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DIARY FOR SEPTEMBER.

17. Sun. *15th Sunday after Trinity.* First U. C. Parliament met at Niagara, 1792.
19. Tue. President Garfield died, 1881.
20. Wed. Lord Sydenham, Gov.-Gen., died 1841.
24. Sun. *16th Sunday after Trinity.* Guy Carleton, Lieut-Governor, 1766.
30. Sat. Sir Isaac Brock, President, 1811.

TORONTO, SEPT. 15, 1882.

THE Benchers met in Convocation on the 8th inst., for the purpose of electing successors to Messrs. Stephen Richards, Q.C., and John Bell, Q.C., who have forfeited their seats through absence during four terms. Mr. Bell was re-elected; and Mr. Alexander Leith, Q.C., whose face it is a pleasure to see once more in Toronto, was substituted for Mr. Richards, this also being a case of re-election.

ACCORDING to the latest returns from Somerset House, no less than 12,914 solicitors have taken out their certificates in England for the purpose of practising during the present year. Of these 4,663 practice in London. When we read these figures it is not surprising to find, as the fact is, fully competent solicitors in England content to work for years as managing clerks for salaries of from $700 to $1.000 a year, only, perhaps, at the end to buy themselves into a firm at a premium of several thousand pounds.

AN interesting question of international law was raised and fully argued by counsel in the *Hall Extradition Case*, which came before the Divisional Court of the Chancery Division on the 9th inst., namely, as to the proper construction and operation of the Ashburton Treaty, entered into in 1842 between the Government of Great Britain and that of the United States, with reference to the extradition of criminals for certain offences therein named. Counsel for the prisoner argued that if the crime with which he is charged would not have fallen within the term "forgery," as that term was understood in England and the United States in 1842, he should not be surrendered. Mr. Fenton, on the other hand, who appeared for the Crown and for the United States authorities, contended that though the act alleged against the prisoner might not be forgery as it was understood in England in 1842, yet if any subsequent Canadian Act had made it forgery the operation of the Treaty covered the case, and he should be surrendered. Judgment is reserved, and if the Court should decide that the offence charged constitutes "forgery" at common law, and as understood in 1842, it may not be necessary to deal with the above question at all.

THE Divisional Court of the Chancery Division gave judgment in the case of *Mc-Tiernan* v. *Fraser*, on the 9th inst., on a point of practice of much importance. The cause was heard before the Judicature Act came into operation, and a reference was made to the Master. Both parties appealed from the Master's report, and the matter having been referred into Court from Chambers, Proudfoot, J., gave judgment in June last, varying the report and referring the matter back to the Master. In August last, notice of appeal to the Divisional Court was served, but that Court has now decided that there is no such right of appeal, but that the parties must go to the Court of Appeal. The Chancellor, in delivering judgment, observed the policy of the

Judicature Act is not to encourage these intermediate appeals; and he also said that O. 494 did not apply to the case, inasmuch as the cause was not pending in the sense of that order. What was pending was the proceeding in the Master's office.

JUST before going to press we have received the completed series of lectures recently delivered by Mr. Joseph E. McDougall before the law students of Toronto, on the subjects of "Torts and Negligence." The lectures have, as our readers are aware, been appearing, from time to time, in pamphlet form, under the editorship of Mr. J. P. Mabee, a law student, who, we gather from the introduction, took them down in short-hand at the time of delivery, and afterwards submitted them to the revision of the learned lecturer. Mr. Mabee has now, we are glad to see, published the whole series in the form of a small book, adding a good index and a table of cases. It is needless to dwell on the service rendered to the profession by giving them, in a permanent form, lectures on which so much labour has been spent, and which bring under review so many Canadian, English and American cases on the subjects on which they treat; while at the same time students who are preparing these subjects for examination ought to be specially grateful. We may take occasion to refer more at length to these lectures in a future number.

WE learn on what we consider good authority that some of the chief and more influential Queen's Counsel in England, after studying with care the judgment of the Columbian Supreme Court Judges in the *Thrasher Case*, have given their opinion "that those Judges have satisfactorily made out that the Supreme Court of B. C. is a Dominion Court, and not a Provincial Court within the B.N.A. Act, 1867, sect. 92, par. 14."

We also hear from Victoria, B.C., of a judgment of the Chief Justice in a recent suit in the Supreme Court of B.C.,—*Morne* v. *Morison*—which decided on the illegality of the Local Government tax sales of land for several years. If the hurried note of it which reached us be correct, we are interested in this judgment inasmuch as it contraverts the position, apparently, laid down by the Hon. Edward Blake (and adopted by Mr. Alpheus Todd) when M. J., in his official minute, (Sessional Papers, vol. x., 1876,) to Lord Carnarvon, on the practice of the Privy Council of Canada, of taking approved reports of Committee of Council, held without the Governor-General being present, as having the legal operation of actual orders made by the Governor-General in Council, where His Excellency is present. The note which reaches us is that Reports of Committee of Council approved by His Excellency, but not in Council, and not containing the operative words "it is ordered," cannot convey any authority to appointees thereunder, by virtue of certain Acts, *e. g.*, tax Acts, prescribing such appointments should be made by *order* of a Governor-General (or in Local Acts a Lieutenant-Governor) *in Council*, although for many purposes an approved report of a Committee of Council may be the most appropriate mode of carrying out certain objects. *Morne* v. *Morison* was partly determined on that ground, and an appointment of an assessor with arbitrary power in the taxation, assessment and sale of land, declared null, and set aside; and his acts avoided in consequence.

AMONG the latest books sent to the secretary of the Law Society is one the existence of which may not be generally known. It is the Incorporated Law Society Calendar for the year 1882. This is a new publication, and is, in some respects, a rival of the well known Law List published by Stevens & Sons. This, the first calendar, appropriately opens by an account of the origin of the Society,

and a general review of its past labours, from the year 1825, when it was first projected, up to the present time. The work of the Society in establishing an efficient system of examination and lectures is pointed out; and also the influence brought to bear by it upon the Statutes specially affecting the professsion. "Every available opportunity," says the writer, "has been taken of obtaining the introduction into current legislation of provisions furthering the just advancement and protecting the interests of solicitors as a class." Reference is also made to the Society's action in upholding the discipline and guarding the good name of the profession by taking steps to secure the closing of its ranks against those who were, in the Society's judgment, not fit to enter them, and the total or temporary expulsion of those who, having gained admission, by their unworthy acts tarnished the honour of the general body of its members. This part of its functions the Society has been enabled to perform more effectually by reason of the Imp. Solicitors Act of 1874, which provides that notice shall be given to the Society of all applications made for the removal of the names of attorneys and solicitors from the roll, and that it shall be at liberty to appear and be heard on such application. "The Incorporated Law Society," says the writer, "must ever aspire to be a faithful leader and a true reflex of enlightened views, and a watchful guardian alike of the honour and of the best interests of a learned profession." The Calendar then proceeds to set out various Acts relating to solicitors, lists of candidates at the examinations of the past years, specimens of the papers set, etc. It then gives the names, firms, etc., of London and country solicitors who are members of the Society. Lastly, under the heading "Foreign Correspondents of Members of the Society," it gives, under the places where they practice, the names of various practitioners in the Colonies and abroad, with the name of the English firm with whom they respectively correspond. Many Canadian names appear here, and there is this advantage over the Law List, that no fee is exacted for the privilege of insertion, whereas the publishers of the Law List charge £1 for each member of a firm whose name they insert.

THE VALUE OF CHILDREN.

[COMMUNICATED.]

We are not going to consider the value of babies as alarum-clocks for arousing the male parent; nor as teachers of patience—the virtue, not the opera; nor as gainers of prizes at country fairs. Nor are we going to quote their market values south of Mason and Dixie's line in the days before the war; nor will we dilate upon the bounties offered by that paternal monarch, Louis XIV., for the production of children in New France, although he, in council, passed a decree, saying, "that in future all the inhabitants of the country of Canada who shall have living children to the number of ten, born in lawful wedlock, . . . shall each be paid out of the money sent by his majesty to the said country a pension of 300 livres a year, and those who have twelve children, a pension of 400 livres." Rich and poor were alike within the purview of this ordinance, whereas before Colbert's reward of 1,200 livres for those who had fifteen children, and 800 to those who had ten, was intended specially for the better class.

But we are about to refer to some of those cases where juries and judges have been called upon to estimate the sums that will compensate for injuries arising from the negligence of others to life or limb of infants, and the value of the services of which the parents of these injured innocents have been deprived by such hurts. This is a subject which must be replete with interest to every *pater familias* in humble circumstances—and how many a solicitor of the High Court of justice is so situated!

The Value of Children.

First, let us look at the value of children piece-meal, or rather what persons injuring portions of their little human forms divine have had to pay for their negligences and ignorances. A boy, seven years old was kicked by a horse, and had his eye, skull, and brain so badly hurt that the witnesses at the trial considered he would never be able to earn his own living; and they were right, for the poor little chap died nine days after the trial. The jury gave him £150 as a slight compensation; the owner of the horse not liking to pay that sum applied for a new trial, but the Court did not consider the damages excessive, and would not interfere.—*Kramer* v. *Waymark*, L. R., 1 Ex. 241.

A child of two years was wandering about a railway track when it was struck by an iron horse, and was so injured that a leg and a hand were lost. The jury, when asked to assess the damages, gave $1,800 as a recompense. ("Redfield on Railways," vol. 2, p. 243, n.) Surely this little trot could not have brought more gain to its parents if it had been actually born with the legendary silver spoon in its mouth. This valuable child dwelt in Connecticut.

Out in Missouri a boy lost his hand through a defect in a moulding machine, and upon suing the owner, who was also his employer, he recovered $1,000. The Court sustained the verdict.—*McMillan* v. *Union Press-Buck Works*, 6 Mo. App. 434. Little Mangan, an English boy, had nothing like the same good fortune, although his misfortune was very similar. He was a small school-boy of four summers, and when passing homewards one day was induced, by a brother of the more mature age of seven, to put his fingers into a machine for crushing oil-cake that was standing unguarded beside the road. Another mischievous little wretch turned the handle and round went the wheels; the chubby fingers were seized and badly crushed, so that three of them had to be amputated. The owner of the machine was sued for negligence in allowing it to stand so exposed, and at the trial the sight of the fingerless and maimed little hand could only induce the twelve honest-hearted jurors to give a verdict of £10 in favor of the boy. Even this pittance Mangan was not able to get because the Court held that the defendant was not liable for the injury, as it was caused by the act of the plaintiff and the boy who turned the handle.—*Mangan* v. *Atherton*, 4 H. and C. 388; L.R. 1 Ex. 239.

Another little boy in England, aged five years, was equally unfortunate. Being too young to take care of himself his granny went with him to Velvet Hall Station, to take the train to Berwick-upon-Tweed. After getting their tickets, on crossing a track they were struck by a freight train, the old lady was killed and the child severely injured. An action was brought for these injuries to the lad, and the jury awarded £20. The Court, however, set aside the verdict as the jury had found that the grandmother had been guilty of negligeuce, without which the accident could not have happened; and the Court considered that the infant was so identified with the grandmother that the action could not be maintained, her carelessness being a sufficient answer to the claim. *Waite* v. *N. E. Ry.*, El. Bl. & El. 719.

In Mississippi a man had to pay $100 for merely whipping a child of five, who had, however, assaulted in a violent and brutal manner (so saith the reporter) the whipper's only child, an infant of eighteen months.—*Lowell* v. *McDonald*, 58 Miss. 251. In Massachusetts a Miss of thirteen winters recovered damages to the extent of $5,000 against a railway company for an injury to an arm; and then when she was of age her father sued the company for the loss, occasioned by the selfsame accident, of her services during minority, and he obtained $500 to compensate himself wherewith.—*Wilton* v. *Middlesex, Ry.* 125 Mass. 130. The gentler sex is highly prized in New England, judging by this and the Connecticut case. Boys, however, at least in the

west, are deemed mere money-making machines. Old Miller's boy, of nineteen, lost his arm through the negligence of a railway company, and the father recovered $2,000 for the value of the son's services until he came of age, and for the expense of medical attendence and nursing in consequence of the injury.—*Houston, &c. R'way* v. *Miller*, 49 Tex. 322.

And now let us consider some of the amounts that have had to be paid where the wrong has caused the death of the child. In such case the rule is that damages of a pecuniary nature must be shown; the damages are not to be given merely for the loss of a legal right, but should be calculated with reference to a reasonable expectation of a pecuniary benefit, as of right or otherwise, from the continuance of the life of the lost one. (*Franklin* v. *S. E. Ry.*, 3 H. and N. 211; *Walton* v. *S. E. Ry.*, 4 C.B., N.S. 296.) In fact, what is laid down by the decisions is, that there must have been a reasonable expectation of pecuniary advantage to the parent from the life of the deceased. (Field, J., *Heatherington* v. *N. E. Ry.*, L.R. 11, Q. B. D. 160.) Still it was held, in a case where a healthy boy of six years old was killed, that absence of proof of any special money damage flowing from the death of the child will not justify a non-suit, nor a direction on the part of the judge to the jury to find nominal damages only. (*Gorham* v. *N. Y. C.*, 23 Hun. (N.Y.) 449.) The "necessary injury" to a parent by the negligent killing of a child, and for which he is to be compensated, comprises the loss of the services of the child during minority, the costs of nursing, medical attendance and the funeral expenses. (*Rain* v. *St. Louis, etc., Ry.*, 71 Mo. 164.) In England doubts have been suggested as to whether damages are obtainable to compensate for the loss of the services of a child so young as to be unable to earn anything. (*Bramhill* v. *Lee*, 29 L. T. 11.) But in the United States the doctrine has been well settled. In *Hill* v. *Forth second Street Railway*, 47 N. Y. 317, where a boy of three years and two months had been killed, and the jury had given a verdict for $1,000, the Court of Appeal sustained it, saying, "It was within the province of the jury, who had before them the parents, their position in life, the occupation of the father, and the age and sex of the child, to form an esitmate of the damages with reference to the pecuniary injury, present and prospective, resulting to the next of kin. Except in very rare instances it would be impracticable to furnish direct evidence of any specific loss occasioned by the death of a child of such tender years, and to hold that without such proof the plaintiff could not recover, would in effect render the statute nugatory in most cases of this description. It cannot be said, as a matter of law, that there is a pecuniary damage in such a case, or that the expense of maintaining and educating the child would necessarily exceed any pecuniary advantage which the parents could have derived from his services had he lived. These calculations are for the jury." As Eliza Hooghkirk, a healthy and bright child of six, was being driven by her father, on a waggon, into Albany, the waggon was struck by a locomotive and substantially destroyed; all the inmates were injured, but the child was killed. The jury was particularly instructed that in estimating the damages they should be strictly confined to the pecuniary injuries resulting from such death to the next of kin of the deceased—that the pain and shock to the feelings of the parents, caused by the death of their daughter, could not in any way be considered, and that in fixing such damages they should be guided by what, in their honest judgment, they should deem a fair and just compensation for the pecuniary injuries resulting from such death, which compensation, however, could not, according to the statute, exceed $5,000. After this charge the jury awarded $5,000, and the Court was asked to set the verdict aside as excessive, but declined to interfere, saying, that as a matter of law it is impossible for any Court to say that the ac-

tual "pecuniary injuries" resulting from the death of the infant might not be $5,000. Possibly the probabilities are against it, but the statute in this region of conjecture has committed the formation of an opinion to a jury upon whose discretion the only limitation is the maximum which is thereby allowed. The discharge of such duty, expressly confided to a jury by statute, necessarily, in a case which presents reasonable grounds of conjecture, involves a wide discretion, and unless the evidence shows a plain error the verdict cannot be disturbed.

Hetty Downie, a girl of the age of about seven years, was run over by the cars of the New York and Harlam River Company, and killed. She lived with her mother. On the trial anon—suit was asked for on the ground, amongst others, "that there was no proof of any pecuniary or special damages sustained by the plaintiff or by the next of kin." The motion was over-ruled, and the plaintiff had a verdict of $1,300. The Court of Appeal said:—It is not required, to sustain the action, that there should be proof of actual pecuniary loss. The damages are to be assessed by the jury with reference to the pecuniary injuries sustained by the next of kin in consequence of such death. This is not the actual present loss which the death produces, and which could be proven, but prospective losses also. They may compensate for "pecuniary injuries," present and prospective. *Oldfield* v. *N. Y. and H.R., Ry.*, 14 N.Y. 310. In *McGovern* v. *N. Y. C. and H.R.R.*, 67 N.Y. 417, the action being for the death of a boy eight years of age and the recovery, $2,500, the Court held that the jury could estimate the whole damages sustained by the father from the death, as well as those proceeding from the loss of services during minority as those after, and would not interfere.

On the other hand, in Arkansas, the Court considered that $4,500 was an excessive sum for a railway company to pay to a mother for the loss of the services of a child five years old, through the negligence of the Company. *Little Rock, etc., Railway* v. *Barker*, 33 Ark. 350. In this case it was decided that no compensation was to be given to the dead infant's parent for the loss of the companionship of the child. In Indiana, in one case, a father made no claim for the loss of his child's future services, and gave no evidence to show his loss; so, although the jury gave him $1,800 therefor upon the death of his child, the Court considered it excessive—*Penn. Railroad* v. *Lilly*, 73 Ind. 252. The amounts awarded in England have been by no means as great as in America. In one case were an action was brought by a father, who was a working mason, for injury resulting from the death of his son, a lad of fourteen, who had been earning four shillings a week, but at the time of his death was out of employment, the jury found a verdict with £20 damages. A motion was made to set it aside as excessive, but the Court held that the father was entitled to retain the amount.—*Duckworth* v. *Johnston*, 4 H. and N. 653. We quite agree with Martin B. when he says, "If damages are to be given, I think that £20 is not too much."

RECENT ENGLISH DECISIONS.

Of the June number of the *Law Reports*, the cases in 7 P. D. 61-102; and 20 Ch. D. 1-229, still remain for review.

WILL—MISTAKE.

In the former, the only case which it appears necessary to notice is *Morrell* v. *Morrell*, p. 68, an article on which was republished from the English *Law Journal*, in our last number. In this case an intending testator instructed his solicitor that he wished to leave all his shares in a particular company to his nephews. The solicitor embodied these instructions in writing, and sent them to a conveyancing counsel to draw the will. In

these instructions the solicitor spoke, as directed, of "all" the said shares; but, by some accident unaccounted for, the counsel introduced the word "forty" before "shares" in the draft. The testator really owned four hundred shares. Though the solicitor saw the word "forty" in the draft, it never attracted his attention, and he did not realize its effect, nor did he inform the testator in anyway that the word "forty" had been introduced; and the actual will as executed was never read over to the testator, who never even heard of the introduction of the word "forty," but executed the will believing that it carried out his instructions. Under these circumstances, the President held that the word "forty" which had been introduced without the authority of the testator, might be struck out. He said he did so on the same principle as that on which in *Fulton* v. *Andrew*, L. R. 7 H. L. 448, where a residuary bequest was introduced into a wlll *without the knowledge and authority of the testator*, the clause containing that bequest was rejected. It may be observed that in his instructions to the jury in this case, the President remarks that there is no difference between the case of a testator referring it to a particular person to express his wishes, who makes the mistake, and himself, knowing what his own wishes are, and setting about to express them, making the mistake. If he trusts to anybody else to express his wishes, and *adopts* the words used by that person as his own, then that alone can remain as the evidence of his intention. But in *Morrell* v. *Morrell*, the jury found as a matter of fact that the testator did not approve of the word "forty" being used, *i.e.*, that he instructed his solicitor as to the whole of the shares, and only approved of the draft upon the supposition that the solicitor had carried out his wishes.

Proceeding now to the June number of the Chancery Division (20 Ch. D. 1-229), the first case (*Redgrave* v. *Hurd*), has been already noted, *supra* p. 174, as reported in the Law Journal Reports for February last.

ACTION FOR DECEIT—COMPANY—FRAUDULENT PROSPECTUS.

Next comes a long report of the case of *Smith* v. *Chadwick*, p. 27, a case similar to the recent case of *Petrie* v. *Guelph Lumber Co.* in our own courts, *supra* p. 176; that is to say, it was an action brought for damages alleged to have been sustained by the plaintiff by his having been induced to take shares in a certain company, by the fraudulent misrepresentations of the defendants, an action which used to be called an action of deceit. The following are certain propositions of law which are illustrated by the judgments of the Court of Appeal in this case of *Smith* v. *Chadwick*:—(i) Such an action as this, although brought in the Chancery Division, is a mere common law action of deceit. In order to entitle the plaintiff in such an action to relief, it must be shown first, that representations, which in fact were not true, had been made by the defendants; that these representations were made by the defendants, either with a knowledge that they were not true, or recklessly, in which case, although they knew not of the untruth, they would be liable as if they had known that the statements were untrue. But that is not all. It must be shown, also, that the plaintiff was deceived, and induced by the deceit that was practised upon him to do something to his prejudice in respect of which prejudice he claims damages. In an action for deceit there must be a misstatement; mere omission is not sufficient to maintain that action, unless the omission makes that which is stated untrue. (ii) On the question of the materiality of the statement or representation, if the Court sees on the face of it that it is of such a nature as would induce a person to enter into the contract, or would tend to induce him to do so, or that it would be a part of the inducement to enter into the contract, the inference is, if he entered into the contract, that he acted on the inducement so held out, and you want no evidence that he did so act; but even then you may show that in fact he did not so act in one of two ways, either by showing that

he knew the truth before he entered into the contract, and, therefore, could not have relied on the mis-statements; or else, by showing that he avowedly did not rely upon them, whether he knew the facts or not. He may by contract have bound himself not to rely upon them, that is, to take the matter at his own risk, whether they were true or false, or he may state that he did not rely upon them in the witness-box. A false statement may be obviously material, and, if so, the natural inference would be that the plaintiff relied upon it, and was misled by it. If the statement is not obviously material, a plaintiff may ask the Court, or a jury if he goes before a jury, to infer the materiality from the fact that he understood the representation in such and such a way, and acted in such and such a way, and was prejudiced. Or he may show affirmatively by other evidence that the statement was material, and that he was deceived. (iii) Where a statement is ambiguous, so that it may have one of two meanings, the plaintiff must tell the Court what he relied on. It is for him to say, "I relied on the statement in this meaning, that is the meaning I took; if it is ambiguous, it is the fault of the defendant, and relying on that, I entered into the contract." It will not do for him to say in answer to interrogatories as to the meaning which he put upon the misrepresentations alleged in the statement of claim, "I understood the meaning of such misrepresentations to be that which the words composing them obviously convey, and I am unable to express in any other words what I understood to be the meaning therefor." He cannot refer to the obvious meaning when there is no obvious meaning. When a representation is capable of two meanings, and a man comes to complain of being deceived, he is bound to tell the Court which meaning he attached to it, because he may have attached to it a meaning which the Court does not attach to it, and then he was not deceived at all. If the plaintiff will not tell the Court which meaning he attached to the representation, the Court cannot say that he was deceived. (iv) It has always been held that if a man in a prospectus, or in a written statement, particulars of sale or otherwise, falsely states the contents of a written document, he cannot escape from such false statement by saying, "I offered to show you the document." But if he makes an incomplete statement, altogether true but imperfect, he can. He says, "I did not mislead you at all; I did not state the whole of it; I said, go and look at the whole of it; the whole of it is in a copy which you can see; I did not profess to state the whole of it; I put you on your guard; I said, you can go and look at the whole of it." (v) To state in a prospectus that someone is a director who is not a director, is not necessarily a material misrepresentation. The names of the directors form an important element with many people as to whether or not they shall decide upon joining a company; but that must depend on their knowledge of the directors, their personal knowledge, or knowledge of their names and positions, otherwise the mere fact of stating that such and such persons are directors will be nothing. You may, however, have names so well known, so notorious in connection with the subject-matter of the prospectus, that even the Court would come to the conclusion that the name, even of a single director, was an inducement to persons to join the concern.

DOUBLE PORTIONS—SATISFACTION—BOND—PARTNERSHIP.

Of the next case, *In re Lawes*, p. 81, it seems only necesssary to say that, on November 25th, 1868, one L. entered into a bond to pay to his reputed son £10,000, on April 30th, 1872. On March 22nd, 1872, L. entered into an agreement for partnership with his said reputed son, and by the articles it was provided that the capital should consist of £37,500, to be brought in by L., of which £19,000 should be considered as belonging to his son. L. having died without having paid any part of the £10,000 secured by the bond, the Court of Appeal held unanimously, affirming the decision of Fry, J., that the rule

against double portions applied, and that the benefit given to the son under the partnership articles must be taken in satisfaction of the sum due under the bond. Jessel, M.R., observes :—"It is perfectly clear that by that deed the testator gave his son a share in the partnership capital, which share was to be taken at £19,000 ;" and going on to refer to the words of Sir W. Grant in *Bengough* v. *Walker*, 15 Ves. 507, he says :—"The true meaning of that is, that where a testator gives to a child a beneficial lease or share of works, or any other thing, and says nothing about the value, he is not to be taken to be giving it in satisfaction of a pecuniary bequest ; but where he does refer to the value the presumption of satisfaction may arise. And when he gives it as being of larger amount than the legacy and the legatee takes it, he takes it at the estimated amount, and in that case it makes no difference whether the testator directs the thing to be sold and gives him the proceeds, or directs the thing to be taken as a specific amount. In either case he shows his intention to give a definite amount."

SALE BY AUCTION—STATUTE OF FRAUDS.

The next case is a full report of the appeal in *Shardlow* v. *Cotterell*, over-ruling the decision of Kay, J., in the Court below, which is reported, L. R. 18 Ch. D. 280, and noted in this journal, *supra* p. 9. The facts were these :—An auctioneer signed the following memorandum at the foot of the conditions of sale :—"The property duly sold to A. S., butcher, Pinxton, and deposit paid at close of sale ;" and he also signed this receipt :—"Pinxton, March 29th, 1880. Received of A. S. the sum of £21, as deposit on property purchased at £420, at Sun Inn, Pinxton, on the above date. Mr. G. Cotterell, owner." The conditions contained no description of the property sold. Both Kay, J., and the Court of Appeal held that having regard to the word "purchased" in the receipt, there was sufficient connection between the two documents to allow them to be read together as saying what was sold, but the question was whether, even taking them together, there was a sufficient description to satisfy the requirements of the Statute of Frauds. Kay, J., held there was not, for that a mere description of a thing sold as "property," was not sufficiently definite to enable parol evidence to be introduced to show what the thing sold was. He said that to his mind the word "property" was quite as vague as the word "vendor," and that has been held in England, as also in our own Courts in the recent case of *Wilmot* v. *Stalker*, *supra* p. 178, to be not a sufficient description of the party selling to satisfy the requirements of the Statute of Frauds. It was here the Court of Appeal dissented from Kay, J., holding the description of the property sold to be sufficiently definite in the present case. Jessel, M.R., and Baggallay, L.J., indeed, held that the receipt alone was a sufficient description of the property sold. The M. R., in his judgment, takes up the general question. What is necessary to make a binding contract within the Statute o Frauds? What is a sufficient description in writing? And he answers :—"No one can say before hand. You cannot have a description in writing which will shut out all controversy as to parcels, even with the help of a map. . . . No description can be framed that will prevent all dispute, and the framers of the Statute of Frauds knew very well that they could not prevent perjury altogether, but could only go some way towards it ; and it was considered that to require a note in writing was a useful check . . . Looking at the Statute in that light, what is a sufficient description? I consider that any two specific terms are enough to point out sufficiently what is sold. For instance, 'The estate of A. B., in the County of C.,' or 'the estate of A. B., which he bought of C. D.,' or "the estate of A. B., which was devised to him by C. D.,' would be sufficiently specific. If so, why should not 'the property which A. B. bought of C.D. on the 29th of March, 1880,' be sufficient."

TESTAMENTARY APPOINTMENT—REVOCATION.

In *Sotheran* v. *Dening*, p. 99, the Court of Appeal decides that a general clause in a will revoking all former wills, revokes a prior testamentary appointment. It was argued, as against this view, that a general clause of revocation in a will does not revoke a testamentary appointment contained in a previous will unless there is a special reference to it, or some other evidence of intention to revoke it, and two decisions of Sir Cresswell Cresswell were referred to in support of this argument, which Baggallay, L.J., reconciles with the decision in the present case, by saying:—"It has been decided that a general revocation of wills does not necessarily revoke an appointment by will. That view is adopted by Sir C. Cresswell in the two cases referred to. But it must be shown that it is entirely unreasonable that it should have that effect, otherwise it will be a revocation."

BREACH OF TRUST—DOWER—STALE DEMAND.

In the next case, *in re Cross*, *Harston* v. *Tenison*, p. 109, the Court of Appeal say in the judgment, which is the judgment of the Court:—"We consider it to be a well established rule that a *cestui que trust* who, knowing that his trustee has committed a breach of trust, obtains from him a part only of that to which he is entitled, does not thereby waive his right to such further relief as he may be able to obtain, unless there is something in the surrounding circumstances from which an intention so to do can be clearly inferred;" and it seems sufficient to add that this case illustrates the application of the rule so enunciated, the Court holding that though the *cestui que trust* in question had obtained from the trustee a part, but a part only, of what they were entitled to, yet they did not thereby waive their right to further relief, for there was nothing to show that this was their intention, and they must not be taken to have elected to abandon their claim against the trustee, and to rest content with what they had obtained.

A.H.F.L.

REPORTS.

ONTARIO.

(Reported for the LAW JOURNAL.)

ASSESSMENT CASE.

IN RE APPEAL OF THE REV. JOHN STEWART FROM THE COURT OF REVISION OF THE TOWN OF KINCARDINE, IN THE COUNTY OF BRUCE.

Exemption from taxation—Probationer—R.S.O. cap. 180, sec. 6, sub-sec. 23.

The appellant was a duly ordained minister in actual connection with the Presbyterian Church in Canada, and at the time of the assessment, being without a charge, was duly entered on the list of probationers of the said Church, and performing his duties as such. He and his family resided upon and occupied property in the Town of Kincardine, owned by him, consisting of a dwelling house and two acres of ground attached, assessed at $1,300. His duty was performed entirely outside of the municipality, and at no particular place except as required by the probationers list. He claimed exemption under the Act.

Held, that appellant, as a probationer of the Presbyterian Church in Canada, though not doing duty in the municipality, is entitled to exemption under sub-sec. 23, sec. 6. R. S. O. cap. 180.

The appeal was heard by consent at the Village of Underwood, on 11th July, 1882.

From the evidence produced, it appeared that appellant was a regularly ordained minister of of the Presbyterian Church in Canada, and had until December last been in charge of a congregation at Rodney, in the County of Elgin, Ont., had then resigned that position owing to ill-health, and came to Kincardine with his family to reside on property there (consisting of a dwelling house and two acres) belonging to himself. He was not doing duty as a clergyman or minister *in* the municipality. He had upon his resignation, and at his own request, been placed on a list, known as the "Probationer's List," of the Church, which is a list composed of names of ministers without charge, and whose names are entered on the list for the purpose of enabling them to obtain employment in the Church, and permanent settlement should a call be extended to them. A probationer in the Presbyterian

Church is a minister in actual connection with the Church, but without charge, who is sent by the proper committee of the Church, and under its supervision, to supply vacancies, and from the list of such probationers vacant charges are supposed to select their pastor. They have a prior claim to be heard for a call in the vacancies. The Church can only ask a probationer to supply vacancies. A probationer is in the active service of the Church in the sense of supplying pulpits, and performing pastoral duties in congregations to which he may be sent by the Distribution Committee of the Church. Appellant is at present in Manitoba, has permission to perform, and has hitherto been performing missionary services there in connection with the Church. At the time of the assessment he was on the probationer's list in this province. He intends returning to Ontario. The congregations at Kincardine being supplied, the appellant has no duties to perform in that municipality, nor is he liable, under such circumstances, to perform any duty as a clergyman under the direction of the Church or its committees in that municipality.

The printed probationer's list of the Church, together with the regulations affecting their duties, were produced and referred to.

J. H. Scott, for appellant.—The effect of the amendment to the former Assessment Act of 1859, is to require an active service to be shewn before exemption can be claimed; or, in other words, in order to establish a claim to exemption, the clergyman or ministor must be actually engaged in his calling. This has clearly been shown here. Under the Act of 1859, a retired minister, or even one holding the position of a college professor simply, could claim exemption. A probationer is as actively engaged in the service of the Church as a minister settled over a particular congregation, and he has the same duties to perform. The statute does not require service *within* the municipality where exemption is claimed, as the language is very general and refers to a connection "with *any* church." The word "church" must here mean "religious body." (See definition in "Reid's" and "Worcester's" Dictionaries. If, as no doubt the rule is, these sections must be construed strictly, no intention of the Legislature can be inferred or argued which does not clearly and expressly appear in the Act. The Assessment Acts, C. S. U. C., cap. 55, sec. 9, sub-sec. 22, and R. S. O. cap. 180, sec. 6, sub-sec. 23, were referred to.

W. C. Loscombe, for respondents.—Provision creating exemptions should be strictly construed—Har. Mun. Man, 4 Ed. 608, and cases there cited. It must be, but has not been, shown that the claim for exemption comes clearly within the letter of the statute. From the evidence it is proved that appellant is a minister without charge, and so is not in such connection with the Church as contemplated by the 23rd sub-sec. of sec. 6 of the Assessment Act, and is not actually doing duty as a clergyman. The duties to be performed by a minister or clergyman should be performed within the municipality in which exemption claimed. The meaning of the word "Church," as used in the sub-sec. referred to, means that particular church or place of worship situate within the municipality, and not the particular denomination or religious body into which the clergyman has been admitted and ordained. Any duties appellant is performing in connection with the Presbyterian Church are being performed in another province. It never was intended by the statute to exempt from taxation a parsonage for a minister who was doing duty as a clergyman in another country. (See *O'Connor, appellant, and Town of Barrie, respondents*, 13 U. C. L. J. 273. The object in exempting from taxation a parsonage or other dwelling of a minister, and throwing the burden of the taxes on the other ratepayers is so that, in return, they may have the benefit of the minister's services amongst them. If such is the intention, his residing in another province prevented this.

Judgment was delivered as follows on the 18th July, 1882.

KINGSMILL, CO. J.—From a careful examination of the evidence before me I am of the opinion that the Rev. Mr. Stewart's dwelling house and two acres, situate as within described (*i. e.* in statement of appeal), are exempt under sub-sec. 23, sec. 6, R. S. O. c. 180, as I find that the appellant is a minister of religion in actual connection with the Presbyterian Church in Canada, and doing duty as such minister.

I think, therefore, that the appeal must be allowed and the assessment struck out, and the clerk shall forthwith alter and amend the roll accordingly. Each party to pay their own costs.

Appeal allowed.

COUNTY COURT, LEEDS AND GRENVILLE.

RE BROCKVILLE (DOMINION) ELECTION, 1882.

Recount of Ballot.

At the last Dominion Election for the Electoral District of Brockville, the candidates were W. H. Comstock and John F. Wood. Mr. Wood's majority, according to the returns of the Deputy Returning Officers, was four.

Mr. Comstock applied for a re-count, which was held at Brockville on the 3rd and 4th July, 1882, before His Honour H. S. McDonald, County Judge of Leeds and Grenville. A. N. Richards, Q.C., C. F. Fraser, Q.C., and E. J. Reynolds, appeared for applicant Joseph Deacon, and G. R. Webster appeared for the respondent, who was also present in person.

In several cases, and at different polls, the cross had been made for each candidate with a coloured pencil, and apparently not that provided in the polling place.

Held, that the votes were good and properly counted for each.

In a ballot rejected in No. 3, Elizabethtown, a cross appeared in the compartment above that containing Comstock's name, and a cross was properly marked after Wood's name. Deacon contended the vote should be allowed to Wood, as the other cross was not in Comstock's compartment. During the course of the argument, it was discovered that the upper cross was caused by the impression made by the one written after Woods' name, when the ballot was folded. Possibly the voter had wet the pencil before using it.

Held, a good vote for Wood, and added to his count.

On a ballot rejected at No. 1 Division North Ward of Brockville, and on one allowed at No. 3 in same ward, and on four allowed at No. 3 Kitley, the initials of the Deputy Returning Officer did not appear. Of these, the one rejected, and three of those counted were for Comstock, and the other two for Wood. Fraser cited 12 Law Journal, 116. Deacon cited 14 Law Journal 322, and contended that at any rate the one rejected by the Deputy Returning Officer must remain so, as he had clearly disavowed its being a paper supplied by him to the voter.

Held, that if these ballots were really those furnished by the Deputy Returning Officers to the respective voters, it was the duty of the latter to see that the initials were upon them (*vide* 3rd clause of directions for guidance of voters), and by using them without the initials, they aided the non-compliance with the provisions of the Act. *Held*, that the rejected ballot was properly so, and that all the others ought to have been. Accordingly three votes were struck off Comstock, and two off Wood.

In No. 2 Kitley, a ballot for Wood, properly marked, but with the counterfoil attached, had been allowed by the Deputy Returning Officer.

Held, properly so; for the voter was not in any manner to blame for the omission of duty after he had done his part, and handed in his ballot: see *South Grenville Case*, 14 Law Journal, p. 322. In the ballot papers used, in addition to the lines given in the Form I. to the Act, a printed line appeared in many, perhaps all, a little above the perforated line. Taking this printed line as the lower boundary of Wood's compartment, he and Comstock were allowed equal spaces.

The following may be taken as a specimen of the ballot paper.

ELECTION FOR THE ELECTORAL DISTRICT OF BROCKVILLE, JUNE 20th, 1882.

COMSTOCK.

I. William Henry Comstock, of the Town of Brockville, in the County of Leeds, Manufacturer.

WOOD.

II. John Fisher Wood, of the Town of Brockville, in the County of Leeds, Barrister-at-Law.

X

.....

Several votes for Wood (whose name was the lower one in the paper), had been marked above the perforated line, and below this printed line. This had occurred at several polling places. The X near the foot of the specimen ballot above may be considered a sample. In some cases these votes had been rejected, and in others allowed.

Deacon contended that the lower printed line ought not to have been upon the paper, and

should be treated as a printer's interpolation; that the perforated line was the lower boundary of Wood's compartment; that putting such an unauthorized line in the compartment, was to a certain extent setting a trap to catch voters. He referred to the directions for the guidance of voters, and cited 27th and 80th sections of the Act, and referred to Form I.

Richards contended such votes should be rejected. That the compartments as lined, were equal. That it would be unfair to allow Wood the larger space which he would have if the compartment ran to the perforated line. He cited 80th sections of the Act.

Held, that Mr. Deacon's contention was correct: that the lower line was an interpolation in Wood's compartment, and that he was entitled to all the space to the perforated line; in other words, the perforated line at the top of the counterfoil should (following the form given by the statute), be the lower line of Wood's compartment. The votes rejected (two), were added to his count, and those allowed by certain Deputy Returning Officers remained so.

There were other objections of various kinds urged, but they were mostly cases in which the question was as to ability to identify, or as to the improper formation of a cross. Some of these votes were allowed, others not.

One ballot for Wood had been allowed to Comstock, and one allowed Comstock was missing. The result of the recount was to add five to Comstock, and take ten off; to add four to Wood, and take eight off. This increased Wood's majority by one vote.

RECENT ENGLISH PRACTICE CASES.

BROWN v. NORTH.

Imp. O. 16, r. 8—Ont. r. 97—Married woman suing separately—Security for costs.

When a married woman applies to a Court or Judge for leave to sue without her husband, and without a next friend, under the above order, she should not be required to give security for costs if she possesses sufficient property available for the payment of costs in the event of her losing the suit.

[April 3, 1882,—C.A.L.R. 9 Q.B.D. 52.

BRETT, L.J.—We took time to consult with other members of the Court of Appeal in order that we might state what, in our view, is the general rule which should be followed in reference to a married woman giving security for costs under such an order as the one in question. We thought that the rule should be the same as that in the ordinary case of giving security for costs by an appellant; of course there may be special circumstances, and we do not attempt to lay down a hard and fast rule which never can be departed from, but the ordinary rule is this, that if it is stated, and not denied, that the appellant has no means to pay the costs of the respondent, then the appellant must give security for those costs. That being the general rule, subject to exceptions in certain cases, the Court sees no reason why it should be departed from in the case of a married woman . . . As a general rule, if she has no available means, and will go to law, she must give security for costs. But if she has available means to pay costs if she loses, the Court cannot see any reason for adopting a different rule in her case to that which is followed in the ordinary case, and she ought not, the Court thinks, in that case be obliged to give security for costs.

HOLKER, L.J., concurred.

[NOTE.—*So far as this decision rests on the analogy of the practice in the case of appellants, R. S. O. c. 38, sect. 26, would seem to prevent the application of the analogy here. The Imp. and Ont. rules are, as regards the matter of this case, identical.*]

VICARY v. THE GREAT NORTHERN RY. CO.

Imp. O. 55, r. 1—Ont. rule 428.

The discretion of the Court as to costs extends to the costs to be incurred in any future proceeding.

[June 26, 1882,—Q.B.D., L.R. 9 Q.B.D. 168.

DENMAN, J.—By Order 55, r. 1, (Ont. rule 428) the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court, and I think it is a reasonable construction of this rule that the Court should have the power, without waiting for the end of the proceedings, to order that the costs of any step in the proceedings should, in any event, be borne by one or other of the parties, having regard to his conduct in any previous matter which had occurred before that event. But even if the

power be not conferred by Imp. O. 55, r. 1, (Ont. rule 428) I think a discretionary power of the same character existed at the date of the Judicature Act, and which was not affected by the Act or the rules made under it.

POLLOCK, B., concurred.

[NOTE.—*The Imp. and Ont. rules are identical.*]

EYNDE V. GOULD.

Imp. O. 44, r. 2; O. 53 r. 3—Ont. rule 365, 406.

Under above rule a motion for an attachment can only be on notice; and the Court cannot grant a rule *nisi*, dispensing with notice.

[May 1, 1882,—Q.B.D., L.R. 9 Q.B.D. 335.

T. W. Chitty moved for an attachment against a person for removing goods out of the hands of the sheriff, which had been taken by him under a writ of *fi. fa.* He asked for a rule *nisi*, as was granted in *Jupp* v. *Cooper*, L. R. 5 C.P.D. 26, inasmuch as no notice of motion had been given. He argued that the service of a rule *nisi* would operate as a notice. He also referred to Imp. O. 53, r. 3, (Ont. rule 406) urging that in this case serious mischief was suggested as likely to result from delay.

LORD COLERIDGE, C.J.—The words of Imp. O. 44, r. 2, (Ont. rule 365) are perfectly plain and unambiguous, and if they are to be taken to mean what they say, a rule for an attachment cannot be entertained unless notice has been given. No notice having been given here, this rule must be refused.

GROVE, J., concurred.

Rule refused.

[NOTE.—*The Imp. and Ont. rules are identical.*]

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Divisional Court.] [Sept. 7.

ESSERY V. COURT PRIDE.

Provident Society—Expulsion of member—R. S. O., c. 167.

In the case of charitable and provident societies incorporated under the statute empowering them to provide for the discipline and management of their own affairs, one of the members should not be allowed to litigate his grievances with the society in the courts until he has exhausted every possible means of redress outside of the courts, according to the principle laid down in *Field* v. *Court Hope*, 26 Gr. 475.

All that is required in these cases is to see that the party complaining is a member of the society, and that the matter in dispute is one relating to the internal economy of the organization, and provided for by its rules and regulations. In such a case the jurisdiction of the courts is practically ousted until all expedients furnished by the conventional code of laws have been resorted to.

Held, in this case, inasmuch as it appeared that the plaintiff did not follow the rules prescribed by his society, and exhaust all the remedies provided thereby, but prematurely filed the present bill to restrain the society from expelling him, the decree of the court below dismissing the bill should be affirmed with costs.

R. M. Meredith for the appellants.

W. P. R Street for the respondents.

Divisional Court.] [Sept. 7.

O'DONOHOE V. WHITBY.

Solicitors — Negligence — Costs — Sale under mortgage—Notice—R. S. O. c. 104.

On a proper construction of the power of sale contained in the Act respecting short forms of Mortgages, R. S. O., c. 104, alternative modes of service of notice of the intention to exercise

the power are permitted. The service may be, (i) personal; (ii) at the mortgagor's usual place of residence within the province; or (iii) at his last place of residence within the province. It cannot be the intention of the Act that service may not be effected at the mortgagor's usual or last place of residence, unless he is out of the province, because that would be to import a restriction into the statute which is not fairly deducible from its language.

Held also (reversing the judgment of PROUDFOOT, J.), that even presuming the proper construction of the statute to be as last mentioned, yet the wording of the statute is doubtful, and it by no means follows that there was any want of skill, or any negligence on the part of a solicitor who failed to inform his client that service of the said notice at the mortgagor's usual or last place of residence within the province, would be useless if the mortgagor was still in the province. If the solicitor, taking a contrary view of the meaning of the statute, told his client that in order to exercise the power of sale, notice had to be served at the usual or last place of residence of the mortgagor in Ontario, he did all that in law he was required to do. If he went further, as in this case, and pursued investigations as to where that place was, then it becomes a question of evidence whether he shewed such negligence in the discharge of this self-assumed duty as should disentitle him to tax costs as against his client. In the present case no such negligence was made apparent.

Held further, where the services of a solicitor are rendered at the instance of the client with the like knowledge of the matters of fact as the the solicitor, the onus is on the client to establish negligence, ignorance, or want of skill, by reason of which alone and entirely the services have been utterly worthless.

Moss, Q.C., for appellant.

Fitzgerald for respondent.

Divisional Court.] [Sept. 7.

FRASER v. THE GORE DISTRICT INS. CO.

Insurance — Payment of premium — Waiver — Onus.

This was an action brought to recover the amount secured by a certain policy of fire insurance, which the plaintiff alleged had been duly renewed so as to cover the date of the occurrence of the loss. The defendant company was an Ontario company, and the agent with whom the dealing as to insurance took place, was a local agent of the company. The policy ran out on June 1st in each year, unless renewed. The fire took place in September, 1881. There was no payment of cash at the end of the year preceding that in which the fire occurred, or afterwards, but the following arrangement was made between the company's agent and the husband of insured: In April, 1881, the husband undertook to make a set of harness for the agent, who agreed to pay him for the harness partly in cash, and to pay the balance to the insurance company as the consideration of the renewal receipt. The agent expected to get the harness by June, 1881, but did not get it till the following October or November after the fire. Nevertheless the agent, having received a renewal receipt from the company, gave it to the plaintiff on August 3rd, 1881. No entry of the transaction was to be found in the books of either party to it. The agent did not pursue his usual course of debiting the company with the premium as if paid by him or payable by him, and failed to make a return of this policy as renewed in a statement sent by him to the head office, in August, 1881, after he had delivered the renewal receipt to the plaintiff. After the fire the agent sent forward the amount for the premium, which the company forthwith returned, and repudiated liability.

Held (affirming the judgment of PATTERSON, J., who had non-suited the plaintiff), that the above was an invalid transaction, inasmuch as no course of dealing was proved which would tend to mislead the plaintiff or work an estoppel against the company, and no evidence was offered that the company knew of their agent receiving anything else but money for the payment of premiums.

Held also, if payment is made out of the usual course, it lies on the person who sets up the exceptional mode of payment to shew the authority of the agent to bind his principal. Any doubt that exists as to the sufficiency of the payment should be given against the person dealing with the agent, as he always has the power of protecting himself by applying at head-quarters.

Maclennan, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

Divisional Court.] [Sept. 7.

ROBERTS v. HALL.

Adoption of child—Promise to make a will.

This was an appeal from the judgment of FERGUSON, J., noted *supra* p. 177, where the facts of the case are stated.

Held (reversing the judgment of FERGUSON, J.), (i) The question was not now whether the contract originally would have been enforceable by the court in specie; and inasmuch as the engagement had been faithfully performed by the father and the child on their part, any objection that there was in the agreement itself a want of mutuality could not be allowed to prevail at this stage. The agreement having so far been acted upon as to have altered the status of the plaintiff, and that by the act of the Halls, a new equity had arisen, and the defendants must be precluded from disputing with the plaintiff their liability to perform their part of the agreement. For where the plaintiff has fully performed his part, then if the court can enforce in specie the part which remains to be done by the defendant, it will do so, unless the agreement in question be illegal and contrary to public policy.

(ii) The agreement now in question is not illegal as against public policy, or otherwise. For although the general rule is indisputable that any agreement by which a father relinquishes the custody of his child, and renounces the rights and duties which as a parent the law casts upon him, is illegal and contrary to public policy, yet this only means that the court will not allow or assist a father to make an arrangement which will preclude him from acting according to his judgment and discretion in the most advantageous manner for the welfare of the child. Therefore, in those exceptional cases in which the control of the father may be injurious to the child, or where it is for the advantage of the child that the parental superintendence should not exist, or where the father agrees to *forisfamiliate* the child out of regard for his welfare, in view of benefits, pecuniary or otherwiss, bestowed or expected, the "principal is inverted," and such a contract may be justified. And the facts shewed the present to be one of these exceptional cases. The benefit of the child is the foundation of both the rule and the exception. And although, in such cases, the court requires to be satisfied that there are solid considerations for the infant to be taken into account, and not merely expectations, before coming between the parent and the child, yet in cases where the father is not seeking to regain the custody of the child, this is not a necessary element in determining whether such an arrangement is contrary to public policy.

(iii) *Held*, therefore, on the whole case, the plaintiff was entitled to a declaration that the property, real and personal, of which the deceased died possessed is impressed with a trust in her favour.

Dictum of Court of Appeal in *Alderson* v. *Maddison*, L. R. 7 Q. B. D. 181, dissented from.

(iv) *Held* further (affirming the judgment of FERGUSON, J., on this point), that the plaintiff had the right of suit in her own name.

W. Cassels for the the plaintiff.

Robb for the defendant.

Osler, J.] [Sept. 5.

THE TOWNSHIP OF PEMBROKE v. CANADA CENTRAL RAILWAY.

Railways—31 Vict. c. 68, sec. 10 D—Municipal law—Acquiescence by corporation—R. S. O. c. 174, sec. 277.

Suit by the corporation of the Township of Pembroke seeking for a *mandamus*, commanding the defendants to remove their railway from off a certain highway in the unincorporated village of Campbelltown, and for an injunction, on the ground that the defendants had constructed their railway along the said highway without the leave of the plaintiff, and contrary to the provisions of the Railway Act of 1868, 31 Vict. c. 68, sec. 10 D., to which Act the defendants were subject.

Held, on the evidence, that the corporation had sufficiently granted leave to the company to carry their railway along the highway, by a certain resolution passed by them in 1876, to the effect that, "The railway company be notified to fill up the deep ditch on both sides of the tract on the street, and have proper crossings put down at each cross street." The court held that this amounted to an admission that the defendants were lawfully in occupation of the street, coupled with a request to put it into better condition.

All that the Railway Acts require is that "leave shall be obtained" from the proper municipal or local authorities before a railway is carried along an existing highway. Such leave may be granted at any time, whether before, during, or after the construction of the railway. Although, moreover, the most proper way to grant such leave would be by by-law, yet it may also be granted by resolution. R. S. O. c. 174, sec. 277, enacting that the powers of Township Councils shall be exercised by by-law, must be construed as referring only to the exercise of powers of the Council under the Municipal Act, and not to powers which may be exercised under a special Act passed for other purposes or by another legislature.

Held also, that apart from this, the plaintiffs had acquiesced in the acts complained of, and a corporation may be bound by acquiescence as an individual may. The plaintiffs had power to grant or refuse leave to do what they were now complaining of, and the evidence shewed that they stood by while the railway was being built, on the assumption that it was assented to by them, and they had allowed it to be operated for four or five years without objection; moreover, by the resolution above referred to, they had recognised what had been done and procured further expenditure by the defendants.

Moss, Q.C., (*W. R. White* with him) for the plaintiff.

J. H. Metcalf for the defendants.

PRACTICE.

Divisional Court.] [Sept. 9

MCTIERNAN v. FRASER.

Appeal—Divisional Court—Court of Appeal—O. J. A.

An appeal from the report of the Master at Ottawa was decided by PROUDFOOT, J., on 29th June, 1882. The cause was made and decree made before the O. J. A. came into operation. The plaintiff then appealed to the Divisional Court.

Held, that the cause was not distinguishable from *Re Galena*, 46 U. C. R. Under the O. J. A. the appeal should have been to the Court of Appeal and not to the Divisional Court.

S. H. Blake, Q.C., for appellant.

Bethune, Q.C., contra.

The Master in Chambers.] [Sept. 8.

WALLACE v. WHALEY.

Reference—Powers of Local Masters—O. J. A. secs. 47 and 48.

The following order of reference was made at the trial of the cause: "Upon hearing the solicitors on both sides, and by their consent, I order that all matters in difference in this cause between the parties in this cause be referred to the certificate of the local Master, etc., with all powers, as to certifying and amending, of a Judge of the High Court, and that the costs of the suit and of the reference be in the discretion of the local Master."

The Master found on every issue between the parties, and exercised his discretion as to the costs, and concluded his report as follows, "All which I humbly certify and submit to this honorable Court," but the report did not contain any order on any party to pay according to the findings or the costs.

Upon this report the defendant signed judgment, and this was a motion by the plaintiff to set the same aside.

Held, that the signing judgment was proper, as the Master had acted as an arbitrator under the Common Law Procedure Act, whose decision was final, and not as an official of the Court under secs. 47 or 48, O. J. A.

Shepley for motion.

Clement, contra.

Burton, J.] [Sept. 9.

INTERCOLONIAL BRIDGE CO. v. SOUTHERN RAILWAY.

Motion to disallow a bond filed by the defendants (appellants), to secure the amount found due the plaintiffs, pending an appeal to the Privy Council. The bond was in the form given in Rule 36, O. J. A., with some further recitals.

It was objected that the condition of the obligation ought to read "do and shall effectually prosecute such appeal *and* pay," etc., instead of "*or* pay," as given in the form, and also that the condition should be to pay "what had been found due by the Court appealed from," instead of "such costs and damages as shall be awarded."

BURTON, J., held that *or* was the correct word to use, and that "effectually prosecute" meant "successfully prosecute," but disallowed the bond on the second objection, holding that the proper condition must be found based upon the language in R. S. O. cap. 38, sec. 27. sub-sec. 4.

Liberty was given to file new security.

Cassels for plaintiffs (respondents).

Crooks, contra.

SELECTIONS.

NEW ENGLISH MARRIED WOMEN'S PROPERTY ACT.

Quietly, and almost unobserved by the mass of the persons whom it will affect, a Bill fraught with no small consequence to nearly half the community has been passing through Parliament. The Married Women's Property Bill was brought from the Lords as long ago as May 22. In the Commons it was blocked by the tactics of Mr. Warton. But it has been triumphant even over him, and was read a third time on Tuesday, and the amendments of the Commons were agreed to yesterday by the Lords. More than once in other years the measure seemed on the point of passing, and yet was at the last moment shunted, owing to those vague but potent reasons known as "the state of public business." The Bill has not been advanced to its final stage without deliberation. It has been subjected to the scrutiny of three Select Committees; it has been amended in the Lords; and if the authors and friends of the Bill have proceeded upon wrong lines, they have done so with malice prepense. The policy of the measure may be good or bad, but there can be no mistake about the magnitude of the change which it will introduce. It is intended to amend and consolidate the Acts of 1870 and 1874; but it is much more than a consolidation Bill. The first section shows the sweeping character of the alterations which it may make in the economy of many English households. When the Bill becomes law, a married woman will be capable of acquiring, holding and disposing, by will or otherwise, of real or personal property as her separate estate, just as if she was single. The intervention of trustees and the rest of the apparatus of settlements will not be requisite. At Common Law—and with some modifications the same still holds good—a married woman could not enter into any contracts; if she went through the form of doing so, the result was null. She was more helpless in this respect than infants and lunatics, the two classes in whose company she habitually figured in English law. Everything which she acquired, no matter in what manner, went to her husband, and at death to his personal representatives. If she were injured in a railway accident and recovered damages, she might see the compensation spent by her husband as he in his wisdom or folly thought fit. A married woman might work hard and earn money as an artist or washerwoman. Her receipt for the price of her labour was no receipt at all, and the person who trusted to it and paid her might have to do so twice over. In several respects this has already been altered, and greater changes are proposed. Under this Bill every married woman will be capable of "entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her." Hereafter the damages which she recovers for a broken leg or injured reputation will be her separate property. An important change will be effected by the adoption of the clause which proposes to enact that every contract into which a married woman enters will be deemed to be a contract binding her separate estate, unless the contrary be shown. A leading presumption of law will thus apparently be altered at a stroke. Of still more consequence is the proposal that in the case of any woman married after the measure comes into operation, she shall hold as her separate estate and be free to dispose of, without limitations as to the amount, "all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage." Thus at a stroke goes the prime necessity for settlements. Not content with making this measure prospective, the framers of it boldly go on to say, "Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid." Compared with these clauses, most of the others are tame and commonplace. But it is perhaps worth while to note that the Bill proposes to give to every married woman the same civil and criminal remedies against all persons, and, subject to certain exceptions, "including her husband," for the protection and security of her separate property as if it belonged to a *feme sole*; that, conversely, a wife is to be liable to criminal proceedings by her husband, if she deals improperly with his property; and that if she happens to carry on trade separately from her husband, she may be made bankrupt.

An exaggerated conception of the area covered by the measure would be got if we lost sight of a few substantial qualifications which undo not a little of the effect of the most salient clauses of the Bill. It is not intended, for instance, to interfere with existing settlements. There is, too, no proposal to withdraw or curtail the power of making future settlements, unless so far as it is necessary to give creditors the same rights over the property of a married woman who engages in trade, and is unable to pay her debts, as they now possess in the case of a bankrupt trader. To avert an obvious scandal, which would be produced by the adoption of one of the clauses without check or limit, the framers of the Bill say that as to any property, "no criminal proceedings shall be taken by any wife against her husband by virtue of this Act, while they are living together." Nevertheless this legislation marks a notable advance, and heralds some curious social changes. In 1870 the Legislature had its eye directed almost solely to the hardship, which was undeniable, of permitting a husband, who might be wholly remiss in his duties as breadwinner of the family, to sweep away all the earnings made by his wife's pen, pencil, or needle. With general approbation Parliament then took measures to secure the remuneration gained by married women in separate trades, or in the exercise of literary, artistic, or scientific skill. In 1875, Parliament returned to the subject, but only to touch it lightly and perfunctorily. The new measure is more important than either of its predecessors. Unlike them, it is based upon a principle, and one radically different from the principle which has hitherto been supreme in regard to married women's property.

The presumption always has hitherto been that everything which a woman had at marriage, or which she afterwards obtained, passed to her husband. For centuries that principle has been applied, almost without mitigation, to the poor, and, indeed, to the greater part of the middle classes, who have not family solicitors at their elbows, and are not much concerned about the transmission of property. Until the measures which we have named, and others designed to protect the earnings of women who were deserted by their husbands, were adopted, the Common Law was, in fact, the marriage law of the poor. For the rich there was another law. Men whose daughters were entitled to property took care, as a rule, to settle it to their separate use; and accordingly the well-to-do classes of the community know little of the rigour of the the rules which we have stated. Under this Bill the wife of a costermonger will have, in effect, an Act of Parliament settlement. An important legal presumption will be altered, and we shall not have to wait long to observe the result. Those who do not marry without settlements of some sort will continue in the same course; but the millions who do will live under a law which gives a *feme covert* much the same rights as a *feme sole*. Other consequences, perhaps more momentous, are latent in the measure, which will leave little of the Common Law intact. It probably portends indirect social effects, much greater than the disposition of property, and it may in the end pulverize some ideas which have been the basis of English life. Measures which affect the family economy are apt to be "epoch making;" and probably when the most talked of Bills of the Session are clean forgotten this obscure measure may be bearing fruit.—*Times*, August 17.

LAW STUDENTS' DEPARTMENT

EXAMINATION OF STUDENTS BEFORE EASTER TERM, 1882.

EXAMINATION FOR CALL.

Pollock on Contracts—Best on Evidence.

1. Indicate by examples the kind of conduct which can be relied on as constituting a tacit acceptance of a contract.

2. To what extent can an agent personally enforce contracts entered into by him on behalf of his principal? Answer fully.

3. Under what circumstances will representations not fraudulent affect the validity of a contract? Answer fully.

4. In case of a solicitor purchasing or obtaining a benefit from his client, what is required of the solicitor in order that the contract may be upheld?

5. Write short notes on the privilege of witnesses in not answering questions tending to criminate themselves.

6. Mention the different modes of proof of handwriting by resemblance.

7. To what extent are communications between solicitor and client privileged from being given in evidence? Answer fully.

8. Define a promissory note, and write brief notes on the question of its negotiability.

9. A. on good consideration transfers a bill payable to his order to B. without indorsing it. What right has B. in regard to the bill so transferred?

10. To what extent is a banker liable for the payment of a forged bill? Illustrate your answer by reference to a decided case.

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 1882.

During this term the following gentlemen were called to the Bar, namely :—

George S. Lynch Staunton, with Honours, awarded Silver Medal; Arthur O'Heir, Thomas Henry Luscombe, James Leaycroft Geddes, David Henderson, John Williams, Thomas Alpheus Snider, Dennis J. Donahue, John Travers Lewis, William Steers, Alexander Aird Adair, Andrew Taylor G. McVeity, Alexander Howden, George William Meyer, William Alexander Macdonald, John Dickinson, Hugh Boulton Morphy, John Vashon May.

The following gentlemen received Certificates of Fitness, namely :—

William Burgess, jr., Thomas Henry Luscombe, George William Meyer, John Arthur Mowat, Alfred Beverly Cox, Charles Rankin Gould, David Henderson, Frank Russell Waddell, W. H. Hastings, Alexander Aird Adair, Alexander John Snow, Dennis J. Donahue, John Vashon May, Henry Joseph Dexter, Andrew Taylor G. McVeity, John Barry Scholefield, William Aird Adair, Henry Bogart Dean, Thomas Ambrose Gorham, Christopher William Thompson, Thomas H. Stinson, Thomas Edward Moberly, Charles Edward Jones, John Wood, Alexander Howden, Robert Taylor, Albert John Wedd McMichael, and Charles Edward Irvine, who passed his examination in Michaelmas Term, 1881.

And the following gentlemen matriculated as students and articled clerks, namely :—

Graduates—Archibald Gilchrist Campbell, Alex. W. A. Finlay, and James Redmond O'Reilly. Matriculants of Universities—James Michael Lahey, Hugh Hartshorne, Edward M. Young, and John Clarke. Junior Class—Richard Henry Collins, Leopold Wm. Fitz Hardinge Berkeley, John Lindsay Snedden, Charles E. Weeks, Alexander James McKenzie, P. Henry Allin, Herbert James Dawson, Angus Wm. Fraser, Albert Edward Taylor, Thomas Sherk, David Gordon Marshall, Henry Edward Ridley, Abner Jas. Arnold, James Herbert Kew, Ralph Herbert Dignan, William, John McDonald, Shirley B. Ball, Alfred Wm. Lane, Orville Montrose Arnold, Horace Bruce Smith, Jas. Archibald Macdonald, Theodore Augustus McGillivray, Geo. Wellington Green, James Alfred Mills, Ernest Morphy, J. Frederick Cryer, Robert Chappelle, Alexander Sanders, James Francis R. O'Rielly. Articled Clerks—E. Considine, D. A. Cameron.

RULES

As to Books and Subjects for Examination.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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 upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his Diploma, or a proper certificate of his having received his Degree. All other candidates for admission as Articled Clerks or Students-at-law shall give six weeks' notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects :—

Articled Clerks.

From 1882 to 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History Queen Anne to George III.
- Modern Geography, N. America and Europe.
- Elements of Book-keeping.

In 1882, 1883, 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 year.

Students-at-Law.

CLASSICS.

1882.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum, B. G. B. IV., c. 20–36, B. V. c. 8–23.
- Cicero, Pro Archia.
- Virgil, Æneid, B. II., vv. 1-317.
- Ovid, Heroides, Epistles. V. XIII.

1883.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cæsar, Bellum Britannicum.
- Cicero, Pro Archia.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Heroides, Epistles, V. XIII.

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. & III.

ENGLISH.

A paper on English Grammar.

Composition.

Critical Analysis of a selected Poem :—

1882—The Deserted Village.
The Task, B. III.