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The quinquennial digest of Ontario cases is in course of preparation, and is to be supplied gratis to the profession by the Law Society. It is to be ready for delivery sometime during the long vacation. This digest will take up the cases from the end of 1890, and carry them on to the end of 1895. It will include all cases in the Ontario Reports and those carried to the Supreme Court, as well as the Exchequer decisions, and cases appealed to the Privy Council.

In our last issue, a correspondent asked for information on the subject of branch offices. As an item in connection therewith, we notice that in British Columbia no barrister or solicitor can transact or carry on business as such, by means of a branch office, unless such office is under the personal and actual control of a duly qualified barrister or solicitor. This provision might be considered a proper and beneficial one in this Province also, and would prevent, at least, some of the abuses which prevail here from want of some measure of protection and safeguard.

A correspondent writes us regarding the decennial consolidation and revision of the Ontario Statutes to be made this year. Referring to the amount placed in the estimates for this purpose, he suggests the following plan instead of a revision, as one by which expense would be saved: "At each session of the Legislative Assembly a committee might be named, whose duty it would be, at or immediately before the close of such session, to compile and present to the House an appendix in a tabular form of such of the Acts of the

previous sessions as had been amended, altered or compiled, by the Legislature *then* in session, such appendix to be printed with the Acts of *that* session." Our correspondent's suggestion is very useful and valuable, but we doubt whether it would take the place of a revision. It is worthy of consideration whether in view of the endless mass of amendments of Acts made at every session, a revision of the first volume of the Revised Statutes should not be made at least every five years, and perhaps a revision of the second volume every seven years, the Acts in the latter volume being amended to a much less extent. But it would be the greatest blessing of all if it could be provided that no amendment should be made until after the end of at least two years from each revision. This constant tinkering with the statutes is a crying evil.

We publish in another place some new Rules made under the Ontario Land Titles Act. Rule 81 was passed on account of complaints made that solicitors had all the trouble and responsibility of examining and certifying to titles in the first instance, instead of simply bringing in the applications and removing objections, if any should arise. Rule 82 is to get rid of the expense of advertising, when the value of the property does not exceed $3,000. This has been found a heavy burden, costing on the average about $12 in each case. Rule 83 enables the solicitors for proposing applicants to estimate what the costs in the Land Titles office will be, without incurring the expense of obtaining, in the first place, an abstract from the Registry Office, which was necessary under the tariff heretofore in force, as the main charge was a fee of thirty cents in respect of each instrument examined in connection with the title. The Master of Titles, in his last report, suggests giving applicants the option of paying the assurance fees either at the time of first registration, or at any time within six years thereafter, unless the owner wishes to deal with the property in the meantime. These rules are a step in the right direction, and we think the Master's suggestion as to the assurance fees an excellent one.

The revision of the Statutes of British Columbia goes on apace. The first report of the Commissioner, Chief Justice Davie of the Supreme Court of that Province, has been presented to the Lieutenant-Governor. The commission was for the purpose of revising and consolidating a new edition of the laws of British Columbia, and of the statute law of England, so far as it is in force and applicable to that Province. It will thus be seen that a wide scope was given to the Commissioner. So far as we are able to form an opinion, the learned Chief Justice has done excellent service for his Province in the work entrusted to him; and the large volume which contains this first report, gives evidence of great labor and research. It is moreover produced, so far as its typographical appearance is concerned, in a manner not inferior to the best work of the kind even in England.

The learned Commissioner has, we notice, completely discarded the enactment of the English law by mere reference to the number and chapter of the statute of the Imperial Parliament, which has previously been the rule, and gives these English Acts in full, with necessary additions and amendments so as to make them part and parcel of the Revised Statutes. This of course will be an immense convenience to the profession in that Province. Many of the more important of the Provincial Acts have been re-drawn and re-arranged, and such changes made as seemed to be desirable. We have no doubt the Commissioner's experience and intimate knowledge of the law of the Province will have been found most helpful in this regard.

We notice that the municipal law of the Province has been in this draft revision divided into three separate Acts. The Municipalities Incorporation Act, the Municipal Election Act, and the Municipal Clauses Act. This seems strange, as seen through our Ontario spectacles; but the Commissioner's note explains that the western province has not as yet reached the stage in which it would be practicable to consolidate the entire statute law relating to municipalities into one Act, and that it would seem desirable to make this division until such time as the circumstances of the country and gradual know-

ledge of municipal law would warrant complete consolidation and arrangement. If British Columbia legislators are as full of suggestions for the alteration of municipal law as their brethren are in Ontario, they certainly need lots of sea room for their diversion in that sort of manœuvering.

The quinquennial election of Benchers to the Law Society of Upper Canada will be held on April 2nd next, when thirty members of the Bar of Ontario will be chosen to represent their fellow practitioners. Whilst the position is an honorable one, its duties are very onerous to those who conscientiously perform them, and the office is to a greater extent than it should be, a thankless one.

We believe that all the present Benchers are willing to serve again, which is perhaps somewhat surprising, as many of them have spent a great deal of time, energy and thought in the work assigned to them, and received but little thanks for it. Their names have, under the statute, been sent round with the voting papers. In addition to these names a number of others have been brought to the attention of their brethren as desirable candidates. We give all these names, so far as they have come to our ears up to the time of writing. Some of them are excellent, and we shall be glad to see them on the Law Society Bench ; some are no more entitled to the distinction and are perhaps less so than others whose names are not mentioned, and some may be so entitled by and by. The names referred to are : Nicol Kingsmill, Q.C., E. F. B. Johnston, Q.C., J. J. Foy, Q.C., W. B. McMurrich, Q.C., R. C. Clute, Q.C., F. Arnoldi, Q.C., J. B. Clarke, Q.C., W. D. McPherson, George Kappele, P. H. Drayton, H. H. Dewart (Toronto); J. A. Barron, Q.C., (Lindsay); W. D. Hogg, Q.C., (Ottawa); John McIntyre, Q.C., (Kingston); E. B. Edwards (Peterboro); E. Sidney Smith, Q.C. (Stratford); Wm. Kerr, (Cobourg); J. P. Thomas (Belleville); Matthew Wilson, Q.C., (Chatham).

Various changes have been suggested in connection with this election and the tenure of office by the Benchers. Some of these are as follows: (1) The division of the Province into

ten electoral districts, with a representation from each district. (2) The election of Benchers for three years, instead of five as at present. (3) The nomination of all candidates, and that a list of the names of these nominees should be sent to every member of the Bar, from which list the thirty Benchers should be selected. Not being entirely in love with the elective principle, where the profession is concerned, we offer no opinion either as to names or changes except to say that the last suggested change seems an excellent one, and many will vote for it who are not on the tickets promulgated by those who made this change a part of their platform. We trust the selection will be conscientiously made in the best interests of the profession of the very best men, whether on or off any ticket.

HOW FAR IS THE JURY SYSTEM PROCEDURE?

In the distribution of legislative powers ordained between the rival claimants, at Confederation, the subject of the "constitution, organization and maintenance" of the Courts —both civil and criminal—including the procedure in civil matters, was assigned to the local legislatures, the departments of "criminal law and procedure" being reserved to be dealt with by the Dominion Parliament.

Limiting this controversy (to attain the object in hand) to those transactions of the Courts which manifest criminal attributes, the grave question arises, does each turn in the evolution, every advance from the inception of the scheme of trial by jury, which culminates in the presence of the regularly chosen and approved jurors in their places, their palpable entrance upon, or active undertaking of a share in the administration of justice partake of criminal procedure? Or, on the other hand, is every formality which tends to, and are all steps leading up to its fulfilment bound up with the constitution of the Court?

Room may be found, indeed, for an independent solution of the dilemma which would reconcile such diverse concep-

tions; and there is judicial support for the theory that the creative process, from being, through its transitional stages, intimately allied with procedure, in its outcome develops plainly the character of constitution. This view is, at least, strongly favoured, if not deliberately asserted, by the late Sir Adam Wilson, (then Chief Justice of the Common Pleas) when considering, as the President of the Court, en banc, the case of *Reg.* v. *O'Rourke*, (reported in the aspect then assumed, in 32 C.P. 388) a "cause celèbre" of the day, from the County of Halton.

The application which provoked his expression of opinion was in the nature of a Crown case, attempted to be reserved by the Assize Judge, upon the trial of the prisoner for murder. The ground of complaint was that the Dominion Legislature had, to the applicant's prejudice, improperly delegated an authority they alone possessed—that they had inexcusably and weakly abnegated the right of initiative in legislation, by enacting that all requirements of Provincial Acts relating to the qualification, selection and summoning of jurors to participate in a civil cause, should be applied to a criminal trial.

The Chief Justice, while agreeing with the majority of the Court, that the exception taken was not an appropriate one to be ventilated in a Crown case reserved, declared it to be his undoubted and firm belief that, though the incidents attending the formation and convening of the jury were unquestionably procedure, the moment these good men and true had assembled and were ranged in the box, they became as essential a factor in the constitution of the Court as the Judge himself. The dictum, after all, is not surprising, when it is learnt that even a constable, on one occasion, appealed to the Court (the grade, unhappily, has been forgotten) as a component atom in its constitution.

To employ as an illustration of this an incident of recent occurrence—in what relation to the Court would the negligent crier be held to stand, who failed, one afternoon, to announce the resumption of a sittings of the Assize Court; and whose omission called for the re-swearing of a witness, who had been given the oath, in ignorance of the episode with its subverting possibilities?

The *O'Rourke* case subsequently came before the full Court of Queen's Bench, 1 *O. R.*, 464, on a submission by the prisoner on a motion on a writ of error, allowed to issue on the fiat of the Attorney-General, to determine the objection theretofore strenuously though abortively urged in the Court of Common Pleas. On this second and much more exhaustive inquiry, it was, by the judgment of the Court, unhesitatingly conceded that criminal procedure was involved in the point advanced; the decision further adjudging the Dominion fully competent, by adoption, to utilize the machinery—the furthest they were thought to have gone, which the Local Legislature had furnished for controlling the preliminaries, looking to the perfecting of the jury as the guaranteed complement of the Court on the hearing of a civil action.

A singular feature of both arguments was that counsel for the Attorney-General of Ontario tendered the bold contention that everything discussed was within the domain of constitution.

One can well understand the position, where the sole difficulty is whether or not some procedure enacted by the Provincial Legislature has been recognized by the Dominion, with the purport and design of affecting their own criminal practice; but what of the situation where there are prescriptions by the Dominion that evince no such recognition—far-reaching sanctions, perhaps—as to which provincial law is altogether silent, probably because the usual course of trial by jury in a civil matter makes the distinctive treatment needless? Are they, apart from their tendency, to be always deemed procedure, or are they to be reckoned as inseparable from constitution?

It is interesting to observe that there are original directions of the Dominion Parliament, much akin in scope to those vitalized by them for criminal purposes—which came under review in *Reg.* v. *O'Rourke*, and which, by the ruling there, we must obviously class with procedure—notably the method for obtaining talesmen, empowering the Court, where a panel has been exhausted, to impress unwary and retiring citizens, irrespective of qualification, to precipitately serve as substitutes.

Take the provision assuring to a prisoner in the Province of Manitoba and in some districts in the Province of Quebec the privilege of electing to be tried by a mixed assemblage of French and English-speaking jurors; or that which appoints the manner and designates the requisites of the return of a panel to facilitate his option—can it be seriously doubted that both, in principle, directly invade the realm of constitution?

Or consider the opportunity provided for a view by the jury of the locus in quo—does not this afford a striking and clear presumption of their contributing to the constitution of the Court, as being the conclusive and supreme judges of the fact? The regulation of challenges, moreover, with the possible profound effects of error on the personnel of the jury —the risk of grievous reaction on the prisoner—surely reveals proceedings and suggests results that denote interference with the constitution of the Court.

Arguing, in conclusion, that any numerical impairment, equally with the entire deprivation of a jury to suitors, is matter of constitution, what shall be said of the Dominion statute regulating the practice on appeals to the Sessions, which, denying this safeguard to contestants, makes the judge exclusive arbiter of law and fact. In *Reg.* v. *Bradshaw*, 38 Q.B. 564, the court held that the provision of law prevailing when the appeal in that case was heard, that the chairman of the Sessions might proceed to a trial, where neither party had demanded a jury, carried with it no notion whatever of a trenching upon constitution.

But suppose there had been involved in the application the question of the unqualified refusal of a jury—the governing principle of the present procedure on appeals to the Sessions —what would then have been its disposition? And if the Dominion may rightfully extinguish the jury in a criminal appeal, why may they not as reasonably cause it to disappear, in toto, from the system of trial at the Assizes or Sessions? What stronger or greater warrant have they, in truth, for abolishing the jury, or for lowering its efficiency, diminishing its strength, than they have for decapitating a member or two of the Court of Appeal, or of the Divisional Court?

CAUSERIE.

"If I chance to talk a little while forgive me."
— *Henry VIII., Act I, Scene 4.*

Mr. Frederic William Maitland is no respecter of legal traditions and myths. On the contrary he is an iconoclast of the most ruthless kind, and whenever he penetrates into the temples where our professional forbears were wont to worship, the idols and oracles there statant and couchant have a very bad quarter of an hour. In his Introduction to the Parliament Rolls of 33 Edward I., he very effectually dispelled some clouds of error that had long enveloped the origin of the remedy by petition of right. In the "History of English Law before the time of Edward I.," written by him conjointly with Sir Frederick Pollock, he reforms some false and deep rooted notions as to the authorship and authenticity of certain archaic repositories of the common law, such as the works known as "Leges Henrici," "Leges Edwardi Confessoris," the "Tractatus de Legibus et Consuetudinibus Angliæ," and the "Dialogus de Scaccario." But all his previous assaults upon the citadel of legal fiction are put into the shade by his recent fatal cudgelling of the "Mirror of Justices." Now to such of us as were launched upon the deeps of the common law in the old days when Coke upon Littleton and Blackstone's Commentaries were still the chief beacons that illuminated that "weltering waste," the "Mirror" was a work not to be approached lightly or to be spoken of with irreverence. We bore in mind that my lord Coke lauded it as "a very antient and learned treatise of the laws and usages of this kingdom of England," and that Lord Somers regarded it as of equal authority with Bracton and Fleta. Nor, indeed, did we find the work lacking esteem even in our own times and in American courts. In the well known case of *Briggs* v. *Light Boats etc.* (11 Allen, p. 166) Mr. Justice Gray refers to the "Mirror" as an authority to show that in the early days of English law the sovereign was amenable to an ordinary action at the suit of a subject. This, then, being premised, it will not be wondered at that we old-fashioned people sustain a very pronounced shock when we peruse Mr. Maitland's Introduction to the

edition of the work in question recently published by the Selden Society. We are not fond of neologisms as a rule, but we must say that the adjective "baresark," as coined at Mr. Ryder Haggard's mint, seems to most aptly express the state of mind produced in Mr. Maitland by the many proofs he finds of the author of the "Mirror's" persistent trifling with historical facts. Indeed, to judge from the strenuousness of Mr. Maitland's language, neither Baron Munchausen nor Count Cagliostro could hold the palm of mendacity against this ancient commentator upon the common law. Let us quote from his screed: "Our author's hand is free, and he is quite able to do his lying for himself, without any lying from Geoffrey of Monmouth or any other liar. He will not merely invent laws, but he will invent legislators also; for who else has told us of the statutes of Thurmod and Leuthfred? The right to lie he exercises unblushingly. . . . Religion, morality, law, these are for him all one; they are for him law. . . . That he deliberately stated as law what he knew was not law, if by law we mean the settled doctrines of the king's court, will be sufficiently obvious to anyone who knows anything of the plea rolls of the thirteenth century." It is quite obvious that Mr. Maitland's manner here has not that repose which stamps the caste of the dispassionate critic; but, nevertheless, he quite effectually disposes of the "Mirror's" claim to authority, and consigns it forever to the charnel house of defunct impostures.

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The Boston University Law School is to be congratulated upon having secured the services of Mr. Irving Browne as one of its lecturers. Mr. Browne's scholarly ability as an editor and treatise-writer have won for him a distinguished reputation both at home and abroad; while his witty productions in legal verse have a rare charm for those who delight to blend the strong waters of case-law with the nectar of Helicon. The latest honour conferred upon him prompts us to hurl a bit of Horatian philosophy at him, and say:—

"Mediocribus esse poetis
Non homines, non di, non concessere columnæ!"

The *Law Journal* (London) has this to say in opposing Lord Russell's praiseworthy effort to induce those in authority to elevate the system of legal education in England to the level of the standards prevailing in France, Germany and the United States at the present day :—

"The fashion of our day is, as it was the fashion of that of Dr. Johnson, to believe that everything can be taught in lectures ; and it is as true now as then, that a clever man will learn all, or nearly all, that can be so taught from a book in half the time the lectures occupy, and will prefer to do so (!)"

The immanent assininity of this deliverance is its own undoing ; a serious reply to it could only emanate from Bedlam.

Ottawa. CHARLES MORSE.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

The Reports for February comprise (1896) 1 Q. B., pp. 97-139; (1896) P. pp. 33-64; and (1896) 1 Ch., pp. 105-198.

CRIMINAL LAW—EXTRADITION—JURISDICTION—BONA FIDES OF DEMAND FOR EXTRADITION—POLITICAL OFFENCE—EXTRADITION ACT, 1870 (33 & 34 VICT., C. 52) S. 3, S-S. 1—(R.S.C. C. 143, AND DOM. STATUTES, 1890, PP. XXX., ET SEQ.)

In re Arton (1896), 1 Q. B. 108, was an application in an extradition proceeding on the part of the prisoner for a *habeas corpus* to the keeper of the gaol in which the prisoner was confined, to bring him before the Court to abide the judgment of the Court. The application was based on several grounds. Those relied on, however, resolved themselves practically into two, viz.: (1) That some of the offences charged were not within the Extradition Act. (2) That the demand for extradition was not made in good faith, but for the purpose of punishing the prisoner for a political offence. As to the first ground the Court (Lord Russell, C.J., and Wills and Wright, JJ.) thought that sufficient was shown to warrant

the Court in granting a rule, intimating that, on its return, steps would be taken to prevent the prisoner being charged, in the event of his extradition, with any offence except such as would properly come within the Act and treaty. As regards the second point, what was alleged on behalf of the prisoner was that according to the French law the prisoner would be liable to be interrogated by the Court as to certain alleged political secrets, and that, whatever the technical description of the offence for which he is extradited and put on his trial, his punishment will depend upon his disclosure or non-disclosure of these political secrets. But the Court was clearly of opinion that the exception in the Extradition Act in favor of persons who have committed political offences, only contemplates a political offence which has actually been committed, and for which, under cover of trying the offender for an extraditable offence, the foreign tribunal is seeking to punish him. In the present case the offences charged and for which extradition was sought were plainly non-political, and the Court could not judicially inquire into the bona fides of a friendly foreign government making a demand for extradition.

CROWN, PREROGATIVE OF—CIVIL SERVICE—TENURE OF OFFICE—DISMISSAL OF OFFICERS IN SERVICE OF THE CROWN.

In *Dunn* v. *The Queen*, (1896) 1 Q.B. 116, the plaintiff presented a petition of right claiming to recover damages for wrongful dismissal from the service of the Crown. The plaintiff alleged that he had been appointed a consular agent for the period of three years, and that before the expiration of that time he had been dismissed without cause. Day, J., who tried the action, held that contracts for the service of the Crown were terminable at the pleasure of the Crown, and therefore dismissed the petition. The Court of Appeal (Lord Esher, M.R., Lord Herschell and Kay, L.J.) agreed with him, holding that the doctrine that service under the Crown, is liable to be terminated at the pleasure of the Crown applies to civil as well as to military or naval service. A previous decision of the Court of Appeal in *Mitchell* v. *The Queen* appears in a note. In that case the Court held that all engage-

ments between those in the naval or military service of the Crown are voluntary only on the part of the Crown, and give no ground for an action in respect of any alleged contract.

ALIMONY PENDENTE LITE—INJUNCTION.

In *Carter* v. *Carter* (1896) P. 35, Barnes, J., refused to grant an injunction to restrain a husband, against whom an order for payment of interim alimony had been granted, from alienating certain of his property *pendente lite*.

PERMANENT ALIMONY INJUNCTION.

In *Newton* v. *Newton*, (1896) P. 36, however, where a wife had obtained a decree nisi for divorce, and an order had been obtained under the provisions of the Matrimonial Causes Act, that the husband should secure a sum for her maintenance, Barnes, J., granted an injunction restraining the defendant and his agents from dealing with certain funds to which he was entitled, until the deed securing the plaintiff's maintenance should be executed by him.

PRACTICE—ADMISSION OF NEW EVIDENCE ON APPEAL—ORD. LVIII. R. 4—(ONT. RULE 585 (3)).

Shoe Machinery Co. v. *Cutlan*, (1896) 1 Ch. 108, was an action to restrain the infringement of a patent in which the defendant contested the validity of the patent (inter alia) on the ground of anticipation. On the trial of the action the validity of the patent was upheld and an injunction granted restraining the infringement. The defendant appealed from this decision to the Court of Appeal, and on the appeal applied for leave under Ord. lviii. r. 4, (Ont. Rule 585 (3)) to adduce further evidence of anticipation, but the Court (Smith and Rigby, L.JJ.) refused to admit the further evidence on the ground that no irreparable damage would result from rejecting it, inasmuch as the evidence in question would be admissible on an application to revoke the patent; and that, under the circumstances, the plaintiff might be unfairly prejudiced by its admission.

PRACTICE—ALTERATION OF LAW SINCE JUDGMENT—LEAVE TO APPEAL.

In *Eyre* v. *Wynn-Mackenzie*, (1896) 1 Ch. 135, the Court of

Appeal (Lindley, Smith, and Rigby, L.JJ.) refused to grant leave to appeal on the ground that since the judgment sought to be appealed from had been pronounced a statute had been passed which had altered the law in favour of the applicant's contention, and was retrospective in its operation. The Court held that the Act was not intended to affect judgments given before it was passed.

TENANT FOR LIFE—REMAINDER-MAN—PAYMENT OF CHARGE ON INHERITANCE BY TENANT FOR LIFE—PRESUMPTION OF INTENTION TO KEEP CHARGE ALIVE—PARENT AND CHILD.

In re Harvey, Harvey v. *Hobday*, (1896) 1 Ch. 137, a testator by his will devised certain real estate then subject to a mortgage, to his widow for life, with remainder to his children. Out of the rents of the property the widow paid off the mortgage, and she having died, her executors claimed to be entitled to a charge on the property for the amount so paid on the mortgage, so far as it represented capital. It was contended on behalf of her children entitled in remainder, that owing to the relationship existing between them and the tenant for life, she must be presumed to have paid off the mortgage for their benefit. The Court of Appeal (Lindley, Smith and Rigby, L.JJ.) came to the conclusion that the ordinary presumption that a tenant for life who pays off a charge does so with the intention of keeping it alive, is not rebutted by the simple fact that the relationship of parent and child exists between the tenant for life and the persons entitled in remainder, and beyond that there were no other circumstances in the present case. The decision of Kekewich, J., to the contrary was therefore reversed.

COPYRIGHT—DESIGN—INFRINGEMENT—PATENT, DESIGNS AND TRADE MARKS ACT, 1883 (46 & 47 VICT., C. 57), S.60; (R.S.C., C. 63, S. 22.)

Harper v. *Wright*, (1896) 1 Ch. 142, might, perhaps, be considered another proof, if proof were needed, that the supposed infallibility of Judges of first instance on questions ot fact, does not rest on a very sound foundation. In the present case, the simple question at issue was whether or not a stove manufactured and sold by the defendants was an in-

fringement of the registered design of the stove made by the plaintiffs. Both stoves were before the Court, and yet Kekewich, J., who tried the action, was of opinion that there was no infringement (see (1895) 2 Ch. 593, noted *ante* vol. 31 p. 601), and yet Lord Herschell and Smith and Rigby, L.JJ., were unanimous that the defendants' stoves "were an obvious imitation" of the plaintiffs' design. It may be remembered, however, that Kekewich, J., although admitting there was a resemblance, based his decision on the ground that all that was protected was the actual design, and not the idea of applying that kind of ornamentation to stoves.

PARTNERSHIP—ARBITRATION, AGREEMENT TO REFER TO—POWER OF ARBITRATOR—DISSOLUTION—MOTION TO STAY PROCEEDINGS—ARBITRATION ACT, 1889 (52 & 53 VICT., C. 49), S. 4, (R. S. O., C. 53, S. 38).

In *Vawdrey* v. *Simpson*, (1896) 1 Ch. 166, Chitty, J., following *Walmsley* v. *White*, 40 W. R. 675, held that where articles of partnership contain a clause referring all matters in difference between the partners to arbitration, an arbitrator has power to decide whether or not there should be a dissolution of the partnership, and where a defendant in an action moves under the Arbitration Act, 1889 (52 & 53 Vict., c. 49) (see R. S. O., c. 53, s. 38) to stay proceedings on the ground that the parties have agreed to refer the matter in dispute to arbitration, the judge has full discretion to determine whether to do so, or to permit the matter in dispute to be tried out in the action.

WILL—TRUST FOR SALE POWER TO POSTPONE SALE—POWER TO CARRY ON BUSINESS OF TESTATOR.

In re Smith, Arnold v. *Smith*, (1896) 1 Ch. 171, was a summary application for the construction of a will. The testator's residuary estate (the greater part of which consisted of the business of a pawnbroker, carried on at two different places), was devised and bequeathed to trustees for sale, and particularly to sell his business of a pawnbroker with all convenient speed, but with power to postpone the sale for as long as the trustees should think fit. The testator left two elder sons beneficially interested in the residuary estate, and the trustees

desired to continue one of the businesses carried on by the testator until the second son attained 21, in order to give the two elder sons an opportunity to purchase it, and the question submitted for the opinion of the Court (North, J.), was whether the trustees had power to continue the business until the second son attained 21, or for any and what other period, and if they were, under the circumstances, justified in so doing. North, J., held that the power to postpone the sale did not absolutely nullify the previous direction in the will to sell with all convenient speed, so as to authorize an indefinite postponement of the sale, but that, under the circumstances, of the estate, they had power to postpone the sale, and were justified in postponing it for two years.

PRACTICE—FUND IN COURT—DECEASED INSOLVENT IN INDIA—ADMINISTRATION IN ENGLAND DISPENSED WITH.

In re Lawson's Trusts, (1896) 1 Ch. 175, an application was made by an Indian official assignee in insolvency of a deceased person formerly resident in India, who was entitled to a fund in Court, for payment out of the fund to the applicant, and the question was raised whether the money could be ordered to be paid out without letters of administration to the deceased insolvent's estate being first obtained in England. North, J., was of opinion that *In re Davidson*, L. R. 15 Eq., warranted him in dispensing with administration in England, and he granted the application accordingly.

COMPANY—SHARES—MISREPRESENTATION BY AGENT—RESCISSION OF CONTRACT TO TAKE SHARES.

Lyndc v. *Anglo-Italian Hemp Spinning Co.*, (1896) 1 Ch. 178, was an action to rescind an agreement entered into by the plaintiff with the defendant company to take shares in the company, on the ground that the plaintiff was induced to enter into the agreement by the misrepresentation of one Waitham, who the plaintiff alleged was the agent of the company. Romer, J., summarizes the cases in which such an action will lie, viz., (1) where the representations are made by directors or other general agents of the company entitled to act and acting in its behalf; or (2) by a special agent of the company

while acting within the scope of his authority, including the case of a person constituted agent by the subsequent adoption of his acts by the company; or (3) where the company can be affected with notice, before the contract is complete, that it has been induced by misrepresentation; or (4) where the contract is made on the basis of representations, whether the particulars of those representations were known to the company or not, and it turns out that some of those representations were material and untrue—as, for example, if the directors of a company know when allotting, that an application for shares is based on the statements contained in a prospectus, even though the prospectus were issued without authority, or even before the company was formed, and even if its contents were unknown to the directors. In this case the alleged misrepresentations were made by Waitham, who had been a promoter of the company, and who was known by the company to be applying to his friends to take shares; but Romer, J., held that that fact did not itself constitute him the agent of the company, and that the plaintiff had not brought the case within any of the above classes, and he was also of opinion that the plaintiff had failed to establish that any misrepresentation had in fact been made.

The use of indecent or profane language in a street car, which by statute is expressly made an offence, is held in *Robinson* v. *Rockland, T. & C. St. Ry.* 87 Me. 387, 29 L.R.A. 530, to be sufficient reason for putting the offender off the car.

The right to bring a private action for a public nuisance is sustained in *Farmers' Co-operative Mfg. Co.* v. *Albermarle & R. R. Co.* (N.C.) 29 L.R.A. 700, in favor of the owner of a boat used in part for the business of a common carrier, against a party who had obstructed the navigation of a river to the damage of such business, although the owners of other boats were similarly damaged.

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] [Dec. 9, 1895.

TORONTO JUNCTION *v.* CHRISTIE.

Appeal—Judgment awarding damages to respondent—Increase of damages—Cross appeal.

C. claimed damages from the town of Toronto Junction for injury to his house property by the raising of the grade of the street on which it stood, and the claim was submitted to arbitration under the Ontario Municipal Act, 1892. The arbitrators considered that C.'s property was benefited by the alteration in the grade of the street, which was raised to the level of the houses, and so made a more convenient entrance, and they awarded him nominal damages. On appeal to Mr. Justice ROSE, he increased the award to substantial damages, and the Court of Appeal sustained his judgment, being equally divided as to his jurisdiction so to deal with the case. The corporation then appealed to the Supreme Court of Canada.

Held, that the Ontario Judicature Act (R.S.O., c. 44, ss. 47, 48), and Rule 16 thereunder, gave the Court of Appeal power to increase the amount of the award to the extent to which it had been increased by Mr. Justice ROSE, and the judgment appealed from was right; that the Supreme Court under its rule no. 61, had the like power to increase damages awarded to a respondent though there was no cross-appeal: *Robertson* v. *The Queen*, 3 S.C.R. 52, followed; and that the amount awarded by ROSE, J., did not compensate the respondent for the injury to his property, and it should be still further increased.

Held, per STRONG, C.J., that as the statute under which the arbitration took place required the Court to pronounce just such judgment as the arbitrators should have given, it was sufficient notice to the appellant of what the Court might do without a cross appeal.

Appeal dismissed with costs subject to variation by increasing the damages.

Aylesworth, Q.C., and *Going*, for appellant.

Riddell, and *Gibson*, for respondent.

Ontario] [Mar. 4.

EASTMURE *v.* CANADA ACCIDENT INSURANCE COMPANY.

Master and servant—Dismissal—Agent of insurance company—Acceptance of agency for rival company.

By agreement in writing Eastmure became chief agent for Ontario of the Canada Accident Insurance Company, doing ordinary accident, plate glass and

employers' liability insurance. By one clause in the agreement Eastmure engaged to fulfill conscientiously all the duties assigned to him, and to act constantly for the best interests of the company, and by another, the agreement was to continue from year to year subject to termination by either party on giving three months' notice to the other. Shortly after he became agent of this company Eastmure accepted the agency for Ontario of the Lloyd's Plate Glass Insurance Company, and, on refusing to give it up on demand of the Canada Accident Insurance Company, he was dismissed from their employ.

Held, affirming the decision of the Court of Appeal for Ontario, (22 A. R. 408) that the acceptance by Eastmure of the agency of the rival company, by which he would be prevented from conscientiously fulfilling the duties assigned to him by the Canada Accident Insurance Company, was sufficient justification for his dismissal by the latter.

Appeal dismissed with costs.

Gormully, Q.C., and *Orde*, for the appellant.

W. Cassels, Q.C., and *Bruce*, Q.C., for the respondents.

Province of Ontario.

COURT OF APPEAL.

OSLER, J.A.] [Feb. 12.

IN RE DAM AND SLIDE ON LITTLE BOB RIVER.

Water and watercourses—Rivers and Streams Act—Mills and Mill Dams Act R.S.O. c. 118—R.S.O. c. 120.

It is only when improvements in a stream are made for the express purpose of facilitating the floating of saw logs, that tolls can be charged for their use. There is no right to charge tolls for the use of improvements primarily intended for milling purposes, though the use of the stream for floating saw logs is thereby facilitated.

Judgment of His Honor Judge Dean affirmed.

H. J. Wickham, and *C. W. Thompson*, for the appellants.

Cassels, Q.C., and *T. Stewart*, for the respondents.

Irving, Q.C., for the Attorney-General of Ontario.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

ARMOUR, C.J.
STREET, J. } [Dec. 31, 1895.

MCKAY *v.* THE NORWICH UNION INS. CO.

Insurance—Statutory conditions — Variation — Unreasonableness — Notice — Vacancy—Materiality—Part affected—Title—Agreement between mortgagee and insurance company—Subrogation.

The defendants insured seven houses, described in the policy as "a two-story frame, rough-cast, felt-roofed block, 128 x 78 feet, containing seven dwell-

ings, six of which are occupied by tenants and one by assured." In the application the question as to how many tenants, was answered "six tenants and applicant," but the defendant's agent was informed, and he advised them that "the largest house of the lot the applicant will occupy himself." A variation of the statutory conditions was printed on the policy in these words, "This policy will not cover vacant or unoccupied buildings (unless insured as such), and if the premises shall become vacant or unoccupied * * * this policy shall cease and be void unless the company shall by endorsement * * allow the insurance to be continued."

Held, that the defendants could not escape liability upon the ground that the actual facts were not before them at the time of the application, nor by their variation of the statutory conditions that the policy would not cover vacant or unoccupied houses.

Held also, that the variation as to the premises becoming vacant or unoccupied in a case like this, where the houses were of a class likely to be occupied by monthly tenants or by tenants for short periods, where the moving out of one tenant and leaving the tenement vacant one day whether the insured was aware of it or not, might avoid the policy, was unreasonable, and the reasonableness of the variation was to be tested with relation to the circumstances at the time the policy was issued, and not in the light of those existing at the time at which the condition was sought to be applied.

Smith v. *City of London Ins. Co.*, 14 A. R. 328; and *Ballagh* v. *Royal Mutual Fire Ins. Co.*, 5 A.R. 87, cited.

Semble, following the *Citizens Insurance Company of Canada* v. *Parsons*, 7 App. Cas. 96, 121, when an attempted variation of a statutory condition has been held for any reason not binding, the other conditions must then be read as if the attempted variation was not in the policy.

Held also, that the fact that three or four of the houses having been vacant to the knowledge of the plaintiff, for some months before the fire, was under the third statutory condition, a change material to the risk, and the risk was increased by it, and the failure to notify the defendants voided the policy "as to the part affected," which in this case was the whole block.

Held also, following *Reddick* v. *Saugeen Mutual Fire Insurance Company*, 14 O.R. 506, that the provisions of the third statutory condition could not be distinguished from those of the first, as to the meaning of the word "risk," and matters relating to title were not covered.

Held also, following *Imperial Fire Insurance Company* v. *Bull*, 18 S.C.R. 697, that the defendants having under an agreement paid the mortgagees and taken an assignment of the mortgage, could not hold it against the mortgagor (plaintiff) even though they could show the mortgagor never had any claim against them, and that that case is no authority for holding that the effect of the agreement between the mortgagees and the defendants, limited to the extent of the mortgagees' interest, was to do away, as between the mortgagor and the defendants, with the conditions upon which the policy was issued.

Judgment of FALCONBRIDGE, J., affirmed.

Myers, Q.C., and *W. J. Clark*, for the appeal.

Wallace Nesbitt, and *R. McKay*, contra.

MEREDITH, C.J., ROSE, J., MCMAHON, J. [Feb. 10.

PATRICK ET AL. *v.* WALBOURNE ET AL.

Mechanics' lien—Increased value—Destruction of—Rights of lienholder and mortgagee—When increased value to be ascertained.

In a mechanics lien proceeding, where it was found by an official referee that the lienholders had increased the selling value of the land to an amount equal to their claims, and to that extent were declared prior to mortgages on the premises, although pending the proceedings the buildings were burned down and the increased value gone.

Held, (on an appeal to a Divisional Court, affirming FALCONBRIDGE, J., who had reversed the Referee) that the policy of the Act is to take from the mortgagee the benefit which at common law he was entitled to, of the work and materials, which after the making of his mortgage had been employed in the improvement of the property, and which had not been paid for by the mortgagor, and to leave his security otherwise unimpaired. The lienholder gets priority to the mortgage on the increased value, and the mortgagee retains his priority over the lienholder as to all that his security embraces, except that increased value, and any loss or depreciation in value of that which gives the increased value to the land must fall on the lienholder, the increased value, and that only, is his security as against the mortgagee.

Semble, the question of what is the increased value to which the lienholder is entitled as against the mortgagee to resort for the satisfaction of his lien, cannot be finally determined until the lands have been sold, and it is with reference to the result of the sale, and the condition of the property at the time of the sale that the respective rights of the mortgagee and the lienholder are to be finally ascertained.

James Bicknell, for the appeal.

Aylesworth, Q.C., contra.

ARMOUR, C. J. STREET, J. Feb. 27.

BEATTIE *v.* DINNICK.

Statute of Frauds—Promise to answer for the debt of another—Guarantee or indemnity.

The plaintiff was a holder of a note of a company of which the defendant was president, and was pressing for payment when the defendant verbally promised to see him paid.

Held, (reversing the judgment of FALCONBRIDGE, J.) that a promise, whether unconditional or not, to pay a debt for which another remains liable is within the fourth section of the Statute of Frauds, while a promise to indemnify is not; and that as the defendant's promise was really a guarantee and not an indemnity, the plaintiff could not recover.

Guild & Co. v. *Conrad*, (1894) 2 Q.B. 885, cited, considered and followed.

Aylesworth, Q.C., for the appeal.

J. W. Elliott, contra.

Divisional Court.

BOYD, C., ROSE, J.
ROBERTSON, J.

Jan. 17.

IN RE THOMPSON.

Attachment of debts—Assignment for benefit of creditors—Executions—Priorities—Sheriff—Creditors' Relief Act, sec. 37.

An assignment by an insolvent for the general benefit of his creditors does not oust a prior attachment by a creditor of the insolvent of a debt due to him.

Wood v. *Joselin*, 18 A.R. 59, followed.

Section 37 of the Creditors' Relief Act must be construed to refer only to a case where the facts would entitle a sheriff, if there had been no attaching order issued by a creditor, to obtain one at his own instance, under s-s. (1), sec. 37; and, to entitle him to such order, there must be in his hands several executions and claims, and not sufficient lands or goods to pay all and his own fees, and a debt owing to the execution debtor by a person resident in the bailiwick.

And where a debtor, who was entitled to certain insurance moneys, assigned them to his wife, who subsequently assigned them to her husband's assignee for the benefit of creditors, and such moneys were also attached by a creditor of the husband between the dates of the assignment to his wife and his assignment for creditors; and some months after these transactions, when the moneys were in court awaiting the result of litigation between the assignee and the attaching creditor, two executions against the debtor came into the hands of the sheriff of the county in which the insurance company, in whose hands the moneys were when attached, had its head office.

Held, that the moneys had ceased to be the property of the debtor, and, even if there had been no attaching order, the sheriff could not have obtained the moneys for the purpose of satisfying the executions.

Semble, also, that the provisions of s-s. (3) of sec. 37 should be read as confined to creditors having executions and claims in the sheriff's hands at the time of the attaching of the debt.

W. R. Riddell and *F. J. Travers*, for the attaching creditor.

Rowell, for the Sheriff of Elgin.

W. H. Blake, for the assignee.

BOYD, C., ROBERTSON, J.,
MACMAHON, J.

Feb. 18.

GUROFSKI *v.* HARRIS.

Fradulent conveyance—13 Eliz., c. 5—Intent to defeat action for tort—Creditor—Preference.

Where a conveyance of land was made by a father to a daughter, with intent on the part of both to defeat an action for slander then pending against the father, but made and accepted in satisfaction of a bona fide pre-existing debt to the extent of the full value of the land.

Held, that the conveyance being attacked under 13 Eliz., c. 5, by one who became a creditor by reason of the judgment obtained in the action of slander

three months after the conveyance, and there being no other creditors, the preferring of one creditor was no ground for setting aside the conveyance as fraudulent and void.

Cameron v. *Cusack*, 17 A.R. 489, followed.

A plaintiff suing for tort is not a creditor within the meaning of the Ontario statute as to preferences.

Ashley v. *Brown*, 17 A.R. 500, followed.

F. E. Titus, for the plaintiff.

Watson, Q.C., for the defendants.

ARMOUR, C.J., FALCONBRIDGE, J. } [March 4.
STREET, J. }

LANGTRY *v.* CLARK, ET AL.

Landlord and tenant—Distress—Possession of goods—Impounding—Sale—Reasonable time — Seizure under chattel mortgage — Pound-breach — 2 W. & M., session 1. c. 5, sec. 4.

Plaintiff as landlord distrained the goods of his tenant on July 16th, and left them in the custody of the tenant, taking an agreement to hold possession and deliver them up when required. On August 10th a chattel mortgagee seized and removed the goods.

In an action for pound-breach under 2 W. & M., sess. 1, c. 5, sec. 4, by the landlord against the chattel mortgagee and his bailiff, it was

Held, (affirming a County Judge) that the landlord had the right to impound and secure the goods on the premises, and at the expiration of five days to sell them, and had a reasonable time after the five days to sell, which had elapsed in this case ; that there was a good distress and a good impounding, and the agreement bound the tenant but not the mortgagee, who was entitled to have the provisions of the law carried out, and who could after the expiry of a reasonable time for sale say the goods are not in the custody of the law but of the landlord, under an agreement with the tenant, and in taking them under his chattel mortgage did not commit a pound breach.

G. W. Patterson for the plaintiff (appellant).

Geo. Kerr, for the defendant (respondent.)

Practice.

WINCHESTER, Master.] [Feb. 15.

MARSHALL *v.* MCTAVISH.

Writ of summons—Concurrent writ—Service within jurisdiction—Allowance —Costs.

A defendant while within the jurisdiction was served with a copy of a concurrent writ of summons issued under an order which directed service on the defendant at his place of residence out of the jurisdiction.

On motion to set aside such service as irregular, an order was made allowing the service as good and sufficient service of the writ of summons on that defendant. Costs in the cause.

N. F. Davidson, for the defendant.

D. Hooey, for the plaintiff.

ARMOUR, C. J., FALCONBRIDGE, J., STREET, J. [Feb. 26.

MARPLES *v.* ROSEBROUGH.

Vacation—Reference—Official referee.

Every legal proceeding which may properly be taken out of vacation may with equal propriety be taken during vacation, unless something to the contrary can be found in some statute or rule of Court.

An official referee may proceed with a reference during vacation.

Shepley, Q.C., for the plaintiff.

W. J. Elliott, for the defendant.

MACLENNAN, J.A.] [March 2.

DONNELLY *v.* AMES.

Security for costs—Appeal to Court of Appeal—Special order—Judicature Act, 1895, sec. 77.

Under sec. 77 of the Judicature Act, 1895, security was specially ordered to be given by the plaintiffs in the sum of $200 on their appeal to the Court of Appeal from the judgment of the trial Judge dismissing their action for the recovery of land of which the defendants and those under whom they claimed had been in undisturbed possession for nearly thirty years, where two of the plaintiffs resided abroad, and the other two, who resided in this province, had no property exigible under execution, and the taxed costs in the Court below were unpaid, and execution therefor had been returned nulla bona.

E. D. Armour, Q.C, for the plaintiffs.

Shepley, Q.C., for the defendants.

SURROGATE COURT.

COUNTY OF YORK.

Re REID.

Two testamentary papers treated as one will—Surrogate Court fees—Trust estate—R.S.O. c. 50, ss. 70, 71.

Testator executed two testamentary papers on same day, the one as to his individual estate, the other as to property held in trust.

Held, that they were to be admitted to probate as making together the last will of the testator.

Held also, that the statute imposing fees of $1 and 50 cents respectively per $1,000 did not apply to the trust estate.

[TORONTO, Feb. 28, McDOUGALL, Co. J.

The Reverend William Reid, D.D., died on the 19th of January, 1896, having, on the 24th of April, 1895, executed two testamentary papers, the one of such estate as he held in his individual capacity, in which his widow and son were named executors. The other in terms related only to such real and personal property as he held as agent and trustee for the Presbyterian Church in Canada, and its various schemes, religious and charitable. His son and two others were named as executors in respect of the trust property, and directed

to hold on the same trusts as the testator and to deal therewith as the General Assembly of the Church or other competent authority should direct.

J. C. Hamilton, for the executors applied for probate, citing the following authorities: Williams on Executors, 6th ed., vol 1, 103; *Stone* v. *Evans*, 2 Atk., 87; *In the goods of Nickolls*, 34 L. J. P., 103; *In the goods of Harris*, L. R. 2 Prob., 83.

McDOUGALL, Surrogate Judge, ordered that both documents should be admitted to probate as forming together the last will of the testator.

The account of fees demanded by the Court in respect of the trust estate included items of $233 under R. S. O. C. 50, sec. 70, sched. A., and $121 under sec. 71, sched. B., which were objected to on the ground that such fees were not chargeable on trust property under the Act. The Attorney-General being notified, left the matter to the decision of the Surrogate Judge.

J. C. Hamilton, for the executors: The testator being, as appears by the papers filed, for many years financial agent of the Church referred to, was invested with these funds, *ex necessitate*, as there was no committee or corporation provided to hold them. He was a bare trustee without power of disposition except under direction of the Church authorities. The only proper course open to him was to make the will and appoint his executors trustees. They have no power of disposition, save as is expressed in the will, and Dr. Reid's estate has no surviving interest in this property: Jarman on Wills (1861) 675; *Townsend* v. *Wilson*, 1 B. & Ald., 608. The meaning of "devolving," as used in the Act, must be considered with reference to the actual state of the property in question. This property was not the testator's, and so did not devolve, in the meaning of the Act, for the purpose of being administered: R. S. O., c. 50, secs. 16, 62, 64, and Surrogate Rules, p. 591. Howell Surrogate Practice (1895), pp. 321, 539 and 540; *Platt* v. *Routh*, 6 M. & W., 756; *Drake* v. *Att'y-Gen.*, 10 Cl. & Fin., 257; *Re Griffiths*, 14 M. & W., 510; *Re Booth's Trusts*, 16 O. R., 429.

McDOUGALL, Surrogate Judge: The fees objected to are not chargeable in this matter, as the $239,253 is trust estate in which testator had no beneficial interest whatever, and merely passed by this will the like estate to other trustees.

Province of Nova Scotia.

SUPREME COURT.

EN BANC.] [Feb. 20.

HILLMORE *v.* COLBOURNE.

Constitutional law—Highway Labor Act—Liability of Dominion employe—Income derivable from Dominion source.

Plaintiff was a surveyor of highways, and defendant a section man employed on the I. C. R. by the Government of Canada. In accordance with

the provisions of c. 47, sec. 20, R. S. N.S. (an Act requiring all the ratepayers of a section, without distinction, to perform certain labor on the highways, or pay a reasonable per diem commutation), plaintiff notified defendant to work on the highway, and upon the latter's non-compliance, an action was brought to recover the forfeiture provided by the above Act. Defendant pleaded the character of his employment, that he could not obey the direction of the surveyor without impairing the railway service; that the penalty, if enforced, would come out of an income derived from a Dominion source. On these grounds defendant sought to establish that the above Act was ultra vires of the provincial legislature. On appeal from the County Court,

Held (MACDONALD, C.J., dissenting), that it was perfectly within the competence of the local legislature to pass such an Act; that a compliance therewith did not necessarily involve the absence of defendant from his duty, and that he could not be exempted from the operation of the law merely because he happened to derive an income from a Dominion source. *Leprohon* v. *Ottawa*, 20 A. R. 522, distinguished.

J. A. Chisholm and *H. C. Borden*, for appellant.

Longley, Attorney-General, for respondent.

RITCHIE, J.
In Chambers.

[Feb. 21.

GRAY *v.* WALLACE.

Amendment of address on writ—Judicial notice of facts—Waiver of irregularity by absolute appearance—Stay until amendment.

The address of B., one of the plaintiffs, as indorsed on a writ of summons was "Dresden, Germany." A conditional appearance was entered by all of defendants, among whom was McL., but the latter subsequently by a different solicitor entered an absolute appearance. Defendants moved to compel plaintiffs to amend the writ by giving a proper and better address of B., or in the alternative to have proceedings stayed. Neither party adduced evidence to show what kind of a place "Dresden" was, whether city with numbered streets, or village, etc.

Held, that as the object of O. 4, r. 1, which requires plaintiff's solicitor to indorse on the writ the address of plaintiff, was doubtless to enable defendant to find plaintiff if he so desired, or to make inquiries respecting him, and as the address given was obviously insufficient for that purpose if D. were anything more than a mere village (and judicial notice could not be taken of any of these matters), plaintiffs must amend their writ by giving the full and proper address of B., and in default thereof that further proceedings should be stayed.

Held also, that defendant McL. had waived the irregularity by entering an absolute appearance, and unlike the defendants, who had appeared conditionally, was not entitled to a stay until amendment of the address was duly made.

W. Macdonald, for plaintiffs.

T. Wallace, for defendants.

RITCHIE, J.
In Chambers } [Feb. 26.

BROOKFIELD *v.* SUTCLIFFE.

Setting down for trial—Counter-claim and reply—When cause at issue.

Besides pleading a defence to plaintiff's claim, defendant raised a counter-claim to which in due course plaintiff replied. Before the expiration of 21 days after the delivery of the reply, plaintiff moved under a special rule which provides that certain causes may be set down for trial on motion of either party after the action is at issue.

Held, that as the answer or reply to a counter-claim must be treated as a defence to an action, the defendant in the suit had the same time to reply to it as the plaintiff would have in reply to a defence in an action in which there was no counter-claim.

That the cause not being on that account at issue, the motion to set down for trial was premature.

Application dismissed, but not with costs, as defendant's objection was technical in character, and as he had not shown that his case would have been prejudiced in the event of the cause being set down for trial.

Fulton, for plaintiff.

J. A. Chisholm, for defendant.

TOWNSHEND, J.
In Chambers. } Mar. 6.

CURRIE *v.* HIRSCHFIELD.

Striking out defence—Interlocutory application—Substantial question for trial.

On the dissolution of a partnership between plaintiff and defendant, F. H., the latter, in consideration of a sale to him of plaintiff's share in the business, gave a promissory note in which his father, G.H., also joined as maker. For convenience, as alleged by plaintiff, the note was made payable to plaintiff's mother, who subsequently, before maturity, indorsed the same to plaintiff. To an action on the instrument, defendants, the makers, pleaded: (1) That the contract of defendant G.H. was one of guaranty, and void, because not in writing as required by the statute. (2) That the note being made payable to the mother of plaintiff from whom no consideration moved, was bad in its inception. (3) That the note was made in favor of plaintiff's mother for the purpose of hindering, delaying and defrauding the creditors of plaintiff. On motion to strike out defence as false, frivolous and vexatious,

Held, that the defence raised serious and substantial questions of fact and law which could not be disposed of on an interlocutory application.

Motion dismissed.

Russel, Q.C., for defendants.

King, Q.C., for plaintiff.

Province of New Brunswick.

SUPREME COURT.

EN BANC] [Feb. 7.

MCLEOD *v.* THE UNIVERSAL MARINE INSURANCE COMPANY.

Marine insurance—Valued policy.

The female plaintiff sued on a valued policy to recover $2,201.25. The ship was valued in the policy at $22,000. The plaintiff was the registered owner of the 64 shares which were subject to a mortgage. Outside of the policy in suit, plaintiff had $16,000 on another policy; the mortgagee had $5,000, and the ship's husband had $5,000, on the hull, in which he had no interest, but swore the policy was really a disbursement policy. All the insurance except that involved in this suit had been paid, and defendants claimed that as the amount of insurance already paid was greater than the value of the vessel stated in the policy in suit, the plaintiff was precluded from recovering. There was evidence to show that the real value of the ship was greater than $22,000. The judge below gave judgment for the plaintiff.

On appeal the judgment was sustained.

Currey, Q.C., for plaintiff.

Armstrong, Q.C., and *Blair*, Attorney-General, contra.

There was an interesting point with reference to practice decided in this case also. During the progress of the trial the defendants wished to have the plaintiff's books brought into Court, but had not subpœnaed plaintiff. They asked for an adjournment to permit of their doing so, which was refused by the trial Judge on objection being taken, and this decision of the trial Judge was also upheld by the full Court.

EN BANC] [Feb. 7.

LEE *v.* WALLACE.

Practice—Equity court—Married woman liable in equity under Col. Stat., c. 72

The defendant who is a married woman, employed plaintiff to make certain repairs to a building, which plaintiff did. Being unable to get payment of a balance, which he alleged was due under the contract, he filed a bill in equity to compel payment. The defendant demurred to the bill on the ground that a married woman could not be proceeded against under c. 72, Col. Stat. TUCK, J., upheld the demurrer and ordered the bill to be dismissed. The plaintiff appealed to Supreme Court of New Brunswick.

Held, per BARKER, LANDRY and VANWART, JJ. (HANINGTON, J., dissenting) that a married woman is liable in equity for her contracts during coverture, and may be sued in the Equity Court.

TUCK, J.)
In Chambers.)

[Feb. 11.

BUSSING *v.* MCLAUCHLAN

Col. Stat., c. 38—Imprisonment on judgment—Means to pay.

Plaintiff held a city court judgment against defendant, whom he brought before FORBES, Co. J., for examination under Col. Stat., c. 38. The defendant

on examination admitted that since the recovering of the judgment, he had means to pay it. Plaintiff then made an affidavit setting out this fact and applied ex parte for on order to imprison the defendant under sec. 32, s-s. 1, which provides for the imprisonment of any person making default in payment of any sum due from him in pursuance of any order or judgment of the Court, provided "that the person making default has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same." The County Judge ordered the imprisonment of the defendant.

The matter was re-heard before TUCK, J., who discharged defendant on the ground that all the circumstances had not been revealed at the previous hearing.

Montgomery, for plaintiff.

Skinner, Q.C., for defendant.

EQUITY COURT.

BARKER, J.] [St. John, Feb. 25.

IN RE HOPPER, INFANTS

Practice—Equity Act, 1890, sec. 175—Equity will not grant license to sell real estate for benefit of infants where there are debts remaining unpaid.

The petitioner was the administratrix of the estate of the infants' father. No personal estate existed, and the real estate consisted of a farm valued at about $1,200, but subject to a mortgage of over $600. The petition disclosed the fact that the intestate left debts unpaid amounting to $224. Leave was asked to sell the real estate on the ground that it was necessary for the infants' support and to prevent deterioration of the value of the property.

Held, that as there were outstanding debts remaining unpaid the Probate Court was the proper tribunal to adjudicate upon these debts; that the Equity Court could not order the property sold and the money paid to the infants until the debts were paid; that the Equity Court could not order the moneys received under sec. 175 of Equity Act, 1890, to be paid out in any way except for the benefit of the infants; and that the license applied for should have been asked of the Probate Court, or (under the circumstances) the estate wound up in the Probate before applying to the Equity Court.

Application refused.

Barnhill, for applicant.

BARKER, J.] [St. John, Feb. 27.

HEGAN *v.* MONTGOMERY.

Practice—Production of documents—The correct practice to compel production of documents is under sec. 59 of Equity Act, and not under sec. 61, in the first instance.

The plaintiff filed a bill in equity against defendant to set aside a release executed by the plaintiff, on the ground of fraud; and also for an accounting. On January 11th, defendant obtained a summons under sec. 61 of the Equity

Act, 1890, calling upon the plaintiff to show cause why the latter should not produce certain papers alleged to be in his possession. The defendant's affidavit supporting the summons stated that it was impossible for him to fully answer plaintiff's bill unless these papers were produced for the purpose. The plaintiff denied having the papers in his possession or under his control.

Held, that the correct practice was to have applied for an order under sec. 59 of the Equity Act, 1890, in obedience to which the plaintiff would have been obliged to disclose under oath such papers as he had in his possession relating to the matter in question. If that affidavit were insufficient, then a summons might be taken out compelling further affidavits. When the documents are shown by the affidavit of the party to be in his possession, then under sec. 61 an application may be made for their production.

Held also, that if the defendant could not answer fully without the production of these documents, and the plaintiff on request refused to produce them, the Court would not treat an answer insufficient by reason of the plaintiff's own act.

The following authorities were cited: Daniel's Prac., 1823, *Panfold* v. *Munn*, 5 Sim. 409; *Kelley* v. *Eckleford*, 5 Paige, 548.

Application refused without costs.

Currey, Q.C., for applicant.

Coster, contra.

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.] [Feb. 15.

SYLVESTER *v.* PORTER.

Mistake—Contract—Reforming of agreement—Evidence to rectify agreement—Agreement—Agreement to guarantee notes.

This was an appeal from a judgment of a County Court in favor of defendants.

The plaintiffs, a firm of dealers in agricultural implements, employed the defendants as their agents for the sale of their goods at Portage la Prairie. Their relations for the year 1890 were governed by a formal contract in a printed form, with a few additions and alterations in writing.

Among other provisions of the printed form was an agreement by the defendants to endorse all notes taken in settlement. In 1890 the parties signed another document by which the plaintiffs purported to appoint the defendants as their agents for the year 1891. This instrument, also, was on a printed form, with a few alterations and additions in writing. By one printed clause not found in the contract for 1890, the defendants agreed to guarantee payment of all notes taken in settlement for machinery; but the agreement to endorse, also in the printed form, was struck out, and there was inserted, in writing, a provision that any notes found to be unsatisfactory or uncollectible before the 1st

of January, 1892, were to be taken by the defendants for commission, whether they should then be due or not.

The plaintiffs sued the defendants as guarantors of the payment of a certain promissory note taken for goods sold in 1891. The defendants denied the alleged guarantee, and also pleaded that their signatures to the agreement for 1891 were obtained by fraud.

Evidence was given on the part of the defendants, to show that in the course of negotiations for the contract for 1891, the defendants expressly stipulated that they were not to be responsible for notes to be taken, except that the plaintiffs were to be allowed a period ending on the 1st of January, 1892, to investigate the quality of notes taken by the defendants who were to accept on account of commission any which were objected to within that period, after which their responsibility was to cease, and that this was agreed to by the plaintiffs. Further that the contract was prepared and produced to them by one of the plaintiffs, and was signed by them without reading it over, and without knowing that it contained the clause relating to a guarantee of notes. On the other hand, one of the plaintiffs gave evidence in denial of all this.

The Judge of the County Court found in favour of the defendants upon the issues of facts thus raised, but did not find whether the plaintiffs had been guilty of any fraud or misrepresentation in procuring the defendants' signatures to the contract.

Held, that in order to reform an instrument purporting to contain the agreement of the parties, the evidence to vary the language must be of the clearest and most satisfactory character, and the party seeking the rectification must also establish that the alleged intention to which he desires it to be made conformable continued in the minds of all parties down to the time of its execution, and as the County Court Judge, in giving his reasons for the decision, did not state that in his opinion the evidence was overwhelming and perfectly clear and satisfactory, the verdict should have been set aside or a new trial granted, but for the other objection to the plaintiff's recovery.

The defendants' undertaking, as proved in evidence, was that they agreed to guarantee any notes taken by them, but no demand was ever made upon them to sign any guarantee of any particular note, and the claim in this action was found as upon an alleged guarantee of the particular note in question.

Held, that the proper construction of the agreement was, that it provided for the execution of some further instrument, and was not one of present guarantee of the notes to be given in future, and as this was not an action for damages for neglect or refusal to enter into a guarantee, the plaintiffs were not entitled to a verdict or to have the judgment in favor of defendants set aside to enable them to change the form of the claim.

Appeal dismissed with costs.

Howell, Q.C., for plaintiffs.

Martin, for defendants.

Province of British Columbia.

SUPREME COURT.

DAVIE, C. J.] [Feb. 12.

WERT *v.* MCEACHRON ; MCDONALD, Claimant.

Assignment for benefit of creditors—Homestead exemption—Partners—Wages Act—Corporation—Preference.

McEachron and others, partners, made an assignment for the benefit of creditors to Wert, and subsequently claimed a boom of logs and a logging outfit as chattels exempt under the Homestead Exemption Act. The deed of assignment reserved such chattels as would be exempt from seizure under execution, without specifying them particularly. McDonald claimed as a preference creditor of McEachron under the "Wages Act," by virtue of an assignment from the B. S. M. Co., a corporation, of a debt incurred for the hauling of the particular logs for which exemption was claimed.

Held that the Homestead Amendment Act, 1890, does not modify the absolute exemption provided by the Homestead Act.

The Homestead Amendment Act 1893, applies, and the debtor is not entitled to exemption with respect to the boom of logs. The word "debtor" includes the plural number (Interpretation Act, sec. 13, sub-sec. 12), and therefore the partners are entitled to exemption as regards the logging outfit.

A corporation is not a "person" entitled to claim wages within the meaning of the Wages Act.

McDonald, having enforced his right under the Homestead Act Amendment Act, 1893, before the assignment for the benefit of creditors, has no preference, and the general body of creditors are entitled to the proceeds of the boom of logs.

Shaw, for plaintiff.

Miller, for defendants.

Reid, for claimant.

WALKEM, J.]

HUDSON BAY COMPANY *v.* KEARNS & ROWLING.

Equitable mortgage—Foreclosure of registration of a deed as a charge—Registry certificate issued without production of title deeds or affidavit void.

Miss Kearns owed the H.B. Co. a sum of money, and to secure them agreed to give a mortgage on some lots in Vancouver. B.C. She accordingly left her title deeds and registry certificate with the company's solicitor to have mortgage drawn up. The solicitor neglected to draw up mortgage, but retained the papers. Later on Kearns sold the lots to Rowling and executed a deed to Rowling, and told him she could not give him the title deeds and certificate of registration for some days, but offered no explanation of the absence of them or her inability to produce them. She never produced title deeds nor certificate. Rowling registered his deed as a charge against the property. H. B.

Co. sued for foreclosure of their equitable mortgage joining Rowling in the suit. Kearns did not appear. The trial judge dismissed the suit as against Rowling with costs. Plaintiff appealed to the full Court, which ordered a new trial, costs to abide the result of the new trial.

Held, that the Rowling deed was unlawfully registered as a charge, (the title deeds not being produced nor an affidavit to account for their absence) and must be cancelled.

Held, also, that said deed could not vitiate plaintiff's equitable mortgage and that plaintiff must have foreclosure of the mortgage with all costs.

Davis, Q.C., for plaintiff.

McPhillips, Q.C., for defendant.

North-West Territories.

SUPREME COURT.

EN BANC] [Regina, Dec. 5, 1895.

CONGER *v.* KENNEDY.

Married women's personal property ordinance—Husband's rights to chattels of wife—N. W. T. Act, ss. 36-40.

Appeal from judgment of ROULEAU, J., dismissing action to recover from administrator of deceased husband, possession of certain chattels belonging to the wife prior to her marriage on 11th Dec., 1889, and transferred by her to plaintiff.

Held, that Ordinance 16 of 1889 (repealed by 20 of 1890) did not confer on married women any greater powers of holding personal property than was conferred by the North-West Territories' Act, R.S.C., c. 50, ss. 36-40, and that except as to the classes of personal property specified in the last mentioned Act, the common law rights of the husband to the personal property of his wife still existed after the passing of the said Ordinance 16 of 1889, and the words "her personal property" in said Ordinance are to be taken as meaning, "whatever was, at the time of the passing of the Ordinance, under the law as it existed, her personal property."

Appeal dismissed with costs, WETMORE, J., dissenting.

P. McCarthy, Q C., for appellants.

C. C. McCaul, Q.C., for respondent.

An appeal is being taken to the Supreme Court of Canada.

SOUTHERN ALBERTA JUDICIAL DISTRICT.

ROULEAU, J., In Chambers. [Jan. 22.

REGINA *v.* WHITE.

Liquor license ordinance—Appeal from conviction.

This was an appeal from a conviction by a Justice of the Peace for an offence under sec. 64 of Ord. 18 of 1891-92.

Held, that the provisions for appeals prescribed by ss. 124-125 apply only to appeals from convictions for offences punishable under sec. 91, and the

proper procedure in case of a conviction for an offense under sec. 64 is that provided for by sec. 120.

P. McCarthy, Q.C., for defendant (appellant).

C. C. McCaul, Q.C. for North-West Government and prosecutor (respondents.)

WESTERN ASSINIBOIA JUDICIAL DISTRICT.

RICHARDSON, J.
In Chambers

[Jan. 10.

ROSS *v.* MACKINTOSH.

Irregular judgment—Setting aside preliminary objections—Judicature ordinance, ss 540, 542—Varying judgment—Judicature ordinance, sec. 95 and E. Rule 308.

Plaintiffs sued on three promissory notes and entered judgment by default of appearance. Subsequently defendant, on an affidavit that he was entitled to credit of $60 paid on account of one of the notes sued on, which sum had not been credited in statement of claim, obtained a summons to show cause why the judgment should not be set aside. The objections to the judgment were not stated in the summons, nor was a copy of defendant's affidavit served. On preliminary objection that the summons did not comply with sec. 542—objection overruled—and

Held, that the summons was to be treated as amended under sec. 540, and as objecting to the judgment as being for an excessive amount: *Baillie* v. *Goodwin*, 33 C.D. 604; *Petty* v. *Daniel*, 34 C.D. 180.

Upon the hearing on the merits the plaintiffs filed an affidavit of their book-keeper controverting defendant's assertions and stating that the judgment was for the amount justly due. On behalf of the plaintiffs it was contended that the case differed from *Hughes* v. *Justin*, 9 Reps. 213; *Anlaby* v. *Praetorius*, 20 Q. B. D. 764, and *Rodway* v. *Lucas*, 10 Ex. 667. in that here the parties were at issue quoad the $60, while in cases cited there was no room for any issue that the affidavits disclosed alleged merits for defence only, consequently defendant could only have the judgment reduced by $60, and trial of an issue quoad the $60 upon terms, and that in any event the judgment should only be varied by being reduced, as section 95 gives the Court or a Judge power to do this, in which respect it differs from E. Rule 308.

For the defendant it was contended that the judgment was irregular and for an excessive amount—that the entry of it was an abuse of the process of the Court, that the defendant was entitled ex debito justitiæ to relief.

Held, that the plaintiffs had no right to enter judgment for the amount they did, that the judgment as signed was irregular, that were it not for the power to vary given by section 95, in addition to the powers contained in E. Rule 308, there would be no other course open than to order the judgment set aside ex debito justitiæ. Order that the Clerk of Court revise the calculation from the plaintiffs' statement of claim on file, and credit $60 and interest from date of payment; tax defendant's costs of application, and, crediting same, amend the judgment by inserting the amount resulting as above in the place of the sum at which it then stood.

Hamilton, Q.C., for applicant.

Ford Jones, for plaintiffs.

REVIEWS.

Outlines of Legal History. By ARCHER M. WHITE, of the Middle Temple and of the Midland Circuit. Swan, Sonnenschein & Co. (Lim.), Paternoster Square, E.C., London, 1895; and The Copp, Clark Co., Toronto.

This is a useful little volume. The author says that he attempts to supply a want which his experience in preparing pupils for legal examinations has convinced him exists. He says truly that a complete history of the English law has yet to be written, and, if written, would fill more than one ponderous volume, and would be beyond the reach of many who may find in the book before us some help in getting an elementary knowledge of legal history.

The book is divided into chapters covering the following points: Principal courts and their history—Minor and obsolete courts—The Saxon legal system—The Norman legal system—Constitutional and general matters—Common law and equity—Criminal law, with appendices, tables and index. The author has succeeded in producing a book which will, though the information is very condensed, interest the student in the "dry bones of past periods of legal evolution."

A Treatise on the Law of Landlord and Tenant. By S. R. CLARKE, Barrister-at-law, Author of "The Criminal Law of Canada," etc.; Toronto, The Carswell Co., (Ltd.), 1895.

The author in his preface says that he has attempted to embody, as nearly as possible, the whole law governing the relations of landlord and tenant, and, in addition to the cases decided in Great Britain and Ireland, he claims to have cited those of the various provinces of the Dominion, with a considerable number from the Australian colonies, also a number of references to American cases, decided in the Courts of last resort during the last few years. He can scarcely have done all that he claims; but he has done a good deal, and given the profession a useful collection of authorities, which would appear to be carefully arranged under appropriate heads. The author, although he refers to, does not discuss the recent Act, which has lately engaged the attention of the legal press, as well as of the judiciary.

The typographical execution of the work does not come up to the standard of the more recent productions of the Toronto publishing houses. The work being, however, on a popular subject, and containing such a large collection of cases, will probably find a ready sale.

LAND TITLES ACT.

NEW RULES—FEBRUARY 27, 1896.

Absolute or Qualified Title.

No. 81. The words "and a certificate of one of his counsel or solicitors" are hereby struck out of Rule 3, sub-section 5 of The Land Titles Act of 1890, and Rule 5 of the said Rules is hereby repealed.

Publication of Notice.

No. 81. (1) If the value of the property does not exceed $3,000, the Master, instead of causing notice of the application to be advertised in the manner prescribed by Rule 10, may direct that a printed or typewritten general notice, or several copies thereof, shall be posted upon the property in a conspicuous place or places, and a copy thereof mailed by registered post addressed on the outside to the occupant of each contiguous property which is occupied, or instead of being mailed, left at the residence of the occupant, or in case any contiguous property in unoccupied, then mailed to the occupant of the nearest occupied property, lying at the same side as such unoccupied contiguous property, or left at the residence of such occupant.

(2) Where several persons belonging to the same family occupy any property, the head of the family for the time being shall be deemed the occupant within the meaning of this rule, and where there is any doubt to whom a copy of the notice should be mailed, or who should be served, the Master shall give directions in respect thereof.

Tariff of Fees.

No. 83. (1) In lieu of the fees chargable for First Registration, under the tariff established by the said rules of 1890, the following shall be charged :—

	Where the Title is possessory	Where title is absolute or qualified and number of instruments requiring to be examined does not exceed 10.	Where title is absolute or qualified and number of instruments requiring to be examined exceeds 10.
Where the value of the property being registered does not exceed $1,000	$2 50	$4 00	$6 00
Where such value exceeds $1,000 and does not exceed $2,000	3 00	5 00	9 00
Where such value exceeds $2,000 and does not exceed $4,000	4 00	8 00	12 00
Where such value exceeds $4,000 and does not exceed $10,000	5 00	10 00	20 00
Where such value exceeds $10,000 and does not exceed $20,000	5 00	12 00	25 00
Where such value exceeds $20,000 and does not exceed $40,000	7 00	15 00	30 00
Where such value exceeds $40,000 and does not exceed $50,000	8 00	20 00	40 00
Where such value exceeds $50,000	8 00	20 00	50 00

(2) Where oral depositions have to be taken, or notices served upon persons appearing to have adverse claims, or where there is a contest, the fees provided by the said tariff in respect of such matters shall also be charged. The disbursements of the Master for postages and for registration of certificates in the registry office shall likewise be payable by the applicant. (3) In case two or more distinct properties are embraced in the same application, fees shall be payable as if the registration of such properties had been applied for separately.

PERSONALIA.

REMINISCENCES OF OLD WENTWORTH.

The Bar of Wentworth during the late Judge Logie's term of office as County Judge, will remember the singularly even temper of the Judge, and the expedition with which he disposed of Chamber work. When the late Judge S——t was appointed Junior Judge of Wentworth, it was observed that the Chamber sittings were not the usual fifteen or twenty minute sessions, but that students much affected this particular branch of the administration of justice machinery, and would appear with authorities unlimited, arguing their points at length, and frequently Chambers would adjourn for lunch to renew business in the afternoon, and sometimes argument would last on into the "dewy eve." A senior member of the Bar spoke to His Honor privately, hinting at the protracted nature of these Chamber sittings, in a genuine endeavor to shorten them, and having commiserated with the Judge for the length and arduousness of his duties in this particular, was not a little surprised to hear His Honor remark:—"Oh! bless you, I don't mind it, I learn plenty of law that way!" The anecdote was repeated to Chief Justice ——— when taking the assizes at Hamilton; he refused to smile at the joke, however, and remarked quite seriously, "Well, we all do that."

The Clerk of the Court over which Judge Logie presided, says that the only occasion upon which he saw the late Judge at all ruffled and put out, was upon a certain criminal trial which had been fixed for a certain day. The Court, the prisoner, his counsel and witnesses were all present at the time appointed, and after waiting forty minutes for the Crown prosecutor, a constable was despatched to ascertain the cause of this delay on the part of the Crown. The constable returned in due course, and in a loud voice announced from the entrance to the Court room, "Mr. Freeman has gone fishing!"

X. PARTY.

Requiring a train crew to be on duty nineteen hours each day without time for food, is held in *Pennsylvania Co.* v. *McCaffrey* (Ind.), 29 L.R.A. 104, to be the proximate cause of an injury to a track hand by trains backing on him without warning, while members of the crew were away from the train in search of food; and the company was held liable for such injury.

LAW SOCIETY OF UPPER CANADA.

THE LAW SCHOOL.

Principal, N. W. Hoyles, Q.C. *Lecturers*, E. D. Armour, Q.C.; A. H. Marsh, B.A., LL.B., Q.C.; John King, M.A., Q.C.; McGregor Young, B.A. *Examiners*, A. C. Galt, B.A.; W. D. Gwynne, B.A.; M. H. Ludwig, LL.B.; J. H. Moss, B.A.

ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled. Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School in some cases during two, and in others during three, terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law. The course in the School is a three years' course. The term or session commences on the fourth Monday in September, and ends on the last Monday in April, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day, and another at Easter, commencing on the Thursday before Good Friday and concluding at the end of the ensuing week. Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk, before being allowed to enter the School, must present to the Principal a certificate of the Secretary of the Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term. Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practice in Ontario, are allowed, upon payment of the usual fee, to attend the lectures without admission to the Law Society. Attendance at the School for one or more terms is compulsory on all students and clerks not exempt as above.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. Students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and their attendance upon the third year's lectures between the fourth and fifth years of their attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lectures. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceding year has been duly passed, and a student or clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year.

The course during each term embraces lectures, recitations, discussions and other oral methods of instruction, and the holding of moot courts under the

supervision of the Principal and Lecturers. On Fridays moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or Lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court. At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept. At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday and Thursday. Printed schedules showing the days and hours of all the lecturers are distributed among the students at the commencement of the term. The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society. The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the School course respectively. The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper. Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

Students whose attendance upon lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations, either in all the subjects or in those subjects only in which they failed to obtain fifty-five per cent. of the marks obtainable in such subjects. Those entitled, and desiring, to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society at least two weeks prior to the time of such examinations, of their intention to present themselves, stating whether they intend to do so in all the subjects, or in those only in which they failed to obtain fifty-five per cent. of the marks obtainable, mentioning the names of such subjects. The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

HONORS, SCHOLARSHIPS AND MEDALS.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examinations. An examination for Honors is held, and medals are offered in connection with the

final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor. In order to be entitled to present themselves for an examination for Honors candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following: Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact. The medals offered at the final examinations of the Law School are the following: Of the persons called with Honors the first three shall be entitled to medals on the following conditions: *The First:* If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal. *The Second:* If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal. *The Third:* If he has passed both intermediate examinations with Honors, to a bronze medal. The diploma of each medallist shall certify to his being such medallist. The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

CURRICULUM.

FIRST YEAR.—*Contracts.*—Smith on Contracts. Anson on Contracts. *Real Property.*—Williams on Real Property, Leith's ed., Deane's Conveyancing. *Common Law.*—Broom's Common Law. Kerr's Stud. Blackstone, Bks. 1 & 3. *Equity.*—Snell's Equity. Marsh's History of Court of Chancery. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.—*Criminal Law.*—Kerr's Stud. Blackstone, Bk. 4. Harris's Criminal Law. *Real Property.*—Kerr's Stud. Blackstone, Bk. 2. Leith & Smith's Blackstone. *Personal Property.*—Williams on Personal Property. *Contracts.*—Leake on Contracts. *Torts.*—Bigelow on Torts, English ed. *Equity.*—H. A. Smith's Equity. *Evidence.*—Powell on Evidence. *Canadian Constitutional History and Law*—Bourinot's Manual of Constitutional History of Canada. O'Sullivan's Government in Canada. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.—*Contracts.*—Leake on Contracts. *Real Property.*—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles. *Criminal Law.*—Harris's Criminal Law. Criminal Statutes of Canada. *Equity.*—Underhill on Trusts. Kelleher on Specific Performance. De Colyar on Guarantees. *Torts.*—Pollock on Torts. Smith on Negligence, 2nd ed. *Evidence.*—Best on Evidence. *Commercial Law.*—Benjamin on Sales. Smith's Mercantile Law. Maclaren on Bills and Notes. *Private International Law.*—Westlake's Private International Law. *Construction and Operation of Statutes.*—Hardcastle's Statutory Law. *Canadian Constitutional Law*—Clement's Law of the Canadian Constitution. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice, and procedure of courts. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal

NOTE.—In the examinations of the second and third years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.