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The visit of the Lord Chief Justice of England to the United States, and the cordial reception he received, are noteworthy. His Lordship came by special invitation to deliver an address before the American Bar Association at Saratoga. The topic he selected was "International Arbitration," which included a learned and able disquisition on international law, its origin, foundation and sanctions. With regard to the main subject of the address, while expressing himself as a strong sympathiser with the idea of settling international disputes by arbitration, he was nevertheless careful to point out the unavoidable limitations and difficulties in the way of any such schemes. "Men do not arbitrate where character is at stake, nor will any self-respecting nation readily arbitrate on questions touching its national independence or affecting its honor. Again, a nation may agree to arbitrate and then repudiate its agreement. Who is to coerce it? Or having gone to arbitration and been worsted, it may decline to be bound by the award. Who is to compel it? These considerations seem to me to justify two conclusions. The first is, that arbitration will not cover the whole field of international controversy, and the second, that unless and until the great powers of the world, in league, bind themselves to coerce a recalcitrant member of the family of nations, we have still to face the more than possible disregard by powerful states of the obligations of good faith and justice." This puts in a nutshell some of the practical difficulties in the way of the universal application of arbitration to the settlement of international disputes.

His Lordship's description of what constitutes true civilization deserves to be recorded in letters of gold: "Its true

signs are thoughts for the poor and suffering, chivalrous regard and respect for woman, the frank recognition of human brotherhood, irrespective of race or color, or nation or religion, the narrowing of the domain of mere force as a governing factor in the world, the love of ordered freedom, abhorrence of what is mean and cruel and vile, ceaseless devotion to the claims of justice."

His Lordship's final aspiration for peace and harmony with our neighbors to the south will meet with a ready response in Canada. Speaking of the British and American nations he truly says: "They have the making of history in the times to come. The greatest calamity that could befall would be strife which should divide them. Let us pray that this shall never be. Let us pray that they, always self-respecting, each in honor upholding its own flag, safe-guarding its own heritage of right, and respecting the rights of others, each in its own way fulfilling its high national destiny, shall yet work in harmony for the progress and peace of the world." This end will be facilitated as far as Canadians are concerned, by the frank recognition by our neighbors of the fact that we are here on this continent to stay, not as a part of the United States, but to fulfil our destiny as a separate nationality, and that all schemes to coerce the political sentiment of the country in favor of annexation, while they are certain to obstruct free and friendly intercourse, are equally certain to fail of their object.

The learned Chief Justice appears to have made some curious slips in one of his remarks. According to the version of his address printed in the *English Law Times* of the 29th Aug. last, he is reported to have said, referring to the proneness of the nations of Europe in the past to resort to war as a means of settling international disputes: "But from time to time, and more fiercely when the influence of the head of Christendom lessened, the passions of men broke out, the heat for dominion asserted itself, and many parts of Europe became so many

fields of Golgotha." The learned Chief Justice may possibly be stronger in the law than in the gospel, for when he said *Golgotha* he probably meant *Aceldama*, that is "the field of blood." But however this may be, it seems hardly consistent with the fitness of things that a Chief Justice of England should call the Pope (for that is, we presume, what he meant by the expression) "the head of Christendom." England is a part of Christendom and we had always thought that the King or Queen of England was head of the church so far as the British Empire is concerned. The great multitude who hold the tenets of the Greek church moreover, do not recognize the Pope as the head of Christendom. The remark was a very natural one for a member of the Roman Catholic church to make, and but for the position held by this most learned and excellent judge, who was appointed by Her Majesty to dispense justice in her name, would not be worth noticing. This, however, is but "a spot on the sun," and it is gratifying to learn that the address was warmly and enthusiastically received, not only for its intrinsic merits, but also on account of the oratorical gifts displayed in its delivery.

A WORD ABOUT PARAPHERNALIA.

We have read Mr. T. F. Uttley's contribution to the July-August number of the *American Law Review* (Vol. xxx., No. 4, p. 556), on the subject of paraphernalia, with a great deal of pleasure and profit; but while we agree in the main with the views therein expressed, we feel constrained to point out one instance in respect of which the learned writer lays himself open to criticism. In the course of his article he says: "The English law of the wife's paraphernalia is borrowed from the civil law, and consist in her wearing apparel and ornaments suitable to her rank, even the jewels of a peeress." Now apart from any objection to this statement from a syntactical point of view, it strikes us as being substantially inexact and misleading. It is quite true that the paraphernal *idea* was borrowed by the English lawyers from the civilians; but in the civil law *parapherna* comprised real

property belonging to the wife, as well as articles of personal use and adornment, and corresponded perhaps more than anything else to what we now style the wife's "separate property." By Cod. 5, 14, 8, the matter in question was dealt with as follows: "Hac lege decernimus, ut vir in his rebus quas extra dotem mulier habet, quas Graeci *paraphcrna* dicunt, nullam uxore prohibente habeat communionem; . . . . . nullo modo, muliere prohibente, virum in paraphernis se volumus immiscere." In commenting upon this provision Lord MacKenzie (Rom. Law, 6th ed., p. 107) says: "All the property of the wife not comprehended in the dowry, was called paraphernal." Again, Mr. Schouler, in his admirable work on the Domestic Relations (4th ed., p. 208), emphasizes the very distinction that we are here indicating between the Roman and English systems of jurisprudence in relation to this subject, and says: "The word [paraphernalia] has a more limited signification in England and America, being confined to personal necessaries or ornaments, and having no possible application to real estate." These authorities (and there are others which we have not space to quote) justify us in thinking that it is incorrect to say that "the English law of the wife's paraphernalia is borrowed from the civil law." On the whole, however, Mr. Uttley's article is both interesting and instructive, and if he has made one or two slips in his exposition of the law, why—*Quandoque bonus dormitat Homerus!*

A CANADIAN BAR ASSOCIATION.

A new chapter in Canadian legal history has been opened by the formation of the Canadian Bar Association. We bespeak the careful attention of our readers to the constitution adopted, and to the report of the proceedings of the preliminary conference at Montreal, which appears in an appendix to this issue.

The highly representative character of the attendance and the ability with which the meeting was managed, augur well for a useful future for the new organization. Except by letters from leading barristers in various parts of the province, Ontario was not so fully represented as some of the other pro-

vinces. Those, however, who were there, were accorded a full voice in the conduct of the proceedings, and took no inconspicuous part in the labors that brought the meeting to its successful conclusion. We are glad to be enabled to say that some of the most prominent members of the Bar of this province have since the meeting signified their intention of joining the Association, and we trust that their example may be speedily followed by the profession generally, so that all the possibilities of the new organization may be the more quickly and fully developed.

The Law Society of Nova Scotia is entitled to the credit of initiating the movement, and the best men from the Maritime Provinces were at the inaugural meeting in full force.

The Bar of Montreal was naturally the most numerous element in the gathering. It had made excellent arrangements and took charge of the delegates in the most hospitable manner. The Bench of that Province also treated the assembly with marked courtesy. It was fitting, in view of these facts, as well as of the seniority of the Quebec Bar and of the merits of its able and genial Batonnier, that he should have been chosen as the first President of the national Association.

Perhaps the only omission in the preparations was the failure to secure a verbatim report of the speeches, many of which were well worthy of being fully recorded. The Montreal press, however, was well represented, and by its aid a very fair report has been prepared. By following it our readers can obtain a good understanding of the views held by those who took part in the discussion, and as to the prospective utility of the new born Association. Further it will be seen that a strong and representative Executive Council has been formed to carry the plans of the organization into effect.

Prominent among the objects may be mentioned Canada's interest in International Law. It may have occurred to thoughtful members of the legal profession in Canada that when a Lord Chief Justice of England came to this continent for the purpose of discussing the great question of an International Court between our Empire and the United States, the Canadian Bar should have been heard from in connection

with a subject in which Canada has and ought to manifest a livelier interest than any part of the British Empire. This circumstance alone emphasizes the need of a national Association of our Bar, where such branches of law of more than provincial import can be suitably entertained.

Canadian lawyers are not lacking in the necessary ability to grapple with these larger questions. What has been lacking was an organization suited to bring such subjects into prominence. In this and other matters it may be hoped that the Canadian Bar Association will fill a blank hitherto existing in our institutions. Its existence may be expected to have an effect upon the enlargement of legal thought and action analogous to that produced in the political field by the union of the provinces and the creation of the Dominion Parliament. And it may not be a mere matter of sentiment that members of the Association will be able to describe themselves as members of the Canadian Bar, a term which will convey a meaning abroad much more significant than members of the Bar of any province.

If there are those who think that at present there does not appear to be much practical benefit to be derived from this Association, it would not be difficult to enumerate many other matters of interest in common to the members of the Bar of the various provinces which such an Association might deal with. For example all are equally interested in matters of appeal to the Privy Council and the convenience of those who are called upon to appear before that tribunal. There are arising, and always will arise, important questions of constitutional law, which should be dealt with by legislation and otherwise; a strong and representative Association, such as is contemplated, would be a great benefit in this regard. Such an Association would also tend to develop a helpful esprit de corps among, and consolidate the interests of the profession in the Dominion as a whole.

We do not, however, at the present time attempt to forecast the full development of the Association; suffice it to say that there is already a raison d'etre for its existence, and as time goes on its field of usefulness will be more apparent and gradually enlarge. At least it will not, and is not in-

tended in any way to interfere with, or be inimical to any existing association or local system of law, but is rather the natural outcome and the due complement of Provincial Associations.

It is worthy of note that the large number of the Bar, viz., about 300, present at the meeting in Montreal, at a time which was not convenient for many, is a good indication of the interest which has already been evoked by the movement.

The place for the next meeting has not as yet been determined. Possibly the capital city of the Dominion would be an appropriate place, and if held when Parliament is in session, and during the sittings of the Supreme Court, many of the leading men from all the Provinces would naturally be present, and the best thought would be likely to be evolved.

The idea is a national one. The Association has been commenced on broad lines. It remains for the profession throughout Canada to maintain it in the same broad spirit, and to lend the utmost aid to the executive in carrying its plans to success.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

ESTATE PUR AUTRE VIE—SPECIAL OCCUPANT—DEVOLUTION OF ESTATES PUR AUTRE VIE—WILLS ACT (1 VICT., C. 26), SEC. 6—STATUTE OF FRAUDS—(29 CAR. II., C. 3) SEC. 12.

Mountcashell v. *More-Smyth*, (1896) A.C. 158, involved a neat little question of real property law. The appellant and respondent were tenants pur autre under a conveyance to them and their heirs upon certain trusts, subject to a declaration that all the estates and interest conveyed to the respondent were conveyed to her as trustee for an infant. This infant having died, the respondent as administratrix of the deceased infant brought this action for an account against the appellant. The action was resisted on the ground that the respondent's estate as trustee was an estate of quasi fee, a descendible

freehold, and therefore the equitable estate of the infant was also a descendible freehold, and went to his heir as special occupant. The House of Lords (Lords Halsbury, L.C., Watson, Herschell, Macnaghten, Morris and Davey) thought that this argument was untenable, and that the equitable estate of the infant not being expressed to be to him and his heirs, there was no special occupant thereof, and, under the statute, on his death his equitable estate passed to his personal representative, notwithstanding there was a special occupant of the legal estate vested in the trustee. The appeal was therefore dismissed and the judgment of the Court of Appeal in Ireland, in favour of the respondent, was affirmed.

HUSBAND AND WIFE—MARRIED WOMAN—JUDGMENT AGAINST MARRIED WOMAN—SEPARATE ESTATE—RESTRAINT ON ANTICIPATION—ARREARS OF INCOME—MARRIED WOMEN'S PROPERTY ACT, 1882, c. 75, ss. 1, 19—(R.S.O. c. 132, ss. 2, 20.)

Hood Barrs v. *Heriot*, (1896) A.C. 174, may be looked on as a somewhat remarkable case from the fact that although the action was against a married woman, the question in dispute was actually decided against her, and in favor of the creditor. The point at issue was a very short one, and was simply this, viz., whether a restraint against anticipation would operate so as to prevent arrears of income, subject to such restraint, which had accrued before the recovery of the plaintiff's judgment against the married woman, but which had not been paid over to her by the trustees, from being made available by way of equitable execution for the satisfaction of the plaintiff's judgment. The Court of Appeal, *Loftus* v. *Heriot*, (1895) 2 Q.B. 212 (see ante vol. 31, p. 505) held that the restraint operated to protect the income until it had actually reached the hands of the married woman, but the House of Lords (Lords Herschell, Macnaghten, Morris and Shand) holds that the effect of the restraint as a protection of the fund from the creditors of the married woman, is exhausted as soon as the income becomes payable, and that therefore the income in question was exigible. The triumph of the plaintiff, however, was a hollow one, because the Court of Appeal refused to order the fund to be kept in medio pending the appeal to the Lords, and it also refused to stay execution for the costs of

the appeal. The successful plaintiff endeavored after the present decision to obtain an order against the respondent's solicitors to refund the costs on the ground that their client was worthless, but failed, and he has probably been equally unsuccessful in getting either money or costs out of the respondent herself. Thus though the highest Court in the land has held the plaintiff's claim to be well founded, yet inasmuch as the inferior Court has assumed that he could not possibly succeed, it has by its inaction succeeded in preventing him from reaping any fruits of his victory, and such is by some fatality the usual result of actions against married women. We notice that in a subsequent case of *Whitley* v. *Edwards*, 74 L.T. 720, the Court of Appeal has "explained" this case so that it is held not to authorize arrears of income of separate estate subject to a restraint on anticipation which accrue after judgment to be made available in execution against a married woman debtor.

MORTGAGE—CONSOLIDATION OF MORTGAGES—REDEMPTION—ASSIGNEE OF EQUITY OF REDEMPTION.

Pledge v. *White*, (1896) A.C. 187, was known in the Courts below as *Minter* v. *Carr*, (1894) 2 Ch. 321; 3 Ch. 498, and in its preliminary stages was noted ante, vol. 30, p. 636; and vol. 31, p. 119. The case turns upon the equitable doctrine of consolidation of mortgages. This doctrine, though the subject of adverse comment in some of the later cases, is considered by the House of Lords to be too firmly established by a long course of decisions, to be now overthrown. In the present case the owner of different properties mortgaged them to different persons, and the mortgages afterwards became united in the same person. The mortgagor prior to the union of the mortgages had conveyed his equity of redemption in all the properties and the same had become vested in the appellant. It was contended that the right of the mortgagee to consolidate did not arise except as to the mortgages which were united in title prior to the conveyance of the equity of redemption, and that as to any mortgages subsequently acquired, the right to consolidate did not exist. The

House of Lords (Lords Halsbury, L.C., Watson and Davey), however, affirmed the decision of the Court of Appeal holding that the mortgagor cannot by an assignment of the equity of redemption intercept the right of consolidation, and that the assignee stands in the same position as the mortgagor himself would have done had there been no assignment. *Vint* v. *Paget*, 2 D. & J. 611, was therefore approved and followed. Lord Davey thus states the result of the decision: "If your lordships affirm the decree now under appeal, the doctrine of consolidation will be confined within at least intelligible limits. It will be applicable where at the date when redemption is sought all the mortgages are united in one hand and redeemable by the same person, or where after that state of things has once existed the equities of redemption have become separated. If the purchaser of two or more equities of redemption desire to prevent consolidation, he has it in his power to redeem any one mortgage before consolidation takes place; but if for his own convenience he delays doing so, he runs the same risk as the mortgagor ran of the mortgages becoming united by transfer in one hand."

TRADE NAME—NAME INDICATING MANUFACTURER—DESCRIPTION OF ARTICLE—IMITATION—INTENTION TO DECEIVE—FRAUD—PASSING OFF GOODS AS THOSE MADE BY ANOTHER—INJUNCTION.

Reddaway v. *Banham*, (1896) A.C. 199, was an action to restrain the defendants from calling goods manufactured by them "camel-hair belting," on the ground that by doing so they were passing off their goods as goods manufactured by the plaintiffs. The goods in question were belts made of camel hair, and it appeared by the evidence that the plaintiffs had for fourteen years manufactured camel-hair belting, and "camel-hair belting" was known in the trade as the belting manufactured by the plaintiffs and no others. The defendants had recently begun the manufacture of a similar kind of belting, and had also called it camel-hair belting, and it was found by the jury that camel-hair belting was known as the distinguishing name of the goods manufactured by the plaintiffs and no others, and that the defendants' goods were similarly named for the purpose of deceiving and did deceive

purchasers into the belief that they were buying the plaintiffs' goods, and that the defendants did pass off their goods as those of the plaintiffs. The Judge at the trial gave judgment for the plaintiffs, but the Court of Appeal considered there was no evidence to support the finding of the jury and dismissed the action (1895) 1 Q.B. 286 (noted ante vol. 34, p. 201.) This decision the House of Lords (Lords Halsbury, L.C., Herschel, Macnaghten and Morris) reversed, and restored the judgment of Collins, J., at the trial, holding that notwithstanding the description was literally true as applied to the defendants' goods, yet that the plaintiffs had by prior user acquired the name as a distinctive designation of the goods manufactured by them, that it could not be used by the defendants as descriptive of their goods without at the same time adding thereto something to distinguish them from those of the plaintiffs.

TRADE MARK—"CLUB SODA"—INJUNCTION—ALLEGED MISREPRESENTATION OF HIS GOODS BY PLAINTIFF.

Cochrane v. *Macnish*, (1896) A.C. 225, was an action to restrain the use by the defendants of the plaintiff's registered trade mark of "Club Soda." The defendants contended that the plaintiff was not entitled to relief because he printed on his label "manufactured in Ireland by H. M. Royal Letters Patent," which was alleged to be an untrue representation that ingredients from which the goods were manufactured were patented. But it was held by the Privy Council (Lords Hobhouse, Macnaghten, Morris, and Sir R. Crouch) that as those words were explained by evidence to mean that the goods were manufactured by patented machinery, they did not disentitle the plaintiff to relief.

CONTRACT OF INDEMNITY—ESTOPPEL—INTENTION TO ABANDON CLAIM.

In *Chadwick* v. *Manning*, (1896) A.C. 231, the Privy Council (Lords Hobhouse, Macnaghten, Morris, and Sir R. Crouch) have approved of the law as laid down in *Jordan* v. *Money*, 5 H. L. C. 185. The action was brought to obtain a declaration that the defendant was estopped from enforcing an agreement of indemnity, and for an injunction to restrain him from

enforcing it, and for the delivery up of the agreement to be cancelled. The facts relied on by the plaintiff were that the defendant by his conduct had manifested an intention to abandon any claim to the indemnity. But beyond the fact that the defendant had forgotten the existence of the agreement to indemnify, and had apparently acted in some respects as though it did not exist, there was no evidence of any intention to abandon. This the Judicial Committee held was not enough to estop the defendant. The law as laid down in the head note to *Jordan* v. *Money* is, that "where a person possesses a legal right, a Court of Equity will not interfere to restrain him from enforcing it, though between the time of its creation and that of his attempt to enforce it he has made representations of his intention to abandon it. Nor will equity interfere, even though the parties to whom the representations were made have acted on them, and have, in full belief in them, entered into irrevocable engagements. To raise an equity in such a case there must be a misrepresentation of existing facts, and not of mere intention."

COMPANY—WINDING UP—LESSORS, CLAIM BY—CREDITOR—PROOF OF CLAIM BY LESSOR.

In *Re Panther Lead Co.*, (1896) 1 Ch. 978, Romer, J., was of opinion that where a company is being wound up, a lessor of the company who is willing to terminate his lease on being compensated for the loss, should be assisted by the Court in proving his claim. Since the decision in *Hardy* v. *Fothergill*, 13 App. Cas. 351, he intimates that the old cases as to proof of loss by a lessor, need reconsideration.

INSURERS, REMEDIES OF—POLICY—PAYMENT OF LOSS UNDER—SUBROGATION—CHOSE IN ACTION—ASSIGNEES OF CHOSE IN ACTION.

King v. *Victoria Insurance Co.*, (1896) A. C. 250, was an appeal from the Supreme Court of Victoria. The action was brought by the insurance company as assignees under deed of all causes and right of action of the Bank of Australasia in respect of loss or damage caused to certain wool, the property of the bank, by a collision between certain punts of the defendant and the lighter on which the wool was stowed. The

plaintiffs had insured the wool, and paid the bank for a loss thereof under the policy, and had taken an assignment of the bank's claim against the defendants for having occasioned the loss. The defence set up was that the wool was not at the time of the collision and subsequent damage covered by the policy, and that the assignment did not entitle the plaintiffs to bring the suit in their own name. The Privy Council (Lords Watson, Hobhouse, Davey and Sir R. Crouch) dismissed the defendant's appeal, being of opinion that the honest payment of a claim by the insurers under the policy entitled them to the remedies available to the insured, and that it was not open to the defendants in action to enforce such remedies, to contend that the payment was not within the policy. As to the question of procedure, though it was conceded that the mere right to subrogation would not entitle the plaintiffs to sue in their own name, yet the Colonial statute relating to the assignments of choses in actions, which is similar in its terms to the English Judicature Act, 1873, authorized the bringing of the action in the plaintiff's own name. It may be observed that under R.S.O. c. 116, scc. 7, the right of the assignee of a chose in action to sue in his own name, seems to be limited to the case of assignees of choses in action "arising out of contract," and would therefore not cover a case like the present.

PRACTICE—BANKER AND CUSTOMER—FORGED CHEQUE—BANK, LIABILITY OF, FOR PAYMENT OF FORGED CHEQUE—NEW TRIAL, POWER OF COURT ON MOTION FOR—(ONT. RULE 755).

Ogilvie v. *West Australian Mortgage Corporation*, (1896) A. C. 257, though an appeal from the Supreme Court of Western Australia, incidentally furnishes a guide for the construction of Ont. Rule 755. The action was brought by a customer against the bank to recover moneys deposited. The money in question had been debited to the plaintiff's account in respect of cheques which the jury found were forged by one of the bank's servants. The jury also found that the plaintiff was informed thereof by the bank's agent, who requested his silence, and that the plaintiff in complying with that request acted honestly and with a view to what he believed to be the

bank's interest. The Court appealed from had held that the plaintiff was by reason of the facts aforesaid estopped from relying on the forgery, and that he was guilty of a legal wrong to the bank. The Privy Council (Lords Watson, Hobhouse, Davey and Sir R. Crouch) reversed this decision and held the plaintiff entitled to succeed. It was also held that under the provisions of a rule of Court similar in its terms to Ont. Rule 755, it is not competent for the Court to give judgment in disregard of the findings of a jury, which are not objected to, merely because it sets aside other findings which have been objected to.

The Law Reports for July comprise: (1896) 2 Q.B., pp. 1-112; (1896) P. pp. 153-209; and (1896) 2 Chy. pp. 1-278:

COUNTY COURT—JURISDICTION—BAILIFF, NEGLIGENCE OF—NEGLECT TO LEVY—ACTION AGAINST BAILIFF FOR NEGLECT—SUMMARY REMEDY—COUNTY COURTS ACT, 1888—(51 & 52 VICT., C. 43), SEC. 49—(R.S.O., C. 51, SEC. 279.)

Watson v. *White*, (1896) 2 Q.B. 9, was an action to recover damages against a bailiff of a County Court for neglect to levy an execution. It appears that by sec. 49 of the English County Courts Act, a power is given to the judge to exercise a summary jurisdiction over the bailiff for neglect to levy an execution similar to that which is conferred on judges of the Division Courts under R.S.O., c. 51, sec. 279, and the defendant claimed that the plaintiff was shut up to that remedy and could not bring an action, and he claimed a prohibition: but the Court (Lord Russell, C.J., and Wills, J.) were of opinion that the plaintiff was not deprived of his remedy by action, and refused the application for prohibition.

DETINUE—PROPERTY FOUND ON LAND OF ANOTHER—RING FOUND IN POOL OF WATER—OWNERSHIP OF CHATTELS FOUND ON PRIVATE PROPERTY.

South Staffordshire Water Co. v. *Sharman*, (1896) 2 Q.B. 44, raises an interesting question concerning the right to chattels found on private property. The defendant had been employed by the plaintiffs to clean out a pool of water on their lands, and in the course of his employment found a couple of gold rings, and the action was brought to compel him to deliver them up to the plaintiffs. The defendant claimed the right

to keep them, relying principally on the case of *Bridges* v. *Hawkesworth*, 21 L. J. (Q.B.) 75. In that case a parcel of notes had been found in the public part of a shop, and it was held that the finder was entitled thereto as against the shop keeper, on the ground that the notes were never in the custody of the shop keeper, or "within the protection of his house." The Court (Lord Russell, C.J., and Wills, J.), however, distinguished that from the present case, on the ground that in general the possession of the land carries with it the possession of everything which is attached to or under that land, and in the absence of a better title elsewhere, the right to possess it also. And it makes no difference that the possessor is not aware of the thing's existence. It might be said that this rule is equally applicable to the shop keeper's case, and that being on his land, the notes as against the finder and every one but the true owner, were his property. The distinction based on the notes being in the "public part of the shop" seems an over nice one, and it looks very much as if *Bridges* v. *Hawkesworth* has in fact been overruled under the guise of being "distinguished."

HUSBAND AND WIFE—JUDGMENT AGAINST MARRIED WOMAN—SEPARATE ESTATE—RESTRAINT ON ANTICIPATION—ARREARS OF INCOME DUE AFTER JUDGMENT—MARRIED WOMAN'S PROPERTY.

In *Whiteley* v. *Edwards*, (1896) 2 Q.B. 48, the Court of Appeal (Lord Esher, M.R., and Smith, L.J.) has determined that, notwithstanding the decision of the House of Lords in *Hood Barrs* v. *Heriot*, (1896) A. C. 174, noted ante, p. 576, the judgment creditor of a married woman is not entitled to the appointment of a receiver to receive the arrears of income of the separate estate of the married woman, subject to a restraint on anticipation, which have accrued and become payable to her subsequent to the recovery of the judgment. The distinction which the Court makes between *Hood Barrs* v. *Heriot* and the present case is that in the *Hood Barrs* case the arrears of income were due at the date of the judgment. In the present case they had accrued subsequent to the date of the judgment. Smith, L.J., summarises the result of the cases as follows: "If the income of the settled property is due at the

date of the judgment, a receiver in a proper case will be appointed; if such income is not then due a receiver will not be appointed." The rule that the income of the settled estate must be actually due at the date of the judgment in order to be available by the creditor, and that all income accruing due subsequently is exempt from liability to satisfy the judgment, seems, with all deference, closely to border on the absurd, and it would be somewhat surprising if the House of Lords do not prick this legal bubble if it ever have the opportunity.

SALE OF GOODS—CONTRACT—WARRANTY—IMPLIED CONDITION OF FITNESS OF GOODS—EVIDENCE—SALE OF GOODS ACT, 1893 (56 & 57 VICT., C. 71) SEC. 14.

Gillespie v. *Cheney*, (1896) 2 Q.B. 59, is a case which turns upon the construction of one of that class of Acts which have lately been enacted in England with a view apparently of codifying the law by instalments. The Act in question is The Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), in which the law relating to the sale of goods is codified, and which is an Act which might very properly be adopted in Ontario, together with the Partnership Act. These Acts do not for the most part enact any new law, but merely embody in a statutory form that which was already the law, as settled by judicial decisions, and hence a decision under the Act in question is applicable in Ontario. Sec. 14 of the Act enacts that where goods are supplied under a contract of sale and "the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill and judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose; provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose." The subject matter of the contract in question was coals supplied under a written contract containing no mention of any particular purpose for which they were required, though prior to the making of

the contract the buyers make known that purpose to the sellers, who were coal agents, and relied on their skill and judgment. The action was tried before Lord Russell, C.J., who held that the evidence of what had taken place prior to the contract was admissible to raise the implied condition mentioned in sec. 14, and therefore there was by virtue of that section an implied warranty that the coals were fit for the purpose for which they were required. He also held that the contract for the sale of coals under a particular description known to the coal trade was not "a contract for the sale of a specified article under its patent or other trade name," within the meaning of the proviso to sec. 14. That, he says, is obviously intended to meet the case, not of the supply of what may be called raw commodities or materials, but manufactured articles—steam ploughs, or any form of invention which has a known name and is bought and sold under its own name, patented or otherwise.

SEQUESTRATION—MONEY HELD BY THIRD PERSON NOT PARTY TO THE ACTION—JURISDICTION.

In *Craig* v. *Craig*, (1896) P. 171, a sequestration had issued in a divorce action against the co-respondent for the recovery of damages; and the sequestrators applied upon motion in the suit for an order compelling the trustees of the marriage settlement of the co-respondent to pay into Court the money in their hands belonging to him. The trustees disputed their liability to the co-respondent, and the jurisdiction of the Court to make the order, and Barnes, J., dismissed the application, holding that as the trustees were not parties to the suit, and disputed their liability, and the jurisdiction of the Court, the Court had no jurisdiction to determine the question upon motion. It may be noticed that the application was not made under the Rules relating to the attachment of debts, and the Judge was not asked to consider whether they could be used to enforce proceedings against the trustees.

REPORTS AND NOTES OF CASES

Province of Ontario.

HIGH COURT OF JUSTICE.

[June 30.

ROBERTSON, J., FERGUSON, J.]

BOSWELL *v.* PIPER.

Attachment of debts—Rule 935—Garnishee "within Ontario"—Foreign insurance company—55 Vict., c. 39, ss. 14, 17.

The garnishees, an English insurance company, had an agent or attorney and a chief agency in Ontario, and service of process could be made upon such attorney for the purposes mentioned in ss. 14 and 17 of 55 Vict., c. 39, the Ontario Insurance Corporations Act.

Held, that the garnishees were not "within Ontario," within the meaning of Rule 935.

Canada Cotton Co. v. *Parmalee*, 13 P. R. 308, followed.

County of Wentworth v. *Smith*, 15 P. R. 372, distinguished.

G. L. Lennox, for the plaintiff.

S. W. McKeown, for the claimant Harthill.

W. Gow, for the garnishees.

[September 1.

ARMOUR, C.J., FALCONBRIDGE, J., STREET, J.

IN RE MOLPHY, BECKES *v.* TIERNAN.

Appeal—Master's Certificate—Divisional Court.

An appeal does not lie to a Divisional Court from the decision of a Judge in Court upon an appeal from a Master's report.

The certificate of a Master is a report, and is subject to the same rules as to appeal as an ordinary report.

E. R. Cameron, for Elizabeth Molphy.

F. A. Anglin, for the executors.

[September 15.

MEREDITH, C.J., ROSE, J.]

GRAHAM *v.* COMMISSIONERS FOR QUEEN VICTORIA NIAGARA FALLS PARK.

Negligence—Niagara Falls Park commissioners—50 Vict., c. 13, ss. 3, 4, 10—Obligation to maintain fence—Public way—Nonfeasance—Persons resorting to park—Licensees—Status of commissioners—Liability of Crown for acts of servants.

By sec. 3 of the Queen Victoria Niagara Falls Park Act, 1887, the lands selected for the park were vested in the defendants as trustees for the Province.

The plaintiff was injured by an accident due to a fence along the edge of the cliff forming the bank of the Niagara River being in an insecure and defective condition, owing to an u nauthorized act of a railway company. The

place of the accident was not within the limits of the lands mentioned in sec. 3, but upon lands which became vested in the defendants by force of the provisions of sec. 4, and upon a public way reserved thereout by s-s. 5. The fence had been built before, and was existing at the time the park was vested in the defendants. The plaintiff was in the park either under sec. 10, providing that the grounds shall be open to the public, or in the enjoyment of the public way provided by sec. 4.

Held, that, in the absence of any statutory provision expressly or impliedly casting upon the defendants the duty of keeping the public way in repair or the obligation to maintain a fence or railing upon the edge of the cliff, no such duty or obligation towards the plaintiff existed.

Whether the defendants were to be regarded as servants of the Crown or not, no action lay against them for not keeping the fence in repair. If it were viewed as a protection for the travelling public in the use of the public way, the absence or insufficiency of which might, in the case of a municipal corporation, render it liable as for a default in discharging its statutory duty to keep its highways in repair, the defendants were not liable ; for the condition of the fence was not due to misfeasance, but to nonfeasance, the unauthorized act of the railway company not being chargeable to the defendants as an act of misfeasance on their part.

Gibson v. *Mayor of Preston*, L. R. 5 Q.B. 218 ; *Sanitary Commissioners of Gibraltar* v. *Orfila*, 15 App. Cas. 400 ; *Cowley* v. *Newmarket Local Board*, (1892) A.C. 345 ; *Municipality of Pictou* v. *Gildert*, (1893) A. C. 524 ; *Sydney* v. *Bourke*, (1895) A.C. 433, followed.

If, on the other hand, the defendants' liability was based upon the allegation of a duty to maintain the fence for the protection of those resorting to the park, the plaintiff's case also failed ; for no charge was made for the privileges which she enjoyed, and she occupied at most the position of a bare licensee, as to whom there would be no duty in respect of a bare defect of construction or repair which the defendants were only negligent in not finding out or anticipating the consequences of.

Southcote v. *Stanley*, 1 H. & N. 247 ; *Ivay* v. *Hedges*, 9 Q.B.D. 80 ; *Schmidt* v. *Town of Berlin*, 26 O. R. 54 ; and *Moore* v. *City of Toronto*, ib. 59 n., followed.

Held, also, having regard to the various provisions of the Act of 1887, that the defendants were intended to act in the discharge of their duties thereunder "as an emanation from the Crown," or that it was intended to make the government the principal and the commissioners merely a body through which its administration might be conveniently carried on. There was no negligence on the part of the commissioners, but the negligence was that of the subordinate officers, who had been appointed under the provisions of the Act, and the effect of a recovery would be to charge the property of the Crown vested in the defendants with damages and costs for a wrong committed by a servant of the Crown, for which the Crown was not by the law of this Province liable.

Mersey Docks Co. v. *Gibbs*, L.R. 1 H. L. 93 ; *The Queen* v. *Williams*, 9 App. Cas. 418 ; and *Gilbert* v. *Corporation of Trinity House*, 17 Q.B.D. 795, distinguished.

The enactment in Ontario of legislation establishing the liability of the Crown for wrongs committed by its servants, suggested.

Aylesworth, Q.C., and *F. W. Hill*, for the plaintiff.

Irving, *Q.C.*, and *W. M. German*, for the defendants.

MEREDITH, C. J., ROSE, J.] [September 15.

CAMPAU *v.* RANDALL.

Summary judgment—Rule 739—Special appearance—Defence of want of jurisdiction—Judicature Act, 1895, sec. 124—Absence of defence on the merits.

Action upon a foreign judgment. Both plaintiff and defendant resided out of the jurisdiction; neither of them was a British subject; and the cause of action upon which the judgment was recovered arose out of Ontario. The plaintiff's right, if any, to sue in this Province depended upon sec. 124 of the Judicature Act, 1895. The defendant entered a special appearance, and raised, by pleading, the question of jurisdiction.

Upon appeal from an order affirming an order refusing summary judgment under Rule 739,

Held, that although the defendant failed to show that he had a good defence to the action on the merits, and disclosed no facts that would have entitled him to defend in an ordinary action, yet the discretion exercised below should not be interfered with, having regard to the special nature of the jurisdiction conferred by sec. 124, and the provision requiring, even where no appearance is entered, the plaintiff's claim to be proved before he obtains judgment.

J. B. Clarke, Q.C., for the plaintiff.

L. G. McCarthy, for the defendant.

BOYD, C.] [June 15.

WILSON *v.* MANES.

Security for costs—Appeal to Divisional Court—Judgment at trial—Rule 1487 (803).

Rule 1487 (803) does not interfere with the previous and still existing right to appeal from the judgment of the trial Judge to a Divisional Court. The words "appeal from a single Judge," mean from a Judge presiding in Court, and not at the trial of a cause. A party has the right to prosecute an appeal from the judgment at the trial to a Divisional Court, without terms being imposed as to giving security for costs.

Semble, that security should be "specially ordered" under Rule 1487 (803), upon an appeal by the defendant, where substantial questions arise, and the action is of a penal character.

Aylesworth, Q.C., for plaintiff.

W. E. Middleton, for defendant.

BOYD, C.] [June 25.

STARK *v.* ROSE.

Receiver—Ex parte order—Costs—Review.

After judgment a receiver may be appointed ex parte in case of emergency or where there is danger apprehended in the disposal of property.

Re Potts, (1893) 1 Q.B., at p. 662, and *Minter* v. *Kent, etc., Land Society*, 11 Times L.R. 197, referred to.

And where ex parte orders were made in respect of two parcels of stock which the plaintiff feared might be disposed of if notice were given, and in both cases costs were given to the applicant.

Held, that the disposition of the costs should not be reviewed on motion to continue the receiver.

Moss, Q.C., for the plaintiff.

Langton, Q.C., for the defendant.

OSLER, J.A.] [July 11.

DAVIDSON *v.* FRASER.

Appeal bond—Supreme Court of Canada—Condition.

The condition in a bond filed upon an appeal to the Supreme Court of Canada, was to "pay such costs and damages as shall be awarded in case the judgment shall be affirmed."

Held, that this was not in substance the same as the statutory condition to "pay such cost and damages as may be awarded against the appellant by the Supreme Court"; and the italicized words added a condition not required by the Supreme Court Act, and by which the respondents ought not to be hampered.

G. G. Mills, for the plaintiffs.

J. Grayson Smith, for the defendants.

MEREDITH, C.J.] [Sept. 8.

MOONEY *v.* JOYCE.

Parties—Causes of action—Joinder—Rule 300.

Two plaintiffs joined in an action a claim by one for $500 damages for the wrongful interference of the defendants with him in the completion of a building, and for assaulting and arresting his servant and co-plaintiff, and a claim by the other for $2,000 damages for the same assault and arrest.

Held, that each was a separate and distinct cause of action, and they could not properly be joined, under Rule 300.

Smurthwaite v. *Hannay*, (1894) A.C. 494, and *Carter* v. *Rigby*, (1896) 1 Q.B. 113, followed.

Booth v. *Briscoe*, 2 Q.B.D. 496, distinguished.

L. G. McCarthy, for the plaintiffs.

Aylesworth, Q.C., for the defendants.

FERGUSON, J.] [September 10.

IN RE TORONTO, HAMILTON AND BUFFALO R. W. CO. AND KERNER.

Railways and railway companies—Legislative authority—Alteration of grade of street—Arbitration and award—Appeal—Dominion Railway Act, 1888, sec. 161, s-s. 2—Damages—"Structural damages"—"Personal inconvenience."

Held, that the railway company, though incorporated by 47 Vict., c. 75 (O.), was, by 54 & 55 Vict., c. 86 (D.), subject to the legislative authority of the Parliament of Canada, and its power to do the work of altering the grade of a

street, in the doing of which the damages claimed by a land-owner arose, was under sec. 90 of the Dominion Railway Act, 1888, and the rights of the parties in an arbitration to ascertain such damages were governed by the provisions of that Act.

And where the arbitrator awarded that the land-owner had suffered no damage:

Held, that having regard to the provisions of sec. 161, s-s. 2, no appeal lay from the award.

Held, also, that the arbitrator had no power to allow the land-owner "structural damages" caused to his buildings, or damages for "personal inconvenience" by reason of his means of access being interfered with.

Ford v. *Metropolitan R. W. Co.*, 17 Q.B.D. 12, distinguished as to the former kind of damages, and followed as to the latter.

Bruce, Q.C., for John Kerner.

D'Arcy Tate, for the railway company.

FERGUSON, J.] [Sept. 14.

CLARK *v.* VIRGO.

Costs—Taxation—Two defendants appearing by same solicitor—Appeal—Extension of time—Solicitor's mistake—Objections to taxation—Question of principle—Rules 1230, 1231.

An action against two defendants, who defended by the same solicitor, was dismissed as against one with costs, and judgment was given for the plaintiff against the other with costs.

Held, that the successful defendant should on taxation be allowed the costs of services (if any) appertaining wholly to his own defence, and at most only a proportionate part of the cost of services appertaining to both defences, as in *Heighington* v. *Grant*, 1 Beav. 228.

Time for appealing from taxation extended, as a matter of discretion, where, by the mistake of the solicitor, the appeal was at first brought on in due time in the wrong forum, and after that, but too late, in the proper forum.

Where the principle on which the taxing officer acts is objected to, that is to say, his mode or method of proceeding in taxing the bill, it is not necessary for the party proposing to appeal to carry in written objections before the officer, as provided for by Rule 1230, to enable him to review his taxation, under Rule 1231.

D. L. McCarthy, for the plaintiff.

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

FERGUSON, J.] [September 15.

IN RE BRODERICHT *v.* MERNER.

Division Court—Garnishee plaint—Application to remove into High Court—Judgment against primary debtor only—R.S.O. c. 51., sec. 79.

An application under s. 79 of the Division Courts Act, R.S.O. c. 51, to remove an action from a Division Court into the High Court, will not lie after judgment in the Division Court; and this rule will be applied where the action

in the Division Court is brought under sec. 185, the garnishee being a party to the proceedings from the beginning, if final judgment had been obtained against the primary debtor, even though the liability of the garnishee has not been determined.

Gallagher v. *Bothie*, 2 C.L.J. 73. applied and followed.

W. M. Douglas, for the plaintiff.

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

In note of Practice case *Sales* v. *Lake Erie*, for *Brown* v. *Dunn*, 6 P. R. 67, read *Browne* v. *Dunn*, 6 R. 67.

Province of Quebec.

POLICE COURT—MONTREAL.

REG. *v.* CHISHOLM.

Criminal law—Canada evidence Act, 1893, ss. 2, 5—When depositions in civil court receivable as evidence in subsequent criminal proceedings.

Held, 1. That depositions given before the Superior Court of the Province of Quebec (which is a court over which the Parliament of Canada has no control) may be used in a subsequent criminal proceeding against the party who made it, unless made under protest, on the ground that the answers might tend to criminate him, but the finding of the jury in the civil case is not receivable.

2. That depositions, given by the accused, in connection with the subject in question, before the Canada Evidence Act, and without any claim of privilege, are also receivable in evidence.

[MONTREAL, April 27, 1896.

On the trial of this case *Atwater*, for the prosecution, tendered as evidence the depositions made by the accused on the trial of the case in the Superior Court.

Greenshields, for the accused, objected to this evidence, relying upon the Canada Evidence Act of 1893, sec. 5, which enacts that: "No person shall be excused from answering any questions upon the ground that the answer to such questions may tend to incriminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person: Provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence." His contention was that a deposition given by a witness in any court whatsoever, civil or criminal, cannot be used or read against the witness making it.

Atwater, contra. The deposition sought to be introduced here having been given before the Superior Court of this province, which is under Provincial, not Federal, jurisdiction, the defendants are not protected by sec. 5, inas much as sec. 2 limits the operation thereof to criminal proceedings and civil proceedings, and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf.

DESNOYERS, Police Magistrate :—This question is of very great importance, and the Canada Evidence Act being of recent legislation—July, 1893—no direct ruling has yet been made by any Superior Court to establish a precedent by which we may be governed. In the case of the *Queen* v. *Hopkins*, where there was a charge of manslaughter in connection with the street railway building disaster, at enquete before me, in January, 1896, I refused to admit as evidence the depositions given by the accused before the coroner at the inquest on said accident. Shortly after, in the case of the *Reg.* v. *Hendershott*, 26 O.R. 678, Chief Justice Meredith also refused to admit as evidence the deposition given by the accused at the coroner's inquest.

The reason of that ruling was that the Coroner's Court was considered to be a criminal Court, and, therefore, one in which the evidence would be subject to the Canada Evidence Act. From the remarks of the Chief Justice in the last mentioned case, it appears clearly that he was of opinion that if the depositions sought to be introduced had been made in a Court under Provincial, not Federal, jurisdiction, by the accused, without availing himself of his privilege to refuse answering, as his answers might tend to criminate him, he would have allowed the evidence.

The counsel for the defence has made a very able argument to demonstrate that sec. 5 protects a witness against the use of his deposition made in any Court whatsoever, but I am unable to adopt his views. I believe that if the law had so intended, it would have said so positively, and would not have limited its operations to criminal proceedings generally, and to civil proceedings respecting which the Parliament of Canada has jurisdiction.

The Parliament of Canada has no jurisdiction over the Superior Court of the Province of Quebec, and a deposition given before that Court may, in my opinion, be used in a subsequent criminal proceeding against the party who made it, unless that party made it under protest and claiming to be exempted from answering, insomuch as his answers might tend to criminate him, and even if I had any doubts about this question, I believe that it would be my duty to allow the evidence, so as to let the question come before a higher tribunal for final adjudication.

Objection is also made to the production as evidence in this case of the deposition given by the accused at the inquest held by the Fire Commissioners as to the origin of the fire in the premises occupied by the Chisholms. I am of opinion that such evidence must also be allowed, inasmuch as such depositions were given before the Canada Evidence Act came into force, and as admitted by the parties at the argument, were given by the accused without claiming their privilege.

As to the finding of the jury in the civil case, I am of opinion that it cannot be received as evidence in this trial.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] [July 27.

MCGREGOR *v.* KERR.

Contract—Lien agreement—Goods removed to another province.

The Nova Scotia Act for the prevention of frauds on creditors by secret bills of sale (R.S. ch. 92, sec. 3) enacts that every hiring, lease or agreement for the sale of goods and chattels accompanied by an immediate delivery, and followed by an actual and continued change of possession, whereby it is agreed that the property in the goods and chattels . . . . shall remain in the hirer, lessor or bargainor, until the payment in full of such price . . . . shall be in writing . . . . and . . . . shall be accompanied by the affidavit of either of the parties . . . . stating that the writing truly sets forth the agreement between the parties thereto . . . . and such agreement and affidavit shall be registered . . . . otherwise the claim, lien, charge or property intended to be secured to the hirer, lessor, or bargainor, shall be null and void and of no effect as against the creditors and subsequent purchasers and mortgagees of the person to whom such goods and chattels are hired, leased or agreed to be sold.

Plaintiffs, doing business at Galt, Ont., shipped certain machinery to M. for his factory at Hopewell, N.S., under an agreement in writing, executed at Hopewell, that the title to the machinery was to remain in plaintiffs until the whole of the price thereof was paid. M. afterwards executed an assignment to defendant for the benefit of his creditors.

Held, per TOWNSHEND, MEAGHER and HENRY, JJ., WEATHERBE, J. and GRAHAM, E. J., dissenting, that the words of the section quoted are not applicable to a contract made and executed outside of the province in relation to property situated at the time where the contract is made, but afterwards brought into the province.

H. W. Rogers, for plaintiff.

Borden, Q.C., for defendant.

CORKUM *v.* FEENER.

Easement—Prescription—Pleading.

Plaintiff, and those under whom he claimed, had enjoyed a right of way over defendant's land for a period of twenty years down to within one year before action brought. The way not being appurtenant to the land or such as would pass by deed,

Held, that the periods of user of successive owners could be united so as to give plaintiff a title under the statute.

In his statement of claim plaintiff alleged title to the way: "1st. Under ch. 112 Revised Statutes of Nova Scotia, 5th series, 'Of the limitation of actions.'"

Held, that this statement was insufficient under Order 19, Rule 4, under

which it was necessary to state the title to the easement claimed, which should have been done by setting out that the occupiers of the land possessed by plaintiff, had for twenty years before action enjoyed the way as of right and without interruption, but that it was too late for defendant to raise this objection after the trial and judgment for plaintiff.

Ritchie, Q.C., for plaintiff.

Wade, Q.C., for defendant.

THE QUEEN *v.* BUTLER.

Canada Temperance Act—Two charges, conviction on one—Evidence—Time for payment of penalty.

Defendant was summoned to appear before two justices of the peace to answer two charges for violations of the Canada Temperance Act, one for selling intoxicating liquor contrary to the provisions of the Act, and the other for keeping such liquor for sale.

After hearing evidence on the first charge, the justices heard formal evidence of the service of the second summons. They then dismissed the second charge and convicted defendant on the first.

Held, that the case was sufficiently distinguished from *Hamilton* v. *Walker*, (1892) 2 Q.B. 25, by the fact that no evidence was heard on the second charge that would be likely to prejudice the minds of the justices in the consideration of the first.

The minute of conviction mentioned no definite time for the payment of the penalty.

Held, that the conviction must be taken to have required payment to be made forthwith.

The information taken on the 21st September, 1894, alleged the offence of selling to have been committed between the 1st day of September, "last past," and the 20th September, 1894.

Held, that the expression "last past," though ambiguous, did not vitiate the conviction, as defendant had a complete defence in law to anything beyond the three months.

McLean, Q.C., for plaintiff.

Wade, Q.C., and *V. J. Paton*, for defendant.

Province of New Brunswick.

SUPREME COURT.

Easter Term] [April 25.

EX PARTE HEYWOOD.

C. S. ch. 38, sec. 7—Disclosure—Debtor.

A debtor under arrest made a disclosure under C. S., ch. 38, sec. 7, and signed to its truth. On being recalled he gave further evidence, but did not sign to its truth.

Held, that he was improperly discharged, as the section is imperative that the debtor should sign to the truth of his disclosures.

A. B. Connell, in support of rule.

Carvill, contra.

Easter Term.]

RULE ALLIANCE *v.* BANK OF BRITISH NORTH AMERICA.

Insurance—Unlicensed foreign company—R.S.C. ch. 124, sec. 4.

The plaintiffs were a life insurance company incorporated under the laws of Massachusetts. They had an agency at the city of St. John, but were not licensed to carry on business in Canada as required by the Dominion Act, ch. 124, R.S.C. The company issued a policy on the life of W. H. Reid, a resident of New Brunswick, payable to his wife, Mary A. Reid, for $2,500. On his death the company sent to their St. John agent a receipt of the payment of the loss to be signed by the beneficiary, and the following draft:

"$2,500. Boston, Mass., June, 1890.

"To W. H. HOYT, ESQ., Treasurer-in-chief G.R.A.

"You will please pay to Mary A. Reid the sum of two thousand five hundred dollars. She is the beneficiary named in a benefit certificate, 3205, issued to W. H. Reid, of Hillsboro, N.B. Proof of the death of the said W. H. Reid is on file at this office. John S. Damell, President."

Endorsed on the draft was a receipt to be signed by Mary A. Reid. The receipt and draft, with the signature of Mary A. Reid, attested to by the St. John agent of the insurance company, were negotiated with the Bank of British North America, and by it presented to the company for payment. The company paid the draft to the bank, who paid the amount to the St. John agent of the insurance company under an order purporting to be signed by Mary A. Reid. The signatures in all cases were forged, and the insurance company brought an action against the bank to recover the amount of the draft.

Held, that R.S.C., ch. 124, sec. 4, applied, and that as the money was paid by the insurance company in connection with business done contrary to the Act, the company could not recover.

Pugsley, Q.C., for plaintiffs.

Blair, Attorney-General, for defendants.

BARKER, J.] [Sept. 15.

IN RE DOHERTY.

Crim. Code, s-s. 872, 877, 880—Canada Temperance Act—Two convictions—Imprisonment as penalty or to enforce payment of fines—When concurrent.

The prisoner was convicted on the 18th of February, 1895, for unlawfully keeping for sale intoxicating liquors in violation of the second part of the Canada Temperance Act, and he was adjudged to pay a fine of $50 and costs, and if not paid and in default of distress, that he should be imprisoned for 80 days. A warrant of commitment was issued on 19th July, 1895. On 17th June, 1895, he was convicted by the same justices for a second offence under

the same Act, and fined $100 and costs, and in default of payment to be imprisoned for 80 days. A warrant of commitment was issued on 18th July, 1896. He was arrested on the 29th January, 1896, under the first warrant, and after 80 days imprisonment was discharged. On 8th September, 1896, he was arrested on the second warrant. An application was now made for his discharge on the ground that as the imprisonments were not expressed to be cumulative, they must be taken to have been concurrent by virtue of sec. 877 of the Criminal Code.

BARKER, J., in refusing the application, said there was an important distinction between the case of an offence for which the justice awards imprisonment as a punishment and one for which a penalty can only be imposed, and where the imprisonment is merely a means of enforcing payment of the penalty. Under sec. 100 of the C. T. Act any person violating the provisions of the second part of the Act is liable for the first and second offence to a fine, and it is only for the purpose of enforcing payment that imprisonment is awarded. In this respect the case was to be distinguished from *Reg.* v. *Cutbush*, L. R. 2 Q.B. 379, and *Castro* v. *The Queen*, 6 App. Cas. 229. He referred to s-s. 872, 877 and 880 of the Criminal Code as recognizing this distinction. As the prisoner when in custody under the first warrant was not undergoing punishment, his imprisonment could not be said to refer to the second offence.

R. LeB. Tweedie, for the application.

F. A. McCully, contra.

Province of British Columbia.

SUPREME COURT.

DAVIE, C.J.] [June 26.

NELSON & FORT SHEPPARD RAILWAY CO. *v.* JERRY.

Mineral claim—Abandonment— Rock in place—Certificate of improvements—Bond.

The plaintiff company received a grant of public land in aid of its railway, and in this action sued for possession of certain lands comprised within its grant, to which the defendants claimed title under locations as mineral claims.

Held, 1. That a mineral claim when abandoned immediately reverts to the Crown.

2. That "rock in place" means rock mineralized sufficiently to work profitably.

3. That a certificate of improvements does not displace previously acquired surface rights.

4. That where ground is already occupied a location is invalid if no bond for damages is given by the locator.

DRAKE, J.] [June 26.

COCHRANE *v.* JONES.

Small Debts Court—Commitment—Prohibition.

This was a motion to make absolute a rule nisi to prohibit the magistrate sitting in the Small Debts Court from committing defendant for refusal to answer certain questions.

Held, that prohibition can only be granted for excess of jurisdiction, and that the magistrate was quite within his powers in committing for general unsatisfactory answers given by defendant.

Gregory, for plaintiff.

Helmcken, Q.C., for defendant.

DAVIE, C. J.] [July 25.

ATTORNEY-GENERAL OF CANADA *v.* VICTORIA.

Injunction—Bridge over navigable waters.

This was an application for an injunction to restrain the City Council from building a bridge over navigable waters.

Held, 1. That it was not necessary to show that the Attorney-General had taken this action with the approval of the Governor-in-Council.

2. That it was necessary to obtain the permission of the Dominion Government for the construction of the bridge.

Bodwell, for plaintiff.

Taylor and *Mason*, for defendant.

MCCREIGHT, J., BOLE, LOC. J.] [August 16.

PAISLEY *v.* CORPORATION OF CHILLIWACK.

Municipal contract—Seal.

This was an appeal by the plaintiff from the judgment of Judge Spinks. The case was tried at the County Court holden at Chilliwack, and the plaintiff was non-suited. One, Ennis, had done some work for the respondents under an alleged contract, which was not under seal, and had given the appellant an order on the respondents for payment of the monies alleged to be due to him from the municipality. Subsequently, however, the municipality paid the money to another person. Paisley then brought the action.

Held, that the contract must be under seal, and that the language of sec. 82 in the Muncipality Act of 1892, is imperative, not directory. See *Ashbury R. W., &c., Co.* v. *Riche*, L.R., 7 H.L. 653.

Reid, for appellant.

Henderson, for respondents.

DRAKE, J.] [August 19.

LORING *v.* SONNEMAN ET AL.

Appearance under protest—Renewing expired writ of summons—Laches.

Plaintiff applied to renew a writ which expired in April last. After action brought, plaintiff discovering that both defendants were out of jurisdiction, obtained an order to issue concurrent writs, one of which was served in due course. The other was not served until after the twelve months for which the original writ was in force had expired.

The defendant who was served some months after the expiration of the twelve months, entered an appearance.

DRAKE, J.: A defendant improperly or irregularly served cannot treat the writ thus served as a nullity, *Hamp* v. *Warren*, 11 M. & W., 103. He must apply to set it aside, and this he can do without entering an appearance, (see Rule 70). Here the defendant has appeared and under the appearance is written a note stating that the defendant appears uuder protest.

In the case of *Fletcher* v. *McGillivray*, 3 B. C. Rep. 49, some remarks are made on the subject of appearance under protest being unknown under our rules. The case of *Frith* v. *DeLas Rivas*, 69 L.T. 383, was not brought to the attention of the Court when an appearance under protest was recognized as valid under a rule which is not in our code, but that case was decided on *Mayer* v. *Claretic*, 7 Times L.R. 40, where it was held that an appearance unqualified by protest did not take away the right to object to the jurisdiction if notice of the objection was given to the plaintiff at the time of entering the appearance, so it may be considered that this appearance conveys notice of an intention to raise the question of jurisdiction. The defendant has taken no step to set aside the service of the writ, and the plaintiff seeks to renew the writ in order that fresh service may be effected. The delay of four months, unaccounted for, shows too great laches. Application refused, with costs.

Senkler, for plaintiff.

Godfrey, for defendant.

BOLE, LOC. J.] [June 24.

IN RE TRYTHALL.

Setting aside award—Reference back.

This was an action to set aside an award on the grounds that two of the arbitrators, while the arbitration was pending, and before the award was made, in the absence of their fellow-arbitrator and of the parties to the submission, obtained evidence having material bearing on a question of fact in the arbitration and on the question of construction of the agreement of submission.

Held, that under sec. 10 of the Arbitration Act, 1893, the matter of the award should be referred back to the arbitrators for their reconsideration and determination.

LAW SOCIETY OF UPPER CANADA.

RESUME OF PROCEEDINGS, EASTER, 1896.

MONDAY, May 18.

Present: Sir Thomas Galt and Messrs. Proudfoot, Martin, Shepley, Watson, Teetzel, Idington, Hoskin, Maclennan, O'Gara, Edwards, Bruce, Britton, Strathy, Bayly, Osler, Irving, Robinson, Aylesworth, Clarke, Hardy, Kerr and Guthrie.

On motion of Mr. Martin, Mr. Irving was appointed Chairman.

The Secretary then read the report of the scrutineers on the result of the election of Benchers for the five years from the present date, showing the following gentlemen to be elected Benchers of the Society:—H. H. Strathy, Charles Moss, W. Douglas, A. S. Hardy, C. Robinson, B. M. Britton, D. B. Maclennan, John Idington, John Hoskin, Colin Macdougall, B. B. Osler, D. Guthrie, M. O'Gara, G. C. Gibbons, R. Bayly, A. B. Aylesworth, J. V. Teetzel, Alexander Bruce, G. H. Watson, W. Kerr, A. H. Clarke, G. F. Shepley, John Bell, Edward Martin, D'Alton McCarthy, C. H. Ritchie, W. R. Riddell, W. D. Hogg, E. B. Edwards, Æmilius Irving.

The report was ordered to be fyled.

Mr. Æmilius Irving, Q.C., was elected Treasurer for the ensuing year.

The minutes of the last meeting were confirmed.

Upon the question of the closing of Osgoode Street, it was ordered that the matter be referred to the Finance Committee to deal with, in accordance with the action of Convocation already taken, and to report to Convocation.

Dr. Hoskin, on behalf of a Special Committee appointed to strike the standing committees, reported the members of Convocation to compose such committees.

The report was received and adopted.

The letter of Miss Clara Brett Martin, stating that she desired to avail herself of the provisions of the Statute 58 Vict., chap. 28, in relation to the Call of Women to the Bar, was read.

Mr. Osler gave notice that he would move on Friday, the 5th day of June, that it be referred to the Legal Education Committee to frame such additional Rules as may be necessary to give effect to the Act of 1895, 58 Vict., cap. 28, "An Act to amend the Act to provide for the admission of women to the study and practice of law."

Mr. Martin gave notice that he would on the 5th day of June move to introduce a rule to the following effect: That Rules 226 and 227 be repealed, but such repeal shall not apply to any woman who is now entered upon the books of the Society as a student-at-law, or barrister or solicitor.

Mr. Bruce gave notice, seconded by Mr. Riddell, that he would on Friday, 5th June, move: That it is inexpedient to make rules providing for the admission of women as barristers-at-law.

It was then ordered that notice be given of a Special Call of the Bench on Friday, 5th June, in relation to the above matters.

Mr. Osler moved that a Building Committee be appointed, consisting of the Treasurer, and Messrs. Bruce, Hoskin, Shepley, Osler, Riddell, Idington, Kerr, Bayly and Watson, three to form a quorum, to report to Convocation at its meeting of 5th June, upon the plans and estimates prepared for the alterations and improvements of the east wing of Osgoode Hall, and to report the name of an architect of the Society, or an architect ad hoc, or to report to Convocation upon the subject of alterations or improvements generally. Carried, and ordered that the Committee be convened for Saturday next at 10 a.m.

The petition of John O. Connors, complaining of the conduct of Mr. T. C. Robinette, was read and referred to the Discipline Committee, to ascertain whether a prima facie case had been made out.

Mr. Osler, having obtained leave, moved that the members of Convocation who are chairmen of the standing committees, comprise a committee to consider and report upon an alteration of the days of meeting of Convocation during the year. Carried, and further ordered that Messrs. Edwards, Britton, Strathy, O'Gara, Clarke and Kerr be added to the Committee, and that Mr. Osler be convener.

Convocation then rose.

TUESDAY, May 19.

Present: The Treasurer and Messrs. Bell, Macdougall, Strathy, Hogg, Bayly, Clarke, Britton, Osler, Kerr, Riddell and Douglas.

The question of the appointment of an auditor was ordered to stand until next meeting.

Mr. Aylesworth's motion to amend the rule (No. 100) defining the officials to whom the reports are furnished by the Society, was ordered to stand until next meeting.

Convocation then rose.

SATURDAY, May 23.

Present: The Treasurer and Messrs. Osler, Moss, Riddell, Gibbons, Bruce, Watson, Aylesworth and Shepley.

Ordered that the following gentlemen be entered as students-at-law: Messrs. J. C. Brown and G. A. Ferguson of the Graduate Class, and Messrs. L. G. D. Legault, E. S. Beynon, C. W. Moore and F. C. Ridley of the matriculant class.

Ordered that Mr. J. F. J. Cashman, who passed the Law School 3rd Year Examination in Easter, 1895, be called to the Bar and receive his certificate of fitness.

The following report from the Editor of the Reports in respect of the progress of the reporting, was presented by the Reporting Committee:

"The work of reporting is in a forward state. In the Court of Appeal, all judgments up to March have been published, and of the thirteen judgments of that month ten have been revised and the others are ready for revision. In the High Court, Mr. Harman has ten unpublished judgments, all of April. Mr. Lefroy has fourteen, two of March, ready; one of April and one of May. Mr. Boomer has three, one of 28th February, delayed to ascertain as to appeal, but now ready; one of April and one of May. Mr. Brown has ten, one of 28th February, ready to issue; three of March, four of April and two of this month. Of the Practice cases there are eleven, six of March ready to issue, and awaiting a sufficient quantity to make up a number, and five of April. The Digest is also well advanced, three-fourths of it are in type, and more than one-half has been struck off the press. I see no reason to doubt that it will be ready to issue during Vacation."

Mr. Watson, from the Finance Committee, reported a letter received from the City Clerk of the City of Toronto, dated 10th March, 1896, asking the Benchers to throw open the grounds in front of Osgoode Hall for the use of the public, the receipt of which the Secretary had already acknowledged.

The Secretary was directed to inform the City Clerk that the Benchers consider it inexpedient to comply with the request.

Mr. Watson from the same Committee reported:—

"That it appears that certain gentlemen who are duly qualified solicitors, and are, it is stated, employed as salaried clerks by firms of solicitors, do not pay, and have not been in the habit of paying the annual fees for certificates as practising solicitors. The Secretary was directed to communicate with these gentlemen, and in answer to his letters several of the gentlemen in question advanced reasons for the position they had taken. The Committee is of opinion that if a satisfactory test case to determine the liability can be arranged, the Society may properly pay the fee of counsel acting on behalf of the parties who dispute their liability, and they submit for the information of Convocation the correspondence in connection with the case."

Ordered that it be referred to the Finance Committee to arrange the case and appoint counsel to argue the matter on behalf of the Society.

Mr. Watson then gave notice that he would on June 5th move the third reading of the Rule respecting lists, showing default of solicitors, which had been read a first and second time on Feb. 7th last.

Mr. Aylesworth then, in pursuance of notice given, moved that Rule 100 be amended by inserting the words: "8. The Principal of the Law School," and changing the numbers of the following paragraphs: 8, 9, 10 and 11, to 9, 10, 11 and 12. The amending rule was then read a first and second time, and by unanimous consent the rule as to stages was suspended, and the amending rule was read a third time and passed.

The consideration of the report of the Discipline Committee upon the complaint of Mrs. McDonald against J. A. Robinson and C. C. Grant, was ordered to be deferred until Friday, 5th June.

Mr. Watson gave notice that he would on the 29th day of May introduce a rule relating to the appointment of an auditor in accordance with the report of the Finance Committee adopted by Convocation on 9th Feb., 1894. Ordered that the appointment of an auditor do stand until 29th May inst.

Convocation then rose.

FRIDAY, 29th May.

Present: The Treasurer, and Messrs. Robinson, Watson, Moss, Shepley, Osler and Riddell.

Mr. Watson moved the amendment of Rule 66, paragraph 3, by striking out the words "appointed for that purpose," and introducing in lieu thereof the following: "annually appointed for that purpose on the first day of Easter Term in each year." The draft amending rule was read a first and second time, and by unanimous consent the rule as to stages was suspended, and the amending rule was read a third time and passed.

Mr. Watson gave notice that he would on the first day of Trinity Term move for the appointment of an auditor for the current year beginning Easter Term, 1896.

Mr. Watson moved, pursuant to notice: "That Rule No. 29 be amended by increasing the number of Benchers appointed to serve on the Finance Committee to 14 instead of 12, and that there be inserted after the word "members" in the second line of the said rule, "in the case of the Finance Committee, 14." The draft amending rule was then read a first and second time, and by unanimous consent the rule as to stages was suspended, and the draft rule was read a third time and passed.

Mr. Watson then moved that Messrs. Strathy and Riddell be appointed members of the Finance Committee for the ensuing year. Carried.

The Standing Committees of Convocation, as amended, are as follows:

FINANCE.

G. H. Watson, Chairman; A. B. Aylesworth, B. M. Britton, A. Bruce, A. H. Clarke, E. B. Edwards, G. C. Gibbons, John Hoskin, W. Kerr, E. Martin, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy.

REPORTING.

B. B. Osler, Chairman; B. M. Britton, E. B. Edwards, D. Guthrie, W. D. Hogg, J. Idington, D. McCarthy, Colin Macdougall, W. Proudfoot, C. H. Ritchie, G. F. Shepley, J. V. Teetzel.

DISCIPLINE.

John Hoskin, Chairman; R. Bayly, A. Bruce, E. B. Edwards, Donald Guthrie, W. D. Hogg, D. B. Maclennan, Colin Macdougall, C. H. Ritchie, C. Robinson, H. H. Strathy, G. H. Watson.

LIBRARY.

G. F. Shepley, Chairman; A. B. Aylesworth, S. H. Blake, W. Douglas, J. Idington, Charles Moss, D. McCarthy, W. Proudfoot, W. R. Riddell, C. Robinson, H. H. Strathy, G. H. Watson.

LEGAL EDUCATION.

Charles Moss, Chairman; R. Bayly, A. H. Clarke, John Hoskin, E. Martin, B. B. Osler, W. Proudfoot, W. R. Riddell, C. H. Ritchie, C. Robinson, H. H. Strathy, J. V. Teetzel.

JOURNALS AND PRINTING.

A. Bruce, Chairman; A. B. Aylesworth, R. Bayly, John Bell, A. H. Clarke, G. C. Gibbons, W. Kerr, Colin Macdougall, D. B. Maclennan, M. O'Gara, W. R. Riddell, J. V. Teetzel.

COUNTY LIBRARIES.

E. Martin, Chairman; B. M. Britton, A. Bruce, W. Douglas, G. C. Gibbons, D. Guthrie, A. S. Hardy, J. Idington, W. Kerr, M. O'Gara, B. B. Osler, H. H. Strathy.

The petition of Mr. R. L. Fraser complaining of the conduct of Mr. John McGregor, was then read, and it was ordered that the same be presented to Convocation at its next meeting on 5th June.

The attention of Convocation was called to an article published on 18th May inst. in the London *Free Press*, purporting to emanate from Mr. W. H. Bartram, a barrister and solicitor. It was then ordered that the said article be referred to the Discipline Committee for consideration, action and report, and in consequence of the absence of the Chairman, Dr. Hoskin, the Secretary was directed to issue notices for a call of the Discipline Committee for Friday, 5th June next. at 10 a.m.

Convocation then rose.

FRIDAY, 5th June.

Present: The Treasurer and Sir Thomas Galt and Messrs. Moss, Kerr, Idington, S. H. Blake, Martin, Shepley, Strathy, Bayly, Bruce, Edwards, Macdougall and Douglas

Ordered that the following gentlemen be called to the Bar:—Messrs. O. A. Langley, J. W. Payne, D. A. McDonald, O. E. Klein, C. B. Pratt, G. H. Thompson, G. L. Smith, J. E. McMullen, A. B. Pottinger, E. F. Lazier, M. A. Secord, J. E. Macpherson, F. W. Tiffin, E. J. Deacon, M. J. O'Reilly, T. B. German and E. J. Butler.

Ordered that the following gentlemen do receive their certificates of fitness as solicitors as above named, with exception of Mr. Tiffin, and Mr. Deacon, whose time had not expired, and with the addition of Mr. H. H. Bicknell. Also that Miss Clara B. Martin do receive her certificate of fitness as a solicitor.

Ordered that Mr. W. T. White be admitted as student-at-law of the Graduate Class, and Messrs. J. A. Peel and H. A. Tibbetts, of the matriculant class.

Mr. Moss laid on the table the report of the Principal of the Law School, which was ordered to be taken into consideration on 30th June, and to be in the meantime printed and sent to every member of Convocation.

On motion of Mr. Moss, it was ordered that the Secretary do insert the usual advertisements, calling for applications for the position of Lecturers in the Law School for the next three years.

Ordered that Mr. F. W. Thistlethwaite, a candidate for call to the Bar, who was subjected to an examination under 57 Vict., cap. 44, be called to the Bar.

The petition of Mr. W. P. Bull was referred to the Legal Education Com-

mittee with instructions to inquire and report upon the petition, and also generally with regard to the expediency of granting relief in similar cases.

In the absence of Mr. Osler, Mr. Moss moved, seconded by Mr. Bayly, that it be referred to the Legal Education Committee to frame such additional rules as may be necessary to give effect to the Act of 1895, 58 Vict., cap. 28.

Mr. Bruce moved in amendment, seconded by Mr. Shepley :—That it is inexpedient to make rules providing for the admission of women as barristers-at-law. The amendment was carried. The original motion was declared lost.

Mr. Martin withdrew the motion of which he had given notice.

The Report of the Special Building Committee was read, and it was

Ordered that the report be referred back to the same Committee to continue their enquiries, and report to Convocation the changes proposed, and the cost of such changes.

Mr. Martin from the County Libraries Committee reported with respect to the appointment of an Inspector. Ordered that Mr. Eakins, the Librarian, be appointed Inspector of County Libraries for 1896, and that he be paid $200 for his services, which sum shall include all his expenses. Ordered that Mr. Fleming be paid fifty dollars in full for his services in inspecting certain county libraries.

The following gentlemen were then introduced and called to the Bar, and were subsequently presented to the Court: Messrs. F. W. Thistlethwaite, O. A. Langley, J. W. Payne, M. A. Secord, O. E. Klein, E. J. Butler, C. B. Pratt, E. J. Deacon, G. H. Thompson, J. E. McMullen, F. W. Tiffin, M. J. O'Reilly, G. L. Smith, A. B. Pottinger, D. A. McDonald, J. E. Macpherson, T. B. German, E. F. Lazier.

The report of the Discipline Committee relating to the complaint of Mrs. McDonald against Messrs. Robinson and Grant, was read. Ordered that the further consideration of the report be proceeded with on Tuesday, 30th June inst., that a copy of the report be sent to each of the parties complained of, and to the complainant, and that they be informed that Convocation will take action on their case at the hour of 12 noon on that day, and that a special call of the Bench be issued for that day for the purpose of dealing with the report.

The Discipline Committee reported on the complaint of J. O. Connors against Mr. Robinette that a prima facie case had been found. Ordered that the complaint stand referred to the Discipline Committee for investigation and report.

The complaint of Mr. R. L. Fraser against Mr. John McGregor was read and referred to the Discipline Committee for investigation and report.

Mr. Douglas gave notice that at the next meeting he would move that the fee payable hereafter for solicitors' certificates shall be reduced to ten dollars.

Mr. Moss gave notice that at the next meeting of Convocation he would move a resolution declaring that the members of Convocation not resident in Toronto or within five miles distance therefrom, are entitled to be paid by way of indemnity a per diem allowance for each day's attendance at meetings of Convocation, and that a committee be appointed to prepare and report a proper scale of allowances and any other necessary regulations in regard thereto.

Mr. Moss gave notice that at the next meeting of Convocation he would move that the County Libraries Committee be requested to consider whether any special arrangements can be made for providing law libraries at Sault Ste. Marie, Rat Portage and Port Arthur.

Mr. Moss gave notice that at the next meeting of Convocation he would move the appointment of a Committee to report to Convocation as to what if any steps should be taken with a view to observing the centennial anniversary of the Law Society of Upper Canada.

Convocation then rose.

LAW SOCIETY OF UPPER CANADA.

THE LAW SCHOOL.

Principal, N. W. Hoyles, Q.C. *Lecturers*, E. D. Armour, Q.C.; A. H. Marsh, B.A., LL.B., Q.C.; John King, M.A., Q.C.; McGregor Young, B.A. *Examiners*, R. E. Kingsford, E. Bailey, P. H. Drayton, Herbert Dunn.

NEW CURRICULUM.

FIRST YEAR.—*General Jurisprudence.*—Holland's Elements of Jurisprudence. *Contracts.*—Anson on Contracts. *Real Property.*—Williams on Real Property, Leith's edition. Dean's Principles of Conveyancing. *Common Law.*—Broom's Common Law. Kingsford's Ontario Blackstone, Vol. 1 (omitting the parts from pages 123 to 166 inclusive, 180 to 224 inclusive, and 391 to 445 inclusive). *Equity.*—Snell's Principles of Equity. Marsh's History of the Court of Chancery. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.—*Criminal Law.*—Harris's Principles of Criminal Law. *Real Property.*—Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone. *Personal Property.*—Williams on Personal Property. *Contracts.*—Leake on Contracts. Kelleher on Specific Performance. *Torts.*—Bigelow on Torts, English edition. *Equity.*—H. A. Smith's Principles of Equity. *Evidence.*—Powell on Evidence. *Constitutional History and Law.*—Bourinot's Manual of the Constitutional History of Canada. Todd's Parliamentary Government in the British Colonies (2nd edition, 1894). The following portions, viz: chap. 2, pages 25 to 63 inclusive; chap. 3, pages 73 to 83 inclusive; chap. 4, pages 107 to 128 inclusive; chap. 5, pages 155 to 184 inclusive; chap. 6, pages 200 to 208 inclusive; chap. 7, pages 209 to 246 inclusive; chap. 8, pages 247 to 300 inclusive; chap. 9, pages 301 to 312 inclusive; chap. 18, pages 804 to 826 inclusive. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.—*Contracts.*—Leake on Contracts. *Real Property.*—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles. *Criminal Law.*—Harris's Principles of Criminal Law. Criminal Statutes of Canada. *Equity*—Underhill on Trusts. De Colyar on Guarantees. *Torts.*—Pollock on Torts. Smith on Negligence, 2nd ed. *Evidence.*—Best on Evidence. *Commercial Law.*—Benjamin on Sales. Maclaren on Bills, Notes and Cheques. *Private International Law.*—Westlake's Private International Law. *Construction and Operation of Statutes.*—Hardcastle's Construction and Effect of Statutory Law. *Canadian Constitutional Law.*—Clement's Law of the Canadian Constitution. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

NOTE.—In the examinations of the Second and Third Years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.