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DIARY FOR JANUARY.

15. Tue .. Primary Ex. for Students and Articled Clerks begin.
20. Sun... *2nd Sunday after Epiphany.*
21. Mon... First Intermediate Examination.
24. Thur...Second Intermediate Examination.
25. Fri... Sir F. B. Head, Lieut-Governor U. C., 1836.
27. Sun... *3rd Sunday after Epiphany.*
29. Tue... Solicitor's Examination.
30. Wed... Barrister's Examination.
31. Thur...Earl of Elgin Governor-General, 1847.

TORONTO, JAN. 15, 1884.

WE have received two answers to the legal puzzle stated by us in our last issue, relating to Mr. G. O., his landed estate, and obnoxious tenant, so we can conclude that the rest of our nine hundred and ninety-nine subscribers (there is one lawyer not on our list) found themselves baffled by it. We will therefore put an end to the harassing suspense of these, and enable them to return to their legal duties with composure. The conveyancer to whom Mr. G. O. resorted bethought him of the change in the calendar which was made in the reign of George II. The lease dating back to the time of Charles II., it ran for two hundred years from the day of its date, which day of course related to the months and days of the old calendar, and thus a margin of a few days remained within which to give the necessary six months' notice.

SINCE our article on the change of time inaugurated by the railways, a valued correspondent states a point which certainly seems to render the legalization of the new time divisions somewhat more difficult, viz., that the railway time belts are to some extent arbitrary, and not true meridians. He says:—"The railway people abandon meridians as boundaries of time belts, and propose zig-zags and curved fancy lines. They have thrown the whole Intercolonial Railway out of 75° time, and so made two standard times at Point Levis, differing by an hour from each other . . . and they intimate that they may change their time belts as they please." We cannot say how far this is true, of our own knowledge, but it would seem to throw a difficulty in the way of the Legislature sanctioning for universal adoption the changes suggested.

THE Privy Council in *Macdonald* v. *Whitfield*, 49 L. T. N. S., 446, has demolished the decision of the Court of Appeal of this Province in *Janson* v. *Paxton*, 23 C. P., 439, which laid down the doctrine that where several persons mutually agree to give their indorsements on a bill, as securities for the holder, who wishes to discount it, they must be held to have undertaken liability to each other, not as sureties for the same debt, and so jointly liable in contribution, but as proper indorsers liable to indemnify each other successively, according to the priority of their indorsements, unless it had been specially stipulated that they were to be liable as co-sureties. In the later case of *Fisken* v. *Mishaw*, 40 U. C. Q. B. 153, Wilson, J., thus referred to *Janson* v. *Paxton*: "I must say that *Janson* v. *Paxton* is directly opposed to the English authorities, both at law and in equity, and they are the authorities which ultimately govern our highest Court of Appeal, the Privy Council." This opinion is fully borne out by Lord Watson, who delivered the judg-

ment of the Privy Council in *Macdonald* v. *Whitfield*. The result of the decision of the Privy Council is, that there is no hard and fast rule such as that laid down by our Court of Appeal, but on the contrary in every case the whole facts and circumstances attending upon the making, issue, and transfer of a bill or note may be referred to, in order to ascertain the true relations of the parties who have put their signatures upon it; and if those facts disclose that the parties were really sureties they will be entitled to contribution from each other, notwithstanding the order in which their names may appear upon the instrument.

AUSTRALIAN CONFEDERATION.

IT is perhaps more impossible for an intelligent Canadian, than it may be for an intelligent Englishman, not to feel a great interest in the steps being taken to effect a confederation of our Australian sister colonies. The student of politics, at all events, everywhere, will watch every step in the process of establishing this new Dominion. It is impossible to suppose that the Intercolonial Conference at Sydney have not looked to our records for guidance in the momentous movement they are inaugurating; yet it is strange, and perhaps not very flattering to our self-satisfaction, to see how widely they seem inclined to depart from the lines of the British North America Act. We read in that most interesting journal, *The Colonies and India*, the following:—"The Bill for the Constitution of a Federal Council, drawn up by the Intercolonial Conference, provides that each colony shall be represented by two members, and the Crown colonies by one member. There will be yearly sessions, and any three of the colonies will be competent to summon an extra session. The first session will be held at Hobart, and be convened by the Governor of Tasmania. The summoning of subsequent sessions will be determined by the Council. The Council will be invested with legislative authority in regard to the relations of the colonies with the Pacific Islanders, the prevention of the influx of criminals, marriage, divorce, fisheries, naturalization, enforcement of criminal process, extradition, colonial defences, quarantine, patents, copyright, bills of exchange, and other matters. The Royal assent will be necessary to give effect to any decision arrived at by the Council, and will be given through the Governor of the colony where the Council may be be in session. This Act will only be operative in the colonies which assent to its provisions, and will not have force until four of the colonies have signified their adhesion to the Bill."

The London *Spectator* in a recent issue adds the information that the members of the Council are to be appointed by the Legislature, two from each free colony, and one from each Crown colony, and that it is expected that the Premier of each colony represented will be in the Council.

Now, without intending to speak presumptuously, we must say this appears an arrangement open to grave objections. Not only are those safeguards absent which exist under our constitutional system against the mingling of Dominion and Provincial politics and questions, but the scheme seems calculated to render such mingling inevitable. With us a voter can give effect to his views on current Dominion questions by registering his vote for the party which favours them; while he can also give effect to his views on Provincial questions by voting, if necessary, for the opposite party. But the only way the Australian will be able to secure representation of his views in the Federal Council will be by voting

for that party, at the Provincial elections, which supports these views in Federal questions. Yet this may obviously involve a sacrifice, on his part, of his convictions as to which party it is for the interests of his Province to see in power. For the Federal Council, it would appear, is to be the creature of the Provincial Legislatures. Hence either Dominion or Provincial interests will have to go to the wall, or be made subordinate, one to the other.

Then if all the Premiers are to be on the Federal Council, it seems inevitable that they will use their powers in the Council to influence the elections to the Provincial Legislatures in their several Provinces; and the system seems to render what we should term Dominion interference in Provincial matters inevitable. Again, if the Federal Council develop a centralizing tendency, the members having the Provinces under their control, there would appear to be great danger to Provincial autonomy.

These reflections, it appears to us, must occur to any one at all conversant with affairs in this country. But perhaps the exigencies of the occasion rendered such a scheme as the above the only one that would satisfy the majority of the delegates. Whatever the result of their deliberations, there can be no doubt Australia will have the warmest sympathy on the part of her Canadian sister, and we may look forward to a period of friendly and glorious rivalry between the two Dominions, to which no man shall fix the limits.

LAW SOCIETY.

MICHAELMAS TERM, 47 VICT., 1883.

THE following is the *resumé* of the proceedings of the Benchers during Michaelmas Term, published by authority:—

During this term the following gentlemen were called to the Bar, namely:—Messrs. George Kappele, gold medalist, with honours; C. A. Masten, R. A. Porteous, Jas. A. Mulligan, John Soper McKay, W. J. Taylor, Thos. Chapple, Chas. Macdonald, R. A. Coleman, F. J. Dunbar, C. G. Jarvis, F. E. Titus, A. J. Reid, A. Mackenzie, W. H. Barry, E. Bell, W. J. Wallace, J. J. A. Weir, Jas. Garbutt.

The following gentlemen received certificates of fitness, namely;—Messrs. George Kappele, T. T. Porteous, A. E. Barber, W. J. Taylor, J. D. Gausby, W. B. Dickson, C. H. Cline, Wm. Cook, Charles Henderson, F. J. Dunbar, J. W. Hanna, D. C. Murchison, R. A. Coleman, Jas. Garbutt, W. H. McLean, J. P. Telford, J. G. Jones, W. J. Wallace, E. Bell, J. M. Kelbourne, Hugh McMillan, J. Stuart, F. S. Wallbridge, H. C. Hamilton, Chas. Macdonald, C. H. Ivey.

The following gentlemen passed the first intermediate examination, namely:—E. W. H. Blake, honours and first scholarship; A. E. O'Meara, honours and second scholarship; O. K. Fraser, honours, and third scholarship; W. E. Raney, A. M. Taylor, R. S. Hays, E. A. Holman, W. S. Ormiston, T. McIntosh, W. H. Sibley, H. Wissler, J. Nason, A. C. Morris, W. J. Tremeear, J. C. Judd, F. M. Gray, G. G. S. Lindsey, T. Urquhart, R. Vanstone, J. P. Eastwood, J. Carson, E. R. C. Martin, O. L. Lewis, R. G. Fisher, M. J. McCarron, R. B. Beaumont, A. D. McLaren, Thos. Hobson, Andrew Grant, J. H. Bobier, H. J. Dawson, W. J. McWhinney, H. W. Bucke, A. S. Campbell, N. J. Clark, J. Craine, W. G. Fisher, S. T. Hamilton, F. Hornsby, J. J. Smith, F. Stone.

The following gentlemen passed the second intermediate, namely:—A. Carruthers, honours and first scholarship; A. E. Kennedy, honours and second scholarship; A. S. Lown, A. M. Dymond, G. Wall, J. A. Valin, A. A. Mahaffy, W. E. Middleton, A. B. McBride, J. D. S. C. Robertson, John Douglas, F. R. Powell, D. S. Kendall, T. C. Milligan, P. H. Simpson, D. W. Saunders, T. B. Bunting, W. D. Jones, J. E. Moberly, E. McKeough, Alex. Skinner, F. W. Thistlewaite.

The following gentlemen were admitted into the Society as students-at-law,

namely:—*Graduates:* T. F. Lyall, W. G. H. McAllister, C. J. McCabe, J. S. Skinner, W. S. Harrington, F. W. Raines. *Matriculants:* D. R. Anderson, E. P. McNeil, C. Elliott, J. B. Lucas, W. F. Bannerman, F. B. Featherstonhaugh, D. S. Wallbridge, F. C. Jarvis, Ira Standish, W. P. McMahon.

Juniors:—A. Bridgman, H. C. Rose, Colin McIntosh, W. A. Thrasher, D. A. Dunlop, T. B. Denton, M. Routhier, W. S. Livingston, J. A. Chisholm, Paul Jarvis, M. H. Simpson, Thos. Scullard, J. Harper.

Monday, November 19th.

Present:

The Treasurer, and Messrs. Bethune, Ferguson, Murray, Foy, Maclennan, Moss, Crickmore, Robertson, Mackelcan, J. F. Smith, Martin.

The report of the Finance Committee on the subject of the supply of heat, water and light to Osgoode Hall was presented and read, and ordered to be considered on 20th November.

Tuesday, November 20th.

Present:

The Treasurer, and Messrs. Maclennan, Murray, Robertson, Martin, Hudspeth, Read, Bethune, L. W. Smith, Crickmore, Moss, J. F. Smith, Mackelcan, Ferguson, Hoskin.

The report of the Finance Committee on the subject of heating, lighting, etc. Osgoode Hall, which was presented on the 19th, was considered and unanimously adopted.

The Finance Committee were directed to negotiate with the Government on the subject.

Mr. Maclennan presented the report of the Reporting Committee as follows:—

The Committee on Reporting beg leave to report as follows:

1. The Committee have had under their consideration the subject of the decisions in the Chancery Division of the High Court, and they are of the opinion that it is impossible to overtake the efficient reporting of those decisions with the present staff.

2. The Committee have also, after full discussion and careful consideration, in which they were assisted by the editor, agreed to recommend, as the best means of meeting the difficulty, the immediate appointment of another reporter to the High Court, at a salary of twelve hundred dollars a year.

3. In the meantime in order to expedite the issue of the Chancery cases in arrear the Committee took the responsibility of authorizing the editor to provide assistance to Mr. Lefroy until permanent arrangements could be made.

All which is respectfully submitted.

(Signed) JAMES MACLENNAN.

Nov. 20th, 1883.

The report was adopted.

Mr. Maclennan introduced the following rule, based upon the report, namely,

That section 3 of rule 109 be amended by substituting the word "four" for the word "three" in the first line thereof.

The rule was read a first time and was ordered to be read a second time on Saturday, 24th November.

Mr. Martin gave the following notice for next meeting, namely, That the questions put by the examiners at the intermediate and final examinations be published.

Saturday, Nov. 24th, 1883.

Present:

Messrs. Crickmore, Martin, Murray, Ferguson, Foy, Bethune, Maclennan, J. F. Smith, McCarthy, Moss, Read.

Mr. Maclennan was elected Chairman in the absence of the Treasurer.

Mr. W. H. Steele's petition was referred to Finance Committee.

Mr. Lee's letter was read—no action taken.

The letter of Mr. Tully referring to the use of water by the contractors was referred to Finance Committee.

The rule to amend rule 109, respecting the reporters introduced by Mr. Maclennan, was read a second and third time and was adopted.

Mr. Martin's motion for the publication of the questions put by the examiners was referred to Legal Education Committee, with power to act.

Friday, November 20th.

Present:

The Treasurer, and Messrs. Mackelcan, S. H. Blake, Murray, McMichael, Britton, Maclennan, J. F. Smith and Crickmore.

A letter from Mr. W. A. Taylor, the Sec-

retary of the Manitoba Law Society, respecting the supply of Ontario reports to the Manitoba Bar was read and referred to the Committee on Reporting for consideration and report.

Saturday, December 8th.

Present:

The Treasurer, and Messrs. Crickmore, Guthrie, Foy, Ferguson, Hoskin, Murray, Beaty, L. W. Smith, Mackelcan, Read, J. F. Smith, Maclennan, Bethune, Moss, McMichael.

The petitions of Messrs. Livingston and Vance were granted, the Legal Education Committee having reported favourably upon them.

Mr. Maclennan presented the second report of the Committee on reporting as follows:—

8th December, 1883.

The Committee on Reporting beg leave to report as follows:

1. Seventeen applications for the new reportership have been received from qualified persons and their names are submitted.

2. Since last Term Mr. Grant has issued the last number of volume 29 of Grant's Report's which is now practically complete, with the exception of the index. He has also issued a number of volume 8 of the Appeal Reports. He is still however very largely in arrear with the Appeal Reports, but says that 500 pages are nearly ready to issue. The Committee recommend that no adverse action be taken at present with reference to the backward state of these reports.

3. The Chancery Division Reports are in a very forward state, but an unavoidable delay has occurred in the issue of a large number of cases at the last moment.

4. The work in the other Courts is in a satisfactory state with the exception of the Index of volume 2 of the Ontario Reports, and 32 Common Pleas.

5. The digest is in a forward state. It will comprise the following volumes complete:—29 Grant, 32 Common Pleas, 46 Queen's Bench, 3 Ontario Reports and 9 Practice Reports; and it is confidently expected that it will be in the hands of the profession by the 1st day of May next.

6. The Committee have had a number of interviews with the editor, who has made several suggestions as to modification of the rules relating to reporting, which your Committee think well worthy of careful consideration.

All which is respectfully submitted.

(Signed), JAMES MACLENNAN,
Chairman.

The report was ordered for consideration paragraph by paragraph.

The first paragraph was adopted. At this stage of the proceedings Mr. Boomer was elected a joint-reporter of the High Court of Justice.

The second paragraph of the report was adopted.

The third, fourth, fifth and sixth paragraphs were adopted.

Mr. Maclennan, from the Reporting Committee, presented their report on the letter of Mr. Taylor, the Secretary of the Manitoba Law Society, in the matter of the supplying of Ontario reports to that Society.

The report was ordered to be considered at the next meeting of Convocation.

On the motion of Mr. Murray, it was ordered that the Finance Committee be instructed to order for the Convocation room and dining-room such furniture as may be deemed necessary.

Mr. Poole's petition was refused.

The petitions of Messrs. S. W. Burns and R. W. Witherspoon were refused.

Wednesday, Dec. 26th.

Present:

The Treasurer, and Messrs. Crickmore, Murray, J. F. Smith, Foy, Irving, Maclennan, Guthrie, Hoskin, Cameron, Moss, McMichael.

The report of the Finance Committee on the petition of W. H. Steele was adopted.

The report of the Reporting Committee on the letter of the Secretary of the Manitoba Law Society, appointed to be considered to-day, was read as follows:—

The Committee on Reporting beg leave to report as follows:

They have had under consideration an inquiry from the Law Society of Manitoba whether arrangements could be made by which the Ontario Reports could be supplied to the members of that Society; and

they find that the number which will be required is about one hundred.

Your Committee recommend that the reports be supplied to the members of the Manitoba Law Society at the price of $17.50 a year in advance, provided that not less than eighty sets be taken, the sets to comprise the Appeal Reports, the Ontario Reports and the Practice Reports, reserving to Convocation the right to alter the price at the end of any year.

All which is respectfully submitted.

On the motion of Mr. Cameron it was ordered,

That the thanks of Convocation be given to the Rev. Dr. Barclay, for his gift to the Society of a copy of his sermon, preached on the occasion of the death of Chief Justice McLean.

Convocation adjourned.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

BURSTALL v. FEARON.

Imp. O. 50—*Ont. O.* 44.

Revivor—Death of sole Plaintiff—Administration Proceedings.

[L. R. 24 Ch. D. 126.

A person served with notice of an administration judgment, and who has obtained liberty to attend the proceedings under it, is in the same position as a party to the action, and is entitled to obtain an order of course to revive the action on the death of the sole plaintiff.

BUTCHER v. POOLER.

Imp. Jud. Act, sec. 49, *O.* 55, *r.* 1—*Ont. Jud. Act, sec.* 32, *r.* 428.

Partnership suit—Costs of unsuccessful claim—Appeal for costs.

[C. A. L. R. 24 Ch. D. 173.

On the death of one member of a certain partnership, an action was instituted by his executrix, in which a decree was made to administer the partnership estate. In the course of the administration a dispute as to facts arose, which was first dealt with by the Chief Clerk, and then adjourned into Court, and the decision was adverse to the plaintiff. Bacon, V.C., decided against her, but ordered the costs of the enquiry to come out of the estate. The defendants, the surviving partners, now appealed from this order as to costs.

The question was whether the Court had jurisdiction to hear the appeal.

Held, that the case did not come within the rule in *Foster* v. *Great Western Railway Company*, L. R. 8 Q. B. D. 25, 515, that the Court cannot make a successful defendant pay the costs of a plaintiff who has wholly failed; but that it was within the discretion of the Court to order all costs reasonably incurred in ascertaining the fund to be paid out of the fund, and that an appeal would not lie.

NOTE.—*The appellants argued in the above case that there was no jurisdiction to make a successful party pay costs, citing Johnstone* v. *Cox, L. R.* 19 *Ch. D.* 17; *and Foster* v. *Great Western Railway Company, L. R.* 8 *Q. B. D.* 25, 515. *The case is a good one to refer to on the question of appealing in respect to costs.*

IN RE AGAR ELLIS, AGAR ELLIS v. LASCELLES.

Imp. Jud. Act. sec. 25, *sub.-s.* 10—*Ont. Jud. Act, sec.* 17, *sub.-s.* 9.

Infants—Habeas Corpus—Prevalence of Equity.

[C. A. L. R. 24 Ch. D. 323.

It is not correct to say the law is altered by this section. The Courts of law and equity administered the law alike in proceedings under writs of hæbeas corpus.

PRESTNEY v. CORPORATION OF COLCHESTER.

Imp. O. 31, *rr.* 11, 12—*Ont. Rules* 221, 222.

Production of documents—Place of production.

[C. A. L. R. 24 Ch. D. 376.

Where an order has been made for production of documents at a particular place the Judge or his successor may at any time make a fresh order appointing a different place, if the circumstances render it advisable. And although such an order may be appealed from

the Court will not interfere with the Judge's direction except on some special ground.

In this case an order was made for production by the defendants at London. Six months after another order was made, on the application of the defendants, for production at Colchester, but the Court of Appeal, on the matter coming before them, added a direction that the plaintiffs should be at liberty to apply for the production of any documents which might be more conveniently examined in London; and that the defendants should undertake to pay any additional costs caused by the alteration in the place of production.

IN RE PEACE V. WALLER.

Imp. Jud. Act, s. 25, *sub.-s.* 8—*Ont. Jud. Act, s.* 17, *sub.-s.* 8.

Costs—Taxation of solicitor's bill—Receiver.

[C. A. L. R. 24 Ch. D. 405.

M., a married woman, by her next friend, applied to tax the bill of costs of her solicitor incurred in a suit relating to her separate estate. After the Taxing Master's certificates had been filed, an order was made on the application of the solicitor, directing an enquiry of what M's. separate estate consisted at the date of the filing of the certificate capable of being reached by the judgment and execution of the Court, and appointing a person to receive it until the amount found due on taxation was paid.

Held, that this order was proper, and that it was not necessary to take separate proceedings by action to enforce the demand against the separate estate.

IN RE MANITOBA ECONOMIC BUILDING SOCIETY.

Ont. J. Act, secs. 38, 39—*Imp. O.* 58, *r.* 15 (1875).

Appeal—Extension of time for appeal—Special grounds.

A creditor of a certain company filed a petition in court for a supervision order or a compulsory winding up order of the company, in necessary ignorance of the fact, as was also the Court, that a preceding extraordinary resolution of the shareholders to wind up the company voluntarily was invalid. A supervision order was made. Five months afterwards he discovered the invalidity of the said resolution, and now moved before the Court of Appeal for leave to appeal against the supervision order notwithstanding the lapse of time. The proper time for appealing from the supervision order was twenty-one days, "except by special leave of the Court of Appeal." (Imp. O. 58, r. 15, 1875.)

Held, that leave to appeal, notwithstanding the lapse of time, ought to be granted, the mistake as to the validity of the resolution forming a special ground for the application, and the respondents having no equity to resist it.

[C. A. L. R. 24 Ch. D. 488.

Per BRETT, M. R.—It has been attempted to define and circumscribe, and lay down in other words than are laid down in the rule (Imp. O. 58, r. 15, 1875; cf. R. S. O., 38, s. 45), the jurisdiction and duties of the Court of Appeal. That rule must stand as it was written; it must stand as it was adopted by Parliament; and what the Court has in each case to do is to see whether there are grounds for the Court to give the special leave; and I know of no rule other than this, that the Court has power to give the special leave, and, exercising its discretion, is bound to give the special leave, if justice requires that that leave should be given.

Per COTTON, L. J.—In order that the appellant may be relieved from lapse of time, it is not necessary to shew that there has been anything in the conduct of the respondent which entitles the appellant to be relieved, it is sufficient if he satisfies the Court that there has been something either in the acts of the respondent or from other circumstances which entitle him to be relieved, and to be allowed to appeal notwithstanding the time has elapsed.

Per BOWEN, L. J.—It seems to me that to attempt in any case to lay down a set of iron rails on which the discretion of the Court of Appeal was always to be obliged to run, and to say that the leave of the Court would never be granted except in certain special circumstances and in a defined way, would be very perilous. Of course it is to be exercised in the way in which judicial power and discretion ought to be exercised, upon principles which are well understood, but which had better not

be defined in a case except so far as may be necessary for the decision of that case, otherwise there is the great danger, as it seems to me, of crystallizing into a rigid definition, that judicial power and discretion which the Legislature and the Rules of Court have, for the best of all reasons, left undetermined and unfettered. If the person who is asking for leave to appeal after twenty-one days is only asking for what is just, why should he not have it?

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

Wilson, C. J.]

HYNES ET AL. v. FISHER ET AL.

Master and servant—Intimidation of servant—Injunction—Suppression of facts on motion ex parte for injunction—Dissolving injunction on motion to continue.

On a motion to continue an injunction, the defendant may bring forward such facts as he might if he were moving to dissolve the injunction, and may show suppression of facts by the plaintiff as a ground for dissolving it, and may thereupon move to dissolve it.

The plaintiffs individually were members of the Master Plasterers' Association, and the defendants individually were members of the Operative Plasterers' Association. The plaintiffs did not by their writ state in what character they sued, but, by their affidavits filed, professed to represent their association, and joined the defendants as representing the Operative Association. Some of the defendants, by threats, intimidation and violence, prevented one man, who had contracted to work for one of the plaintiffs, from fulfilling his contract, and induced him to leave Toronto, where he had been hired to work, whereby his master suffered injury to his business.

Held, that this entitled the master to an injunction, restraining these defendants from so interfering with his servants.

It appeared that previous to the intimidation four workmen had struck work with one W., a member of the plaintiff's association, because W. had refused to pay one of his workmen the wages demanded for him by them. Thereupon, the plaintiff's association passed a resolution imposing a fine on any of its members who should employ the four striking workmen, and communicated this to the defendants' association. The latter demanded the rescission of the resolution, and notified the plaintiff's association that in default the workmen would strike. The resolution was not rescinded, and the workmen struck. The intimidation complained of by the plaintiffs followed as a consequence.

Held, that the defendants, by showing the fact of the resolution of the plaintiff's association, which the plaintiffs had not divulged on their motion ex parte for the injunction which they now moved to continue, were entitled to have the injunction dissolved.

Held, also, upon the merits, that the plaintiffs were not entitled to the injunction on account of their resolution.

S. H. Blake, Q.C., and *O'Sullivan* for the plaintiffs.

Osler, Q.C., and *Fullerton* for the defendants.

Wilson, C. J.]

HYNES ET AL. v. FISHER ET AL.

(MCCORD AND JENKINS' CASE.)

Injunction—Interference with process—Contempt of court—Parties in representative capacity.

Pending the injunction in this case, one P., who was not a party to this action, but was a member of the plaintiff's association, on behalf of the association hired one H. to work for him. McCord and Jenkins, members of the defendant's association but not parties to the action, hearing of this, went to H., and induced him to refuse to work for P., and to leave Toronto. The Court was of opinion that M. and J. knew of the injunction pending at the time. The plaintiffs did not state by their writ that they sued in any representative character, nor did they sue the defendants in a representative capacity; but the plaintiffs' affidavits stated that the plaintiffs represented

their association, and the defendants, theirs. On motion to commit M. and J. for contempt of process of the Court.

Held, that the Master Plasterers' Association was not made a party to nor sufficiently represented in the action by the allegations in the plaintiffs' affidavits; and that no act against the plaintiffs individually having been established, M. and J. could not be held guilty of contempt for interference with the association, and that, though the association might be added by amendment, the injunction would also have to be amended, and in the meantime M. and J. must be discharged out of contempt

days, by acceptance of an application for insurance, called a "binding application," made to them by M., the owner. On the same day, on application of the plaintiffs a memorandum was written on the margin of the application, and signed by the manager and secretary of the defendants' companies, that they covered one-fourth, subject to survey and approval at first port of arrival, etc. On the 4th April, an agreement was signed by defendants' president and manager, under which defendants were to cover a fourth part of the risks accepted by plaintiffs; but it was expressly agreed that the risks covered were only on hulls of vessels not classed below B 1.

By the defendants' Act of Incorporation, 36 Vict. ch. 103, all policies, instruments, etc., issued or entered into by defendants, were to be signed by the president or vice-president, and countersigned by the manager and secretary, or as otherwise directed by the rules and regulations of the company in case of their absence, and so signed it should be deemed valid, etc.

Held, that the agreement of the 4th April could not be relied on, as it was limited to vessels not below B 1, and the evidence shewed that the vessel here had never been classed; but that the contract was contained in the memorandum written in the margin of the application, and that it was so signed so as to be binding on the defendants; for that, in the absence of evidence to the contrary, it must be deemed to be signed in accordance with the rules and regulations of the company.

It appeared that the vessel was driven ashore on the 6th September, whereupon the plaintiffs, of their own motion, procured a tug, steam pumps, etc., got the vessel off, and towed her to Detroit, where she was put into dry-dock and repaired. The salvage charges, and repairs, etc., amounted to $4,000. On 26th September, the owner notified the plaintiffs that he abandoned the vessel, and would not be responsible for any of the expenses, etc.; whereupon the plaintiffs settled with him for some $3,000. On 29th September, the vessel was libelled for seamen's wages, and salvage charges, and was subsequently sold to pay same. The actual damage done to the vessel only amounted to $190. At the time of the accident the vessel had only one achor, having lost a short time previously the second one she had.

Held, that, if there was no express warranty as to seaworthiness, and being a lesser policy none could be implied; and that there was no evidence to shew that the having only one anchor constituted unseaworthiness.

Held, also (1) there was no total loss so far as defendants were concerned; (2) defendants were liable as upon a general average for expenses incurred by plaintiffs as salvers and insurers in saving the ship, after deducting the proportion to be borne by the owners of the vessel and cargo, etc.; (3) the cargo was in fact valued by the plaintiffs and delivered to the owners; (4) there was no particular average for which the defendants were responsible, or towards which defendants were liable to contribute. The pleadings were directed to

be amended according to the findings, and the costs apportioned.

McMichael, Q.C., and *W. T. Boyd* for the plaintiffs.

Osler, Q.C., and *Biggar* contra.

Rose, J.] [Dec. 21, 1883.

COOPER ET AL. v. CENTRAL ONTARIO R. W. Co.

Verdict subject to reference—Failure of reference by lapse of time—Setting aside verdict in single court—Venue, change of.

At the Ottawa assizes, a formal verdict was entered for the plaintiff, subject to a reference. The reference failed through the omission of the arbitrator to enlarge the term for making the award.

A judge in High Court set aside the verdict and ordered a new trial.

The plaintiffs resided at Montreal, and the defendants' offices at Ottawa, and some of the plaintiff's witnesses resided at Toronto; and it appeared that Toronto was as easily accessible as Ottawa, and that unless a change of venue was directed, the case would be laid up until the spring assizes.

Under these circumstances the venue was changed to Toronto, and the case directed to be tried at the January sittings.

Arnoldi, for the plaintiff.

Marsh, for the defendant.

PRACTICE.

Mr. Dalton, Q.C.
Cameron J. [Nov., 1883.

CITIZENS' INSURANCE CO. v. CAMPBELL ET AL.

Particulars—Motion to strike out—Evidence.

In an action of libel, the defence was a general statement of the truth of the alleged libel. An order was made for particulars under this defence, and particulars were delivered. The plaintiffs moved to strike them out or prevent evidence being given upon them at the trial, as being too general. The Master in Chambers

Held, that particulars cannot be struck out; but if the particulars delivered are too general the Judge at the trial will exercise his discretion as to the admission of evidence thereunder.

On appeal, CAMERON, J. sustained the Master's order.

Rae, for plaintiff.

Osler, Q.C., for defendant Campbell.

H. J. Scott, Q.C., for defendant McCord.

Mr. Dalton, Q.C.] [Nov., 1883.

ROBINSON v. BERGIN.

Writ of attachment binds land from seizure—What is a seizure?

The mere fact that a writ of attachment against an absconding debtor is in the Sheriff's hands does not bind the debtor's land, and the land is not bound until seizure.

Warrener v. *Kingsmill*, 13 U. C. R. 18, followed.

The Sheriff's bailiff went to, and entered upon the land of the debtor, on which his family resided, and finding there no goods, did not leave anyone in possession; he said that he had no instructions beyond the warrant to seize the land; he told the debtor's wife at the time that the land would be sold, but he did no other act ot seizure.

Held, that there was no seizure.

Aylesworth, for the attaching creditors.

H. J. Scott, Q.C., for execution creditors.

Cameron, J.] [Dec. 1883.

IN RE JENKINS v. MILLER.

Prohibition—Division Court—Jurisdiction—Set off.

The plaintiff brought his action in a Division Court for $74.31, his claim being $156.36, an unascertained amount, as against which he admitted a set-off of $82.05. At the trial in the Division Court the plaintiff affirmed and the defendant denied that there had been an agreement between them to set off against the plaintiff's claim the value of certain purchases made by the plaintiff from the defendant, and

the judge at the trial found as a matter of fact that there had been such an agreement.

Upon motion for prohibition:

Held, following *Fleming* v. *Livingstone*, 6 P. R. 63, and *Dixon* v. *Snarr*, 6 P. R. 336, that it was a question of fact for the judge of the Division Court to determine whether or not there was an agreement between the plaintiff and defendant, and the judge having determined that there was an agreement, there was jurisdiction.

Prohibition refused.

G. Bell, for the motion.

McVittie, contra.

Mr. Dalton, Q.C.] [Dec. 22, 1883.

MCLEAN V. SMITH.

Judgment against married woman—Setting aside—Lapse of time.

Motion to set aside judgment entered in 1878 against one of the defendants, the wife of her co-defendant, on the ground that she is and was a married woman, and the judgment is therefore not justified. The original process in the action was served upon the defendant, the married woman, personally, and upon this application she swore that she handed it to her husband, but never authorized anyone to act for her as solicitor. She was not proceeded against as a married woman. D., an attorney, appeared for her and her husband, and judgment was signed against both defendants, by consent of D., on an order made in Chambers as long ago as 1875. Execution was at once issued under the judgment, and the personal property of the female defendant was seized and sold by the sheriff without complaint from her. It appeared that at the time of the commencement of the suit the married woman had an interest in certain real estate, which she and her husband conveyed away after action brought and before judgment.

No affidavit from the male defendant, nor from D., the attorney, was filed.

The Master in Chambers

Held, that after the long lapse of time and under the circumstances shown he could not set aside the judgment.

McClive, for the motion.

A. C. Galt, contra.

Rose, J.] [Dec. 24, 1883.

WILSON V. WAINFLEET.

Municipal law—Opening road allowance.

This was an application by plaintiff for a mandamus to compel the municipal council of the township of Wainfleet to open an original road allowance.

A by-law had been passed by the council in June, 1882, and notice given to the parties in possession to remove all fences and other obstacles from the road allowance. Nothing further was done by the council up to the time of making the application, Nov. 1, 1883.

ROSE, J.

Held, that it is discretionary with and not obligatory upon a municipal council to open a road allowance, and the fact that a by-law had been passed did not create such an obligation, and that a mandamus would not be granted.

Osler, Q.C., for plaintiff.

C. Robinson, Q.C., and *Cox*, for defendants.

Wilson, C. J.] [Nov. 2, 1883.

COOKS V. STROUD.

Examination of judgment debtor—Unsatisfactory answers.

Motion to commit defendant, etc.

A satisfactory answer, upon examination as a judgment debtor, according to the statute R.S.O., c. 50, sec. 305, means more than that the answer shall be a full, appropriate, and pertinent answer to the question: it means that the answers shall show a satisfactory disposition of the property.

The defendant in his examination said he had no real estate nor any personal estate.

In the fall of 1882 he had about $300 in money; he paid his bills with it, and lost the balance at the horse races at Buffalo. Since the fall of 1882 he has been in his father's employ; he gets nothing but his board and clothing.

When he conveyed the tannery lot to his father, which he held in trust for him, he said: "I could not say what the consideration was, or whether I was paid anything or not; I for-

get; I can't think of it, I forget whether I received any money for that then or since; it was before judgment. . . . . My father wanted me to get it fixed."

Held, that the defendant, in his examination, had disclosed his property and his transactions respecting the same; and had not concealed or made away with his property in order to defeat or defraud his creditors.

Held, however that the defendant had not answered fully or truthfully with respect to the fact of receiving or not receiving money or other considerations for signing the tannery deed, or the amount of it, if he did receive any such money or consideration; and that the answers he had given respecting his transactions with his property were not satisfactory by reason of the illegal and wrongful disposition of it by gambling or horse-racing and otherwise.

Defendant allowed to appear for further examination, and ordered to pay costs of first examination and this application forthwith.

Aylesworth, for the plaintiff.

Holman, for the defendant.

Proudfoot, J.] [Nov. 28, 1883.

MCPHERSON V. MCPHERSON.

Tenants in common—Claim against co-tenants for excess of rent received—Execution creditors—Priority.

The plaintiff was tenant in common with the defendants, and is proved to have received more than his proper share of the rent. The defendants claimed against the plaintiff's share of the land for the excess of rent received by the plaintiff. There were executions in the sheriff's hands, and the execution creditors had come in under the decree in the cause.

Held, that the defendant's claim being simply for a debt for which an action might be brought there is no actual change until a judgment was obtained.

The execution creditors do not lose their priority by coming in under the decree, and are entitled to have it maintained.

Held, that the case is not varied by some of the defendants being infants.

Purdom, for the appeal.

J. Hoskin, Q.C., *Hoyles*, and *Macbeth*, contra.

Mr. Dalton, Q.C.] [Dec. 31, 1883.

DAVIES V. HUBBARD.

Notice of trial—Service—Leaving copy in office of defendant's solicitor.

Service of notice of trial effected by leaving a copy of the same in the office of the defendant's solicitor before six o'clock, but after the solicitor and his clerks had left for the day, *held* to be good service only from the time when the notice came to the knowledge of the solicitor.

The practice laid down in *Consumers' Gas Co.* v. *Kissock*, 5 U. C. 542, and in *McCallum* v. *Provincial Ins. Co.*, 6 P. R. 101, held not to have been altered by the O. J. A. as to service upon defendant's solicitor.

A. G. McLean, for the defendant.

H. Cassels, for the plaintiff.

Proudfoot, J.] [Jan. 9, 1884.

CHRISTOPHER V. NOXON.

Taxation—Witnesses—Abortive Trial.

A taxing officer refused to allow the plaintiffs the expenses of seventeen witnesses who were subpœnaed to attend a trial at Hamilton which proved abortive, the trial being postponed because the defendants had not obeyed an order to produce.

The defendants were ordered to pay the costs of the hearing at Hamilton rendered nugatory by the postponement.

The seventeen witnesses were subpœnaed to be examined at the abortive trial, and were examined at the adjourned trial upon matters which the judge held could not be interfered with by the court.

Held, on appeal from the taxing officer that in refusing the plaintiffs the costs of subpœnaing these seventeen witnesses the taxing officer did not erroneously exercise the discretion given him by Rule 442, O. J. A.

G. Bell, for the appeal.

Hoyles, contra.

Mr. Dalton, Q.C.] [Jan. 12.

CLARK v. ST. CATHARINES.

Security for costs—Plaintiff not able to answer costs and put forward by others.

Security for costs was ordered in an action brought by a ratepayer for himself and the other ratepayers to restrain the delivery by the corporation of certain debentures to a Railway Company, where it appeared from the examination of the plaintiff that he was financially incompetent to pay the defendants' costs, and was only interested to an insignificant extent; and where he swore that he expected certain persons named to pay his costs and to protect him should the case go adversely, that he did not want to spend any money on the prosecution of his own right in the matter, and that he did not know who instructed the plaintiff's solicitor.

Plumb, for the motion.

Hoyles, contra.

Mr. Dalton, Q.C.] [Jan. 14.

DOERR v. RAND.

Security for costs—Præcipe order for—Setting aside—Stay of proceedings.

A defendant is not necessarily entitled to security for costs because the plaintiff's residence is out of the jurisdiction.

If it be made apparent by evidence, which the court should look at, that the defendant has no defence, security will not be ordered.

The defendant admitted on his examination in this cause, that he owed the debt sued for, but he afterwards alleged a counterclaim for illegal arrest by the plaintiff in the course of this action.

Held that, under these circumstances, the defendant was not entitled to security for costs, and a *præcipe* order for security was set aside with costs.

Held, that a *præcipe* order for security for costs is a stay of proceedings while it exists, and a motion for judgment made simultaneously with the motion to set aside the *præcipe* order for security for costs was refused.

Cameron and *McPhillips*, for plaintiff.

A. B. Cox, for defendant.

Boyd, C.] [Jan. 14.

RE LYONS.

Costs—Scale of.

After a mortgage sale, the first mortgagee paid the surplus proceeds of sale, $162, into court.

The third mortgagee petitioned for payment out to him of the $162, alleging that the second mortgage was void for want of consideration, etc.

A reference was directed, and the Master found that the second mortgage was valid, and that a much larger amount than $162 was due upon it. The claimants of the fund lived in three different counties.

An order made upon further directions gave the second mortgagee the costs of the petition and reference.

Upon appeal from the Taxing Officer, who decided to tax the costs upon the higher scale.

Held, that what was in contest was the whole amount represented by the second mortgage, and the subject matter thus involved exceeded the limits of the former equitable jurisdiction of the County Court, and therefore, and also because the different respondents resided in different counties, and the money in question was in court in a third county, the Taxing Officer was right in taxing costs upon the higher scale.

A. C. Galt, for the appeal.

W. Cassels, Q.C., contra.

Boyd, C.] [Jan. 14.

MANSON v. MANSON.

Purchaser at judicial sale—Delivery of possession—Growing crops—Knowledge by purchaser of tenancy.

At a judicial sale of a farm, the conditions were the usual conditions of the court, providing for the delivery of possession to the purchaser upon payment of the balance of the purchase money one month after the sale. The purchaser lived upon a part of the lot which was not sold, and was aware that the farm sold was occupied by a tenant, but swore that he did not know the terms of the tenancy that he relied upon the conditions of sale, and

that he bid more for the land because there were growing crops thereon. The purchaser paid the balance into court at the proper time, but did not get possession then, nor had he got possession at the time of this application (Jan. 7th, 1884).

Motion for an order for delivery of possession to the purchaser, and for compensation for not getting the crops or the possession at the time agreed upon, and for a vesting order.

Held, that the vendors were bound by the terms of the printed and published conditions of sale, and that it was not the business of the purchaser to acquaint himself with the terms of the tenancy, and by inquiry to ascertain whose were the crops.

Order made as asked, with a reference as to compensation.

Watson, for the purchaser.

W. Mortimer Clark, for the plaintiffs.

Harcourt, for the infants.

Boyd, C.] [Jan. 14.

BLAKE v. BUILDING AND LOAN ASSOCIATION.

Appeal—Report—Time—Christmas Vacation.

The term vacation in G. O. Chy. 642, means Christmas Vacation as well as Long Vacation, and hence the former is not to be counted in the time within which an appeal from a Master's Report may be had under that order.

Notice of appeal from a report dated 29 Nov., 1883, given on the 31st Dec., 1883, for the 7th Jan., 1884, is valid.

W. Cassels, Q.C., and *Rolph*, for appellant.

Hamilton, contra.

LAW STUDENTS' DEPARTMENT.

NEW LAW SCHOOL AT HALIFAX.

A correspondent sends us a copy of a Halifax paper giving the following account of the organization of a new law school at Halifax, which will be of interest to our young friends:

The law department of the University of Dalhousie owes its origin to the munificence of George Munro, of New York, as it does its success to the energy and self-sacrificing spirit of the faculty, who have undertaken to carry the trust into operation. Whether it was the increasing favour with which such schools are regarded, or the crying necessity for higher legal education, or some other reason, that prompted Mr. Munro to devote some $40,000 to founding the school, we do not know. But of this there can be no doubt—such an institution was greatly needed in the maritime provinces. No man capable of forming a judgment on the question of how best to obtain a complete and thorough knowledge of the law would for one moment recommend any other course than attendance at a law school. The student in a law office seldom receives any instructions from his preceptor. Day after day he goes through the mill-round of posting books, serving notices, copying papers, writing letters, etc. This work is of the most desultory character; in fact too often his studies are conducted without guide, counsel, or friend, and it is only when admitted to the bar that he wakes up to the realities of his situation and finds that all the while he has been under a pleasant delusion, that he has never studied law, knows no law, and must either begin at the beginning or be pushed out of the profession by men who have studied. Determined to give students the inestimable advantages of a thorough training, the founders of the school have spared nothing at their command to make it the most successful in Canada. Already it numbers fifty students and has a library far in advance of many schools twenty years in operation. The school occupies the large rooms in the High School on Brunswick street, that to the right being devoted to a lecture and recitation room, and the one on the left to a library and reading-room. Every one who visits the school is struck by the handsome appearance of the rooms and the neat though simple manner in which they are fitted up. On the tables may be found the leading daily newspapers and the most of the leading law periodicals. The advantages for reading and studying are very great. The library contains about 3,000 volumes, some of which are duplicates, and are to be exchanged with American and Canadian libraries. In legal publications relating to Canada it is hoped to make it complete, and already in this respect it is far ahead of any library in the maritime provinces. The faculty are about to make an appeal to the public to give them such a library as will enable them to take rank with the best American law schools.

Then follow pen and ink sketches of the faculty, consisting of Richard C. Weldon, Principal, and the following lecturers: Hon. J. S. D. Thompson,

Hon. S. L. Shannon, Q.C., James Thompson, Q.C., Robert Sedgwick, Q.C., Wallace Graham, J. Y. Payzant, and J. T. Bulmer.

EXAMINATION QUESTIONS.

MICH. TERM, 1883.

FIRST INTERMEDIATE.

Equity.

(*Honours.*)

1. Give an illustration of the maxim: *Vigilantibus non dormientibus, æquitas subvenit.*

2. When will equity grant relief by way of supporting the defective execution of a power?

3. A. is the owner of a farm and, in ignorance of and without inquiry as to the true state of facts, he, in the course of a treaty for sale to B., represents to the latter that there is a ripe and standing crop of fifty acres of wheat on the farm, which will yield at least forty bushels to the acre. B., relying thereon and without inspection or further inquiry, purchases the farm with the crop, and pays for the same. There are in fact but twenty-five acres of wheat, which yield but twenty bushels to the acre. Action is brought by B. to rescind the contract on the ground of misrepresentation. A. defends, asking that the contract be affirmed, and offering to pay the market value for the deficiency in the wheat. What are the rights of the parties? Explain fully.

4. The owner of goods places them in the hands of an auctioneer for sale. The latter secretly procures a friend to buy them in for him at the sale. the owner then discovers the fact. What remedies has he, if any?

5. A piece of land is conveyed unto and to the use of A. to hold in trust for B. The trustee sells the land to C. who holds it for ten years. Action is then brought by B. against A. for breach of trust and against C. for recovery of the land. Both defendants rely upon the Statute of Limitations. What are the rights of the parties? Explain fully.

6. A. is a blind man, and agrees with B. for the purchase of a farm. The contract is signed by A. who is then falsely told by B. that the latter has also signed it. Action is brought by A. for specific performance which is resisted by B., who sets up the Statute of Frauds as a defence. What are the rights of the parties? Explain fully.

7. A testator devises the revenues arising from certain lands to trustees for certain specified objects of charity. These revenues so increased that they were more than sufficient for the specified objects: the testator's heir-at-law brought action against the trustees to recover the surplus revenue. What were the rights of the parties? Explain fully.

SECOND INTERMEDIATE.

Real Property.

1. What is the present state of the law as to the cultivation of wild land being considered waste?

2. How can a freehold estate be made to commence *in futuro?*

3. What was, and what is now, the meaning of the phrase "die without issue" in a will? Explain

4. What was formerly the distinction between a tortious and an innocent conveyance? What is the law now upon the subject?

5. Is there any case in which land, not being a leasehold estate, will descend to the personal representative of an intestate? Explain.

6. Explain the meaning of the rule that powers cannot be grafted on a bargain and sale.

7. What is the effect of the intentional destruction of a deed with the consent of all parties to it? Explain fully.

Equity.

1. What is constructive notice? Give two examples.

2. A. by voluntary deed conveys Whiteacre to B. and by deed for valuable consideration conveys Blackacre to C., and each of the conveyances contains a covenant for further assurance. Action is brought by B. against A. to reform the Whiteacre deed, on the ground that the land is imperfectly described, and action is brought by C. against A. to reform the Blackacre deed on the ground that by mutual mistake of the parties it conveys only a life estate, whereas it was intended to convey a fee. What are the rights of the parties to these actions, and why?

3. A. holds certain stock in trust for B., who, for value, assigns his interest therein to C., who gives no notice of the assignment: B. afterwards again assigns the same stock to D., a purchaser for value without notice of the prior assignment, who gives notice of his assignment to C.; and still later B. again assigns the same stock to E., a purchaser for value without notice of any of the prior assignments, who gives notice of his assignment to A. Upon this state of facts who is entitled to the stock, and why?

4. A. enters into a voluntary bond whereby he binds himself to convey certain lands to B. or his assigns. The latter assigns the bond to C., who is a *bona fide* purchaser thereof for value, without notice of any want of consideration for the original instrument. C. brings action on the bond for specific performance thereof, and A. depends on the

ground of want of consideration. What are the rights of the parties, and why?

5. Give an example of a constructive trust.

6. What exception is there to the general rule that a trustee shall not be allowed to delegate his trust?

7. Illustrate by one example the equitable doctrine of election.

(*Honours.*)

1. Land is conveyed unto and to the use of A. in trust for B, The latter then mortgages the land to C. and sells it to D, who is an innocent purchaser for value without notice of C.'s mortgage. None of the instruments are registered. Action for foreclosure is brought by C. on his mortgage and is resisted by D. who claims to hold free from the mortgage. What are the rights of the parties? Explain fully.

2. Certain moneys are held by A. as trustee for B. The latter in the presence of C. voluntarily gives a verbal direction to A. to hold these moneys in trust for C. Afterwards B. repents and revokes this direction and brings action against A. for the money. What are the rights of the parties and why?

3. State in what respects charities are favoured in the law above individuals, and in what respects they are disfavoured as compared with individuals?

4. Discuss the question of the liability of trustees and executors respectively for the defaults of their co-trustees and co-executors, and the effect upon them respectively of joining in receipts for conformity.

5. Define and distinguish between General, Specific, and Demonstrative legacies, and give an example of each.

6. A settlor by deed conveys lands upon trust to pay the rents and profits to the settlor during his life, and after his death to sell the same and divide the proceeds equally between A. and B., if then living. A. predeceases the settlor. Who takes the property, and in what character does he take it, *i.e.*, whether as realty or personalty? Give reasons for answer.

7. Define and illustrate by an example the equitable doctrine of consolidation, of securities, and distinguish consolidation from tacking, illustrating the latter doctrine by an example.

Real Property.

(*Honours.*)

1. Define *disclaimer*. Where in an action by landlord against tenant to recover the land, the tenant sets up title in himself, and also denies the landlord's title, is this a disclaimer?

2. From what time does a will now speak? Is there any exception? Give an example.

3. When can an executor bring an action against a wrongdoer for injury done by him to the land of his testator?

4. Under what circumstances can an executor distrain for arrears of rent due to the lessor in his lifetime?

5. Give some examples of estates upon condition.

6. How is an estate tail barred?

7. A bargain and sale to A. in trust for B. Who takes the legal estate? Why?

Broom's Common Law, and O'Sullivan's Manual of Government in Canada.

(*Honours.*)

1. Where a written contract is signed by a party as principal, will parol evidence be admissible, (1) to discharge that party from liability by shewing that he was in fact merely an agent; (2) to charge the real principal by shewing that the party signing did so merely as his agent? Give reasons.

2. What is the reason of the law in not permitting a civil action to be brought against a person who obstructs a highway?

3. Will an action lie for the mere entry by the defendant on the plaintiff's land, without any damage resulting? What is the main reason of your answer, and what is the general proposition of law applying to cases of this nature?

4. In a crowded street A., who is escaping from B., who is pursuing him with an intent to commit an assault upon him, unavoidably comes into violent collision with C. Is B. liable to an action by C for the injury he sustains? Give reasons.

5. If a judgment be recovered against one of two joint wrongdoers, and remains unsatisfied, can another judgment be recovered afterwards against the other wrongdoer for the same cause? Why?

6. When a banker pays a forged cheque, purporting to be that of his customer, on whom does the loss fall, the banker or the customer? and why?

7. Mention the six changes which have taken place in regard to the government of the old colony of Canada since 1760.

CERTIFICATE OF FITNESS.

Real Property and Wills.

1. A testator entreated his wife to settle such part of his real estate as she might think fit in

certain manner, and then devised all his real estate to her, unfettered and unlimited, in full confidence and with the firmest persuasion that she would devise the whole to such of his heirs as she should think fit. Is a trust created by this devise? If so, explain its nature.

2. When will illegitimate children take under a will, under the general designation of "children?"

3. Name the chief points advisable to be observed in drawing a power of sale in a mortgage.

4. What is the present state of the law respecting tenancy by the curtesy?

5. Where a mortgagor has, after the mortgage, demised the land to a tenant, what are the rights of the mortgagee when the mortgagor is in default of payment?

6. A. conveys land to B. for value by statutory deed. Subsequently A. conveys the same land to C. for value, who registers his conveyance before B's., and without notice of it. In whom is the legal estate? Explain.

7. What are the statutory provisions as to the improvement of land under a mistake of title?

8. By R.S.O. cap. 98, sec. 8, it is enacted that corporations aggregate, capable of taking and conveying land, may take and convey by bargain and sale. Explain this section.

9. A. by deed conveys lands to B. for life. By his will made on the same day he devises the same land to the heirs male of B. from and after the decease of B. What estate do the parties take under these instruments? Explain.

10. What is the office of the *habendum* in a deed? Can it be dispensed with? Why?

Smith's Mercantile Law—Practice.

1. A is carrying on business as a grocer, and makes an agreement with B., his book-keeper, to take one-fifth of the profits of the business in lieu of salary. Discuss fully B's. liability for partnership debts, giving reasons.

2. A. calls at B's. shop and looks over some goods, points out a particular parcel and says he will take it, but no price is named. The shop and goods are burned. Who is at the loss of the goods? Explain fully your answer, and the law bearing on the subject.

3. Give a short sketch of the method of forming (*a*) a joint stock company for mercantile purposes; (*b*) a limited partnership. Point out any difference in the liability of the members of the respective companies.

4. Point out shortly the steps to be taken in mortgaging a British ship.

5. Point out difference in principle between fire and life policies of insurance. What limitation has been put on the right of fire insurance companies to impose special conditions in their policies?

6. What is necessary for a defendant to allege and prove in order to succeed on a defence of tender to an action for debt? Answer fully.

7. A. sells goods in Toronto to B., who lives in Chatham, for a sum certain, and B. is to pay the freight to Chatham. After the goods are delivered to the railway company by A., he finds B. is insolvent. What remedies has he? Answer fully.

8. Under what circumstances and for what purpose is it necessary to *protest* a bill of exchange?

9. Give sketch of the practice in cases where a writ of summons is served out of the jurisdiction, and the defendant does not appear.

10. What changes have been made in the rights of a successful party in an action to costs under the Judicature Act?

Equity.

1. Assets which have come to the hands of an administrator to be administered are, without uny default on his part, stolen from him. An action is afterwards brought by a creditor of the estate, in which it is sought to make the administrator account for these assets. State the rights of the parties. Give reasons for your answer.

2. A testator directs his solicitor to so draw his will that his son shall take a life estate in certain lands. The solicitor draws it so that the son takes the estate for a term of years. The will is so executed, and the mistake not discovered until after the testator's death. The son seeks as against the person entitled in remainder to reform the will. What are the rights of the parties? Give reasons.

3. A broker owns certain stock which he desires to sell. B. is seeking an investment. The broker recommands this stock, saying that he holds it for a customer. B. relies upon the statement and purchases, although he would not have purchased had he supposed that the stock belonged to the broker. B. afterwards discovers the true state of facts, and brings action to set aside the contract. What are the rights of the parties? Give reasons.

4. An infant sells and conveys his land, and upon being asked his age during the course of the transaction, he knowing the same to be untrue, states that he has arrived at his majority. He then re-

fuses to leave the property, and an action being brought to recover possession, sets up his infancy and the invalidity of the conveyance. Who should succeed in the action, and why?

5. A testator bequeaths his household furniture to his widow upon condition that she shall never marry, and in the event of her marrying again it is to go to her servant. Is the condition a valid one? Give reasons.

6. What is the rule in equity as to the right of a solicitor to purchase property from his client during the continuance of the relationship?

7. What was the former rule in equity as to the right of a surety on payment of the debt to receive an assignment of the securities held by the creditor, and how has that rule been modified by statutory provision?

8. Where a right, title or interest in lands is in question in an action, what step can the plaintiff take in order to prevent the land from falling into the hands of an innocent purchaser for value without notice of the plaintiff's rights?

9. Give a short sketch of the law relating to appropriation of payments as between debtor and creditor.

10. Distinguish between the different measures of relief afforded at law and in equity to one of several sureties who is compelled to pay the whole debt, in a case where one of his co-sureties is insolvent.

Benjamin on Sales, and Smith on Contracts.

1. Under what circumstances can, and under what circumstances cannot, a vendee who has purchased goods by fraud, transfer them to an innocent purchaser for value, so as to enable such innocent purchaser to hold them as against the original vendor?

2. Define *fructus industriales* and *fructus naturales;* and explain the difference between them as regards the application of the fourth section of the Statute of Frauds.

3. A. sells to B. a certain stack of hay standing on his farm for $30, the stack to be allowed to remain where it is for one month, and not be removed until paid for. During the month the stack is accidentally burnt before any of it is removed or paid for. Is B. obliged to pay for it? Reasons.

4. When a vendor delivers goods to a common carrier to be sent to the purchaser, is the carrier as a general rule in contemplation of the law the bailee of the vendor, or of the purchaser?

5. What is the effect in regard to the passing of the title, of goods being put by the vendor on board the purchaser's own vessel; and how may that effect be prevented?

6. When may a party rescind a contract of sale on the ground that he has been induced to enter into it by an innocent misrepresentation of fact not amounting to a warranty?

7. Where a purchaser has been induced to buy goods through the fraud of an agent of an innocent vendor, what remedies has the purchaser, and against whom?

8. Explain the difference, as regards the effect upon a sealed contract, between the illegality of part of the consideration and the illegality of some of the covenants.

9. What exceptions are there to the rule that money paid in pursuance of an illegal contract cannot be recovered back?

10. Will evidence of a *parol* admission by a debtor that he has made a payment to his creditor on account of a debt within the statutory period be sufficient to take the case out of the Statute of Limitations? Give reasons.

CORRESPONDENCE.

RAIDS ON THE PROFESSION.

To the Editor of the LAW JOURNAL;

SIR,—I beg to call your attention to the fact that in a certain town not more than sixty miles from Toronto, a chemist and druggist has undertaken to practice as a conveyancer, in addition to his ordinary business, and he boastfully informed the writer that he did as much conveyancing as any of the lawyers. Now, why should this state of things exist? If a lawyer undertook to sell and dispense drugs, he would be immediately prosecuted at the instance of the druggist; yet, the latter may with impunity infringe on the business of the former, and even boast of it. How long is this evil to continue? In no other country in the world can every Tom, Dick, or Sim practise this most important branch of the law without being duly qualified. Surely an influential body like the Law Society ought to be strong enough to protect its members against this iniquity.

Yours, very truly,

ONE OF THE INJURED.

Law Society of Upper Canada.

OSGOODE HALL.

MICHAELMAS TERM, 47 Vict., 1883.

During this term the following gentlemen were entered on the books of the Society as Students-at-Law, namely:—

Graduates—Thomas Francis Lyall, William George Hector McAllister, Charles Joseph McCabe, John Shaw Skinner, Walter Stephen Harrington, Francis Norman Raines.

Matriculants—Donald Reginald Anderson, Edward Peel McNeil, Charles Elliott, Isaac Benson Lucas, William Francis Bannerman, Frederick Bernard Featherstonhaugh, David Stevenson Wallbridge, Frederick Clarence Jarvis, Ira Standish, William Patrick McMahon.

Juniors—Ashman Bridgman, Hugh Crawford Rose, Colin McIntosh, Walter A. Thrasher, David Alexander Dunlop, Francis Brown Denton, Magloire Raoul Routhier, Heber Stuart Warren Livingston, John Alexander Chisholm, Paul Jarvis, Marcus Herbert Simpson, Thomas Scullard, John Harper.

The following gentlemen were called to the Bar, namely:—

George Kappele, honour man and gold medalist; Cornelius Arthur Masten, Robert Alexander Porteous, James Arthur Mulligan, John Soper McKay, William John Taylor, Thomas Chapple, Charles Macdonald, Rufus Adams Coleman, Chaucy Giles Jarvis, Fernando Elwood Titus, Archibald James Reid, Alexander Mackenzie, William Henry Barry, Edwin Bell, William John Wallace, John Johnstone Anderson Weir, James Garbutt, Ferguson James Dunbar.

BOOKS AND SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

1884 and 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—North America and Europe.
- Elements of Book-Keeping.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

Students-at-Law.

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar.

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

Books—Arnott's elements of Physics, and Somerville's Physical Geography.

FIRST INTERMEDIATE.

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

Three scholarships can be competed for in connection with this intermediate.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Gov-

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

FOR CERTIFICATE OF FITNESS.

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

FOR CALL.

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

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

CURRICULUM.

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

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

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

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

5. The Law Society Terms are as follows:

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

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

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

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

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

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

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

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

10. The Solicitors' examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

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

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

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

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

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

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

FEES.

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