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DIARY FOR JULY.

Fri....Dominion Day. Long vacation H. C. J. and Sup. Court of Canada begins.
3. Sun....*4th Sunday after Trinity.* Quebec founded, 1608.
4. Mon....C. C. term begins, except in York.
9. Sat.....C. C. term ends, except in York.
10. Sun....*5th Sunday after Trinity.*
13. Wed..Sir John Robinson 7th C. J. of Q. B. 1829.
17. Sun....*6th Sunday after Trinity.* Law Society incorporated, 1797.
22. Fri.....V. H. Draper, 9th C. J. of Q. B., 1863. W. B. Richards, 3rd C. J. of C. P., 1863.
23. Sat....Ac. uniting Upper and Lower Canada assented to, 1840.
24. Sun....*7th Sunday after Trinity.* Lundy's Lane, 1814.
28. Thur..Wm. Osgoode, first Chief Justice of Q. B., 1792.
31. Sun....*8th Sunday after Trinity.*

TORONTO, JULY 1, 1887.

DURING the long vacation, following our usual custom, we shall, for this and the following month, issue but one number each month instead of two.

THE regular September Sittings of the Divisional Court of the Chancery Division this year will commence on the 5th day of September next, instead of on the 1st September as appointed by the Rules.

THE QUEEN'S JUBILEE.

THE fiftieth anniversary of Her Majesty's accession has drawn forth from her faithful subjects in all parts of the empire demonstrations of rejoicing. The Dominion of Canada has not been behind hand, and throughout its broad domain religious and festive commemorations of the event have everywhere been held.

To one accustomed to the exuberant manifestations of feeling common in an English crowd, it must often appear that we Canadians are inclined to be somewhat cold and lacking in loyal enthusiasm. Though not so loud-tongued, perhaps, as our brethren across the sea, beneath an apparent coldness, however, there runs a deep current of loyal feeling which, on occasions of this kind, comes to the surface.

In no part of the Queen's dominions are to be found more loyal and faithful subjects than in this great Dominion, built up, as it has largely been, during her long and happy reign.

From a legal point of view, Her Majesty's reign has been one that will ever be a memorable era in the history of our law.

During this period, the old intricate system of pleading and practice, which so frequently left the victory in a law suit, not with the litigant who had the merits on his side, but with the opposite party who had happened to employ the subtler lawyer, has been swept away. On the whole, we think, all modern lawyers, and certainly all litigants, must agree that the disappearance of the technicalities which distinguished the system of the past, has at least advanced the cause of justice.

While the first Common Law Procedure Act was the death-blow of the old system of procedure, it has in its turn been superseded by the Judicature Act which attempts still further to carry on the work of reform. It is, perhaps, premature to speak of the comparative merits of the latter Act, as in this country, the few years it has been in force, and the state of flux in which it still remains, prevent a proper judgment on its merits. Suffice it to say that its main scheme of consolidating the courts and providing one uniform system of procedure for all civil suits is sound, and, when it has been adequately worked out in actual practice, cannot fail to be productive of public benefit.

While the practice and procedure of the courts have been simplified, the law itself has been also very greatly improved. The foundation of an important part of this

work is no doubt to be found in the reports of the real property commissioners. Parliament, proceeding upon an adequate knowledge of the evils in the old system, and of the nature of the remedies necessary to be applied supplied by these reports, has carried on the work of reform gradually but surely, and unaccompanied by any violent disturbance of the rights of property. The Real Property Descent Acts whereby the right of primogeniture was abolished, and the succession to real and personal property has been assimilated —the Acts shortening the period of limitation within which suits may be brought—the Disentailing Act—have all been so many steps forward in the improvement of the law of real estate. They are, however, but steps, and we may believe will soon, in obedience to the spirit of the age, lead up to still further improvements. This reign has also witnessed the abolition of the barbarous practice of imprisonment for debt.

The extension of the system of representative government to Her Majesty's colonial possessions has been productive of manifold benefits, both in strengthening the bonds of amity between the colonies of the empire and their common centre, and also in developing in Her Majesty's colonial subjects that spirit of self-reliance and contentment which is essential to their prosperity. If, in any colony, her subjects are ill-governed, they have almost everywhere the consciousness that the remedy is in their own hands.

The profession of the law is a profession in which loyalty to the chief magistrate must always be a distinguishing characteristic. The solemn oath which is required o every practitioner "to be faithful and bear true allegiance" adds the sanction of religion to that which duty and interest alike demand. The prosperity of lawyers is intimately bound up with the prosperity of the community in which their lot is cast. Upholding the majesty of the law, and reverence and respect for the chief magistrate, the executive of the law, is only natural for those whose whole life-work is to assist in administering the law. Law and lawyers flourish best when peace and prosperity, and respect for law and order, are maintained. During the Victorian era the law and lawyers have prospered, because it has been pre-eminently the reign of law and order. Scattered throughout the land the legal profession is capable of exerting a vast influence for good in the community; to them, in a large measure, belongs the duty of promoting that sentiment of personal affection and loyalty to the Crown which is after all but another name for loyalty to law and order. In the Dominion it has been amply demonstrated that loyalty to the Crown is perfectly consistent with a most democratic state of society, and notwithstanding all the blandishments of our cousins to the south of us, there is to-day no appreciable public sentiment in favour of imitating their example, and cutting ourselves adrift from the glories and traditions of the motherland, or the benign sway of a Queen whose constitutional regard for the rights of her subjects, and whose spotless and unsullied life have endeared her to the hearts of all classes of her people. Whatever radical philosophers and politicians may say to the contrary, the personal influence and example of the Sovereign of the British Empire is still a vital force permeating all ranks of society, and exerting its influence in indirect ways far and wide. To have had a sovereign fifty years upon the throne, distinguished as the constant friend of virtue, and foe of vice, is not the least of the blessings for which we may be thankful on this auspicious occasion. We echo but the sentiments of the profession in Ontario when, on this the anniversary of Confederation, with heart-felt love we say, GOD SAVE THE QUEEN.

SIR MATTHEW CAMERON.

IT is but a few short weeks ago since we had the pleasant office of congratulating Sir Matthew Cameron on the well-merited honour of knighthood which had been recently conferred on him, and now it is our melancholy duty to record his untimely death, whereby the Bench of this Province is robbed of one of its most conspicuous ornaments, and the profession at large has to mourn the loss of one of whom it had every reason to be proud.

Sir Matthew Cameron, as his name implies, was of Scotch descent. His father was Mr. John McAlpine Cameron, a gentleman who held in his day the offices of Postmaster at Dundas, the Deputy Clerkship of the Crown for the Gore District, subsequently a clerkship to the committee of the Parliament of Upper Canada, and finally an important post in the Canada Company's service. He died in Toronto in 1866 at the good old age of seventy-nine. Sir Matthew's mother was an Englishwoman, a native of Northumberland, Nancy Foy by name. Sir Matthew was born on 2nd October, 1822, and was the youngest child of his parents, and the only one of them born in Canada. He was named "Matthew Crooks," after an uncle of the late Hon. Adam Crooks. He received his education at a private school kept by a Mr. Randall, in Hamilton, and also at the Home District School, in Toronto, and in 1838 entered Upper Canada College, where he continued until 1840. In this year he met with an unfortunate accident at the island in front of the city of Toronto, while out shooting with two companions, one of whom accidentally shot him in the leg, shattering his ankle. The result was, the wounded limb had to be amputated, and he was doomed to crutches for the rest of his life. Through some defect in the surgical treatment he received he had to endure not only the loss of the leg, but the wound remained a continual source of pain and trouble to him until his dying day.

On his recovery from this accident he entered upon the study of the law in the office of Messrs. Campbell & Boulton, and in Hilary Term, 1849, he was called to the Bar of this Province. He commenced practice first as a partner of the late William Henry Boulton, his former master. Subsequently on Mr. Boulton retiring from practice he formed a partnership with the Hon. William Cayley, an English barrister, under the name of Cayley & Cameron. In 1859 Dr. McMichael became a member of the firm. On Mr. Cayley's retirement Mr. Cameron became the senior partner, and continued so until his elevation to the Bench as a *puisne* Judge of the Court of Queen's Bench, in 1878. He was appointed one of Her Majesty's Counsel in 1863, and was elected a Bencher in April, 1871.

While at the Bar he acquired a Provincial reputation as a forensic orator of the first class, and his services were eagerly sought in all parts of the Province. He was tall and slightly built, and of commanding presence, and though not gifted with a very musical voice, his force and keenness of invective, coupled with a thorough mastery of the law, made him very soon a formidable opponent, and in the early days of his career he found in the late Henry Eccles, John Hilyard Cameron, P. M. Vankoughnet and the present Chief Justice of Ontario, antagonists worthy of his utmost skill. Notwithstanding the infirmity he laboured under, owing to the accident to which we have referred, he was a most indomitable worker, and no client ever found his interests neglected in his hands. All that skill and learning and industry and eloquence could do, consistently with honour and

integrity, he might be sure would be done for him.

In 1859 he entered the arena of politics and was elected alderman for St. James' ward. In 1861 he offered himself as a candidate for the Mayoralty of Toronto, but failed to secure election. In the same year he was elected to the late Parliament of Canada as member for North Ontario, but at the general election which followed in that year he was defeated. In 1864 he was re-elected for that constituency, which he continued to represent until 1867. After Confederation he sought election to the Commons but was defeated, and was then elected to the Local House as member for East Toronto, a constituency in which he had for many years resided. He became a member of the late Sandfield Macdonald's Administration, in which he was at first Provincial Secretary, and afterwards Commissioner of Crown Lands.

In November, 1878, he was appointed a *puisne* judge of the Queen's Bench, and on the 13th May, 1884, he became Chief Justice of the Common Pleas on the removal of Chief Justice Wilson from that court to the Queen's Bench. In recognition of his distinguished services to the country, he, on the 5th of April last, received the honour of knighthood.

None who came in contact with the late Chief Justice could fail to be impressed with the simplicity of his manners, his entire freedom from *hauteur*, and his downright earnestness of purpose. He set for himself a high standard of honour, from which he never allowed himself to depart. He was not only admired and looked up to as a great lawyer, but he was beloved and esteemed because he was known to be in every transaction of life a thoroughly high-minded and upright gentleman. His devotion to duty, it is to be feared, has hastened his end. For the last few weeks his health had been seriously impaired through a succession of painful carbuncles, and he persisted in remaining at work, when his physicians think he should have been in bed. His disorder ultimately became complicated by an acute attack of inflammation of the bowels, to which he succumbed on the evening of the 25th June. His remains were interred on the 28th June in St. James' Cemetery, Toronto, according to the rites of the Anglican Church. A great concourse of professional, political and private friends attending to pay their last tribute of respect.

His name and memory will long be cherished with affection by the profession of this Province, and M. Berthon in the admirable portrait which he made of his departed friend, which hangs in Osgoode Hall, has handed his form and visage on to many succeeding generations of lawyers.

RECENT ENGLISH DECISIONS.

The *Law Reports* for May, in addition to the numbers referred to in our last issue, also comprise 12 App. Cas. pp. 181-283.

LEASE--JOINT TENANTS--COVENANT TO PAY RENT--LIABILITY OF EXECUTORS OF DECEASED TENANT DURING SOLE TENANCY OF SURVIVOR.

The first case to be noted is the Scotch appeal of *Burns* v. *Bryan*, 12 App. Cas. 184. The case arose upon the construction of a mining lease. The lease was for thirty-one years, and was granted to L and M, "and the survivor of them, but expressly excluding assigns and sub-tenants, whether legal or conventional." By the lease L and M bound themselves and their respective heirs, executors and successors, all conjunctly and severally, renouncing the benefit of discussion, to pay the rent. There was also a provision that if either lessee became bankrupt the lessor should have the option of avoiding the lease. Shortly after the commencement of the lease

L became bankrupt, and M died, the lessor never exercised his option to determine the lease. It was held by the House of Lords (reversing the decision of the Court of Session) that by the terms of the covenant the lessees were jointly and severally liable for rent, irrespective of their interest, and that after M's death his representatives, though they had no interest as tenants, remained liable for rent during the currency of the lease.

WILL—POWER CREATED AFTER WILL—APPOINTMENT BY GENERAL BEQUEST—7 WM. IV. & 1 VICT. C. 26, SS. 23, 24, 27 (R. S. O. C. 106, SS. 25, 26, 29).

In *Airey* v. *Bower*, 12 App. Cas. 263, the House of Lords (affirming a decision of the Court of Appeal) held that when a testatrix who had a general power of appointment over the A property, by her will made in 1854, after specific devises and bequests, devised and bequeathed the residue of her estate to X, and afterwards, she, by a deed poll in 1855, appointed the A property upon such trusts as she, by deed or her last will, "should, from time to time, or at any time thereafter, direct or appoint," and, in default of appointment, in trust for Y; and the testatrix died in 1857 without having altered her will of 1854: that under the 7 Wm. IV. & 1 Vict. c. 26, ss. 23, 24, 27 (R. S. O. c. 106, ss. 25, 26, 29), the will operated as an exercise of the power reserved by the subsequent deed poll and passed the property to X. *Boyes* v. *Cook*, 14 Chy. D. 53, was approved.

PRINCIPAL AND AGENT—CONTRACT WITH AGENT FOR UNDISCLOSED PRINCIPAL—SET OFF AGAINST PRINCIPAL OF DEBT DUE BY AGENT—ESTOPPEL.

The only other case in this number of the appeal cases is *Cooke* v. *Eshelby*, 12 App. Cas. 271, which is an important decision on a point of commercial law. Livesy & Co., a firm of brokers, sold cotton to the appellant C. in their own names, but really on behalf of an undisclosed principal. The appellant knew that Livesy & Co. were in the habit of dealing both for principals, and on their own account, but had no belief, and made no inquiries, as to whether they made the contract as principals or agents. The principals brought the present action to recover the price of the cotton, and the appellant claimed the right to set off a debt due by Livesy & Co. to him; but the House of Lords (affirming the decision of the Court of Appeal) held that he was not entitled to do this. Lord Watson thus states the result of the cases:

> . . . In order to sustain the defence pleaded by the appellant, it is not enough to show that the agent sold the goods in his own name. It must be shown that he sold the goods as his own, or, in other words, that the circumstances attending the sale were calculated to induce, and did induce, in the mind of the purchaser a reasonable belief that the agent was selling on his own account, and not for an undisclosed principal; and it must also be shown that the agent was enabled to appear as the real contracting party by the conduct or by the authority, express or implied, of the principal. The rule thus explained is intelligible and just; and I agree with Bowen, L. J., that it rests upon the doctrine of estoppel.

The *Law Reports* for June comprise 18 Q. B. D. pp. 657-827; 12 P. D. pp. 137-144; and 35 Chy. D. pp. 1-190.

POST-NUPTIAL SETTLEMENT—SOLVENCY OF SETTLOR AT DATE OF SETTLEMENT.

The bankruptcy case of *In re Lowndes*, 18 Q. B. D. 677, is deserving of notice. This was an application under the Bankruptcy Act, 1883, s. 47, to set aside a post nuptial settlement within ten years of its execution, and it appeared that if the life interest reserved to the settlor were taken into account, he was able to pay his debts at the date of the settlement, but that if it were not taken into account, he was insolvent; and it was held by Mathew and Cave, JJ., that the settlor's life interest ought to be taken into account in estimating his solvency, and that the settlement was therefore valid against the trustee in bankruptcy.

MASTER AND SERVANT—EMPLOYERS LIABILITY ACT 1880—"OTHERWISE ENGAGED IN MANUAL LABOUR"—DRIVER OF TRAM CAR—49 VICT. C. 28, S. 2, SS. 3 (O.).

Cook v. *The North Metropolitan Tramways Co.*, 18 Q. B. D. 683, was an action under the Employers Liability Act, 1880, brought by the driver of a tram car for injuries sustained by him through falling into a hole in the floor of a shed in which the defendants' cars were kept; and the question was whether the plaintiff was a "workman" within the meaning of the Act, which provided that the term should include any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, has entered into, or works under, a contract with an employer. The

court (A. L. Smith and Grantham, JJ.,) held that the plaintiff did not come under the definition of a workman. The court distinguished between the expressions "manual work" and "manual labour," and though conceding that a tram car driver was engaged in manual work, yet considered he could not be deemed to be engaged in manual labour.

MASTER AND SERVANT—DEFECT IN CONDITION OF WORKS—EMPLOYERS LIABILITY ACT, 1880—49 VICT., C. 28 S. 1 (O).

Thomas v. *Quartermaine*, 18 Q.B.D., 685, is another decision under the Employers Liability Act, 1880 (49 Vict. c. 28 [O].) in which the Court of Appeal affirm the decision of Wills and Grantham, JJ., 17 Q. B. D., 414, noted *ante*, vol. 22, p. 357. Lord Esher, M.R., however, dissented. In this case the plaintiff was employed in a cooling-room in the defendant's brewery; in the room were a boiling vat and a cooling vat, and between them ran a passage which was in part only three feet wide. The cooling vat had a rim raised sixteen inches above the level of the passage, but it was not fenced, or railed in. The plaintiff went along this passage to pull a board from under the boiling vat; the board, which was stuck fast, suddenly came away, so that the plaintiff fell back into the cooling vat and was scalded. Under this state of facts the court below had held that the employers were not liable, on the ground that there was no defect in the ways, works, or plant, of the brewery. As Bowen, L.J., observes, the decision is one of great importance to employers and workmen, and for this reason it may be useful to quote a passage from the judgment of Fry, L.J., at p. 700, which succinctly states the ground on which the majority of the court proceeded. After stating that independently of the Employers Liability Act, 1880, the plaintiff would have no cause of action, he proceeds to say:

"There arises the question which seemed to me to be that of the greatest difficulty in this case, viz.: has the plaintiff a right of action by force of the Act of 1880? The first section provides that when personal injury is caused to a workman by reason of any one of five things enumerated, the workman shall have the same right of compensation and remedies against his employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work. If the workman is to have the same rights as if he were not a workman, whose rights is he to have? Who are we to suppose him to be? I think that we ought to consider him to be a member of the public entering the defendant's property by his invitation. Can such a person maintain an action in respect of an injury arising from a defect, of which defect and of the resulting damage he was as well informed as the defendant? I think not. To such a person it appears to me that the maxim *volenti non fit injuria* applies. . . . But again, s. 2, ss. 1, provides that a workman cannot maintain this action when arising from a defect in the ways or plant, unless the defect arose from, or had not been discovered or remedied, owing to the negligence of the employer, or of some person in his service as therein mentioned. Was there, then, in the present case any negligence, *i.e.*, any breach of duty which the defendant owed the plaintiff? In my opinion it must be determined by considering the real relation between the parties, *i.e.*, the relation of this particular master to this particular servant. The duty which a master owes to one servant may be quite different to that which he owes to another, it may vary with the knowledge, the experience, the skill, and the powers of the workman. In the present case I think that the master owed no duty in respect of the vat in question towards a workman who voluntarily continued to work on the property with a full knowledge of the defect and of the danger thence resulting.

It will thus be seen that the Court of Appeal proceeded upon a different ground to that adopted by the court below.

PRINCIPAL AND AGENT—LIABILITY OF AGENT—CUSTOM—EVIDENCE.

In *Pike* v. *Ongley*, 18 Q. B. D., 708, the Court of Appeal overruled the judgment of Day and Wills, JJ. The defendants, who were hop-brokers, gave to the plaintiffs a sold note, stating that they had sold to plaintiffs "for and on account of owner," 100 bales of hops. In an action for the non-delivery of the hops, the plaintiffs sought to make the defendants personally liable on the contract, and tendered evidence to show that by the custom of the hop trade, brokers who do not disclose the names of their principals at the time of making the contract are personally liable on it as principals, although they contracted as brokers for a principal. It was held by the Court of Appeal that this evidence was properly admissible, and was not in contradiction of the written contract.

PRINCIPAL AND AGENT — LIABILITY OF PRINCIPAL FOR REPRESENTATIONS OF AGENT.

British Mutual Banking Co. v. *Charnwood Forest Ry. Co.*, 18 Q.B.D., 714, is another decision on the law of principal and agent. In this case it was sought to make the defendants liable in respect of certain representations

made by their agent, who was the secretary of the defendant company, respecting the validity of certain debenture stock of the company. The representations were untrue, and were fraudulently made by the secretary for his own benefit. The jury found that the secretary was held out by the company as a person proper to answer inquiries respecting the stock on their behalf; but the Court of Appeal held (reversing the decision of Manisty and Mathew, JJ.) that the company was not liable in an action of deceit for the unauthorized and fraudulent act of the secretary, committed not for the general or special benefit of the company, but for his own private ends.

TAXATION—ASSESSMENT—RAILWAY COMPANY.

The short point decided in the *North and South Western Ry. Co.* v. *Assessment Committee of Brentford*, 18 Q.B.D., 740, by the Court of Appeal, was that where a line of railway is leased by three different railway companies, the line, for the purposes of taxation, is to be assessed, not as being an integral part of each of the lines of the three companies leasing it, but on the basis of the rent which a tenant from year to year might reasonably be expected to give for it as an independent line.

EQUITABLE MORTGAGE—ORAL PROMISE TO GIVE SECURITY—STATUTE OF FRAUDS—PART PERFORMANCE.

Ex parte Broderick, 18 Q. B. B. 766, is a bankruptcy decision involving a question of law of general interest. The bankrupt being indebted to a company made an oral promise to the directors to give them security for the debt when required. He was then entitled to a one-fifth reversionary interest in a farm of which his mother, the tenant for life, held the deeds. The mother subsequently died, and the title deeds came into the possession of the respondent who was manager of the company, and was also entitled to one-fifth of the property. The respondent told the bankrupt that he had the deeds, and that he held the bankrupt's one-fifth for the company. But the Court of Appeal held (affirming the decision of Cave and Wills, JJ.), 18 Q. B. D. 380, that the company had not a valid equitable mortgage of the bankrupt's share in the farm, because there was no memorandum in writing to satisfy the Statute of Frauds, and the conversation that took place between the bankrupt and the respondent as to the custody of the title deeds, not being followed by any act which altered the legal position of the parties, was not such a part performance of the oral promise to give security as would exclude the operation of the statute.

ACTIO PERSONALIS MORITUR CUM PERSONA — SLANDER OF TITLE—DEATH OF PLAINTIFF—CONTINUANCE OF ACTION.

Hatchard v. *Mege*, 18 Q. B. D., 771, was an action for publishing an alleged false and malicious statement respecting the plaintiff's trade, calculated to injure the plaintiff's right of property in a trade mark; the plaintiff died pending the action, and an order was made to continue the action in the name of his executrix. At the trial Lord Coleridge, C.J., nonsuited the plaintiff on the ground that the cause of action did not survive; but the Divisional Court (Day and Wills, JJ.) held that the injury complained of being one not merely to the person but to the estate of the deceased, in so far as the claim was in the nature of slander of title it did survive in favour of the executrix, who would be entitled to recover on proof of special damage, and a new trial was ordered, limited to the latter cause of action.

STATUTE OF LIMITATIONS—EJECTMENT—POSSESSION OF TENANTS—RECEIPT OF RENTS BY AGENT—RATIFICATION.

The keenly contested case of *Lyell* v. *Kennedy*, 18 Q. B. D. 796, has at last reached the Court of Appeal on the merits. The facts of the case were somewhat peculiar. The defendant had been for many years the agent of Ann Duncan, a former owner of the property in question, and collected the rents of it for her. In 1867 Ann Duncan died intestate, and it was unknown who were her heirs-at-law. The defendant, after her death, continued to receive the rents, and carried them to an account which he had opened in the name of "the executors of Laurence Buchan." The defendant was one of the executors of Laurence Buchan's estate, and it was under the latter's will that Ann Duncan became entitled to the property. It further appeared that the defendant had frequently stated, orally, and in writing to the plaintiff (before he acquired the title of the heirs of Ann Duncan), that he was acting on behalf of the true heir-at-law of Ann

Duncan, whoever he might be; and he stated that the property would be delivered up to the rightful owners as soon as it should be ascertained who they were. The plaintiff subsequently in 1880 procured an assignment of the interests of three ladies who were the sole heiresses-at-law of Ann Duncan—one of them was a married woman whose husband died in 1877, the other two were unmarried. The present action was commenced on 4th January, 1881. Stephen, J., before whom the action was tried, considered that the defendant had constituted himself the agent for the heir-at-law, and could not rely on the Statute of Limitations. On the appeal from this decision the defendant admitted that as to the share of the married woman the plaintiff was entitled to succeed, as by reason of her coverture the Statute of Limitations had not run against her. But as to the other two shares it was contended that the statute was a bar, and of this opinion was the Court of Appeal. The Court of Appeal held that the statute as to these two shares commenced to run in 1868 at the expiration of one year from Ann Duncan's death, that there had been no adoption or ratification of the acts of the defendant within the statutory period, and that no ratification after the statutory period could have the effect of reviving a title which, by force of the statute, had been extinguished.

PRINCIPAL AND AGENT—SECRETARY OF COMPANY, REPRESENTATION BY—ESTOPPEL.

The case of *Barnett* v. *The South London Tramway Co.*, 18 Q. B. D. 815, shows the care that is necessary to be exercised in acting on representations made by the secretary of a company. In this case the defendant company employed contractors to execute certain works. By the contract the defendants had a right to retain a percentage of the amounts for which their engineer had from time to time certified, had been earned on account of the price, until the completion of the work. The contractors having applied to the plaintiffs for an advance upon the security of the moneys retained by the defendants; the defendants' secretary, in answer to the plaintiffs' inquiries, erroneously represented that there was a certain amount of money retained in the defendants' hands which would be payable on completion of the works, whereas, in fact, it was not so. The plaintiffs thereupon advanced money to the contractors on the security of an assignment of the fund supposed to be in the defendants' hands. There being no evidence to show that the secretary had any authority to make the representations he did, it was held by the Court of Appeal (affirming the judgment of Field, J.) that it was not within the scope of the secretary's authority to make such representations, and therefore, that in an action by the plaintiffs as assignees to recover the fund in question, the defendants were not estopped from denying that the money was due.

Lord Esher, M. R., says at p. 817:

> A secretary is a mere servant; his position is that he is to do what he is told, and no person can assume that he has any authority to represent any thing at all; nor can any one assume that statements made by him are necessarily to be accepted as trustworthy without further inquiry, any more than in the case of a merchant it can be assumed that one who is only a clerk has authority to make representations to induce persons to enter into contracts.

PRACTICE — WITHDRAWAL OF JUROR — BREACH BY ONE PARTY, OF COMPROMISE—RETRIAL OF ACTION.

The concluding case in the Queen's Bench Division is *Thomas* v. *Exeter Flying Post Co.*, 18 Q.B.D. 822, and is a decision of the Divisional Court (Day and Wills, JJ.) on an interesting point of practice. The action was against a newspaper proprietor for libel, and at the trial it was agreed that a juror should be withdrawn, and an apology should be made in court by defendants' counsel, and published in defendants' paper. The juror was accordingly withdrawn and the apology offered in court, and on the following day the defendant published an account of the proceedings at the trial and the apology, but in another part of the paper a leading article appeared explaining away the apology; thereupon the plaintiff applied to the judge to have the action retried, which being done, and a verdict of £100 having been obtained—the defendant not having appeared at such retrial personally, or by counsel—a motion was then made to set aside the verdict and for a new trial, the defendant's counsel contending that the withdrawal of the juror put an end to the action; and that the publication of the further libel was the subject of a fresh action, and was not a breach of any undertaking by the defendants; but the court dismissed the motion.

Recent English Decisions.

WILL—REVOCATION—ERASURE OF SIGNATURES—WILLS ACT, 7 W. IV. & 1 VICT., C. 26, S. 20 (R.S.O. C. 106, S. 22.)

The only case in the Probate Division to which we think it necessary to draw attention is *In re Morton*, 12 P. D. 141. In this case a will, which after execution had remained in the custody of the testatrix, was found in her repositories after her death, with her own signature and the signatures of the attesting witnesses scratched out as with a knife; and it was held that there had been a revocation of the will within the requirements of s. 20 of the Wills Act (R. S. O. c. 106, s. 22).

SEPARATE ESTATE—RESTRAINT ON ANTICIPATION—PAYMENT TO MARRIED WOMAN UNDER ORDER SUBSEQUENTLY REVERSED · MARRIED WOMAN'S PROPERTY ACT, 1882

Turning now to the cases in the Chancery Division, *In re Dixon*, *Dixon* v. *Smith*, 35 Chy. D. 4, first claims attention. In this case a female infant being entitled to a residuary share of personalty contingently on her attaining twenty-one, at the age of sixteen married in the year 1879, having first executed articles for the settlement of all property to which she might become entitled, but the sanction of the court under the Infants Settlement Act was not applied for. Under these articles she took a life interest in the fund, with a restraint on anticipation. On the 9th November, 1884, she attained twenty-one, and in September, 1885, £9,000 being the bulk of her share, was paid to her on her separate receipt under an order of Bacon, V.-C., made under the authority of *Baynton* v. *Collins*, 27 Chy. D. 604, on the ground that the settlement was not binding on her. The trustees of the settlement appealed, and the Court of Appeal held, in accordance with *Reid* v. *Reid*, 31 Chy. D. 402, that she was not so entitled, and that the fund was subject to the trusts of the settlement, and that the sum paid to the married woman ought to be refunded. She refunded £7,100, but having spent the remaining £1,900 was unable to refund it. Subsequently, a sum of £1,648 9*s*. 7*d*. for arrears of income on the fund, part of which accrued before the married woman attained twenty-one, was paid to the trustees of the settlement, and they applied to the court for directions as to its application. The married woman claimed to be paid the whole arrears, on the ground that under *Pike* v. *Fitzgibbon*, 17 Chy. D. 454, the restraint on anticipation prevented the application of the arrears of income in reduction of the £1,900 of capital unrefunded by her. But the Court of Appeal held that so much of the arrears as accrued before the married woman attained twenty-one was part of the capital of the fund subject to the settlement, and that so much of the income as accrued between the date of her attaining twenty-one and the date of the order of Bacon, V.-C., should be retained by the trustees to make good the £1,900 unrefunded, and that the balance only should be paid to the married woman. The Court of Appeal held *Pike* v. *Fitzgibbon* not to apply, as there the liability sought to be enforced arose on contract.

INFANT—MARRIED WOMAN—POST NUPTIAL SETTLEMENT—WARD OF COURT—INFANTS SETTLEMENT ACT (R. S. O. C. 40, S. 85).

Buckmaster v. *Buckmaster*, 35 Chy. D. 21, throws a perhaps somewhat unexpected light on the effect of the Infants Settlement Act (R. S. O. c. 40, s. 85). In this case a young lady aged eighteen, being a ward of court, contracted marriage without the leave of the court, and subsequently an order was made, directing an inquiry whether there had been a valid marriage, and if so, what the infant's fortune was, and what would be a proper settlement; and a settlement of the infant's fortune, which consisted of a reversionary interest in personalty, was thereupon executed with the approval of the court. During the coverture the tenant for life relinquished her life estate in one-fifth of the fund, which was paid over to the trustees of the settlement. Subsequently, on account of the husband's misconduct, a divorce was granted. After this the tenant for life died, and the question arose whether the marriage settlement was binding, the property settled having been a mere reversionary interest. Bacon, V.-C., held that the settlement was binding, either under the inherent jurisdiction of the court over its wards, or under the provisions of the Infants Settlement Act, notwithstanding that the reversionary interest had not been reduced into possession during coverture. But the Court of Appeal unanimously reversed this decision, holding that the court had no inherent power to compel its wards to execute settlements of

their property, and that the Infants Settlement Act only removed the disability of infancy, but did not remove the disability of coverture, and therefore because the settlement in question could not have been validly made by an adult married woman, neither could it be validly made by an infant married woman, and the payment over to the trustees of the part of the fund in which the tenant for life had relinquished her life estate, though it has the effect of subjecting this part of the fund to the terms of the settlement, yet it was held it had no effect as regards the rest of the fund. While admitting therefore that the settlement, if ante-nuptial, would have been binding on the married woman, the court held that being post nuptial the disability of coverture prevented its being operative to any greater extent than it would have been had the lady been of full age. The principles enunciated in this case, however, do not appear to us to be reconcileable with what was done in the case of *Re Dixon*, above referred to.

ECCLESIASTICAL BENEFICE—RESIGNATION—REVOCATION BEFORE ACCEPTANCE.

Nearly fifty pages of the reports are taken up with the discussion of a point of ecclesiastical law in *Reichel* v. *Bishop of Oxford*, 35 Chy. D. 48. The plaintiff, a beneficed clergyman, had been publicly accused of immorality, and on being required by his bishop to clear his character, he indicted his accuser for libel, but failed to obtain a conviction. In May, 1886, his bishop intimated to him that he expected him to resign his benefice without delay, and after some negotiation the plaintiff agreed to do so, on the understanding that his resignation would not be formally accepted by the Bishop until 1st October following, and that in the meantime the plaintiff should have leave of absence, making due provision for the duties of the parish. The 1st October being named in order that the plaintiff might not be deprived of the emoluments he had earned. The plaintiff then executed a formal resignation in the presence of two witnesses, which was delivered to the bishop. Before the 1st October the plaintiff executed an instrument purporting to revoke this resignation, and the present action was brought to obtain a declaration that the resignation was invalid, or at all events that it had been duly revoked. On behalf of the plaintiff it was contended that the resignation was invalid because it was not made to the bishop in person or executed in presence of a notary; and because it was executed subject to a condition that it should not come into operation until a future date; and because it was withdrawn before acceptance. But the Court of Appeal (affirming North, J.) overruled all these objections and held the resignation to be valid and irrevocable.

MARRIED WOMAN—SEPARATE ESTATE—SIMPLE CONTRACT DEBT—STATUTE OF LIMITATIONS (21 JAC. 1, C. 16).

Re Hastings, *Hallett* v. *Hastings*, 35 Chy. D. 94, disposes of a question of some importance affecting the law of married women. In 1875 a married woman borrowed money from her husband, upon a parol agreement to repay it with interest. She died in 1884, without having paid anything on account, or given any acknowledgment in writing of her liability to pay the debt. After her death her husband claimed repayment out of her estate. But it was held by the Court of Appeal (affirming Kay, J.) that by analogy to the Statute of Limitations the claim was barred.

MORTGAGE—AFTER ACQUIRED PROPERTY—UNCERTAINTY.

In re Clarke, *Coombe* v. *Carter*, 35 Chy. D. 109, the question was whether or not an assignment by way of mortgage of all the mortgagor's household goods and farming stock, and "also all moneys of or to which he then was, or might during that security become, entitled under any settlement, will, or other document, either in his own right, or as the devisee or legatee or next of kin of any person;" and also all real and personal property "of, in, or to which the mortgagor was, or during that security should become, beneficially seized, possessed, entitled, or interested for any vested, contingent, or possible estate or interest," was sufficient to vest in the mortgagee a share of a testator's residuary estate to which the mortgagor became entitled subsequently to the date of the mortgage. It was contended by the mortgagor that the description was too vague and uncertain, but it was held by Kay, J., that the mortgage was sufficient in equity to pass the estate in question.

Recent English Decisions.

Receiver—Mortgagor and mortgagee—Mortgagor in possession—Occupation rent.

The short point determined by Chitty, J., in *Yorkshire Banking Company* v. *Mullan*, 35 Chy. D. 125, was this: that when in a mortgage action a receiver is appointed, and the mortgagor is in possession, the latter is not liable for an occupation rent from the date of the appointment of the receiver, but only from the date of the receiver demanding rent, the receivership order containing no order that the mortgagor should deliver up possession, or pay rent.

Power of appointment—Excessive exercise of power—Validity of appointment, in default of exercise of delegated power.

In *Williamson* v. *Farwell*, 35 Chy. D. 128, it was held by North, J., when the donee of a power of appointment among his own children appointed to his son for life with remainder to his son's children as he should appoint, and in default of such an appointment to the son absolutely, and the son died without exercising the power thus delegated to him, that the ultimate limitation in favour of the son was valid and took effect notwithstanding the invalid delegation of the power to him.

Agreement in restraint of trade—Injunction—Partial enforcement.

Baines v. *Geary*, 35 Chy. D. 154, was an application for an interim injunction to restrain the defendant from violating an agreement, made by him on entering the plaintiff's service as a milk carrier, not to serve or interfere with any customer belonging to the master, his successors or assigns. It was contended that the agreement was wider than was reasonable, and therefore invalid. But North, J., held that though the argument might be wide enough to include all the persons who might at any time be customers of the plaintiff, still it was divisible, and might be enforced to the extent to which it was valid, and he granted the injunction, but limited to such persons as had become customers of the plaintiff before the defendant left his employment.

Practice—Writ of summons—Default of appearance—Statement of claim.

In *Gee* v. *Bell*, 35 Chy. D. 160, it was held by North, J., that where a plaintiff, in default of appearance, delivers a statement of claim by filing it with the proper officer, he cannot obtain judgment in default of appearance for more than he has claimed by his writ. If the plaintiff in such a case desire to claim further relief than that claimed by the indorsement on the writ, it would seem that he must amend and re-serve his writ.

Practice—Action for account—Payment into court before trial.

Wanklyn v. *Wilson*, 35 Chy. D. 180, was an interlocutory application to compel the defendant to pay into court before trial, moneys alleged to be in his hands—the action being one for an account—and it was held by Stirling, J., that an account having been rendered, and the court having before it the parties to the account, and evidence as to the items in dispute, that such sum might be ordered to be paid into court before trial, as the court, in the exercise of its discretion, should consider would be found due to the plaintiff on the taking of the account.

Practice—Specific performance—Defendant not appearing—Rescission of contract—Judgment.

The only remaining case to be noted is *Stone* v. *Smith*, 35 Chy. D. 188, in which it was held by Kekewich, J., that in a vendor's action for specific performance of a contract to purchase leaseholds, in which the defendant by his statement of defence admitted that he was unwilling to complete the contract, and did not appear at the trial: the plaintiff was not entitled to an immediate judgment, rescinding the contract and forfeiting the deposit, but only to the usual judgment for specific performance.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

Boyd, C.] [May 26.

RE LEWIS AND THORNE.

Writs against lands—Sale by trustees—Application of purchase money—Vendor and purchaser.

Where, on a vendor and purchaser application, it appeared that two trustees under the will of F. L. had, as such, contracted to sell certain lands to H. D., and that under the provisions of the said will the vendors were directed to sell the said lands, and, after payment of funeral expenses and debts, divide the balance of the proceeds among certain of the children of the testatrix, amongst whom was one D. V. L., and that there were certain executions against the lands of D. V. L. in the hands of the sheriff issued upon certain judgments obtained against him, whereupon the purchaser objected that the said executions were a charge and incumbrance on the interest in the said lands contracted to be sold of the said D. V. L., and that the vendors were bound to discharge the said executions in order to convey the lands to him, and the vendors submitted on the contrary, and that they could make a good title free from incumbrance without payment of the said executions, and that the purchaser was not bound to see to the application of the purchase-money,

Held, that the writs of execution did not interfere with the right of the trustees to sell so as to carry out the directions of the will, and that as a matter of conveyancing, they did not derogate from the right of trustees to convey the estate indefectibly, and that the purchaser was not required to see to the application of the purchase-money in view of R. S. O. c. 107, sec. 7.

Held, also, as to executions against lands coming in after the contract to sell, they could not affect the devolution of title as between vendor and purchaser.

Boyd, C.] [May 30.

RE BOLT AND IRON COMPANY.

Corporations—Managing director—Remuneration—Breach of trust—Set off—Winding up—Assignment.

By-law 17 of the company provided that "the directors and managing director should be paid for their services such sums as the company may from time to time determine at a general meeting." The only provision made at a general meeting was that which was approved on January 27th, 1883, in these words: "The salary of the managing director was fixed until the 31st day of October next, as at the rate of $4,000 per annum." Beyond October 31st the company had not exercised its discretion under the by-law. L., the managing-director, sought to recover for services rendered as such subsequent to October 31st, 1883.

Held, that he could not do so.

The position of L. as managing-director rendering services for which remuneration was given, was not that of a servant hired by the company, but of a working member of the company who got paid for the work he did. The rules as to hiring and notice between master and servant were therefore not applicable, and the measure of the rights of the salaried managing-director had to be settled by what was provided in that behalf by the charter and by-laws of the company, and here there was no provision for remuneration after October 31st, 1883.

L. having withdrawn from the moneys of the company a certain sum on the assumption that he was entitled to it in payment of his services after October 31st, 1883.

Held, that this was a breach of trust on L.'s part, and the amount thus withdrawn formed a debt based on breach of trust, recoverable by the liquidator, and as to which no set-off was permissible against any debt due by the company to L. L. was bound to replace the money without any deduction before he could get any dividend from the assets of the company in respect to any other claims he had against it.

Held, also, that the fact that L. had assigned his said claim against the company to his wife, after the winding up order had been acted on, made no difference, since any such

assignment would be subject to all the equities against such claim, and against the assignor as a director and trustee of the company's funds in the proceedings under the winding up order.

Bain, Q.C., for the appeal.

Falconbridge, Q.C., contra.

Rose, J.] [June 1.
Chy. Div. Ct.] [June 29.

McPHAIL v. McINTOSH.

Will—Construction—General intention in favour of a class—Particular intention in favour of individuals.

Action for recovery of land.

It appeared that A. McP. in 1826 bought the north half of lot 26, and lived on lot 25, adjoining, until his death in 1841.

J. McP., his son, lived on lot 26 from 1826 till October, 1878, when he died.

By will in 1841 A. McP. devised to J. McP. lot 26, but added, "he is not to sell or dispose of the said lands nor any timber or wood now growing on the said lot; on the contrary, the land is to devolve on the most deserving of his children according to the discretion of my executors, that is to say after his own death."

In February, 1869, J. McP. conveyed the north half of lot 26 to the defendant.

The plaintiff, a son of J. McP., claimed to be entitled under the above will.

The executrix of A. McP. made no selection as to who was the most deserving of his children on which the land should devolve.

Held, that the plaintiff was entitled to judgment, for that J. McP. only took a life estate, and though no selection had been made among the children of A. McP. the court would carry out the general intention in favour of the class by holding that the estate descended on the twelve children of J. McP., and that the plaintiff, having purchased or obtained a conveyance of six-twelfths of the estate, was entitled to seven out of the twelve shares of it.

Leitch, for the plaintiff.

J. Maclennan, Q.C., for the defendant.

Ferguson, J.]

THE ONTARIO AND SAULT STE. MARIE RY. CO. v. THE CANADIAN PACIFIC RY. CO.

Railway Acts—Special Act—General Act, construction of.

Where a railway company is incorporated by a special Act, and there are provisions in the special Act, as well as the general Railway Act, on the same subject, which are inconsistent; if the special Act gives in itself a complete rule on the subject, the expression of that rule amounts to an exception of the subject-matter of the rule out of the general Act. When the rule given by the special Act, applies only to a portion of the subject, the special Act may apply to one portion, and the general Act to another.

The probable intention of the legislature is important in considering a matter of that character.

S. H. Blake, Q.C., and *Cassels*, Q.C., for the plaintiffs.

C. Robinson, Q.C., and *Moss*, Q.C., for the defendants.

Boyd, C.] [May 27.

BANK OF COMMERCE v. NORTHWOOD.

Bills and notes—Agreement with maker—Release of indorser.

The holder of certain promissory notes entered into an agreement with the maker and certain indorsers to extend the time for the payment of the notes without the consent or knowledge of the defendant, who was a subsequent indorser of the same notes; but the agreement expressly reserved all rights and remedies against the sureties.

Held, that this being so, the defendant as surety was not discharged. And also that the reservation of the surety's rights against those for whom he was surety (that is to say, the maker and the prior indorsers) was necessarily involved in the reservation of the rights and remedies of the holder against him as surety.

The agreement further provided for renewal for six months, from time to time, till the notes were paid; but these renewals were assented to by the defendant, who joined therein and was not prejudiced thereby.

Held, that this formed no defence for the defendant against the claim on the notes.

The agreement also provided that upon the holders (the bank) being satisfied, all securities were to be assigned to one of the principal debtors.

Held, that this arrangement not being absolute, but limited to those who were parties to it as between themselves, did not affect the claim of the defendant, as surety, to the possession of the securities, if he paid the plaintiffs.

COMMON PLEAS DIVISION.

C. P. Div. Ct.] [June 25.

THE CENTRAL BANK OF CANADA v. OSBORNE ET AL.

Counter-claim—Slander — Action on promissory note.

To an action on a promissory note the defendant L., the indorser, pleaded that by an arrangement made with the plaintiffs, who had discounted the note, it was to be renewed from time to time, and paid out of the proceeds of a certain agency business, in which the defendant O., the maker of the note, and the defendant L., were engaged as partners; that the defendant O. had absconded, and that afterwards the plaintiffs had, by libel and slander of the defendant L., prevented him from securing the continuance of the agency business for himself, whereby he was unable to carry out the arrangement; and he also pleaded a counter-claim against the plaintiffs for the alleged libel and slander.

The Court (ROSE, J., dissenting) struck out the counter-claim upon an application under Rule 127 (*b.*), O. J. A.

Per CAMERON, C.J.—There is a wide range of discretion under Rules 127 (*b.*), 168, and 178. In actions where malice is an essential element, and the damages are sentimental, without a legal rule to guide in their measurement, there is much more injury likely to arise to the cause of justice by allowing such a counter-claim, than can possibly spring from the defendants being forced to bring an independent action.

Per ROSE, J.—The charge of libel arises out of the circumstances giving rise to the claim and defence. If the facts set up by L. do not constitute a valid answer in law to the claim, the plaintiffs may recover judgment against him, when, peradventure, he is in law and justice entitled to damages against them exceeding the amount of such claim; but if the facts constitute a defence to the claim they must be allowed to be shown in evidence, and no good will be achieved by not allowing the counter-claim to stand.

Lefroy, for the plaintiffs.

Ritchie, Q.C., for the defendant L.

QUEEN'S BENCH DIVISION.

Q. B. Div. Ct.] [June 28.

IN RE MACFIE V. HUTCHINSON.

Prohibition—Division Court—Attachment of debts - R. S. O. c. 47, s. 125.

Held, reversing the decision of ROSE, J., *ante*, p. 159, that a medical health officer of a municipality is not an employee within the meaning of R. S. O. c. 47, s. 125, WILSON, C.J., dissenting.

Finlay, for the plaintiff.

G. W. Marsh, for the defendant.

PRACTICE.

Robertson, J.] [April 13.
Chy. Div. Ct.] [June 17.

FRAM V. FRAM.

Partition or sale—Dowress as applicant—R. S. O. chs. 55, 101.

Although some expressions in the Partition Act, R. S. O. c. 101, authorize a person entitled to dower not assigned, to apply for partition or sale of the lands in which she is interested, yet the Court may, in its discretion, refuse the application, and leave the dowress to proceed otherwise to have her dower assigned. The provisions of the Partition Act, and of the Dower Procedure Act, R. S. O. c. 55, must be harmonized.

The application of a dowress for partition or sale of two parcels of land, each held in severalty by a different person, subject to her right of dower, was refused where the defendants opposed the application, and the proposed proceedings were for the benefit of the applicant only.

Devereux v. *Kearns*, 11 P. R. 452, discussed.

W. R. Meredith, Q.C., and *R. M. Meredith*, for the plaintiff.

Hoyles, for the defendants.

Boyd, C.] [June 7.

MILLAR v. CLINE.

RE MILLAR, A SOLICITOR.

Solicitor and client—Order for taxation—Taxing officer, powers of—Order for payment over.

Under the common order for taxation of a solicitor's bill of costs, Form 136, O. J. A., a taxing officer has power to investigate and dispose of questions of carelessness, impropriety and negligence in the conduct of the business to which the bill relates; and the officer's certificate is conclusive as to all matters within his jurisdiction.

Where, therefore, after action brought upon a bill of costs there has been a taxation under such an order, there is an end to litigation, and it only remains to enforce payment of what has been found due, which may be done upon a subsequent application by the solicitor.

The original order for taxation may reserve questions of retainer, and negligence, in a proper case, but if it does not, the client should not be allowed a double chance of defeating the solicitor's claim by proceeding to defend the action on the ground of the solicitor's negligence, or other grounds, after the conclusion of the taxation.

Re Clark, 9 P. R. 337, and *Macdonald* v. *Piper*, 10 P. R. 586, distinguished.

Hoyles, for the plaintiff.

Dewart, for the defendant.

Robertson, J.] [June 7.

MACKAY v. MACFARLANE.

Action begun without authority—Dismissal—Costs—Procedure after judgment—Creditors.

An action was brought on behalf of the plaintiffs and all other creditors of V. to obtain from the defendant, the assignee of V. for the benefit of creditors, an account of all moneys received by him from the estate of V., and for payment of what might be found due. Judgment was pronounced in favour of the plaintiffs, directing a reference to take the accounts, and reserving further directions and costs. The judgment was not issued, and after it was pronounced, the defendant and the plaintiffs' solicitor both died. The executrix of the defendant obtained from a local judge a summons to compel the plaintiffs to revive the action, or to dismiss it with costs. On the return of the summons, counsel for the plaintiff stated that they would consent to an order dismissing the action without costs, but if that were not agreed to, that they desired an enlargement to show that the plaintiffs had never authorized the bringing of the action, and that they had no knowledge of it until the service upon them of the summons now in question. The local judge, however, made an order dismissing the action with costs.

Held, on appeal, that the local judge would have been justified in dismissing the action without costs, if it had been shown to him that it was brought without the authority of the plaintiffs, and that he should have granted an enlargement for that purpose, and if he had, after the enlargement, been satisfied of the truth of the plaintiff's statement, he should have discharged the summons; for a party should not be required, against his will, to continue in his name an action which he never authorized to be begun.

The old Chancery rule that an action can be dismissed on the application of a plaintiff who has not authorized his name to be used, only on payment of costs, is not now in force, but the plaintiff is now entitled to an order to stay the proceedings without payment of costs.

Reynolds v. *Howell*, L. R. 8 Q. B. 398, and *Nurse* v. *Durnford*, 13 Chy. D. 764, followed.

Held, also, that an action of this kind should not have been dismissed after judgment pronounced, for the creditors other than the plaintiff should not have been deprived of the benefit of the judgment.

A. H. Marsh, for the appellants.

D. W. Saunders, for the respondent.

Chy. Div. Ct.] [June 17.

BROWN v. WOOD.

Trial by jury—Discretion of trial judge—C. L. P. Act, s. 255.

The trial judge has, by sec. 255 of the C. L. P. Act, a discretion to try any case with, or

without, a jury, as he may think best, and his discretion will not be interfered with by a Divisional Court.

Read, Q.C., for the defendant.

Shepley, for the plaintiff.

Chy. Div. Ct.] [June 22.

FURLONG v. REID.

Notice of motion, grounds of—Non-direction—Amendment.

A notice of motion to a Divisional Court against the verdict and judgment at the trial, on the ground of non-direction, should show how, and in what way, there was non-direction. The Court may allow an amendment of the notice in a proper case; but it declined to assist the defendant by doing so, where the non-direction was not material in view of other facts and findings, and the rule of law invoked by the defendants would have operated against a meritorious claim of the plaintiff. *Piper* v. *Midland Ry. Co.*, 18 Q. B. D. 244, followed.

Moss, Q.C., and *Parkes*, for the defendant.

E. Martin, Q.C., and *Beazley*, for the plaintiff.

CIRCUIT LISTS.

AUTUMN ASSIZES, 1887.

The Courts of Oyer and Terminer and General Gaol Delivery Delivery and of Assize and Nisi Prius in and for the several counties of the Province of Ontario, will be held as follows:

The Hon. CHIEF JUSTICE CAMERON.

BARRIE	Monday	12th September.
OWEN SOUND	Monday	26th September.
OTTAWA	Monday	3rd October.
PEMBROKE	Monday	17th October.
L'ORIGNAL	Monday	24th October.
PERTH	Thursday	27th October.
LINDSAY	Monday	7th November.
PETERBOROUGH	Monday	14th November.

The Hon. Mr. JUSTICE ARMOUR.

HAMILTON	Monday	12th September.
STRATFORD	Tuesday	20th September.
GUELPH	Monday	26th September.
BERLIN	Monday	3rd October.
BRANTFORD	Thursday	6th October.
SIMCOE	Tuesday	11th October.
CAYUGA	Thursday	13th October.
WELLAND	Monday	17th October.

The Hon. Mr. JUSTICE ROSS.

LONDON	Monday	12th September.
ST. THOMAS	Monday	26th September.
CHATHAM	Monday	3rd October.
SANDWICH	Monday	10th October.
SARNIA	Monday	17th October.
GODERICH	Monday	24th October.
WALKERTON	Monday	31st October.
WOODSTOCK	Monday	7th November.

The Hon. Mr. JUSTICE O'CONNOR.

WHITBY	Monday	12th September.
NAPANEE	Monday	19th September.
PICTON	Thursday	22nd September.
BELLEVILLE	Monday	26th September.
KINGSTON	Monday	10th October.
BROCKVILLE	Monday	17th October.
CORNWALL	Monday	24th October.
COBOURG	Monday	31st October.

HOME CIRCUIT.

The Hon. Mr. JUSTICE GALT.

TORONTO—Civil Ct.	Monday	12th September.
" Crim. Ct.	Monday	3rd October.
ST. CATHARINES	Monday	24th October.
ORANGEVILLE	Monday	31st October.
MILTON	Monday	7th November.
BRAMPTON	Monday	14th November.

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.

A Judge will remain in Toronto to hold the Sittings of the Court each week, and for the transaction of the business in Chambers.

Of which all Sheriffs, Magistrates, Gaolers, and other Peace Officers are required to take notice.

A. GRANT,

Clerk of the Supreme Court, Ontario

Dated 4th June, 1877.

AUTUMN CIRCUITS, 1887.

CHANCERY DIVISION.

The Hon. Mr. JUSTICE ROBERTSON.

TORONTO	Monday	7th November.

The Hon. THE CHANCELLOR.

KINGSTON	Monday	12th September.
BROCKVILLE	Friday	16th September.
CORNWALL	Tuesday	20th September.
COBOURG	Friday	30th September.
BELLEVILLE	Monday	24th October.
OTTAWA	Wednesday	2nd November.

The Hon. Mr. JUSTICE PROUDFOOT.

CHATHAM	Monday	12th September.
SANDWICH	Friday	16th September.
SARNIA	Tuesday	20th September.
GODERICH	Monday	26th September.
WALKERTON	Friday	30th September.
LONDON	Monday	10th October.
ST. THOMAS	Monday	17th October.

The I[illegible] Mr. JUSTICE FERGUSON.

BRANTFORD	Monday	12th September.
SIMCOE	Friday	16th September.
ST. CATHARINES	Monday	26th September.
HAMILTON	Thursday	20th October.
OWEN SOUND	Monday	31st October.
GUELPH	Monday	7th November.

The Hon. Mr. JUSTICE ROBERTSON.

LINDSAY	Wednesday	21st September.
PETERBOROUGH	Tuesday	27th September.
WOODSTOCK	Monday	3rd October
BARRIE	Monday	10th October.
STRATFORD	Tuesday	18th October.
WHITBY	Monday	24th October.

CORRESPONDENCE.

To the Editor of the CANADA LAW JOURNAL:

DEAR SIR,—I inclose a pamphlet published by the Irish Loyal and Patriotic Union which a friend has recently sent to me from England, and which you may consider of sufficient interest to your readers to publish in the pages of your journal.

Yours faithfully, A. H. F. LEFROY.

June 23, 1887.

AN IRISH TENANT'S PRIVILEGES.

The privileges of Irish tenant farmers are of gradual growth, and date from various Acts of Parliament. They have, however, in recent years, been largely extended by three great measures:—(1) the Land Act of 1870; (2) the Land Law Act, 1881; and (3) the Land Purchase Act, 1885. It will, then, be convenient to consider these various privileges in chronological order.

I.—PRIVILEGES ACQUIRED PRIOR TO 1870.

No tenant can be evicted for non-payment of rent *unless one year's rent is in arrears.* (Landlord and Tenant Act, 1860, sect. 52.)

Even when evicted for non-payment of rent—

A tenant can *recover possession* within six months by payment of the amount due, and in that case the landlord *must pay* to the tenant the amount of any profit he could have made out of the lands while the tenant was out of possession. [11 Anne, c. 2, sect. 2; 8 Geo. I., c. 2, sect. 4; Act of 1860 (23 & 24 Vict. c. 154), sect. 70.]

The landlord must pay *half* the poors-rate if the Government valuation of a holding is £4 or upwards. (Poor Relief Act, 1843, sect. 1.)

The landlord must pay the *entire* poors-rate if the Government valuation is under £4. (Poor Relief Acts, 1838, sect. 74; 1849, sect. 11.)

II.—PRIVILEGES UNDER THE ACT OF 1870.

A yearly tenant who is disturbed in his holding by the act of the landlord, for causes other than non-payment of rent, and the Government valuation of whose holding does not exceed £100 per annum, must be paid by his landlord not only—

(*a*) Full compensation for all improvements made by himself or his predecessors, such as unexhausted manures, permanent buildings, and reclamation of waste lands; *but also as*

(*b*) Compensation for disturbance, a sum of money which may amount to seven years' rent. (Land Act, 1870, sects. 1, 2 and 3.)

NOTE.—Under the Act of 1881, the landlord's power of disturbance is practically abolished.

A yearly tenant, even when evicted for non-payment of rent, must be paid by his landlord—

(*a*) Compensation for all improvements, such as unexhausted manures, permanent buildings, and reclamation of waste land. (Sect. 4.)

And when his rent does not exceed £15 he must be paid in addition—

(*b*) A sum of money which may amount to seven years' rent, if the court decides that the rent is exorbitant. (Sects. 3 and 9.)

NOTE.—Until the contrary is proved, the improvements are presumed to have been made by the tenants. (Sect. 5.) The tenant can make his claim for compensation immediately on notice to quit being served, and cannot be evicted until the compensation is paid. (Sects. 16 and 21.)

A yearly tenant, even when voluntarily surrendering his farm, must either be paid by landlord—

(*a*) Compensation for all his improvements; or be

(*b*) Permitted to sell his improvements to an incoming tenant. (Sect. 4.)

In all new tenancies—

The landlord must pay *half* the county or Grand Jury Cess, if the valuation is £4 or upwards.

The landlord must pay the *entire* county or Grand Jury Cess, if the value does not exceed £4. (Land Act, 1870, sects. 65 and 66.)

III.—PRIVILEGES UNDER THE ACT OF 1881.

The Act of 1870 mainly conferred two advantages on evicted tenants—

(*a*) Full payment for all improvements;

(*b*) Compensation for disturbance.

The Act of 1881 gave three additional privileges to those who avail themselves of them:

1. *Fixity of Tenure*—By which the tenant remains in possession of his land *for ever*, subject to periodical revision of his rent. (Land Act, 1881, sect. 8.)

NOTE.—If a tenant has not had a fair rent fixed, and his landlord proceeds to evict him for non-payment of rent, he can apply to the court to fix the fair rent; and meantime the eviction proceedings will be restrained by the court. (Land Act, 1881, sect. 13.)

2. *Fair Rent*—By which any yearly tenant may apply to the Land Commission Court (the judges of which were appointed under Mr. Gladstone's administration) to fix the fair rent of his holding. The application is referred to three persons, one

of whom is a lawyer, and the other two inspect and value the farm. This rent can never again be raised by the landlord. (Land Act, 1881, sect. 8.)

3. *Free Sale*—By which every yearly tenant may, whether he has had a fair rent fixed or not, sell his tenancy to the highest bidder whenever he desires to leave. (Land Act, 1881, sect. 1.)

NOTE.—There is no practical limit to the price he may sell for, and twenty times the amount of the annual rent has frequently been obtained in every Province in Ireland.

Even if a tenant be evicted, he has the right either to redeem at any time within six months, or to sell his tenancy within the same period to a purchaser who can likewise redeem, and thus acquire all the privileges of the tenant. (Land Act, 1881, sect. 13.)

IV. PRIVILEGES UNDER THE LAND PURCHASE ACT OF 1885.

If a tenant wishes to buy his holding, and arranges with his landlord as to terms, he can change his position from that of a perpetual rent payer into that of the payer of an annuity terminable at the end of forty-nine years, the Government supplying him with the entire purchase-money, to be repaid during those forty-nine years at four per cent. This annual payment of £4 for every £100 borrowed covers both principal and interest. Thus if a tenant already paying a statutory rent of £50 agrees to buy from his landlord at twenty years' purchase (or £1000), the Government will lend him the money, his rent will at once cease, and he will pay, not £50, but £40 yearly, for forty-nine years, and then become the owner of his holding, free of rent. It is hardly necessary to point out that, as these forty-nine years of payment roll by, the interest of the tenant in his holding increases rapidly in value. (Land Purchase Act, 1885, sects. 2, 3 and 4.)

It must also be remembered that the privileges cited in this leaflet, though the most important, are by no means the entire of the legal privileges of the Irish tenant.

Thus it will be seen (to use the words of Mr. Chamberlain), that "The Irish tenant is in a position which is more favourable than that of any agricultural tenant throughout the whole of Europe. I will say in any civilized country on the face of the globe. . . . There are thousands and tens of thousands of tenants throughout Scotland and England who would receive as an inestimable boon those opportunities which the Irish tenant so scornfully rejects."—*Speech at Hawick, Scotsman*, January 24th, 1887.

In considering these privileges, it must be borne in mind that those conferred by the Act of 1881 (which broke down old contracts of tenancy, and even prohibited tenants of holdings valued under £150 yearly from contracting themselves out of the Act) could not have been given under the constitution of the United States.*

* See Federal Constitution, Article I., sect. 10, 1.—"No State shall pass any law impairing the obligation of contracts."

Law Society of Upper Canada.

OSGOODE HALL.

CURRICULUM.

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

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

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

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

5. The Law Society Terms are as follows:

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

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

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

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

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

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

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

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

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2.30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

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

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

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

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

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

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

19. No information can be given as to marks obtained at examinations.

20. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES

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

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM FOR 1887 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I,
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (1-33.)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33)

1890
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's Composition, and re-translation of single passages.

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.

Critical reading of a Selected Poem:—

1887—Thomson, The Seasons, Autumn and Winter.

1888—Cowper, the Task, Bb. III. and IV.

1889—Scott, Lay of the Last Minstrel.

1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

A paper on Grammar.
Translation from English into French Prose.

1886, 1888, 1890 } Souvestre, Un Philosophe sous le toits.
1887, 1889 } Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics and Somerville's Physical Geography; *or* Peck's Ganot's Popular Physics and Somerville's Physical Geography.

ARTICLED CLERKS.

In the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-Keeping.

RULE RE SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

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

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

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

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

Copies of Rules, price 25 cents, can be obtained from Messrs. Rowsell & Hutchison, King Street East, Toronto.