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DIARY FOR DECEMBER.

1. Thur....Sittings of Divisional Court Chancery Division begin. Lord Chancellor Hardwicke born 1600.
4. Sun.....*2nd Sunday in Advent.*
5. Mon.....Courts of Justice in England opened 1882.
6. Tues...C. C. York sittings for trials beg.
8. Thur...Sir W. Campbell, 6th C. J. of Q. B., 1825.
10. Sat.....Michaelmas sittings end.
11. Sun.....*3rd Sunday in Advent.*
13. Tues...C. C. sittings for trials commence, except in York.
14. Wed...Christmas vacation in Supreme Court of Canada and Ex. Ct. begins.

TORONTO, DECEMBER 1, 1887.

MR. HENRY REEVE, who for fifty years has been in the public service, and who since 1853 has held the office of registrar of the judicial committee of the Privy Council, has resigned his office. His long and faithful service was publicly recognized by Sir Barnes Peacock in an address which he made at the Bar on the opening of the sittings of the committee for business on 2nd November last. Such a graceful recognition of his merits as a public officer must have been exceedingly gratifying to Mr. Reeve and his many friends, not a few of whom are to be found in the ranks of the colonial bars.

THE following judicial appointments have been made in Quebec and Manitoba. In Quebec Mr. Tellier, of St. Hyacinthe, has been appointed Puisne Judge of the Superior Court of Lower Canada, in the place of Mr. L. J. Sicotte, resigned—Mr. A. N. Charland taking the seat on the same bench formerly occupied by Mr. H. W. Chagnon, resigned. In Manitoba Mr. John Farquharson Bain, Q.C., has been made a judge of the Queen's Bench in place of Mr. Justice Taylor, recently appointed Chief Justice of that court.

THE vacancies in our Bench have been filled by the appointment of William Glenholme Falconbridge Q.C., and William Purvis Rochford Street, Q.C., to the Queen's Bench Division, and Hugh McMahon, Q.C., to the Common Pleas Division. We congratulate these gentlemen on their promotion. Whilst they have not perhaps occupied the front rank in the profession as leading counsel their selection gives the assurance that the law of the land in their hands will be honestly, conscientiously and industriously administered. They are all men of ability and of business experience. Mr. Falconbridge had a brilliant career as a young man at the University, and was gold medallist in modern languages. Mr. Street was a gold medallist in law, and is a sound and well-read lawyer. Mr. McMahon was the head of a large legal firm, and one of the leading men on circuit in the Western district.

SIR ADAM WILSON, Knt.

THE Hon. Chief Justice Sir Adam Wilson, Knt., during the present Term resigned his position as Chief Justice of the Court of Queen's Bench, and President of the High Court of Justice for Ontario.

A very brief history of the learned Judge will be acceptable to the profession at the present time. Sir Adam was born in Edinburgh on the 22nd September, A.D. 1814, and came to this country in 1830. He resided for a time in the township of Trafalgar with an uncle, Col. Chalmers, at one time M.P. for Halton, and who was engaged largely in milling and merchandise. His father's family followed soon after. The only member of that

family living is Mr. Geo. H. Wilson, accountant in the Bank of Montreal.

In January, 1834, he was articled to the law in the office of Baldwin and Sullivan. He was there a diligent student, and was called to the Bar in Trinity Term, 1839, remaining in the management of the office for Hon. Robert Baldwin until he went into partnership with that eminent man in January, 1840. This partnership continued until 1849 when it was dissolved, Mr. Baldwin retiring from the practice of the profession. He was appointed a Queen's Counsel in 1850. In the same year Mr. Wilson formed a partnership with Dr. Larratt W. Smith, and subsequently with Mr. John Hector, Q.C., which continued until 1856, when a partnership was formed with (now) Hon. Mr. Justice Patterson and Mr. James Beaty, Q.C.

Mr. Wilson, who now applied himself to Counsel business only, though his clients were many, found time for public affairs and took a lively interest in the politics of the day, being then allied with that party that was led by his partner and friend Mr. Baldwin. He took an intelligent and earnest interest in municipal affairs; and was, it may truly be said, the best municipal lawyer in Ontario, at a time when municipal administration was not as well understood as now.

In 1859 and 1860, he sat as Mayor for the city of Toronto, having been the first Mayor elected by the general vote. Mayor Wilson may also be said to have been the first practical municipal reformer Toronto ever had. He entered with zeal into all things pertaining to city interests, and met with the usual conflicts, misinterpretations and misrepresentations of those set upon reforming abuses. The people at large supported him throughout, and he was eminently successful. He consolidated the city by-laws, then in indescribable confusion, and fully organized the Municipal machinery. He also took a marked interest in the police, and compiled for them a handy book of law on the "Office of Constable," which has been a standard book of reference ever since. He had the honour of receiving, as Mayor of the city, His Royal Highness the Prince of Wales in 1860, and everything so far as Toronto was concerned passed off satisfactorily.

In 1856 Mr. Wilson was appointed one of the commissioners for consolidating the statutes. To this he applied himself with his usual zeal and industry until the work was complete. Not content with municipal honours, he entered into the larger field of Canadian politics, and in 1860 was elected as member for the North Riding of York in the Parliament of Old Canada. He represented that constituency until his appointment to the Bench in 1863. During part of this period, in 1862, he held the office of Solicitor General and Executive Councillor in the John Sandfield Macdonald administration. Appointed in the first place to the Court of Queen's Bench, he only remained there a few months when he went to the Common Pleas, changing places with Mr. Justice Morrison. He afterwards went back to the Queen's Bench along with Hon. Chief Justice Sir Wm. Richards, at the time when Mr. Justice Hagarty became the Chief Justice of the Common Pleas. Thus for the second time in 1868 he took his seat in the latter court. He became Chief Justice of the Common Pleas in 1878, and of the Queen's Bench in 1884.

Always regarded as a sound and able lawyer, painstaking and industrious to a great degree, most fearless and conscientious in the discharge of his duties, as well in his judicial capacity as well as elsewhere, he was distinguished for his never failing courtesy to the Bar and

to the students, even under circumstances that are occasionally calculated to upset the equanimity even of the most patient judge. His self-possession and dignity never forsook him. All who appeared before him were sure of a patient hearing and undivided attention, and a certainty that their arguments, however trivial they might seem, would receive due and careful consideration. His was one of the most receptive of minds and always on the alert. Probably there was no lawyer at the Bar and no judge on the Bench his superior in the knowledge of decided cases. His industry, patience and exhaustiveness were proverbial; his judgments being almost text books on the law of the case in hand. A most retentive memory enabled him to recall authorities and facts at will, and he had a large capacity for marshalling facts. He became President of the High Court of Justice upon the passing of the Judicature Act.

Before his resignation the Chief Justice was knighted by Her Majesty. This honour, it is believed, he had formerly once, if not twice, declined to accept. Early in life he married Miss Dalton, sister of R. G. Dalton, Esq., Q.C., the esteemed Master in Chambers.

Mr. Æmilius Irving, Q.C., representing the Benchers and the Bar, presented to him, upon his retirement, expressions of great esteem and regard for his great ability manifested during his well nigh quarter of a century on the Bench. There was a large attendance of the Bar on the occasion, and the learned Chief Justice made a feeling and eloquent reply.

We may well close this short notice of one of the most eminent of our Judges and one of the most widely and highly respected of Canada's worthies, by quoting the true and apt observations of the Hon. Chancellor Boyd, now Sir Adam Wilson's successor as President of the High Court of Justice, upon the occasion of the swearing in of Hon. Mr. Justice Falconbridge as senior puisne judge of the Court of Queen's Bench during Michaelmas Term:—"Before I engage in the first public act of my new position I may refer briefly to him whom I succeed as President of the High Court of Justice. It is a matter of sincere congratulation that this vacancy has been occasioned, not by death but by choice; that Sir Adam Wilson, unlike most of his judicial brethren, has not laid down his life with his work. His merits need no commendation at my hands. Untiring industry, unselfish devotion to the duties of his office, and unblemished integrity are some of the well-known characteristics of his public life. His judicial life proper is embodied in many volumes of reports which will carry on to future time the best memorials of his ability and erudition. More I need not say, except there has never passed from this Bench any judge better known, more loved, or more venerated than Chief Justice Sir Adam Wilson. Our best wishes accompany his retirement. Long may he be spared to enjoy the well-earned measure of a dignified and honourable old age."

DISALLOWANCE—MANITOBA AND THE NORTH-WEST.

THE Disallowance Question in Manitoba has been much written about in newspapers and periodicals, but a few words on some points from their legal aspect, not generally adverted to in articles on this most important question may be useful to a right understanding of the subject. In the Act respecting the Canadian Pacific Railway, 44 Vict. chap. 1 (1881), it is recited in effect that the construction of the railway (C.P.R.) was stipulated by the terms of the admission of British Co-

lumbia into the Union, that Parliament preferred its construction and operation by an incorporated company rather than by the Government, that the greater portion was still unconstructed, and that in conformity with the expressed desire of Parliament, a contract had been entered into for its construction and permanent working, a copy whereof was annexed to the Act and submitted to Parliament for its approval; and the first section of the Act approves and ratifies this contract and authorizes the Government to carry out its conditions according to their purport. It is enacted that the company shall have the right to build and work branches from any point on the main line to any point or points within the Dominion; that for twenty years from the date of the contract (21st October, 1880) no line of railway shall be authorized by the Dominion Parliament to be constructed south of the C.P.R. from any point at or near the C.P.R., except such as shall run south-west or to the westward of southward, nor to within fifteen miles of latitude 49; and that in the establishment of any new province, provision shall be made for continuing such prohibition after such establishment until the expiration of the said period.

The Governor is then authorized to grant a charter of incorporation to the contracting company in the form appended to the contract and to the Act, and granting them the franchises, privileges and powers embodied in the contract, and which being published in the *Canada Gazette*, shall be held to be an Act of incorporation of the company, and have effect as if it were an Act of the Parliament of Canada. Under this contract so confirmed, the company have acted and are acting, and claim the exclusive privilege therein stipulated for twenty years from its date, and the right of constructing branches as therein provided at any time, under the conditions mentioned in the contract: and the words "The Canadian Pacific Railway" are declared by the contract to be intended to mean the entire railway as described in the Act 37 Vict. c. 14, *i.e.*, from a point near to and south of Lake Nipissing, to its terminus at some point in British Columbia on the Pacific Ocean. This provision as to branches does not exclude the construction of other railways by other companies as the twenty year monopoly clause does, though it has been objected to as being too extensive, and as in some cases virtually preventing their construction.

The twenty year monopoly clause has given rise to much difficulty. The Manitoba Legislature, holding that it did not apply to that Province as originally constituted and bounded, passed an Act authorizing the construction of a railway from Winnipeg to the southern Provincial boundary, and this Act was disallowed by the Governor under the B. N. A. Act. The Manitoba Government undertook to make the railway under their Provincial Public Works Act, or of their own right. Exceedingly unpleasant litigation and bad feeling have been, and are the consequence: and the Dominion Government has been violently abused for the disallowance, and I think improperly and unjustly. The Provincial Act seems to have been beyond the powers of the Provincial Legislature under sec. 94 of the B. N. A. Act (*a*), as relating to a railway "extending beyond the limits of the Province," if not according to the *letter* certainly according to the spirit of the said sec. 94, which expressly applies to railways connecting one province with another, and could hardly be intended not to apply to a railway connecting, as this was avowedly intended to do, a Province with a foreign country. Sec. 91 of the B. N. A. Act expressly subjects ferries between a province and any foreign country to the *exclusive* jurisdic-

tion of the Dominion Parliament and for good reason, any such ferry (and *a fortiori* any such railway as that in question) requiring attention and regulation by the Dominion Customs department. At any rate if there be doubt, the unquestionable duty of the Dominion Government was to use its power of disallowance, as well as any others it might possess, to give effect to the contract between Parliament and the C.P.R. Company, and to keep the faith and honour of Canada intact. And this duty will devolve also on any other Government succeeding that in power when the contract was made, or Canadian bonds will become of small account on the world's exchanges. Whether the contract was good and wise or not, does not affect this point. The contract must not be broken without the consent of the C P.R. Company or its failure to perform the conditions it undertook. What any member or minister may have said in the House or out of it matters not; there is no doubt that Parliament by the said Act, grants and must have intended to grant the twenty year monopoly, and it was part of the consideration for which the company undertook to make the railway, and made it. W.

LEGAL LEGISLATION.

THE report of the Committee on Legislation from the County Law Association to the Benchers of the Law Society has just been published and is a very important and valuable document. It recites that subsequent to the formation of the Joint Committee on Legislation from the Law Associations of the counties of York and Wentworth, it was deemed desirable to enlarge the committee by inviting representatives to be present at its meetings, from all the law associations of Ontario as well as from Local Bars of counties wherein no law associations had been formed.

The committee formed from these various representatives met from time to time, and gave the proposed rules of practice and procedure careful consideration, having been assisted by various suggestions which have from time to time been forwarded for consideration by law associations not represented at the meetings of the committee.

The Report goes on to say that at an early meeting of the committee it was decided to prepare a proposed code of civil procedure, and with this object a scheme for such a code was prepared for consideration and was laid before the Attorney General, who, while giving it a general approval, expressed his opinion that the proposed code contained more than the Judges could properly adopt, and still more, in view of their other engagements, than they would have time to consider. The Committee therefore confined their consideration to such additions and alterations to be now made in the existing rules and practice as they deemed substantially material, and as might give to the Statute Commission the minimum of work in considering and adopting them.

The prominent features of the revision as set out in the report are:—

1. The abolition of all written Rules of Practice not contained in the rules now under revision, with a provision that decisions in matters not provided for by the rules, shall be by analogy thereto and not to the former practice, and the provision that no rule hereafter made shall be of any force until it is promulgated by publication in the *Gazette*.

2. The creation of a permanent circuit list for the trial of all actions in the High Court, and the necessary re-arrangement of the sittings of the Divisional Courts. It has been found impossible to provide for four sittings of the High Court in every county town, but a rule has been drawn providing for three sittings a year in the principal county towns with power to direct special sittings when required. The rule provides for the present number of sittings in Toronto, Hamilton and London. A short experience of the system will be necessary to perfect its working.

3. Provision that one Judge shall sit in each week for the disposal of all business of the High Court, to be done in court and in chambers, with-

out regard to the divisions in which the actions are pending.

4. The re-distribution of offices in Toronto, so as to secure that all proceedings in an action from writ to judgment shall be taken in one office, viz., the Records and Writs Office.

5. The abolition of the office of Judgment Clerk, and the provision for giving Deputy Registrars the same power of settling minutes of judgment as are possessed by the Registrar, subject to the right to move to vary the minutes.

6. The abolition of writs for the execution of extraordinary remedies and the substitution of orders therefor.

7. The abolition of references to arbitration, the same object being secured by reference to Referees, and consequent thereupon the substitution of appeal from Referees' reports of the same nature as appeals from Masters' reports, for motions against awards.

The old act respecting arbitrations, making submissions rules of court, etc., has been inserted in the new Revised Statute, but it is hoped that upon approval of these rules, this act will be repealed.

8. Provision that all motions which require to be set down shall be set down in the Registrar's office.

9. The abolition of Orders *nisi* and summonses. A rule has also been drawn providing that it shall not be necessary to move separately against the findings of a jury and the judgment thereon, but that a motion against the judgment alone shall be sufficient.

10. Provision that every judgment shall be drawn up, signed and entered, as a decree formerly was.

11. The old Chancery Rules as to setting down demurrers and amending pleadings which have been demurred to, have been substituted for the rules of the Judicature Act.

12. The amendment of the rules in such other respects as are necessary to secure uniformity of practice in all casses, and the exercise of jurisdiction by all the Judges of the High Court without regard to the divisions to which they are attached, or to the divisions in which the actions are pending.

13 Provision that payment into court by a defendant with his defence be simplified, by requiring the money to remain in court subject to order, unless the plaintiff take it out in satisfaction of the very cause of action or matter for which it was paid in.

14. Provision that the order for delivery and taxation of a solicitor's bill follow the old Chancery practice, according to which one order contained directions to deliver, tax, take accounts and pay over balance. Provision has also been made that when a party secondarily liable on a bill applies for taxation and it appears that he is precluded by payment having been made by the party primarily liable the matter may be referred summarily for the taking of the accounts without the necessity of an action.

15. A rule has been drawn providing that unless the incorporation of a plaintiff corporation is specifically denied by the pleading, it shall not be necessary to prove it.

16. The making a clear distinction between defence and counterclaim.

17. The reduction of the several modes of securing the attendance of a party or witness for examination or cross-examination before trial to one method, viz., by subpœna and appointment.

18. The extension of the right to cross-examine on an affidavit on production to all deponents instead of restricting it to officers of corporations.

19. A rule has been drawn providing that special cases may be stated in every proceeding, and not only in actions.

20. Provision that execution is to issue forthwith upon judgment by default.

21. A general rule has been drawn, providing that whenever security for costs or for prosecuting any proceeding is required, the party to give security may pay money into court in lieu of giving a bond.

22. As to absconding debtors, the Act has been inserted in the new Revised Statutes, and this prevents this scheme from being carried out in its entirety. Rules have been drawn in accordance with the scheme of the Committee, by which an order for attaching the goods of an absconding debtor may be issued; when once the goods have been attached it shall not be necessary to issue another order, but all parties who come in and prove their claims in the action within six months shall be entitled to share in the proceeds. These rules will remain in suspense until the meeting of the Legislature, whereupon the Absconding Debtors' Act may be repealed in so far as it deals with procedure.

23. Rules have also been prepared assimilating the practice in proceedings in the nature of *quo warranto* to those of an ordinary motion, which will also remain in suspense until confirmed by the Legislature.

In addition to the foregoing matters, which have been embodied in draft rules, the committee have made the following suggestions:

I. That a Rules Committee, consisting of the Chief Justices, the Chancellor, and the Attorney-General, and such of the Judges as may be chosen

should form a permanent Rules Committee, and that the sole power to make rules should be vested in that committee.

II. That some means should be devised to settle definitely, before a case is called for trial, whether it is to be tried with or without a jury. Upon this point the committee have taken pains to ascertain the views of the profession, and after elaborate inquiry the committee have unanimously came to the opinion that all cases entered upon the jury list for trial should be tried by a jury, and that all cases entered upon the non-jury list for trial should be tried without a jury, unless by consent of parties, and that the Judge at the trial should have no power to vary the mode of trial.

The committee intend that the effect of this recommendation, if adopted, shall be to cast upon the Judge before whom any application to strike out or add a jury notice shall come, the duty of considering the nature of the action, the evidence likely to be adduced, and the circumstances likely to arise affecting the application, instead of, as has occurred in many cases, throwing that duty upon the trial Judge.

III. That some means of more rapidly obtaining copies of evidence should be devised than the present.

IV. That the rules respecting the jurisdiction of Local Masters taken from 48 Vict., cap. 13, sec. 21, and J. A. Rule 584, should confine the jurisdiction to such Masters as do not practise.

V. That the rules as to pleading should be amended so as to prevent the pleading of a joinder of issue to a statement of claim or counterclaim, and that where the plaintiff pleads a simple denial of the defendant's pleading, he should be at liberty to close the pleadings by filing a similiter.

Great care has been given in the revision to the logical arrangement of the rules, and they have been subjected to careful verbal criticism and consequent correction.

Elaborate headings to the divisions and subdivisions are to be interspersed throughout the rules.

The report concludes as follows:

Several memorials were laid before the committee upon the subject of changing the period of Long Vacation, but the suggestions made by these memorials were so many and varied that the committee have not suggested any change in the rules governing this vacation.

The committee have also taken active steps with a view of obtaining an increase of judicial salaries, and they request that this question be left by Convocation with the committee to take such further steps as may be deemed advisable in continuing to urge upon the Government this important question.

The committee desire to express to Convocation the high opinion formed by them of the usefulness of the County Law Associations. These bodies form ready means of obtaining opinions on subjects of professional interest from Local Bars which opinions cannot be obtained from counties in which such association do not exist. No associations have been formed in the following counties; Carleton, Grey, Hastings, Huron, Kent, Lambton, Lanark, Leeds and Grenville, Lennox and Addington, Lincoln, Northumberland and Durham, Oxford, Perth, Peterborough, Simcoe, Stormont, Dundas and Glengarry, Waterloo.

The committee urge upon Convocation the taking steps to procure the formation of Law Associations in these counties under the liberal provisions of the rules relating to county libraries.

This report is signed by Mr. John Hoskin, Q.C., and Mr. Walter Barwick, the energetic Chairman and Secretary respectively of the Association.

Under the direction of the Attorney General the rules as revised will be laid before the Judges, he himself having approved of many of the proposed changes. Under these circumstances, and after the very careful consideration given to the subject by the committee, it may be assumed that the rules will, with some slight alterations or additions, be adopted.

It has usually been that changes in procedure have resulted from the thought and experience of individuals more of less competent to judge of what changes are desirable; but this matter has been taken hold of by the profession as a body, and the details carefully discussed by those who are best able to express an opinion on the subject from their daily practice. We may therefore expect with some certainty that a step has been taken in the right direction. The work of the committee is a result of the formation of the local law associations. Without these bodies there would have been no possibility of securing an authoritative expression of opinion on the contemplated changes in procedure from the Bar as a body.

The profession are much indebted to those of their body who have spent so much time and energy in this labour of love.

RECENT ENGLISH DECISIONS.

The *Law Reports* for November comprise 19 Q. B. D. pp. 509-567; and 36 Chy. D. pp. 113-261.

INFANT—NECESSARIES—EVIDENCE.

Commencing with the cases in the Queen's Bench Division, *Johnstone* v. *Marks*, 19 Q. B. D. 509, is the first to claim attention. In this case Lord Esher, M.R., and Lindley and Lopes, L.JJ., sitting as a Divisional Court of the Queen's Bench Division, held that where an infant is sued for the price of goods sold to him on credit, he may, for the purpose of showing that they were not in fact necessaries, give evidence to show that at the time of the sale he was sufficiently provided with goods of the kind supplied. The judge at the trial, on the authority of the well known case of *Ryder* v. *Wombwell*, L. R. 4 Ex. 32, held that in order to entitle a plaintiff to succeed it was sufficient to show that the goods supplied were of the class which the law regards as "necessaries," and that the question whether the infant had, or had not, at the time of the sale already a sufficient supply of such articles, was immaterial; but the Divisional Court were unanimous that the evidence rejected was admissible, following *Barnes* v. *Toye*, 13 Q. B. D. 410; and intimated that if they were sitting as a Court of Appeal they would have come to the same conclusion.

HUSBAND AND WIFE—MARRIED WOMAN—CONTRACT—SEPARATE PROPERTY—MARRIED WOMEN'S PROPERTY ACT, 1882 (47 VICT. c. 19, s. 1, ss. 2, 3 ONT.).

Pallister v. *Gurney*, 19 Q. B. D. 519, is a decision of Lord Esher, M.R., and Lindley and Lopes, L.JJ., sitting as a Divisional Court of the Queen's Bench Division, to which we have already referred *ante* p. 302. The short point decided is that in an action against a married woman to recover the price of goods sold and delivered to her, it is necessary for the plaintiff to show that the defendant had separate property at the time she made the contract. Lopes, L.J., puts the point decided very concisely at p. 521:

> The disability of a married woman to contract was remedied by the Married Woman's Property Act, 1882, but only to this extent—that she may now enter into a binding contract in respect of her separate property. If she has no separate property she still cannot contract. I entirely agree with the decision of Pearson, J., in *In re Shakespear, Deakin* v. *Lakin*, 30 Chy. D 169, that the contract which is to bind future separate property must be entered into at a time when the married woman has existing separate property.

STOPPAGE IN TRANSITU—DELIVERY OF GOODS ON BOARD SHIP—TERMINATION OF TRANSIT.

Bethell v. *Clark*, 19 Q. B. D. 553, is a decision of a Divisional Court composed of Mathew and Cave, JJ. The facts of the case were as follows: T. in London bought goods of C. in Wolverhampton, and sent C. a consignment note in the following terms: "Please consign the ten hds. hollow ware to the *Darling Downs*, to Melbourne, loading on the East India docks here." C. sent the goods per railway accordingly, to Poplar for shipment, and they were shipped on board at noon on July 3. On the same day at 10 o'clock he telegraphed to the railway company not to deliver the goods, and the railway company telegraphed to their agents at Poplar to the same effect, but the message did not arrive in time to prevent the shipment of the goods. The master's receipt of the goods was given to the railway company, and by them forwarded to C. No bill of lading was applied for by any of the parties. On July 11 the purchaser T. became bankrupt. On August 15 C. notified the ship owners that he claimed the ten hds. as his property. They were also claimed by T.'s trustee in bankruptcy. The court held that there had been no constructive delivery to T., and that the transitus was not at an end when the goods were delivered on ship board; though the case would have been different, in the opinion of Cave, J., if the purchaser had then obtained bills of lading.

LANDLORD AND TENANT—SHERIFFS' LIABILITY FOR REMOVING GOODS UNDER EXECUTION AFTER NOTICE OF RENT IN ARREAR—MEASURE OF DAMAGES—8 ANNE, c. 14, s. 1.

The only other case in the Queen's Bench Division is *Thomas* v. *Mirehouse*, 19 Q. B. D. 563, which was an action brought by a landlord against a sheriff under 8 Anne, c. 14, s. 1, for removing goods taken in execution, without

paying the landlord a year's rent. The case was brought up by way of appeal to a Divisional Court composed of Lord Esher, M.R., Lindley and Lopes, L.JJ., from a County Court on the question of the proper measure of damages. The court dismissed the appeal, holding that *prima facie* the proper measure of damages in such cases is the amount of the rent due, but that it is open to the defendant to show, in mitigation of damages, that the goods were of actually of less value than the amount due for rent, in which case the damages should be for the lesser sum. But that the mere proof that they fetched less than the rent due, when sold at a forced sale, was not evidence of the goods being of less value than the rent in arrear.

INJURY TO PROPERTY BY FLOOD—DAMAGES—INJURY TO REVERSION.

Taking up now the cases in the Chancery Division, *Rust* v. *Victoria Graving Dock Co.*, 36 Chy. D. 113, which is a decision of the Court of Appeal, claims our attention. The action was brought to recover damages for flooding land, in part of which the plaintiff was interested as owner in fee, in possession, and part as lessor. As to the part to which he was entitled as tenant in fee, in possession, it was held that he was not entitled to compensation for the loss arising from reduced rental for four years in consequence of the prejudice against the neighbourhood caused by the flood, inasmuch as that was a loss which was not the result of, or directly caused by the flood. And as to the land subject to lease, it having been found as a fact, that no injury had been sustained which would last to the end of the lease, it was held that damages for the temporary depreciation of the selling value of the landlord's interest were not recoverable. As to part of the property subject to building agreements under which the plaintiff had advanced money to the builders on the security of the property, damages had been allowed on the basis of deducting the value of the houses when repaired and completed, less the expense of repairing and completing them, from the amount advanced, and the difference was awarded for the depreciation of mortgage securities; but it was held that this was erroneous, and that an inquiry should be directed as to what extent the flood had made these houses a less sufficient security for the plaintiff's advances than they were before.

An allowance of three months' estimated rent, for delay in letting part of the land which was vacant was upheld.

UNDUE INFLUENCE—CONVENT—VOLUNTARY GIFT OF PROPERTY—LACHES—ACQUIESCENCE.

We now come to the recent *cause celebre* of *Allcard* v. *Skinner*, 36 Chy. D. 145, in which the plaintiff who, while a member of a religious sisterhood, had made a voluntary gift of all her property to the sisterhood under circumstances which, in the opinion of the Court of Appeal, were held to amount to undue influence, was, nevertheless, held by the court to be debarred from recovering, because, having left the sisterhood in May, 1879, and having then or shortly after, ample means of knowing her rights, she nevertheless neglected to take any proceedings to recover the property in question until August, 1885. This delay the majority of the Court of Appeal (Bowen and Lindley, L.JJ.) held to amount to acquiescence, so as to deprive the plaintiff of her remedy. But Cotton, L.J., was of a contrary opinion as to the capital of the fund still in the hands of the defendant. We may observe that the bulk of the property had been expended for the purposes of the sisterhood, and that the appeal was restricted to what actually remained in specie in the hands of the donees, and the income which had accrued thereon since the plaintiff left the sisterhood. The judgment of Kekewich, J., was affirmed. It would appear from the judgment of the Court of Appeal that the question of whether or not a gift is made under the pressure of undue influence, is not to be determined by the position of the donor at the time he originally purposes to make the gift, but at the time it is actually made. Thus all the judges in appeal agreed that although the plaintiff was of full age and able to obtain independent advice at the time when she entered the sisterhood, and originally conceived the purpose of making the gift in question, yet that fact did not validate the gift, because at the time it was actually made the donor was unable to obtain independent advice.

SALE OF CHATTELS—ENTRY IN AUCTIONEER'S BOOK—STATUTE OF FRAUDS—BILLS OF SALE ACT, 1878—REGISTRATION.

In re Roberts, *Evans* v. *Roberts*, 36 Chy. D. 196, is an important decision of Kay, J., under

the Bills of Sale Act, 1878. At a sale of farm produce one Williams purchased a stack of hay, the purchase money to be paid in six months. The auctioneer signed the name of Williams as purchaser in his book, which was also signed by the auctioneer, and contained a copy of the conditions of sale and specified the lot and price. The whole of the hay was suffered to remain on the premises in the apparent possession of the vendor, and was subsequently seized in execution under a judgment against the vendor. Upon an interpleader summons taken out by the sheriff, it was held by Kay, J., that as the sale would have been void under the 17th section of the Statute of Frauds but for the memorandum of sale in the auctioneer's book, that that memorandum therefore was an assurance and a bill of sale within the Bills of Sale Act, and was void as against the execution creditor for want of registration. It was admitted that there was no authority precisely in point, and the case was distinguished from *Marsden* v. *Meadows*, 7 Q. B. D. 80, on the ground that the sale in that case was complete so as to pass the property without any memorandum of sale, and therefore the memorandum of sale in that case was not necessary to the validity of the sale. Whereas, in the present case, but for the memorandum there would be no valid sale as Kay, J., puts it: "The Act of 1878 only avoids the bill of sale; it does not avoid any transaction of sale which is complete without it."

WILL—LEGACY OF SHARES—GENERAL OR SPECIFIC LEGACY—CHANGE IN NATURE AND VALUE OF SHARES BEQUEATHED AFTER DATE OF WILL.

In re Gray, *Dresser* v. *Gray*, 36 Chy. D. 205, is one of those hard cases constantly turning up in the construction of wills, whereby the intention of the testator is frustrated, and the hopes of a legatee are dashed to the ground, all because the testator has used language which the law is unable to construe so as to give effect to his intentions. In this case the testator, who died in 1887, by his will made in 1882, bequeathed to trustees "fifty shares in the York Union Banking Co." At the date of the will there was a company of that name in existence which was an unlimited company, the shares of which were £100 each. After the date of the will this company was converted into a limited company, and the shares were £60 each. The new company was styled "The York Union Banking Co., Limited," and each of the shareholders of the original company was entitled to exchange each of his shares in the old company for two of the shares of the new company. The testator exchanged seventy shares in the original company for 140 shares of £60 each in the limited company. And at the time of his death he actually held 171 shares in the latter company. It was conceded that the legacy was general and not specific, and Kay, J., so held; but it was contended that the will spoke from the testator's death, and was equivalent to a direction to purchase fifty shares in the limited company existing at the time of the testator's death. But it was held by Kay, J., that the gift must be construed to apply to shares in the company existing at the date of the will, and that as that company had ceased to exist there was no basis by which the value of such shares could now be ascertained, and therefore no means by which the amount of the legacy could be ascertained, and that therefore the legacy failed.

DEBENTURE—MEMORANDUM OF AGREEMENT—BILLS OF SALE ACT, 1882.

Edwards v. *Blaina Furnaces Co.*, 36 Chy. D. 215, appears to be important to note, because, although Chitty, J., decided that a memorandum of agreement made by a company in favour of certain parties to secure advances made by them to the company, and which, as security for the payment, charged therewith all the company's property, was a debenture, and therefore exempt by the Bills of Sale Act, 1882, s. 17, from registration as a bill of sale. Yet in this Province where we have no such provision exempting debentures from the operation of our Bills of Sale Act, this decision would serve to show that such a document, in order to its validity as against third parties, would require registration as a chattel mortgage.

MORTGAGE—SET OFF—ADMINISTRATION ACTION.

In re Gregson, *Christison* v. *Bolam*, 36 Chy. D. 223, was an administration action in which a contest arose between the executor and a mortgagee of the testator. The testator had mortgaged an estate for his own life to secure an annuity granted by himself, and payable during his own life. He had also mortgaged to the same mortgagees a policy of insurance

on his own life. After the testator's death the mortgagees received the amount of the policy, which was more than sufficient to secure the amount secured by the mortgage on the policy, and claimed to set off against the claim of the executors to the surplus, the arrears due to them on the annuity. But North, J., held that they had no such right. He says at p. 226:

The decisions are clear that a debt due by the testator in his lifetime, and for which his executor was never personally liable, cannot be set off against a sum never payable to the testator at all, and in respect of which he never had a right of action, but which first became payable after his death, and then became payable to the use of the executor.

There had been some conflict of authority on the point, and North, J., elected to follow the decision of Jessel, M.R., in *Talbot* v. *Frere*, 9 Chy. D. 508, rather than the decision of Lord Romilly, M.R., in *Re Haselfoot*, L. R., 13 Eq. 327; *Spalding* v. *Thompson*, 26 Beav. 637, and *Ex parte National Bank*, L. R. 14 Eq. 507, 516.

APPOINTMENT OF NEW TRUSTEES—DEATH OF SOLE TRUSTEE IN TESTATOR'S LIFETIME—VESTING ORDER.

In re Williams Trusts, 36 Chy. D. 231, the sole trustee named in a will had died in the testator's lifetime. The testator's heiress-at-law had died intestate (after the Conveyancing Act, 1881, had come into operation), and there was no personal representative of her estate. North, J., on a petition for the appointment of a new trustee, which was served on the heir-at-law of the testator, made an order vesting the property in the new trustees for such estate as was vested in the heiress-at-law of the testator at the time of her death, notwithstanding that the Conveyancing Act provided that her estate as trustee should pass to her personal representative.

VENDOR AND PURCHASER—RESTRICTIVE COVENANTS—RIGHT OF PURCHASER TO ENFORCE RESTRICTIVE COVENANT—INJUNCTION.

Collins v. *Castle*, 36 Chy. D. 243, is a case in which a purchaser of part of a certain property, offered for sale subject to certain restrictive covenants as to building, was held entitled, by Kekewich, J., to enforce such covenant as against a purchaser of other parts of the same property, by restraining him from erecting buildings of less value than that stipulated for by the restrictive covenants subject to which the land had been sold. It was attempted on the part of the defendant to exclude the case from the ordinary rule, on the ground that although the property had originally been offered for sale at the same time, yet the sale to the defendant had been made subsequently to the purchase by the plaintiff. But this fact was held not to exclude the case from the law laid down by Wills, J., in *Nottingham Patent Brick and Tile Co.* v. *Butler*, 16 Q. B. D. 778, and approved by the Court of Appeal. The statement of the law by Wills, J., was as follows:

When the same vendor, selling to several persons plots of land, parts of a larger property, exacts from each of them covenants imposing restrictions on the use of the plots sold, without putting himself under any corresponding obligation, it is a question of fact whether the restrictions are merely matters of agreement between the vendor himself and his vendees imposed for his own benefit and protection, or are meant by him, and understood by the buyers to be, for the common advantage of the several purchasers. If the restrictive covenants are simply for the benefit of the vendor, purchasers of other plots of land from the vendor cannot claim to take advantage of them. If they are meant for the common advantage of a set of purchasers, such purchasers may enforce them *inter se* for their own benefit.

Applying this rule to the case before him Kekewich, J., granted the injunction as prayed.

SHARES — TRUSTEE — INDEMNITY—ACTION BEFORE CALL—DISCLAIMS OF LEGACY.

Hobbs v. *Wayet*, 36 Chy. D. 256, is a decision of Kekewich, J. Moneys belonging to A. were invested in the shares of a company in the joint names of A & B, the ultimate trust being for the estate of A. A predeceased B, and the company having gone into liquidation this action was brought by B against the representative of A's estate for indemnity against liability on the shares, before he had been placed on the list of contributors, and before any call had actually been made upon him, and he was held entitled to the relief prayed. The shares in question had been bequeathed by A to certain charitable societies, one of whom, apprehensive that the shares might be fraudulently disposed of by the personal representative, placed a *distringas* upon the shares; and another question in the case was whether the society had thereby precluded itself from disclaiming the legacy which by reason of the failure of the company had become *damnosa hereditas*, and the learned judge held that it had not.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

Leeds and Grenville.] [September 29.

RAYMOND v. SCHOOL TRUSTEES OF THE VILLAGE OF CARDINAL.

School trustee—Right to dismiss teacher.

The right of public school trustees to dismiss a teacher hired by them, necessarily arises from the relation of the parties. 49 Vict. ch. 49, ss. 165-168, provides a proceeding by which the status or qualification of the teacher may be determined; and the result of such proceeding may be in effect the same as dismissal; but this enactment does not take away the inherent right of employers to dismiss.

Knapp, for appeal.

Shepley, contra.

C. C. Wentworth.] [September 29.

ROSS v. HAENEL.

Interpleader—Refusal to interfere with verdict.

Goods seized under an execution were claimed by the father-in-law of the execution debtor, under a chattel mortgage, and an issue was directed to be tried between the claimant and the execution creditors. At the trial no witnesses were examined, except the claimant and the execution debtor, and although they swore to the *bona fides* of the claim, the verdict and judgment of the court below were for the execution creditor.

This court refused to interfere.

F. Fitzgerald, for the appeal.

Osler (Hamilton), contra.

C. C. Grey.] [September 29.

MITCHELL v. VANDUSEN.

Costs—Discretion of judge in ordering and apportionment.

An action by the bailiff of one Division Court against the bailiff of another Division Court, to recover the proceeds of goods seized and sold by the latter under an execution against B., which, at the time of such seizure and sale, were under seizure, and had been advertised for sale by the plaintiff under executions which he also held against B. The action was tried without a jury by the judge of a County Court, who held that the plaintiff was entitled to recover, but deprived him of his costs and ordered that the defendant's costs of the action, and the costs of the seizure and sale of the goods should be deducted from the amount of the judgment.

The plaintiff having, by leave of the judge, appealed from the discretion exercised in the disposition of the costs, this court reversed the decision, and ordered the defendant to pay the plaintiff's costs.

HAGARTY, C.J.O., reversed his opinion as to the existence of any right in any judge to make a defendant pay the costs of a plaintiff who has failed to establish a right to recover, or to make a plaintiff who has substantially proved his right to recover, pay the costs of the defendant.

Per PATTERSON, J. A.—Rule 428 gives full discretion over the apportionment of costs, and in proper cases to deprive the successful party of costs, but does not extend to make any party, whether plaintiff or defendant, who is wholly successful in his action or defence, pay the costs of his defeated opponent.

Per OSLER, J. A.—The jurisdiction in question is one which does exist, though the circumstances in which it has been exercised are of a very special and unusual character.

Creasor, Q.C., for the appeal.

George Kerr, contra.

C. C. York] [Oct. 25.

JOYNE v. LEE.

Chattel mortgage—After acquired property—Appeal—Practice.

A chattel mortgage conveyed to the plaintiff the stock in trade of the mortgagor as a general hardware merchant, etc., more particularly described in Schedule A.; all which goods and chattels were situate and lying on certain specified premises. Schedule A. set out the property and proceeded: "And all goods . . which at any time may be owned by the said mortgagor and kept in the said store for sale by him as a general hardware merchant . . and whether now in stock or hereafter to be purchased and placed in stock."

Held, affirming the judgment of the County Court of York, that the after-acquired property brought into the business in ordinary course, was covered by the plaintiff's chattel mortgage as against the executions of creditors of the mortgagor. No title to such property passed at law; the claim rested on the mortgagee's equitable title; as soon as the property was brought upon the named premises and into the named business, it was identified, and the equity attached.

The action out of which this interpleader arose was in the High Court of Justice; the interpleader issue and subsequent proceedings were transferred to the County Court of Middlesex, by an order under 44 Vict. c. 7, s. 1. A subsequent order recited that the parties had consented that the issue directed should be determined by the decision of the County Court of York on a special case agreed upon, and directed that the venue should be changed from Middlesex to York, and that the parties should proceed to the argument of the special case before the County Judge of the latter county.

Held, per PATTERSON and OSLER, JJ.A., that no appeal lay to this court from the decision of the County Court of York upon the special case, and that the appeal should be quashed.

McMichael, Q.C., for the appeal.

Clark, contra.

CHANCERY DIVISION.

Ferguson, J.] [September 29.

MAYS v. CARROLL ET AL.

Will—Devise—Next of kin—Period of distribution—Construction—Executor.

J. C. died, leaving a wife and a daughter, E. C. By his will, after giving all his property to his executors, to pay the whole income to his wife for life, or during widowhood, and after her death or second marriage, to pay the said income to his daughter E. C., yearly, if she had attained the age of twenty-one, for her life . . . he provided as follows: "And I hereby empower her, my said daughter, if she come into possession of the said income, and have lawful issue, to make a will bequeathing my said property absolutely to any or all of her said children, in such manner as she may think best. And if she have no children, then the said property to fall to my next of kin who may be living on this continent"; and further provided: "In case . . . then, notwithstanding anything heretofore provided, I will and direct that neither she, Ellen, nor any of her children, shall receive any portion of my property, and in such case my whole property shall be given to my wife absolutely, or if my said wife at that time be dead, then the property to go to my nearest of kin as above provided." The wife died and the daughter E. C. attained twenty-one, came into possession of the income, and died unmarried and without issue, having made a will appointing the plaintiff her executor. In an action by the plaintiff, M., as executor of the daughter E. C. against W. C. and F. McQ. as executors of the testator J. C. for the property which the defendants resisted on the ground that the next of kin of the testator other than E. C. were entitled to it, it was

Held, That the "next of kin" must be ascertained at the death of the testator J. C., and not at the death of his daughter E. C., and as E. C. was sole next of kin she had such an interest as would pass by her will, and the plaintiff as her executor was entitled to the property.

G. W. Field, for the plaintiff.

J. L. Murphy, for the defendants.

Boyd, C.] [November 5.

HERCHMER v. ELLIOTT.

Mistake—Fraud—Purchaser for value—Solicitor and client.

P. gave a mortgage on lands to J. H. Subsequently an assignment of this mortgage to K. E. purporting to be executed by P. was given to K. E. by P.'s solicitor, who was also the solicitor of K. E. J. H. brought this action to have this assignment delivered up to be cancelled as a cloud on her title and void.

The evidence showed that J. H., when she executed it, was told and believed that it was merely to provide for an extension of the term of payment of the mortgage from P.

Held, that J. H.'s signature having been obtained by a piece of deception which involved a fundamental error on her part, the assignment of the mortgage was void, even in the hands of an innocent holder.

Held, further, that the assignment being void, and no estate having therefore passed thereunder, there was no basis on which K. E. could found the defence which he set up of purchase for value.

Held, however, apart from this, that the circumstances under which K. E. obtained this assignment, viz., from the said solicitor, to secure some moneys due from the said solicitor to K. E. were such that K. E. had no reason to trust to any statement in the assignment that J. H. had been paid the mortgage moneys, and he was not constituted a purchaser of the assignment for value as against J. H.

The possession of the assignment of the mortgage apparently executed by J. H. did not authorize the solicitor to pledge it for a debt of his own, or justify the defendant K. E. in accepting it without the privity of the plaintiff.

Dickson, Q.C., for the plaintiff.

Cassels, Q.C., and *Skinner*, for the defendants.

Proudfoot, J.] [November 9.

DICKSON v. MONTEITH.

Mandamus—Surrogate judge—Grant of administration—Jurisdiction—R. S. O. c. 46, s. 31.

Mandamus directed to issue to compel the judge of the Surrogate Court of the County of Wellington, to grant administration with the will annexed of a certain testator to G. D., one of the next of kin (who had filed all necessary papers), notwithstanding that in an issue directed out of the said Surrogate Court a jury had found against the will. It appeared that the present applicant was no party to that issue, and that since the trial of it this court had held in favour of the will.

Held, also, that this was not a case for an appeal from the refusal to grant administration under the 31st section of the Surrogate Court Act, because an appeal under that section would appear to be granted only when some one contests the grant of administration, which no one was doing here.

Semble, that this court has jurisdiction to declare a will valid.

Moss, Q.C., and *Hoyles*, for the motion.

J. Maclennan, Q.C., contra.

Ferguson, J.] [November 11

STEWART v. GOUGH.

Garnishee proceedings—Share under will—Receiver.

A testator left his real and personal property to the defendants as executors and trustees, on trust to sell and divide among his eight children, of whom S. S. was one. The testator died in May, 1883. On August 30th, 1883, J. S., one of the defendants, obtained judgment against S. S., and on September 15th, 1883, an attaching order was made thereon attaching all debts due and accruing due from the defendants to S. S., referring to his share under the said will. Afterwards, on October 3rd, 1883, J. S. recovered judgment against S. S., and on October 27th, 1883, J. W. S. was, by an order made without notice to the defendants, appointed receiver, and after his death the plaintiff was appointed receiver in his place. Notice of the making of these orders

was given to the defendants after they were made.

In 1886, the defendants as executors as aforesaid sold the testator's estate, and realized the share of S. S., and paid it over to J. under the attaching order, and afterwards distributed the rest of the estate. The plaintiff now sued the defendants, claiming payment of the amount of S. S.'s share to him.

Held, that the attaching order was properly made, and the defendants were bound by it, and the payment made by them under it discharged them under Marg. rule 376, and the action must be dismissed with costs.

Leeming v. *Woon*, 7 A. R. 42 followed, in preference to *Webb* v. *Stenton*, 11 Q. B. D. 518.

Held, also, that the fact of J., the attaching creditor, being one of the executors and trustees in whose hands the share of S. S. was attached, did not invalidate the garnishee proceedings.

Held, lastly, that the defendants were not bound to interplead on receiving notice of the appointment of the receiver.

McKelcan, Q.C., and *Gorby*, for the plaintiff.
Moss, Q.C., and *Clement*, for the defendants.

Ferguson, J.] [November 11.

CORBY v. GRAY.

Vendor and purchaser—Sale subject to mortgage—Liability to indemnify—Parol evidence.

Although where one sells land, subject to an outstanding mortgage, there arises a presumption or supposed intention in equity on the part of the purchaser, to indemnify the vendor against the mortgage (if, that is, under the actual facts and circumstances, the parties are to be considered to have really occupied the relation of vendor and purchaser), yet this presumption may be rebutted by parol evidence; and it was held to have been so rebutted in this case, in which it appeared to be contrary to the real intention of the parties to the transaction in question, who, moreover, were not strictly in the relation of vendor and purchaser.

Parkes, for the plaintiff.
McCarthy, Q.C., for the defendant Gray.
Stanton, for the defendant Grinrod..

PRACTICE.

Boyd, C.] [November 19.

IN RE MONTEITH, MERCHANTS' BANK v. MONTEITH.

Costs—Solicitor appointed by Master—Charging client's with costs—G. O. Chy. 218.

During a reference in an administration suit the master appointed the solicitor for one of the unsecured creditors of the estate in question to represent the general body of unsecured creditors. The Imperial Bank were unsecured creditors of the estate; they sent in a claim to the administrator in answer to the statutory advertisement for creditors, but did not prove their claim before the Master. The nomination of the one solicitor for the unsecured creditors was an *ex parte* proceeding of which the bank were not satisfied till a year afterwards.

Held, that in the absence of contract or of an order of the master made under conditions contemplated by G. O. Chy. 218, the solicitor could not recover from the Imperial Bank any portion of the costs incurred on behalf of the unsecured creditors in contesting the claims of the secured creditors.

The doctrine of ratification by silence or inaction does not apply to a case like this.

Hall v. *Lane*, 1 Ha. 571, followed.
Hoyles, for the solicitor.
Kappele, for the Imperial Bank.

Mr. Dalton.] [November 22.

HANDS v. U. C. FURNITURE CO. ET AL.

Examination—Excluding solicitor and clerk from examiner's chambers—Exhibits.

Upon an examination before a special examiner at his chambers: (1) The examining counsel has no right to have a clerk present to assist him, if the opposite party objects. (2) If the documents are produced by the party under examination, the opposite party is entitled to have them marked as exhibits. (3) It is within the discretion of the examiner to exclude from his chambers even the solicitor for the party under examination, if his presence

interferes, in the examiner's opinion, with the due execution of his duty as examiner.

Hands, for the plaintiff.

Behlin, for the defendants, Wm. Beatty & Son.

Q.B. Div. Ct.] [Nov. 28.

GOWANS v. BARNETT.

Discovery—Examination—49 Vict. c. 16, s. 12—Solicitor—Employee—Transfer.

The solicitor of a judgment debtor, who had absconded, transferred property of the judgment debtor to a purchaser, under power of attorney, and received the consideration money, $4,000. Upon an application to examine the solicitor under 49 Vict. c. 16, s. 12,

Held, that this provision being remedial and for the purpose of enabling the judgment creditor the better to discover property of his debtor, it should be construed so as to advance the remedy, so far as the fair meaning of the words will permit. The word "transfer" in the expression "any person to whom the debtor has made a transfer of his property or effects" should not be limited to the transfer of the title to the property or effects, but should be regarded as equally applicable to the transfer of the possession; and therefore the solicitor was a person to whom a transfer of the debtor's property and effects to the extent of $4,000 had been made, for the possession of that sum had been transferred to him by the debtor.

Per ARMOUR, C.J.—The solicitor was also an employee of the judgment debtor within the meaning of the section.

Walter Macdonald, for the plaintiff.

J. R. Roaf, for the defendant.

FLOTSAM AND JETSAM.

ONE often comes across a tit-bit in looking over old reports. We note the following from 8 De G., M. & G., 538, where Lord Justice Knight Bruce thus delivers himself:—"This litigation owes its origin to the manner in which a series of professional gentlemen in the North of England permitted themselves to transact, or, in more accurate phrase to entangle and perplex, some legal business entrusted to their care. These licensed pilots undertook to steer a post captain through certain not very narrow straits of the law, and with abundance of sea room ran him aground on every shoal that they could make. A settlement made in June, 1824, on the marriage of the plaintiff, Captain James Robertson Walker and his late wife, Anne Walker, gave a joint power of appointment to them over the whole, and also a power of testamentary appointment (notwithstanding coverture) to the lady over some at least of the real estates here in contest. The settlement in other parts of it was erroneously framed, and for the purpose of curing the mistake, or mistakes, they executed in the year 1825, under the joint power, an instrument of appointment, which, correcting after a fashion that error or those errors, committed or was affected by another error or other errors."

SUICIDE AS A CRIME.—We extract the following: "Punishment will prevent some actual suicides, but much more will it prevent attempts by those who are so weak and infirm of purpose that they cannot successfully accomplish the act. That suicides are amenable to the argument of punishment, is evident from some well-established facts. In the first place, they are in general fastidious as to their mode of death. In cold countries and in cold weather death by drowning is avoided (Morselli, 324). Women avoid public places when they wish to destroy themselves. Among military men firearms are chosen as an honourable means of compassing their death. In the second place, fashion has an overwhelming influence, both in causing suicide and in determining the mode of death. If the State, by a well-defined and strictly enforced law, can to some extent counteract this influence, it will have accomplished a great end. * * But there must be a large class of cases where the interposition of society by an emphatic prohibition, and the imposition of a penalty on the delinquent

himself, could counteract the forces which impel weak-minded persons to lay violent hands on themselves. The punishment would be reformatory of the delinquent himself, and the example in his person would deter others from a similar course, while a mawkish sympathy might impel them to follow his example. But while a more stringent criminal law might prevent some attempts at suicide, if it did not prevent some successful acts, there is something to be said for the paternal mode of dealing with suicides which now prevails in Scotland. The causes which lead up to this crime are generally social, and legal and political remedies will effect only a partial cure. In the struggle for existence the weakest must succumb, and when they give up the fight their defeat assumes different shapes. It may be drunkenness or other vicious indulgence; it may be vagrancy, as in this country and the Eastern States of America; or it may be suicide. These various forms of defeat may be morally the same, and the particular one chosen will be determined by previous history and surrounding circumstances. And existence in different parts of the world means utterly differen things. Contrast existence in the east or south of Ireland with existence in Paris. There, though the struggle is severe, it is for mere life and with nature itself and the conscious failures are few. Here, men set themselves false, absurd and exaggerated ideals as the aim of life, and the failures are many. If we could change the Parisian conception of life we might make the suicide rate lower than the Irish, and what is true of Paris is true of our own country. We cannot, however, help feeling that even though the French Legislature were to pass a stringent law against suicide it would be inoperative, since in the present condition of French society it would come to the people in a foreign guise. The true remedies are economical, social, moral and relligious. No alteration of the law, and no stringency in its administration, will enable us to dispense with the efforts of the Christian philanthropist."—*Journal of Jurisprudence.*

BOOKS RECEIVED.

A TREATISE ON THE INVESTIGATION OF TITLES TO REAL ESTATE. By E. D. Armour, Barrister-at-Law. Toronto: Carswell & Co.

NATURAL LAW IN THE BUSINESS WORLD. By Henry Wood. Boston: Lee & Shepard.

Law Society of Upper Canada.

OSGOODE HALL.

CURRICULUM.

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Society as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

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

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

5. The Law Society Terms are as follows:

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

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

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

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

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

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

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

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2.30 p.m.

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

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

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

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

15 A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

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

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

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

19. No information can be given as to marks obtained at examinations.

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

FEES

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM FOR 1887 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1887.	Xenophon, Anabasis, B. I. Homer, Iliad, B. VI. Cicero, In Catilinam. I. Virgil, Æneid, B. I. Cæsar, Bellum Britannicum.
1888.	Xenophon, Anabasis, B. I. Homer, Iliad, B. IV. Cæsar, B. G. I. (1-33.) Cicero, In Catilinam, I. Virgil, Æneid, B. I.
1889.	Xenophon, Anabasis, B. II. Homer, Iliad, B. IV. Cicero, In Catilinam, I. Virgil, Æneid, B. V. Cæsar, B. G. I. (1-33)
1890	Xenophon, Anabasis, B. II. Homer, Iliad, B. VI. Cicero, In Catilinam, II. Virgil, Æneid, B. V. Cæsar, Bellum Britannicum.

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

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

Law Society of Upper Canada.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.

Critical reading of a Selected Poem:—
1887—Thomson, The Seasons, Autumn and Winter.
1888—Cowper, the Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

A paper on Grammar.
Translation from English into French Prose.

1886, 1888, 1890 } Souvestre, Un Philosophe sous le toits.
1887, 1889 } Lamartine, Christopine Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

In the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-Keeping.

RULE RE SERVICE OF ARTICLED CLERKS.

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

First Intermediate.

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

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

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

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

Copies of Rules, price 25 cents, can be obtained from Messrs. Rowsell & Hutchison, King Street East, Toronto.

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