# The Canada Law Journal.

VOL. XXV. APRIL 1, 1889. No. 6.

WE regret that our space is so fully occupied wit matters which cannot well be postponed, that we are compelled to defer until our next number an obituary notice of the late Sir William Buell Richards.

---

A SOMEWHAT important point regarding security for costs on appeal arose in *Carroll* v. *Pemberthy*, before the Master in Chambers on March 6th. A motion was made on behalf of the appellants to stay proceedings upon giving security for the amount of the judgment debt, and paying $200 as security for costs, on appeal to the Court of Appeal, into Court. For the respondents, it was objected that the amount to be paid into Court as security for costs should be $400, as required by sec. 71 of the Judicature Act. The appellant relied upon Rules 806 and 1248 as authority for paying in $200 for security where a bond is required for $400. The Master in Chambers held that whether the security was by bond or payment of money into Court, on appeal to the Court of Appeal, it must be in the sum of $400.

---

IN *Curtin* v. *Curtin*, lately argued on appeal before STREET, J., an interesting aspect of the question of the examination of third parties before trial was discussed. The plaintiff, Mary Curtin, brought an action against the defendant, Lawrence Curtin, her step-son, to set aside a deed from the plaintiff to the defendant of a fee simple in certain farm lands after a life estate reserved to the plaintiff, on the ground that the plaintiff, being illiterate, signed the deed not being aware of its true nature, and upon the understanding that it embodied an agreement as to collateral matters which she subsequently ascertained it did not contain. In the statement of claim it was alleged that one R. I. D., a solicitor, had drawn the conveyance. The plaintiff applied after issue retained to examine the solicitor, R. I. D., under Rule 565. In support of the application the plaintiff's solicitors made an affidavit alleging: "That it is very material (the plaintiff being illiterate) for the proper prosecution of this action on her behalf, that the said R. I. D. should be examined, touching his knowledge of the matters at issue, and as to his instructions for the preparation and execution of said deed, and that such instructions and that the books of the said R. I. D. should be produced for examination. That I believe that it would be useless to endeavor to obtain any information from the said R. I. D. touching the matters in question, unless by an examination under oath, as I believe the said R. I. D. to be acting altogether in the interest of

said defendant in this action." The Master in Chambers made the order asked on the 28th day of February, 1889. An appeal was argued before Mr. Justice Street on the 8th March, 1889. In giving judgment, he said: "The exercise of jurisdiction in ordering examinations of parties under this rule must be carefully guarded. It may be an advantage to have this examination of R. I. D., the solicitor, as it is an advantage to every litigant to know the evidence of witnesses before trial. Nothing more is shown in support of this application than could be shown in the great majority of cases in the courts. It is not a sufficient ground for obtaining the examination, as contended by plaintiff's counsel, that R. I. D. might have been added as a party originally. The order must be reversed, with costs in any event to the defendant."

## *COMMENTS ON CURRENT ENGLISH DECISIONS.*

THE Law Reports for February comprise 12 Q.B.D., pp. 125-238; 14 P.D., pp. 17-26; and 40 Chy. D., pp. 77-215.

MUNICIPALITY—RIGHT TO CARRY WATER MAINS THROUGH PRIVATE PROPERTY—REPORT OF SURVEYOR.

The only point for which *Lewis* v. *Weston*, 40 Chy. D. 55, can be considered an authority is this, that where a municipality is empowered by Act of Parliament to carry water mains through private property, if on the report of their surveyor it is necessary so to do; the surveyor must be the duly appointed surveyor of the municipality, and the report of a surveyor who is appointed surveyor to the board upon the death of its regular officer, "until a further permanent surveyor is appointed," is not a surveyor of the municipality within the meaning of the Act, and the municipality in this case having acted on a report of a surveyor temporarily appointed as above mentioned, was restrained by Stirling, J., by injunction from proceeding further with the work, and this, notwithstanding that the surveyor who had been subsequently appointed by the municipality, made affidavit that he concurred in the report of the temporary surveyor: the learned judge declaring that as the defendants were seeking to avail themselves of the powers conferred by the statute to take lands in derogation of the plaintiff's rights, they must follow strictly the terms of the power, and their proceedings being based on report of one who was not their surveyor within the meaning of the Act, were consequently null and void.

LANDLORD AND TENANT—NUISANCE—COVENANT FOR QUIET ENJOYMENT—INJUNCTION—DAMAGES.

*Jenkins* v. *Jackson*, 40 Chy. D. 71, was an action brought by a tenant against his landlord to restrain a nuisance under the following circumstances: The landlord let a flat in a building to the plaintiff for the purpose of his business as an auctioneer, giving the usual covenant for quiet enjoyment; subsequently he gave a license to his co-defendant to use a floor above that leased to the plaintiff, for the purpose of dancing and other entertainments. The plaintiff complained that the dancing was a nuisance, and that the visitors to the upper flat obstructed him in the enjoyment of his premises. Kekewich, J., held that the annoyance caused

by the dancing was not a breach of the covenant for quiet enjoyment, that such covenants do not extend to nuisances committed on adjoining premises of the lessor, and therefore he refused an injunction: but on the general law he held that a lessor is responsible in damages to his tenant if he so uses his adjoining premises as to create a nuisance to his tenant, and he therefore awarded damages in respect of the nuisance caused by the dancing; but he held that neither the landlord nor his licensee were responsible for the inconvenience to the plaintiff caused by the visitors on the staircase.

JURISDICTION—"CAUSE OF ACTION ARISING WHOLLY OR IN PART WITHIN THE CITY OF LONDON"—ASSIGNMENT OF DEBT.

In *Read* v. *Brown*, 22 Q.B.D. 128, an appeal was brought from an order of Sir James Hannen directing a prohibition to issue to the Mayor's Court, under the following circumstances: The action was brought by the plaintiff as assignee to recover a debt in respect to the price of goods. The goods had been sold and delivered without the City of London, but the debt had been assigned to the plaintiff within the city. The question therefore was whether the assignment was a part of "the cause of action." Pollock, B., and Manisty, J., held that it was, and this decision was affirmed by the Court of Appeal. (Lord Esher, M.R., and Fry and Lopes, L.JJ.) The Master of the Rolls adopted the definition of the term "cause of action" laid down in *Cooke* v. *Gill*, L.R. 8 C.P. 107, viz.: "Every fact which it would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved." The order for the prohibition was therefore reversed.

DEFAMATION—LIBEL—PRIVILEGE—INNUENDO—PUBLICATION IN TRADE NEWSPAPERS OF LIST OF JUDGMENTS.

*Williams* v. *Smith*, 22 Q.B.D. 134, is a case which shows the dangers that trade protection papers may run. The action was brought to recover damages for a libel, which consisted in the defendants having published, in a trade protection paper of which they were proprietors, in a list of judgments recovered in the County Court, a statement that a judgment was recovered against the plaintiff, "meaning thereby that there was at the date of the publication an unsatisfied judgment against the plaintiff for the amount mentioned." The facts being, that a judgment for the amount mentioned had been recovered against the plaintiff, but that, prior to the publication of the alleged libel, the plaintiff had satisfied it, but he had given no notice to the officer of the Court that the judgment had been satisfied, and the defendants were not aware that the judgment had been satisfied, but had taken the list of judgments from another trade paper, in which to the list of judgments the following note was appended: "These judgments are not necessarily for debts. In some cases they are for damages or properly disputed causes of action, but no distinction is made in the register. Judgments settled otherwise than through the Court may appear

unless satisfaction is entered up within fourteen days allowed for that purpose." The jury found a verdict for £25 in favor of plaintiff, and the Divisional Court (Pollock, B., and Mainsty, J.) refused to disturb it, holding that the statement was susceptible of the innuendo that the judgment was still unsatisfied.

LANDLORD AND TENANT—COVENANT BY LESSOR TO PAY RATES, TAXES AND IMPOSITIONS—WATER RATE.

*Badcock* v. *Hunt*, 22 Q.B.D. 145, was an action by tenants against their landlord upon a covenant in the lease, whereby the lessor covenanted to pay all rates, taxes and impositions whatsoever, whether parliamentary, parochial, or imposed by the City of London, or otherwise howsoever, which then were, or thereafter might be, rated, charged or assessed on the said premises, or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants, of the said premises, in respect thereof. Water was supplied to the premises for domestic purposes by the New River Company, under the provisions of the Waterworks Clauses Act, 1847, and the lessees paid the water rates, which they now claimed to recover from the defendant. The question, therefore, was whether the water-rates were "imposed." The Court of Appeal (Lord Esher, M. R., and Fry and Lopes, L.JJ.), over-ruled Field and Wills, JJ., and held unanimously that the rates were not "imposed." Lord Esher says, "I do not think that a charge to which a person can only be made liable with his own consent, can be said to be imposed upon him within the meaning of this covenant." . . . "Furthermore, I think that the words 'imposed otherwise howsoever' must be construed according to the rule of construction applicable when general words follow specific words, and that therefore they can only include rates or impositions imposed in a similar manner to parliamentary and parochial rates, viz., imposed compulsorily on the person charged."

PRACTICE—EXECUTION—RECEIVER—EQUITABLE EXECUTION.

In *The Manchester & Liverpool Banking Co.* v. *Parkinson*, 22 Q.B.D. 173, the Court of Appeal has put a check on the practice of obtaining the appointment of a receiver by way of equitable execution, by laying down the rule that that mode of procedure should not be adopted when the ordinary course of obtaining execution of a judgment may be resorted to. In this case the judgment debtor had died, leaving a will whereby she appointed an executor. At the time of her death she was possessed of certain furniture and chattels, and was carrying on business. The will not having been proved and the judgment remaining unsatisfied, the judgment creditors obtained an order appointing a receiver of the furniture, chattels and business, and to get in and receive the debts due to the business, and afterwards another order for the sale of such property by the receiver. Pollock, B., and Manisty, J., set aside these orders, and an appeal from them was had to the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.), which affirmed their decision. The case of *Whitaker* v. *Whitaker*, 7 P.D. 15, was considered not to be an authority for the appointment of a receiver under such circumstances.

BANKRUPTCY—PETITIONING CREDITOR—RECEIVER.

*In re Sacker*, 22 Q.B.D. 179, it was decided by the Court of Appeal that an interim receiver in an action is not competent to be a petitioning creditor in bankruptcy against the defendant, against whom he has been appointed, upon his default in paying over moneys to the receiver pursuant to the order of the Court.

RECEIVER BY WAY OF EQUITABLE EXECUTION—BANKRUPTCY—SECURED CREDITOR.

*In re Dickinson*, 22 Q.B.D. 187, the Court of Appeal also held that a judgment creditor who has procured the appointment of a receiver of chattels of his debtor by way of equitable execution, is not a secured creditor, and in the event of the bankruptcy of the debtor, the trustee in bankruptcy is entitled to the chattels then unsold as against the receiver.

EASEMENT—RIGHT OF WAY—GRANT OF WAY BY GENERAL WORDS—"WAYS NOW OR HERETOFORE HELD OR ENJOYED."

*Roe* v. *Siddons*, 22 Q.B.D. 224, is a decision of the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.), reversing a decision of Cave and A. L. Smith, JJ., upon a question arising in the construction of certain words used in a conveyance. In 1872 the owner of two adjoining parcels of land granted one of them to the plaintiff and the other to the defendant. In the grant to the plaintiff were the general words: "together with all ways and easements and appurtenances whatsoever to the said tenement and premises hereby granted, or any part thereof now *or heretofore* held or enjoyed or reputed or known as part or parcel thereof or appurtenant thereto." Prior to 1852 the occupiers of the two tenements had used in common a formed private road for the purpose of going to and from their respective tenements to the high road. There was access to the plaintiff's tenement from the high road by another way, but the only access to the defendant's tenement was by means of that road. In 1852, by the permission of the owner, the then occupier of the plaintiff's tenement built a wall which entirely separated his tenement from the private road, and from that time down to 1872 and afterwards, with one exception, down to the issue of the writ, the occupiers of the plaintiff's tenement made no use of the private road. Cave was of opinion that the right of way existing in favor of the owners of the plaintiff's premises prior to 1852, passed under the general words as a way "heretofore held or enjoyed," but from this A. L. Smith, J., dissented, and the Court of Appeal arrived at the same conclusion as he did. The Court of Appeal base their decision on the ground that in order to maintain the plaintiff's right to the way in question, it would be necessary to alter the physical condition of the property from what it was at the time of the grant to the plaintiff, to what it formerly was, and this they considered prevented the ordinary general words from being treated as disclosing any intention to give the right.

None of the cases in the Probate Division seem to require notice here.

INJUNCTION—RESTRICTIVE COVENANT—ANNOYANCE AND GRIEVANCE.

Turning now to the cases in the Chancery Division, the first requiring attention is *Tod-Heatly* v. *Benham*, 40 Chy. D. 80. This was an action for an injunction

to restrain the breach of a restrictive covenant against carrying on certain specified trades, or doing any act "which shall, or may be, or grow to the annoyance, nuisance, grievance or damage of the lessor, his heirs or assigns, or the inhabitants of the neighboring or adjoining houses." The alleged breach of this covenant consisted in the defendant having established a hospital on the land for treatment of outdoor patients suffering from diseases of the throat, nose, skin and eye, fistula and other diseases. The right of the plaintiffs to an injunction was resisted on the ground that the hospital was not an actionable nuisance, but both Kekewich, J., and the Court of Appeal (Cotton, Lindley & Bowen, L.JJ.) were of opinion that it was not a question whether a nuisance had been committed, but whether what was complained of was a breach of the covenant, and they held that without proof of any actual damage the plaintiffs were entitled to an injunction as asked; as Bowen, L.J., says at p. 98: "Annoyance is a wider term than nuisance, and if you find a thing which reasonably troubles the mind and pleasure, not of a fanciful person or of a skilled person who knows the truth, but the ordinary sensible English inhabitant of a house—if you find there is anything which disturbs his reasonable peace of mind, that seems to me to be an annoyance, although it may not appear to amount to physical detriment to comfort." Here the fact of the existence of the hospital being the means of bringing a number of people into the neighborhood suffering from diseases of the eyes, etc., etc., was held to be a reasonable ground for apprehension that there was danger of spreading infectious or contagious diseases in the neighborhood.

RAILWAY COMPANY—ARBITRATION—JURISDICTION—WAIVER.

In *London, Chatham & Dover Railway Co.* v. *Southeastern Railway Co.*, 40 Chy. D. 100 the Court of Appeal (Cotton, Lindley & Bowen, L.JJ.), held, that though when parties have agreed to refer disputes arising between them to arbitration, the Courts are bound to give effect to the agreement if either party insist on it; yet that if neither of them do insist on it, the jurisdiction of the Court is not ousted by the existence of such an agreement; and therefore when a defendant had by his pleadings set up the agreement and his right to arbitration, but at the trial failed to raise the point, and went into evidence on the merits, it was held that the point could not afterwards be raised in the Court of Appeal.

BOND—CONDITION IN RESTRAINT OF TRADE—SPECIFIC PERFORMANCE—INJUNCTION—PENALTY—LIQUIDATED DAMAGES.

*National Provincial Bank of England* v. *Marshall*, 40 Chy. D. 112, was an action on a bond executed by the defendant in the general sum of £1000 on entering the plaintiffs' service as bankers, conditioned that it should be void if the defendant should perform his duty as therein mentioned, and also if he should pay to the plaintiffs £1000 as liquidated damages in case he should at any time within two years after his leaving the plaintiffs' service accept any employment in any other bank within twenty miles of the plaintiffs' bank. The defendant resigned his employment and immediately entered the service of a rival bank in

the same town. The plaintiffs claimed an injunction to restrain the defendant from holding employment in any rival bank contrary to the terms of the bond. The defendant was willing and offered to pay the £1000, but Butt, J., held the plaintiffs entitled to an injunction, and his decision was affirmed by the Court of Appeal (Cotton, Lindley & Bowen, L.JJ.)

COMPANY—RATIFICATION BY COMPANY OF PARTICULAR ACT OF DIRECTORS IN EXCESS OF AUTHORITY—ALTERATION OF ARTICLES.

*Grant* v. *United Kingdom Switchback Co.*, 40 Chy. D. 135, is a decision of the Court of Appeal (Cotton, Lindley and Bowen, L.JJ.), affirming a judgment of Chitty, J., on a question of company law. The articles of the *T. Company* authorized the sale of part of its undertaking to any other company, and contained a provision prohibiting any director from voting in respect of any contract in which he is interested. The directors of the *T. Company* entered into a contract to sell part of its undertaking to the *U. Company*, of which all the directors of the *T. Company*, except one, were directors. A general meeting of the *T. Company* was called by a notice stating that it was called to consider a resolution for approving and adopting the agreement, but not stating any ground for a meeting being necessary. The resolution was passed as an ordinary resolution, and not as a special resolution. The plaintiff was a shareholder of the *T. Company*, and brought his action against both companies to restrain them from carrying out the sale, and it was held by the Court that though a resolution giving the directors powers to do certain acts in future which they were not authorized by the articles to do, would be an alteration of the articles, and would require to be passed as a special resolution, the adoption of a contract which was within the objects of the company, but which the directors had entered into without authority, was not an alteration of the articles, and could be effected by an ordinary resolution; and it was also held that the resolution of the general meeting was not invalidated by the fact that the notice calling the meeting did not suggest any reason why the contract could not be carried into effect without the sanction of a general meeting.

COMPANY—WINDING UP—DIRECTOR—TRUSTEE—BREACH OF TRUST—BROKERAGE.

*In re Faure Electric Co.*, 40 Chy. D. 141, was an application in a winding up proceeding against directors to make them liable for alleged acts of misfeasance in the execution of their office. The articles of association provided that no transfers of shares not fully paid up should be registered unless "approved" by the directors. M., a stock jobber, offered to take a large number of £10 shares at par, paying £2 per share at once, provided the directors paid a commission to the stock-broker who had introduced the shares to him. The directors agreed to this and allotted the shares to M., he paying £2 per share, and they paid a commission of 2s. 6d. per share to the broker, the total amount of the commission so paid being £937 10s. M. subsequently transferred the shares to P., who was already a shareholder and had recently been elected a director, and the directors sanction the transfer, believing P. was a proper person to take a transfer of the shares, and having been advised by their solicitor that there was no valid objection to it. P. afterwards became bankrupt, being indebted to the company in the balance

of £8 per share. The company having been ordered to be wound up, the liquidators claimed to recover from the directors damages for sanctioning the transfer to P., and also repayment of the commission paid to the broker as being *ultra vires*. Upon the evidence it was held by Kay, J., that the directors had duly exercised their judgment in approving of the transfer of the shares to P., and were not liable for any damages resulting therefrom, no dishonest dealing being charged; but the payment of the commission he held to be *ultra vires*, and ordered it to be refunded with interest.

WILL—CONSTRUCTION—RESIDUE—INTESTACY—GIFT OF RESIDUE "TO EXECUTORS OF EXECUTORS OR ADMINISTRATORS OF M. AND J."—GIFT OF RESIDUE BY J. TO TESTATOR.

*In re Valdez*, 40 Chy. D. 159, presents a somewhat curious state of facts. One Valdez, who died 5th June, 1887, by his will dated 17th November, 1851, bequeathed the residue of his estate to Mary Hunter and Jemima Hunter, whom he appointed his executors, and in case of their decease in his lifetime then he bequeathed what he had bequeathed to them to their executors or administrators. Jemima Hunter died in the lifetime of Valdez on the 21st November, 1855, and by her will she bequeathed her residuary estate to Valdez. Mary Hunter died 15th July, 1887, and the petitioner as her administrator duly proved the will of Valdez; and the question was whether or not Valdez was to be considered to have died testate or intestate as regards the moiety of the residue of his estate which he had purported to bequeath to Jemima Hunter, and which under the residuary devise in her will would return to him. Kay, J., held that as to this moiety he must, in the events which had happened, be deemed to have died intestate, and that as the property was not required to pay the debts of Jemima Hunter, it was equivalent to a gift to her executors in trust for Valdez himself.

MARRIED WOMAN—CHOSE IN ACTION—TITLE OF HUSBAND—PROBATE OF INVALID WILL OF MARRIED WOMAN—ACTION BY HUSBAND AGAINST EXECUTOR OF HIS WIFE.

*Smart* v. *Trauter*, 40 Chy. D. 165, is a case which shows that the old practice of turning a suitor out of Court because he has mistaken his forum is even yet not quite a thing of the past. In this case the action was brought by a widower against the executor of his deceased wife, claiming to be entitled to her *choses in action* on the ground that his wife had no separate property and no testamentary capacity by assent of her husband or otherwise; but it was held by Kay, J., that the husband suing the executor in the Chancery Division must treat the will as valid, and that in order to establish his right to the *choses in action* he must take proceedings in the Probate Division to recall the probate, and obtain letters of administration to his deceased wife.

# Proceedings of Law Societies.

## *LAW SOCIETY OF UPPER CANADA.*

The following is a *résumé* of the proceedings of Convocation on the 4th day of January and during Hilary Term, 1889.

*Friday, 4th January.*

Convocation met.

*Present*—Sir Alexander Campbell, and Messrs. Beaty, Cameron, Ferguson, Foy, Guthrie, Hardy, Irving, Kerr, Kingsmill, Lash, Mowat, Martin, Mackelcan, Meredith, Moss, Murray, Shepley, Smith.

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

The minutes of last meeting of Convocation were read and approved.

The Secretary read the letter of the Treasurer *re* Mr. J. G. Currie, and informed Convocation that Mr. Currie's application for re-instatement on the Roll of Solicitors was enlarged until 8th inst., to give the Society an opportunity of appearing on the motion.

Mr. Currie's petition for re-instatement and affidavits in support of it, were laid on the table.

Ordered, that the matter be referred to the Discipline Committee, with power to act as they deem proper.

Mr. Martin then brought up the consideration of the resolutions for the establishment of the Law School, specially appointed as the first order of the day.

Mr. Martin moved the adoption of paragraph 2 as a whole.

Mr. Meredith, seconded by Mr. Beaty, moved in substitution :

"That it is not expedient at present to express an opinion as to the desirability of entering into arrangements with any University for the joint education of students."

*Yeas*—Messrs. Moss, Meredith, Beaty, Lash, Smith, Kingsmill, Hardy, Kerr.—8.

*Nays*—Messrs. Martin, Shepley, Murray, Ferguson, Foy, Mackelcan, Sir A. Campbell.—7.

The amendment of Mr. Meredith carried.

Mr. Martin moved, seconded by Mr. Shepley, the adoption of the 3rd paragraph as amended. *Carried.*

Mr. Martin moved the adoption of the 5th paragraph. *Carried.*

Mr. Martin, duly seconded, moved the adoption of the 6th paragraph as amended.

Mr. Meredith moved, seconded by Mr. Hardy :

"That the 6th paragraph of the report be amended by striking out all the words after the word 'courses' in the third line, and substituting the following : 'All other students shall not be required, but shall be permitted, if they so desire, to attend the lectures and other methods of instruction.'" *Lost.*

*Yeas*—Messrs. Meredith, Hardy, Mackelcan, Guthrie.—4.

*Nays*—Messrs. Moss, Martin, Shepley, Murray, Ferguson, Beaty, Lash, Smith, Kingsmill, Foy, Kerr, Sir A. Campbell.—12.

Mr. Hardy moved, seconded by Mr. Lash:

"That the words 'two courses' in the last line of the 6th paragraph, as it appears in its amended form, be struck out, and the words 'one course' be substituted therefor."

*Yeas*—Messrs. Meredith, Beaty, Lash, Hardy, Mackelcan, Guthrie.—6.

*Nays*—Messrs. Moss, Martin, Shepley, Murray, Ferguson, Smith, Kingsmill, Foy, Kerr, Sir A. Campbell.—10.

Mr. Martin then moved the adoption of the 6th paragraph, as follows:

The attendance at the lectures and other methods of instruction shall be compulsory, as follows:

"Students under service or in attendance in Toronto during the last two years of their course and more shall be required to take three courses. All other students shall be required to take two courses."

The 6th paragraph in this form was carried.

The 7th paragraph was carried, Mr. Meredith voting against it.

The 8th paragraph was carried.

The 8th *a* paragraph was carried.

The 9th paragraph was carried.

The further consideration of the Report and Resolutions *re* the Law School was adjourned until the first Wednesday in Hilary Term (6th February, 1889), and a call of the Bench ordered for that day.

Ordered, that the Secretary do cause to be printed the proceedings of to-day, and do distribute the same to the Benchers.

The Rule relating to the loaning of books from the Library, which was read a first time on 26th December, was read a second and third time, was adopted and is as follows:—

RULE.

1. Text books of which duplicates are in the Library, at least one copy of the latest edition being always retained there.

2. Legal periodicals as follows:—*Albany Law Journal, American Law Register, American Law Review, Bookseller (The English), Canada Health Journal, Central Law Journal, Criminal Law Magazine, Gibson's Law Notes, Irish Law Times, Journal of Jurisprudence, Law Journal* (English paper, not Law Journal Reports), *Law Magazine and Review, Library Journal, Law Times* (English paper, not Law Time Reports), *Legal News, Lower Canada Jurist* (not Reports), *Law Quarterly Review* (Pollock), *Literary News, Solicitor's Journal*, may be taken over night, to be returned at the next morning's opening of the Library.

Books relating to literature other than legal literature, may be taken for a week, this definition not to include Books of Reference, Dictionaries and Encyclopædias.

The above named books are available to Barristers and Solicitors who are members of the Law Society only, upon application to the Librarian, whose duty it shall be to issue them on such application, if the applicant shall not have disregarded these rules previously, taking a receipt on which shall be recorded the time of the return of the book and its condition.

Convocation adjourned.

---

## HILARY TERM, 1889.

During the above Term the following gentlemen were called to the Bar, viz.:

*February 4th.*—Michael Herman Ludwig, with honors and gold medal;

Malcolm Wright, William Charles Fitzgerald, John Frederick Gregory, William Samuel Bagsley Hall, James Robinson, Joseph Tweedale Kirkland, William McBeth Sutherland, Arnold Morphy, William Ernest Hastings, William Heber Campbell, Donald Livingston Sinclair, Charles Alexander Ghent, Colin McIntosh, William Edgett Tisdale, Frank William Carey, Franklin Smoke, Alexander Gray Farrell, Heber Stuart Warner Livingston, Samuel W—— McKeown.

*February 5th.*—John Wesley Ryerson, John B—— McColl, Archibald Weir.

*February 9th.*—Christopher Robinson Boulton, David Stevenson Wallbridge.

The following gentlemen were granted Certificates of Fitness as Solicitors, viz.:

*February 4th.*—A. Morphy, W. E. Tisdale, W. E. Fitzgerald, J. F. Gregory, F. B. Denton, A. Saunders, R. Ruddy, F. Rohleder, J. B. McColl, D. S. Wallbridge.

*February 5th.*—F. Smoke, J. W. Coe, C. McIntosh, A. F. Lobb.

*February 9th.*—E. H. Jackes.

The following candidates passed the Second Intermediate Examination, viz.:

A. W. Anglin, with honors, 1st scholarship; J. B. Holden, with honors, 2nd scholarship; J. H. Denton, with honors, 3rd scholarship; R. E. Gemmill, J. F. Orde, with honors; and M. Murdoch, A. Constantineau, A. J. Armstrong, F. J. Roche, W. J. Williams, H. Armstrong, W. L. E. Marsh, J. Agnew, J. J. O'Meara, F. L. Webb, A. E. Slater, D. W. Baxter, C. Stiles, H. Macdonald, E. S. B. Cronyn, W. Carnew, R. S. Chappell, R. Barrie, J. R. Layton, J. A. Webster, E. G. P. Pickup, A. C. Sutton, A. F. Wilson, R. A. Widdowson, I. Greenizen, A. M. Macdonell, J. A. Ritchie, T. W. Horn, N. Mills, H. P. Thomas, A. Elliot, P. K. Halpin, J. F. Hare, J. Knowles, A. Purdom.

The following candidates passed the First Intermediate Examination, viz.:—

W. G. Owens, with honors, 1st scholarship; N. Simpson with honors, 2nd scholarship; R. McKay and J. J. Warren, with honors, and one-half of 3rd scholarship to each; W Campbell, N. B. Gash and C. P. Blair, with honors; R. Parker, O. Watson, W. Davis, A. B. Armstrong, F. R. Martin, L. A. Smith, K. H. Cameron, A. A. Smith, J. McBride, A. R. Walker, J. G. Farmer, S. A. C. Greene, P. E. Ritchie, A. S. Burnham, R. H. McConnell, P. A. Malcomson, S. F. Evans C. B. Rae, R. A. Hunt, A. A. Roberts, W. C. McCarthy, F. W. Wilson, J. McEwen, F. C. Cousins, J. H. D. Hulme, C. J. Lucy, T. B. P. Stewart, W. H. Williams.

The following candidates were entered on the books as Students-at-Law and Articled Clerks, viz.:—

*Graduates.*—William Henry Doel, Cyril Haughton McGee.

*Matriculants.*—George Augustus Harcourt, Frederick Davy Diamond, John Daly Hamilton, David Plewes.

*Juniors.*—James Clayton Haight, John Ewart Irving, Willard Leroy Phelps, John Sutherland McKay, George Henry Donogh Lee, Albert Forester McMichael, Charles Francis Ellerby Evans, Robert Bradford, Benjamin Tureaund.

*Articled Clerks.*—George Johnston Ashworth, William Edward Vincent Kelleher.

*Monday, 4th February.*

Convocation met.

*Present*—The Treasurer, and Messrs. Beaty, Ferguson, Fraser, Hoskin, Irving, Kingsmill, Meredith, Moss, Murray, Shepley.

The minutes of last meeting were read and approved.

The Report of the Special Committee as to honors and scholarships in connection with call to the Bar was received and read.

Ordered for immediate consideration and adopted.

Ordered that M. H. Ludwig be called to the Bar with honors and receive a gold medal.

Ordered that the Secretary do give notice that candidates for call to the Bar, who desire to be called, do attend on the first day of Term at 11.45 a.m., punctually.

Ordered that the Reports of the Examiners on the Intermediate Examinations, presented on first day of Term, be deferred to the second day of each Term, and be taken up with the Report on Special Cases on that day.

The Report of the Special Committee on honors and scholarships in connection with the First Intermediate Examination was received and read.

Ordered that Messrs. Owens, Simpson, McKay, Warren, Campbell, Gash and Blair be declared to have passed the First Intermediate Examination with honors.

Ordered that W. G. Owens receive a scholarship of one hundred dollars, N. Simpson a scholarship of sixty dollars, and that R. McKay and J. J. Warren, being equal, do receive a scholarship of forty dollars, to be divided between them.

Mr. Murray presented the Report of the Finance Committee as follows:—

1. They have caused a balance sheet showing the receipts and expenditure for 1888, to be prepared and audited by the Society's auditor.

2. They have also prepared a sheet showing the estimates for the year 1889, and submit the same herewith.

3. Your Committee have had under consideration the question of the salary of Mr. Grasett, the first General Assistant of the Secretary, and your Committee recommend to Convocation that the salary of Mr. Grasett be increased from eight hundred to one thousand dollars per annum, such increase to commence from the first day of July, 1888.

February 4th, 1889.

The report was received and read.

Ordered that it be considered forthwith paragraph by paragraph.

Ordered that the consideration of the first and second paragraphs be deferred till to-morrow.

The third paragraph was adopted.

---

ABSTRACT OF BALANCE SHEET FOR 1888.

*Receipts.*

| | | |
|---|---|---|
| Certificate and Term Fees | $22,507 47 | |
| Less Fees returned | 124 75 | |
| | | $22,382 72 |
| Notice Fees | $706 00 | |
| Less Fees returned | 1 00 | |
| | | 705 00 |
| Attorneys' Examination Fees | $7,607 00 | |
| Less Fees returned | 1,402 50 | |
| | | 6,204 50 |

| | | |
|---|---|---|
| Students' Admission Fees | $8,529 00 | |
| Less Fees returned | 839 00 | |
| | | $7,690 00 |
| Call Fees | $12,659 00 | |
| Less Fees returned | 1,623 00 | |
| | | 11,036 00 |
| Interest and Dividends | | 3,752 97 |
| SUNDRIES:— | | |
| Fees on Petitions, Diplomas, etc. | | 159 00 |
| Fines, Lending Library Account | | 15 90 |
| Fees, Telephone Office | | 186 14 |
| Rowsell & Co., Reports sold | $1,001 65 | |
| " " Digests " | 2,462 22 | |
| | | 3,463 87 |
| Conscience Money | | 10 00 |
| | | $55,606 10 |

*Expenditure.*

| | | |
|---|---|---|
| REPORTING:— | | |
| Salaries | $9,021 92 | |
| Printing—Reports, $7,906.22; Digest, $1,484.67 | 9,390 89 | |
| Disbursement, re Election Reports | 50 00 | |
| Notes for Law Journal | 298 08 | |
| | | $18,760 |
| EXAMINATIONS:— | | |
| Salaries | $3,200 00 | |
| Scholarships, $1,400; Special Examination re same, $37.30 | 1,437 30 | |
| Printing and Stationery | 277 80 | |
| Examiners for Matriculation | 324 00 | |
| Law Journal Account | 100 00 | |
| | | 5,339 10 |
| LIBRARY:— | | |
| Books, Binding, and Repairs at Osgoode Hall Library | | 3,308 22 |
| County Libraries Aid | | 4,276 00 |
| GENERAL EXPENSES:— | | |
| Salaries— | | |
| Secretary and Librarian | $2,000 00 | |
| Assistants | 1,400 00 | |
| Housekeeper | 525 00 | |
| | | 3,925 00 |
| Lighting, Heating, Water, and Insurance— | | |
| Gas | $311 85 | |
| Water | 128 14 | |
| Insurance (for three years) | 990 00 | |
| Ontario Government, for Steam Heating | 850 00 | |
| Fuel | 255 13 | |
| Repairs to Apparatus | 63 38 | |
| | | 2,598 50 |
| Grounds— | | |
| Gardener | $317 73 | |
| Labor | 360 00 | |
| Snow Clearing | 35 35 | |
| | | 713 08 |
| SUNDRIES:— | | |
| Postage | $ 88 20 | |
| Advertising | 30 00 | |
| Stationery, Printing, etc | 428 71 | |
| Law Costs | 607 22 | |
| Furniture, Ordinary, $1,288.61; Book Cases, for re-arrangement of Library, $1,405.60 | 2,694 21 | |
| Portraits: Galt, C. J.; Armour, C. J. | 800 00 | |
| Roberts, renovating, $14.00, and moving pictures, $10.75 | 24 75 | |
| Guarantee Co. | 20 00 | |

| | | |
|---|---|---|
| Auditor | $100 00 | |
| Term Lunches (83 Meetings) | 892 32 | |
| Ice | 17 50 | |
| Telephone Office, $60; additional grant, Miss Cameron, $72 | 674 00 | |
| Stenographers, for Discipline Committee | 32 00 | |
| Repairs, $12.37; Tenant (Carpenter) $68.59; Door Springs, $28.95 | 269 91 | |
| Legal Charts, $100; Printing Resumé, $42; Ontario Directory, $5 | 147 00 | |
| Expenses, Grasett, *re* Solicitors in default | 134 20 | |
| Attending to Clocks | 10 00 | |
| Keys, Locks, and Paper, for Lavatory, $48.50; Soap for same $17.35 | 65 85 | |
| Brooms and Soap for house cleaning | 22 70 | |
| Dusting Books, $25.65; Oiling floor, $8.00 | 33 65 | |
| Petty Charges | 60 42 | |
| | | $7,142 64 |
| | | $46,063 43 |
| Balance | | 9,542 67 |
| | | $55,606 10 |

Audited and found correct.

HENRY WM. EDDIS, *Auditor.*

TORONTO, 29th January, 1889.

---

## ESTIMATES FOR 1889.

*Receipts.*

| | | |
|---|---|---|
| Certificate and Term Fees | $22,300 00 | |
| Notice Fees | 625 00 | |
| Attorneys' Examination Fees | 6,000 00 | |
| Students' Admission Fees | 6,500 00 | |
| Call Fees | 8,500 00 | |
| Interest and Dividends | 3,750 00 | |
| SUNDRIES:— | | |
| Petitions and Diplomas | 150 00 | |
| Fines on Books not Returned on Time | 15 00 | |
| Reports Sold | 350 00 | |
| Digests Sold | 100 00 | |
| Telephone Receipts | 200 00 | |
| | | $48,490 00 |

*Expenditure.*

| | | |
|---|---|---|
| REPORTING:— | | |
| Salaries | $9,700 00 | |
| Printing | 5,600 00 | |
| Notes for Law Journal | 300 00 | |
| | | 15,600 0 |
| EXAMINATIONS:— | | |
| Salaries | $3,200 00 | |
| Scholarships | 1,600 00 | |
| Printing and Stationery | 275 00 | |
| " " for Examination in connection with Law School | 300 00 | |
| Prizes | 50 00 | |
| Examiners for Matriculation | 350 00 | |
| Law Journal Account, Advertising | 100 00 | |
| Medals | 150 00 | |
| | | 6,025 00 |

| | | |
|---|---|---|
| LIBRARIES :— | | |
| Osgoode Hall, Books, Binding, and Repairs | $3,500 00 | |
| Book Cases in connection with Improvements | 900 00 | |
| County Libraries Aid | 2,400 00 | |
| Inspector of County Libraries | 100 00 | |
| | | $6,900 00 |
| GENERAL EXPENSES :— | | |
| Salaries— | | |
| Secretary and Librarian | $2,000 00 | |
| Assistants | 1,600 00 | |
| Arrears, Grasett's increase, $100 | 100 00 | |
| Housekeeper | 525 00 | |
| | | 4,225 00 |
| Lighting, Heating, Water, and Insurance— | | |
| Gas | $300 00 | |
| Water | 100 00 | |
| Insurance on Stock of Reports | 90 00 | |
| Payment to Government for Steam Heating | 850 00 | |
| Fuel | 250 00 | |
| Repairs to Apparatus | 50 00 | |
| | | 1,640 00 |
| Grounds— | | |
| Gardener, Contract, $260; Flowers, [illegible] | $300 00 | |
| Labor, P. O'Brien | 360 00 | |
| Snow Clearing | 40 00 | |
| | | 700 00 |
| REPAIRS AND FURNITURE :— | | |
| Repairs | $250 00 | |
| Furniture | 100 00 | |
| Picture Frames, Galt C.J., Armour C.J. | 178 00 | |
| | | 528 00 |
| STATIONERY, ADVERTISING, &c. :— | | |
| Postages | $ 90 00 | |
| Advertising | 40 00 | |
| Stationery and Printing, General Account | 100 00 | |
| Resumé | 40 00 | |
| Copies for distribution | 15 00 | |
| Stenographer for Discipline Committee | 40 00 | |
| Legal Chart | 100 00 | |
| Directory | 5 00 | |
| | | 430 00 |
| Law Costs | $1,250 00 | |
| Guarantee Co., half premium | 20 00 | |
| Auditor | 100 00 | |
| Term and Committee Lunches | 900 00 | |
| Ice | 20 00 | |
| Telephone Office | 650 00 | |
| 100 keys for Lavatory | 15 00 | |
| Soap " | 15 00 | |
| Brooms and Soap for Cleaning Building | 20 00 | |
| Dusting Books, $25; Oiling Floor, $10 | 35 00 | |
| Petty Charges | 50 00 | |
| | | 3,075 00 |
| Estimated Balance | | 9,367 00 |
| | | $48,490 00 |

Mr. Murray presented the Report of the Finance Committee on the subject of proceedings to be taken against certain members of the Society.

The Report was received and read, and consideration ordered to be deferred.

Mr. Murray also presented a Report on the subject of G. M. Gardner's case and the letters of the Solicitor.

Ordered that the Report be referred back to the Finance Committee with instructions to communicate with the Solicitor and to report fully on the whole matter forthwith.

Ordered that in future all matters in which special litigation is suggested be referred to the Discipline Committee for a special report before proceedings are taken.

Ordered that the matters referred to in the Report of the Finance Committee as to proceedings to be taken against certain members, be referred to the Discipline Committee for report.

*Tuesday, 5th February.*

Convocation met.

*Present*—Messrs. Bruce, Hoskin, Irving, Kerr, Kingsmill, Mackelcan, Martin, Meredith, Moss, Murray, Osler, and Shepley.

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

The minutes of last meeting were read and approved.

The letter of 30th January last, addressed by Mr. J. A. Macdonell to Convocation, was considered.

Ordered that it be referred to a Committee composed of Messrs. Hoskin, Irving, Meredith, Moss, Osler, and Robinson, to report to Convocation as to whether there is any rule or usage with reference to a Member of Convocation holding a brief or acting as counsel or solicitor against the Society in proceedings to which it is a party, or in which it is concerned, and to make such recommendations or suggestions with regard to the question as may appear to them to be proper.

Two other letters from Mr. Macdonell, of 4th February, were read, the consideration of which was deferred until the Committee above mentioned have reported.

Ordered that the judgment of the Q. B. Division in the case of Mr. J. B. Hands be appealed and that the Solicitor be instructed to take the necessary steps.

The consideration of the first two paragraphs of the Finance Committee's Report on the Balance Sheet and Estimates was proceeded with and adopted.

Ordered that the Balance Sheets and Estimates be entered upon the journals of Convocation.

*Wednesday, 6th February.*

Convocation met.

*Present*—Messrs. Beaty, Bruce, Ferguson, Foy, Hudspeth, Irving, Kerr, Kingsmill, Martin, Moss, Osler, Purdom, Robinson, Shepley.

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

The minutes of last meeting were read and approved.

Convocation proceeded with the consideration of the resolutions relating to the Law School.

Resolutions and expressions of opinion from London, Simcoe, and the Osgoode Legal and Literary Society, were read.

The consideration of the Report of the Special Committee was then proceeded with and the following resolutions adopted :

That the Principal of the Law School shall be a Barrister who has been called not less than ten years, and that his salary shall be not less than $3,500 a year.—*Carried.*

That there shall be at least two Lecturers who shall each be paid salaries not exceeding $800 for each year.—*Carried.*

That there shall be two Examiners who shall each be paid salaries not exceeding $500 for each year.—*Carried.*

That the Student's fee shall be $20 in advance for each year.

It was then ordered that the further consideration of the Report and the re-organization of the Law School do stand until Friday, 15th February, and that the Secretary do cause to be printed the resolutions relating to the Law School so far as they have been adopted, and that a copy be sent to each member of Convocation with the notices of motion to be made on the further consideration of this matter, as follows :—

NOTICES OF MOTION FOR FRIDAY, 15TH FEBRUARY, 1889.

A.—Mr. Meredith gave notice that he would move :

That where any University of this Province had established a Law Faculty, and provided for a Course of Instruction and Lectures thereat, similar to those adopted at the Law School and to the satisfaction of Convocation, such Law Faculty may be constituted a branch Law School, and it shall be optional with the Students who are required to attend the Law School, to attend the Course of Instruction and Lectures at such branch School, and such University shall be entitled to receive and be paid out of the funds of the Law Society for each Student attending the said course in each and every term during which he attended, the sum of twenty dollars towards defraying the expenses of the University in providing such Course of Instruction and Lectures, the remainder of which shall be borne by the University and such branch Law School may be further aided as Convocation may from time to time determine.

B.—Mr. Meredith gave notice that he would move :

That attendance at the Lectures and other methods of instructions should not be compulsory on Students who are or shall be at the time these resolutions go into effect, under service.

C.—Mr. Moss gave notice that he would move (for discussion only):

That Students should not be required to be under service while attending said School, but that the time they are in attendance should be allowed as part of the three or five years, as the case may be, now required by the Students to be under articles.

D.—Mr. Osler gave notice that he would move, by way of reconsideration :

That the annual fee of twenty dollars to be paid by Students, be reduced to ten dollars for each year, or that when the Student shall have passed his final Examination for Call, the sum of ten dollars in respect of each annual fee of twenty dollars which he shall have paid as fees in attendance at the Law School, shall be credited to him upon his fees then payable.

*Saturday, 9th February.*

Convocation met.

*Present*—Messrs. Hoskin, Irving, McCarthy, McMichael, Meredith, Morris, Murray, Osler, Robinson, Shepley.

Mr. Irving was appointed Chairman in the absence of the Treasurer.

The minutes of last meeting were read and approved.

Mr. Hoskin presented the Report of the Special Committee (appointed on the 6th instant) to consider the position of Members of Convocation in proceedings before the Courts in which the Law Society is a party.

The Report was received, ordered for consideration and adopted.

Mr. Osler, from the Special Committee on Honors and Scholarships in connection with the Second Intermediate Examination, reported as follows:—

That Messrs. Anglin, Holden, Denton, Gemmill, and Orde passed the Second Intermediate Examination with Honors, and that A. W. Anglin is entitled to a Scholarship of one hundred dollars, J. B. Holden to a Scholarship of sixty dollars, and J. H. Denton to a Scholarship of forty dollars.

The Report was adopted and ordered accordingly.

Mr. Hoskin drew attention to a resolution of the County of York Law Association, forwarded by Mr. Barwick, the Secretary of the Association, drawing the attention of Convocation to the application of G. M. Gardner to the Legislature for an Act authorizing his admission as a Solicitor.

Ordered that a Committee consisting of Messrs. Irving and Hoskin be appointed to watch the legislation referred to.

Ordered that the Finance Committee report to Convocation the estimated cost of opening the Library at night, except during the long vacation, from 7.30 p.m. to 10.30 p.m.

The resignation of Mr. Osler as a member of the Legal Education Committee was accepted, and Mr. Osler proposed, with the concurrence of the Chairman, Mr. Moss, Mr. Kingsmill as a member of that Committee in his place. —*Carried.*

The Finance Committee was discharged from reporting upon the subject of G. M. Gardner, which was referred to them by Convocation on the 4th inst.

*Friday, 15th February.*

Convocation met.

*Present*—The Treasurer and Messrs. Beaty, Britton, Bruce, Cameron, Foy, Guthrie, Hoskin, Irving, Kerr, Kingsmill, Mackelcan, Martin, McMichael, Morris, Moss, Murray, Osler, Purdom, Robinson, Shepley, Smith.

The minutes of last meeting were read and approved.

Mr. Moss presented the Report of the Legal Education Committee.

In the case of George G. Martin, recommending that before his Certificate of Fitness be granted, he be required to produce a certificate of the County Judge or Junior Judge of Kent, and of three senior out of five senior members of the profession practising in Chatham, in the terms of Schedule "B," in lieu of the usual certificate from the late Patrick McGregor.

In the case of A. L. Baird, recommending that he be required to place himself under articles for three months and twenty-four days, and that his examination do stand for favorable consideration after proof of service under such articles.

In the case of W. M. Sutherland, recommending that he be required to place himself under articles for six months and six days, and that his examination do stand for consideration until after proof of such service—it being considered premature to now express any opinion thereon.

The Report was ordered for immediate consideration and adopted.

Mr. Murray, from the Finance Committee, reported, recommending that $20,000 be at once invested in debentures.

Ordered for immediate consideration.

Ordered that $20,000 be invested in Loan Companies' debentures at not less than 4½ per cent. interest.

Mr. Irving, from the Library Improvement Committee, reported as to the arrangement proposed to be made of the books on the new shelving.

The Report was ordered for immediate consideration and adopted, save as to the paragraph number 5. As to it, it was ordered that the Committee have power to remove all but the frame work of the southern alcoves.

The letter of Mr. J. T. C. Holden was read and received.

Ordered that it be referred to the Finance Committee, with power to act after due enquiry.

A letter from Mr. J. A. Macdonell was read and received.

The question of the Law School, ordered to stand for this day, was then taken up.

Mr. Purdom (for Mr. Meredith) moved the resolution of which he had given notice, in the following words:

That where any University of this Province had established a Law Faculty, and provided for a Course of Instruction and Lectures thereat, similar to those adopted at the Law School and to the satisfaction of Convocation, such Law Faculty may be constituted a branch Law School, and it shall be optional with the Students who are required to attend the Law School, to attend the Course of Instruction and Lectures at such branch School, and such University shall be entitled to receive and be paid out of the funds of the Law Society for each Student attending the said course in each and every term during which he attended, the sum of twenty dollars towards defraying the expenses of the University in providing such Course of Instruction and Lectures, the remainder of which shall be borne by the University, and such branch Law School may be further aided as Convocation may from time to time determine.

That attendance at the Lectures and other methods of instructions should not be compulsory on Students who are or shall be at the time these resolutions go into effect, under service.

Mr. Osler moved in amendment to Mr. Purdom's motion:

That where any County Law Association in this Province, except in the County of York, either in conjunction with any University or otherwise, establishes a local Law School and provides for a Course of Instruction and Lectures thereat similar to those adopted at the Law School and to the satisfaction of Convocation, such local School may be constituted a branch Law School and shall be under the supervision of the Principal, who shall, under direction of Convocation, aid by Lectures and otherwise in the Course of Instruction thereat, and it shall be optional with the Students who are required to attend the Law School to attend the Course of Instruction and Lectures at such branch School. The examinations and certificates connected with such branch Law School shall be the same as in the case of those Students and Clerks who attend the Law School at Toronto, and such branch School shall be entitled to receive such financial aid from the Law Society as may be agreed upon between the Law Society and the County Law Associations, but not less than the yearly fees payable by the Students attending such branch School.

Mr. Purdom withdrew his resolution in favor of Mr. Osler's, which became the main motion.—*Lost.*

Mr. Martin moved that the following resolution be substituted for clause 1:

The Law School should be thoroughly re-organized and continued independently of any University, and it is not desirable to shorten in any way the period of study or service of Students.

Mr. Moss, seconded by Mr. Britton, moved in amendment to add the following words:

And that where any University of this Province has established a Law Faculty and provided for a Course of Instruction and Lectures thereat, similar to those adopted at the

Law School and to the satisfaction of Convocation, the attendance of a Student upon one of such Courses of Instruction and Lectures shall be accepted in lieu of attendance upon one of the Courses prescribed in the Law School.

Mr. Meredith, seconded by Dr. Smith, moved in amendment to the amendment,

That all the words in the proposed amendment after the word "Convocation" be struck out, and the following substituted therefor:

The attendance of a Student upon such Course of Instruction and Lectures shall be accepted in lieu of the like attendance upon the course prescribed in the Law School.—*Lost.*

Mr. Moss' amendment was carried.

The main motion was carried as amended.

Mr. Moss moved:

That the actual time Students attend at the Law School count as part of the term of service under articles or under clause 5.—*Carried.*

Mr. Meredith moved that attendance at the Lectures and other methods of instruction should not be compulsory on Students who are or shall be at the time these resolutions go into effect, under service.

Mr. Britton moved in amendment as follows:—

That the Rules to be founded upon these resolutions shall provide in some fair and reasonable way for Students under service at the time the rules come into force.—*Carried.*

Mr. Osler moved by way of reconsideration, that the annual fee of twenty dollars to be paid by Students, as provided by the 12th resolution, be reduced to ten dollars.

Mr. Irving moved in amendment:—

That the fee collected for each Term be returned to the Student when called to the degree of Barrister or admitted as a Solicitor, then to be allowed on account of the fees then payable.

Mr. Meredith moved in amendment to the amendment that no fee be payable by Students.—*Lost.*

The main motion was carried.

Mr. Martin moved that it be referred to a select Committee composed of Messrs. Hoskin, Lash, Osler, Shepley, Kerr and the mover, of whom three shall be a quorum, to frame draft rules to carry out the foregoing resolutions, and that such draft rules be printed and circulated before next Term.—*Carried unanimously.*

Mr. Osler gave notice for the second day of next Term of the following motion:—

That in view of the proposed establishment of a Law School under lines of the resolutions passed, it will be expedient to appoint a Committe to report on the accommodation required, and to report if it is necessary to erect a special building for the School.

Ordered that it be a direction to the Finance Committee to enquire and report whether further accommodation can be provided in Osgoode Hall for the clothing of practitioners in attendance at the Hall.

Convocation adjourned.

# Notes on Exchanges and Legal Scrap Book.

AMERICAN MARRIAGE LAW.—There are thirty-eight States in the American Union, and in no two are the laws of marriage and divorce alike. Even as regards the age at which marriage is legal they differ—some fixing the old absurd English limits of fourteen and twelve, while in others the husband must be twenty-one and the wife eighteen. In New Hampshire, Ohio, and Indiana, first cousins may not marry; in Nevada and Washington the same rule exists. The people of Vermont must be credited with peculiar, not to say morbid, tastes, for their Legislature has passed a solemn Act prohibiting a man from marrying his mother-in-law. In France such a statute would throw a charm around the forbidden fruit, on the principle that induced a witty and profane French lady, drinking a glass of deliciously cool water on a hot day, to say, "Oh, if this were only a sin!" In three or four Western States marriage with a Chinaman or a person of Chinese blood is illegal, while corresponding restrictions attach in most of the Southern States to alliance with black blood, even when it is attenuated, as in the veins of an octoroon. In Pennsylvania and Tennessee there is special legislation following in the lines of the "leading case" of Enoch Arden. If a man or woman is deserted, and believes that the deserting wife or husband is dead, he or she may legally marry again, and no prosecution for bigamy can follow; but, oddly enough, the first husband returning may reclaim his wife or let her alone—the same option being extended to a recurrent wife. Mr. H. A. Smith, who has collected these and other curiosities of American law, adds on this point: "Supposing a woman to have a penchant for men with migratory instincts abnormally developed, she might well have as many husbands as the Samaritan, and all of them lawful, without any assistance from Death, and then might, after all, return to her first choice. The family relationships arising in such a case would give fine scope for the ingenuity of the cornerman conundrum-inventor of negro minstrelsy." In addition to diversity in the laws of marriage, there are infinite varieties of divorce. In South Carolina alone is marriage indissoluble. In North Carolina, Kentucky, and Tennessee the law is much the same as in England at the present day. In other States desertion for five, three or in some places for two years, will suffice for a final severance of the matrimonial chain. In Florida a man, or for the matter of that, a woman, must be very careful, for the "mere habit of violent temper" will justify a decree. "Habitual drunkenness," defined in different ways, is in many States a valid plea; and conviction of a serious offence is also sufficient. In Wisconsin and Nebraska, if a husband or wife is for any reason detained for three years in a State prison, the marriage is *ipso facto* dissolved. Failure to support a wife in a proper manner is a cause for divorce in about a dozen States; in California and Dakota "wilful neglect" is enough; in Missouri and Wyoming "vagrancy" is sufficient. In three States if the husband or wife join the Shakers, the other party is free. It will be seen, therefore, that if the Canadians fall captive to the charms of American women, they have large liberty of choice as to the kind of marriage

they would like. An almost endless variety offers itself, from South Carolina, where no divorce is allowed, to West Virginia, where a wife can obtain a dissolution of the contract if she discover that before his marriage her husband's relations to other women were not above reproach. The Canadians themselves know something of these diversities, for the old French law as to marriage still prevails in Lower Canada, while the rest of the Dominion is in the main governed by English laws.—*Daily Telegraph.*

LEGAL EDUCATION IN QUEBEC.—A petition presented by the General Council of the Bar of the Province of Quebec to the legislature of that Province calls forth a warm protest from our contemporary, the *Legal News*. In opposition to a private bill introduced to admit Bachelors of Arts to the study of the law without further examination, the Council says: "The experience of Bar examinations has shown that the university degrees granted in this Province are not always a proof of the qualification of the graduates, especially if one may judge by the degrees granted for legal studies." The petition goes on to say that McGill University grants degrees in arts to all students who complete the course in that faculty, while in the colleges, affiliated to Laval University only a very small number of the students receive degrees, and there are colleges in the Province which have not the right of granting degrees. "It has been found," say the petitioners, "by the experience acquired at Bar examinations, that the classical studies in a great many colleges are not of a sufficiently high degree to allow of their certificates being accepted without further examination; that several sciences which are considered important are greatly neglected in most of the colleges; that the programme and method of examination adopted by the Bar have had the effect of compelling the classical colleges to be more careful with their course of studies, and of compelling the students to follow it more attentively and assiduously." By the profession in Ontario the genesis of this unique production will, we fancy, be explained on one of three suppositions; the colleges and universities of Quebec must give an utterly superficial and useless training; the literary and scientific acquirements demanded of beginners in the study of law must be ridiculously high, higher than in any civilized country in the world; or the General Council of the Bar in that Province is an assembly of egotists unduly elated and inflated with the contemplation of their own importance. The *Legal News* seems to think that ignominious failure would be the fate of the learned members of the General Council of the Bar, if they had to pass the examination for admission which they prescribe for others; "for," says our contemporary, "a school-boy would be covered with disgrace if his composition revealed the faults of grammar which appear in the petition of that august body." It begs them not to make themselves ridiculous by setting up rules which do not exist in any part of the civilized world. No one in Ontario has yet dared to advocate any higher examination in lieu of the "primary" of the Law Society, than matriculation in arts. The day seems to be yet distant when a degree in arts, or an equivalent for it, will be demanded. We wish it was much nearer than it is. But

we think the time will never come when a degree in arts from one of our universities will be rejected as insufficient evidence of knowledge and culture to qualify the applicant for beginning the study of the law. Are the people of Ontario and its professional men inferior in education to those of the sister Province? We certainly think not.

A CONFESSION NOT CONCLUSIVE PROOF OF GUILT.—One of the most remarkable cases in the criminal annals of the present century has lately been disposed of at the Northumberland (England) assizes by Mr. Justice Denman and a jury. The prisoners, Harrison, Gair, and Spratt, were accused of conspiracy and perjury in connection with the Edlingham burglary in 1879. In February of that year two burglars broke into Edlingham Vicarage and wounded the Vicar and his daughter, a crime of which Brannagan and Murphy were convicted in the following April, and sentenced to penal servitude for life. Last year two other men, Edgell and Richardson, came forward and confessed that they were the real culprits. The convicts were pardoned and released, and each of them received a *solatium* of £800 for his nine years in the dungeon. The police were accused of having conspired to convict innocent men, and three of them were indicted, as already mentioned, for conspiracy and perjury. The trial and conviction of Edgell and Richardson upon their own voluntary confession, and their being sentenced to four years' penal servitude, convinced the public that there had been a great miscarriage of justice in the former trial. The weight given to their evidence by reason of the severe punishment to which they were of their own accord exposing themselves, was somewhat detracted from by their admission on cross-examination that they had been assured that as there were two men in prison already for the same crime, they could not be punished if they confessed. At the recent trial all the facts of the original crime were fully gone into, and Mr. Justice Denman declares that there was "a tremendous case" against the original prisoners, nothwithstanding that they had the services of able counsel. The evidence given against them was in some points slightly weakened, but in others it was materially strengthened. Brannagan was identified by the Vicar and his daughter as one of the burglars, and the latter says positively that Edgell was not the man. But the confession and imprisonment of the other two men remains a stubborn fact to be explained. The trial of the police has satisfactorily established one thing, that they did nothing more than their duty in working up the case in 1879. Mr. Justice Denman does not seem to have shared in the general doubt as to which pair of villains, for all of them were admittedly men of depraved character, committed the crime. He says that if Brannagan and Murphy could be tried again, the evidence against them would be ten times stronger than it was ten years ago, and no jury could have had any hesitation in convicting them at that time. The verdict of the jury at the trial of the police for conspiracy was "not guilty," of which Mr. Justice Denman remarked, "a very right verdict, gentlemen, if you will allow me to say so."

## DIARY FOR APRIL.

1. Mon ....County Court Sittings for Motions begin.
2. Tue ....County Court Non-Jury Sittings, except in York.
6. Sat.....County Court Sittings for Motions end.
7. Sun ....*5th Sunday in Lent. Passion Sunday.*
14. Sun ....*6th Sunday in Lent. Palm Sunday.*
15. Mon ....County Court Non-Jury Sittings in York.
19. Fri.....Good Friday.
20. Sat.....Last day for Primary Notices.
21. Sun ....*Easter Sunday.*
22. Mon ....Easter Monday.
23. Tue ....St. George's Day.
25. Thu ....St. Mark.
28. Sun ....*1st Sunday after Easter. Low Sunday.*
30. Tue ....Primary Examination.

# Reports.

## ONTARIO.

### *HIGH COURT OF JUSTICE.*

### CHANCERY DIVISION.

Reported for THE CANADA LAW JOURNAL.

### GRAHAM *v.* DEVLIN.

*Receiver—Share under will—Precatory trust.*

This was a motion to continue the Sheriff of Toronto as receiver of the defendant's share in the estate of his father, under the will of the latter, which devised and bequeathed the testator's realty and personalty to his wife, and expressed a wish that she should divide the estate amongst their children, of whom the defendant was one, before her death.

*Held*, that the motion was practically one to construe a will, which could not be done on motion.

*Held*, also, that it was not shown that there was any estate that could be received.

[FERGUSON, J. March 12.

Motion by the plaintiff, who had obtained judgment against the defendant, for an order continuing the Sheriff of Toronto as receiver of the share of the defendant in the estate of his father, under his will.

The clause of the will under which it was claimed the defendant took an interest was as follows :—"I give, devise and bequeath to my beloved wife Eleanor Devlin all my ready money and securities for moneys that I may die possessed of, for her sole use and benefit, and it is my will and wish that my wife Eleanor Devlin shall divide the real estate and money and securities for money amongst our surviving children before her death."

The material filed by the plaintiff showed that he had obtained judgment for $1,525.40 debt and $222.66 costs against the defendant, and had placed writs of fi. fa. in the sheriff's hands, which were unsatisfied; that the defendant had been examined as a judgment debtor and had deposed that he was unable to satisfy the judgment and had no property. The plaintiff swore that the only way he had of realizing his judgment was by the appointment of a receiver to receive the share of the defendant under the will of his father William Devlin.

It also appeared that the defendant was one of seven children of William and Eleanor Devlin, whose estate amounted to $5,000 or $6,000, and that the defendant had received no part of the estate.

*J. M. Clark*, for the plaintiffs, referred to *Le Marchant* v. *Le Marchant*, L. R. 18 Eq. 214; *Re Hutchings*, W. N. 1887, p. 217; Lewin on Trusts, 8th ed., pp. 130, 387.

*C. J. Holman*, for Eleanor Devlin, referred to *Re Diggles*, 29 Ch. D. 253; *Re Adams*, 27 Ch. D. 398; Jarman on Wills (4th Eng. ed.), p. 396; *Missouri Bank* v. *Raynor*, 7 App. Cas. 321; *Lamb* v. *Eames*, L. R. 10 Eq. 267.

No one appeared for the defendant or the executors of his father, though duly notified.

FERGUSON, J.—This application asks more than any application hitherto. I am really asked to construe a will in a way that at present does not seem to me to be the meaning of it, to make out that the defendant has even a prospective estate of any value whatever. The will cannot be construed upon a motion of this kind at all, I think. The application, in my opinion, fails, for the reason that it is not shown that there is any estate that might or could be received, and the court will not appoint a receiver in a case where it cannot be perceived or it does not appear that any good purpose will be served by so doing. See *Smith* v. *Port Dover, etc., Railway Co.*, in appeal, 12 A. R. 288, and my judgment there, 8 O. R. 256, referring to the case of the late Chief Justice Spragge.

*Motion refused.* *With costs.*

## Early Notes of Canadian Cases.

### *SUPREME COURT OF JUDICATURE FOR ONTARIO.*

### COURT OF APPEAL.

SMITH *v.* MILLIONS.

*Survey—Plan part of description in deed.*

The decision of the Court below (reported 15 O.R. 453) was reversed with costs, this Court being of opinion that having regard to the plan itself the lots must be laid out in rectangular, and not in rhomboidal, shape.

*McVeity*, for the appellant.

*Lash*, Q.C., for the respondent.

McLEAN *v.* BROWN.

*Sale of goods—Material condition in contract—Refusal to accept—Action for deposit and damages.*

This Court being equally divided in opinion, an appeal from the judgment of the Divisional Court of the Chancery Division (reported 15 O.R. 313) was dismissed with costs.

Per HAGARTY, C.J.O., and OSLER, J.A.—The stipulation as to consignment was a condition the breach of which justified the refusal to accept the lambs.

Per BURTON and MACLENNAN, JJ.A.—This stipulation was merely collateral to the contract.

*Osler*, Q.C., for the appellant.

*Aylesworth*, for the respondent.

*Re* McDONAGH AND JEPHSON.

*Creditors' Relief Act—Executions against firm and against individual partners—Sale of firm property—Mode of distribution of proceeds.*

The Creditors' Relief Act is merely intended to abolish priority among execution creditors of the same class, and to alter the legal effect of the executions themselves or to effect a distribution of separate and partnership assets in the manner in which such assets are administered in bankruptcy.

There were in the sheriff's executions (1) against R. alone; (2) against R., J. J. and G. J. on a joint note given by them for the price of a horse, J. J. being merely a surety for R. and G. J., who bought the horse as partners and held it as partnership property; (3) against G. J. and R. on a joint note given by them for the price of a threshing machine purchased for the purpose of being used in another partnership business carried on by them quite distinct from that partnership business to which the horse belonged; and (4) against G. J. and R. on a joint note in which R. was surety only for G. J. The horse was seized and sold.

*Held*, reversing the decision of the County Court of the County of Huron, that the proceeds of this sale were distributable rateably among the execution creditors (2) and (3).

*Moss*, Q.C., and *Chisholm*, for the appellants.

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

BARTRAM *v.* HILL.

*Sale of goods—Contract induced by false pretences—Purchaser for value without notice.*

The plaintiff exchanged with one H. a horse belonging to the plaintiff for a mare supposed to belong to H., and gave H. $10 "to boot." As a matter of fact the mare had been stolen by H., and her owner subsequently reclaimed her. H. sold the horse to the defendant, who had no knowledge of the fraud. H. had not been prosecuted under R.S.C., cap. 174, s. 230.

*Held*, affirming the judgment of the County Court of the County of Brant, that the plaintiff having intended to part absolutely with his property in the horse to H., and the defendant having purchased the horse in good faith, the fact that the transfer to H. was made by way of barter and exchange, and not by way of sale, did not affect the matter, and the plaintiff could not recover.

*Bentley v. Vilmont*, 12 App. Cas. 471, considered.

*MacKenzie*, Q.C., for the appellant.

*Aylesworth*, for the respondent.

GOLDIE *v.* JOHNS.

*Tax sale—Replevin—Sale of safe held under lien agreement—R.S.O., c. 184, s. 364—R.S.O., c. 195, ss. 122, 123, 124.*

In December, 1886, the defendants sold to one H., who was a tenant to the defendant

G. of certain premises in the City of Stratford, a safe under the ordinary lien agreement, the purchase money being payable in two instalments at six and twelve months. Under the lease H. was to pay taxes. In October, 1887, after the first instalment of purchase money had been paid, H. surrendered his lease to G., who took over the chattels of H. (including the safe) at a valuation, and assumed payment of the proportion up to that time of the taxes for 1887. G. then leased the premises to the defendant P. and sold him the chattels, including the safe.

The defendant J. was collector of taxes for the City of Stratford, and the roll for 1887 was delivered to him on the 26th October, 1887.

It is provided by by-laws of the City that all taxes and assessments shall be paid by the 31st December in each year, and that 5 per centum shall be added for non-payment and collected as if the same had originally been imposed and formed part of such unpaid tax or assessment.

On the 2nd November, 1887, J. served a notice on P. showing the amount of taxes and requiring payment of these taxes on or before the 31st December, "according to City by-law; after that date 5 per cent. on the dollar will be added to the above amount."

On the 9th March, 1888, the defendant J. issued his warrant to the defendant T. to distrain, and the safe was seized and sold on the 15th March to the defendant G. Five per cent. was added to the amount of the taxes, but no demand was made after the 31st December for payment.

On the 9th March the safe was demanded by the plaintiffs.

*Held*, that the sale (upon the evidence) was not made in good faith and was void.

*Held*, also, affirming the decision of the County Court of the County of Perth, that the sale was bad, no demand being made after the time fixed for payment.

*Idington*, Q.C., for the appellants.

*Aylesworth*, for the respondents.

---

MAY *v.* REID.

*Prosecution under R.S.C., c. 8, s. 3—Costs as against prosecutor.*

The plaintiffs were tried at the Haldimand Assizes in the spring of 1887 for bribery and acquitted. The information upon which the indictment was founded was laid against them by the defendant, and at the conclusion of the trial the presiding judge, at the request of the counsel for the plaintiffs, endorsed on the indictment the statement that it was proved that the defendant was the private prosecutor. The plaintiffs taxed their costs of the prosecution and brought this action to recover payment of these costs from the defendants. The information and the indictment with the endorsement were the only evidence that the defendant was a private prosecutor.

*Held*, that the endorsement on the indictment had no force as a judgment or finding of fact, and could not be accepted as proof of the defendant's position.

*Held*, also, that the fact that the information was laid by the defendant did not in itself place him in the position of private prosecutor.

Decision of the County Court of the County of Lincoln reversed.

*Aylesworth*, for the appellant.

*Lash*, Q.C., for the respondents.

---

*Re* CLARK AND THE UNION FIRE INSURANCE COMPANY.

*Dominion Winding-up Act—Constitutionality—Application of Act to provincial corporation.*

*Held*, affirming the decision of BOYD, C. (reported 14 O.R. 618), that the Act 45 Vict., c. 23, now R.S.C., c. 129, is *intra vires* the Dominion Parliament, and applies to an insurance company incorporated by the Provincial Legislature.

*Held*, also, BURTON, J.A., dissenting, that the order having been made and the liquidator appointed by the Judge, the subsequent proceedings might properly be referred to the Master.

*Lash*, Q.C., for the appellants.

*Bain*, Q.C., for the respondents.

---

THOMPSON *v.* ROBINSON.

*Solicitor and client—Negligence by solicitor—Liability of partners.*

R., a solicitor practising in Chatham, was employed in 1877 by the plaintiff to manage

her business affairs, and he proceeded to invest the plaintiff's moneys upon mortgages. In 1878 he took the defendant W. into partnership with him, and the business of the plaintiff continued to be managed by him, but all entries were made in the books of the firm, and all legal charges went into the profits of the firm. Losses occurred in connection with these investments.

*Held*, BURTON, J.A., dissenting, affirming the decision of the Divisional Court of the Queen's Bench Division (15 O.R. 662), that W. was liable. When the partnership was formed, W., in order to escape liability, should have given warning to the plaintiff that he did not intend to accept liability.

In 1883, R. entered into an agreement with the plaintiff to purchase for her certain lands in Dakota, R. being entitled to a certain share of the profits of the speculation. The moneys were lost.

*Held*, reversing the decision of the Divisional Court of the Queen's Bench Division, that the transaction was not entered into by R. as a collector, and that W. was not liable for the loss.

*Moss*, Q.C., for the appellant W.

*Osler*, Q.C., *Douglas*, Q.C., and *Aylesworth Finlay*, for the respondent T.

*M. Wilson*, for the respondents, the trustees of R.

---

POTTS v. BOIVINE.

*Will—Cujus est solum ejus est usque ad coelum.*

A testatrix, being the owner of certain lands and premises in the City of Belleville upon which a block of buildings were erected, devised the property in two parcels. The description of one parcel included an archway running through the centre of the block, but the rooms built over this archway were used with the premises devised as the other parcel.

*Held*, affirming the decision of the Divisional Court of the Common Pleas Division (16 O.R. 152), that the presumption *cujus est solum ejus est usque ad coelum* is a rebuttable one, and that, under the circumstances, the rooms in question did not pass with the land.

*Dickson*, Q.C., and *Burdett*, for the appellant.

*Northrup*, for the respondent.

ROWLANDS v. THE CANADA SOUTHERN RAILWAY COMPANY.

*Negligence — Railways — Workmen's Compensation for Injury Act—R.S.O., c. 141.*

An engine driver is a person who has charge or control of a locomotive or engine within the meaning of R.S.O., c. 141, s. 3, s.s. 5, and the plaintiff, a brakesman, who was injured in consequence of the cars being brought together without any warning signal from the engine, was held entitled to recover.

*A. J. Cattanach*, for the appellants.

*R. M. Meredith*, for the respondent.

---

## HIGH COURT OF JUSTICE FOR ONTARIO.

---

## *Queen's Bench Division.*

---

Div'l Ct.] [Feb. 4.

CURRY v. CANADIAN PACIFIC RY. CO.

*Railway Company—Negligence—Invitation to passenger to board moving train — Patent danger—Question for jury—New trial.*

The plaintiff, who was a passenger on a train of the defendants, alighted at a station, and the train having started before he had re-entered it, endeavored to jump on while it was in motion. In doing so he was injured, and brought this action for damages for negligence. There was evidence of an invitation by the conductor of the train to jump on while it was in motion, and the jury found (1) that there was such invitation; they also found (2) that the plaintiff used a reasonable degree of care in endeavoring to get on; and (3) that he was injured while trying to get on, in pursuance of the request of the conductor.

It was argued by the defendants that the danger to the plaintiff was so patent and obvious that he had no right to act on the conductor's invitation or to attempt to get on the train.

*Held*, that this was a matter which should have been submitted to the jury, and that it was not covered by the second finding; that the questions involved in the action could not be determined upon the findings, and that there should be a new trial.

Per ARMOUR, C.J.—Questions for the jury suggested.

*J. W. Elliott*, for the plaintiff.

*G. T. Blackstock*, for the defendants.

---

STREET, J.] [Feb. 19.

CHAPLIN *v.* PUBLIC SCHOOL BOARD OF TOWN OF WOODSTOCK.

*Public schools—Seats of trustees—Contracts with school board—R.S.O., c. 225, s. 247, construction of—Declaring seats vacant—Powers of remaining trustees—Powers of court—Injunction—Quo warranto—Parties.*

In an action brought by a ratepayer against a School Board, three of the persons elected as trustees, and one G., the statement of claim alleged that the three defendant trustees had, by reason of their being interested in certain contracts with the Board, *ipso facto* vacated their seats, by virtue of s. 247 of the Public Schools Act, R.S.O., c. 225; that they nevertheless continued to sit and vote, and had voted in favor of certain resolutions which were passed whereby the principal of the schools was dismissed, and the defendant G. appointed in his place; and that but for the votes of the three defendant trustees the result would have been different. The prayer was that the seats of the three should be declared vacant and the votes and resolution declared void, and for an injunction restraining the defendants, the trustees, from further acting as members of the Board.

*Held*, upon demurrer, following *Hardwick v. Brown*, L.R. 8, C.P. 406, that the seat of a trustee does not under s. 247 actually become vacant until the other members of the Board have declared it to have become vacant; and in this case, no action having been taken by the remaining members of the Board, that the seats of the three defendant trustees were full, and being full, that the Court would not interfere by injunction to restrain the occupants of them from acting as trustees.

2. That *quo warranto* proceedings were the only means by which the seats could be declared vacant by the Court; that the duty of declaring them vacant, if the facts charged were established, devolved upon the remaining individual members of the Board, who were not parties to the action and were not made parties by the fact that the school corporation was a party defendant.

*Rex.* v. *Mayor of Hartford*, 2 Salk 701; *Rex.* v. *Smith*, 2 M. & S. 598, referred to.

3. That the defendant G. was an unnecessary and improper party to the action.

*W. Nesbitt*, for demurrer.

*C. J. Holman, contra.*

---

STREET, J.] [March 2.

YOUNG *v.* MIDLAND RY. CO.

*Railways—Compensation for land taken—Conveyance in fee by tenant for life—C.S.C., c. 66, s. 2—24 Vict., c. 17, s. 1—Estates in compensation money—Statute of limitations—Will—Devise of land taken for railway—Inoperative to pass compensation—Parties.*

Under the Railway Act, C.S.C., c. 66, s. 2, s.s. 1, as interpreted and explained by 24 Vict., c, 17. s. 1, a tenant for life had power to convey the fee to a railway company, but had no power to receive the purchase money, and therefore a railway company which took a conveyance in fee from a tenant for life and paid her the purchase money remained responsible for the payment. The meaning of s.s. 22 of s. 2 is that the money value of the land is converted into a piece of real estate, which the railway company holds for the owners of the land in place of which it stands, and that the estates in the land existing at the time the land is taken become estates in the compensation instead; and upon the tenant for life, in this case, conveying the fee, she became tenant for life in the compensation, and those entitled to the inheritance in the land became entitled to the reversion in fee in the compensation as against the railway company, and the Statute of Limitations did not begin to run against them till the death of the tenant for life.

The tenant for life conveyed to the railway company in 1871. The person entitled to the reversion after the life estate died in 1871 intestate, and I. H. Y., his sole heiress-at-law, died in 1884, leaving a will in which she devised to the plaintiff a specific parcel of land, including the part conveyed to the railway company.

*Held*, that this will did not pass to the

plaintiff the right to receive the compensation money, and that as to it I. H. Y. died intestate, and it descended to her heirs-at-law, of whom the plaintiff was one, and the plaintiff was allowed to amend by adding the other heirs-at-law as parties.

*J. K. Kerr*, Q.C., and *Wm. Macdonald*, for plaintiff.

*Osler*, Q.C., for defendants.

---

STREET, J.] [March 11.

*In re* COLLARD AND DUCKWORTH.

*Will—Devise for life—Power of appointment—Exercise of power—Covenant not to revoke will—Title to land—R.S.O., c. 100, s. 19.*

M. D. by her will devised certain land to trustees upon trust to hold one part to the use of her son, C. S. C., for his life, and after his decease to convey the same to his children, or to such of the testatrix's other three sons or their children as C. S. C. might by his last will appoint; and the other part to the use of her son, W.D., in precisely the same way.

C. S. C. and W. D. each appointed his parcel to the other by will duly executed, and each conveyed to the other his life interest, and covenanted in the conveyance not to revoke the appointment made by the will. They then contracted to sell both parcels to a purchaser.

*Held*, that C. S. C. and W. D. each took under the will a life estate with a power to appoint the inheritance in fee by will amongst the specified objects, and that such a power cannot be executed except by will, the intention being that the donee of the power shall not deprive himself until the time of his death of his right to select such of the objects of the power as he may deem proper; and notwithstanding the covenants here given not to revoke the appointments, a subsequent appointment by will to one of the other objects of the power would be a good execution of it, and the covenants would not affect the title of the subsequent appointee, for he would take the estate under the original testatrix, and not under the devisee for life.

*Held*, also, that the position of C. S. C. and W. D. was not aided by s. 19 of R.S.O., c. 100, which gives to the donee of a power the right to release or to contract, not to exercise it; by so doing they could not confer upon themselves the right to give the purchaser a good title.

Upon a petition under the Vendor and Purchaser Act, it was therefore declared that C. S. C. and W. D. could not make a good title.

*D. Urquhart* and *E. J. B. Duncan*, for the petitioners.

*McCrimmon*, for the purchaser.

---

STREET, J.] [March 11.

MCINTOSH *v.* ROGERS.

*Vendor and purchaser — Contract — Interest — Taxes.*

Motion for supplemental judgment on further directions upon questions as to interest and taxes in an action for specific performance of contract for purchase of land by defendant.

By the terms of the contract (see 14 O.R. 97) the existing mortgage was to be assumed by the purchaser, and the balance of the purchase money was payable "on completion and tendering a conveyance."

*Held*, that this meant that the purchaser should assume the mortgage from the time when the purchase money became payable. The tendering of the conveyance meant the offer to the purchaser of a properly executed conveyance at a time when the vendor deemed the purchaser bound to accept the conveyance and the title, and to pay over the purchase money; and the vendor having done this before action, and the purchaser having refused to accept the conveyance or pay his purchase money at that time, on the ground that the vendor could not then make a good title, and the purchaser's position having been sustained, and no subsequent offer of the conveyance having been made, the purchaser was not obliged to accept possession until the whole matter was closed, because he would then from the time of possession become liable to pay interest contrary to the obligations of his contract.

That as soon as the litigation should reach such a stage as to enable the parties to ascertain exactly the balance due from the purchaser, he should at once assume the mortgage, pay the balance, and accept the conveyance, and until that period arrived he was not bound to pay any interest nor to become liable to pay any taxes.

That the vendor was not liable to pay interest upon the deposit.

*Hoyles*, for plaintiff.

*G. W. Marsh*, for defendant.

---

## *Practice.*

---

Ct. of Appeal.] [March 5.

LIVERNOIS v. BAILEY.

*Costs, scale of—Setting off costs—R.S.O.* (1877), *c.* 50, *s.* 347, *s.s.* 3—*Rule* 428, *O.J.A.*, 1881.

An appeal from the decision of the C.P.D., 12 P.R. 535, was dismissed, the members of this Court being divided in opinion.

*Held*, per HAGARTY, C.J.O., and BURTON, J.A., that the trial judge had the power to deal with the costs, and that power, having been exercised, was not reviewable, and the appeal should be allowed.

Per OSLER and MACLENNAN, JJ.A., that the appeal should be dismissed.

*J. W. Nesbitt*, for the appellant.

*H. H. Collier*, for the respondent.

---

Ct. of Appeal.] [March 5th.

*In re* CITIZENS' INSURANCE COMPANY AND HENDERSON.

*Arbitration and award—Reference back to arbitrators—Time for moving—Delay—Discovery of new evidence—Fraud—Scope of reference back.*

An application to remit case back to arbitrators for reconsideration need not be made within the time limited for moving to set aside an award, but it must be made within a reasonable time, and the delay must be satisfactorily accounted for.

*Leicester* v. *Grazebrook*, 40 L.T.N.S. 883 approved and followed.

In this case a reference of the claims upon certain insurance policies was made by submission to two arbitrators, who disagreed, and in pursuance of the submission chose an umpire, who made his award on the 25th July, 1887. On the 29th May, 1888, the insurers moved for a reference on the ground that they had then recently discovered evidence that a quantity of goods saved from the fire were not credited by the assured on their proofs of loss and were fraudulently concealed.

*Held*, that there should be a reference back to the arbitrators to consider the new evidence and determine its bearing on the questions originally submitted to them. The reference back should be general, and not limited to an inquiry as to what goods were not destroyed by fire.

*Bain*, Q.C., and *Kappele*, for the appellants.

*Aylesworth* and *Hellmuth*, for the respondents.

---

STREET, J.] [March 11.

REGINA *ex rel.* DOUGHERTY v. MCCLAY

*Municipal elections—Quo warranto—Powers of County Judge—R.S.O., c.* 184, *ss.* 187-208—*Rules* 41, 1038—*Motion to set aside proceedings.*

Notwithstanding the provisions of R.S.O., c. 184, ss. 187-208, a County Judge has now no authority, as such, to give leave under Rule 1038 to serve a notice of motion to initiate *quo warranto* proceedings under the Municipal Act; and he has no authority at all to act in proceedings of that nature as a local judge of the High Court, that power being expressly excepted from the powers conferred upon him as a local judge by Rule 41.

A County Judge assumed to act in such proceedings, which were styled in the High Court of Justice.

*Held*, that he must be taken to have acted in his capacity as local judge of the High Court, and objection to the proceedings was properly taken by motion to set them aside.

*W. R. Meredith*, for the respondent.

*Aylesworth*, for the relator.

FERGUSON, J.] March 11.]

IMPERIAL LOAN CO. *v.* BABY.

*Judge in Chambers—Motion to extend time for moving Divisional Court.*

A motion to extend the time for moving before a Divisional Court against the judgment of the trial judge should not be made to a judge in Chambers, but to the Divisional Court itself.

*Hoyles*, for defendant.

*E. B. Brown*, for plaintiffs.

---

MR. DALTON.] [March 11.

TRADERS' BANK *v.* KEAN.

*Evidence—Examination—Motion to be made—Rule 578.*

Immediately after appearance in the action a subpœna was issued and an appointment given for the examination of the defendant, and also of one M. D. Kean (not a party), before a special examiner at Barrie, to give evidence on behalf of the plaintiffs on a motion to be made by them under the rules respecting replevin for an order for replevying a certain guarantee, the subject of this action.

The subpœna and appointment were moved against on the ground that there was no motion, petition, or other proceeding pending in the action, and the provisions of Rule 578 were therefore not applicable.

*Held*, that there must be a pending motion on which the examination is to be taken; and such was not the case here, as the subpœna spoke of a "motion to be made."

*McMurray* v. *Grand Trunk Ry. Co.*, 3 Ch. Chamb. R. 130; *Stovel* v. *Coles*, *ib.* 362, referred to.

*Held*, also, that the examination of the defendant at this stage was improper for another reason; the examination was manifestly on the merits of the action, and it was too early in the action for the plaintiffs to obtain discovery except by a special order under Rule 566.

*Lefroy*, for plaintiffs.

*H. W. Eddis*, for defendants.

---

ROSE, J.] [March 18.

DELANEY *v.* MACLENNAN.

*Security for costs—Nominal plaintiff.*

The defendant in an action of ejectment, in which the plaintiff claimed title as owner subject to a mortgage to a bank, moved for security for costs on the ground that the plaintiff was not able to pay costs, and that the action was not really brought by him, but by the bank.

It was shown that the plaintiff was financially worthless; that his interest in the land was so doubtful that he did not feel sufficient interest in the question to litigate it; that the bank instructed their own solicitor to look into the title, took the advice of counsel, and were advised to have an action brought in the name of the mortgagor, who was then for the first time consulted about bringing the action; that the ordinary solicitor of the bank was retained to bring the action, and that he admitted he knew the plaintiff was insolvent. It was fairly deducible from the evidence that the bank had really in fact retained the solicitor, and that the solicitor would look to the bank for his costs.

*Held*, that under these circumstances the action must be regarded as that of the bank, and not of the plaintiff, who was therefore required to give security for costs.

*Parker* v. *Great Western Ry. Co.*, 9 C.B. 766, and *Andrews* v. *Marris*, 7 Dowl. 712, followed.

*W. H. P. Clement*, for plaintiff.

*J. B. Clarke*, for defendant.

---

## Appointments to Office.

---

REGISTRAR OF DEEDS.

*Halton.*

D. Campbell, of Nelson, to be Registrar of Deeds for the County of Halton, *vice* F. Barclay, deceased.

CORONER.

*York.*

Geo. W. Clendenan, M.D., of West Toronto Junction, to be an Associate Coroner for the County of York.

DIVISION COURT CLERKS.

*Hastings.*

A. W. Coe, of Madoc, to be Clerk of the Sixth Division Court of the County of Hastings, *vice* Dr. Loomis, deceased.

*Victoria.*

Edward D. Hands, of Fenelon Falls, to be Clerk of the Second Division Court of the County of Victoria, *vice* Geo. Cunningham, resigned.

Peter McIntyre, of Woodville, to be Clerk of the First Division Court of the County of Victoria, *vice* John Gunn, resigned.

BAILIFFS.

*Dundas, Stormont and Glengarry.*

Homer Stiles, of Cornwall, to be Bailiff of the Third Division Court of the united Counties of Dundas, Stormont and Glengarry.

*Simcoe.*

Wm. H. McDougall, of Alliston, to be Bailiff of the Eighth Division Court of the County of Simcoe, *vice* F. M. Woodcock.

*Victoria.*

Angus McKinnon, of Woodville, to be Bailiff of the First Division Court of the County of Victoria, *vice* G. I. Smith, resigned.

## Miscellaneous.

### *OSGOODE HALL LIBRARY.*

Latest additions:

Abbott's National Digest, vol. 5, New York, 1889.
Bellow's Land Surveying, Ann Arbor, 1887.
Bishop on Insolvent Debtors, 2nd ed., New York, 1884.
——Supplement to above, New York, 1888.
——Marriage and Divorce, 2 vols., 6th ed., Boston, 1881.
Blackburn, Life of Lord, London, 1874.
Blackwell on Tax Titles, 5th ed., 2 vols., Boston, 1889.
Blickensderfer's Blackstone's Elements, Chicago, 1889.
British Columbia Consolidated Statutes, vol. 1, Victoria, 1888.
Broom's Common Law, 8th ed., London, 1888.
Bryce's American Commonwealth, 3 vols., London, 1888.
Cababé on Estoppel, London, 1888.
Cochran's Law Lexicon, Cincinnati, 1888.
Douthwaite's Catalogue of Gray's Inn Library London, 1888.
Edwards on Property in Land, London, 1888.
Ely on Taxation, New York, 1888.
Evatt's Municipal Assessment Acts, Toronto, 1889.
Fonblanque's Bankruptcy Reports, Dublin, 1851.
Gear on Landlord and Tenant, S. Francisco, 1888.
Gemmell on Divorce, Toronto, 1889.
Gray's Cases on Property, 2 vols., Cambridge, 1889.
Hallett on Executors and Trustees, London, 1888.
Hare's American Constitutional Law, 2 vols., Boston, 1889.
Hastings on Fraud, London, 1888.
Hertslet's Map of Europe by Treaty, 3 vols., London, 1875.
Hodges on Railways, vol. 1, 7th ed., London, 1888.
Holt on Concurrent Jurisdiction, New York, 1888.
Indermaur's Practice of Com. Law, London 1886.
——Trusts and Partnerships, London, 1885.
——Specific Perfce. and Mtges., London, 1886.
——Real and Personal Property, London, 1886.
Kingsford's Evidence in Civil Cases, Toronto, 1889.
Leake's Land Laws, London, 1888.
Macnamara on Carriers, London, 1888.
Matthews and Conway's Land Decisions Washington, 1888.
Mechem on Agency, Chicago, 1889.
Merrill on Newspaper Libel, Boston, 1888.
Moore's Law of the Foreshore, 3rd ed., London, 1888.
McCord's Handbook of Dates, Montreal, 1888.
Napier's Guide to the Bar, London, 1888.
Nash's Life of Lord Westbury, 2 vols., London, 1888.
Niblack's Benefit Societies, Chicago. 1888.
Omand's Lord Advocates of Scotland, 2 vols., Edinburgh, 1883.
Pollock & Wright's Possession in Com. Law Oxford, 1888.
Pott's Law of Succession, London, 1888.
Quebec, Revised Statutes of, 2 vols., Quebec, 1888.
Roscoe's Criminal Evidence, 8th Am. ed. Philadelphia, 1888.
Sharp's Civil Code of Lower Canada, vol. 1, Montreal, 1889.
Snow's Annual Practice, London, 1888.
State Trials, vol. 1 (1820-23), London, 1888.
Stephenson's Examination Digest, London 1888.
Stokes' Anglo-Indian Codes, vol. 2, Oxford, 1888.
Stimson's Am. Statute Law, 1st supplement, Boston, 1888.
Swann, Investor's Notes on Am. Railroads, New York, 1887.
Thompson on New Trials, 2 vols., Chicago, 1889.
Thomson's Magna Charta, London, 1829.
Thornton on Statutory Construction, Indianapolis, 1887.
Thring's Practical Legislation, London, 1877.
Thwaite's Guide to Criminal Law, 2nd ed., London, 1888.
Tyssen's Charitable Bequests, London, 1888.
Williams' Conveyancing Statutes, London, 1884.