DIARY FOR AUGUST.

1. Sun....Tenth Sunday after Trinity.
5. Thur..Atlantic Cable laid, 1858.
8. Sun... Eleventh Sunday after Trinity.
11. Wed...Battle of Lake Champlain, 1814.
13. Fri. ...Sir Peregrine Maitland, Lieutenant-Governor of Upper Canada, 1818.
15. Sun. ..Twelfth Sunday after Trinity.
17. Tues...First Intermediate Examination. Gen. Hunter, Lieut.-Governor of Upper Canada, 1799.
18. Wed...Second Intermediate Examination.
19. Thur..Examination for Admission.
20. Fri. ...Examination for Call.
21. Sat. ..Long Vacation Q. B., C. P. and Co. Court ends.
22. Sun. ..Thirteenth Sunday after Trinity.
23. Mon....Trinity Term begins.
25. Wed...Francis Gore, Lieutenant-Governor of Upper Canada, 1806.
26. Thur. Re-hearing Term in Chancery begins.
29. Sun. ..Fourteenth Sunday after Trinity.
31. Tues...Long Vacation in Supreme Court, Exchequer Court, Court of Appeal and Chancery ends.

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Canada Law Journal.

Toronto, August, 1880.

NOTES OF CASES

IN THE ONTARIO COURTS, PUBLISHED IN ADVANCE, BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH.

IN BANCO—JUNE 26.

MARTIN v. CONSOLIDATED BANK.

Security for costs—R. S. O. c. 50, s. 71—Practice.

An order for security for costs cannot be obtained under sec. 71 of the Common Law Procedure Act (cap. 50, R. S. O.), upon an affidavit made by the defendant's attorney, as that section requires the affidavit to be made by the defendant personally.

Roaf, for plaintiff.
J. K. Kerr, Q. C., *contra*.

FARBINGER v. MCDONALD.

Chattel mortgage—Affidavit—Debt payable at future day.

The affidavit annexed to a chattel mortgage omitted the words, "or accruing due," after those "so justly due."

Held, that the debt might be stated as due when it really was due, and that it need not be necessarily stated as either due or accruing.

The mortgage showed the debt in the proviso as one becoming due and payable at a future day, but the consideration was stated to be money acknowledged to be paid for the transfer of the property, and the evidence showed it was given to secure an over-due debt.

Held, that the mortgage could be upheld, regarding it as given for a present debt payable at a future day.

The affidavit stated that the mortgage was not executed for the purpose of protecting the goods against the creditors of the said mortgagors, naming them, or pre-

venting the creditors of *the said mortgagor* from obtaining payment of any claim against *him, the said mortgagor.*

Held, sufficient in substance to meet the fact of there being two mortgagors instead of one.

Richards, Q. C., for plaintiff.

McCarthy, Q. C., *contra.*

Agricultural Savings Society v. The Federal Bank.

Banking.

Plaintiffs, a money loaning company, issued cheques upon defendants with whom they kept their account, payable to B. or order. These cheques were obtained by a third party, who indorsed them in B.'s name, and got the money on them. The cheques having been charged by defendants against plaintiffs,

Held, that the latter were entitled to recover back from defendants the amount represented by the cheques, as having been improperly charged against them.

Bayley, for plaintiffs.

J. K. Kerr, Q. C., *contra.*

Jones v. Grand Trunk Railway Co.

Railway Co.—Explosion of fog signal—Negligence—Nonsuit.

Plaintiff, while standing on the platform at one of defendants' stations, had his eye injured by the explosion of a fog signal which had been placed on the track. The only evidence given was that certain servants of defendants had those fog-signals in their possession for lawful purposes, but that no one, to the knowledge of several employees of the company, who were called as witnesses, placed this one on the track, and it appeared not impossible that it might have been obtained from them by some third party, or might have been put there by a servant of the defendants for a frolic and not for any purpose of the company, or their business.

Held, that a non-suit had been properly directed.

Wallbridge, Q. C., for plaintiffs.

Bethune, Q. C., *contra.*

Re McLean and Township of Ops.

Drainage By-law—Omission in notice published—By-law varied by Court of Revision and Judge—Assessment of property in such cases—Interest of member of Court of Revision and Councillor.

The omission of the words "during the term next ensuing the final passing of the by-law," from the published notice do not render the by-law invalid.

Where a by-law finally passed differs from that published only in respect of changes made in assessment by the Court of Revision and County Judge on appeal, it is not necessary to publish such by-law again after such changes.

Where the person who made the assessment was not notified and not present at Court of Revision,

Held, no ground for setting aside the by-law.

The Engineer is the proper person to make the assessment.

The principle on which the assessments were made in this case was held not erroneous, but this Court would not interfere on such grounds, as these are matters of complaint to the Court of Revision.

No interest that springs solely from his being a rate-payer in the municipality can disqualify a councillor or a member of the Court of Revision from performing his duties as such.

Bell v. Irish.

Distress for rent—Justifying as owner.

Where a party distrains, as landlord, on goods which, as a matter of fact, had, by subsequent agreement between himself and tenants, but before the distress, become his absolutely. *Held*, that he may justify the taking on this latter ground.

Armour J., dissenting, on the ground that the instrument under which the defendant claimed the goods had not the effect of transferring the property in them to defendant.

P. S. Martin for plaintiff.

J. K. Kerr, Q.C., *contra.*

Miller v. Grand Trunk Railway Co.

Railway Company—R. S. O. ch. 199.

Held, that the defendants, a railway company, were not subject to the provisions of R. S. O. ch. 199.

H. J. Scott, for plaintiff.

Bethune, Q. C., *contra.*

Martin v. Bearman.

Assignee of chose in action—Subsisting equities.

Held, that the assignee of a chose in action, in this case a chattel mortgage, takes subject not merely to the state of the account, but to all the equities subsisting between the original parties.

R. Martin, Q. C., for plaintiff.

Osler, Q. C., *contra.*

Timmins v. Wright.

Malicious prosecution—Proof of affidavit and Judge's order—Secondary evidence.

Held, that a County Court Judge's order is well proved under R. S. O. c. 62, sec. 28, by the production of a copy, certified as such, under the hand of the Clerk of the Court, and with a seal attached to such certificate purporting to be the seal of the Court; but that an affidavit filed in that Court is not duly proved by a copy similarly certified and sealed.

Richards, Q.C., for plaintiff.

McCarthy, Q.C., *contra.*

McSherry v. Cobourg.

Corporation—Pleading—Amendment.

The plaintiff sued "The Commissioners of the Cobourg Town Trust," in whom the harbour at Cobourg is vested in fee by statute, 22 Vict. cap. 72, for damages, for loss of his vessel caused by negligence of defendants. The defendants pleaded only, not guilty and negligence of plaintiff. At the trial plaintiff was non-suited on the objection, that defendants were sued as a corporation, but were not so under the statute.

Held, that this objection should have been raised by plea, and was not open to the defendants on this record.

At the trial plaintiff asked leave to amend by adding the names of the trustees, which was refused.

Held, that amendment asked was proper, and the case should not have been stopped.

Bigelow for plaintiff.

J. K. Kerr, Q.C., *contra.*

Trust & Loan Co. v. Lawraison et al.

Distress clause in mortgage.

A mortgage was drawn under the Act as to Short Forms of Mortgages, with the addition of a clause that the mortgagor did "attorn and become tenant at will to the company, subject to the said proviso" (for redemption). The mortgagee never executed the mortgage, which named a day for payment of principal more than three years from the date of the mortgage and intermediate days for payment of interest in advance.

Held, per Hagarty, C. J., that a tenancy at will was created at a fixed rent equivalent to the interest, for which the mortgagee had all the remedies of a landlord.

Per Cameron, J., though not dissenting, that the distress clause had the appearance of being an evasion of the Chattel Mortgage Act.

Robinson, Q.C., for plaintiffs.

Leith, Q.C., *contra.*

McCarthy v. Arbuckle.

Ejectment—Death of defendant—Amending rule by adding parties.

In an action of ejectment, the plaintiff recovered a verdict for the land claimed, but the defendant was held entitled to recover the value of his improvements, he having made them under a *bona fide* belief of title, and the matter was referred to the master to report thereon. The Master accordingly made his report, which was moved against. After the Master had made his report, the defendant died, leaving a son by a former wife, his widow; and it appeared that a loan society had had an interest in the improvements assigned to them. The Court permitted the plaintiff to amend his rule *nisi* by calling on the widow and son, and on the loan society, to show cause why they should not be made

parties, and why the former should not be appointed under the ninth section of the A. J. Act, to represent the estate of the defendant on this motion, and on all subsequent proceedings in the reference—the rule to be returnable after fourteen days notice before a single judge.

Snelling for the plaintiff.

Clench, Assignee, v. Consolidated Bank.

Insolvency—Banking account—Transfer of moneys by assignee from estate to separate account—Liability of bank to reimburse.

One McE., who was the assignee of an Insolvent's estate, kept the estate account as well as his private account at the defendants' bank. Certain notes belonging to the estate were in McE.'s hands, as such assignee, and were deposited with the defendants for collection, and the proceeds placed to the credit of the estate, but which McE. drew out by cheque as assignee, and then deposited to his private account, and they were used for his private purposes. McE. then absconded, and the plaintiff was appointed assignee of the estate in his place. In an action against the defendants to recover the amounts of the said notes,

Held, that he could not recover for debt; the defendants were under no liability to reimburse the estate with the said amounts.

J. K. Kerr, Q.C., for the plaintiff.

J. A. Miller, for the defendants.

COMMON PLEAS.

IN BANCO.—June 25.

Peak v. Shields.

Sec. 136 of Insolvent Act—Crimes—Civil procedure—Right of Parliament of Canada to enact.

Held, that the acts referred to in sec. 136 of the Insolvent Act are not by that section constituted crimes, punishable as such under that and the following sections.

Held, also, that the right of the Provincial Legislature to direct the civil procedure in the Provincial Courts has reference to the procedure over which the Legislature has power to give those Courts jurisdiction, and does not in any way interfere with or restrict the right or power of the Parliament of Canada to direct the procedure to be adopted in cases over which Parliament has jurisdiction.

J. E. Rose and *T. F. Blackstock*, for the plaintiff.

Bethune, Q.C., for the defendant.

Gildersleeve v. McDougall,

Contracts—Cause of action—R. S. O. ch. 50, sec. 49.

On 19th March, 1879, plaintiff, at Kingston, Ont., wrote to defendant at Montreal, "Please state price for forging, for cross-head for beam engine, steamer 'Hastings' (36 inch cylinder, diameter), to be finished here; very best material; telegraph me to-morrow." On the 20th, the defendant telegraphed in reply, "Will forge cross-head at seven cents per pound." On the same day the plaintiff replied by letter, "I am in receipt of your telegram in answer to mine, saying you will forge cross-head at seven cents per pound, and enclose drawing which explains itself. Please leave metal enough to finish up to the sizes in the drawing, and ship them here as soon as finished by G. T. R." On 22nd March, defendant replied by letter as follows: "Yours of 20th duly to hand, with sketch of cross-head enclosed. The same will have immediate attention, and as soon as ready I will ship to your address."

Held, that the plaintiff's letter of the 19th March and the defendant's telegram in reply comprises merely an enquiry and answer; and that the whole contract was contained in the plaintiff's telegram of the 20th March and the defendant's letter in reply accepting the order therein contained, and that the contract must be deemed to have been made at Montreal, where the final assent was given.

The expression "cause of action," in sec. 49 of the C. L. P. Act, R. S. O. ch. 50, does not mean the whole cause of action, namely the contract and breach, but the act on the part of defendant which gives plaintiff his cause of complaint.

In this case the cause of action was the

breach of the defendant's warranty that the forging manufactured by him was reasonably fit for the purpose for which it was intended. It was delivered and used for some time in Ontario, when it proved defective.

Held, that the breach of warranty occurred in Ontario, and therefore the cause of action arose there within the meaning of sec. 49.

B. M. Britton, Q.C., for the plaintiff.

Ogden, for the defendant.

Dominion Bank v. Blair.

Principal and surety—Discharge of surety by mode of dealing with securities.

In the former judgment, reported in 30 C. P., the sole question was as to the validity of the bond. The other question upon which judgment is now given is whether even though the bond is valid, the plaintiffs had not so dealt with the property and securities of the principal debtor as to discharge the securities from all liability. The evidence failed to establish the defendant's contention, and the plaintiffs were therefore held entitled to recover.

Robinson, Q. C., and *W. Mulock*, for the plaintiffs.

Hector Cameron, Q. C., and *J. E. Farewell*, for the defendants.

Long v. Guelph Lumber Company, Limited.

Company—By-law to issue preference stock—Illegal conditions—Validity of shares.

The defendants, a company incorporated under the Ontario Joint Stock Letters Patent Act, passed a by-law under sec. 17 of the Act for the issue of $75,000 of preference stock in shares of $1.000 each, which was to have preference and priority as respects dividends and otherwise as therein declared, namely, 1. "The company guarantee *eight* per cent yearly to the extent of the preference stock up to the year 1880, and over that amount (8 per cent) the net profits will be divided among all shareholders *pro rata*. 2. Should the holders of preference stock so desire, the company binds itself to take that stock back during the year 1880 at par, with interest at eight per cent per annum, on receiving six months' notice in writing," &c. The plaintiff subscribed for and was allotted five shares amounting to $5,000, which he fully paid up, but contending that the by-law was *ultra vires* by reason of the above conditions, brought an action to recover back the money so paid by him for the shares.

Held, that the first condition of the by-laws was not *ultra vires*, as its proper construction was not that the interest was to be paid at all events, and so possibly out of capital, but only if there were profits out of which it could be paid; but that the second condition to take back the stock was *ultra vires*, the Act not empowering the company to do so.

Held, however, that the plaintiff could not recover, for that notwithstanding one or even both of such conditions were invalid, there was authority to issue the preference shares themselves which were therefore valid.

McCarthy, Q. C., for the plaintiff.

Bethune, Q. C., for the defendants.

Mahon v. Nicholls.

Venue—Change of—County Court cases—Order of Clerk of Crown—Appeal from.

Held, there is no appeal to the full court in term from the order of the Clerk of the Crown in Chambers on an application made under R. S. O. c. 56, s. 155, for a change of venue in County Court cases.

Semble: in such cases the proper course is to follow the practice in force in Superior Court cases.

R. M. Meredith, for the plaintiff.

Ogden for the defendant.

The Canada Permanent, &c., Society v. Taylor.

Free grant lands.—Mortgage. — Execution by wife of patentee.

Under sec. 16 of the Free Grant and Homestead Act, R. S. O. ch. 24, patents to be issued for lands located under that Act must state, in the body thereof, the name of the original locatee; the date of the location, and that the patent is issued un-

der the authority of the Act; and by sec. 15 no deed or mortgage of such lands shall be valid unless the wife of the locatee is one of the grantors with her husband and executes the same.

The patent in this case, of lands in the Free Grant District, granted the land absolutely to the patentee, without stating any of the requisites of sec. 16. The patentee mortgaged the land to the plaintiffs, his wife being a party to and executing the mortgage to bar dower.

Held, under the circumstances, that the land could not be deemed to have been patented under the said Act, and therefore it was not essential that the wife should execute the mortgage as a grantor; but even if essential, the wife being a party and executing the deed to bar her dower was a sufficient execution as such grantor within the meaning of the Act.

George Mackenzie for the plaintiffs.

Hector Cameron, Q.C., for the defendant.

Corporation of Stafford v. Bell.

Surveyor—Negligence in making survey—Action for—Evidence.

Action against the defendant, a Deputy Provincial Land Surveyor, for negligence and unskilfully running the lines for the road allowances between lots 9 and 10 in the 1st, 2nd, 3rd and 4th concessions of the Township of Stafford, when employed by the plaintiffs to run such lines.

Held, Osler, J., dissenting, that the evidence set out in the case established the negligence and unskilfulness of the defendants and that the plaintiffs were therefore entitled to recover.

Read, Q.C., for the plaintiffs.

Robinson, Q.C., for the defendant.

Fenton v. County of York.

Administration of criminal justice—Expenses payable by county—County attorney—Mandamus.

On an application for a Mandamus to the County Board of Audit commanding them to rescind their order for the deduction of certain items amounting to $39.92 charged by the County Attorney for expenses incurred in the administration of criminal justice in the county, and which had been allowed on a previous audit, but disallowed on the audit of subsequent accounts because the Government had refused to pay them out of the Consolidated Revenue Fund of the Province, as not being mentioned in the schedule to the Act, R. S. O. chap. 86.

Held, that under the said Act only such of said expenses as mentioned in the schedule are payable out of the Consolidated revenue, and that the other of such expenses must be borne by the municipality out of the county fund.

Æ. Irvine, Q.C., for the plaintiff.

J. G. Scott, Q.C., for the Crown.

J. K. Kerr, Q.C. for the defendants.

Corneil v. Abell.

Chattel mortgage—Description of goods—Sufficiency.

In a Chattel Mortgage certain of the goods and chattels were described as follows: "One brown stallion ten years old, one bay horse eight years old, one black mare nine years old."

Held, a sufficient description.

Macbeth, for the plaintiff.

Riordan, for the defendant.

Douglas v. Fox.

Shade trees on highways—Right of action by owner of adjacent land for injury thereto.

Held, that the owner of land adjoining a highway has such a property in the shade trees opposite his land so as to entitle him to maintain an action to recover damages against a wrong doer for cutting down and doing damage thereto.

Hagel, for the plaintiff.

G. B. Gordon, for the defendant.

McKay v. McKay.

Covenant—Right to convey—Reformation deed.

To an action against defendant as administratrix of one J. McKay, for breach of covenant by the said J. McK., that he had the

right to convey certain lands to the plaintiff, the defendant pleaded on equitable grounds that the real contract between the said J. McK., the plaintiff, was that the said J. McK. should execute a deed under the Act respecting Short Forms of Conveyances, and containing covenants against his own acts only, but by mistake the document was made general, and asked that the deed might be reformed.

Held, that upon the evidence set out in the case, the plea was proved, and the deed was accordingly directed to be reformed.

McBeth, for the plaintiff.

R. M. Meredith, for the defendant.

PARSONS, qui tam v. CRABB.

Magistrate—Costs—Overcharge—Liability.

A magistrate, acting under 32 & 33 Vict. c. 20, sec. 37 D., convicted some four persons for disturbing an assemblage of persons, &c., but instead of imposing the costs, which would appear to be about $9.25, on all the defendants, he separately imposed a fine of $6.00 on each defendant.

Held, under the circumstances, there was a wilful overcharge, and the magistrate was liable to the penalty imposed in such cases.

Bethune, Q. C., for the plaintiff.

Ferguson, Q. C., for the defendant.

MOLSON'S BANK v. CORPORATION OF BROCKVILLE.

Municipal corporations—Fraudulent act of officer—Benefit to corporation—Liability.

On the 28th August, 1879, the defendant's bank account at the Bank of Montreal was overdrawn to the extent of $1157 64, and a resolution of the council was thereupon passed, authorizing the mayor and town clerk to borrow from some banking institution a sum not exceeding $2,000, to meet the current liabilities until the taxes were available, and to sign the necessary documents and affix the corporate seal. The resolution appeared in the town newspapers. On 2nd September, a promissory note for $2,000, in accordance with the terms of the resolution was made and discounted at the Bank of Montreal, and the proceeds placed to the defendants' credit. On the 5th September, a similar note was made and discounted at the plaintiff's bank, where the defendants had kept an account, but which was virtually discontinued, but there was a small balance remaining to the defendants' credit. The last note was, in fact, fraudulently procured, to be made and discounted by one T., who was the clerk and treasurer of the defendants, and who was a defaulter, and as such treasurer he chequed out some $1,656 of this money, which he deposited to the credit of the defendants, at the Bank of Montreal, and the defendants derived the benefit thereof.

Held, that the defendants were liable to the plaintiffs for the $1,656, for that T. had acted within the scope of his authority, and defendants derived the benefit thereof.

Britton, Q. C., and *Wood*, for the plaintiffs.

Richards, Q. C., and *Fraser*, for the defendants.

WATTS v. ATLANTIC MUTUAL LIFE INS. CO.

Insurance—Equitable non-forfeiture system—Promissory note.

Action on a life insurance policy for $1,000, on the joint lives of the plaintiff and his wife, on what is called the equitable non-forfeitable system, whereby, if after the payment of one or more annual premiums, the policies were allowed to lapse, the insurance was continued in force for the period which the equitable value of the policy at the time of lapse would purchase. The policy was effected on the 13th April, 1869, and the quarterly payments of cash premiums were made up to the 13th October, 1873, being a period of four years and nine months, so that under the defendants' tables the equitable value of the policy was such as to continue it in force for three years and 318 days, during which period the death of one of the insured, the wife, occurred. After the plaintiff had ceased to make the said cash payments, the defendants' agent, of his own authority, made an arrangement with the plaintiff whereby the plaintiff, on 28th January, 1875, gave a so-called promissory

note for the four quarterly payments of 1874, by the terms of which the policy was to be null and void if the note was not paid at maturity.

Held, under the circumstances more fully set out in the case, that the plaintiff was entitled to recover the amount of the policy, the death of one of the joint lives having occurred during the extended period; and that the non-payment of the note could not be taken advantage of so as to wholly deprive the plaintiff of such right of recovery, but its effect was merely to place the plaintiff in the same position as if the note had not been given.

F. E. Hodgins, for the plaintiff.

McCarthy, Q.C., for the defendants.

VACATION COURT.

Osler, J.] [June 8.

Armour v. Rogers.

Husband and wife — Tort of wife — Whether husband a proper party to action.

Held, that in action for a tort committed by a wife during coverture, the husband is not a proper party, but the wife must be sued alone.

Ogden, for the plaintiff.

Creelman, for the defendant.

Toronto Hospital Trustees v. Denham.

Ejectment—Lease of land—Sale of buildings thereon—Ejectment for breach of covenant not to assign, &c.—Recovery limited to land, and not to include buildings.

The plaintiffs, the owners in fee of certain lands on which certain buildings, &c., were erected, by an indenture of lease, dated 30th October, 1876, leased it for 21 years to one B. The lease contained the covenants to pay rent and not to assign or sublet without leave, with a proviso for re-entry on non-payment of rent, or non-performance of covenants. By a deed, of this same date, which after reciting the preceding lease, and an agreement of B. to purchase the buildings, &c., in and upon the said lands and premises, the plaintiffs for the consideration of $1,400, conveyed to B. the said buildings, &c. B. then gave a mortgage of the land to J. H. & E. H. Afterwards B. assigned the lease to C.; C. assigned to G. H. H., and G. H. H. assigned to M. This last assignment was without the plaintiffs' consent. The plaintiffs thereupon brought ejectment against the defendant, who was in possession of the buildings, &c., under a lease thereof from B., for the forfeiture occasioned by the said assignment, as also for non-payment of rent. The plaintiffs obtained a verdict. Subsequent thereto, and after motion in term, the plaintiffs obtained a decree in Chancery, upon bill and answer, to which the now plaintiffs were plaintiffs, and G. H. H., J. H., E. H., and M., were defendants, by which the deed from the plaintiffs to B., so far as it conveyed the land on which the buildings stood was a mistake, and the deed should be rectified so as to pass only a chattel interest in said buildings, &c., and no estate whatever in the land.

Held, that the plaintiffs were entitled to retain their verdict; but, under the circumstances, their recovery must be limited to the land alone, and would not include the buildings, &c., thereon; and, therefore, that they could not enter in said buildings, &c., or remove the defendant therefrom.

H. Gamble, for the defendant.

Foster, for the defendant.

SELECTIONS.

OWNERSHIP OF LANDS USQUE AD MEDIUM FILUM.

A question of more than ordinary novelty was raised in the case of *Leigh* v. *Jack*, 42 L. T. Rep. N. S. 463, which came before the Court of Appeal on appeal from the Exchequer Division. The question there raised was, whether the presumption of law that the property in the soil of a road belongs *usque ad medium filum viæ* to the adjoining proprietors arises before the road has been dedicated to the public by being used as a highway. The action was brought to recover a piece of waste land in the borough of Liverpool, which was in the occupation of the defendant. The plaintiff was tenant for life under the will of

J. L., deceased, of all the lands of which J. L. died seized. In 1854 J. L. was seized of a piece of land adjoining the south side of a part of the piece of waste land, and called Grundy Street. By deed dated the 1st Dec., 1854, he conveyed to the defendant the latter piece of land in fee, subject to a ground rent secured by powers of distress and re-entry. The land conveyed did not include any portion of the site of Grundy Street. On the 19th March, 1857, J. L. by deed conveyed to the Mersey Dock Trustees a piece of land adjoining the north end of the waste land called Grundy Street, but no portion of the site of Grundy Street was conveyed. The last piece of land was subsequently conveyed by those trustees to the defendant. The first mentioned piece of waste land is bounded on the east by waste land called Napier Place; but neither Napier place nor Grundy Street was ever used by the public as a highway. In 1872 the defendant completely inclosed the pieces of land called Grundy street and Napier Place. No complaint was made by the plaintiff or her predecessors until 1875. Judgment was given by the Exchequer Division for the plaintiff. On appeal it was argued that the street had been defined on the plans, and as clearly as it could be in the conveyance; and that the grantor could not derogate from his own grant.

Where the claim to the soil of a road or the bed of a stream is founded upon a presumption arising from a grant of the adjacent land, the words in the instrument of grant are to be taken in the sense in which the common usage of mankind has applied to them in reference to the context in which they are found. If lands granted are described as bounded by a house, no one could suppose the house to be included in the grant; but if land granted is described as bounded by a highway, it would be equally absurd to suppose that the grantor had reserved to himself the right of the soil *ad medium filum*, in the far greater majority of cases wholly unprofitable. Hence it can never be a question to be determined by the literal meaning of the words without reference to the circumstances in which they are used. The general rule is, that a grant of land bounded by a highway or river carries the fee on the highway or the river to the centre of it, provided the grantor at the time owned to the centre, and there are no words or specific description to show a contrary intent: per Cur., *Lord* v. *Commissioners for City of Sydney*, 12 Moo. P. C. 97.

An instance of such an intention, *i. e.* of an intention not to pass the adjacent soil, is found in the case of *Marquis of Salisbury* v. *Great Northern Railway Company* (inf.), as well as in the recent case of *Plumstead Board of Works* v. *British Land Company*, 31 L. T. Rep. N. S. 752. In the latter case, the defendants being owners of certain lands, in 1863 laid them out for building purposes, and made roads and ways across them. Nearly the whole of the estate was sold in lots to different purchasers, and conveyed to them by bounds set out in coloured plans. Each lot conveyed was numbered, and had a frontage upon one of the roads, and was stated in the conveyance to be on the side of the road and adjoining thereto. The road was not included in the admeasurements or colouring. The roads had been dedicated to the public, but no proceedings had been taken to make them repairable by the parish. The Court of Queen's Bench held upon those facts that it was intended by the form of conveyance used that no part of the soil of the road should pass from the defendants to the purchasers of the lots.

The conveyance in *Simpson* v. *Dendy*, 8 C. B. N. S. 433, was by the lord of part of the demesne of the manor. The land was described "all that piece or parcel of meadow ground commonly called or known by the name or description of Chamberlain Field, containing by estimation 3a. 3r. 35p., be the same more or less, and abutting toward the west on Hall Lane." The deed also contained the following general words: "Together with all ways, etc., and appurtenances to the said messuage, etc., lands, etc., belonging, or therewith used, possessed, occupied, or enjoyed, or accepted, reputed, taken, or known as a part, parcel, or member thereof, or as appurtenant or belonging thereto." Upon

a special case, in which it was provided that the court should be at liberty to draw inference as a jury, it appeared that the grantee of the above field and those claiming under him had for sixty years used a small strip of land lying between the field and Hall Lane as a place of deposit for manure; that about the year 1841 the present owner cut and converted to his own use a tree which grew thereon, and that in 1843 he inclosed the strip. On the other hand there was evidence that the lord of the manor had both before and since the date of the conveyance exercised various acts of ownership by making grants thereof, and giving to the owners of the adjoining lands license to inclose over other similar trips of land by the roadside, in other parts of the manor, the nearest of which was about three-quarters of a mile distant from the spot in question. The question for the court was, whether the conveyance of the field was sufficient to pass to the grantee the strip of land beyond the fence, and the soil to the centre of Hall Lane adjoining. Mr. Justice Willis was of opinion that a conveyance of land described as abutting on a road passes a moiety of the soil of the road unless there was something in the context to exclude the presumption. His Lordship thought it was like the case put in Rolle's Abr. "Graunts" (P.) pl. 6: "*Si home grant un messuage vocatum Falstolfe Place prout undeque includitur acquis per ceux parolls le soile del motes en que le live est passera.* The court came to the conclusion that the presumption in favour of the plaintiff, the grantee, should prevail.

The principle was not disputed in the *Marquis of Salisbury* v, *Great Northern Railway Company*, 5 C. B. N. S. 174, that in ordinary cases where a man who is the owner of two pieces of land conveys them to a purchaser, if a turnpike road lies between them, the soil of the road passes by the conveyance, although the conveyance is silent as to its existence, and although the particular measurement of each piece is given and would exclude the road. It appeared in that case that the Great Northern Railway Company had in 1848 purchased of the plaintiff certain freehold land adjoining a turnpike road to be used partly for the site of their railway and works, and partly for the purpose of diverting a portion of an existing road. Having made a substituted road, the company, with the knowledge of the plaintiff and of the trustees, inclosed and took possession of the portions of the old road which had ceased by the diversion to form part of the turnpike road. The soil was not noticed in the conveyance, all parties being under the impression that it was vested in the trustees. By several acts regulating the turnpike road, the trustees had power from time to time, to purchase land for the widening of the road; but there was no evidence that the freehold of the diverted portion of the road had ever been acquired by them. The Court of Common Pleas held upon those facts, in an action of ejectment in which the plaintiff claimed to be entitled to possession of the site of the old road, that the presumption that the soil of the road was in the plaintiff as owner of the adjoining land, was not rebutted by the local Turnpike Acts, so as to cast upon the plaintiff the onus of showing that the soil of the road had not been purchased by the trustees, and that the soil of the old road did not pass by the conveyance to the defendant company. It was argued for the plaintiff that the deed of conveyance did not contemplate any dealing with the soil of the road, and that, as this was not the case of a voluntary bargain, but a compulsory sale under the powers of a railway company, no presumption was raised in favour of the purchasers. Mr. Justice Crowder, during the argument, raised the question whether, if the conveyance had been an ordinary one of two pieces of land intersected by a road, it would not pass the soil. The point was not necessary for the decision and was not settled.

Chief Justice Cockburn pointed out during the argument in *Leigh* v. *Jack*, that the maxim that the grantor could not derogate from his own grant did not arise here. True, having laid out this waste land as a street, the grantor could not derogate from his grant by building upon it, but that was not the question. "I think," said his lordship, "that the

ordinary presumption of law that the ownership of the soil *usque ad medium filum viæ* is to be taken to be in the land-owners on either side does not apply here. This presumption of law is founded on the probability that, where the ownership of the soil of a road is doubtful, it belongs to the adjoining proprietors; because when land was withdrawn from its private uses, and granted to the public for the purpose of making a road, it is reasonable to suppose that something was given up on each side." "Now," said Lord Justice Bramwell, "if a man says: 'I hereby sell you my estate at A, bounded by such and such roads,' then the land *usque ad medium filum viæ* will pass; or suppose what he sells is 'my field of Dale,' and there is a road on one side of it, then the land *usque ad medium filum viæ* would pass; or suppose he gave the particular boundaries of the field such as 'bounded by a hedge,' and there was a road beyond the hedge, then the land *usque ad medium filum viæ* would pass, because a man does not convey less than he has, and in such a case he means bounded by the road." That in his Lordship's opinion was the principle of the cases. If the conveyance included the street, the defendant might have prevented the making of the road. Of the same opinion was Lord Justice Cotton. The decision practically comes to this, that the rule relating to land *usque ad medium filum viæ* can have no application where there is no *via* in existence at the time of the grant.—*Law Times.*

CONTRACTS IN RESTRAINT OF TRADE.

Contracts in restraint of trade have received their latest illustration in the case of *Roussillon* v. *Roussillon*, which was recently decided by Mr. Justice Fry. The plaintiffs, who are champagne merchants at Epernay, and have a place of business in London, applied for an injunction to restrain the defendant from carrying on a rival trade. The defendant went into the employment of the plaintiffs at Epernay in 1866. He remained there two years, and was afterwards employed by them as a traveller in England and Scotland. In 1869, in return for the kindness bestowed upon him by the plaintiffs, and for the trouble they had taken in his commercial education, he undertook not to represent any other champagne house for two years after leaving their service. He also undertook, if at any time he left the plaintiffs' house for any reason whatever, not to establish himself nor to associate himself with any other persons or houses in the champagne trade for ten years. The defendant left the plaintiffs' employment in 1877, and the defendant established himself in London as a vendor of Ay champagne. Proceedings were instituted in the Tribunal of Commeree at Epernay by the plaintiffs, who obtained judgment by default. The defendant was thereby restrained from representing any champagne house for two years, and from carrying on the business of champagne merchant for ten years. The present proceedings were brought to enforce either the contract or the judgment. Two questions were thus raised. His Lordship was of opinion that the rule to be deduced from the authorities was, that the restraint must not be unreasonable, having regard to the circumstances of the business to be protected. He thought the restraint in this case was not larger than the reasonable protection of the plaintiffs' business warranted. Must the contract, then, be partial to one place? Such a rule, in his opinion, could be evaded by exception. There were businesses, considering the facilities of communication, which were very well conducted over the whole country or a larger area, and other businesses which could only be interfered with in a limited area. "In the first case," his Lordship went on to say, "a universal restriction would be reasonable; in the second, it would be unreasonable to render the contract void. * * The supposed rule as to locality would only apply to those cases in which, in my judgment, it ought not to apply; and therefore, unless there is strong authority to bind me, I should hold that there was no such rule." In the recent case of *Collins* v. *Locke*, 41 L. T. Rep. N. S. 292, it appears to have been fully admitted by the Privy Council that contracts in restraint of trade are against public policy, unless the restraint they impose is partial only, and they are made for good consideration and

are reasonable. The main consideration, however, appears to be whether the restraint is larger than the necessary protection of the party with whom the contract is made, is unreasonable and void, as being injurious to the interests of the public on the grounds of public policy. In the *Leather Cloth Company* v. *Lorsont*, L. Rep. 7 Eq. 355, Vice-Chancellor James stated that all restraints upon trade are bad as being in violation of public policy, unless they are natural and not unreasonable for the protection of the parties in dealing legally with some subject-matter of contract. His Lordship explained that the same public policy which enables a man to sell what he has in the best market, enables him to enter into any stipulation, however restrictive it is, provided that restriction, in the judgment of the court, is not unreasonable, having regard to the subject-matter of the contract. Restrictions even indefinite in time have been held valid, as in *Bunn* v. *Guy*, 4 East, 190, or for a life of the party restrained, as in *Hitchcock* v. *Coker*, 6 A. & E. 438. Again, Vice-Chancellor Leach, in *Bryson* v. *Whitehead*, 1 S. & S. 74, enforced an agreement by a trader upon selling a secret in his trade to restrain himself for twenty years absolutely from the use of such secret, and intimated that the trader might restrain himself generally. Mr. Justice Fry, relying upon the *Leather Cloth Company* v. *Lorsont* and other cases, came to the conclusion that the plaintiffs had established a right to an injunction.

—*Law Times.*

THE LAW OF TRADE MARKS.

Scarcely a week passes during the legal year without some addition being made to the authorities upon the Law of Trade Marks. In a case which was heard on the 24th instant, on appeal from the Master of the Rolls (*Re Worthington's Trade Mark*), the question for decision was whether certain brewers were entitled to register a trade-mark which consisted of a triangle with the picture of a church inside, and the name and address of the firm around it. One of the well-known brewery firms had already adopted a triangle of a different colour and without the picture inside. Was the former mark so like the latter that it was "calculated to deceive" within the meaning of the Trade Marks Registration Act? The Master of the Rolls decided the question in the affirmative. He thought that, if the applicants were allowed to register the proposed mark, they might subsequently colour it red, the colour of the trade mark already registered, so as to obscure the church, and that the proposed mark was in fact an unfair attempt to gain advantage by adopting a mark as nearly as possible resembling the other. Registration was accordingly refused. On appeal this decision was upheld by Lords Justices James, Brett and Cotton. What is the object of the Trade Marks Registration Act? In the words of Lord Justice James, it is to prevent the mischief arising from one trader adopting a similar mark to that already used by another trader. His Lordship admitted that, if the marks were used in black and white only, there would be a substantial difference between them. The Act, however, founded no distinction upon differences of colour. Hence, if the appellants' marks were registered, there would be nothing to prevent them from adopting a red colour. Lord Justice Brett thought there were two questions—one of law, the other of fact, the former being whether, in construing the Act, the marks were to be looked at only as printed in the advertisements, or as they would probably be used in the trade. Nothing was said in its provisions about outline, form, or design. The thing to be registered was stated to be "a distinctive device, mark, heading, label or ticket." "That being so," said his Lordship, "and the mischief being one which was to be done in the course of the trade, it would be a narrow construction to say that you were only to look at the mark as printed in the advertisements, and not as it would be used in the trade. There is nothing in the Act to prevent a trade-mark from being used in any colour. In registering a trade-mark, not only the outline or design as registered will be protected, but the trade-mark which can be used in the trade." The question then was resolved into this: assuming both trade-marks to be registered, and the owner of

each to be ignorant of the other, would any fair use of either be calculated to deceive, both being of the same colour? This raised the question of fact, which was answered in the affirmative. The Lords Justices, however, were not altogether unanimous, for Lord Justice Cotton entertained great doubts as to the decision of the Master of the Rolls. Speaking for himself, he was of opinion that there was sufficient difference between the two marks and distinctness of device to prevent the Court from arriving at the conclusion that the proposed mark was so similar to that already registered as to be calculated to deceive. This difference of opinion was, it will be noticed, really upon a question of fact. It had no influence upon the result of the case. —*Law Times.*

RETROSPECTIVE STATUTES,

May they validate prior void contracts; and as a consequence render invalid intermediate valid contracts made by one of the parties with others: So held by Judge Moran.

In the case of *J. Y. Scammon* v. *The Commercial Union Insurance Company*, in the Circuit Court, before Judge Moran, a verdict was rendered in favour of the defendant. It seems that on the 9th day of July, 1872, Scammon borrowed $220,000 in gold from the United States Mortgage Company, and secured it by mortgage on No. 409 Michigan Avenue and other adjoining property. He made default in payment of interest in December, 1873, but in January took out $20,000 insurance on No. 209 Michigan Avenue. In February, 1874, the Company declared the whole loan due, and advertised the property for sale under a power to sell contained in the mortgage. The property was sold thereunder March 31, 1874, and struck off to J. H. Rees for $100,000, and he conveyed to Mr. Babcock individually, he being at the time president of the Mortgage Company. Scammon, however, did not surrender possession of the property, but remained in actual possession, claiming title, until the fire of July, 1874, when the buildings were destroyed. Failing to get the insurance on the property, he began a suit against the Commercial Union Assurance Company, one of the insurers, claiming the foreclosure proceedings were void because the Mortgage Company was a foreign corporation, and prohibited from loaning money or taking securities in Illinois, at any time between July, 1872, and the time when the property was destroyed by fire, and that hence he had not then parted with the title to the property, but had the same interest in it as when he got it insured.

The Insurance Company, on the contrary, claimed that the subsequent Act of April, 1875, in terms validated prior mortgages between July, 1872 and 1875, and operated in favour of the Mortgage Company so as to make good the mortgage in question from the time it was given, and, as a consequence, that it validated the foreclosure proceeding which had taken place before the fire, and by relation back divested Scammon's title out of him, as of the time when the attempted foreclosure was made some months before the fire. On this question the judge held for the defendants, and instructed the jury to find in their favour, which was done. Mr. Scammon took an appeal.—*Chicago Legal News.*

CANADA REPORTS.

ONTARIO.

COUNTY COURT CASE.

Regina v. Seaton.

Liquor License Act—Rev. Stat. Ont. cap 181, sec. 28.

[London, July 13, 1880.

On the 29th of April, 1880, a tavern license was issued to W. D. Campbell, to be in force from the 1st of May, 1880, to the 30th April, 1881, for the hotel known as the Western Hotel, in Strathroy. On the 3rd day of June last, Campbell removed from the hotel, gave possession to Seaton, and assigned the license to him. On the 10th, Seaton, at the suggestion of the Chairman of the Board of License Commissioners, paid into the Bank of Commerce $7.00, the transfer fee, to the credit of the License

Fund for the License District of West Middlesex. On the 11th, an information was laid before the Police Magistrate against Seaton by the Chief of Police for selling liquor on the 9th day of June without license. On the 17th, the hotel was inspected by the License Inspector and the usual certificate given. On the 25th of June, Seaton was convicted for selling liquor contrary to law on the 9th, and fined $20 and costs. From this conviction Seaton appealed.

Meredith, Q.C., for the appellant, contended that the appellant, under the 28th section, chap. 181 of the Revised Statutes of Ontario, had one month after the assignment of the license to obtain the consent of the Commissioners; in the meantime he could sell.

Hutchison, contra.

ELLIOTT, Co. J.—One Campbell held a tavern license, and transferred it to the appellant on the 3rd of June, 1880. The appellant, apparently relying upon this transfer, sold liquor in the same tavern on June 9th, 1880, for which he has been convicted, on the ground that he had no license for so doing, and against this conviction he has appealed.

According to sub-section 2 of the 28th section, cap. 181, R. S. O., the transferer of a license shall first produce to the License Commissioners a report of the Inspector of Licenses, setting forth facts similar to those which are required by the 9th section. When this report has been obtained from the inspector, the next step to be taken is to produce the written consent of the Commissioners, according to section 28.

Now, the Inspector's report was not obtained until the 17th of June, whereas the sale was on the 9th of June; whether the written consent of the Commissioners was ever obtained seems from the depositions to be not very clear; but certainly it was not obtained until after the 9th of June. It seems, therefore, to be clear that the appellant, when he sold liquor on the 9th of June, had nothing to qualify him to do so, except the bare fact of the transfer of Campbell's license to sell. Was this a sufficient authority? By the appellant it is contended it was upon the ground that by the 28th section he had one month in which to complete the things which are required to be done by that section, and that the sale for which he was convicted took place within that period. I cannot accede to this view of the law. I think the meaning of section 28 is that if the transferee of the license does not procure the formalities required by that section to be done, within one month after the assignment, then the license *ipso facto* becomes void. But this does not dispense with the necessity there is, that the transferee should first have these formalities performed. The Statutes state that any one selling liquor should be licensed. The 9th section requires that applicants for licenses shall be fit and proper persons to have licenses, and in case of tavern licenses, shall have all the accommodation required by law. And by the 19th section every tavern shall contain suitable bedding and furniture. This shows the importance that should be attached to the Inspector's Report, and to the written consent of the Commissioners. If the transferee of a License can go on and sell liquors without either the Inspector's Report or the Commissioners' written consent, then he may do so for a month at least however unsuitable he may be in respect to character, or however destitute his house may be of the requisite beds and bedding, furniture and accommodation required by the 9th and 19th sections. In fact he may go on and sell during a month although the bar-room should be the only furnished apartment in the house.

In this case Campbell removed all his furniture, which was replaced by the appellant, and I believe properly replaced. But I am looking at what might have occurred if the condition of the law were such as the appellant contended for. It is said that this conviction is a harsh one, and that the appellant has not wilfully contravened the law. I give no opinion upon this point—upon this appeal I consider I have only to deal with the case in its legal aspect, and in that view, I feel myself constrained to adjudge that this appeal should be dismissed.

Appeal dismissed with costs.

DIVISION COURT CASES.

COUNTY OF CARLETON.

Bank of Ottawa v. Smith and Marshall.

Division Courts—Action against bailiff and surety for not returning execution.

Declaration in covenant against defendant Smith, as Bailiff of the 4th Division Court of the County of Carleton, and his surety, Marshall, under section 221, Division Court Acts, for non-return of execution within three days after return day and also for false return.

Demurrer on the ground that the declaration did not state that the Bailiff's fees were paid at the time of the issuing of the execution.

Summons to show cause why demurrer should not be set aside and judgment as for want of a plea.

Mosgrave showed cause, and contended that section 51 of the Division Court Acts made the payment of fees a condition precedent, and that unless this payment were made, the Bailiff was not obliged to make a return.

McCaul, for the rule, contended that the Bailiff had a right to demand that his fee should be paid to the Clerk at the time the execution was given to him, but if he did not do so, and accepted the execution, he and his sureties were liable, under section 221, to an action on their bond, where he made a false return of the execution, or did not return it within three days after the return day thereof.

Lyon, J. J., set the demurrer aside with costs.

CORRESPONDENCE.

Interest after maturity of debt.

To the Editor of the Law Journal.

Sir,—There has been a good deal of discussion among the profession on the vexed question of interest when the agreement or security is silent as to the rate after the maturity of the debt.

Cook v. *Fowler*, L. R. 7 H. L. 27, indicated the true principle to be that interest on the maturity of the debt and in the absence of any agreement as to the rate after such maturity, sounds in damages only; and if the rate before the maturity of the debt was unreasonable, it was inferred that the parties saw fit to make no agreement respecting the rate of interest after such maturity, and consequently only statutory interest could be collected. But it is impliedly stated that if the interest were not unreasonable, perhaps the result of the case might have been different. The case of *Dally* v. *Humphries*, 37 U. C. Q. B. 514, goes no further. The writer, however, is informed that in all computations in the Masters' offices and by officers in the Common Law Courts the practice now is to allow only the statutory interest in all cases where the instrument or agreement is silent as to the rate of interest after the debt becomes payable.

The judgment of Cotton J., in the recent case of *Goodchap* v. *Roberts*, L. R. 14 Chy. Div. 49, seems to question the application of this principle in cases of redemption (and we may infer the same rule would apply in foreclosure suits).

Apparently in such suits if the interest stipulated were the usual rates paid by mortgagors, and the mortgagor had gone on paying interest which the mortgagee had applied on his interest at the rate stipulated by the mortgage, but without any express sanction of the mortgagor, the mortgage in question could only be redeemed on paying the larger interest.

A. B.

To the Editor of The Law Journal.

Dear Sir,—I enclose you, as a curiosity, the enclosed *modest* crying-up of one's *wares*:—

_____, _____,

PORT COLBORNE,

Notary Public, Commissioner for taking Affidavits, &c.

Have you a Deed or Mortgage to Draw?

Do you wish to make a Will or Lease?

Would you enter into an Agreement, Bond or a Contract?

Or do you desire to have a Business Letter carefully written?

Call on the undersigned, and he will do the writing carefully, neatly and cheaply.

Fire and Life Insurance effected.

Money to loan on Real Estate.

Ocean tickets, good from Port Colborne to any European city.

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Fortunately for the good of the community at large in this section, professional gentlemen invariably prepare conveyances, and these pests only occasionally get a nibble, and not unfrequently we have the extreme pleasure, especially in the case of chattel mortgages, of bringing their work to naught.

Yours respectfully,

SUBSCRIBER.

St. Catharines, June 14, 1880.

AUTUMN CIRCUITS, 1880.

EASTERN CIRCUIT.

Hon. The Chief Justice of the Queen's Bench.

1. Pembroke	Monday	13th	Sept.
2. Perth	Monday	20th	"
3. Cornwall	Monday	27th	"
4. L'Orignal	Wednesday	13th	Oct.
5. Ottawa	Monday	18th	"

MIDLAND CIRCUIT.

Hon. Mr. Justice Burton.

1. Belleville	Monday	27th	Sept.
2. Napanee	Tuesday	12th	Oct.
3. Picton	Monday	18th	"
4. Kingston	Thursday	21st	"
5. Brockville	Tuesday	2nd	Nov.

VICTORIA CIRCUIT.

Hon. Mr. Justice Patterson.

1. Cobourg	Monday	27th	Sept.
2. Lindsay	Thursday	7th	Oct.
3. Peterborough	Monday	18th	"
4. Whitby	Monday	25th	"
5. Brampton	Monday	1st	Nov.

BROCK CIRCUIT.

Hon. Mr. Justice Cameron.

1. Owen Sound	Monday	20th	Sept.
2. Walkerton	Monday	27th	"
3. Goderich	Monday	4th	Oct.
4. Stratford	Monday	11th	"
5. Woodstock	Monday	18th	"

NIAGARA CIRCUIT.

Hon. The Chief Justice of the Common Pleas.

1. Milton	Monday	20th	Sept.
2. Welland	Monday	27th	"
3. Cayuga	Monday	4th	Oct.
4. St. Catharines	Monday	11th	"
5. Hamilton	Monday	25th	"

WATERLOO CIRCUIT.

Hon. Mr. Justice Osler.

1. Guelph	Monday	13th	Sept.
2. Berlin	Monday	27th	"
2. Brantford	Monday	4th	Oct.
4. Simcoe	Monday	11th	"
5. Barrie	Monday	18th	"

WESTERN CIRCUIT.

Hon. Mr. Justice Armour.

1. London	Tuesday	28th	Sept.
2. St. Thomas	Tuesday	12th	Oct.
3. Chatham	Tuesday	19th	"
4. Sandwich	Tuesday	26th	"
5. Sarnia	Tuesday	2nd	Nov.

HOME CIRCUIT.

Hon. Mr. Justice Morrison.

1. Toronto (Assize and Nisi Prius)	Tuesday	28th	Sept.
2. Toronto (Oyer & Terminer, &c.)	Tuesday	26th	Oct.

N. B.—There shall be at every Nisi Prius Court a Jury List and a Non-Jury List. The former shall be first disposed of, and the latter not taken till after the dismissal of the Jury Panel, unless otherwise ordered by the Judge.

The Hon. Mr. Justice Galt will remain in Toronto during the Autumn Circuit, to hold the sittings of the Queen's Bench and Common Pleas, each week, and for the transaction of business by a Judge in Chambers.

CHANCERY AUTUMN CIRCUIT.

The Hon. Vice-Chancellor Blake.

Toronto	Tuesday	2nd November.

HOME CIRCUIT.

The Hon. The Chancellor.

Guelph	Tuesday	5th October.
Brantford	Tuesday	12th "
Simcoe	Friday	15th "
St. Catharines	Thursday	21st "
Barrie	Monday	15th November.
Owen Sound	Tuesday	23rd "
Whitby	Friday	26th "
Hamilton	Wednesday	1st December.

WESTERN CIRCUIT.

The Hon. VICE-CHANCELLOR BLAKE.

Stratford....	Wednesday..	8th September.
Goderich....	Tuesday....	14th "
Sandwich...	Monday....	20th "
Chatham.....	Thursday....	23rd "
Woodstock..	Thursday....	30th "
Walkerton..	Tuesday.....	5th October.
St. Thomas..	Friday.....	8th "
London.....	Tuesday....	12th "

EASTERN CIRCUIT.

The Hon. VICE-CHANCELLOR PROUDFOOT.

Cornwall....	Tuesday....	14th September.
Ottawa.....	Saturday....	18th "
Brockville..	Monday....	27th "
Kingston....	Thursday...	30th "
Lindsay....	Monday....	25th October.
Peterborough	Thursday....	28th "
Cobourg....	Tuesday....	2nd November.
Belleville...	Monday....	8th "

COURT OF CHANCERY.

ANNOUNCEMENTS.

The Sittings of the Full Court appointed by the General Orders to be held on the 26th August next for the re-hearing of causes are adjourned until Thursday, 2nd September next. Between the 21st August and 1st September the Court will not sit for the hearing of any causes or applications except such as may be disposed of in vacation. The Master's office will be open each day (Sundays excepted) from 10 to 12 a.m. for the purpose of making appointments. The other offices will be open during the same hour for the transaction of such business as shall not require the attendance of the opposite party, and as may be transacted in vacation.

During vacation applications of an urgent nature are to be made to V. C. Proudfoot. He will be at Osgoode Hall at 11 a.m. on each Tuesday. Papers relating to applications are to be left with the Registrar on the previous Friday. Applications for leave to serve notice of motion may be made to the Registrar at his office at 10 a.m.

In any case of urgency the brief of counsel is to be sent to the Vice-Chancellor, accompanied by copies of the affidavits in support of the application, and also by a minute on a separate sheet of paper signed by counsel of the order he may consider the applicant entitled to, and an envelope capable of securing the papers addressed as follows:—

"To the Registrar of the Court of Chancery
Osgoode Hall,
Toronto."

(Vacation business.)

and containing stamps for postage. On application for injunction or writs of *ne exeat provincia*, in addition to the above, there must also be sent an office copy of the bill.

The papers sent to the Vice-Chancellor will be returned to the Registrar's office. The Vice-Chancellor's address can be obtained on application at the Registrar's office.

Cheques will be issued by the Accountant of the Court of Chancery on Friday next at 2 to 4 p.m.

FLOTSAM AND JETSAM.

The following forecast of the fortunes of Ex-President Grant, which is quite as good and ve racious a prediction in its way as many ancient oracles, and more modern prophecies, may be found in the Index to the first volume of the Probate and Divorce Reports, published 31st December, 1869, p. 786:

"GENERAL GRANT—Limited Administration."

"Do you understand the nature and solemnity of an oath?" the judge asked a witness who had come up from the lower end of the State. "Well, yes," the witness replied, after some study. "I reckon I know the natur' of an oath, but there never appeared to be no powerful amount of solemness about swearin' to me. It always come kind of nat'ral like. Mam swore a little when she was riled, dad was a born cusser, and Parson Bedloe—" But the court excused him without further pedigree.

GEORGE JONES, *alias* the Count Joannes, an eccentric individual who died in New York last week, was both an actor and a lawyer. In an election case before Judge Brady, of that State, some years ago, after considerable debate between the lawyers, the judge himself interposed with: "Well, gentlemen, let us get to the merits of the case. I suppose that all that either party desires in this case is an honest count." At which there rose before the judge on the instant a wild and strange figure, not unfamiliar to the courts, nor yet to the footlights, which with hand upon its heart bowed low and uttered in sepulchral tones: "May it please the court, *Ecce homo!*" It was the Count Joannes.

The following is from California. Scene in a police court. Judge—"Bill Sheets, you are charged with burglary. Are you guilty?" "Sure, yer 'onour, an' if it's gooilthy I am, do yez thinks I be afther tellin' yez ov it? I pleads not gooilthy," was the response of Bill. "All right," said the judge, and turning to one of the most eminent members of the bar, said: "You

Flotsam and Jetsam.

will please act as counsel for the defendant." At this the prisoner turned and calmly surveyed the placid countenance of his champion, and then addressed the court as follows: "Sure, an' if it's that yez afther givin' me fur a loiyer, I pleads gooilthy, and be done with it at once." Then as he turned and pointed to the robust form of a youthful member of the bar, he continued: "But if yoill give me him, as what is a foine loiyer, oill plade not gooilthy." The prisoner was allowed his choice of counsel.

The following remarkable title appeared in an answer filed in a New York court last week:—Wellington Porter against Daniel Quill, Arsinio Amabile, Raphael Suckrat, Jim Libbick, Louis Somebody, Martin Jinks, Lonigo Louis, Joseph Amen, Tony Amen, Billy Lonias, Bechonce Godjohn, Junice Curio, Jim Liberto and others. It was a mechanics' lien suit, most of the defendants being Italian labourers, and it is supposed that the extraordinary production above set forth was the fruit of the prolonged struggle of a modern gang foreman with the dulcet language of the modern Roman.

In an interesting article in the *Westminster Review* for October, on England's great lawyer, Lord Brougham, the writer says that the name "Brougham" is variously pronounced, but its correct pronunciation, according to its illustrious bearer, is "Broom." At his first appearance as counsel at the Bar of the House of Lords, Lord Eldon called him "Mr. Bruffam." Indignant at being so miscalled, the offended advocate sent the chancellor a rather angry message, accompanied with a paper, on which, to insure for the future the proper and monosyllabic pronunciation of the name, were written in large round text the letters B R O O M. At the end of the argument Lord Eldon, with his usual kindliness of manner towards the bar, observed: "Every authority upon the question has now been brought before us. New brooms sweep clean." We may add that the common method of pronouncing the name as "Bro-am" or "Broo-am," were equally distasteful to its bearer as Lord Eldon's "Bruffam."

Two Laws.—Several days ago a white man was arraigned before a coloured Justice down the country on charges of killing a man and stealing a mule.

"Wall," said the Justice, "de facs in dis case shall be weighed with carefulness, an' ef I hangs yer tain't no fault of mine."

"Judge, you have no jurisdiction only to examine me."

"Lat sorter work 'longs to de raigular Justice, but yer see I'se been put on as a special. A special hez de right ter make a mouf at S'preme Court ef he chuses ter."

"Do the best for me you can, Judge."

"Dat's what I'se gwine ter do. I'se got two kinds ob law in dis court, de Arkansaw an' de Texas law. I generally gins a man de right to choose fur his sef. Now what law does yer want, de Texas or de Arkansaw?"

"I believe I'll take the Arkansas."

"Wall, in dat case I'll dismiss yer fur stealin' de mule——"

"Thank you, Judge."

"An' hang yer fur killin' de man——"

"I believe, Judge, that I'll take the Texas."

"Wall, in dat case I'll dismiss yer fur killin' de man——"

"You have a good heart, Judge."

"An' hang yer fer stealin' de mule. I'll jis take de 'casion heah ter remark dat de only difference 'tween de two laws iz in de way yer state de case."

A Scotch advocate writes a pleasant letter to a New York journal concerning the peculiarities and traditions of his profession. "I find," he says, "that nothing interests an American so much as my wig. I only wish the person who thus derives amusement from the fashion had to experience its inconvenience. To begin with, they are by no means cheap. A horse-hair wig costs about $50, and an ordinary one—they are now all made out of whalebone shavings—about $30. They very soon get dirty, and to powder them as some men used to do, only makes one's coat perpetually greasy. Then in summer they are hot and tight on the head. Yet we all wear them. We are not compelled to do so. We must wear a gown; that is our mandate. The abolition of the gown I should regret. Its several parts involve not a little curious history. For instance we carry at the back of the gown a little pocket which, though still worn, is now sewn up. That appendage takes you back more than 300 years, to the days before the Reformation, when the advocates were churchmen. No churchman was allowed to accept a regular payment for his services. But if he was prohibited from handling the money, that was no reason why you, if you wanted your case particularly attended to, should not put a couple of gold pieces into the bag which he carried at his back. So you see we still have some relics of the past in this reforming age. Many of our names even strike a stranger as peculiar. The official head of the bar is called 'Dean of the Faculty.' 'Ah,' said Sidney Smith, when he heard the name for the first time, 'that's very odd now. With us in England our deans have no faculties?' Absurd as these old customs and names may be, it can not be denied that the country has reason to be proud of her judicial ar-

rangements, not merely in the Supreme Court, but down to the humblest judicatory."

In an article in the *Westminster Review* on the Life and Times of Lord Brougham, it is said that his first professional business in Scotland was defending prisoners free of charge, who were too poor to pay a lawyer. On the first occasion the Judge of Assize was Lord Eskgrove, whom Campbell describes as "a foolish old gentleman, of whom ludicrous stories had been told, and upon whom tricks had been played for nearly half a century." At no time in his life did Brougham care to grapple with a strong judge; but on this, his first appearance in court, he showed the propensity which ever afterwards he exhibited, to take liberties with a weak one. He accordingly perplexed Lord Eskgrove by elaborate arguments, delivered with all his vehemence and force of rhetoric, and with apparent sincerity, on such questions as whether, in an indictment for sheep-stealing, it is necessary to state the sex of the stolen animal; whether a man indicted for stealing a pair of boots can be convicted of stealing a pair of half boots; whether, where a woman made her husband drunk, and he being drunk assaulted her, the woman was not the *causa causans*, or, in the language of Scots law, *art and part*, so as to entitle the husband to the benefit of the maxim "*volenti non fit injuria.*" It was not without difficulty that the prosecuting advocate convinced the not very clear-minded judge of the fallacy of Brougham's arguments, and his lordship gave this utterance to his feelings: "I declare that man Broom or Brougham is the torment of my life." The general election being over, Brougham found it necessary to turn again to the law. He became a pupil of Mr. Tindal, who was afterwards one of his juniors in the Queen's case, and subsequently Chief Justice of Common Pleas. Here he formed the acquaintance of James Parke, afterwards a Baron of the Exchequer, and Lord Wensleydale. Two men more opposite to each other than Brougham and Parke could not be found—Brougham, brilliant and ambitious, but wanting steadiness and discretion; Parke slow, plodding, cautious and persevering. With Brougham, politics, literature and science shared his energies with the law. To Parke, law was "all in all." We have heard that shortly before his death a lady said to him, "I wonder with your great mind, baron, you have never written anything." "Written anything," was the astonished answer, "why, my dear madam, I have written the judgments in the volumes of Meeson and Welsby, and they will remain long after the perishable literature of the present time has passed away."

Lord Justice Bramwell has written a strong letter condemning the Bill pending in Parliament proposing to make masters liable to servants for injuries by fellow-servants in the course of the same employment. We have several times expressed ourselves against this. See 17 Alb. L. J. 358; 19 id. 505. Lord Bramwell says: "I have shown that . . . it is not a natural right that the master should be liable, nor any thing that exists in the nature of things. That it is reasonable a railway company should be liable to a passenger for the negligence of its servants, because it has so contracted; and that it should not be to one of its own servants, because it has not so contracted. We are to start afresh, then, and make a new rule. Why? Why if I have two servants, A. and B., and A. injures B. and B. injures A. by negligence, should I be liable to both when, if each had injured himself, I should not be to either? There can be but one reason for it, viz., that, on the whole, looking at the interest of the public, the master, and the servants, it would be a better state of things than exists at present. Is that so?" This he answers in the negative. As the servant may now contract that the master shall be liable, so under the new law he might contract that he should not be liable, and for say sixpence a day difference of wages, he would so contract. "The great employers of labour will understand the change in the law, and guard against it. The mischief and wrong will be in the case of men, who, not knowing of the change, will go on paying the wages which include the compensation for risk, the premium of insurance, and yet find they have to pay compensation when the risk happens, and that they are insurers though they have not received the premium." His lordship concludes that change would do the workman no good except in this last class of cases. Admitting that it might make the master more careful in selecting servants, he denies that this is a sufficient consideration for the enormous increase of risk. He might add that the master is already liable for carelessness in selection, and there is therefore all the less need of making him an insurer of his servants' care toward one another. Finally, he says—"And even if the law were made obligatory in spite of bargains to the contrary, it would not profit the servant. Because it is certain there is a natural rate of wages, one fixed by what neither master nor man can control, and that if they are practically added to one way, they will be taken from in another. If a manufacturer's wages now are £10,000 in the year, and he is made to pay compensation to the amount of £1,000 a year, his wages will fall to £9,000. He cannot charge more for his produce because he has to pay more; and if he could, his sales would diminish, and injury be done to the workman in loss of work." For our own part, we regard the proposed change as so impolitic, unjust, and unequal, as to verge on folly.

Law Society of Upper Canada.

OSGOODE HALL,

EASTER TERM, 43RD VICTORIÆ.

During this Term, the following gentlemen were called to the Bar. The names are placed in the order in which they stand on the Roll of the Society, and not in the order of merit.

SAMUEL SKEFFINGTON ROBINSON.
ALEXANDER GRANT.
JOSEPH BOOMER WALKEM.
EBENEZER FORSYTH BLACKIE JOHNSTONE.
FRANK FITZGERALD.
GEORGE A. F. ANDREWS.
THOMAS STEWART.
HENRY SCHUYLER LEMON.
JAMES HENDERSON SCOTT.
EUGENE DE BEAUVOIR CAREY.
GIDEON DELAHAY.
GERALD FRANCIS BROPHY.
WILLIAM HENRY DEACON.
ROBERT W. SHANNON.
DANIEL MCLEAN.
ARTHUR WILLIAM GUNDRY.
JOHN NICHOLSON MUIR.
JOHN BROWN MCLAREN.

On the 19th May the following gentlemen were admitted as Students-at-Law and Articled Clerks, namely .—

Graduates.

ROBERT PEEL ECHLIN.
WILLIAM HENRY WILBERFORCE DALEY.

Matriculants.

ALEXANDER B. SHAW.
LEONARD HUGH PATTEN.

Junior Class.

DOUGLAS ALEXANDER.
PAUL KINGSTON.
THEOPHILUS BENNETT.
EDWARD W. J. OWENS.
ALBERT J. FLINT.
DONALD MACDONALD.

Articled Clerk.

WILLIAM DUNCAN SCOTT.

And on the 22nd May the following gentlemen were admitted as Students-at-Law and Articled Clerks :—

Graduates.

C. H. IVEY.
CHARLES R. IRVINE.
RICHARD WALLACE ARMSTRONG.

By order of Convocation, the option to take German for the Primary Examination contained in the former Curriculum is continued up to and inclusive of next Michaelmas Term.

RULES AS TO BOOKS AND SUBJECTS FOR EXAMINATIONS, AS VARIED IN HILARY TERM, 1880.

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 satisactory examination in the following subjects :—

Articled Clerks.

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
Arithmetic.
Euclid, Bs. 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.

Students-at-Law.

CLASSICS.

1880 { Xenophon, Anabasis, B. II.
Homer, Iliad, B. IV.

1880 { Cicero, in Catilinam, II., III., and IV.
Virgil, Eclog., I., IV., VI., VII., IX.
Ovid, Fasti, B. I., vv. 1-300.

1881 { Xenophon, Anabasis, B. V.
Homer, Iliad, B. IV.

1881 { Cicero, in Catilinam, II., III., and IV.
Ovid, Fasti, B. I., vv. 1-300.
Virgil, Æneid, B. I., vv. 1-304.

Translation from English into Latin Prose.

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