islands for the subsistence and care of the natives), and will promptly use its best efforts to insure the observance of this prohibition by United States citizens and vessels.

Article III. Every vessel or person offending against this prohibition in the said waters of Behring's Sea, outside of the ordinary territorial limits of the United States, may be seized and detained by the naval or other duly commissioned officers of either of the high contracting parties, but they shall be handed over as soon as practicable to the authorities of the nation to which they respectively belong, who shall alone have jurisdiction to try the offence and impose the penalties for the same. The witnesses and proofs necessary to establish the offence shall also be sent with them.

Article IV. In order to facilitate such proper inquiries as Her Majesty's Government may desire to make, with a view to the presentation of the case and arguments of that government before the arbitrators, it is agreed that suitable persons designated by Great Britain will be permitted at any time, upon application, to visit or remain upon the seal islands, during the sealing season, for that purpose.

Article V. If the result of the arbitration be to affirm the right of British sealers to take seals in Behring's Sea within the bounds claimed by the United States, under its purchase from Russia, then compensation shall be made by the United States to Great Britain (for the use of her subjects) for abstaining from the exercise of that right during the pendency of the arbitration upon the basis of such a regulated and limited catch or catches as in the opinion of the arbitrators might have been taken without an undue diminution of the seal herds; and, on the other hand, if the result of the arbitration shall be to deny the right of British sealers to take seals within the said waters, then compensation shall be made by Great Britain to the United States (for itself, its citizens, and lessees) for this agreement to limit the island catch to 7,500 a season, upon the basis of the difference between this number and such larger catch as in the opinion of the arbitrators might have been taken without an undue diminution of the seal herds. The amount awarded, if any, in either case, shall be such as under all the circumstances is just and equitable, and shall be promptly paid.

Article VI. This convention may be denounced by either of the high contracting parties at any time after the 31st day of October, 1893, on giving to the other party two months' notice of its termination, and at the expiration of such notice the convention shall cease to be in force.

Article VII. The present convention shall be duly ratified by Her Britannic Majesty and by the President of the United States of America, by and with the advice and consent of the Senate thereof; and the ratifications shall be exchanged either at London or at Washington, as early as possible."

By virtue of Article I. of the treaty there have been appointed on the part of Great Britain, as arbitrators, Lord Hannen and Sir John Thompson; as agent,

Hon. C. H. Tupper; as counsel, Attorney-General Sir Richard Webster, Christopher Robinson, and Hon. W. H. Cross. The United States Government has appointed as arbitrators Judge Harlan, of the Supreme Court of the United States, and Senator Morgan; as agent, J. W. Foster; as counsel, E. J. Phelps (Ex-Minister), James Carter, and H. W. Blodget. The recognized ability not only of the arbitrators, but of the agents and counsel who have been selected on both sides, leaves no room for doubt that the case will be ably argued. France has appointed Baron de Courcelles (Senator) as its arbitrator. The remaining European arbitrators have not yet been appointed, but distinguished jurists will certainly be selected. It is alleged that the French Minister objected to English being the official language in the arbitration proceedings; but although it has been customary, perhaps, for international proceedings to be conducted in French, it seems worse than absurd that a dispute between two English-speaking nations should be discussed and adjusted in a foreign tongue. This age is too practical and too much an age of reason, common sense, and expediency to allow the adoption of a custom founded on mere etiquette in a case in which the circumstances neither suggest nor require it, and in which the evidence and documents must necessarily be almost exclusively in English, the language of both the high contracting parties, their arbitrators, agents, and counsel, and therefore without a perfect knowledge of which no man can be qualified to form a correct judgment on the matters in question.

Having thus laid before our readers a summary of the official documents, we will endeavour now to give a condensed but fair and tolerably sufficient *résumé* of the present state of the case itself, availing ourselves of what we find in print in other Canadian, or it may be American, papers coinciding with our own views and opinions. We find, then, that in January, 1891, President Harrison, through Mr. Secretary Blaine, sent a communication to the House of Representatives concerning the Behring's Sea controversy, in which he lays great stress on the fact of Great Britain having excluded vessels from coming within eight leagues of St. Helena when Napoleon was confined there, and also on the protection exercised by that power over the Ceylon pearl fisheries. Mr. Harrison objects to the form of the proposed arbitration, and says it will amount to something tangible if Great Britain consent to arbitrate the real questions discussed for the last four years. What were the rights exercised by Russia in Behring's Sea? Was Behring's Sea included in the Pacific Ocean? Did the United States acquire all Russia's rights? What are the present rights of the United States? And if the concurrence of Great Britain is found necessary, then, what shall be the protected limits in the close season? Secretary Blaine denies that the United States ever claimed Behring's Sea to be a closed sea, and quotes Minister Phelps, in 1888, where he says that the question is not applicable to the present case. Mr. Harrison objects to the form in which Lord Salisbury proposes arbitration, and seems to wish that a number of special points should be expressly referred to, and *not* the main and real question, "Whether the United States have any exclusive right of catching seals in Behring's Sea outside the limit of their territorial jurisdiction under international law?" in the con-

sideration of which question that of all those he mentions (including those he founds on England's precautions for preventing the escape of Napoleon from St. Helena, or for the regulation of the pearl fisheries off Ceylon) might of course be brought up as points affecting the decision, which would in fact be one determining the rights of the United States as against the rest of the world; for if British vessels have no right to take seals in the said open sea, neither have those of any other nation than the United States; nor could a close season agreed upon by Great Britain and the said States affect any country not a party to such agreement, except so far only as may be required by the comity of nations.

In his letter to Sir Julian Pauncefote (see Ottawa *Citizen*, May 5th, 1891), the President, using the pen of Mr. Blaine, continues the argument in the *Sayward* case, and re-states his six questions for the arbitrators. The first five remain as before. The sixth touching the close season, in case the concurrence of England is found necessary, is repeated with some points of detail as to the months over which it should extend and the waters to which it should apply. To these there seems no reason to object; and, on every consideration of policy and humanity, we think (though some good Canadian authorities doubt the necessity) that a close season should be established, if it be true that the time over which it is proposed to extend it is that in which the seals found in the open sea are mainly females seeking food for themselves and their young. The British Parliament, we believe, established an international close season for oil-producing seals, but had no fur-bearing ones to deal with. The difficulty seems to be that if the arrangement were only made between Great Britain and the United States, it would close the sea to them and leave it open to all other nations who have now the same rights as Britain, and a general international agreement would be necessary, for there are many other nations who would take advantage of its absence to the utmost extent.

The President then speaks of damages, and not unnecessarily, for if either party has sustained damages from the illegal acts of the other, that other must pay the amount, as we did in the Alabama case, and the United States in that about the fisheries. He then repudiates the imputation that he called Behring's Sea a *mare clausum*, using words as vehement, though not quite the same, as Mr. Punch puts in the mouth of a seal rising through a hole in the ice, on either side of which John Bull and Jonathan are standing, and bitterly squabbling. The seal begins with "*Mare clausum* be blowed. That's all Blaine's big bow-wow. Give us a close time. We shall be very grateful," and urges the same reasons as we have done. The President then complains that Lord Salisbury has not answered his verbal difficulties about geographical and diplomatic expressions, which may very well be left to the arbitrators, and winds up with a new bit of argument in the "*tu quoque*" or "you're another" style, by urging that a British Act of Parliament makes it criminal to fish in certain ways in a tract of water off the Scottish shore, containing some 2,700 square miles, far outside the three-mile limit; and that therefore Mr. Bull cannot object to the United States doing the same thing with respect to a smaller tract outside the Pribiloff Islands in Behring's Sea. As Canadians we may not perhaps object to the United States using this peculiar figure of rhetoric, inasmuch as some of our smaller, sometimes, but never—well, hardly

ever—any of our greater statesmen use it; but however powerful its rhetorical, we totally deny its logical effect, in order to which the cases supposed to balance each other should be alike, while neither in the Ceylon Sea case, nor the Scotch one, does the President assert that the British Government seized a foreign vessel, carried her to a British possession and caused her to be condemned as forfeited for contravention of an alleged prohibition, as the United States did the *Sayward;* and it is only fair to hold that when a legislator prohibits the doing of any act, he must be understood to mean that such prohibition shall apply only to persons over whom his jurisdiction extends, though it is not necessary or usual to express this limit in every case. The President concludes by repeating the claim—that seals living on islands belonging to the United States, and returning to them at night, are the property of the United States, even when found sixty miles outside the three-mile limit, and may be claimed and seized as such. The point may be left to international law and the arbitrators. *Fiat justitia* is of course the honest wish of both sides; though John Bull looks at the question through British glasses, and Uncle Sam through American.

May we not hope that the difficulty between Lord Salisbury and Mr. Harrison may be settled by the arbitrators in a manner at once honourable and satisfactory to both parties? There was a difficulty, we believe, as to the renewal of the *modus vivendi;* but this has been arranged, as we thought and said it ought to be. Unfortunately there is no parliament of nations, and therefore no written act defining the international law in the case before us; but it has always been understood that the exclusive jurisdiction of a country over the seas adjoining it extends only to three marine miles from the shore: and as this rule has, beyond all question, been allowed and insisted on by England and the United States in all other places, it rests on the United States to show that it does not apply to Behring's Sea. On the Atlantic side both parties have held it as unquestionable. All the arguments Mr. Harrison has urged against its applicability to the present case have been abandoned by him or shown to be futile. Russia, from whom the United States hold their title to Alaska, never claimed such exemption, or exercised it against England, who therefore cannot be said to have acquiesced in it: she disputed it, and so did the United States, until they bought Alaska. Mr. Harrison's "*tu quoque*" arguments fail, as we have shown; neither England nor the United States ever declined to take the fish outside the three-mile line because such fish may have been bred and fed inside that line; and if Pribiloff seals go outside the three-mile line to catch fish for food, they feed on fish to which the United States have certainly no exclusive claim.

It would seem therefore that the arguments cited on the United States' side are futile; but as many of our neighbours, whose opinions are entitled to the utmost respect, believe them to be valid (at least we are willing to assume good faith on their part), we have always held the arbitration to be most desirable, and we have full confidence that the decision of the men appointed on it will command the assent of the "other powers" which the treaty wisely provides the high contracting powers shall endeavour to obtain: for if the United States have the rights they claim, they have them against the world, and no other nation has

a right to catch a seal in Behring's Sea if England has not. The *modus vivendi* has been continued, as we have always contended it should be. The arbitration will settle the vexed question whether the United States have or have not the exclusive right they claim, and also that relating to a close season if necessary; a point on which it is said the experts employed by the contending parties do not agree. The costs of the arbitration and of the continuance of the *modus vivendi* must be paid by the party by whose fault or error they are occasioned, and will be as nothing in comparison with the mischief which would attend the prolongation of this dispute between two nations whose relations should be more friendly and between whom "a small unkindness is a great offence."

COMMENTS ON CURRENT ENGLISH DECISIONS.

(Law Reports for June—*Continued.*)

ADMIRALTY—COLLISION—LATENT DEFECT IN STEERING APPARATUS—INEVITABLE ACCIDENT—EVIDENCE, ONUS OF PROOF.

In *The Merchant Prince* (1892), P. 179, the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) have reversed the decision of the President, noted *ante* p. 134, on the ground that the defendants had failed to satisfy the burthen of proof by showing that the collision was in fact occasioned by inevitable accident. To do this, the Court of Appeal held that it was incumbent for them to show that the cause of the accident was one not produced by the defendants, and the result of which they could not have avoided. Here it appeared that the defendants knew of the tendency of a new chain to stretch, and therefore that an accumulation of links at the leading wheels of the steering gear might cause jamming, and, considering the crowded state of the river when the accident occurred, they might have prevented the accident by having hand-steering gear ready for immediate use in case of necessity.

MORTGAGE—PATENT—CO-OWNERS OF PATENT BY PURCHASE—ONE CO-OWNER MORTGAGEE OF SHARE OF OTHER CO-OWNER—PATENT WORKED BY MORTGAGEE CO-OWNER—REDEMPTION—ACCOUNT.

Steers v. Rogers (1892), 2 Ch. 13, was a redemption action brought by one co-owner of a patent against his co-owner, to whom he had mortgaged his share of the patent. The patent had been acquired by the plaintiff and defendant by purchase, and subsequently to the mortgage of the plaintiff's share the defendant had worked the patent by making machines thereunder, which he had sold at a profit, but he did not grant licenses, nor receive royalties. At the trial, judgment was given directing (1) an account of what was due on the mortgage; (2) an account of profits come to the hands of the defendant as mortgagee. On bringing in his account, the defendant claimed that the profits he had derived from working the patent were not received by him as mortgagee, but as co-owner of a moiety of the patent, and that he was not accountable therefor to the plaintiff. This contention was sustained by Romer, J., and by the Court of Appeal (Lindley and Kay, L.JJ.), and it was held that the form of the judgment did not preclude the defendant from taking that position.

CONTRACT BY LETTERS—ACCEPTANCE OF OFFER—TIME OF ACCEPTANCE—WITHDRAWAL OF OFFER.

Henthorn v. Fraser (1892), 2 Ch. 27, draws a very important distinction between the case of an acceptance by letter of an offer and the withdrawal by letter of an offer, as to the time they respectively take effect. The facts of the case were that the plaintiff, who lived at Birkenhead, called at the office of the defendants in Liverpool to negotiate for the purchase of some houses belonging to them. The defendants' agent signed and handed to the plaintiff a note giving him the option of purchase for fourteen days at £750. The next day the agent posted to the plaintiff a withdrawal of the offer. This withdrawal was posted between 12 and 1, and did not reach Birkenhead till after 5 p.m. In the meantime the plaintiff, at 3:50 p.m., had posted to the agent an unconditional acceptance of the offer, which was delivered after the defendants' office was closed, and was opened by the agent next morning. The Court of Appeal (Lord Herschell, and Lindley and Kay, L.JJ.) were of opinion that the circumstances under which the offer was made indicated that it must have been within the contemplation of the parties that according to the ordinary usages of mankind the post might be used as a means for communicating the acceptance of it, and that the acceptance was complete as soon as it was posted, though the offer was not made by post. They were also of opinion that the withdrawal of an offer is of no effect until brought to the mind of the person to whom the offer was made, and that, therefore, a revocation by post does not operate from the time of posting it. They, therefore, reversed the judgment of the Vice-Chancellor of Lancaster, and decreed a specific performance of the contract.

CONTINGENT INTEREST—INCOME ON FUND PRIOR TO HAPPENING OF CONTINGENCY.

In re Burton (1892), 2 Ch. 38, although an application for maintenance under the Conveyancing and Law of Property Act, 1881, yet incidentally involved a question of law which deserves to be noticed. A testator specifically devised scheduled property, "whether real or personal," to trustees upon trust for his daughter for life, and after her decease for her children—sons at 21, daughters at that age or marriage: he then devised his residuary estate, real and personal, as to one moiety thereof on the same trusts as declared regarding the specifically devised freehold. The scheduled property, in fact, only comprised freeholds. The daughter died leaving two infant children, and the question propounded for adjudication by Chitty, J., was whether the infants were contingently entitled to the income as well as the principal of the specific and residuary gifts, and consequently whether under the Act the trustees might apply the income which should accrue during their minority towards their maintenance. He held that they were. In arriving at that conclusion, he dissented from the decision of North, J., *In re Jeffery* (1891), 1 Ch. 675, noted *ante* vol. 27, p. 33.

VENDOR AND PURCHASER—PARCELS—OVERHANGING BUILDING—CUJUS SOLUM EJUS EST USQUE AD CŒLUM.

Laybourn v. Gridley (1892), 2 Ch. 53, is an illustration of the maxim, *Cujus solum ejus est usque ad cœlum.* A vendor owned adjoining parcels of land, on one

of which was erected a loft which projected over the other parcel. He devised the parcels as occupied to different persons, and subsequently conveyed the overhung premises, by reference to a ground-floor plan, subject to the lease of those premises, but not expressly subject to the lease of the overhanging premises. The overhanging premises were subsequently sold to the defendant's predecessor in title. The action was brought to restrain the defendant from trespassing on the plaintiff's premises, the trespass complained of being the user of that part of the loft which projected over the plaintiff's lot, which the defendant had enlarged by building it up higher. North, J., was of opinion that the conveyance to the plaintiff conveyed that part of the loft which projected over the land conveyed to him, and that the defendant had, therefore, no right at all in that part of the loft: and even if he had any, he would not have been justified in enlarging it by extending it higher up, as he had done. In connection with this case it may be useful to refer to *Potts v. Boivine*, 16 A.R. 191, where our Court of Appeal held that the maxim in question is a rebuttable presumption, and was rebutted by the circumstances appearing in that case.

ESTATE PUR AUTRE VIE—CONTINGENT REMAINDER IN FEE—SPECIAL OCCUPANT—DOWER.

In re Michell, Moore v. Moore (1892), 2 Ch. 87, was a special case to determine the rights of the plaintiff and defendant in certain real and personal estate which both parties claimed through John G. C. Moore. The plaintiff was his father and heir-at-law, sole next of kin, and legal personal representative, and the defendant was his widow. At the time of his death John G. C. Moore was entitled to an equitable estate in the property in question for the life of the plaintiff, his father, determinable on the birth of a second son to his father; and he was also entitled to a vested legal estate in fee in the property in remainder expectant on his father's death, and the failure of the limitations to his father's second and other sons, if any there should be. One of the questions was in what character the plaintiff held the property, and whether or not as part of the estate of John G. C. Moore. Stirling, J., was of opinion that the plaintiff took the rents and profits of the real estate as special occupant, and the income of the personalty as the legal personal representative of John G. C. Moore, and consequently during the life of the plaintiff, and so long as he had no second son, the income of the personal estate would form part of the personal estate of John G. C. Moore, but that the income of the realty would not. The other question was whether the defendant was entitled to dower. It was claimed that the deceased J. G. C. Moore's estate was equal to an estate of inheritance in possession, but Stirling, J., considered that the interposition of a succession of estates tail in favour of the plaintiff's second and other sons, if any, although they might never arise, nevertheless prevented the interest of John G. C. Moore being equal to an estate of inheritance in possession, and he, therefore, held the defendant was not entitled to dower.

SAVINGS BANK—WINDING UP—PRESIDENT—NEGLECT OF RULES—NON-ATTENDANCE AT MEETINGS—LIABILITY OF PRESIDENT FOR DEFAULT OF OFFICERS.

In re Cardiff Savings Bank (1892), 2 Ch. 100, was an attempt to make a president of a savings bank personally liable for the fraud of an inferior officer of the

bank under the following circumstances. By the rules of the bank it was provided that the business should be conducted by a president, trustees, and managers, and that no transaction of deposit and repayment should take place without the presence of at least one trustee or manager in addition to the paid officer of the bank, and that lists of the depositors' balances should be extracted and certified by the auditors, and kept open for the inspection of the depositors. These rules were not in fact complied with, and their non-observance resulted in the perpetration of frauds upon the bank by its paid officer, in consequence of which the bank suspended payment in 1886. The Marquis of Bute accepted the office of president, and was so described in all the books and documents issued by the bank. He attended a meeting of the trustees and managers in 1869, and signed the minutes, but took no further part in the business of the bank. He was unaware of the irregularities, and had received copies of the reports and circulars issued by the bank, which, in the opinion of the court, justified him in believing that its affairs were being conducted in conformity with the rules. Such being the case, Stirling, J., held that the Marquis was not liable, that his neglect to attend meetings of the bank was not the same as neglect or omission of the duties which he ought to have performed at those meetings. The decision may be sound, but it seems to lead to the conclusion that if all the trustees and managers, including the president, had neglected to attend any of the meetings none of them would have been liable, which seems to be rather absurd. Stirling, J., seems to think that such a state of things could not arise without some of the trustees being aware of it, that it is the knowledge of the irregularity which creates the liability; but this seems to be introducing a new principle into the law governing the liability of trustees for neglect of duties. Perhaps if the Marquis had been found liable, it might have resulted in fewer noble lords in future lending their names to inspire public confidence in commercial enterprises over which they have no intention of exercising any efficient supervision.

COMPANY—LOSS OF CAPITAL—DIVIDEND, RESTRAINING PAYMENT OF—WRITING OFF LOSSES.

Bolton v. *Natal Land and Colonization Co.* (1892), 2 Ch. 124, was an action by a shareholder of the defendant company to restrain the payment of a dividend on the ground that if the losses the company had sustained were to be recouped there would be no profits out of which the dividend could be paid, and that they were, in fact, attempting to pay the dividend out of the capital. The company was formed for buying and selling land, etc., and the articles of association provided that dividends should be paid out of the net profits. In 1882 the company lost by a bad debt £72,000, and they met this by writing up in the balance sheet of that year the value of their land at £69,000 above cost price, and brought this increased price down into the credit side of the profit and loss account as an offset to the bad debt, which was in this way treated as written off. In 1885 the company made a profit on revenue account, out of which it was proposed to pay a dividend. The plaintiff claimed that a dividend could not properly be paid until the loss of 1882 had been recouped. But Romer, J., following *Lea* v. *Neuchatel Asphalte Co.*, 41 Ch.D. 26 (noted *ante* vol. 25, p. 362), held that the

company was not bound to keep its capital intact, and that even though the mode of providing against the loss of 1882 were objectionable that did not preclude the payment of dividends arising from the profits of the business in any subsequent year without first restoring the capital then lost.

The Law Reports for July comprise (1892) 2 Q.B., pp. 1-152; (1892) P., pp. 217-239; (1892) 2 Ch., pp. 133-277; and (1892) A.C., pp. 165-297.

ASSIGNMENT OF DEBT—NOTICE OF PRIOR CHARGE—DEBENTURES CREATING CHARGE ON ALL PROPERTY —SOLICITOR—CONSTRUCTIVE NOTICE.

The English and Scottish Mercantile Investment Trust v. *Brunton* (1892), 2 Q.B. 1, was an interpleader issue between the debenture-holders of a company, on the one hand, and the assignees by way of mortgage of a certain debt due to the company from an insurance company, and whose mortgage was made subsequent to the debentures, on the other. The debentures were made a charge on all the company's property, both present and future, and they contained a condition that the charge thereby created was to be a floating security, but so that the company should not be at liberty to create any mortgage or charge in priority to the debentures. It appeared that the solicitor for the mortgagees had notice of the issue of debentures, and that he had reason to think that they were a charge on the present and future property of the company; and it also appeared that debentures were in use restraining companies from creating any mortgage or charge in priority to the debentures, but that the solicitor of the mortgagees had never seen this form. The mortgage was taken without inquiry as to the debentures, and notice thereof was given to the insurance company. The company afterwards went into liquidation, when a contest arose between the debenture-holders and the mortgagees as to the right to the debt thus assigned. Charles, J., before whom the issue was tried, held that the solicitor was not guilty of culpable negligence in not making inquiry as to the debentures, on the ground that the debentures were of a class of documents which might or might not affect the title of the company to the debt in question, and therefore that the omission of the mortgagees' solicitor to inquire as to them would not affect the mortgagees with constructive notice of the terms of the debentures: and the mortgagees having first given notice to the insurance company of their assignment were therefore entitled to priority over the debenture-holders.

PRACTICE—SPECIALLY INDORSED WRIT—COMMON MONEY BOND—8 & 9 WM. 3, C. 11, S. 8—4 & 5 ANNE, C. 16, SS. 12, 13—ORD. III., R. 6; ORD. XIII., R. 14; ORD. XIV., RR. 1, 4, 6 (ONT. RULES 245, 739, 741, 743).

In *Gerrard* v. *Clowes* (1892), 2 Q.B. 11, the plaintiff having applied for judgment under Ord. xiv., r. 1 (Ont. Rule 739), and the defendant having obtained conditional leave to defend, the defendant now appealed from the order on the ground that the judge had no jurisdiction to make it because the writ was not specially indorsed. The claim indorsed was for £500 due on a bond made by the defendant as security for the payment of £250. For the defendant it was

contended that the claim was in effect one for damages, and it was contended that *Tuther* v. *Caralampi*, 21 Q.B.D. 414 (noted *ante* vol. 24, p. 578), was a decision in point; but A. L. Smith and Laurance, JJ., were of opinion that that case only applied where breaches have to be assigned, and that in the present case the claim might be specially indorsed, and that in default of the defendant complying with the condition on which he had obtained leave to defend the plaintiff was entitled to judgment for the £250, notwithstanding that the plaintiff had claimed by his indorsement more than he was entitled to. They also held that such bonds are within the statute of 4 & 5 Anne, c. 16, and not within the statute 8 & 9 Wm. 3, c. 11, because only one breach can be assigned, and the penal sum is not for the performance of several covenants.

SPECIAL INDORSEMENT—CLAIM FOR INTEREST—ORD. III., R. 6; ORD. XIV., R. 1 (ONT. RULES 245, 739).

In *The Gold Ores Reduction Co.* v. *Parr* (1892), 2 Q.B. 14, the question as to the circumstances under which a claim for interest can be made the subject of a special indorsement is again discussed. The action was for calls on shares, and by the indorsement interest was claimed on the principal money from the date of default until judgment. No agreement to pay interest was alleged. On a motion to sign judgment under Ord. xiv., r. 1 (Ont. Rule 739), it was objected that by the addition of the claim for interest the writ was not "specially indorsed," and therefore there was no jurisdiction to order judgment; to which objection Mathews and Smith, JJ., gave effect, holding that the cases established that in order to constitute a good special indorsement where interest is claimed, the writ must show that the interest claimed is payable under a contract, or, as in the case of a bill of exchange, is an amount fixed by statute. As we have already remarked, the decisions in Ontario are in conflict with this line of decision (see *ante* p. 296).

PRACTICE—DISCOVERY—ACTION FOR PENALTIES.

Saunders v. *Wiel* (1892), 2 Q.B. 18, was an action brought to recover a sum of money payable under The Patents, Designs, and Trades Marks Act, whereby it is enacted that "any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding £50 to the registered proprietor of the design, who may recover such sum as a simple contract debt by action." The plaintiff having sought to examine the defendant for discovery, he refused to answer on the ground that his answer might make him liable to the penalties sought to be recovered. A master having disallowed the objection, an appeal was taken to Denman, J., who referred the matter to the Divisional Court. The plaintiffs relied on *Adams* v. *Batley*, 18 Q.B.D. 625 (noted *ante* vol. 23, p. 229), where it was held that an action to recover £40 for infringement of a musical copyright was not an action for penalties so as to preclude the plaintiff from obtaining discovery from the defendant. Day and Charles, JJ., however, allowed the appeal, and held that *Adams* v. *Batley* did not apply because in that case the amount sued for was recoverable as "damages," and not as a penalty.

PRACTICE—MANDAMUS—SECOND APPLICATION AFTER DISCHARGE OF FIRST.

In *The Queen* v. *Mayor of Bodmin* (1892), 2 Q.B. 21, Day and Charles, JJ., followed *Re Thompson*, 6 Q.B. 721, and held that where an application for a prerogative writ of mandamus had once been made and refused on the ground of the insufficiency of materials (in this case for want of proof of a prior demand and refusal to do the act required to be done), the court would not entertain a second application in the same matter on additional materials.

JUSTICES—CRIMINAL LAW—PRACTICE—TWO INFORMATIONS ON SAME FACTS—HEARING OF INFORMATIONS—CONVICTION, ILLEGALITY OF.

Hamilton v. *Walker* (1892), 2 Q.B. 25, was a motion to quash two convictions under the following circumstances: Two informations were preferred against the appellant charging him with two separate offences. Both informations were based on the same facts. After hearing the first information, without deciding it, the court proceeded with and heard the second, and after the second had been heard the appellant was convicted of the offence charged in the first. He was also convicted on the second information. On a case stated by the magistrates as to whether the appellant could be legally convicted at the same time for both offences charged, the appellant raised the question whether the two charges could be properly heard together, and that what had been done practically amounted to two convictions for the same offence, Pollock and Williams, JJ., quashed both the convictions, holding that it was improper to try the cases together, as had been done; that it, in effect, deprived the appellant of the defence of *autrefois acquit* or *autrefois convict*, and was an invasion of a principle of the criminal law that each case ought to stand on its own merits, and should be decided on the evidence given with relation to that particular charge.

Legal Scrap Book.

BICYCLISTS' RIGHT OF WAY.

In pronouncing his decision in *Jones* v. *Parkinson* in the Manchester (Eng.) County Court, the learned judge took occasion to remark that the moment a driver noticed that a bicyclist was in his way and that it would not be possible to pass along the road without driving over him, it was his duty by all means in his power to avoid him. If the driver chose to go on, and an accident occurred, he must take the consequences.

SINGULAR OFFICIAL MISTAKE.

It was a curious mistake that occurred in connection with the vacancy in the office of registrar of the St. Asaph (England) Court of Probate. A letter was received from the registry office at London by Mr. Pierce Lewis, of Rhyl, appointing him registrar, which letter was supplemented by a confirmatory telegram, and Mr. Lewis entered upon his duties. He has since received informa-

tion that his appointment was a mistake, and that it was intended that Mr. Pryce Lewis, another solicitor, should have the office. The first-named registrar is now considering his peculiar position.

IN PERSON BY ATTORNEY.

In *Ex parte Gordon*, 28 *Pac. Rep.* 489, a father failed to pay the amount adjudged for the support of his infant child, and was ordered to appear *in person* before the court to show cause why he should not be punished for contempt. On the return his attorney appeared and was prepared to show cause, but the court refused to hear him, and, issuing a writ of attachment, caused the father's arrest for contempt in not appearing. An appellate court set aside the arrest, holding that he "had a right to appear by attorney." Observe the paradox of appearing *in person by attorney*. Some American decisions seem to hold everything except water.

WHOLESALE RECOVERY OF LAND.

It is stated that an action is about to be brought to recover possession of a large tract of land in Texas, on which the cities of Dallas and Fort Worth now stand, and the value of which is estimated at one billion dollars. It appears that one Colonel Ross was granted this land by the Mexican Government for his services when Mexico was fighting against Spain for its independence. The recognition by the United States Government, at the time when it annexed Texas, of the claims of those who had received grants of Texas land from the Mexican Government seems to have encouraged this action. Suits to recover large tracts of land in Philadelphia, New York, and other cities have hitherto failed, and this one will be watched with more of curious interest than expectation of the plaintiff's success.

UNCLAIMED MONEYS.

This JOURNAL called attention a year ago (*ante* vol. 27, p. 481) to an advertisement inquiring for representatives of shareholders in the West New Jersey Society in respect of shares upon which no dividends had been paid for two hundred years. *The Law Journal*, adverting to this same advertisement, makes some practical suggestions. First, that all companies possessed of such stock and dividends should be compelled to advertise particulars, but be entitled to deduct the expenses of advertising from the amount ultimately paid to the successful claimant: second, that if not paid within a certain time, such stock and dividends be forfeited to the existing shareholders; third, that the company should be guaranteed from further claims, and the successful claimant given an indisputable title; and, fourth, that the public might be benefited by levying a tax on the amounts so paid over. This latter tax would be less felt than is a succession duty, since any money so recovered would be from its nature a windfall. What extent of advertising would discover owners among those of us whose ancestors emigrated to this New World is a question, but the scheme suggested should be worth trying.

A.H.O'B.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

HILARY TERM, 1892.

Friday, 6th February, 1892.

Convocation met at 11 a.m.

Present—The Treasurer, and Messrs. Barwick, Lash, Shepley, Blake, S. H., Hoskin, Bruce, Osler, Kerr, Irving, Watson, Aylesworth, and Robinson.

Ordered, that the question of the confirmation of the minutes be postponed till 12.15 p.m.

Mr. Lash, from the Legal Education Committee, reported on the case of S. A. C. Greene that he had passed his examination, that his papers are now regular, and that he is entitled to receive his Certificate of Fitness. Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Osler, from the Reporting Committee, reported as follows:

(1) The committee recommend printing the Cartwright Digest as an appendix to the Ontario Digest upon the terms proposed by Mr. Cartwright, namely, at the total cost of $300 for the edition of 1,500 copies. (2) The committee advise that no further action be taken on the question of supplying the Supreme and Exchequer Reports to the profession until further information as to cost and demand be ascertained. (3) The committee advise Convocation not to grant any aid to the proposed Digest of cases by Mr. Holmested.

Ordered for immediate consideration, paragraph by paragraph; when paragraph 1 was adopted; paragraph 2, consideration deferred till next meeting of convocation; paragraph 3 adopted.

Mr. Irving, from the Finance Committee, presented their Report on the revenue and expenditure, as follows:

The Finance Committee respectfully beg leave to place before Convocation a statement in detail of the revenue and expenditure of the Law Society for the year ending 31st December, 1891, prepared pursuant to R.S.O., chap. 145, section 53.

The said statement has been audited on 2nd February, 1892, by Mr. Eddis, the auditor appointed by the Society to audit and report upon the finances of the Law Society.

The committee observe that the statute provides the statement is to be audited by auditors, but the practice has been to submit the same to one auditor.

The committee beg leave to add that the audit actually made being deemed sufficient the statement, subject to the approbation of Convocation, is ready to be furnished to every member of the Bar who has paid all his Bar fees to the Law Society.

Dated February 5, 1892.

STATEMENT OF REVENUE AND EXPENDITURE

FOR THE YEAR ENDING 31ST DECEMBER, 1891, PURSUANT TO R.S.O., CAP. 145, SEC. 53.

REVENUE.

Certificate and Term Fees for 1890-1891 collected after 1st January, 1891, but payable in Michaelmas, 1890. Barristers and Solicitors at $17.....	$17,354 35

Barristers at $2	$ 100 00	
Solicitors at $15	2,565 00	
Fines collected	311 00	
Certificates and Term Fees in arrear prior to Michaelmas, 1890	1,045 25	
		$21,375 60
Certificate and Term Fees for 1891-1892 payable in Michaelmas, 1891:		
Barristers and Solicitors at $17	$19,564 00	
Barristers at $2	44 00	
Solicitors at $15	2,490 00	
	$22,098 00	
Less Fees returned	386 00	
		21,712 00
Notice Fees		442 00
Solicitors' Examination Fees	$ 8,420 00	
Less Fees returned	160 00	
		8,260 00
Students' Admission Fees	$ 3,720 00	
Less Fees returned	160 00	
		3,560 00
Call Fees in Special Cases	$ 1,573 00	
" " (Ordinary)	13,237 28	
	$14,810 28	
Less Fees returned	1,093 00	
		13,717 28
Interest and Dividends		4,635 99
Law School Tuition Fees	4,065 00	
Less Fees returned	25 00	
		5,040 00
Rowsell & Hutchison, for Reports sold up to 31st December, 1890		1,226 95
Fines, Lending Library		13 25
Fees on Petitions, Diplomas, etc		165 00
Telephone Office, collected for commission and messages		160 13
County Library Loans returned:		
Hamilton	$ 100 00	
Bruce	10 80	
Essex	30 00	
		140 80
		$80,449 00

EXPENDITURE.

REPORTING:		
Salaries—		
Editor	$2,000 00	
Reporter Q.B.D	1,200 00	
" C.P.D	1,200 00	
" Chy.D	1,200 00	
" Chy.D	1,200 00	
" Court of Appeal	1,000 00	
" Court of Appeal	1,000 00	
" Practice	900 00	
		$9,700 00
Insurance, one year, on Reports at Rowsell & Hutchison's		90 00
Rowsell & Hutchison, printing Reports		5,957 01
Notes of Cases, *Canada Law Journal*	126 00	
" " *Canadian Law Times*	147 00	
		273 00
		$16,020 01

LAW SCHOOL:			
Salaries—			
Principal	$ 4,000 00		
Four Lecturers at $1,500 per annum each	6,000 00		
Examiners, $250 each	750 00		
	$10,750 00		
Scholarships	560 00		
Printing Curriculum in *Law Journal*	25 00		
Stationery and Printing	411 25		
Attendance	118 75		
			$11,865 00
EXAMINATIONS:			
Salaries—Examiners in respect of Old Curriculum	730 00		
Printing and Stationery	182 00		
" Curriculum in *Law Journal*	25 00		
Medals	24 25		
			981 25
LIBRARY:			
Librarian from 15th December to 31st December, 1891	$ 66 50		
Assistant Librarian from 1st September	266 67		
Temporary Assistant, two months and a half	110 50		
Night Attendant in Library	164 25		
Books	3,118 03		
Binding	543 65		
Repairing	103 20		
Stamping	22 13		
Dusting Books	36 75		
Ice for Filter	8 50		
			4,440 8
COUNTY LIBRARY AID:			
Hamilton	$ 512 50		
Middlesex	395 00		
Perth	54 00		
Bruce	40 00		
Wellington	80 00		
"	77 00		
Lindsay	78 34		
Carleton	256 50		
Essex	196 40		
York	918 00		
Norfolk	55 00		
Brant	102 20		
Norfolk	160 00		
Perth	250 00		
Simcoe	610 00		
Frontenac	42 00		
Hastings	1,000 00		
Wellington	19 50		
			4,846 44
SECRETARIAT, ETC.:			
Secretary and Sub-Treasurer, twelve months	$ 2,000 00		
Senior Assistant, nine months	750 00		
Gratuity on his retirement	500 00		
Accountant, posting books during illness of an Assistant	110 00		
Junior Assistant, eight months	533 33		
Temporary Assistant, July and August	139 96		
Caretaker (Gilly)	306 25		
" (Bowers)	214 28		
Cheque Book, $24.50, half premium on guarantee of Sub-Treasurer, $20.00	44 50		
			4,598 32

LIGHTING, HEATING, AND WATER:			
Gas	$ 327 72		
Incandescent Lighting	302 13		
		$ 629 85	
Renewing kitchen range	50 75		
Gas stove	45 60		
Fuel	97 80		
Ontario Government, for heating with steam, season 1890-91	890 00		
		1,084 15	
Water		71 58	
Repairs to Apparatus		11 26	
INSURANCE, three years on $120,000, viz., East Wing and contents, $65,000; Law School building, $15,000; Books in Library, $40,000	1,128 66		
Plans to attach to policies	12 00		
		1,140 66	
GROUNDS:			
Gardener	169 32		
O'Brien (labour)	363 50		
Rolling lawn	2 94		
Tools	2 87		
Flowers	50 00		
Manure	32 50		
Snow cleaning	34 83		
		655 96	
ADDITIONS, ALTERATIONS, AND REPAIRS:			
Mason work in basement	675 52		
Kalsomining and painting Treasurer's room	13 70		
Kalsomining and painting Secretary's apartments	75 00		
Kalsomining, painting, papering, and glazing east wing and basement	592 55		
Plastering east wing and basement	41 50		
Iron screens for windows	50 00		
East wing and basement, carpenter work	249 65		
Plumbing Lavatory	69 33		
Repairs	43 80		
Architect's Commission	87 16		
		1,898 21	
PRINTING, ADVERTISING, AND STATIONERY:			
Law Journal, Résumé, and Advertisement	103 13		
Printing	196 00		
Stationery	419 85		
		718 98	
Advertising:			
Mail	26 28		
Empire	19 50		
Globe	19 50		
Ontario Gazette	6 70		
Paid for Papers	14		
		72 00	
LAW COSTS:			
Solicitor's Allowance	300 00		
Solicitor's taxed costs, *re* Hands, *re* McDougall, *re* Donovan, and *re* McMillan	257 28		
Re Fisher, Copies of Evidence, etc	11 70		
		568 98	
FURNITURE—Carpets and Barristers' Wardrobes		584 40	

TELEPHONE OFFICE:		
Rent of Telephones	$ 100 00	
Salary of Telegraph Operator	414 00	
Messenger	118 00	
		$ 632 00
MISCELLANEOUS:		
Scrutineers at Election of Benchers		480 00
Mr. Read, compiling Official Record		100 00
Engrossing addresses *re* the deaths of Sir John A. Macdonald and Mr. Morris		30 00
H. R. Hardy, Official Law List and Legal Chart additional for 1890 and 1891, and copies of Law List		256 00
Postage		101 41
Portraits of Chief Justices Elmslie and Powell		300 00
Term and Committee Lunches:		
Prior to 31st December, 1890	85 36	
Prior to 18th May, 1891	247 10	
Easter Term, 18th May, to end of 1891	290 33	
		622 73
Petty Disbursements		45 31
House Expenses, including sundries for caretakers of Law School and East Wing		236 22
Auditor's Fee		100 00
EXPENDITURE ON NEW BUILDING FOR LAW SCHOOL:		
Benjamin Brick, masonry, etc	$13,034 00	
J. C. Scott, carpenter	8,359 43	
Duthie & Sons, roofers	592 00	
Douglas & Co., galvanized iron	506 00	
C. R. Rundle, plasterer	1,069 00	
Pendrith & Hutton, founders	1,528 00	
Bennett & Wright, plumbers	1,688 00	
O'Connor, painter	1,000 00	
Gart & Aitchison, mineral wool	392 00	
Smead, Dowd & Co., furnaces and ventilating	1,775 00	
Bryce Bros., sidewalk	40 00	
W. G. Storm, Architect's fees	1,570 39	
Paid Counsel for revising and settling contract for building, and copies of contract	37 78	
		31,591 60
		$84,682 62

Audited and found correct.

HENRY WM. EDDIS, F.C.A.,
Auditor.

TORONTO, 2nd February, 1892.

Ordered for immediate consideration and adopted.

Mr. Irving, from the Finance Committee, presented their report on the letter of Rowsell & Hutchison referred to them with power to act, informing Convocation that they had after enquiry ordered payment of the amount.

Ordered for immediate consideration and adopted.

To the Benchers of the Law Society in Convocation assembled:

With reference to that part of the letter of 29th December, 1891, addressed by Messrs. Rowsell & Hutchison to the secretary, relating to the Digest in course of preparation, in which they write as follows:

"With regard to the Digest we are printing, there have been 1408 pages (columns) actually printed off, and a large amount of matter is in type being revised for press.

"The value of the work actually done so far amounts to about $2000, and we have not received any payment on the work. It would be a very great convenience to us if the Law Society would give us a payment of a round sum, say, $1500, on the Digest account." Which letter was referred by Convocation on 29th December, 1891, to the Finance Committee with power to act.

The Finance Committee reported that the minutes of Convocation of 31st December, 1889, on the subject as follows:

Mr. Osler, from the Reporting Committee, submitted the following estimate of the cost of the Digest, namely:

1500 copies—Printing	$3 500	
Compiling	3 000	
Editing	750	
		$7250

and recommended that the committee be instructed to arrange for the publication of the Digest set forth in the prospectus, the same to be issued to subscribers taking within three months of publication at $7.50.

The Report was adopted on the question of the new Digest and the price to be charged. Journal, vol. 9, pages 673, 674.

The Finance Committee cannot find that the Reporting Committee ever reported their action on the instruction given by the above order; and as the prospectus does not appear on record in the society's books, we now respectfully supply that deficiency, the said propectus being in words and figures following:

The proposed consolidated Digest will contain in all 62 vols., 44 and 45 U.C.R. 27, 28, and 29 Grant, 31 and 32 C.P., vols. 1 to 19 inclusive of the Ontario Reports, vols. 4 to 17 inclusive of the Appeal Reports, vols. 8 to 13 inclusive of the Practice Cases, vols. 3 to 16 inclusive of the Supreme Court Reports, Hodgins' Election Cases, and vol. 1 of Election Cases.

This will include all Ontario cases published up to November 1st, 1890, or thereabouts. It is estimated that it will contain from 1250 to 1300 pages, or from 2500 to 2600 columns, which will include a table of cases, doubled, *i.e.*, with plaintiffs' and defendants' names and a table of cases reversed, etc.

The cost of the compilation will be $3750, and the cost of printing $3500; in all, the sum of $7250.

The compiler states his ability to have it ready for the printer by November, 1891; and if nothing unusual occurs, the printer states that he can have it ready to issue by the end of vacation, 1892. (This includes Cartwright's 4 vols.)

The Reporting Committee had before them when considering the terms of the prospectus a letter from Mr. F. J. Joseph, and one from Messrs. Rowsell & Hutchison. These letters are not on file, but Messrs. Rowsell & Hutchison have supplied the Finance Committee with a copy of the proposal made by them to the Reporting Committee, and which the Finance Committee have no doubt is correct and in accordance with the terms recommended by the Reporting Committee, and this document also it being desirable to have on record is now set forth as follows:

Copy of estimate for Digest given to the Reporting Committee, December 30th, 1889, by Messrs. Rowsell & Hutchison:

"Estimate for 1500 copies of Ontario Digest. to contain 1250 pages (2500 columns), $3350, being at the rate of $2.68 per page, printed in best manner on English paper of quality and weight, of that used in the triennial Digests, folded and gathered into volumes ready for binding.

"The above price allows for a liberal amount of revises and corrections, but will be subject to some addition for what we term extraordinary corrections, revises, and cancellations, etc., which are, we believe, unavoidable on the part of the compilers of a work of that kind; such charges are regulated by the actual time taken by the workmen to make such corrections, etc. For the purpose of estimating the whole expense of compiling and publishing, it will be safer to estimate $2.80 as the maximum cost per page for our charge. It may not reach that figure.

"The binding we do not charge to the Society, for the reason that the members of the profession select the style of binding they require.

ROWSELL & HUTCHISON.

"Of course the above price could be reduced by using paper less expensive than the English paper."

Messrs. Rowsell & Hutchison have no written evidence of any acceptance by the Law Society of their offer to print the Digest, nor any distinct recollection how such acceptance was communicated. Undoubtedly they have been supplied with material to print and have actually done a large amount of work.

On the 29th December last, they claimed to have printed 704 pages, which estimated at $2.80 per page, as their accepted contract stipulates, would amount to $1971.20, and they are understood to have done much additional work since then; according to details furnished, about $2500.

Convocation having empowered the Finance Committee to act in the premises, the committee consider the application of Messrs. Rowsell & Hutchison to be reasonable, and have therefore ordered them to be paid $1500 on account.

Respectfully submitted.

(Signed) ÆMILIUS IRVING,
On behalf of the Finance Committee.

Dated February 5th, 1892.

Mr. Osler presented the petition of C. E. B. Anderson.

Ordered, that the petition be referred to the Finance Committee with power to act.

At 12.15 the question of the confirmation of the minutes of last meeting was taken up pursuant to order. The minutes were amended, and approved as amended.

Mr. Watson moved that Messrs. Aylesworth and Riddell be added to the committee appointed at last meeting to wait on the Minister of Justice and the Attorney-General, and that Mr. Osler be convener of the committee in so far as relates to the deputation to the Minister of Justice.—*Carried.*

The Report of the Committee on Reporting as to reorganization, ordered to be considered to-day, was taken up. The Report was amended by the insertion of certain words, and was adopted as follows:

We report that no change can be made in the Reporting staff until after the complete fusion of the courts, and we give a comparative statement as to cost of reporting in England and Ontario in support of our views that we are obtaining our reporting at a reasonable rate, and that the staff could not be reduced without detriment to the value of our reports.

COMPARATIVE STATEMENT AS TO COST OF REPORTING IN ENGLAND AND ONTARIO.

1889.

ENGLISH LAW REPORTS.

App. Cas., English, Scotch, and Irish Appeals to H. L. and Colonial, and Indian to P.C.—59 cases by three Reporters—20 cases each.
Q.B.D., 168 cases, of which 88 are in Court of Appeal—by 12 Reporters.
Ch.D., 203 cases including Court of Appeal—14 Reporters, say 15 cases each.
Probate, Divorce, and Admiralty, 29 cases—3 Reporters—10 cases each.
Total 459 cases by 2 Editors and 32 Reporters. In all, 4320 pages.

1890.

App. Cas., 46 cases—3 Reporters—15⅓ cases each.
Q.B.D., 205 cases—12 Reporters—17 cases each and one over.

Ch.D., 193 cases—12 Reporters—16 cases each and one over.
P.D., 37 cases—3 Reporters—18½ cases each.
Total, 481 cases—2 Editors, 30 Reporters. Number of pages, 4239. There are of course a much larger number of Courts in England.

ONTARIO LAW REPORTS—ONE YEAR.

Appeal between 50 and 60, say 55
Ontario about 200 ..... 200 { Q.B.D., C.P.D., about 116 / Ch. D ..... 84 } In Vols. 19 and 20 O.R.
Practice upwards 65 65
320

[Election cases 20, extra.] In all, 2500 pages per annum.
Indexes, table of cases prepared by Reporters. 3½ vols. per annum.

The number of volumes issued in England is twice that of the number issued in Ontario, by five times the number of Reporters. The number of cases reported in England is about one-third more than in Ontario.

In England each Reporter average fifteen cases and a fraction per annum.

In Ontario each Reporter averages at least 50 cases per annum.

Salaries—Reporters from £300 to £350, and 25 per cent. bonus—£375 to £425—$1,800 to $2,100 each.

Editors—£750 (*i.e.*, £600 and £150 bonus)—$4000 each.

The indexes to volumes, digests, etc., are prepared by people specially employed—7 vols. per annum.

Expenditure for salaries $55,000 a year besides bonus.

Mr. Lash moved the introduction and first reading of the Rule of which he gave notice for this day.

The Rules were read a first time, amended, and read a second and third time and passed; the standing Rule being suspended for that purpose.

The Rules as passed are as follows:

(1) From and after the appointment of a sub-Treasurer, as hereinafter authorized, the Secretary shall no longer be *ex officio* sub-Treasurer, and his salary shall thereafter be fifteen hundred dollars per annum, payable monthly, and he shall not be furnished with rooms, fuel, water, and light.

(2) From and after the appointment of a sub-Treasurer, the duties of the Secretary shall be such as may be from time to time defined by a committee consisting of the Committee of Finance and Legal Education Committee.

(3) There shall be a salaried officer of the Society to be called the sub-Treasurer, who shall hold office during the pleasure of Convocation. His salary shall not exceed $1500 per annum, payable monthly, in addition to which he shall be furnished with such rooms in the Society's building, where he must reside, and with such fuel, water, and light, as the Committee of Finance may from time to time determine.

(4) The duties of the sub-Treasurer shall be such as may be from time to time defined by a a committee consisting of the Committee of Finance and the Legal Education Committee.

(5) So much of any existing Rules as may be inconsistent with the foregoing is hereby repealed.

(6) All definitions of duty made by the committees under clauses two or four shall be reported to Convocation at its next ensuing meeting.

Convocation adjourned.

Friday, February 12th, 1892.

Convocation met at 11 a.m.

Present—The Treasurer, and Messrs. Irving, Hoskin, Osler, Barwick, Strathy, Bruce, Guthrie, Riddell, Idington, Aylesworth, Teetzel, McCarthy, Martin, Douglas, Ritchie, Kerr, Moss, Meredith.

The minutes of last meeting were read and approved.

Ordered, that the further consideration of the second clause of the Report of the Reporting Committee, ordered to be taken up to-day, be postponed to the next meeting of Convocation.

Mr. Hoskin, from the Discipline Committee, presented their Report on the matter of the complaint of Mr. Millar against Mr. S. R. C. Ordered for immediate consideration, and adopted.

Mr. Irving, from the Finance Committee, presented their Report on the estimated receipts and expenditures for the year, as follows:

To the Benchers of the Law Society in Convocation assembled:

1) Pursuant to Rule No. 58 of the Society, the Finance Committee beg leave to forward an estimate of the probable receipts and expenditures for the year 1892, made up from such information as the respective standing committees charged with the management of business affecting the finances of the Society have furnished, together with the Finance Committee's own estimate of resources and liabilities for the year current:

Probable receipts, as per details	$57,300
Probable expenditure, as per details	56,965
Balance	$ 335

2) The Finance Committee being required by Rule No. 58 to report on the said estimates their own observations are not prepared to make any beyond stating their belief that the collections have been liberally estimated, and that it does not at present appear that the Society can at best expect a surplus over expenditure of a higher sum than the amount to be expected from interest on bank account and investments.

3) The Finance Committee deem it desirable that the occasion should be taken to lay before Convocation a statement of the investments of the Society as effected during the past year, and also a statement of the insurances against fire which have been made and are current and in force, with reference to the conditions attendant thereon.

The statement of investments shows that the Society now holds debentures to the amount of $60,000 according to the details in the statement set forth.

4) The statement of insurances, as per detail furnished herewith, may be summarized as follows:

On books in library, paintings, and furniture in building	$50,000 00
On the original East Wing	25,000 00
On the Examination Hall building and the appurtenances	30,000 00
On the new Law School building and appurtenances	15,000 00
On the stock of books stored at Rowsell's	10,000 00
	$130,000 00

All of which is respectfully submitted.

ÆMILIUS IRVING,
On behalf of the Finance Committee.

Feb. 12, 1892.

ESTIMATES FOR 1892, PURSUANT TO RULE No. 58.

PROBABLE RECEIPTS.

Certificate and Term Fees	$26,000 00
Notice Fees	500 00
Solicitors' Examination Fees	6,500 00
Students' Admission Fees	3,000 00

Call Fees in special cases	$900 00	
" " ordinary cases	10,100 00	
		11,000 00
Interest on bank account and investments		3,500 00
Law School Fees		5,000 00
Rowsell & Hutchison, sale of Reports		1,500 00
Other resources of Revenue		300 00
		$57,300 00

PROBABLE EXPENDITURE.

Reporting, general average	$16,000 00
New Consolidated Digest:	
Expenditure over Receipts from sales	1,500 00
Law School:	
Tuition and Examinations, Fuel, 100 tons coal, lighting, and caretaker	14,000 00
Examinations, old Curriculum	1,000 00
Library:	
Salaries, new books, binding, and repairs	8,000 00
County Library Aid	4,000 00
Secretariat, etc.	3,600 00
Lighting, heating, and water for East Wing and Library	1,600 00
Grounds	700 00
Repairs and alterations	1,000 00
Printing and stationery and legal chart	1,000 00
Solicitor and law charges	500 00
Term lunches	500 00
Telephone	640 00
Miscellaneous and unforeseen	1,500 00
Law School building, balance unpaid	1,425 00
	$56,965 00

STATEMENT RELATING TO INVESTMENTS.

On the 1st January, 1891, the Society held Debentures amounting to $90,000, as follows:

Western Canada L. & S. Co.	$15,000 00
Canada Permanent	20,000 00
Building and Loan	15,000 00
Huron & Erie	15,000 00
Hamilton Provident	5,000 00
Farmers' Loan	20,000 00
	$90,000 00

Of the above paid, 1st Oct., 1891, Canada Permanent	$10,000 00
" " 1st Aug., 1891, Building and Loan	5,000 00
" " 1st July, 1891, Huron & Erie	10,000 00
" " 2nd July, 1891, Hamilton Provident	5,000 00
Total	$30,000 00

Now remaining in the hands of the Society $60,000, payable as follows:

Western Canada, 1st Jan., 1894, Int. 4½	$5,000 00
" " 1st July, 1892, Int. 4½	10,000 00
Canada Permanent, 1st April, 1894, Int. 5½	10,000 00
Building and Loan, 1st Aug., 1892, Int. 4½	5,000 00
" " 1st Feb., 1894, Int. 4½	5,000 00
Huron & Erie, 1st July, 1895, Int. 5	5,000 00
Farmers' Loan, 1st Nov., 1892, Int. 5½	20,000 00
Total	$60,000 00

INSURANCE.

The following insurance policies are held by the Society, as effected upon the property described in the schedule hereunto annexed, amounting to $105,000; also upon the Law School building and fittings therein, as follows:

The Imperial Insurance Co.	$2,500 00
The Queen City	2,500 00
The Lancashire	2,500 00
The Norwich Union	2,500 00
The Phœnix	2,500 00
The Hand-in-Hand	2,500 00
Total	$15,000 00

All of which expire on the 21st July, 1894, the premium being at one per cent. for three years.

The stock of law books in the building of Rowsell & Hutchison, to the amount of $10,000, is insured for that amount, and which expires on the 15th February, 1892, rate of premium being $90 for the year.

Upon that part of the building or buildings known as Osgoode Hall, which is owned by the Law Society of Upper Canada. And upon all the property owned by the said Society contained as well in that part of Osgoode Hall which is owned by the Society, as in that part of the same which is owned by the Ontario Government, but is occupied by the Society. And for greater certainty, but not so as to restrict the generality of the foregoing terms, it is declared that the insurance herein mentioned shall extend to, and shall cover all such buildings, property, goods, chattels, and effects herein mentioned, that is to say:

(1) On the furniture of every description owned by the assured, including linen, silver and plated ware, cutlery, china and glassware, cooking stoves and utensils, fuel, and stores $4,000

(2) On the library of books, papers, and pamphlets contained in said building or buildings $40,000

(3) On the oil paintings and frames thereof contained in the said Osgoode Hall, not exceeding the actual cost thereof $6,000

(4) On the two-story brick slate roof building, occupied as examination and dining halls, lavatory and other apartments, with caretaker's apartments including the whole of the building marked I. on the diagram attached hereto, and foundations thereof, and the fittings therein contained, consisting of furnaces, steam, water and gas pipes and fixtures, lavatory appliances and all other fixtures therein contained $30,000

(4) On the three-story brick and stone buildings known as the east wing and corridors and consultation and students' rooms of Osgoode Hall aforesaid, including the whole of the buildings marked II. and shown in red colors upon the diagram attached hereto, and foundations thereof, the whole being occupied as students', secretary's, benchers', and other apartments and halls, and the fittings therein contained consisting of furnaces, grates, steam, gas and water pipes and fixtures, and all other fixtures therein contained $25,000

In all $105,000

Ordinary repairs and alterations permitted without notice or extra charge.

Further concurrent insurance permitted without notice.

The erection of a large brick building for a Law School immediately to the north of the building marked I. on diagram and connected therewith permitted without further notice, and without any extra charge for carpenter's risks on present building during the erection of the Law School building.

The insurance company, the party hereto, hereby insures the whole of the above-mentioned building and buildings and property, but such company accepts only the amount of risk thereon which is mentioned in this policy, and shall not be liable to pay or contribute more than the proportionate and ratable amount of any loss which may be sustained by the Society which the said sum insured shall bear to the sum of $105,000, which is the total insurance upon the said building and buildings and property effected by the above insurance company, and the other insurance companies which have respectively accepted risks thereon in terms similar in effect to the terms of this policy.

British America Insurance Co.	$10,000
Lancashire Insurance Co.	7,500
Norwich Union	7,500
Phœnix Insurance Co.	10,000
Guardian Insurance Co.	10,000
Fire Insurance Association	10,000
Citizens' Insurance Co. of Canada	10,000
Western Assurance Co.	10,000
Hand-in-Hand	5,000
Queen City	5,000
Imperial Insurance Co.	10,000
Roy[illegible] Insurance Co.	10,000
Total	$105,000

The rate for the foregoing insurance for three years to be one per cent.

The Report was ordered for immediate consideration and was adopted. (Here follows the schedule.)

The order for the consideration of the Report of the Committee on Unlicensed Conveyancers was taken up.

Mr. Strathy presented a further interim report. Ordered to be considered forthwith.

Mr. Strathy moved that the Report be referred back to the committee, and that it be continued.—*Carried.*

The order for the consideration of the Report of the committee on appointment to and tenure of office was taken up.

Mr. Irving moved the adoption of the Report. Ordered to be considered paragraph by paragraph.

On motion, ordered that the consideration of paragraphs 1 to 9 inclusive be postponed to this day six months.

Mr. Irving moved the adoption of the 10th, 11th, 12th, 13th, and 14th paragraphs.—*Carried.*

Mr. McCarthy moved that 1893 be substituted for 1892. Seconded by Mr. Ritchie, and carried.

The 14th paragraph as amended was carried.

Mr. Irving moved for leave to introduce a Rule founded upon the above Report.—*Carried.*

The Rule was read a first time as follows:

Rule relating to the tenure of office.

(1) All offices in the gift of the Law Society or of Convocation shall be held during the pleasure of Convocation.

(2) If the pleasure of Convocation be not earlier determined, no examiner shall hold office for more than three years from the time at which his appointment takes effect, and no examiner shall be eligible for reappointment.

(3) In case the pleasure of Convocation be not earlier determined, no lecturer, save the principal, shall hold office for more than three years from the time at which his appointment takes effect; but each lecturer shall be eligible for reappointment.

(4) In case the pleasure of Convocation be not earlier determined, no editor or reporter shall hold office for more than three years from the time at which his appointment takes effect; but every editor and reporter shall be eligible for reappointment.

(5) With reference to existing officers, the preceding Rules as to the determination of offices by efflux of time shall operate to determine their tenure of office as follows:

(*a*) As to examiners, on the last day of Trinity Term in A.D. 1893.

(*b*) As to lecturers, on the last day of Easter Term in A.D. 1893.

(*c*) As to editor and reporters, on the last day of Michaelmas Term in A.D. 1893.

The Rule was ordered to be read a second time on the second day of next Term.

The order for the consideration of the Report of the Legal Education Committee was taken up.

Mr. Moss moved the adoption of the Report.

The first three clauses were adopted. The latter three clauses were adopted.

Mr. Barwick, pursuant to notice, moved:

That the Finance Committee be instructed to have erected a suitable flagstaff in the grounds of the Society, on which the British flag shall be hoisted during the sittings of the courts. The motion was withdrawn.

Mr. Moss, from the Committee on Legal Education, reported on the case of Mr. F. W. Wilson, that they had considered his case and find that he has duly passed the examination, that his period of service had expired, and that his papers are regular and he is entitled to his Certificate of Fitness.

The Report was ordered for immediate consideration, adopted, and it was ordered accordingly.

Mr. Barwick moved as follows: That the matter of the appointment of the sub-Treasurer be referred to the Finance Committee after the definition of duties provided by the Rule passed last meeting has been made by the committee appointed there, to publish the usual advertisement, and to report at the next meeting of Convocation upon the applications made, and upon the qualifications of the applicants and upon any other matter connected with the proposed appointment of sub-Treasurer.—*Carried.*

Convocation adjourned.

J. K. KERR,

Chairman Committee on Journals.

DIARY FOR SEPTEMBER.

2. Fri.....De Beauharnois Governor, 1726.
4. Sun.....*13th Sunday after Trinity.*
6. Tues.....Court of Appeal sits.
11. Sun .....*13th Sunday after Trinity.*
12. Mon.....Trinity Term begins. Frontenac, Governor of Canada, 1692.
13. Tues.....General Sessions and County Court Sittings for trials in York.
14. Wed.....Jacques Cartier arrived at Quebec, 1535. Quebec taken and death of Wolfe, 1759.
17. Sat. .....First Parliament of Upper Canada met at Niagara, 1792.
18. Sun. .....*14th Sunday after Trinity.* Quebec surrendered to the British, 1759.
19. Mon.....President Garfield died, 1881.
20. Tues.....Battle of the Alma, 1854.
21. Wed.....St. Matthew.
22. Thur .....Jewish New Year, 5653, begins.
23. Fri.....Courcelles, Governor of Canada, 1665.
24. Sat .....Trinity Term ends. Guy Carleton, Lieut.-General and Commander in Chief, 1766.
25. Sun. .....*15th Sunday after Trinity*
26. Mon .....Chancery Sittings at Toronto.
28. Wed.....W. H. Blake, 1st Chancellor U.C., 1849.
29. Thur.....St. Michael and All Angels.
30. Fri.....Sir Isaac Brock, Administrator, 1811.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [June 13.

ARMSTRONG *v.* HEMSTREET.

Assignments and preferences—R.S.O., c. 124, s. 3, s-s. 1—Payment of money to a creditor—Transfer of cheque.

The handing by a debtor to his creditor of the cheque of a third person upon a bank in the place where the creditor lives, the maker of the cheque having funds there to meet it, is a "payment of money to a creditor" within the meaning of R.S.O., c. 124, s. 3, s-s. 1.

Judgment of FERGUSON, J., affirmed.

Gibbons, Q.C., for the plaintiffs.

G. T. Blackstock, Q.C., for the defendant Murray.

FALCONBRIDGE, J.] [Aug. 1.

IN RE WALKER AND DREW.

Will—Construction—Devise—Estate in fee—"Absolutely"—"In the event of her death"—R.S.O., c. 109, s. 30.

A testator, who died on the 9th April, 1891, by his will devised and bequeathed all his real and personal estate to his wife absolutely, and in the event of her death to be equally divided among her children.

Upon a petition under the Vendor and Purchaser Act respecting lands of which the testator died seized in fee,

Held, that the wife took under the will an estate in fee simple in the lands.

The will was to be construed as if the words "in my lifetime" followed the words "in the event of her death."

Construction of s. 30 of the Wills Act, R.S.O., c. 109.

A. H. Marsh, Q.C., for the vendor.

J. M. Clark for the purchaser.

Chancery Division.

Full Court] [June 28.

REDICK *v.* TRADERS BANK.

Action to recover alleged surplus after mortgage sale—Jurisdiction of County Court.

The Traders Bank sold under a power of sale in a mortgage whereon over $6,200 was due, and retained the whole proceeds of sale. The assignees of the mortgagor brought this action claiming payment of an alleged surplus in the hands of the banks, which the latter disputed.

Held, that the County Court had jurisdiction to entertain the action.

C. J. Holman for the plaintiff.

A. H. F. Lefroy for the defendant.

Div'l Court.]

RANDALL ET AL. *v.* LOPP ET AL.

Settlement for benefit of mother—Execution by other members of the family—Valuable consideration — Interest — Attack by execution creditor.

A son, having entered into the business of an hotel-keeper, joined with his brother and sister in a settlement of all their interests in their father's estate for the benefit of their mother. In an action by a subsequent judgment creditor to set the settlement aside,

Held, (affirming the judgment of ARMOUR, C.J.) that, on the evidence, there was no fraudulent intent, and that the agreement to execute and the execution by the other members of the

family was a valuable consideration for the settlement, and that it could not be impeached.

John Rowe for the plaintiffs.

E. P. Clement for the defendant Adeline Dopp.

ORR ET AL. *v.* DAVIE.

Mechanics' lien—53 Vict., c. 37 (O.)—Jurisdiction of master—Practice—Procedure.

In a proceeding in the Master's office under 53 Vict., c. 37 (O.), in which the Master in Ordinary decided that his jurisdiction was a limited statutory one, and that because the statement of claim did not show the time the work was done, and the certificate issued under section 3 was not served as prescribed by section 6, he had no power to amend or proceed further and set aside the lien,

Held (reversing the Master in Ordinary), that he should have entertained the application to extend the time for prosecuting the reference; and that all the ordinary rules of procedure in the conduct of contested litigation are to be read into the Act which was intended to simplify, but not to introduce new rules of practice.

C. J. Holman for the appeal.

Macklem contra.

BOYD, C.] [June 15.

JENNINGS *v.* WILLES.

Mechanics' liens—"Payments"—R.S.O., c. 126, s. 9.

The word "payments" as used in s. 9 of R.S.O., c. 126, is not a technical word, but one in popular use. It should not be limited to the case of actual payments in cash by the owner into the hands of the contractor. It may well cover payments made by the owner at the instance or by the direction of the contractor to those who supply materials to him. It may well cover tripartite arrangements by which an order is given by the contractor on the owner for the payment of the material man out of the fund, and this, when accepted, fixes the owner with direct liability to pay for the materials.

R. McKay for defendant Willes.

D. M. Robertson, F. E. Hodgins, and *Kilmer* for other parties.

Practice.

Q.B. Div'l Court.] [June 13

IN RE SOLICITOR.

Solicitor and client—Delivery of bill of costs—Supplemental bill—Inadvertence — Special circumstances.

A solicitor is bound by the bill which he delivers, and he cannot as of course withdraw it, or substitute another bill, or reduce his demand, or deliver a bill containing other charges; but if he wishes to do so, he must make a special application for leave.

A solicitor in delivering a bill omitted to make any charge for "days employed in going to and returning from Ottawa" upon professional business. He stated that the omission was through inadvertence.

Held, not a "special circumstance" justifying an order for leave to deliver a supplement bill.

F. E. Titus for the solicitor.

E. T. Malone for the clients.

PATTERSON *v.* SMITH.

Pleading—Defence arising after action—Confession—Judgment—Rule 440—"Otherwise order."

In an action against a judgment debtor and his brother to set aside a conveyance by the former to the latter as fraudulent, both defendants pleaded several defences. Afterwards the judgment debtor applied for leave to amend by adding as a defence, without abandoning his other defences, that since action the judgment debt had become extinguished by reason of a set-off ordered in another action.

Held, a case in which the plaintiff should not be allowed to confess the new defence and sign judgment for his costs under Rule 440, but one in which the court should otherwise order under the last clause of the Rule.

Construction and history of Rule 440.

Harrison v. *Marquis of Abergavenny*, 57 L.T.N.S. 360, discussed.

Pepler, Q.C., for the plaintiff.

W. R. Smyth for the defendant Albert I. Smith.

IN RE SOLICITOR.

Solicitor and client—Taxation of costs—Joinder of causes of action—Rule 300—Separate actions—Solicitor not entitled to costs of—Duty of solicitor.

A solicitor, acting on behalf of three clients, brought three separate actions for malicious prosecution against the same defendant. The three causes of action all arose out of an information for an assault laid by the defendant against the plaintiffs.

Held, that under Rule 300 the three causes of action could have been joined in one action, but it was the duty of the solicitor to have so advised his clients; and that not having done so he could not be heard to say that his clients had instructed him to bring three separate actions; and upon taxation of his bill between solicitor and client, he was allowed costs as of one action only.

Booth v. *Briscoe*, 2 Q.B.D. 496, and *Gort* v. *Rowney*, 17 Q.B.D. 625, followed.

Appleton v. *Chapel Town Paper Co.*, 45 L.J. Ch. 276, not followed.

Masten for the solicitor.

J. B. O'Brian for the client.

BOYD, C.] [June 15.

FISHER *v.* CASSADY.

Writ of Summons—Service out of jurisdiction—Rule 271 (e)—Breach of contract—Performance within Ontario—Sale of goods—Inspection of bulk.

The defendants in British Columbia by letter offered to sell the plaintiff in Ontario a carload of lumber, according to a sample previously furnished, at a certain price, free on board cars at Toronto. The plaintiff accepted the offer by letter, and it was agreed between the parties that the lumber was to be shipped at Vancouver and delivered at Toronto, upon which being done the price was to be paid by means of a draft. When the lumber arrived at Toronto the plaintiff inspected it, and refused to accept it or the draft on the ground that it was not up to sample. He then brought this action for damages for breach of the contract.

Held, that the plaintiff had the right to make inspection of the bulk at Toronto before accepting or paying, and the contract was one which, according to its terms, ought to be performed within Ontario; and therefore service out of the jurisdiction of the writ of summons ought to be allowed under Rule 271 (*e*).

W. T. Allan for the plaintiff.

J. A. MacIntosh for the defendants.

Flotsam and Jetsam.

THE right of members of Parliament to payment has never been formally abolished, though no member of Parliament has received payment for 230 years. Andrew Marvell, the poet and contemporary of Milton, was the last paid member.—*Irish Law Times.*

IT is, perhaps, a little elementary, but vice and immorality are clothed with legal rights and are protected by the organic law of the land. A man has a right to drink alcoholic liquors whenever he chooses to do so; being sober to *get drunk*, but he has no right to *be* drunk. He may drink, get drunk, but must not *be* drunk; that is unlawful.—*Ex.*

NO fewer than five judges of the English High Court now living are old 'Varsity oars. The Master of the Rolls, Lord Macnaghten, Mr. Justice Denman, and Mr. Justice A. L. Smith represent Cambridge, and Mr. Justice Chitty represents Oxford. He is one of the few "Double Blues," *i.e.*, men who have both rowed for and played cricket for their own university against the sister rival.—*Irish Law Times.*

THE late Sir Thomas Chambers was not a wit, and laughter seldom entered the court over which he presided so solemnly. There is, however, one good story told of him in the Temple. It is to the effect that a prisoner, who was undefended, pleaded "guilty," and, counsel having been instructed to defend him at the last moment, withdrew the plea and substituted that of "not guilty," with the result that the jury acquitted him. In discharging the prisoner Sir Thomas is said to have remarked: "Prisoner, I do not envy you your feelings. On your own confession you are a thief, and the jury has found that you are a liar."—*London Star.*