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THE following order has been passed: "Rule 146 (*a*)—"After the 1st October, 1893, interest is to be credited upon moneys paid into court only after the same has been in court for fifteen days."

An ingenious citizen of Buffalo, N.Y., thinks he has discovered a solution of the problem which is agitating the financial world in reference to the currency question. His idea is to make a coin which shall be partly gold and partly silver—a disc of silver inlaid with gold. We fear the difficulty is not likely to be met by a mechanical contrivance such as this. It is a pretty conceit, and a pretty coin at least would be the result.

A NOT uncommon mistake prevails of designating the Chief Justices of the Queen's Bench and Common Pleas, respectively, as the Chief Justice of the Queen's Bench Division and the Chief Justice of the Common Pleas Division. A reference to the Judicature Act, s. 3, s-ss. 5, 8, will show that the former titles of "Chief Justice of the Queen's Bench" and "Chief Justice of the Common Pleas" are preserved, and that while they are Presidents of their respective Divisions they are not Chief Justices of the *Divisions*. We think we have seen this mistake in judgments and other documents in which the court itself speaks, and it seems a little incongruous that the court should improperly style its own chief functionaries.

Another not uncommon mistake in drafting orders and judgments is to make the court refer to itself as this "Honourable Court." It may, therefore, be well to point o[illegible], for the informa-

tion of the junior members of the profession, that although suitors in petitions and affidavits, when referring to the court, may properly designate the court in that way, yet the court, when speaking of itself, uses no adjectives, and is content to use simply the words, "this court."

A WILD WEST correspondent sends us a clipping from a newspaper published in a flourishing town which sees the sun set on the other side of the Rockies, from which we gather that "ways that are dark and tricks that are vain" are not peculiar to the Heathen Chinee. They are only "advocates" in this simple land; this word covering the duties of both barrister and solicitor. The clipping states that a certain firm propose to carry on their counsel business apart, while continuing their business as solicitors as heretofore, and state that their separation is only in regard to criminal business. The fact is that one of the members is Crown prosecutor, whilst the other apparently desires to hold briefs for prisoners. This seems not only peculiar, but exceedingly undesirable. Whilst one would be willing to be very lenient in most matters in a frontier town, we think that these gentlemen, being members of an honourable profession, would do well to part company entirely, and keep within the rules governing the profession in the rest of the Dominion.

BY the recent amendment of the Rules, the judicial discretion over the costs of an action has been very largely increased.

Under Rule 1170, as it originally stood, the judge at a trial where the action was tried by a jury could only deprive a successful party of his costs for "good cause," and the question of whether "good cause" did exist was a question on which an appeal would lie, as was determined by the English Court of Appeal in *Jones* v. *Curling*, 13 Q.B.D. 265, a case which has been repeatedly followed in Ontario: *McNair* v. *Boyd*, 14 P.R. 132; *Carter* v. *Bradburn*, 15 P.R. 147.

The effect of the amendment to Rule 1170 is virtually to give the judge at the trial the same discretion, as to the costs of actions tried by a jury, as he has with regard to actions tried without a jury, and consequently there will no longer be any appeal

without leave from the refusal of a judge to award costs to a successful party in a jury case. In fact, it would seem possible, under the amended Rule, for a judge at the trial of a jury case to order the successful party to pay costs if he should think fit, though such an exercise of discretion, no doubt, would be very rare.

THE DEVOLUTION OF ESTATES ACT.

One of the most important pieces of provincial legislation of modern times is, undoubtedly, The Devolution of Estates Act of 1886, now embodied in R.S.O., c. 108. By that Act the whole law of real property received, in a single Act, the most important modification that it has done for years. The learned Chancellor of Ontario, commenting on this Act, said: "No greater change has been effected in the law by any recent legislation. When its far-reaching consequences are properly apprehended, it may be found that the absorption of realty by personalty tends to systematize jurisprudence in much the same way as the absorption of law by equity": *Re Reddan*, 12 O.R. 782. We have now had over seven years' experience of this statute, and it may not be amiss to take a review of the situation and to arrive, if we can, at some conclusion as to whether the change thereby made in the law has been beneficial or otherwise.

Prior to this Act, as is well known, one of the most important distinctions between real estate and personalty was that it passed directly from a deceased owner to his heirs or devisees without the intervention of the personal representative in any way. Even if land were devised to an executor for the purpose of paying debts, he took it, not by virtue of his position as the personal representative, but as a trustee. Merely as executor, he had no right to interfere with the realty at all, however deficient the personal assets of his testator might be for the payment of his debts. An executor's or administrator's duty was confined strictly to the personal estate, and any duty imposed upon an executor by the will of his testator in regard to his real estate was discharged by him as a trustee, and not as executor. Letters probate and letters of administration were confined simply to empowering the personal representative to deal with personal estate, even though the

will might also make the executor a trustee in regard to the realty. Administrators, consequently, had no power whatever to deal with intestates' lands, and even executors could only deal with them so far as they were empowered expressly or by implication by their testators' will, and even then, as we have said, not as executors, but as trustees.

But though the law formerly denied the personal representative any power or jurisdiction over the deceased person's lands, it nevertheless provided that upon a judgment recovered by a creditor of the deceased against his personal representative, in an action to which neither the heir nor the devisee need be a party, it was competent to proceed to sell in execution the lands of the deceased which had passed to his heir or devisee.

One effect of this anomalous condition of affairs was that whenever the personal estate was insufficient for the payment of debts, it was generally found necessary to institute a suit for the administration of the estate, or, even when it was sufficient, before the real estate could be divided between the beneficiaries a partition suit was generally necessary. So grievous did the burthen of such suits become that the former Court of Chancery endeavoured to stem the tide of expense by imposing a special provision for the payment of the costs of such suits, and in lieu of taxed costs a commission proportioned to the value of the estate and the necessary disbursements alone could be charged by way of costs. But notwithstanding even this measure of relief, it is safe to say that multitudes of estates of deceased persons were frittered away in costs, simply from the fact that there was no simple and inexpensive means of otherwise dividing them among the creditors and beneficiaries.

The Devolution of Estates Act (1886) proposed to remedy this evil by conferring upon personal representatives the same power to deal with land that they had previously in regard to personal estate.

The Act was founded on a draft bill introduced by that eminent lawyer, the newly-appointed Lord Justice of Appeal, Sir Horace Davy, into the British House of Commons on Feb. 13th, 1884, and from this draft R.S.O., c. 108, s. 3; s. 4, s-s. 1, and ss. 7 [illegible], are taken almost verbatim.

The Act was at first thought by some of the judges not to accomplish what it was intended to do; and although it expressly

declared (s. 4) that, so far as the said property (*i.e.*, land devolving on the personal representative) is not disposed of by deed, will, contract, or other effectual disposition, the same shall be *distributed* as personal property not so disposed of is hereafter to be distributed, and (s. 9) that, subject as thereinbefore provided, the legal personal representative from time to time of a deceased person shall have power to *dispose of and otherwise deal with* all real property vested in them by virtue of the preceding sections of the Act with all the incidents, but subject to all the like rights, equities, and obligations, *as if the same were personal property* vested in them. Still, it was considered that the personal representative had no power to sell lands so vested in him for the purpose of making a division among the beneficiaries. See *Re Mallandine, per* Boyd, C., June 30, 1890.

In order to remove the doubt raised by *Re Mallandine, supra*, 54 Vict., c. 18, was passed, and by s. 2 of that Act it was made plain that the personal representative was to have power to sell the land not only for the payment of debts, but also for the purpose of division among the beneficiaries.

The result of this change in the law has been to put an end in a large measure to suits for administration and partition. In all simple cases machinery now exists for enabling an estate to be administered and wound up and distributed amongst the parties entitled without incurring the heavy expense and delay which formerly attended such proceedings. So far an enormous gain has been effected to the public, perhaps at some little loss to the legal profession.

But the beneficial effect of the Act bids fair to be very seriously imperilled by other amendments which have been made thereto by 54 Vict., c. 18, and 56 Vict., c. 20.

These amendments have reintroduced the old vicious principles which it was the very object of The Devolution of Estates Act to abolish, and have enabled the heir and devisee again, in certain circumstances, to take immediately from the deceased, without the intervention of the personal representative. It appears to us very like "a dog returning to its vomit" for the Legislature, after having once solemnly determined to bring the law of succession to real estate into harmony with that relating to personalty, to again deliberately create an anomalous and peculiar variation in the case of the succession to realty; and in such a way, as we shall proceed to show, as to jeopardize titles

and to impose unreasonable risks and liabilities on those who may assume the duty of acting as personal representatives of deceased persons.

By the amendments to which we refer, it is provided that unless the personal representative, within a year of the death of the deceased owner, shall register in the proper Registry Office, or Land Titles Office, a caution under their hands that it is, or may be, necessary for them to sell the real estate or part thereof, the land is to vest in the heir or devisee, as the case may be, without any conveyance from the personal representative. And by 56 Vict., c. 20, s. 3, this vesting will take place even though no probate or administration may have, within the year, been granted to the deceased person's estate. This Act also gives power to register the caution after the year, but subject to any rights which have been acquired in the meantime by reason of its non-registration.

These amendments have been held not to apply to the estates of persons dying prior to May 4th, 1891. See *Re Ferguson, per* Meredith, J., June 26, 1891; *Re Baird, per* Boyd, C., June 19, 1893.

As regards the estates of persons dying subsequently to that date, personal representatives are placed in an exceedingly awkward position.

There are at present over sixty Registry Offices and Land Titles Offices in this Province, and unless within the year of the death the personal representative shall register a caution in every one of them he may be deemed guilty of a breach of duty, and liable to creditors whose rights against their deceased debtor's estate have been lost by the neglect. For if it should happen that owing to the want of registering the caution any land of the deceased vests in the next of kin or devisee, and he should sell the property, the rights of the creditors of the deceased against the land would be effectually barred.

In a recent case before the Chancellor, not yet reported, a beneficiary mortgaged his interest before the year was up, and the caution not having been registered in time it was held that the mortgage cut out the claims of the creditors.

It seems absurd to say that a personal representative should register a caution in every Registry Office. But will any one explain how he is to be sure that the deceased had lands in such and such counties or districts and no others?

Some deceased persons, it is true, may leave behind them a full and accurate record of all their possessions; but it is an indisputable fact that a great many do not, and that it is often a very difficult matter to ascertain of what a deceased person's estate consists, and where the lands, if any, to which he died entitled are situate; and where, as is often the case, a person is appointed administrator who has had no previous knowledge of the deceased person's affairs, the difficulty is increased. And by the pernicious amendments to which we refer a most solid inducement is held out to persons who are best able to give information as to the deceased's estate to conceal it; for it is plain that if the next of kin of the deceased can effectually conceal from the personal representative the rights of the deceased in any of his real estate for the space of a year, they may then dispose of it for their own benefit, and the claims of creditors will be defeated.

The old difficulty, moreover, which arose in making title through an heir is perpetuated by this mischievous amendment. Any one familiar with conveyancing knows very well that the proof of heirship after a lapse of years is often a very great obstacle in making out a title, and yet this very difficulty is revived by the amendments we have referred to.

As the Act originally stood, the conveyance of the personal representative was necessary in all cases (see *Martin* v. *Magee*, 18 App. R. 384); but the conveyance of the personal representative would confer a valid title: *Re Wilson*, 20 O.R. 397. It was no longer necessary to go into a elaborate enquiry as to heirship; the personal representative made the investigation, and at his peril conveyed to the proper parties. If any one was injured, their remedy would be against the personal representative, and not against a purchaser from the person to whom he had conveyed. Now, however, we are thrown back again on the old-time system, with all its inconveniences, and, as far as we can see, without a particle of justification.

The amendment we refer to, therefore, besides inflicting unreasonable liabilities on personal representatives, revives the former difficulties in titles attending a succession derived immediately from the deceased owner.

The paltry expense of requiring a deed from the personal representative has been avoided, it is true, but at too heavy a cost. It appears to us it would have been far better to appoint in every

county some officer who should be *ex officio* administrator of all deceased persons' estates within his county, and who should represent the estate in all actions, and continue to hold office until some other person should obtain probate or letters of administration. He might be remunerated by a small *ad valorem* fee according to the duty actually performed by him, and might be empowered to make deeds to the next of kin or devisees in all cases where the land was of insignificant value for a nominal fee, as in the case of grants of administration to estates under $400, on proof of payment of debts.

Many persons die insolvent, and the whole estate they leave is mortgaged for more than it is worth. In such cases, if the next of kin do not think it worth while to take out administration to the estate, there seems no good reason why the creditors should be compelled to go through that formality. In such cases it should suffice to serve the public administrator with the process, informing him who the beneficiaries of the estate are, so far as is known, and it should be the duty of the administrator to inform them, by notice through the post office, of the receipt of process, leaving them to take such steps, if any, as they might think fit to protect their interests. As soon as probate or administration should be granted to some other person, the public administrator would be notified, and all process or notices respecting the estate served on him would be handed over to such other person.

We are inclined to think that the duties of the public administrator should be mainly passive, but, whenever required so to do by any person interested in the estate, he should have power to take active steps for its protection, on receiving proper indemnity. No estate should be distributed by the public administrator unless probate or letters of administration were granted, or, at all events, the usual fee therefor paid.

In many cases, at present, there is an unreasonable delay in taking probate or administration, and creditors are delayed in their proceedings. The fact that they could proceed by serving a public administrator would have a wholesome effect in hastening the issue of probate or letters of administration.

The obnoxious amendments to The Devolution of Estates Act should be repealed before they have done any more damage, and whatever defect might exist in the original Act might, we venture to think, be far better removed by the adoption of some such course as we have suggested.

CURRENT ENGLISH CASES.

The following is a continuation from p. 596, *ante:*

INFANT—MARRIAGE SETTLEMENT OF REVERSIONARY INTEREST—REPUDIATION OF SETTLEMENT BY INFANT SETTLOR—REASONABLE TIME—MORTGAGE—CONVEYANCE BY MORTGAGOR—PURCHASER, RIGHT OF TO INDEMNITY AGAINST MORTGAGE DEBT—PARTITION—TENANT IN COMMON, EXPENDITURE BY, IN PERMANENT IMPROVEMENTS.

In re Jones, Farrington v. *Forrester*, (1893) 2 Ch. 461, several questions of importance are decided by North, J. The first was as to the right of a lady to repudiate a marriage settlement of her reversionary estate made by her during infancy. The settlement was made in 1857, of property subject to an outstanding life estate. The husband deserted the wife in 1865, and she obtained a protection order against him in 1867, since which time he had not been heard of. The tenant for life died in 1890, and some income of the settled property had been paid to the wife, which she was entitled to receive whether barred by the settlement or not. She had done nothing else to confirm the settlement. There were two children of the marriage, but no appointment had been made in their favour under the power in the settlement in their behalf. North, J., held that she was entitled to repudiate the settlement. In discussing what was a "reasonable time" within which to repudiate, he says: "I think it is not an unreasonable time if she elects to repudiate the settlement when for the first time the question arises whether anything is or is not to be received by her or her trustees under it, and that question never arose, so far as I can see, until after the death of the tenant for life in 1890." The action was for partition, and the question was as to how a mortgage was to be borne. The owner of the whole estate mortgaged it, and then conveyed away an undivided moiety. The conveyance to the purchaser did not mention the mortgage, but contained a covenant for further assurance. The two moieties having devolved on different persons, North, J., held that the moiety originally retained by the vendor must bear the mortgage debt (cf. *Norris* v. *Meadows*, 7 A.R. 237; *Pierce* v. *Canavan*, 28 Gr. 356; *Aldous* v. *Hicks*, 21 Ont. 95). The other point raised was as to the incidence of a claim for improvements. The improvements in question were of a permanent character, and

were made by the owner of a moiety who was also tenant for life of the other moiety, and it was held that the present value of the improvements (not exceeding the amount originally expended thereon) must be borne ratably by the present owners of both moieties.

PRACTICE—ARBITRATION ACT, 1889 (52 & 53 VICT., C. 49), S. 4—(SEE R.S.O., C. 53, S. 38)—STAYING ACTION—EXTENSION OF TIME TO PLEAD.

Brighton Marine Palace and Pier v. *Woodhouse*, (1893) 2 Ch. 486, was an application to stay proceedings under The Arbitration Act, 1889 (see R.S.O., c. 53, s. 38), on the ground that the parties had agreed to refer the matters in question to arbitration. The motion was resisted on the ground that the defendant had obtained a consent to extend the time for putting in his defence, which, it was contended, was a "step in the proceedings," but North, J., held that it was not, and granted the stay; though it would seem, according to the dictum of Denman, J., in *Chappell* v. *North*, (1891) 2 Q.B. 252, that if the defendant had obtained the extension on application to the court that would have been a step in the cause.

STATUTE OF LIMITATIONS (3 & 4 W. 4, C. 27), SS. 1, 2, 3—(R.S.O., C. 111, S. 2, S-S. 3; S. 4).

Howitt v. *Harrington*, (1893) 2 Ch. 497, may be usefully referred to for the discussion it contains as to the kind of rents which are included within the word "rent" in the Real Property Limitations Act (see R.S.O., c. 111, ss. 2, 4, 5); Stirling, J., holding that a quit rent payable in respect of copyhold land was a rent within the meaning of the statute.

REMOTENESS—GIFT TO CHARITY IN PERPETUITY, WITH CONTINGENT GIFT OVER TO INDIVIDUALS.

In re Bowen, Lloyd v. *Davis*, (1893) 2 Ch. 491, a testator had bequeathed a sum of money to trustees upon trust to establish schools; and he declared that if at any time thereafter the government should establish a general system of education the several trusts for the schools should cease, and in that event he bequeathed the money as he had bequeathed his residuary personal estate. Those entitled under the gift-over now claimed the fund on the ground that the contingency had happened; their claim was resisted by the Attorney-General on the ground that

the gift-over was void for remoteness, and this contention was held by Stirling, J., entitled to prevail, because the gift to the charity was in perpetuity, and the event on which the gift-over depended was one that need not necessarily have happened within a life or lives in being and twenty-one years thereafter.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (44 & 45 VICT., C. 41), S. 3 —(R.S.O., C. 110, S. 3)—APPOINTMENT OF NEW TRUSTEE—TRUSTEE PREDECEASING TESTATOR.

In *Nicholson* v. *Field*, (1893) 2 Ch. 511, a testator appointed two persons trustees of his will, both of whom predeceased him; and the question which Kekewich, J., was called upon to determine was whether the personal representative of the survivor of the persons named as trustees could, under the Conveyancing and Law of Property Act, 1881 (see R.S.O., c. 110, s. 3), appoint new trustees of the will. This question he answered in the negative, holding that the power conferred on the personal representative of a surviving trustee under that Act does not extend to the representative of a person who had merely been nominated, but had never been, *de facto*, a trustee.

PRINCIPAL AND SURETY—CO-SURETY—CONTRIBUTION—STATUTE OF LIMITATIONS.

Wolmershausen v. *Gullick*, (1893) 2 Ch. 514, was an action by the personal representative of a deceased surety against a co-surety for contribution. The claim of the principal creditor had been allowed against the estate of the deceased surety in administration proceedings, but the debt had not been paid, nor any part of it; and it was contended that until a surety had paid more than his proportion of the debt he could not maintain an action against his co-surety for contribution; but Wright, J., held that the allowance of the claim against the estate of the deceased in the administration proceedings was equivalent to a judgment, and that although at law a surety could not have maintained an action against his co-surety until after he had paid more than his proportion of the debt, yet that in equity he could do so; and though, if the principal creditor had been a party to the proceedings, he was of opinion that he could have ordered the co-surety to pay to the principal creditor his proportion of debt; yet, as he was not a party, he declined to make any more than a prospective order, declaring the plaintiff entitled to con-

tribution, and directing that, upon payment by her of her share, the defendant should indemnify her against further liability. The defence of the Statute of Limitations was also set up to the claim, but it was held that the statute does not begin to run in favour of a co-surety until the liability of the surety has been ascertained, *i.e.*, until the claim of the principal creditor has been established against him, and it is immaterial that at the time the action is brought for contribution the statute has run as between the principal creditor and the co-surety.

PATENT—CO-OWNERS BY PURCHASE—CO-OWNER MORTGAGEE OF OTHER CO-OWNER'S SHARE—PATENT WORKED BY MORTGAGEE CO-OWNER—PROFITS RECEIVED AS MORTGAGEE.

Steers v. *Rogers*, (1893) A.C. 232, was a redemption action by a co-owner of a patent against his co-owner, to whom he had mortgaged his share. During the currency of the mortgage the mortgagee had worked the patent, and the plaintiff claimed an account of the profits so made. The House of Lords (Lords Herschell, L.C., Halsbury, Macnaghten, and Shand), however, unanimously affirmed the decision of the Court of Appeal, (1892) 2 Ch. 13 (noted *ante* Vol. 28, p. 425), that he was not entitled to any share of the profits made by the mortgagee, but that the latter was entitled to the whole of them as co-owner. *Mathers* v. *Green*, L.R. 1 Ch. 29, which the court below had followed, was approved. Their lordships arrived at this result on the ground that a patent is not a chattel or analogous to a chattel, and does not confer any right to make or use the particular invention, but merely gives a right to prevent others from making it.

RIVER—POLLUTION OF STREAM—PRESCRIPTIVE RIGHT, EXTENSION OF.

McIntyre v. *McGavin*, (1893) A.C. 268, is an appeal from a Scotch Court of Session. The action was brought by certain riparian proprietors of a stream called the Fithie to restrain the defendants from taking the water from that stream and returning it in a polluted state into another stream called the Dighty, which flowed into the Fithie. The defendants had a prescriptive right to take water from the Dighty for the purpose of their business, and to return it to the Dighty in a polluted state; and they contended that by taking the waters from the Fithie, as they did, the plaintiffs had no right to complain, because they were not injured

by the defendants' action any more than they would have been had the defendants done as they had a prescriptive right to do, viz., drawn the water from the Dighty and returned it in a polluted state to that stream, inasmuch as it would ultimately reach the Fithie in a polluted state; but the courts below having found as a fact that the defendants' withdrawing of the water from the Fithie weakened the purifying influence of that stream on the waters of the Dighty, their lordships held that they could not interfere with this finding of fact, unless it could be demonstrated either that some cardinal fact had been overlooked, or that some altogether erroneous view had been taken of the bearing of the evidence upon the case, and this, they held, did not appear. The judgment of the court below, restraining the defendants, was therefore affirmed, save as to a riparian proprietor on the Dighty, who was joined as a plaintiff, but who was held not to be entitled to any relief. The case establishes that a prescriptive right to take water in a particular way and at a particular place from a stream will not justify the person having the right taking the water in any other way or place, nor even enable him to use his common law right of taking water in such a way as to add to the pollution of the stream.

BANKER AND CUSTOMER — STOCKBROKER PAYING CLIENT'S MONEY INTO HIS OWN ACCOUNT.

In *Thomson* v. *Clydesdale Bank*, (1893) A.C. 282, the facts were simple. Trustees employed a stockbroker to sell shares belonging to the trust, and directed him to pay the proceeds into certain banks to the credit of the trustees. The stockbroker sold the shares, but, in violation of his duty, paid the proceeds into the credit of his own bank account, which was overdrawn. The day afterwards he absconded, and it was then found that he was insolvent. The trustees claimed the money thus paid into the credit of the broker's account, and the bank claimed to hold it against the amount overdrawn, they having received the money without notice of the fraud. The Court of Session held that the bank was entitled to retain the money, and the House of Lords (Lords Herschell, L.C., Watson, Morris, and Shand) affirmed the decision.

NEGLIGENCE—MASTER AND SERVANT—COMMON EMPLOYMENT.

Cameron v. *Nystrom*, (1893) A.C. 308, was an action to recover damages for negligence of the defendants' servant whereby the plaintiff was injured. The defendants set up the defence of common employment. The plaintiff was a seaman, and servant of the shipmaster on whose ship the injury was caused; and the injury was caused by a servant of the defendants, who were stevedores employed to unload the vessel, while the ship was being unloaded; and was due to the negligence of a foreman of the defendants in rigging up the gear for unloading the vessel. The Judicial Committee of the Privy Council agreed with the Supreme Court of New Zealand that the defence of common employment can only be raised where the servant doing the injury and the person injured are both servants of the same master, and that therefore the defence did not apply, and they agreed with the decision of the House of Lords in *Johnson* v. *Lindsay*, (1891) A.C. 371.

PRINCIPAL AND SURETY—RELEASE OF CO-SURETY.

Mercantile Bank of Sydney v. *Taylor*, (1893) A.C. 317, is another decision of the Judicial Committee of the Privy Council on the law of principal and surety. This was a suit against one of five joint and several sureties to recover the amount guaranteed, in which it appeared that the plaintiffs, without the defendant's knowledge or consent, had released one of the sureties "from all debt due by him to the bank at this date." Their lordships affirmed the judgment of the Supreme Court of New South Wales, that the effect of the release was to discharge the defendant from liability, and that it could not be modified by evidence of verbal negotiations prior to the release for the purpose of showing an agreement to reserve rights against the other sureties.

PRINCIPAL AND SURETY—NOVATION—RELEASE OF PRINCIPAL DEBTOR—SURETY, DISCHARGE OF.

Commercial Bank of Tasmania v. *Jones*, (1893) A.C. 313, is an appeal from the Supreme Court of Tasmania. The plaintiffs were creditors of a man named Wakeham, for whom one Bonney was surety. The bank, with the consent of Bonney, released Wakeham from all liability to them, and accepted one Marshall

in his place as their debtor. Bonney agreed to become surety for Marshall and agreed that his guarantee for Wakeham should continue until he did so. Bonney having died without giving any guarantee for Marshall, the present action was brought against his executors for the debt, in which they pleaded that Bonney was discharged by the release of Wakeham. This defence the Judicial Committee held was good, on the ground that the acceptance of Marshall as a full debtor was intended to be a complete discharge of Wakeham, and could not therefore be construed merely as a covenant not to sue him, which would only operate as a partial discharge; and that, therefore, there had been a complete novation of the debt, and Bonney was thereby discharged from liability.

APPEAL TO PRIVY COUNCIL—NEW POINT NOT TAKEN IN THE COURT BELOW.

Randwick v. *Australian Cities Investment Corporation*, (1893) A.C. 322, may be briefly referred to here for the fact that the Judicial Committee refused to entertain a new point which had not been raised or argued in the court below.

POWERS OF LOCAL LEGISLATURES—PROCEEDINGS AGAINST ABSENTEES, WITHOUT SERVICE.

In *Ashbury* v. *Ellis*, (1893) A.C. 339, on appeal from the Court of Appeal of New Zealand, the point was raised whether a colonial legislature, having power "to make laws for the peace, order, and good government" of the colony, could validly make a law enabling the colonial courts to adjudicate upon the rights of absentees without service of proceedings on them. The Judicial Committee held that such a law was *intra vires* of the colonial legislature.

PRACTICE—LEAVE TO APPEAL IN CRIMINAL CASE.

Ex parte Macrea, (1893) A.C. 346, was an application for leave to appeal in a criminal case on the ground of misdirection, which was refused. The Lord Chancellor, who delivered the judgment, said: "There are, no doubt, very special and exceptional circumstances in which leave to appeal is granted in criminal cases; but it would be contrary to the practice of this board, and very mischievous, if any countenance were given to the view that an appeal would be allowed in every case in which it could be shown that the learned judge had misdirected the jury."

Notes and Selections.

FALSELY PRETENDING TO BE A SOLICITOR.—At the Manchester City Police Court, on the 23rd ult., Thos. Haslam, of Westmoreland street, was summoned, at the instance of the Incorporated Law Society, for wilfully and falsely pretending to be a solicitor. Mr. Beckton prosecuted, and said that defendant was a debt collector, and on the 12th July he handed to Mrs. Tye, a neighbour, a letter, which was in the following terms: "Dear Madam,—Mr. Harper has handed me your account for collection, and also to say if it be not paid on or before Friday next, in the morning, we shall at once take proceedings for the recovery of the same." This was the offence complained of. Mrs. Tye was led by the letter into the belief that the defendant was a solicitor. Mr. Roberts, who appeared for defendant, said Mrs. Tye had known the defendant for a dozen years, and as she knew that he was not a solicitor she could not have been deceived by the letter. As a matter of fact, on the defendant not being paid, she consulted him (Mr. Roberts), and a writ was issued. The prosecution was vindictive on the part of Mrs. Tye.—The stipendiary magistrate said the defendant had no right to write a letter such as that which had been read. There would be a fine of 20s. and costs.—*Law Gazette.*

RAILWAY COMPANY—REFUSAL TO FURNISH A SEAT TO PASSENGER.—It has been held in the case of *Louisville, etc., R.W. Co.* v. *Patterson*, Mississippi S.C. (13 S.R. 697), that a railway company is liable for the refusal and failure of one of its conductors to furnish a passenger with a seat, for which he has purchased and holds a ticket, when there are more of such seats than there are passengers, but none are actually vacant, because some passengers occupy two seats, and other seats are filled with baggage. The plaintiff insisted that the conductor should find him a seat, which the conductor refused to do, emphasizing his refusal with words which are not necessarily for publication. A jury having given the plaintiff a verdict for $75, the railway company appealed, when the opinion of the court is expressed as follows: "The appellee paid for a seat in a first-class coach, and was entitled, as

a matter of right, to have the servants of the railway company who were in charge of the train furnish him such seat, unless a sudden and unusual influx of passengers rendered this impracticable. It is perfectly clear from all the evidence in this case that the conductor in charge of this train could and should have made provision for seating the appellee. It is equally certain that a proper application of the appellee to that effect provoked not only a refusal from the conductor, but subjected the audacious passenger to an explosion of profane and contemptuous wrath from that official. That a jury awarded the trivial sum complained of is proof positive that no undue prejudice existed against the corporation. Let the company thank God and take courage. Affirmed."

BINDING THE CONSCIENCE.—If I had not heard the following story told in open court by a Hebrew lawyer of eminence, I should not repeat it here; for I have too many friends of that persuasion whom I esteem too highly to be willing to cast any imputations upon their race. I have an impression that the Hebrews of the better class are not sensitive, and look upon some habits of their lower orders with a contempt which does not differ much from our own scorn for the jockeying, cheating, mean practices of some of our own Anglo-Saxon origin. It is too good a story to be lost through an unfounded fear that it may be taken as evidence of race prejudice in the writer.

John S. Wise, the genial Virginian whose natural electricity has made him the New York counsel of our leading Electrical Corporation, was counsel in an action between two Hebrews, in which the parties were intensely interested. After a long consultation had been closed, his client, as he thought, departed. But he soon returned, and, opening the door wide enough to get his head inside, interrogated his counsel thus:

"Meester Vise! How vil dey schvare dot Isaac ven he is a veetness?"

"Swear him?" replied the counsel. "In the usual way, I suppose, upon the Bible."

"Dat's no good, Meester Vise. Ef you schvare dot Isaac on de Bible, he vil lie awful. You might just so vell schvare him on a pack of cards."

"But how can we bind his conscience? Must we make him pull off the head of a cock like the Chinese, or swear him on a toad-fish like the New Zealander?"

"No, no! You must schvare him on the Talmud. Dot vil make Isaac tell de troot."

"All right, we will swear him on the Talmud, then," said the counsel; and again the client departed. But not for long. Again his face appeared through the door, this time with an anxious expression.

"What now, Jacob?" asked his lawyer.

"Meester Vise! Of ve make dot Isaac schvare on de Talmud, vill he make me schvare on de Talmud too?"

"I think he would," replied his counsel. "What is sauce for the goose, you know. If I make him swear on the sacred book, I do not think I could object to your being sworn on the same book; do you?"

"Dot ish bad! Dot ish very bad!" said Jacob; and he went away sorrowful.

A third time he returned, and again he was asked what he wanted.

"Meester Vise!" said Jacob, with deliberation, "I tink *ve vill schvare dot Isaac on de Bible!*"—*Green Bag.*

Reviews and Notices of Books.

The Criminal Code of the Dominion of Canada, as amended in 1893, with Commentaries, Annotations, Precedents of Indictments, etc., etc. By Henri Elzear Taschereau, LL.D., one of the Judges of the Supreme Court of Canada; being a third edition of the author's work on the Criminal Statute Law of the Dominion of Canada. Toronto: The Carswell Co. (Ltd.), Law Publishers, etc., 1893.

The Criminal Code is the short name which Mr. Justice Taschereau gives to his new work. It is a third edition of "The Criminal Statute Law of Canada," under which name the two former editions were published. The new edition was rendered necessary by the coming into force of the new Criminal Code of 1893.

As the author tells us in his preface, in the present volume will be found, besides the text of the Code, the Report of the

Imperial Commissioners on the draft Code of 1879; the English and Provincial cases brought down to the latest date; a reference to the Imperial statutory enactments applying to Canada, as well as the English statutes now in force; extracts from the leading English works on criminal law; forms of indictments adapted to recent changes; and italicized references to changes, extensions, or additions to the law. The preface also contains a synopsis of the principal parts of the new statute, to which the attention of the practitioner should be more especially called, though it does not claim to give anything like the amendments that have been introduced. He also gives a table of regnal years for convenience of reference to English statutes and Law Reports.

As a large portion of the Code is new law, the profession have, of course, no decisions to guide them in construing these new sections, and therefore the construction placed upon the passages by the judicial mind of the learned author will prove of great benefit to the struggling practitioner, who would otherwise have nothing to rely upon but his own brain, and research as to the consideration of analogous provisions. It is of course well known that Mr. Justice Taschereau saw many defects which existed in the new Code, and thought he saw some which did not exist, and he took his own way of pointing them out to the Minister of Justice, who had the preparation of the Code in hand. The author has, however, omitted any mention of this fact in his work, and makes his comments on the different sections in an unimpassioned and impartial manner, which cannot help but be satisfactory to his reader.

He has taken the Code section by section, and analyzed it, and added thereto his comments and a review of the leading cases bearing on the point, both English and Canadian, down to the latest date. An important and useful part of the book is comprised in the forms of indictments adapted to the law as changed by the Code, and this in itself will be of great advantage to those whose duty it is to frame these difficult and intricate instruments.

The index is a copious and excellent one, and is the handiwork of Mr. C. H. Masters, of the New Brunswick Bar, and Assistant Reporter of the Supreme Court.

The work of the publishers and printers seems to be well and carefully done.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1893.

Monday, the fifteenth day of May, 1893.

Present, between ten and eleven a.m., Messrs. Osler, Moss, Magee, Irving, O'Gara, Shepley, Martin, Meredith, Teetzel, Riddell, and Dr. Hoskin.

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

Present also, in addition, after eleven a.m., Messrs. Barwick, S. H. Blake, McCarthy, Watson, Ritchie, and Aylesworth.

The minutes of the last meeting of Convocation were read, approved, and signed by the chairman.

Mr. Moss, from the Legal Education Committee, presented their Report to the following effect:

(1) The committee have had under consideration the Report of the examiners on the examinations for call to the Bar passed under the Law Society curriculum passed before this term (Easter, 1893), and the Report of the Secretary on the papers of the successful candidates, and they find that the following gentlemen, who have passed the examination, and whose papers are regular, are entitled to be called to the Bar forthwith, viz., Messrs. William John Harvey, Thomas Herbert Lennox, Frank Mervin Yarnold, William David Ebbels, James Barber McLeod.

The case of Mr. E. Donald is reserved for completion of his papers and production of further proofs.

The case of Mr. H. E. A. Robertson is also reserved pending disposition of a special petition.

(2) The committee have also had under consideration the Report of the examiners on the result of the third year examination in the Law School held in May, 1892, the Report of the Principal with respect to attendance on lectures, and the Report of the Secretary on the papers of the candidate in question, and they find that William John Elliot has duly passed said examination, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness. His papers for call are regular, and the committee recommend that he be called to the Bar forthwith.

May 12th, 1893.

Ordered for immediate consideration and adopted.

Ordered, that the following gentlemen who have passed their examination, and to have presented regular papers, be called to the Bar forthwith, viz., Messrs. William John Harvey, Thomas Herbert Lennox, Frank Mervin Yarnold, William David Ebbels, James Barber McLeod.

Ordered also in the case of Mr. William James Elliott, who passed the third year examination in the Law School at Easter Term, 1892, that he be called to the Bar.

Ordered also, in accordance with the Report, that the cases of Messrs. E. Donald and H. E. A. Robertson be reserved for further report.

Mr. Moss presented the Report of the Legal Education Committee on the result of the examination of candidates for certificates of fitness:

The committee have had under consideration the Report of the examiners on the examination of candidates for certificates of fitness passed under the Law Society curriculum held before this term (Easter, 1893), and the Secretary's Report on the papers and

service of the successful candidates, and they find that the following gentlemen have passed the examination, that their papers and service are correct and regular, and that they are entitled to receive their certificates as solicitors forthwith, viz., Thomas Herbert Lennox, Charles Tyrrell Sutherland, James Barber McLeod, William John Harvey, William Forster Scott, Charles Clinton Fulford, Glanton Gifford Duncan.

The cases of the following candidates are reserved for completion of their term of service as articled clerks, and production of further proofs, viz., Messrs. E. Donald and G. F. Blair.

The committee have also had under consideration the Report of the examiners on the result of the third year examination in the Law School held in May, 1892, the Report of the Principal with respect to attendance on lectures, and the Report of the Secretary on the papers of Henry Wilberforce Maw, and they find that he has duly passed the School examination, is certified by the Principal to have attended the required number of lectures, his papers and service are correct and regular, and he is entitled to receive his certificate of fitness forthwith.

Ordered for immediate consideration and adopted.

Ordered that the following gentlemen, who are reported to have passed their examination, to have presented regular papers, and to have served the regular time, do receive their certificates of fitness forthwith, viz., Messrs. Thomas Herbert Lennox, Charles Tyrell Sutherland, James Barber McLeod, William Foster Scott, William John Harvey, Charles Clinton Fulford, Glanton Gifford Duncan.

Ordered also, in accordance with the Report, that the cases of the following gentlemen be reserved for further report, viz., Messrs. E. Donald and G. F. Blair.

Ordered also in the case of Mr. Henry Wilberforce Maw, who passed the third year examination in the Law School in May, 1892, that he do receive his certificate of fitness.

The Report of the Legal Education Committee on the admission of students-at-law was received and read as follows:

(1) The following candidates for admission as students-at-law presented their diplomas as graduates of the universities named, and are entitled to be entered on the books of the Society as students-at-law of the graduate class, viz., John Robertson Leland O'Connor, B.A., University of Ottawa, and William Pakenham, B.A., University of Toronto.

(2) The following candidates for admission as students-at-law presented certificates of having passed examinations in the subjects prescribed by the Rules of the Law Society in the universities named within four years of their present examination, and are entitled to be admitted as students-at-law of the matriculant class, viz., Messrs. William Charles Armstrong, Queen's, 1890; John Cameron Lindsaye White, Toronto, 1890; Samuel Allan McCoskrey Armstrong, Trinity, 1892; Martin William Griffin, Ottawa, 1892; William Hewson Hargraft, Trinity, 1892; Martin John Kenny, Trinity, 1892; Isaiah Willis McArdle, Trinity, 1892; William Stewart McClymont, Queen's, 1892; Jules Albert Philion, Ottawa, 1892; Isaac Earnest Weldon, Queen's, 1892.

(3) The following candidates for admission as students-at-law of the matriculant class presented certificates showing that they have passed the Junior Matriculation examinations at the Departmental examinations held in lieu of the university matriculation examinations, and the committee recommend that they be admitted as students of the matriculant class, viz., Messrs. Wilson McCue and Everett Holmes McKenzie (1891), and Messrs. Edward John Daly, Henry Hartman, George Glen Moncrieff, Charles Brotchie Nasmith, James Burrows Noble, Wilfred Joseph O'Neail, Charles Herbert Porter, and Arthur Graeme Slaght (1892).

Ordered that the following gentlemen reported entitled as graduates be entered on the books of the Society as students-at-law of the graduate class, viz., Messrs. J. R. L. O'Connor, W. Pakenham.

Ordered that the following gentlemen reported entitled as matriculants be entered on the books as students-at-law of the matriculant class, viz., Messrs. W. C. Armstrong, John C. L. White, S. A. M. Armstrong, M. W.

Griffin, W. H. Hargraft, M. J. Kenny, I. W. McArdle, W. S. McClymont, J. A. Philion, I. E. Weldon, W. McCue, E. H. McKenzie, E. J. Daly, H. Hartman, G. G. Moncrieff, C. B. Nasmith, J. B. Noble, W. J. O'Neail, C. H. Porter, and A. G. Slaght.

PROCEEDINGS AFTER 11 A.M.

The following gentlemen were called to the Bar, viz., Messrs. William David Ebbels and James Barber McLeod. Mr. Colin St. Clair Leitch (who was ordered for call in Convocation of Trinity Term, 1892) was also called to the Bar.

Mr. Moss, from the Legal Education Committee, presented the Report of that committee on the regulations made by them for the conduct of the examinations held in the Law School during the present term, together with a schedule showing the dates of the examinations and other matters, which Report and schedule, in accordance with the Rule in that behalf, were submitted to Convocation as follows :

The Legal Education Committee beg leave to report : With reference to the regulations made by your committeee for the Law School during the present term that the dates of holding the various examinations, the number of questions to be put and answered, and other details are as shown in the accompa. ying schedule.

Your committee beg further to report that owing to the great number of candidates at the second year examination it was found impracticable to place them all in the great hall for examination, and the committee directed that those who could not be accommodated in the hall should write in lecture room No. 2, and with a view to prevent copying Mr. Symons, caretaker and librarian of the students' library, was directed to be present in the great hall during the progress of the examination in order to assist the examiners in overlooking the students.

Dated May 13th, 1893.

Date.	Year.		Subject.	No. of questions put.	No. of questions to be answered.
Thursday, May 11	2nd Pass	Forenoon	Criminal Law	13	10
			Real Property	16	13
		Afternoon	Contracts	13	10
			Torts	13	10
Friday, May 12	2nd Pass	Forenoon	Equity	13	10
			Practice	13	10
		Afternoon	Personal Property	10	7
			Evidence	10	7
			Can. Constitutional Law and History	10	7
day, May 13	1st Pass	Forenoon	Contracts	10	10
			Real Property	10	10
		Afternoon	Common Law	10	
			Equity	10	
M nday, May 15	3rd Pass	Forenoon	Contracts	15	12
			Evidence	13	10
		Afternoon	Criminal Law	15	12
			Equity	13	10
esday, May 16	3rd Pass	Forenoon	Real Property	20	18
		Afternoon	Torts	15	12
			Practice	15	12
Wednesday, May 17	3rd Pass	Forenoon	Commercial Law	20	18
			Private Int. Law	10	8
		Afternoon	Can. Constitutional Law, Constitution of Statutes.	10	8
Tuesday, May 23	1st Pass / 3rd Pass		Results to be announced.		
Thursday, May 25	3rd Honour	Forenoon	Contracts	9	9
			Evidence	9	9
		Afternoon	Criminal Law	9	9
			Equity	9	9
Frida , May 26	1st Honour	Forenoon	Contracts	8	8
			Real Property	8	8
		Afternoon	Common Law	8	8
			Equity	8	8

Friday, May 26....3rd Honour.....	Forenoon...	F. [illegible]Property.....	15	15
	Afternoon...	[illegible]orts.....	9	9
		Practice.....	9	9
Saturday, May 27...3rd Honour.....	Forenoon...	Commercial Law.....	15	15
		Private Int. Law.....	7	7
	Afternoon...	Can. Constitutional Law.	7	7
		Constitution of Statutes.	7	7
Monday, May 29....1st and 3rd Honour.		Results to be announced.		
Tuesday, June 6....2nd Pass.....		Results to be announced.		
Thursday, June 8...2nd Honour.....	Forenoon...	Criminal Law.....	8	8
		Real Property.....	8	8
	Afternoon...	Contracts.....	8	8
		Torts.....	8	8
Friday, June 9.. ..2nd Honour.....	Forenoon...	Equity.....	8	8
		Evidence.....	8	8
	Afternoon...	Personal Property.....	6	6
		Evidence.....	6	6
		Can. Court History and Law.....	6	6
Tuesday, June 13...2nd Honour.....		Results to be announced.		

Mr. Moss, from the same committee, presented a Report, as follows:

In the case of Mr. H. J. Martin, that he is a candidate at the third year examination in the Law School held this term. His time as a student-at-law expires this term, but his articles of clerkship do not expire until the 23rd day of October, 1893. He was under the impression that he could not be called this term, and thus omitted to give the proper notice for call, signed by a Bencher, for this term; but as he is obliged to pay the full examination fee for call, he asks that notice for call be waived in his case. The committee recommend that he be granted leave to give notice now, that it remain posted in the places specified in the Rules until the half-yearly meeting on June 27th, and that he be then called, provided no objection to him appear in the meantime and that he has passed the examination.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same committee, presented a Report, as follows:

In the case of Mr. G. F. Blair, that he is a candidate for call to the Bar in the present (Easter) term. Through mistake, he was late in filing the prescribed notice for call signed by a Bencher; but as soon as he discovered his mistake he gave notice, which was handed to the Secretary three days late. He passed a good examination. The committee recommend that his notice do remain posted in the places prescribed by the Rules until the last day of this term, and that he be called on that day, provided no objection appear.

Dated this 12th day of May, 1893.

Mr. Moss, from the same committee, presented a Report, as follows:

(1) In the case of W. H. P. Walker, the committee recommend that he be granted his certificate of fitness.

(2) In the case of Mr. Leslie H. Lafferty, that he is entitled to receive his certificate of fitness forthwith.

Dated 12th May, 1893.

Ordered, in accordance with the Report, that each of the above-named gentlemen do receive his certificate of fitness.

Mr. Moss, from the same committee, presented a Report, as follows:

In the case of Mr. Reginald William Eyre: This gentleman is an applicant as a student-at-law. He asks that he be allowed to give the necessary notice signed by a Bencher *nunc pro tunc*, notwithstanding that the time for so doing has lapsed.

The committee think that this might be granted and the petitioner admitted as a student-at-law of the matriculant class on the last day of term, provided his notice remain posted until then and no objection to his admission be made to appear in the meantime.

The Report was received, and further consideration of the same was reserved until the last day of term.

Mr. Moss, from the same committee, presented a Report, as follows:

In the case of Mr. Frederick Elliot: The committee recommend that he be required to place himself under fresh articles for a term equivalent to that during which he was engaged in other business than that of an articled clerk, and that on the completion of such further period of service the question of allowing the examination so passed by him come up for favourable consideration.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same committee, presented a Report, as follows:

In the case of Mr. J. K. Arnott: That he was admitted as a student-at-law of the graduate class in Trinity, 1892, and consequently is due to present himself at the first year Law School examination held this term. He presents a special petition, accompanied by a medical certificate stating that he is too ill to attend the examination to be held in Easter, and praying that he be allowed to take the supplemental examination at Trinity. The committee think that he may be allowed to do so, but as he is articled to Mr. J. H. Rodd, of Windsor, and nevertheless appears to have been absent in Manitoba almost since the very beginning of his period of service under articles, granting as recommended should not be taken as a recognition of due service, and he, must satisfy the committee that the requirements of the Society as to service have been fulfilled before the examination, if successfully passed, can be allowed.

Ordered for immediate consideration and adopted.

Mr. Moss, from the same committee, presented a Report, as follows:

That under the Rule of Convocation as to tenure of office passed in Hilary, 1892, the term of office of lecturers expires in Easter Term, and that of the examiners in Trinity Term next ensuing. The committee recommend that steps be taken forthwith to appoint their successors.

Dated May 13th, 1893.

The Report was received and adopted, and it was ordered that the usual advertisement for applicants for the offices of lecturers be inserted, and that a call of the Bench be issued for Friday, the second day of June, upon which day the appointments of Lecturers are to be made.

Mr. Moss, from the Legal Education Committee, presented the Report of that committee as to the termination of office of the Examiners, and their proposed remuneration.

The Report was read and ordered for consideration on Saturday, the 20th day of May instant, and is as follows:

In view of the approaching termination of the period of office of the examiners, and having regard to the fact that the last intermediate examination under the Law Society's curriculum has been held, and that not more than three more final examinations under this curriculum are likely to be held after the expiration of the term of office of the present examiners, and that at each of these examinations only a few candidates will be examined, it is desirable to consider whether, with a view to dispatch in the work of examining, and in the interest of economy, a change in the number and in the amount of remuneration of the examiners may be made.

At present there are three examiners, each receiving a salary of $500, making in all $1,500.

During the Law School examinations each of these examiners has to prepare a large number of papers and read a very large number of answers, and they have frequently complained of the pressure put upon them by reason of the number of papers on subjects and questions to be prepared, and the number of answers to be read, considered, and valued.

The amount of labour thus occasioned has been the cause of delay to the examiners making their returns of the results until considerable time after the conclusion of the examination, and this has occasioned inconvenience and dissatisfaction. It has inconvenienced the committee and delayed them in reporting to Convocation, and this necessarily leading to delay in announcing results to the students dissatisfaction has arisen among them.

To remedy these matters, it is suggested to increase the number of examiners to four; to pay three of them $250 per annum. To make the senior of the four, in addition

to his other duties, responsible for the due conduct of the examinations and the returns, and reports thereof to the Secretary, or as directed by the committee, and to pay him $300 per annum.

This, it is believed, will give sufficient force to enable the work to be performed with ease and dispatch, will remove the objections of delay, will fully compensate for the time, labour, and trouble involved in the examinations hereafter to be held, and will effect a saving of $450 per annum, thus:

Present salaries		$1,500 00
Proposed salaries:		
Three examiners at $250	$750 00	
One examiner at	300 00	1,050 00
		$ 450 00

Dated May 13th, 1893.

The Report of the Principal of the Law School on the session of 1892-1893, just brought to a close, was received and read, and the same was ordered to be printed and distributed to the Benchers, and taken into consideration on Friday, the second day of June next.

Mr. Moss, from the Special Committee appointed to promote the legislation *re* will of T. B. P. Stewart, deceased, reported as follows:

(1) The committee placed the petition to the Legislature, the draft Bill and other necessary papers, in the hands of Donald Guthrie, Q.C., M.P.P., who took charge of and attended to the passage of the Bill through all its stages.

(2) Early in the session it was manifest to the committee and their advisers that strong opposition to the Bill as proposed was to be expected from both the Trustees of the Sick Children's Hospital, and the residuary devisees mentioned in the will; and the committee, after consultation and enquiries, became convinced that unless some arrangement was arrived at between the Society and the Trustees of the Hospital, no legislation in favour of the Society would be granted by the Legislature.

(3) After considerable negotiations with the Trustees, an arrangement was finally arrived at whereby the estate, after payment of all legitimate expenses of administration, was divided equally between the Society and the Hospital, and the Bill, as recast so as to carry out this arrangement, has received its third reading, and now only awaits the assent of the Lieutenant-Governor. A copy of the Bill as passed is annexed hereto.

May 13th, 1893.

The Report was received.

The Secretary then read a letter from W. Mundell, Esq., Secretary of the Frontenac Law Association, enclosing a copy of a resolution passed by that association at a meeting held January 13th, 1893.

Ordered, that the same be referred to the Legal Education Committee for consideration and report.

The following gentlemen were then introduced and called to the Bar: Messrs. Frank Mervin Yarnold and William John Harvey.

The Secretary then read a letter from Mr. Ashman Bridgman, dated the 20th April, 1893, complaining that one Nathaniel Mills, although struck off the Rolls as solicitor in November, 1892, continued to practise in the High Court of Justice. The matter of the complaint was referred to the Discipline Committee for report.

The Secretary read the letter of Mr. G. N. Beaumont, dated the 3rd of May, 1893, in the matter of P—— H——. The matter of this complaint was also referred to the Discipline Committee for report.

Mr. Barwick's notice relating to the establishment of a gymnasium in the Law School was withdrawn.

Mr. Osler gave notice that he would, at the next meeting of Convocation, move that Rule No. 44 be amended by inserting the words "two hundred" after the word "one thousand" in the fourth line of the Rule.

Mr. Thomas Herbert Lennox was then introduced, and called to the Bar.

On motion of Mr. Martin, it was ordered that the members of Convocation be informed by notice that at the meeting of Convocation to be held on Friday next, 19th inst., Convocation will meet *pro forma* and adjourn to Saturday, 20th inst., at the hour of eleven o'clock a.m., when Convocation will proceed to the election of a Treasurer and the transaction of other business, including such as stands for disposal on the 19th inst.

Convocation adjourned.

Tuesday, May 16th, 1893.

Second day of term.

Present, between ten and eleven a.m., Messrs. Strathy, Moss, and Irving; and in addition, after eleven a.m., Messrs. Watson, Bruce, O'Gara, McCarthy, Guthrie, Ritchie, Kerr, and Shepley.

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

The minutes of the last meeting of Convocation, 15th inst., were read and confirmed.

Mr. Moss, from the Legal Education Committee, presented the following Report:

In the case of Mr. Herbert Ewen Arden Robertson, reserved from yesterday, the committee consider that, in view of all the circumstances, he might be called to the Bar, and the committee recommend accordingly.

Dated May 15th, 1893.

Ordered for immediate consideration and adopted, and ordered accordingly that Mr. Robertson be called to the Bar.

Mr. Moss, from the same committee, reported:

In the case of Mr. William Andrew Dickson Lees, whose case was reserved from Hilary Term, 1893, for further report, that he has placed himself under articles of clerkship from the tenth day of February, 1893, to the thirteenth day of May, 1893, being the Saturday preceding this term, and has furnished satisfactory proofs of such service. His papers in other respects are correct, and the committee recommend that he do receive his certificate of fitness accordingly.

Dated May 15th, 1893.

Mr. Moss, from the same committee, presented the Report on the result of the second intermediate examination held under the Law Society curriculum held before this term (Easter, 1893), and the Secretary's Report on the papers of the candidate, and that the following gentlemen have passed the examination, and are entitled to have the examination allowed, viz., J. Porter, H. T. Berry, and W. M. Shaw. The case of Mr. J. A. Murphy was reserved for further proofs.

The Report was adopted, and it was ordered that Messrs. Porter, Berry, and Shaw be allowed their second intermediate examination. The case of Mr. J. A. Murphy mentioned in the said Report was reserved for further proof in accordance with the recommendation of the Report.

After 11 a.m. Mr. Herbert Ewen Arden Robertson was introduced and called to the Bar.

Mr. Osler moved, seconded by Mr. Moss, that Rule No. 44 be and the same is amended by inserting the words "two hundred" after the word "thousand" in the last line of the said Rule. The draft amending Rule was then read a second time, and, by general consent, a third time and passed.

It was then ordered that the salary of the assistant reporter of the

Court of Appeal be paid at the increased rate as from the first of May instant.

Mr. Moss, pursuant to notice given, moved the following amendment to Rule No. 207 in regard to call of barristers in special cases:

That sub-sections (2) and (3) of Rule 207 be repealed, and the following substituted therefor:

(2) That he was duly admitted and enrolled, and has been in actual practice as an attorney or solicitor as mentioned in sub-section (1) of Rule 206, and that he still remains duly enrolled as such, and in good standing, and that since his admission as aforesaid no adverse application to strike him off the roll of solicitors, or otherwise disqualify him from practice as a solicitor has been made, and that no charge is pending against him for professional or other misconduct.

(3) Or that he was duly called to, and is still, a member in good standing of the Bar as mentioned in sub-sections (2) and (3) of Rule 206, and that since his call no adverse application to disbar him or otherwise to disqualify him from practice at the Bar of which he claims to be a member has been made, and that no charge is pending against him for professional or other misconduct.

(3*a*) In case any adverse application has been made in either of the cases provided for by the above sub-sections, the applicant shall set forth the facts and circumstances, and show the result.

The draft amending Rule was then read a second time. Mr. Moss then, by general consent, moved the suspension of Rule No. 21. Carried.

The draft amending Rule was then read a third time and passed.

Pursuant to notice it was moved by Mr. Strathy, seconded by Mr. Ritchie, that the Supreme Court Reports be supplied each year by the Law Society to each member of the profession who shall, when paying his annual fees to the Secretary in Michaelmas Term, pay him the sum of $1.50 in addition to such annual fees. It was then ordered that the further discussion of the motion be adjourned to the second day of June.

Convocation then rose.

Friday, May 19th, 1893.

A meeting of the Law Society was held in Convocation room, Osgoode Hall, on this day, Friday, the nineteenth day of May, 1893. Present, Mr. Irving and Mr. Moss. There being no quorum at the hour of half-past eleven o'clock in the forenoon of the said day, being thirty minutes after the hour of meeting, the senior barrister present adjourned the meeting of Convocation to eleven o'clock in the forenoon of Saturday next, the twentieth day of May instant.

Saturday, May 20th, 1893.

Convocation met at eleven a.m.

Present: Messrs. Irving, Moss, Hoskin, Osler, Barwick, Kerr, Aylesworth, Shepley, Riddell, Macdougall, Ritchie, Bruce, Martin, Magee, Douglas, Watson, and Lash.

On motion of Mr. Osler, Dr. Hoskin was appointed chairman, and read the notice of adjournment from yesterday till to-day, which states that to-day Convocation would proceed to the election of a Treasurer for the year.

The minutes of the meetings of the sixteenth and nineteenth instant were read, approved, and signed by the chairman.

On motion of Mr. Osler, seconded by Mr. Moss, Mr. Æmilius Irving, Q.C., was unanimously elected Treasurer.

It was then ordered that the chairmen of the several Standing Committees for the past year be appointed a Special Committee to report to

Convocation a draft list of members to form the Standing Committees for the ensuing year.

And the members of the said Special Committee then reported the following as members of the Standing Committees:

FINANCE COMMITTEE.—Mr. G. H. Watson, chairman. Messrs. A. B. Aylesworth, Walter Barwick, S. H. Blake, A Bruce, John Hoskin, Z. A. Lash, E. Martin, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy.

REPORTING COMMITTEE.—Mr. B. B. Osler, chairman. Messrs. A. B. Aylesworth, B. M. Britton, J. Idington, Colin Macdougall, F. Mackelcan, D. McCarthy, James Magee, W. Proudfoot, C. H. Ritchie, G. F. Shepley, J. V. Teetzel.

DISCIPLINE COMMITTEE.—Mr. John Hoskin, chairman. Messrs. A. B. Aylesworth, A. Bruce, D. Guthrie, J. K. Kerr, F. Mackelcan, James Magee, M. O'Gara, W. Proudfoot, W. R. Riddell, C. Robinson, G. H. Watson.

LIBRARY COMMITTEE.—Mr. G. F. Shepley, chairman. Messrs. A. B. Aylesworth, Walter Barwick, S. H. Blake, W. Douglas, D. Guthrie, C. Moss, W. Proudfoot, W. R. Riddell, C. Robinson, H. H. Strathy, G. H. Watson.

LEGAL EDUCATION COMMITTEE.—Mr. Chas. Moss, chairman. Messrs. W. Barwick, John Hoskin, Z. A. Lash, Colin Macdougall, F. Mackelcan, E. Martin, W. R. Meredith, W. R. Riddell, C. H. Ritchie, C. Robinson, J. V. Teetzel.

JOURNALS AND PRINTING COMMITTEE.—Mr. J. K. Kerr, chairman. Messrs. John Bell, B. M. Britton, W. Douglas, C. F. Fraser, J. Idington, Z. A. Lash, Colin Macdougall, James Magee, M. O'Gara, J. V. Teetzel, G. H. Watson.

COUNTY LIBRARIES AND AID COMMITTEE.—Mr. E. Martin, chairman. Messrs. B. M. Britton, A. Bruce, W. Douglas, D. Guthrie, A. S. Hardy, J. Idington, J. K. Kerr, W. R. Meredith, M. O'Gara, B. B. Osler, H. H. Strathy.

The Report was adopted.

The members of the said committee, having retired subsequently, reported that the following gentlemen had been elected chairmen of the respective committees, as follows: Finance, Mr. Watson; Reporting, Mr. Osler; Discipline, Dr. Hoskin; Library, Mr. Shepley; Legal Education, Mr. Moss; Journals and Printing, Mr. Kerr; County Libraries' Aid, Mr. Martin.

Mr. Moss, from the Legal Education Committee, then presented a Report:

In the case of Mr. James Albert Harvey, candidate for certificate of fitness, who was in Trinity Term last ordered to re-article himself up to the Saturday preceding the present term, his case then to come up for favourable consideration, that he has complied with the said directions, and has duly served under articles as required, and the committee recommend that his examination and service be allowed, and that he receive his certificate of fitness. Ordered for immediate consideration and adopted, and ordered that Mr. Harvey do receive his certificate of fitness.

Mr. Moss, from the same committee, presented a Report, as follows:

In the case of Mr. Nelson Simpson: That as he has furnished proof of a further service of ten months, viz., from June 14th, 1892, to April 14th, 1893, and presents a further petition praying that a certificate of fitness may be issued to him, the committee, in view of the fact that this gentleman's services will cover the deficiency of his former service other than the time spent in attendance at the Law School, recommend that this petition be granted.

The Report was adopted, and ordered that Mr. Simpson do receive his certificate of fitness accordingly.

Mr. Moss, from the same committee, reported in the case of one of the candidates at the recent second intermediate examination, as follows:

In the case of Mr. J. A. Murphy: The committee now find that the omission has been supplied, and Mr. Murphy is entitled to be allowed his second intermediate examination as a student-at-law.

Ordered, in accordance with the Report, that Mr. Murphy be allowed his second intermediate examination.

Mr. Moss, from the same committe, reported on the case of certain applicants for admission as students-at-law. Ordered that the following gentlemen be admitted as students-at-law of the matriculant class: Arthur McEvoy, Edgar Alexander Dunbar.

Mr. Moss, from the same committee, reported in the case of Mr. George Louis Touissant Bull. Ordered that Mr. Bull be entered as a student-at-law of the matriculant class as of the present (Easter) term.

Mr. William James Elliott was then introduced and called to the Bar.

It was then ordered that the consideration of the Report of the Legal Education Committee upon the change in the number and remuneration of the examiners, which had been ordered for consideration this day, be deferred until Friday, the 2nd day of June next, and that a copy of the Report be sent to every Bencher with an intimation that it will be considered by Convocation on the 2nd of June.

A letter from the widow of the late A. J. Christie, Q.C., expressive of her appreciation of the sympathy of Convocation in her recent bereavement, was read.

Convocation rose.

Friday, May 26th, 1893.

Convocation met at 11 a.m.

Present: The Treasurer, and Messrs. Osler, Hoskin, Britton, Riddell, Martin, and Shepley.

The minutes of the last meeting of Convocation were read, approved, and signed by the Treasurer.

Dr. Hoskin, at the request of the chairman of the Legal Education Committee, presented the Report of that committee on the result of the pass examinations in the third year of the Law School, which was received and read as follows:

(1) The committee have examined and considered the Report of the examiners on the result of the examinations at the end of the third year course in the Law School, the Reports of the Principal with respect to the attendance upon lectures, and the Report of the Secretary upon the papers of those who were successful at the examination.

(2) The committee find that the following candidates have passed the School examination, and are certified by the Principal to have duly attended the required number of lectures, their papers for call are regular, and they are entitled to be called to the Bar forthwith, viz.: Messrs. Alexander Smith, Hugh Alexander Stewart, John Bacon Irwin, William Thomas Joseph Lee, Frederick William Gladman, Arthur Henry Sinclair, James Woods Mallon.

(3) The committee also find that the following candidates duly passed the School examination, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness or other good cause, their papers for call are regular, and the committee recommend that they be called to the Bar forthwith, viz.: Messrs. George Edward Jefferson Brown, William Bruce Wilkinson, Thomas Cranston Gordon, Andrew Thorburn Thompson, William Carney, William Brydone.

(4) The following candidates, who duly passed the Law School examination, but failed to attend the required number of lectures, for causes not certified to by the Principal, presented special petitions praying that attendance be allowed for the reasons set forth therein, viz.: Messrs. James Macalister Farrell, Charles O'Connor, Merritt Alpheus Brown. These special petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon. The committee recommend that their attendance be allowed, and that they be called to the Bar.

The committee further find that the papers and services of the following candidates who have duly passed the Law School examination and have been certified by the Prin-

cipal to have attended the required number of lectures, and whose period of service has expired, are correct and regular, and they are entitled to receive certificates of fitness as solicitors, viz.: Messrs. Alexander Smith, Hugh Alexander Stewart, John Bacon Irwin, William Thomas Joseph Lee, Frederick William Gladman, Arthur Henry Sinclair.

(6) The committee further find that the papers and service of the following candidates who passed the Law School examination but failed to attend the required number of lectures, and as to whom the Principal has certified that such failure was due to illness or other good cause, and whose period of service has expired, are correct and regular, and the committee recommend that they receive certificates of fitness as solicitors, viz.: Messrs. William Carney, George Edwin Jefferson Brown, William Bruce Wilkinson, Andrew Thorburn Thompson.

(7) The following candidates, who duly passed the Law School examination, but failed to attend the required number of lectures, for causes not certified to by the Principal, presented special petitions praying that their attendance be allowed for the reasons set forth therein, viz.: Messrs. James Macalister Farrell, Charles O'Connor. These special petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon, and the committee find as hereinbefore reported with reference to their applications for call to the Bar; their papers and service are regular in other respects, and the committee recommend that they receive certificates of fitness.

(8) The other candidates who are certified by the examiners to have passed the Law School examination in the third year are not entitled to be called to the Bar or to receive certificates of fitness at present, and their cases are not dealt with until the time arrives when they are entitled to be called to the Bar and receive their certificates of fitness as solicitors.

Dated this 26th day of May, 1893.

Ordered for immediate consideration and adopted.

Ordered that the following gentlemen, who are reported to have duly passed the School examination, to have attended the requisite number of lectures, and to have presented regular papers, be called to the Bar forthwith, viz.: Messrs. Alexander Smith, Hugh Alexander Stewart, John Bacon Irwin, William Thomas Joseph Lee, Frederick William Gladman, Arthur Henry Sinclair, James Woods Mallon.

Ordered that the following other gentlemen, whom the committee, for the reasons set forth in the Report, recommend for call, be called to the Bar forthwith, viz.: Messrs. George Edwin Jefferson Brown, William Bruce Wilkinson, Thomas Cranston Gordon, Andrew Thorburn Thompson, William Carney, William Brydone, James Macalister Farrell, Charles O'Connor, Merrett Alpheus Brown.

Ordered that the following gentlemen, who are reported to have duly passed the Law School examination, to have attended the requisite number of lectures, to have presented regular papers, and to have served the requisite time, do receive their certificates of fitness as solicitors forthwith, viz.: Messrs. Alexander Smith, Hugh Alexander Stewart, John Bacon Irwin, William Thomas Joseph Lee, Frederick William Gladman, Arthur Henry Sinclair.

Ordered that the following other gentlemen, whom the committee, for the reasons set forth in the Report, recommend for certificates of fitness, do receive their certificates of fitness as solicitors forthwith, viz.: Messrs. William Carney, George Edwin Jefferson Brown, William Bruce Wilkinson, Andrew Thorburn Thompson, James Macalister Farrell, Charles O'Connor.

In the case of Mr. E. Donald, candidate for call to the Bar under the Law Society curriculum, whose case was on the first day of term reserved for completion of his papers, the Secretary reports that his papers are now

complete, and that he is entitled to be called to the Bar. Ordered, accordingly, that Mr. Donald be called to the Bar.

The following gentlemen were then called to the Bar: Messrs. Alexander Smith, Hugh Alexander Stewart, John Bacon Irwin, William Thomas Joseph Lee, Frederick William Gladman, Arthur Henry Sinclair, James Woods Mallon, George Edwin Jefferson Brown, Thomas Cranston Gordon, Andrew Thorburn Thompson, William Brydone, James Macalister Farrell, Merrett Alpheus Brown, Edward Donald.

A letter dated May 22nd, 1893, from Mr. W. B. Willoughby, solicitor for the administrator of the late T. B. Phillips Stewart, relating to certain real estate of the deceased situate in Winnipeg, Manitoba, was read. The subject was referred to the Finance Committee for report.

Mr. Britton, on behalf of Mr. Osler, chairman of the Reporting Committee, read the following quarterly report of the editor on the state of reporting in the various courts:

TORONTO, May 20th, 1893.

DEAR SIR,—The work of reporting is in a forward condition, all cases in the Court of Appeal up to April having been reported; in the other courts, with the exception of one case, all up to March have been issued.

In the Court of Appeal there are now 12 cases to be reported, 6 of April and 6 of this month.

In the Queen's Bench there are 6 cases—5 of March and 1 of April.

In the Common Pleas there are 12 cases, all of March.

In the Chancery Division, Mr. Lefroy has 8—2 of March, 1 of April, and 5 of May. Mr. Boomer has 3—1 of March and 2 of April.

In the Practice cases there are 11—1 of February, which has been retained by the judges, 1 of March, 5 of April, and 4 of May.

Yours, etc.,

J. F. SMITH.

Dr. Hoskin, chairman of the Discipline Committee, presented the Report of that committee on the complaint of Mr. Ashman Bridgman against Mr. Nathaniel Mills, as follows:

The committee report that, in their opinion, Convocation should instruct the solicitor for the Society to move against Mr. Mills for contempt, in pursuance of the statute.

The Report was adopted.

Dr. Hoskin, from the same committee, presented the Report on the complaint of Mr. G. N. Beaumont against one H., as follows:

Your committe are of the opinion that the act complained of does not come within the purview of the statute, and that the Society therefore cannot institute any proceedings against H. in respect of the proceeding complained of.

The Report was ordered for immediate consideration, and adopted.

It was then ordered that in the case of Mr. Nathaniel Mills the solicitor of the Society be instructed to move in the proper court to commit him for contempt, pursuant to the statute; and further ordered that the Secretary of the Society should investigate the matter and see what steps are necessary to disbar the said Mr. Nathaniel Mills.

It was further ordered in the matter of the complaint against H. that the Secretary do write Mr. Beaumont to the effect that the Society cannot proceed against H..

Convocation then rose

Friday, June 2nd, 1893.

Present: The Treasurer, and Messrs. Martin, Douglas, Bruce, Riddell, O'Gara, Lash, Blake, Aylesworth, Magee, Macdougall, Strathy, Idington,

Shepley, Britton, Ritchie, Hoskin, Teetzel, Guthrie, Watson, Moss, and McCarthy.

The minutes of the last meeting of Convocation, May 26th, 1893, were read and approved.

In the matter of the appointment of lecturers in the Law School, for which notice had been given to-day, Convocation took up and considered twenty-nine applications.

After having perused and considered all applications, it was resolved that Mr. A. H. Marsh, Q.C., be appointed one of the lecturers in the Law School; that Mr. E. Douglas Armour, Q.C., be appointed one of the lecturers in the Law School; that Mr. McGregor Young be appointed one of the lecturers in the Law School; that Mr. John King, Q.C., be appointed one of the lecturers in the Law School.

Ordered that the appointment take effect from 1st of October next, and that the Secretary do inform the gentlemen appointed of their appointment, and request that they reply by the 13th June inst., intimating their acceptance of the said lecturerships.

Mr. Strathy then, in pursuance of the order of May 16th, 1893, moved, seconded by Mr. McDougall, that the Supreme Court Reports be supplied each year by the Law Society to each member of the profession who shall, when paying his annual fees to the Secretary in Michaelmas Term, pay him the sum of $1.50 in addition to such annual fees.

Carried on a division. Yeas, 12; nays, 3.

Mr. Moss, from the Legal Education Committee, presented the Report of that committee on the result of the pass and honour examinations in the third year of the Law School this (Easter) term, 1893, as follows:

(1) The committee have examined and considered the Report of the examiners on the result of the examinations at the end of the third year course in the Law School, the Reports of the Principal with respect to the attendance upon lectures, and the Report of the Secretary upon the papers of those who were successful in the examination.

(2) The committee find that the following candidate has duly passed the School examination, and is certified by the Principal to have duly attended the required number of lectures, his papers for call are regular, and he is entitled to be called to the Bar forthwith, viz., Mr. William Emerson Woodruff.

(3) The committee find that the following candidate duly passed the School examination, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness or other good cause, his papers for call are regular, and the committee recommend that he be called to the Bar forthwith, viz., Mr. William Carleill Hall.

(4) The following candidate, who duly passed the School examination, but failed to attend the required number of lectures, for causes not certified to by the Principal, presented a special petition, praying that his attendance be allowed for the reasons set forth therein, viz., Mr. Donald Hector McLean.

This special petition was referred to the Principal for report as to the general attendance and conduct of the applicant, and he has reported thereon, and the committee recommend that his attendance on lectures be allowed as sufficient, and that he be called to the Bar.

(5) The Report of the examiners on the result of the pass and honour examinations shows that the following of the candidates who passed the School examination in the third year and competed for honours received the requisite number of marks entitling him to honours, viz., Mr. William Emerson Woodruff.

(6) Mr. Woodruff is in due course and is entitled to be called to the Bar with honours, and to receive a bronze medal.

(7) The committee further find that the papers and service of the following candidate, who has duly passed the School examination, and has been certified by the Principal to have attended the required number of lectures, and whose period of service has

expired, are correct and regular, and he is entitled to receive his certificate of fitness as a solicitor, viz., Mr. William Emerson Woodruff.

(8) The committee further find that the papers and service of the following candidates, who passed the School examination, but failed to attend the required number of lectures, and as to whom the Principal has certified that such failure was due to illness or other good cause, and whose period of service has expired, are correct and regular, and the committee recommend that they receive certificates of fitness as solicitors. viz., Messrs. William Carleill Hall, Thomas Cranston Gordon.

(9) The following candidate, who duly passed the School examination, but failed to attend the required number of lectures, for causes not certified to by the Principal, presented a special petition, praying that his attendance be allowed, for the reasons set forth therein, viz., Mr. Donald Hector McLean.

This special petition was referred to the Principal for report as to the general attendance and conduct of the applicant, and he has reported thereon, and the committee recommend that he do receive his certificate of fitness.

The other candidates, who are certified by the examiners to have passed the School examination in the third year, are not entitled to be called to the Bar or receive certificates at present, and their cases are not dealt with until the time arrives when they are entitled to be called to the Bar and receive certificates of fitness as solicitors.

Dated June 2nd, 1893.

Ordered, that Mr. W. E. Woodruff be called to the Bar with honours and a bronze medal.

Ordered, also, that the other gentlemen whom the committee, for reasons set forth in the Report, recommend for call be called to the Bar, viz., Messrs. W. C. Hall and D. H. McLean.

Ordered, that Mr. W. E. Woodruff do receive his certificate of fitness.

Ordered, also, that the following other gentlemen whom the committee, for reasons set forth in the Report, recommend for certificates of fitness do receive their certificates of fitness, viz.: Messrs. W. C. Hall, T. C. Gordon, and D. H. McLean.

Mr. Moss, from the same committee, reported:

In the case of Mr. George Frederick Blair, with regard to whom it was ordered by Convocation on the first day of this (Easter) term, that his notice for call should remain posted until to-day, and that he be called to-day if no objection were made known to Convocation in the meantime; that, in pursuance of such order, his notice has remained posted in in the proper places prescribed by the Rules of the Society in that behalf, and the Secretary now reports that no notice of objection to his call has been received up to the present time.

Ordered for immediate consideration and adopted, and ordered that Mr. G. F. Blair be called to the Bar.

Mr. Moss, from the same committee, further reported:

In the cases of Mr. Edward Donald and Mr. George Frederick Blair, candidates for certificates of fitness at the examination under the Law Society curriculum, held before this term, and whose cases were, on the first day of Term, reserved for completion of their term of service under articles and production of further proofs, that they have now completed their term of service and produced satisfactory proofs of the same, and are entitled to receive certificates of fitness.

Dated June 2nd, 1893.

Ordered that Messrs. E. Donald and G. F. Blair do receive their certificates of fitness.

The following gentlemen were then introduced and called to the Bar: Mr. William Emerson Woodruff, with honours and a bronze medal; Messrs. William Carleill Hall, Donald Hector McLean, George Frederick Blair; also Messrs. Charles O'Connor and William Bruce Wilkinson who were ordered for call on May 26th.

Convocation adjourned to 2 p.m.

At 2 p.m. Convocation met.

Mr. Shepley moved, seconded by Mr. McDougall, that the petition of Mr. G. A. Robillard be received. Carried. Ordered that the petition be referred to the Finance Committee, with power to dispose of the same.

The Report of the Principal of the Law School was read as follows:

May 13th, 1893.

CHARLES MOSS, ESQ., Q.C., Chairman Legal Education Committee, Law Society of Upper Canada:

DEAR SIR,—I beg to report to your committee as follows in reference to the fourth term of the Law School, which closed on the 28th day of April last.

The number of students enrolled during the term was as follows: First year, 50; second year, 133; third year, 67; total, 250.

The number of lectures delivered was as follows: By the Principal, 241; by Mr. Armour, 119; by Mr. Marsh, 91; by Mr. Kingsford, 118; by Mr. Drayton, 121; total, 690.

The average number of students in attendance at lectures in each class during the term was as follows: First year class, 40; second year class, 121; third year class, 55.

The experiment of having three lectures—one in each class—at 9 o'clock a.m. each day has proved very successful. That hour is found to be more convenient than any other for those students who are engaged in offices during the term; and I consider it very important in the interests of the School that we should be enabled to continue to have the three morning lectures at the same hour.

The possibility of doing so, of course, depends upon the continued use of the room which is designed ultimately for a students' reading room, but which we have used as a lecture room during the past term, or upon a new lecture room being fitted up in the space reserved for that purpose in the upper part of the building.

In the event of the same room being used as a third lecture room next term, I beg to suggest that it should be fitted up with seats similar to those which were placed in lecture room No. 2 last term. They have answered our purpose fully as well as the somewhat more expensive seats originally adopted, and occupy less space. If the room referred to was supplied with seats of this kind, they could be transferred to the new lecture room whenever it is completed. This is a matter of more importance than might at first sight appear to any one other than the lecturer himself, because it greatly affects the good order observed during the lecture. With movable chairs, which students can place in such positions as they feel inclined, the best of order is out of the question. Moreover, the want of fixed and numbered seats in one of the three lecture rooms compels the adoption of two different systems of recording the attendance of students, which is inconvenient and in every way undesirable.

I am also compelled to ask for an addition to the seating accommodation of lecture room No. 1. Up to the present it has not been necessary to have that room seated to its full capacity. It has sufficient space for some fifty additional seats, and I feel quite certain that they will be required at the commencement of the next term. The students who composed the second year class last term, numbering 133, and who occupied lecture room No. 2, will belong to the third year class next term, and will occupy lecture room No. 1, and there may be added to them a few students who have not, as yet, attended the School, so that the probable number of the class is not a mere matter of speculation. At the same time, it is clear that lecture room No. 2, with its seating capacity of 140, will be well filled, if not by either of the other two classes alone, certainly by both combined for the lectures in Equity.

The term just ended has been in every way a successful one; and there is every reason, I think, to anticipate for the School a very prosperous future.

W. A. REEVE, *Principal.*

The Report was taken into consideration, and it was ordered that it be referred to the Legal Education Committee to deal with the question of seating in the lecture rooms, including the temporary use of the students' large reading room.

The Report of the Legal Education Committee in relation to the change in the number and remuneration of the examiners, which had been ordered for consideration on this day, a copy having been sent to every Bencher, was then considered and adopted.

Mr. Moss gave notice that he would, at the next meeting of Convocation on the 27th of June, introduce a Rule to give effect to the adoption by Convocation of the said Report.

It was then ordered that the further consideration of the Report of the Committee on the Fusion and Amalgamation of the Courts, which had been ordered for to-day, by order of the 17th of February, 1893, be deferred until Tuesday, 27th June inst.

Mr. Moss, from the Legal Education Committee, presented a Report:

In the case of Mr. William Archibald Hastings Kerr: That he was admitted as student-at-law of the matriculant class in Michaelmas Term, 1889. He had previously to that date graduated at the Royal Military College, Kingston (as to which he produces a diploma of graduation), but at the date of his admission as aforesaid the Rule placing such graduates on the same footing as graduates in Arts had not been passed. It was not passed until June, 1891. He presented a special petition, praying that he might, in the event of his passing the third year examination at the Law School this term, be called to the Bar and granted a certificate of fitness, and the committee, on the twelfth of May instant, decided that it stand to be considered after the result of the examination was known. He has duly passed the said examination, and the Secretary reports his papers and service in other respects as regular. He failed to attend the required number of lectures at the Law School during the past session, but presented a special petition, praying that his attendance on lectures be allowed for the reasons therein set forth. This petition was referred to the Principal for report as to the general attendance and conduct of the petitioner, and he has reported thereon.

The committee recommend that the prayer of both petitions be granted, and that the petitioner be changed on the books of the Society from the matriculant class to the graduate class, that his service under articles and attendance on lectures be allowed as sufficient, and that he be called to the Bar and granted a certificate of fitness forthwith, upon his procuring a release from further service under articles.

Dated May 26th, 1893.

Ordered for immediate consideration and adopted, and ordered that Mr. Kerr be changed on the books of the Society from the matriculant class to the graduate class. Ordered also that he be called to the Bar, and do receive his certificate of fitness, upon producing a satisfactory release, as in the Report set forth.

Mr. Moss, from the same committee, reported that in the case of Mr. W. B. Bentley, who was a successful candidate at the third year examination recently held, the committee recommend that he be called to the Bar next Trinity Term, that being nine months after the passing of his second intermediate examination. Ordered, in accordance with the Report, that Mr. Bentley be called next term.

Convocation rose.

Half-yearly meeting held on the 27th of June, 1893.

Present: The Treasurer, and Messrs. Idington, Hoskin, Meredith, Barwick, Watson, Strathy, Moss, Kerr, Ritchie, Riddell, Bruce, Martin.

The minutes of the last meeting of Convocation of the 2nd of June, 1893, were read, approved, and signed by the Treasurer.

Mr. Barwick, from the Legal Education Committee, presented the Report of that committee on the admission of students-at-law of the graduate class as of Easter Term, 1893, pursuant to the Rules in that behalf, as follows:

(1) The following candidates for admission as students-at-law presented their diplomas as graduates of the universities named, and are entitled to be entered on the books of the Society as students-at-law of the graduate class as of Easter Term, pursuant to the Rules in that behalf, namely: (1) Edward Moore Burwash, University of Toronto; (2) John Leighton Island, University of Toronto; (3) James Frederick Kilgour, Uni-

versity of Toronto; (4) Ernest Franklin Lazier, University of Toronto; (5) Francis Joseph McDougal, University of Ottawa; (6) Phillip Edward Mackenzie, University of Toronto; (7) Laurence Vincent O'Connor, University of Toronto; (8) John Davidson Phillips, University of Toronto; (9) Charles Beeson Pratt, University of Toronto; (10) Herbert Edmund Sampson, University of Toronto; (11) John Donald Shaw, University of Toronto; (12) John Patrick Smith, University of Ottawa; (13) Allan Henry Brown, University of Toronto.

The following gentlemen, who have duly given notice of intention to present themselves for admission as students-at-law of the graduate class, have presented certificates showing that they have passed the final examination for Bachelor of Arts at Trinity College, and are entitled to receive their degrees at the Convocation to be held on Tuesday, the 27th of June inst., and their other papers are regular, namely: (1) Arthur Buchanan Pottenger; (2) Goldwin Larratt Smith; (3) Maitland Stewart McCarthy; (4) Charles Alfred Stanley Boddy.

The committee recommend that upon production of proper diplomas to the Secretary within two weeks, their names be entered as students-at-law of the graduate class as of Easter Term.

Miss Clara Brett Martin, a candidate for admission to the study and practise of law under the Rules with regard to the admission of women to practise as solicitors, presented a diploma showing her to be a graduate of the University of Trinity College named therein. Her other papers are regular, and she is entitled to be entered on the books of the Society in accordance with the said Rules.

June 26th, 1893.

Ordered, that the gentlemen firstly above named be entered on the books of the Society as students-at-law of the graduate class as of Easter Term, 1893.

Ordered also that the gentlemen secondly above named be entered as students-at-law of the graduate class as of Easter, 1893, upon production to the Secretary of their diplomas within two weeks from the present date. Ordered also that Miss C. B. Martin be entered on the books in accordance with the Rules in that behalf.

The Report of the Legal Education Committee on the result of the examinations of the first year in the Law School was presented, as follows:

(1) The committee submit herewith the Report of the examiners on the result of the pass and honour examinations of the first year in the Law School.

(2) Of the candidates obtaining the necessary number of marks entitling them to pass, the following are certified by the Principal to have duly attended the required number of lectures during the course, and are entitled to have their attendance and examination allowed, viz.: D. I. Grant, F. A. C. Redden, G. Grant, R. A. L. Defries, R. E. Gagen, O. A. Langley, S. Casey Wood, J. A. Cooper, J. H. Tennant, W. F. Nickle, E. J. Butler, C. A. Stuart, J. H. Lamont, G. H. Thompson, F. D. Davis, F. McMurray, A. L. Lafferty, C. W. Beatty, J. W. Payne, A. M. Panton, J. F. Patterson.

(3) The Principal certified that the following candidates who obtained the necessary number of marks to entitle them to pass failed to attend the required number of lectures, but they have satisfied the Principal that the failure to attend was owing to illness or other good cause, and the committee recommend that their attendance and examination be allowed, viz., W. E. Buckingham, R. K. Barker, D. Whiteside.

(4) The following candidate, who failed to obtain the necessary number of marks to entitle him to pass, also failed to attend the required number of lectures, but he has satisfied the Principal that such failure was owing to illness or other good cause, viz., M. H Irish.

(5) The following candidates, who obtained the necessary number of marks to entitle them to pass, but failed to attend the required number of lectures for reasons not certified to by the Principal, presented special petitions, praying that their attendance be allowed for the reasons set forth therein, viz., A. H. Royce, C. J. R. Bethune. These petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon, and the committee recommend that their attendance and examinations be allowed.

(6) The following gentlemen also duly passed the School examination, but were not required to attend, and did not attend, the lectures of the first year of the Law School,

and are entitled to have their examination allowed, viz.: S. Price, V. A. Sinclair, J. Vining, F. A. Kearns, H. M. Wood, F. D. Kerr, D. A. McDonald, E. J. Deacon, F. R. Morris, F. W. Tiffin, H. W. McClive, D. L. McCarthy, G. F. Kelleher, W. H. Curle, H. H. Bicknell, O. E. Klein.

The case of Mr. D. C. Ross is reserved for further proofs and explanations, and in consequence the committee are unable to report upon the honours and scholarships in connection with this examination.

Dated 27th June, 1893.

Ordered for immediate consideration, adopted, and ordered accordingly.

The Report of the Legal Education Committee on the result of the examinations in the second year of the Law School was presented as follows:

(1) The committee submit herewith the Report of the examiners on the result of the pass and honour examinations in the second year of the Law School.

(2) Of the candidates who obtained the necessary number of marks entitling them to pass, the following are certified by the Principal to have duly attended the required number of lectures during the course, and are entitled to have their attendance and examinatons allowed, viz.: W. Gow, W. N. Tilley, J. F. Faulds, D. I. Sicklesteel, J. R. Logan, R. M. Thompson, J. F. Warne, J. Sale, G. R. Geary, H. C. Small, W. H. B. Spotton, G. A. M. Young, J. P. White, A. W. Briggs, J. T. Scott, A. E. Bull, A. E. Hoskin, F. Ford, C. W. Craig, G. W. Patterson, J. R. Grant, F. G. Kirkpatrick, J. M. Godfrey, W. F. Gurd, H. J. Sims, A. Fasken, D. Donald, W. N. Ferguson, R. H. C. Pringle, D. Ross, G. F. Peterson, H. L. Watt, A. Mearns, T. W. Evans, J. G. Shwa, A. B. Cunningham, J. A. Stewart, T. E. Godson, J. H. Spence, C. R. McKeown, J. H. Grout, J. Dickson, J. E. Irving, J. J. McCready, G. T. Denison, W. D. Moss, J. O'Brien, J. W. Graham, J. G. Hay, W. H. Lovering, W. Stamworth, A. J. McKinnon, W. J. Moran, W. H. Harris, C. R. Webster, J. D. Kennedy, J. T. Loftus, W. S. Deacon, T. R. Beale, J. K. Maclennan, A. T. Kirkpatrick, J. M. Scott, W. S. McCallum, W. T. Henderson, A. N. Middleton, G. H. Pettit, H. Z. C. Cockburn, W. P. Telford, W. A. D. Grant, J. S. McKay, J. A. Stevenson, H. M. Ferguson, W. M. McClemont, W. A. Robinson, J. J. Mahaffy, W. Mott, A. Macfarlane, E. G. Stevenson, C. Hodge, J. Fowler, A. E. Garratt, W. M. Whitehead, C. J. Foy, T. K. Allan, G. H. Findley.

(3) The following candidate has passed the School examination this term, and is certified by the Principal to have duly attended the lectures of the second year course in the session of 1891-1892. He presents a special petition showing that he was prevented by illness from presenting himself for examination at the close of that term, and the committee recommend that his attendance and examination be allowed: E. W. Drew.

(4) The Principal certified that the following candidates who obtained the necessary number of marks to entitle them to pass failed to attend the required number of lectures, but they have satisfied him that such failure to attend was owing to illness or other good cause, and the committee recommend that their attendance and examination be allowed: W. Mulock, G. A. Ball, S. H. McKay, D. W. Jamieson, A. Maclennan, J. C. Elliott, R. E. Heggie, D. O'Connell, J. E. Cohoe, H. F. Hunter, U. M. Wilson, J. G. Burnham, F. A. McDiarmid, H. E. Price, W. F. W. Lent, R. J. Slattery, G. H. Hayward, D. T. Smith, T. D. Dockray.

(5) The following candidates who failed to obtain the necessary number of marks to entitle them to pass also failed to attend the required number of lectures, but they have satisfied the Principal that such failure to attend was owing to illness or other good cause: R. R. Mackessock, F. Langmuir.

(6) The following candidates who obtained the necessary number of marks to entitle them to pass, but failed to attend the required number of lectures, for causes not certified to by the Principal, presented special petitions praying that their attendance be allowed for the reasons set forth therein, viz.: H. E. Rose, F. A. W. Ireland, W. Hanes, N. St. C. Gurd, M. H. East, G. H. Ferguson, R. D. Scott, N. Y. Poucher, B. H. Ardagh, J. S. Brown, W. A. Lewis, J. T. White.

(7) These petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon.

The Principal considers that in all the above cases, except the case of Mr. Ferguson, there was a substantial compliance with the Rules as to attendance, and recommends

that the attendance of the above petitioners be allowed as sufficient, and the committee recommend that it be allowed accordingly.

Mr. Ferguson's case is reserved for production of further proofs and explanations.

(8) The Report of the examiners shows that the following of the candidates who passed the School examination and competed for honours received the requisite number of marks entitling them to honours, their ranking being as set forth below, viz.: 1, W. Gow; 2, W. N. Tilley; 3, J. F. Faulds; 4, D. I. Sicklesteel; 5, J. R. Logan; 6, R. M. Thompson; 7, H. E. Rose; 8, J. F. Warne; 9, J. Sale; 10, F. A. W. Ireland; 11, J. Ashworth; 12, G. R. Geary; 13, H. C. Small; 14, W. H. B. Spotton,

(9) Of these the committee find that all are in due course and are entitled to be allowed their second year examination with honours, and that Mr. Gow is entitled to a scholarship of $100, Mr. Tilley is entitled to a scholarship of $60, and Messrs. Faulds, Sicklesteel, Logan, Thompson, and Rose are each entitled to a scholarship of $40.

Mr. B. M. Jones also competed for honours and obtained the requisite number of marks entitling him to honours, but his case is reserved for further proofs and explanations as to attendance upon lectures.

Ordered for immediate consideration, adopted, and ordered accordingly.

Ordered also that Mr Gow do receive a scholarship of $100, Mr. Tilley a scholarship of $60, and that Messrs. Faulds, Sicklesteel, Logan, Thompson, and Rose do receive a scholarship of $40 each.

The Report of the Legal Education Committee on the result of the third year examinations in the Law School:

(1) The committee have examined and considered the Report of the examiners on the result of the examinations at the end of the third year course in the Law School, the Reports of the Principal with respect to attendance upon lectures, and the Report of the Secretary upon the papers of those who were successful in the examination.

(2) The committee find that the following candidates have duly passed the School examination and are certified by the Principal to have duly attended the required number of lectures, their papers for call are regular, and they are entitled to be called to the Bar forthwith, viz: Messrs. John Millar McEvoy, William Arthur Wilson.

(3) The committee further find that the papers and services of the following candidates who have duly passed the School examination and have been certified by the Principal to have attended the required number of lectures, and whose period of service has expired, are correct and regular, and they are entitled to receive certificates of fitness as solicitors, viz.: Messrs. James Woods Mallon, John Millar McEvoy, William Arthur Wilson.

(4) The committee further find that the papers and service of the following candidate who passed the School examination, but failed to attend the required number of lectures, and as to whom the Principal has certified that such failure was due to illness or other good cause, and whose period of service has expired, are correct and regular, and the committee recommend that he receive his certificate of fitness forthwith, viz.: Mr. William Brydone.

(5) The following candidate who duly passed the School examination, but failed to attend the required number of lectures, for causes not certified to by the Principal, presented a special petition praying that his attendance be allowed for the reasons set forth therein, viz.: Mr. Merrett Alpheus Brown.

This special petition was referred to the Principal for report as to the general attendance and conduct of the applicant and he has reported thereon, and the committee recommend that he receive his certificate of fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

Ordered. that the following gentlemen be called to the Bar: Messrs. John Millar McEvoy, William Arthur Wilson.

Ordered that the following gentlemen do receive their certificates of fitness: Messrs. James Woods Mallon, John Millar McEvoy, William Arthur Wilson.

Ordered also that the following other gentlemen do receive their certificates of fitness, viz.: Messrs. William Brydone, Merrett Alpheus Brown.

Mr. Barwick, from the Legal Education Committee, presented their Report upon the case of Mr. R. W. Eyre and Mr. Evan Hamilton McLean candidates for admission as students-at-law.

Ordered for immediate consideration and adopted, and ordered that Mr. Reginald William Eyre be entered on the books of the Society as a student-at-law.

Ordered, that Mr. McLean be admitted as a student-at-law of the matriculant class as of Easter Term.

In the case of Mr. W. P. Bull, the committee recommended that he be changed on the books of the Society from the matriculant class to the graduate class. Ordered for immediate consideration and adopted, and ordered that Mr. Bull be changed on the books of the Society from the matriculant class to the graduate class.

In the case of Mr. H. J. Martin, candidate for call to the Bar, the committee reported that with regard to him it was ordered by Convocation on the first day of this Easter Term that his notice of call should remain posted until to-day, and that he be called to-day, if no objection were made known to Convocation in the meantime; that in pursuance of such order his notice has remained posted in the proper places prescribed by the Rules of the Society in that behalf, and the Secretary now reports that no notice of objection to his call had been received up to the present time. Ordered for immediate consideration, adopted, and ordered accordingly that Mr. Harry Jasper Martin be called to the Bar.

In the case of Mr. Stanley T. Chown, the committee reported that as he has recently learned that he is not entitled as of right to present himself at the supplemental examinations in September next, and prays that he may be allowed to be so, the committee thought that under the special circumstances in this case he may be allowed to attempt the supplemental examination as prayed, and they recommend accordingly. Ordered for immediate consideration, adopted, and ordered accordingly.

In the case of Mr. Pierre Antoine Chagnon La Rose, the committee recommended that he be called to the Bar and receive his certificate of fitness. Ordered for immediate consideration, adopted, and ordered accordingly.

The following gentlemen were then introduced and called to the Bar: Messrs. William Arthur Wilson, John Millar McEvoy; also Messrs. William Carney (who had been ordered for call on the 26th May), P.A.C. LaRose and H. J. Martin.

Mr. Watson, from the Special Committee on the Fusion and Amalgamation of the Courts, moved the consideration of the further interim Report of that committee, which was by order of Convocation on 2nd June, 1893, deferred until to-day. (This Report appears in résumé of Michaelmas, 1892.)

Convocation now ordered that the consideration thereof be again deferred to the first Friday of Trinity Term next, and that the Secretary do furnish all the Judges of the Supreme Court of Judicature, Ontario, and the Attorney-General, each with a copy of the Report, with a note at the foot thereof intimating that it will be again considered on the first Friday in Trinity Term.

Ordered, that as Mr. Armour unconditionally accepted the position of lecturer in the Law School his appointment be confirmed, and it was further ordered that the above resolution be communicated to Mr. Armour.

Mr. Moss, pursuant to notice given on the second of June, then moved the adoption of the following Rule:

That Rule 147 be repealed and the following substituted therefor:

(147) The staff of the Law School shall consist of

(*a*) A Principal, who shall be a barrister of not less than ten years' standing.

(*b*) Four lecturers.

(*c*) Four examiners.

That Rule 152 be amended by adding thereto the following words:

(152*a*) The examiner who is the senior in date of call to the Bar shall be the senior examiner, and shall, in addition to his other duties, be responsible for the conduct of and the discipline to be observed at the examinations and the returns and reports thereof to the Secretary, or as directed by the Legal Education Committee.

That Rule 52 be repealed, and the following substituted in lieu thereof:

(52) The salary of the senior examiner shall be three hundred dollars per annum, and of each of the other examiners two hundred and fifty dollars per annum.

The Rule was read a first and second time, and by unanimous consent was read a third time and passed.

Mr. Martin, on behalf of the County Libraries' Aid Committee, presented the following Report:

OSGOODE HALL, June 27th, 1893.

The County Libraries' Aid Committee beg to report that the County of Simcoe Law Association have applied for the balance of their initiatory grant.

A portion of the initiatory grant was paid to this association under the Report of this committee, 29th May, 1891, by which it appeared that $305 had at that date been paid in cash by the members of this association. This was all the money received at that date, but there had then been actually subscribed for stock to the amount of $350, and further stock subscriptions had been promised, and donations of books had then actually been made, but the same had not then been valued, and therefore were not taken into account when the payment of $610 was made (based on the cash $305 paid in) as before mentioned.

The association have now shown that they have collected in all respects of said

Stock subscriptions	$341.00
The books have been valued at	153.25
In all	$494.25

There were on 29th May, 1891, fifty local practitioners in the County of Simcoe; so that the association would be entitled to double the sum so contributed, the same not exceeding $20 for each local practitioner.

The total sum to which the association is entitled is therefore: $988.50.

Loss paid under Report of 29th May, 1891	$610.00
Balance now due	$378.50

Your committee therefore recommend that this sum of $378.50 be now paid to the County of Simcoe Law Association in full of their initiatory grant.

The Report was adopted, and it was ordered that the sum of $378.50 recommended for payment be paid to the County of Simcoe Law Association.

A call of the Bench was ordered for Friday, the 22nd of September, for the appointment of four Examiners, and that the usual advertisement of intention to appoint be given, applications to be filed on the Friday previous.

Notice was given that on the second day of Trinity Term next a motion will be made to reduce the number of reporters, and to introduce a Rule to such affect accordingly.

The Finance Committee were directed to pay the counsel fees in the matter of the legislation relating to the devises under will of the late Mr. T. B. Phillips Stewart.

Mr. Watson, from the Finance Committee, presented the Report of that committee as follows:

The Finance Committee beg leave to report: Your committee have instructed the Bank of Hamilton, subject to further order, to honour the cheques of the Society on the signatures of any of the following named Benchers—Messrs. Æmilius Irving, Treasurer; John Hoskin, G. H. Watson, chairman, countersigned by the sub-Treasurer.

Your committee begs to state for the information of the members of Convocation that the receipts of the first five months of this year, as shown by the Report of the auditor of the Society, are $16,185.32, and the disbursements for the same period are $24,878.48. The receipts for the present month may be estimated at about the sum of $851, and the disbursements at about the sum of $6,569. This is deemed of some importance when compared with the receipts and expenditures during the same period of last year, and also the preceding year, 1893. For five months and estimates for six months:

Receipts	$16185.32	+ 851.00	= 17036.32
Disbursements	24878.48	+ 6569.00	= 31447.48

1892. For first six months:

Receipts	$19626.00
Disbursements	30496.03

1891. For first six months:

Receipts	36929.65
Disbursements	24489.90

Convocation having in Hilary Term last referred to your committee the question of increasing the amount of insurance on the Society's property your committee beg to report that they have in pursuance thereof effected a further insurance on the Library to the extent of $10,000, in the Imperial Insurance Company. This insurance was effected for one year from date. It expires on the 1st April, 1894, being the date at which all other insurance on the Library expires. A considerable number of text-books for students having been transferred to the Phillips Stewart Library in the Law School wing were not covered by the policies current, same having been effected before the building of the Law School wing. Your committee have therefore also effected an insurance on these books to the extent of $1000 for three years.

The Report was adopted.

In the matter of Mr Stephen Francis Griffiths, candidate for call to the Bar under the Rules in special cases, he having duly given notice for this term and advertised, and being too ill to appear, it was ordered that his notice and advertisement do stand good for next term.

Mr. Barwick gave notice of motion as follows for the second day of next term: That the Rule with regard to the Retirement Fund be amended by striking out section 1 and by inserting in lieu thereof the following words: (1) On and after the 22nd day of September, 1892, a fund shall be formed for the retirement of each of the officers of this Society, exclusive of the lecturers and examiners, subject to the conditions and qualifications herein contained.

The letter dated 12th June, 1893, of Mr. Walter Read, enclosing a letter from Mr. Bellew, complaining that Messrs. B.—— and O.—— were advertising themselves as barristers and solicitors, the fact being that Mr. B.—— is not a barrister, but a solicitor only, was read. Ordered, that the matter of the complaint be referred to the Discipline Committee for action and report.

Convocation then rose.

J. K. KERR,
Chairman Committee on Journals.

DIARY FOR NOVEMBER.

2. Thursday....O'Connor, J.Q.B., died, 1887.
4. Saturday....Last day for filing papers for certificate and call and payment of fees.
5. Sunday.....*23rd Sunday after Trinity.* Sir John Colborne, Lieut.-Gov. U.C., 1838. Gunpowder plot.
7. Tuesday.....Court of Appeal sits.
9. Wednesday..Prince of Wales born, 1841.
12. Sunday.....*24th Sunday after Trinity.* J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868. Magna Charta signed, 1215.
13. Monday.....A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty. 12th C.J. of Q.B., 1878.
14. Tuesday.....W. G. Falconbridge, J., Q.B.D., 1887. Examination for certificates of fitness.
15. Wednesday..M. C. Cameron, J., Q.B., 1878. Exam. for call.
19. Sunday.....*25th Sunday after Trinity.* J. D. Armour, 14th C.J. of 1887. T. Galt. C.J., of C.P.D.
20. Monday.....Michaelmas Term begins. Q.B. and C.P.D. of H.C.J.
21. Tuesday.....Convocation meets. J. Emsley, 2nd C.J. of Q.B., 1796.
24. Friday.....Convocation meets.
25. Saturday....Marquis of Lorne, Gov.-General, 1878.
26. Sunday.....*26th Sunday after Trinity.*
30. Thursday....T. Moss, C.J. of Ap., 1877. W. P. R. Street, J., Q.B.D., and H. McMahon, J., C.P.D., 1887.

Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.] [May 1.

CANADIAN PACIFIC R.W. CO. *v.* COBBAN MANUFACTURING CO.

Practice—Trial—Disagreement of jury—Questions reserved by judge—Motion for judgment—Amendment of pleadings—New trial—Judicature Act, Rule 799—Jurisdiction—Final judgment.

In an action brought to recover damages for the loss of certain glass delivered to defendants for carriage, the judge left to the jury the question of negligence only, reserving any other questions to be decided subsequently by himself. On the question submitted the jury disagreed. Defendants then moved in the Divisional Court for judgment, but pending such motion the plaintiffs applied for and obtained an order of the court amending the statement of claim, and charging other grounds of negligence. The defendants submitted to such order and pleaded to such amendments, and new and material issues were thereby raised for determination. The action as so amended was entered for trial, but was not tried before the Divisional Court pronounced judgment on the motion, dismissing plaintiffs' action. On appeal to the Court of Appeal from this judgment of the Divisional Court, it was reserved. On Appeal to the Supreme Court,

Held, affirming the judgment of the Court of Appeal, that the action having been disposed of before the issues involved in the case, whether under the original or amended pleadings, had ever been passed upon or considered by the trial judge or the jury a new trial should be ordered, and that this was not a case or invoking the power of the court, under the Rule 799, to finally put an end to the action.

Held, also, that the judgment of the Court of Appeal ordering a new trial in this case was not a final judgment, nor did it come within any of the provisions of the Supreme Court Act authorizing an appeal from judgment not final.

Appeal dismissed with costs.

Nesbitt for appellants.

Osler, Q.C., and *Holden* for respondents.

Ontario.] [June 24.

TOWN OF PRESCOTT *v.* CONNELL.

Negligence—Proximate cause—Danger voluntarily incurred.

C. having driven his horses into a lumber yard adjoining a street on which blasting operations were being carried on left them in charge of the owner of another team while he interviewed the proprietor of the yard. Shortly after a blast went off, and stones thrown by the explosion fell on the roof of a shed in which C. was standing and frightened the horses, which began to run. C. at once ran out in front of them and endeavoured to stop them, but could not, and in trying to get away he was injured. He brought an action against the municipality conducting the blasting operations to recover damages for such injury.

Held, affirming the decision of the Court of Appeal, 20 A.R. 49 (GWYNNE, J., dissenting), that the negligent manner in which the blast was set off was the proximate and direct cause of injury to C.; that such negligent act immediately produced in him the state of mind which instinctively impelled him to attempt to stop the horses; and that he did no more than any reasonable man would have done under the circumstances.

Appeal dismissed with costs.

Meredith, Q.C., for appellants.

Hutcheson for respondent.

Nova Scotia.] [June 24.

YORK *v.* CANADA ATLANTIC STEAMSHIP CO.

Negligence—Passenger vessel—Use of wharf—Invitation to public—Accident in using wharf—Proximate cause—Excessive damages.

A company owning a steamboat making weekly trips between Boston and Halifax occupied a wharf in the latter city leased to their agent. For the purpose of getting to and from the steamer there was a plank sidewalk on one side part way down the wharf, and persons using it usually turned at the end and passed to the middle of the wharf. Y. and his wife went to meet a passenger expected to arrive by the steamer between seven and eight o'clock one evening

in November. They went down the plank sidewalk, and instead of turning off at the end, there being no lights, and the night being dark, they continued straight down the wharf, which narrowed after some distance and formed a jog, on reaching which Y.'s wife tripped and as her husband tried to catch her they both fell into the water. Forty-four days afterwards Mrs. Y. died.

In an action by Y. against the company to recover damages occasioned by the death of his wife, it appeared that the deceased had not had regular and continual medical treatment after the accident, and the doctors who gave evidence at the trial differed as to whether or not the immersion was the proximate cause of her death. The jury when asked, "Would the deceased have recovered, notwithstanding the accident, if she had had regular attendance?" replied, "Very doubtful." A verdict was found for the plaintiff, with $1,500 damages, which the Supreme Court of Nova Scotia set aside and ordered a new trial. On appeal from that decision,

Held, that Y. and his wife were lawfully upon the wharf at the time of the accident; that in view of the established practice they had a right to assume that they were invited by the company to go on the wharf and assist their friends in disembarking from the steamer; and that they had a right to expect that the means of approach to the steamer were safe for persons using ordinary care, and the company was under an obligation to see that they were safe.

Held, further, that it having been proved that the wharf was only rented to the agent because the landlord preferred to deal with him personally, and that it was rented for the use of the company whose officers had sole control of it, the company was in possession of it at the time of the accident.

Held, also, that the evidence and finding of the jury having left it in doubt that the accident was the proximate cause of Mrs. Y.'s death, the jury not having been properly instructed as to the liability of the company under the circumstances, and the damages being excessive under the evidence, the order for a new trial should be affirmed.

Appeal dismissed with costs.

Newcombe for appellant.

Borden, Q.C., for respondent.

Ontario.] [June 24.

CITY OF LONDON *v.* WATT.

Assessment and taxes—Ontario Assessment Act, R.S.O. (1887), c. 19, ss. 15, 65—Illegal assessment—Court of Revision—Business carried on in two municipalities.

Section 65 of the Ontario Assessment Act (R.S.O., 1887, c. 193) does not enable the Court of Revision to make valid an assessment which the statute does not authorize.

Section 15 of the Act provides that "where any business is carried on by a person in a municipality in which he does not reside, or in two or more municipalities, the personal property belonging to such persons shall be assessed in the municipality in which such personal property is situated." W., residing and doing business in Brantford, had certain merchandise in London, stored in a

public warehouse used by other persons as well as W. He kept no clerk or agent in charge of such merchandise, but when sales were made a delivery order was given upon which the warehouse keeper acted. Once a week a commercial traveller for W., residing in London, attended there to take orders for goods, including the kind so stored; but the sales of stock in the warehouse were not confined to transactions entered into at London.

Held, affirming the decision of the Court of Appeal, that W. did not carry on business in London within the meaning of the said section, and his merchandise in the warehouse was not liable to be assessed at London.

Appeal dismissed with costs.

Meredith, Q.C., for the appellants.

Gibbons, Q.C., for the respondents.

Ontario.] [June 24.

VILLAGE OF NEW HAMBURG *v.* COUNTY OF WATERLOO.

Ontario Municipal Act—Construction of bridges—Liability for construction and maintenance—Width of stream—R.S.O. (1887), c. 184, ss. 532, 534.

By the Ontario Municipal Act, R.S.O. (1887), c. 184, s. 532, the council of any county has "exclusive jurisdiction over all bridges crossing streams or rivers over one hundred feet in width within the limits of any incorporated village in the county and connecting any main highway leading through the county," and by s. 534 the county council is obliged to erect and maintain bridges on rivers and streams of said width. On rivers or streams of one hundred feet or less in width, bridges must be constructed and maintained by the respective villages through which they flow.

The River Nith flows through the village of New Hamburg, and in dry seasons, when the water is low, the width of the river is less than one hundred feet; but after heavy rains and freshets, it exceeds that width.

Held, reversing the decision of the Court of Appeal (20 Ont. App., R. 1), and of the Divisional Court (22 O.R. 193), that the width at the level attained after heavy rains and freshets in each year should be considered in determining the liability under the Act to construct and maintain a bridge over the river; the width at ordinary high water mark is not the test of such liability.

Appeal allowed with costs.

Meredith, Q.C., for the appellants.

King, Q.C., for the respondents.

Quebec.] [June 24.

COWEN *v.* EVANS.

Appeal—Amount in controversy—R.S.C., c. 135—54-55 Vict., c. 25—Costs.

C. brought an action against E., claiming, first, that a certain building contract should be rescinded; second, $1000 damages; third, $545 for value of bricks in possession of E., but belonging to C. The case was *en délibéré* before the Superior Court when 54-55 Vict., c. 25, amending c. 135, R.S.C., was sanctioned, and the judgment of the Superior Court dismissed C.'s claim for

$1000, but granted the other conclusions. On appeal to the Court of Queen's Bench by E., the action was dismissed in 1893. C. then appealed to the Supreme Court.

Held, that the building for which a contract had been entered into, having been completed over five years ago, there remained but the question of costs and the $545 claim for bricks in dispute between the parties, in the judgment appealed from, and that amount was not sufficient to give jurisdiction to the Supreme Court under R.S.C., c. 135, s. 29; *Moir* v. *Corporation of Huntingdon*, 19 Can. S.C.R. 363.

Appeal quashed with costs.

Smith for motion.

Archibald, Q.C., *contra*.

Quebec.] [June 24.

COWEN *v.* EVANS.

Jurisdiction—Amount in controversy—54-55 Vict., c. 25, s. 4—Appeal—Right to.

On the 30th September, 1891, when the statute 54-55 Vict., c. 25, s. 4, was passed, enacting that the amount demanded and not recovered should determine the right to appeal when the right to appeal is dependent upon the amount in dispute, the Superior Court had *en delibéré* an action of damages brought by the respondent against the appellant for $3050 of damages.

The Superior Court on the 5th December, 1891, dismissed the respondent's action.

On appeal to the Court of Queen's Bench for Lower Canada (appeal side), the court, on the 28th February, 1893, reversing the judgment of the Superior Court, granted $880 damages to the respondent, with interest from the 16th June, 1887.

On appeal to the Supreme Court of Canada,

Held, that the statute 54-55 Vict., c. 25, did not apply, and as the amount of the judgment appealed from was under $2000 the case was not appealable, following on the question of the non-retroactivity of the statute: *Williams* v. *Irvine*, 22 S.C.R.; and as to the amount in dispute, *Monette* v. *Lefebvre*, 16 S.C.R. 357.

GWYNNE, J., dissenting.

Appeal quashed with costs.

Smith for motion.

Archibald, Q.C., *contra*.

N.B.—The appeal of *The Montreal Street Railway Co.* v. *Carrière*, argued at the October session, 1893, was quashed on the same grounds.

Quebec.] [June 24.

MITCHELL *v.* TRENHOLME.

Jurisdiction—Appeal—Right to—Amount in dispute—54-55 Vict., c. 25, s. 4.

In an action brought by the respondents on July 25th, 1889, claiming $5000 damages, alleged to have been sustained by them by the production of a plea

and incidental demand by appellants in a case before the Superior Court for the district of Montreal, under number 528, the Superior Court on the 27th day of September, 1890, granted $300 damages to the respondents.

The appellants (defendants) then appealed to the Court of Queen's Bench, and that court, on the 28th day of February, 1893, confirmed the judgment of the Superior Court.

On appeal to the Supreme Court of Canada,

Held, following its decision in *Cowen* v. *Evans*, that 54-55 Vict., c. 25, did not apply to cases pending before the court on the 30th of September, 1891 and, the matter in dispute being $300 damages, the appeal should be quashed for want of jurisdiction.

GWYNNE, J., dissenting.

Appeal quashed with costs.

Buchan for motion.

Delisle, contra.

Quebec.] [June 24.

MILLS ET AL. *v.* LIMOGES.

Right of appeal—54-55 Vict., c. 25, s. 4—Amount in dispute—Jurisdiction.

In an action of damages for $5000, brought for the death of a person by a consort, the Superior Court in April, 1891, granted $1000 damages, and the judgment was acquiesced in by the plaintiff, but defendant appealed to the Court of Queen's Bench, and that court confirmed the judgment of the Superior Court in December, 1892. 54-55 Vict., c. 25, s. 4, declaring that "whenever the right to appeal is dependent upon the amount in dispute such amount shall be understood to be that demanded and not that recovered, if they are different," was sanctioned September 30th, 1891.

On appeal to the Supreme Court of Canada,

Held, that 54-55 Vict. did not apply to such a case, and that the case was not appealable. See *Monette* v. *Lefebvre*, 16 S.C.R. 357.

Appeal quashed with costs.

Abbott, Q.C., and *E. Lafleur* for appellants.

Demers for respondent.

Quebec.] [June 24.

QUEBEC CENTRAL R.W. CO. *v.* LORTIE.

Railway accident to passenger—Damages—Negligence—Art. 1675 C.C.

L. was a holder of a ticket, and passenger of the company's train from Levis to Ste. Marie, Beauce. When the train stopped at Ste. Marie station, passengers alighted; but the car upon which L. had been travelling, being some distance from the station platform, and the time for stopping having nearly elapsed, L. got out at the end of the car, and, the distance to the ground from the steps being about two feet and a half, in so doing he fell and broke his leg, which had to be amputated.

The action was for $5000 damages, alleging negligence and want of proper

accommodation. The defence was contributory negligence. Upon the evidence the Superior Court, whose judgment was affirmed by the Court of Queen's Bench, gave judgment in favour of L. for the whole amount. On appeal to the Supreme Court of Canada,

Held, reversing the judgments of the courts below, that in the exercise of ordinary care L. could have safely gained the platform by passing through the car forward, and that the accident being wholly attributable to his own default in alighting as he did he could not recover. FOURNIER, J., dissenting.

Appeal allowed with costs.

Brown, Q.C., for appellants.

Lavery for respondent.

Quebec.] [June 24.

LEFOUNTUN *v.* VERONNEAU.

Sheriff's sale—Arts. 553, 662, 663, 714 C.C.P.—Jurisdiction.

A petition *en nullité de décrêt* has the same effect as an opposition to a seizure, and under Arts. 662 and 663 C.C.P. the sheriff cannot proceed to the sale of property under a writ of *venditioni exponas* unless said writ is issued by an order of the court of a judge. *Bissonnette* v. *Laurent*, 15 Rev. Leg. 44, approved.

Per FOURNIER, J.: Where the text of the law is clear and positive, a practice even long established should not be followed.

TASCHEREAU and GWYNNE, JJ., dissented.

On the question of want of jurisdiction raised by respondent, it was held that a judgment in an action to vacate the sheriff's sale of an immovable is appealable to the Supreme Court under s. 29 (*b*). *Dufresne* v. *Dixon*, 16 S.C.R. 596, followed.

Appeal allowed with costs.

Mercier, Q.C., and *Gouin* for appellant.

Bonin for respondent.

Quebec.] [June 24.

STEWART *v.* ATKINSON.

Sale of deals—Contract—Breach of—Delivery—Acceptance—Quality—Warranty as to—Damages—Arts. 1073, 1473, 1507 C.C.

In a contract for the purchase of deals from A. by S., *et al.*, merchants in London, it was stipulated, *inter alia*, as follows: "Quality—Seller's guarantee quality to be equal to the usual Etchemin stock and to be marked with the Beaver brand," and the mode of delivery was f.o.b. vessels at Quebec, and payment by drafts payable in London 120 days' sight from date of shipment. The deals were shipped at Quebec on board vessels owned by P. & Bros., at the request of P. & P., intending purchasers of the deals. When the deals arrived in London they were inspected by S., *et al.*, and found to be of inferior quality, and S., *et al.*, after protesting A., sold them at reduced rates. In an action in damages for breach of contract,

Held, reversing the judgment of the court below, that the delivery was to be at Quebec, subject to an acceptance in London, and that the purchasers were entitled to recover under the express warranty as to quality, there being abundant evidence that the deals were not of the agreed quality. Arts. 1507, 1473, 1073 C.C. The Chief Justice and SEDGEWICK, J., dissenting.

Appeal allowed with costs.

Fitzpatrick, Q.C., and *Ferguson*, Q.C., for appellants.

Casgrain, Q.C., for respondent.

Nova Scotia.] [June 29.

INTERNATIONAL COAL CO. *v.* COUNTY OF CAPE BRETON.

Assessment and taxes—Tax on railway—Nova Scotia Railway Act—Exemption—Mining company—Construction of railway by—R.S.N.S., 5 Ser., c. 53.

By R.S.N.S., 5 Ser., c. 53, s. 9, s-s. 30, the roadbed, etc., of all railway companies in the province is exempt from local taxation. By s. 1 the first part of the Act from sections 5 to 33 inclusive applies to every railway constructed and in operation or thereafter to be constructed under the authority of any Act of the legislature, and by s. 4 part two applies to all railways constructed or to be constructed under authority of a special Act, and to all companies incorporated for their construction and working. By s. 5, s-s. 15, the expression "the company" in the Act means the company or party authorized by the special Act to construct the railway.

The International Coal and Railway Co. was incorporated by 27 Vict., c. 42 (N.S.), for the purpose of working coal mines in Cape Breton, and for the further purpose "of constructing and making such railroads and branch tracks as might be necessary for the transportation of coals from the mines to the place of shipment, and all other business necessary and usually performed on railroads," and with other powers connected with the working of mines "and operation on railways." Under these powers a railway twelve miles in length was built and used to carry coal from Bridgeport to Sydney Harbour, and the company having become involved its property, including said railway, was sold at sheriff's sale, and the purchasers conveyed the same to the International Coal Co.

By 48 & 49 Vict., c. 29 (D.), it was enacted that the International Coal Co. might hold and work their railway for the purposes of their own mines and operations, and might hold and exercise such powers of working the railway for the transport of passengers and freight generally for others for hire as might be conferred on the company by the Legislature of Nova Scotia; and by 49 Vict., c. 145, s. 1 (N.S.), the company were authorized to hold and work the railway for general traffic and the conveyance of passengers and freight for hire, as well as for all purposes and operations connected with said mines, in accordance with and subject to the provisions of part two of c. 53, R.S.N.S., 5 Ser., entitled "of railways."

The municipality of Cape Breton having assessed the company for local taxes in respect of said railway,

Held, reversing the decision of the Supreme Court of Nova Scotia (GWYNNE, J., dissenting), that the company was exempt from such taxation; that the railway was one constructed under authority of an Act of the Legislature of Nova Scotia (27 Vict., c. 42), and in operation under the authority of another Act (49 Vict., c. 145); that the company was a "railway company" within the meaning of s. 9, s-s. 30 of c. 53; that part one of that chapter applies to railways constructed under any Act of the legislature, and not only under Acts exclusive of those to which part two applies; and that the reference in 49 Vict., c. 145, s. 1, to part two does not prevent said railway from coming under the operation of the first part of the Act.

Appeal allowed with costs.

Harris, Q.C., for the appellants.

Borden, Q.C., for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

OSLER, J.A.] [Aug. 18.

IN RE THE HAGGART BROTHERS MANUFACTURING CO. (LIMITED).

Company—Winding up—Power to carry on business—R.S.O., c. 183, s. 8, s-s. 1.

The power to carry on the business of a company after winding-up proceedings have been commenced under the Ontario Act, and thus to postpone the final winding up, is one which is not to be exercised unless a strong case of necessity for doing so exists, and it is only for the purpose of administration and realization that such a course should be taken.

That the mortgagees of the company's works, who have foreclosed their mortgage, will be enabled to dispose of the works to greater advantage, and that by affording facilities for procuring repairs, to purchasers of the machinery manufactured by the company, the chances of obtaining payment of outstanding purchase notes will be improved, are not sufficient grounds to justify the carrying on of the business.

Judgment of the County Court of Peel reversed.

Hoyles, Q.C., and *B. F. Justin* for the appellant.

A. McKechnie for the respondent.

Full Court.] [Oct. 27.

REGINA *v.* HAZEN.

Justice of the Peace—Summary conviction—Information—Two offences—"Defect in substance or in form"—Adjournment—Criminal Code, 1892, ss. 845 (3), 847, 857.

An information stating that the defendant "within the space of thirty days last past, to wit, on the 30th and 31st days of July, 1892, did unlawfully sell intoxicating liquor without the license therefor by law required" does not

charge two offences, but only the single offence of selling unlawfully within the thirty days; but even if an information so worded can be said to contravene the provisions of s. 845 (3) of the Criminal Code, 1892, the defect is one "in substance or in form" within the meaning of the curative section (847), and does not invalidate an otherwise valid conviction for the single offence.

The provision of s. 857, that no adjournment shall be for more than eight days, is a matter of procedure and may be waived, and a defendant who consents to an adjournment for more than eight days cannot afterwards complain in that respect.

Judgment of the Queen's Bench Division, 23 O.R. 387, reversed.

J. R. Cartwright, Q.C., and *Langton*, Q.C., for the appellant.

Tremeear for the respondent.

Full Court.] [Oct. 27.

BANK OF HAMILTON *v.* AITKEN.

Creditors' Relief Act—Certificate of claim—Contestation—R.S.O., c. 65, s. 10, s-s. 1—Absconding Debtors' Act—"Commencing proceedings"—R.S.O., c. 66, s. 26.

Although under the Creditors' Relief Act a creditor who does not come in within the period prescribed may not be entitled to rank for a dividend, he is interested in the proper distribution of the moneys realized, and is, therefore, under section 10 of the Act, entitled to contest the certificates of claim of other creditors; for, in case of success, there may be a surplus available for him, or at least the liabilities of the common debtor will be reduced.

Per HAGARTY, C.J.O., and OSLER, J.A.: Making the affidavit of claim is not commencing proceedings within the meaning of section 26 of the Absconding Debtors' Act, R.S.O., c. 66. Something to bring the claim within the control of the court must be done before it can be said that proceedings have been commenced.

Per MACLENNAN, J.A.: Making the affidavit is the first step directed by the Act, and if the further steps be then taken in good faith, and without undue delay, the making of the affidavit may properly be regarded as the commencement of proceedings.

Judgment of the County Court of Simcoe reversed.

Hood for the appellant.

Aylesworth, Q.C., for the respondents.

Full Court.] [Oct. 27.

ARDILL, ET AL., *v.* CITIZENS' INS. CO.—ARDILL, ET AL., *v.* ÆTNA INS. CO.

Fire insurance—Contract for sale—Change of title—Change material to the risk—R.S.O., c. 167, s. 114—Damages.

That the owners of an insured building have entered into an executory contract for the pulling down of the building in question and for the sale of the materials to the contractors at a sum very much less than the amount of the insurance is no bar to their right to recover the full amount of the insurance

when the building is burnt down before the time fixed by the contract for the transfer of possession.

Judgment of MACMAHON, J., 22 O.R. 529, affirmed.

Osler, Q.C., and *Collier* for the appellants.

S. H. Blake, Q.C., and *Ingersoll* for the respondents.

Full Court.] [Oct. 27.

FOX *v.* WILLIAMSON.

Action—Jury—Damages—Apportionment—Protection of Sheep Act—R.S.O., c. 214, s. 15.

The right of action given by R.S.O., c. 214, s. 15, to the owner of sheep killed by dogs is to be prosecuted with the usual procedure of the appropriate form. If, therefore, an action be properly brought in the County Court, it may be tried before a jury—if by the County Court practice a jury may, under the particular circumstances of the case, be had—and in such case the jury, and not the judge, should apportion the damages, if an apportionment be required.

Judgment of the County Court of Wellington reversed.

Field for the appellant.

Johnston, Q.C., for the respondent.

Full Court.] [Oct. 27.

SULLIVAN *v.* MCWILLIAM.

Negligence—Highway—Horse.

It is not negligence *per se* for the driver of a horse of a quiet disposition standing in the street to let the reins go while he alights from the vehicle to fasten a head weight, there being at the time little traffic, and no noise or disturbance to frighten the animal; and the owner of the horse is not responsible for damages caused by the horse in running away when frightened by a sudden noise, just after the driver has alighted.

Judgment of the County Court of York reversed.

E. B. Ryckman for the appellants.

Fullerton, Q.C., for the respondent.

HIGH COURT OF JUSTICE.

Chancery Division.

BOYD, C.] [Sept. 12.

THE WAKEFIELD RATTAN CO. *v.* THE HAMILTON WHIP CO. (LIMITED).

Winding-up Act—Voluntary assignment for benefit of creditors—Approval of majority of creditors—Application for winding-up order—Discretion of the court—Exercise of R.S.C., c. 129, s. 9.

Section 9 of R.S.C., c. 129 (the Winding-up Act), gives a wide discretionary power to the court; and upon an application for a winding-up order in a case where a company had previously made a voluntary assignment for the

benefit of creditors, and it was shown that it was the desire of the great majority in number and value of the creditors that the company should be wound up under the assignment, it was

Held, that this discretionary power should be exercised, and the winding-up order was refused, but leave was given to renew the application if any exigency should arise to justify the intervention of the court.

Carscallen, Q.C., for the petitioners.

F. Fitzgerald for the respondents.

J. J. Scott for a number of creditors supporting the assignment.

FERGUSON, J.] [Oct. 14.

MCKINNON *v.* LUNDY.

Will—Construction—Condition subsequent—Executory devise—Murder of testatrix by devisee—Lapse.

The testatrix by her will dated September 5th, 1888, devised certain lands to her husband, adding these words: "He to pay off the mortgage to McCulla. Should he not pay the said mortgage at maturity, the said land to become the property of my children, and sold with the remaining portion of the lot."

The land thus devised had been previously conveyed from the husband to the testatrix by deed of April 25th, 1887. On April 6th, 1892, the husband, for $225, granted and quitted claim to the land in favour of the testatrix, subject to the mortgage to McCulla, which the testatrix covenanted to pay off, and did pay off some days before the mortgage actually matured. On April 22nd, 1892, the husband murdered the testatrix, and was afterwards convicted of the crime. On August 25th, 1892, notwithstanding the above conveyances, the husband purported to convey the land to his brother in trust to sell, and out of the proceeds pay for his defence at his trial for the murder, and to hold the balance in trust for the grantor, his heirs, executors, and assigns.

This last grantee now claimed the lands as against the representatives of the testatrix.

Held, (1) that the condition in the above devise as to paying off the mortgage to McCulla was a condition subsequent, and its performance having become impossible by the prior payment of the mortgage became void.

(2) That the gift in favour of the children was in the nature of an executory devise, which could only take effect on the happening of the event referred to, namely, the default of the husband in not paying the mortgage to McCulla; but as there was no such default, since the mortgage had been paid off by the testatrix before maturity, the children could take nothing by the devise.

Held, however, (3) that by his felonious act, in murdering his wife, the husband had actually precluded and debarred himself from obtaining any benefit under her will, or out of her estate, and his grantee, his brother, could stand in no better position than himself, and therefore there was an intestacy as to these lands.

S. H. Blake, Q.C., and *D. Guthrie*, Q.C., for the plaintiff.

Aylesworth, Q.C., and *Morphy* for the defendants.

FERGUSON, J.] [Sept. 23.

GILLARD *v.* BOLLERT.

Bills of sale and chattel mortgages—Actual and continuing change of possession—Possession of mortgagee after default—55 Vict., c. 26, ss. 1, 3, and 5—R.S.O., c. 125.

Held, that the "actual and continual change of possession" mentioned in s. 3 of 55 Vict., c. 26, an Act respecting sales and mortgages of personal property, has reference only to the "actual and continued change of possession" mentioned in ss. 1 and 5 of R.S.O., c. 125, an Act respecting mortgages and sales of personal property, and does not refer to possession taken by a mortgagee under his mortgage after default.

The words "persons who become creditors," in s. 4 of the said 55 Vict., c. 26, means persons who become execution creditors as provided for in the second section of that Act.

W. F. Walker, Q.C., for the plaintiff.

D. Guthrie, Q.C., and *E. F. B. Johnston*, Q.C., for the defendant.

Practice.

BOYD, C.] [Oct. 17.

VANZANT *v.* VILLAGE OF MARKHAM.

Costs—Taxation—Apportionment.

Where an action was, roughly speaking, divisible into two parts, one claiming compensation for land, and the other seeking to restrain the defendants from proceeding to estimate it in an improper way, and the judgment gave the plaintiff the costs of the first branch and no costs of the second to either party,

Held, that the taxing officer did not err in principle in allowing the plaintiff one-half of the general costs, and also items which exclusively related to the first branch.

Masten for the plaintiff.

G. A. Kingston for the defendants.

BOYD, C.] [Oct. 17.

SCOTT *v.* NIAGARA NAVIGATION CO.

Infants—Next friend—Foreigner—Security for costs.

Infants having a *bona fide* cause of action are privileged suitors; and the same rule as to security for costs should not be applied as in the case of adults.

If the next friend of infant plaintiffs, being the natural guardian, is within the jurisdiction when the action is begun, and so continues *pendente lite*, the court will not too anxiously scrutinize the tenure of his residence.

And where the infant plaintiffs and their natural guardian and next friend were foreigners, and came within the jurisdiction merely for the purpose o

bringing the actions, but continued therein up to the time of an application for security for costs, and it appeared that they had a *bonâ fide* cause of action, an order staying proceedings until a new next friend within the jurisdiction should be found was reversed.

W. J. Elliott for the plaintiffs.

J. S. Denison for the defendants.

Q.B. Div'l Court.] [Oct. 23.

MASON *v.* COOPER.

Judgment—Partnership—Unauthorized appearance—Irregularity—Execution—Creditors' Relief Act—Sheriff.

After service of the writ of summons upon one of the partners in an action against a partnership in the firm name, an appearance was entered by a solicitor in the names of both partners individually, but upon the instructions of one partner only and without the authority of the other. Upon motion by the latter to set aside the appearance and subsequent proceedings,

Held, that the appearance and the plaintiffs' judgment founded thereon were irregular.

After the judgment had been set aside, several creditors of the defendants obtained judgment against them and placed writs of *fi. fa.* in the sheriff's hands, under which he sold the defendants' goods. Upon a motion by the plaintiffs, made in their own action and also in the several actions in which judgments had been obtained, for an order directing the sheriff to pay the proceeds of the sale into court, instead of making the usual entries under the Creditors' Relief Act, in order to preserve the priority of the plaintiffs' judgment, in case it should be restored upon appeal;

Held, that there was no power, upon the plaintiffs' application, to interfere with the sheriff's proceedings upon writs of *fi. fa.* regularly in his hands.

D. E. Thomson, Q.C., for the plaintiffs.

Shepley, Q.C., for the defendant Cooper and for the Molsons Bank.

Langton, Q.C., for the sheriff.

Court of Appeal.] [Oct. 27.

GOODEVE *v.* WHITE.

Discovery—Transferee of judgment debtor—Examination—Rule 928.

Upon an application under Rule 928 for an order for the examination of the wife of the judgment debtor as a person to whom he had made a transfer of his property, the affidavit of the applicant, the judgment creditor, stated that the action arose out of the sale of a stock of goods by the plaintiff to the defendant, and referring to a verified copy of the judgment debtor's examination, taken under Rule 926, that, on such examination, the latter admitted that he had transferred to his wife a sum of money, part of the proceeds of the sale of the same stock of goods. In the examination, the judgment debtor stated that in buying the stock from the plaintiff he was acting as agent for

his wife, and that when he sold it he gave the purchase money to her, as it was her own property.

Held, that, upon this material, an order for the examination of the wife was properly made.

Per OSLER, J.A.: On such an application, the real title of the debtor should not be enquired into or tried; nor can the transferee resist it merely by asserting that the debtor held the property as agent or trustee. Standing in his name and being dealt with as his own, it was *prima facie* his.

Per MACLENNAN, J.A.: The case intended by the Rule is a transfer of the debtor's own property, and not of property which he has dealt with as agent or trustee for another. But where it is a disputed question whether the property was not the property of the debtor, or property in which he had an interest, the Rule ought to be applied.

Ryckman for the appellant.

W. H. Garvey for the respondent.

Court of Appeal.] [Oct. 27,

STANDARD BANK OF CANADA *v.* FRIND.

Partnership—Rule 876—Judgment against firm—Execution against alleged member of firm—Issue—Amendment.

The latter part of Rule 876, providing for an application for leave to issue execution, upon a judgment against a firm, against some person as a member of the firm other than those mentioned in s-ss. (*b*) and (*c*) of the Rule, applies only where is in truth a partnership which is bound by the judgmer obtained against the firm in consequence of the service of the writ of summons upon one of its members or its manager; where there is, in fact, no partnership, no one can be bound by a judgment against an abstraction called "a firm" except the person who has been served under the provisions of Rule 266 and who has appeared or pleaded in the action.

And where the wife of the manager of the business of a so-called firm, who was shown to be merely a trustee for him of the profits, was served with process in an action against the firm upon a bill of exchange, and defended,

Held, HAGARTY, C.J.O., dissenting, that, as there was, in fact, no partnership, an issue directed to determine whether the husband was liable to have execution issued against him as a member of the firm upon a judgment recovered in an action against the firm must be found in favour of the husband; and no amendment could be made which would enable the court to determine otherwise.

Per HAGARTY, C.J.O.: The husband was, in fact, the firm itself; his liability for the debts of the firm was established; and it was not clearly wrong to find that he was a member of the firm. But, at any rate, it was a case in which the power to make all necessary amendments could and should be exercised.

Marsh, Q.C., for the plaintiffs.

James Parkes and *W. G. McKay* for the defendant.