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DIARY FOR MARCH.

17. Wed ...St. Patrick's Day.
18. Thur...Arch. McLean, 8th C. J. of Q. B., 1862.
19. Fr .....P. M. Vankoughnet, 2nd Chancellor, 1862.
20. Sat.....Lord Mansfield died 1773, æt. 89.
21. Sun.....*2nd Sunday in Lent.*
25. Thur...Lady Day, or Annunciation of B. V. Mary.
28. Sun.....*3rd Sunday in Lent.* Lord Romilly app. M.R., 1851.
30. Tues...B. N. A. Act assented to, 1867. Reformation in England began 1534.

TORONTO, MARCH 15, 1886.

AN old and valued correspondent, one of the best of our County Court judges, sends us the correspondence which took place between him and a person who desired to be appointed a commissioner for taking affidavits in his county. We publish the letters in another place. The correspondence contains food for thought for some other county judges, as well as for the justices of the High Court, on the subject therein referred to. If commissions were only granted to professional men (except under very peculiar circumstances) much injustice would be prevented.

IT seems very strange that those who are specially appointed to protect the interests of their brethren are either too regardless of their duties in this respect, or are otherwise unable to suggest anything to protect the fee-paying lawyer from the depredations of the ignorant, unlicensed harpies who are taking the bread out of the mouths of those who have a clear right to be protected. Perhaps if we had a few more men as benchers from the ranks of the solicitors and a few less leading counsel it might be an advantage. The latter, so long as their fees are paid by the solicitors who employ them, do not feel the shoe pinch, and are either forgetful or careless (perhaps both) of the struggles of country practitioners and the injustice to which they are subjected.

IT is a constant and recurring source of astonishment that the Attorney-General on the one hand (whose duty it ought to be), and the leader of the opposition on the other (who ought to call him to account), take no action in this matter. We presume they would lose some votes if they did the honest thing in the premises; and thus the rights of the profession are sacrificed on the party altar. We are constantly receiving letters on this subject, and publish some of them in this issue. We, at least, have not ceased to call attention to the wrong done. Numerous suggestions have been made, some of which are surely feasible. We add another, extracted from a letter now before us: Let the Legislature establish a tariff of fees which would satisfy the public, and make all persons who do conveyancing obtain certificates of qualification from the Law Society. We do not say this is the best suggestion; we only plead with those in authority to do *something*. There is a story of two shipwrecked sailors which is somewhat in point, though we doubt its authenticity. Death was imminent. Human aid seemed impossible. An appeal for Divine assistance by prayer or hymn came not to their uncircumcised lips; but something had to be done, and so they took comfort in the suggestion of "taking up a col-

lection." We concur in the admitted imbecility of the trustees of the profession in this matter, but perhaps they might summon sufficient energy to take up a collection for those whose interests they neglect.

WE are glad to have received the third edition of Mr. Holland's well-known work on Jurisprudence.* In it the author tells us he has throughout taken account of the development both of positive law and of legal theory in England and other countries during the last three years. The book has acquired far too excellent a reputation to need any special words of commendation now. It is impossible for any lawyer to read it without getting his ideas upon the fundamental principles of law very much systematized and made more clear and exact. The whole field of law is traversed by the author, and is divided and subdivided in such method as, in his view, best exhibits the scientific order of legal ideas. The work is, and has been, since its first publication, a leading text-book on the curriculum of the jurisprudence school at Oxford, and we would submit to the Benchers of the Law Society that it might advantageously be included among the books required to be read on the final examinations. Sir Henry Maine's works are of very different scope and object, dealing with the historical development of legal ideas and institutions, on which Professor Holland touches but slightly. Holmes on the Common Law again occupies a field of labour more akin to that of Sir Henry Maine than of the work before us. Amos' Systematic View of the Science of Jurisprudence, indeed, deals with the relations between legal ideas, but we fancy no one would compare the mental benefit to be derived from the perusal of the two works respectively. Austin is discursive, and, moreover, fragmentary and incomplete, and we know of no worker in the same field who has produced anything so valuable and able as these Elements of Jurisprudence by Professor Holland.

* "The Elements of Jurisprudence," by Thomas Erskine Holland, D.C.L., Clinbele Professor of International Law and Diplomacy, and Fellow of All Souls College, Oxford. Third edition. Clarendon Press, 1886.

RECENT ENGLISH DECISIONS.

The *Law Reports* for January comprise 16 Q. B. D. pp. 1-116: 11 P. D. pp. 1-13; 31 Chy. D. pp. 1-119; there are not, however, many cases requiring notice.

SOLICITOR AS WITNESS—PRIVILEGE—HOW FAR SOLICITOR BOUND TO DISCLOSE CLIENT'S NAME.

Commencing with the cases in the Queen's Bench Division the first to be noted is *Bursill* v. *Tanner*, 16 Q. B. D. 1. In this case judgment had been signed against a married woman, and an inquiry directed whether she was possessed of any separate estate. The solicitor to the trustees of her marriage settlement was called as a witness by the plaintiff on this inquiry, and stated that the deed of settlement was in his possession as solicitor to the trustees, but he objected to state the names of the trustees, or produce the deed, on the ground of professional privilege. Smith, J., had made an order in Chambers overruling the solicitor's objections. The solicitor appealed to the Divisional Court, which affirmed Smith, J., and the present decision is upon a further appeal by the solicitor to the Court of Appeal. The Court of Appeal affirmed the Court below. Cotton, L.J., says:

The privilege only extends to confidential communications. . . In my opinion the names of the trustees did not constitute such a communication. . . There is also another ground for compelling the disclosure of their names. The solicitor claims this privilege as that of his clients. He must then state the names of the persons for whom he claims the privilege.

As to the production of the deed, Lord Esher, M.R., says:

Though there may be no case that exactly decides the point, yet many cases seem to assume that

their can be no such privilege, unless the client could refuse to produce the deed.

As Lindley, L.J., observes, very justly, if the law were otherwise than it is decided to be in this case, "judgments in favour of creditors against married women would, in many cases, be useless."

AFFIDAVIT OF SERVICE—WRIT SERVED OUT OF JURISDICTION.

In *Ford* v. *Miesske*, 16 Q. B. D. 57, a Divisional Court held, that where a writ is served out of the jurisdiction, a certificate of service of the process could not be received in lieu of an affidavit of service, even though it appeared that by the law of the country where the service was effected, the process server could not make an affidavit as required by the Rules.

RULE IN SHELLEY'S CASE—EQUITABLE ESTATE—REMAINDER—POWER OF SALE.

What the Statute of Frauds is in the law of contracts, such is the rule in Shelley's case, in the law of real estate—a perennial fountain of litigation. *Richardson* v. *Harrison*, 16 Q. B. D. 85, is a decision of the Court of Appeal touching the rule in Shelley's case. By a will made in 1833 a testatrix devised lands to trustees in fee, upon trust for her daughter during her life, and after her decease upon such trusts for the lawful child or children of the daughter as she should by deed or will appoint; and in default of appointment in trust for the daughters' heirs. The testatrix directed that the receipts of the daughter should be a discharge to the trustees, and that she should hold the property to her separate use, free from the debts or control of any husband she might marry. The trustees were also empowered to sell the land with the consent of the daughter, "or other the persons or person who shall be beneficially interested under the trusts." The daughter, after her mother's death, conveyed the land to the defendant in fee, and died without having been married. The action was brought by her heir-at-law to recover possession of the land. The Court of Appeal (overruling the judgment of a Divisional Court composed of Manisty and Wills, JJ.,) held that the daughter, under the rule in Shelley's case, took a fee. It is curious to note the various opinions which modern judges entertain with regard to the merits of this rule. In the present case Lord Esher, M.R., goes so far as to say that it is a decision which he could never understand how anybody could come to.

It is a well-known doctrine that in order that the rule can operate, the two estates which are sought to be joined together, must be both legal, or both equitable. A legal estate for life will not coalesce with an ultimate equitable remainder in fee, nor will an equitable estate for life coalesce with a legal remainder in fee, and the question in this case was whether the ultimate remainder in fee of the daughter was a legal or equitable estate: if the former, the rule in Shelley's case would not apply; if the latter, it would, as it was conceded the daughter's life estate was an equitable one. In arriving at the conclusion that the legal estate was vested in the trustees, and that consequently the daughter's remainder in fee was equitable, the Court was influenced by the consideration that the will gave the trustees power to reimburse themselves, and also a power of sale, which power could not be exercised without possession of the legal estate. But Cotton, L.J., dealt with the question as turning to a great extent upon the intention of the testatrix to be collected from the will. He says, at p. 108:

> The question generally is, whether in the will it is apparent that the testator intended the trustees to have the legal estate for any limited period, or for all time? On this ground, in construing wills, what has been done is this, to give the legal estate in accordance with what the Court sees is the intention of the testator; therefore, when there are words of trust or words of devise to trustees to uses or upon trusts, the Court executes the uses or the trusts, not by force of the Statute of Uses, but by giving the legal estate to the trustee or to the beneficiary according to what the Court sees to have been the intention of the testator.

DEFAMATION—PRIVILEGED COMMUNICATION.

The only remaining case to be noticed in the Queen's Bench Division is that of *Proctor* v. *Webster*, 16 Q. B. D. 112, in which Pollock, B., and Manisty, J., decided that a letter addressed by the defendant to the Lords of the Privy Council, charging the plaintiff with irregularities in the exercise of his office as Inspector under the Animals Contagious Diseases Act, the plaintiff being removable by the Privy

Council, was actionable on proof of express malice in the defendant, and was not privileged.

ALIMONY—INJUNCTION.

The only case in the Probate Division which seems to call for attention is *Newton* v. *Newton*, 11 P. D. 11, which was a suit by a wife for restitution of conjugal rights. The plaintiff applied for an interim injunction to restrain the defendant, her husband, from removing his property out of the jurisdiction, pending a motion for payment of interim alimony. The injunction was refused, Sir Jas. Hannen saying that "it is not competent for a Court, merely *quia timet*, to restrain a respondent from dealing with his property."

SECURITY FOR COSTS—INSOLVENT TRUSTEE IN BANKRUPTCY.

Taking up now the reports of the Chancery Division, the first case we think it necessary to call attention to is *Cowell* v. *Taylor*, 31 Chy. D. 34, in which the Court of Appeal held that a plaintiff suing as trustee in bankruptcy will not be required to give security for costs, merely because he happens to be personally insolvent. The only difficulty in the case arose from a *dictum* of Blackburn, J., than whom, as Bowen, L.J., says, "there has been no greater master of law or practice in recent times," and which occurs in *Malcolm* v. *Hodkinson*, 8 Q. B. 209, and which is as follows: "When an insolvent person is suing as trustee for another it has long been the rule to require security for costs," but this, the Court was unanimously of opinion, must be understood as referring not to trustees in bankruptcy, but to the case of an insolvent person suing as bare trustee for some one else, which was the explanation given of it by Hall, V.C., in *In re Carta Para Mining Co.*, 19 Chy. D. 457.

MORTGAGE—COSTS OF ABORTIVE SALE—FORECLOSURE—PERSONAL ORDER FOR PAYMENT.

In *Farrer* v. *Lacy*, 31 Chy. D. 42, the Court of Appeal was called on to determine two points; first, whether a mortgagee was entitled to the costs of an abortive sale under the following circumstances:—The mortgaged property had been put up at auction and sold, and the auctioneer, with the concurrence of the mortgagee, accepted a cheque for the deposit, which, on presentation, was dishonoured, in consequence of which the sale fell through. The Court held that the acceptance of the cheque was not such an act of negligence as to disentitle the mortgagee to the costs. The other question was as to the proper form of a judgment where a mortgagee claims both foreclosure and a personal order for payment on his covenant. The form settled seems substantially to agree with that usual in this Province, with this exception, that the personal order for payment of costs is limited to such costs only as would have been incurred if the action had been brought for payment only of the debt.

PAYMENT INTO COURT—ADMISSION BY DEFENDANT.

In *Porrett* v. *White*, 31 Chy. D. 52, the Court of Appeal affirmed the order of Chitty, J., directing the payment into Court of certain trust funds, admitted by the defendant to have come to his hands, and been invested by him in an unauthorized way. The admission was contained in letters written to the plaintiff, his co-trustee before action. After the action for the administration of the trusts was commenced, the plaintiff made an interlocutory application for payment of this sum into Court, adducing in support of the application the defendant's admission, as the defendant did not answer the affidavit or adduce any evidence, the Court held, that the order was rightly made.

HEARING IN PRIVATE.

Millar v. *Thompson*, 31 Chy. D. 55, is a case in which the plaintiff asked that an appeal by the defendant, from an interlocutory injunction restraining him from disclosing matters communicated to him as solicitor, might be heard in private. It being stated by the plaintiff's counsel, that in his opinion a public hearing would defeat the object of the action, although the defendant's counsel refused to consent, the Court under the circumstances ordered the appeal to be heard in private.

EXONERATION OF PERSONALTY FROM DEBTS—LAPSED BEQUEST.

Kilford v. *Blainey*, 31 Chy. D. 56, which we noted *ante*, Vol. xxi. p. 268, when before Bacon, V.C., is again reported on appeal from that decision. It will be remembered that the question in dispute was as to the effect of a will, whereby the testatrix bequeathed her personal estate to a charity, exonerating it from payment of debts and legacies. As to part of the per-

sonal estate, which savoured of realty, the bequest to the charity failed, and went to the Crown for want of next of kin. The question was whether the exoneration of the personalty applied to that portion of the bequest which went to the Crown, and Bacon, V.C. held that it did not; but the Court of Appeal, refusing to follow *Broom* v. *Groombridge*, 4 Madd. 495, varied the order of the Vice-Chancellor by directing that the debts should be apportioned between the pure and impure personalty, and that the freehold and leasehold estates specifically charged with payment of debts and legacies, should be applied in exoneration of the pure personalty, and declaring the Crown entitled to the impure personalty less the proportion of debts, etc., thrown upon it.

AMENDMENT—NEW CASE—DELAY.

Clark v. *Wray*, 31 Chy. D. 68, was an action for specific performance of an agreement to grant the plaintiff, who was in possession, a lease of a brickfield. The defendant delivered a defence admitting the agreement, and expressing his readiness to perform it; he also counter-claimed for rent alleged to be due under the agreement, and for labour and materials supplied the plaintiff. Three months after issue joined, and after notice of trial served, the defendant applied to amend by adding a claim for the recovery of the land; but Bacon, V.C., refused the amendment, on the ground of the amendment asked being substantially a new case, and also on the ground of delay.

WILL—GIFT TO HUSBAND OF ATTESTING WITNESS—ACCELERATION OF INTERESTS.

In re Clark, *Clark* v. *Randall*, 31 Chy. D. 72, is a decision of Bacon, V.C. A testator devised and bequeathed all his real and personal property to his wife for life, and after her death to be divided between such of his children as should be living at her death, and in case of any of his children predeceasing his wife, leaving issue, such issue were to take their parent's share, and in the event of any of his daughters being married at his wife's decease, such portion as they might be entitled to was left to them and their children exclusively, and to be in no way controlled by their husbands. At the death of the testator's widow one of his daughters was living who had several children. Her husband was an attesting witness to the will, and consequently the gift to her was void under s. 15 of the *Wills Act* (see R. S. O. ss. 16, 17). The question was, whether the gift in favour of her children was thereby accelerated? and Bacon, V.C., held that it was.

GIFT IN REMAINDER—REMAINDERMAN PREDECEASING TENANT FOR LIFE.

In re Noyce, *Brown* v. *Rigg*, 31 Chy. D. 75, is another decision of Bacon, V.C., on the construction of a will, whereby a testatrix gave three houses to E. for life, and after his death directed that they should be sold, and the proceeds to be equally divided amongst her three nephews and niece, but should either of the nephews or niece "die before they are entitled to the property, leaving issue," she gave the share of him or her so dying to his or her children. All the remaindermen survived the testatrix, but three of them predeceased E. leaving children who survived him. The question in dispute was whether the children of the deceased remaindermen or the personal representatives of the latter were entitled to the fund, and this turned on the meaning to be attributed to the words "die before they are entitled." Did it mean die before entitled "in right," or "in possession"? The learned judge came to the conclusion that they meant "entitledin possession," and that therefore, the children took in preference to the personal representatives.

MORTGAGOR AND MORTGAGEE — INTEREST IN LIEU OF NOTICE—ORDER FOR PAYMENT OF MORTGAGE OUT OF FUND IN COURT.

In re Moss, *Levy* v. *Sewill*, 31 Chy. D. 90, a mortgagor gave six months' notice to his mortgagee of payment off of the mortgage on July 1, 1885. On May 20, 1885, an order was made with the concurrence of the mortgagees for payment of the mortgage out of a fund in Court, with interest up to July 1, 1885. Owing to delay in the completion of the order, the payment could not be made on July 1; and on July 2, the mortgagees applied for payment of six months' additional interest in lieu of a fresh six months' notice to pay off the mortgage. On July 20 the order was completed, and on July 21 the mortgagors took the sum mentioned in the order out of Court. Pearson, J., under these circumstances, held that the

mortgagees by accepting the order assented to the payment out of the fund, subject to any delay which might arise in the completion of the order, and therefore, were only entitled to the additional interest up to July 21, 1885.

DIRECTORS—BREACH OF TRUST—CONTRIBUTION.

Several points of interest were decided by Pearson, J., in *Ramskill* v. *Edwards*, 31 Chy. D. 100, affecting the liabilities of directors *inter se*, who concur in breaches of trust. The action was brought by a director against several co-directors, to compel them to contribute to the payment of moneys which had been recovered against the plaintiff for breaches of trust, in which he alleged the defendants had concurred. In the first place it was held, that a director who had not been present when an improper loan had been sanctioned by the board, but who, after the money had been advanced, attended a meeting, at which the minutes of the meeting which sanctioned the loan were confirmed, was not liable to his co-director to contribute in respect of such loan: but that the same defendant having been present at a meeting, at which another improper loan was proposed, and against which he protested, was liable to make contribution in respect of it, because he had attended a subsequent meeting, at which the minutes were confirmed, and signed a cheque for part of the improper loan. Another point determined was that where one of the directors liable to make contribution, who had been made a defendant, died after the commencement of the action, the cause of action survived against his personal representative.

ADMINISTRATION—CHARGE OF LEGACIES ON REAL ESTATE—GIFT TO CHARITY.

In re Ovey, Broadbent v. *Barrow*, 31 Chy. D. 113, turns upon the construction of a will. The testator after directing his executors, (whom he also appointed trustees) to pay his debts and funeral expenses, and giving various pecuniary legacies, gave all his personal estate and effects, except money or securities for money to R., and he gave and devised the residue of his estate, real and personal, to his trustees, upon trust to pay two specified sums, and the residue for such one, or more, or any hospital of a charitable nature, and in such proportions as they in their uncontrolled discretion should think fit. The Court of Appeal had held that the gift to R. was not specific, but that all the pecuniary legacies must be paid before she would be entitled to anything. And Pearson, J., now held, although the whole personal estate was insufficient for the payment of legacies, and the realty had to be sold to make good the deficiency, R. was not entitled to be recouped out of the surplus proceeds of the realty for the amount of the personalty bequeathed to her which had been applied in the payment of legacies. He also held, that the trustees were entitled to appropriate the surplus to hospitals, which were authorized to take land by devise; the case on this point accords with *Anderson* v. *Dougall*, 13 Gr. 164.

The February numbers of the *Law Reports* comprise 16 Q. B. D. pp. 117-304, and 31 Chy. D. pp. 119-250.

LANDLORD AND TENANT—COVENANTS.

Commencing with the cases in the Queen's Bench Division the first to be noted is *Edge* v. *Boileau*, 16 Q. B. D. 117, which was an action by a lessee against his lessors for breach of a covenant for quiet enjoyment contained in a lease. The covenant was in the usual terms, viz., that the lessee, paying his rent and performing his covenants, should quietly enjoy the premises without interruption from the lessors. There were covenants by the lessee to pay rent, and repair. The rent being in arrear, and the premises out of repair, the lessors caused notice to be served on the lessee's sub-tenants, requiring them not to pay their rents to the lessee but to themselves, and threatening legal proceedings in default of compliance. The lessors, though requested to do so, refused to withdraw the notice for several weeks, and some of the sub-tenants paid their rents to the lessors. A verdict was found for the plaintiff, and the case came before the Divisional Court on a motion by defendants for a new trial, or to enter judgment for them, on the ground that there was no evidence of any breach of the covenant, because the covenant was conditional on the plaintiff performing his covenants. But on the authority of *Dawson* v. *Dyer*, 5 B. & Ad. 584, the Court (Pollock, B., and Manisty, J.,) held that the covenants were independent, and that the plaintiff was entitled to recover.

Recent English Decisions.

PRACTICE—PRODUCTION BY CO-DEFENDANT.

In *Brown* v. *Watkins*, 16 Q. B. D. 125, Matthew and Smith, JJ., held that under the English Rules a defendant is not entitled to an order for discovery of documents against a co-defendant. In this Province it was held in *Brigham* v. *Bronson*, 3 C. L. T. 311, that a defendant is entitled to an order for production against a co-defendant who is in the same interest as the plaintiff.

EMBEZZLEMENT—CO-PARTNERSHIP MONEYS—SOCIETY FOR MUTUAL IMPROVEMENT.

The *Queen* v. *Robson*, 16 Q. B. D. 137, was a criminal prosecution for embezzlement of co-partnership moneys. The moneys in question were the property of the Bedlington Colliery Young Men's Christian Association, and it was held that the association was not a "co-partnership," and the conviction of the prisoner was therefore quashed.

COMPOUNDING A LARCENY.

A Court composed of Coleridge, C. J., and four *puisne* judges, held, in *The Queen* v. *Burgess*, 16 Q. B. D. 141, that it is a criminal offence for a person who is neither the owner of the stolen goods, nor a material witness for the prosecution, to make any agreement with a view to compounding the offence, and that the offence is completed by entering into any such agreement, and the compounder is not exonerated, even though the delinquent is subsequently prosecuted to conviction.

AMENDMENT OF DEFENCE—PREJUDICE TO PLAINTIFF.

In *Steward* v. *The Metropolitan Tramways Co.*, 16 Q. B. D. 178, Pollock, B., and Manisty, J., refused to permit an amendment of a defence. The action was brought to recover damages against defendants for allowing their tramway to remain in a defective and unsafe condition. The defendants by their defence denied negligence. More than six months after the delivery of their defence they applied to amend it by adding an allegation that by an agreement the liability to maintain the roadway had previously to the cause of action been transferred to the local authority. But the local authority was entitled to six months' notice of action and the time for giving it had expired, and the remedy against them, if any, was lost; and as plaintiff would be prejudiced by the allowance of the amendment under the circumstances, it was refused. See *Clark* v. *Wray*, 31 Chy. D. 68, noted *ante*, p. 97.

ORDER FOR TRIAL OF ONE QUESTION BEFORE ANOTHER—O. 36, R. 8 (ONT. RULE 256).

Smith v. *Hargrave*, 16 Q. B. D. 183, was an appeal from an order made under Ord. 36, r. 8 (Ont. Rule 256) directing a question of negligence to be first tried, and the question of damages to be postponed until afterwards. The amount of damages being a matter of detail, which would probably be referred to some other tribunal than a jury, the Court (Pollock and Manisty, JJ.,) held the order rightly made under the circumstances and dismissed the appeal.

LARCENY—MUTUAL MISTAKE—SUBSEQUENT FRAUDULENT APPROPRIATION.

The only remaining case to be noticed in the Queen's Bench Division is that of *The Queen* v. *Ashwell*, 16 Q. B. D. 190, which, besides deciding a curious point of criminal law, exhibits also the extraordinary care taken in England in settling any doubtful questions of criminal law as they arise. The case was argued first before five judges who differed in opinion, and it was then re-argued before no less than fourteen judges, and in the end they were equally divided in opinion. The question which gave rise to this extraordinary difference of opinion was a very simple one, so far as the facts were concerned. The prisoner asked the prosecutor for the loan of a shilling. The prosecutor gave the prisoner a sovereign, believing it to be a shilling, and the prisoner took the coin under the same belief. About an hour afterwards he discovered the coin was a sovereign, and, instead of returning it to the prosecutor, he kept it and spent it. The Court seems to have been unanimous that the prisoner was not guilty of larceny as a bailee, but Smith, Matthew, Stephen, Day, Wills, Manisty and Field, JJ., held he was not guilty of larceny at common law; while Coleridge, C.J., and Cave, Hawkins, Denman and Grove, JJ., and Pollock and Huddleston, B.B., held that he was. Denman, J., tried the case, and the prisoner having been convicted at the trial the conviction was affirmed.

In this country, whatever doubt may exist as to the offence in question being larceny, there can be no doubt that it would at all events be punishable as a misdemeanor under sec. 110 of *the Larceny Act*.

Recent English Decisions.

WILL—GIFT OVER TO HEIR OF DEVISEE IN FEE, ON THE LATTER DYING WITHOUT LEAVING ISSUE.

Taking up the cases in the Chancery Division, the first that calls for notice is *In re Parry and Daggs*, 31 Chy. D. 130, which was an application under the Vendor and Purchaser Act. The question submitted for the consideration of the Court was the effect of a will, whereby the testator devised real estate to his son and his heirs; and then declared that in case his said son should die without leaving lawful issue, then, and in such case, the estate should go to his son's next heir-at-law, to whom he gave and devised the same accordingly. The son having no living issue, contracted to sell the estate to Daggs, who objected that he was tenant in fee simple, subject to an executory devise over on his death without issue, but Bacon, V.C., held he was tenant in fee, and that the devise over was repugnant and void: and this decision was affirmed by the Court of Appeal. Fry, L.J., who delivered the judgment of the latter Court, held that the devise over was an attempt to render the estate inalienable in the hands of the son, who was tenant in fee, and was an illegal device, and therefore void. He sums up the conclusion of the Court as follows:

In the present case the testator's son is devisee in fee, and on his death, either one of his issue will be his heir, or some one else. If his heir be his issue, such issue will take under the original devise, and the gift over does not arise: if his heir be some one not his issue, such heir would take equally under the original devise, and under the gift over; so that the operation of the gift over, if it be valid, is not to alter the devolution of the estate, but only to fetter the power of alienation during the lifetime of the son. That was an illegal device, and consequently the gift over is void.

INFANT TRUSTEE—FORM OF DECREE FOR ACCOUNT.

In re Garnes, Garnes v. *Applin*, 31 Chy. D. 147, was a suit for an account against a trustee who had received moneys of the trust whilst an infant, and the question was simply as to the proper form of the judgment in such a case. Bacon, V.C., considered the account should be limited to moneys and properties received since the trustee attained twenty-one. But the Court of Appeal, without determining any question as to the liability of the trustee for his receipts before he attained twenty-one, directed the judgment to be varied by directing the account to be taken of all moneys and property of the trust received by the trustee in question, and of his dealings and transactions in respect of the same, and an inquiry as to the dates of, and circumstances attending, such receipts, dealings and transactions.

ASSIGNEE OF MORTGAGE—ESTOPPEL AS TO AMOUNT SECURED.

Bickerton v. *Walker*, 31 Chy. D. 151, is an important decision of the Court of Appeal, and illustrates the importance which is attached to a receipt for the consideration endorsed on a deed. On the 10th Feb., 1879, the plaintiffs mortgaged to B. for £250 their equitable interests in a sum of stock. By the mortgage deed they acknowledged the receipt of £250, and they also signed a receipt therefor endorsed on the mortgage deed. B. actually advanced only £91. On 11th March, 1879, B. transferred the mortgage to H., who gave full value for it as a mortgage for £250, and had no notice that the plaintiffs had not received that sum. The plaintiffs brought the action, claiming to redeem on payment of £91, but Bacon, V.-C., held that H. was entitled to hold the mortgage as security for £250, and the Court of Appeal affirmed his decision. A passage from the judgment of the Court, delivered by Fry, L.J., may be useful. After commenting on the ordinary rule that a prudent assignee of a mortgage before paying his money requires the concurrence of the mortgagor, or some information from him as to the state of the accounts between him and the mortgagee, and on the fact that in the present case the assignment of the mortgage was taken very shortly after its date, and before any money had become due on it, and that the assignee if he chose to run the risk of no subsequent payment having been made, could not be considered guilty of negligence in giving credence to the solemn assurance under the hand and seal of the mortgagor, and also to his receipt, endorsed on the mortgage, that the full amount of the mortgage money had been received, goes on to say at p. 159:

The presence of a receipt endorsed upon the deed for the full amount of the consideration money has always been considered a highly important circumstance. The importance attached to this circumstance seems at first sight a little remarkable, when it is remembered that the deed almost always contains a receipt, and often a release under the hand

and seal of the parties entitled to the money. But there are circumstances which seem to justify the view which has prevailed as to its importance. A deed may be delivered as an escrow, but there is no reason for giving a receipt till the money is actually received, unless it be to enable the person taking the receipt to produce faith by it. A deed is not always, perhaps rarely, understood by the parties to it; but a receipt is an instrument level with the ordinary intelligence of men and women who transact business in this country, and which he who runs may read and understand.

VENDOR AND PURCHASER — INTEREST ON PURCHASE MONEY—VENDOR AND PURCHASER ACT (R. S. O. c. 100).

In re Young and Harston, 31 Chy. D. 168, was an application under the Vendor and Purchaser Act to determine the question whether a vendor who had left the country on a pleasure excursion about the time fixed for the completion of the purchase, whereby its completion was delayed, was thereby guilty of wilful default, and whether interest paid him on the purchase money during that period could be recovered back; the conditions of sale exonerating the purchaser from interest for any period of delay occasioned by the wilful default of the vendor. The Court of Appeal answered both questions in the affirmative. The question whether, under the V. and P. Act, the Court had jurisdiction to order the interest to be refunded, was taken in the Court below, and decided by Bacon, V.C., in the negative, but this point was waived on the appeal.

PARTNERSHIP DEBT — RIGHT OF CREDITOR AGAINST ESTATE OF DECEASED PARTNER AND SURVIVING PARTNER.

In re Hodgson, Beckett v. *Ramsdale*, 31 Chy. D. 177, is a decision of the Court of Appeal in which the difference between the legal and equitable rights of creditors against the surviving partner of a firm, and the estate of a deceased partner, is illustrated. The plaintiffs were creditors of a father and son who were in partnership. The son died, and the father obtained a judgment for administration of his estate, and the plaintiffs being then unable to establish a partnership between the father and son carried in a claim against the son's estate, and were declared entitled to a dividend. Afterwards the father died, and the plaintiffs, having obtained proof of the partnership, brought an action to make his estate liable for the partnership debt. It was contended by the defendants on the authority of *Kendall* v. *Hamilton*, 4 App. C. 504, that the plaintiffs, by obtaining judgment against the son's estate, were precluded from having recourse to the father's estate; but the Court of Appeal (affirming Bacon, V.C.,) held that the fact of the son being dead took the case out of the rule laid down in that case. Referring to *Kendall* v. *Hamilton*, Sir J. Hannen said that it had undoubtedly decided "that when some members of a firm, or some joint contractors are sued, and judgment is obtained against them, the matter then passes into *res judicata*, and it is to be treated thenceforth as a debt against those persons only against whom that judgment has been recovered, and recourse cannot be had to a person who was not joined in that action." But he goes on to point out that there is in equity an exception to that rule when one of the partners dies; and he goes on to quote with approval the statement of that doctrine of equity as laid down in *Kendall* v. *Hamilton*:

> It is now well established that a Court of Equity does treat the estate of a deceased partner as still liable to the partnership creditors, though at law the survivor has become solely liable. And it must now be considered as established that the partnership creditor may obtain relief against the estate of the deceased partner without having exhausted his remedy against the survivor.

Applying that rule to the case in hand, the Court determined that the claim proved against the son's estate was no bar to the action against the father's estate; but they put the plaintiffs on an undertaking to postpone their dividend on the son's estate to the claims of his separate creditors.

ADMINISTRATION—FOLLOWING ASSETS—LIMITATIONS.

In *Blake* v. *Gale*, 31 Chy. D. 196, Bacon, V. C., had before him a somewhat nice question. A testator had died in 1859, indebted amongst others to the plaintiffs as mortgagees. From 1859 to 1880, the interest on the plaintiff's mortgage was regularly paid out of the rents of the mortgaged estate. In 1861, the residuary estate of the mortgagors was sold and distributed among the residuary legatees by the executors, with the knowledge of the plaintiffs, and without objection on their part, and with-

out making any provision for the payment of the plaintiffs' mortgage. In 1882, the plaintiffs' mortgage proved to be worthless, owing to the existence of a prior mortgage on the property. The plaintiffs then brought an action against the executors for a *devastavit* in paying over the residuary estate, but failed. The present action was brought to make the residuary legatees refund; but it was held that though the claim against the mortgagors' estate was not barred yet that the plaintiffs' claim against the residuary legatees, being in the nature of an equitable demand, was barred by lapse of time and acquiescence.

SPECIFIC PERFORMANCE—DEFAULTING PURCHASER—FORM OF JUDGMENT.

Morgan v. *Brisco*, 31 Chy. D. 216, is an action for specific performance by a vendor. The defendant having refused to tender the conveyance or complete the purchase according to the judgment of the Court, the question Bacon, V. C., was called upon to decide was as to the proper form of the judgment on further consideration in such a case. The judgment, as settled, authorized the plaintiff to prepare and execute a conveyance (as an escrow to be delivered to the defendant on payment of the purchase money), and directed the defendant to pay the purchase money at a time and place to be named, when the conveyance was to be delivered to him.

NEXT FRIEND OF INFANT—TESTAMENTARY GUARDIAN.

In *Hutchinson* v. *Norwood*, 31 Chy. D. 237, an application was made to Pearson, J., to change a next friend under the following circumstances: The action had been commenced by infant plaintiffs in the lifetime of their father, who authorized a stranger to act as their next friend. Subsequently the father died, and by will appointed the mother of the infants their guardian. She now applied to be substituted as their next friend in this action, and the application was granted.

NON-PAYMENT OF COSTS—STAY OF PROCEEDINGS.

In re Youngs, Doggett v. *Revett*, 31 Chy. D. 239, Pearson, J., held that the old rule of Chancery practice, that where a party is in default for non-payment of costs, further proceedings by him in the action will be stayed, until payment is still in force.

PATENT—PRIOR PUBLICATION.

Otto v. *Steel*, 31 Chy. D. 241, is a patent case, in which it was sought to avoid a patent on the ground of alleged prior publication. The facts in support of the alleged prior publication were, that in 1863, a French treatise was placed in the British Museum Library, the Museum catalogue being kept with reference to authors' names, and the books being arranged according to subject-matter, and readers under guidance being able to search for books on particular subjects. But it was held by Pearson, J., that this was no prior publication in England of the matter contained in the treatise so as to avoid a patent taken out in 1876.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

IN BANCO.

LEWEY v. CHAMBERLAIN.

Libel—Privileged communication—Nominal damages—New trial refused.

Defendant published of and concerning plaintiff, a business man, in a written circular called "Legal Record, Co. Renfrew," a statement meaning that plaintiff had given a chattel mortgage on his property, whereas he had only assigned a chattel mortgage held by him against another person.

Held, statement libellous, and not privileged. Jury having found no damages, rule *nisi* for new trial refused without costs.

Delamere, for motion.

Arnoldi, contra.

IN BANCO.

McKAY v. CRAWFORD ET AL.

Malicious arrest—Order for arrest not set aside—Failure of action.

In an action for malicious arrest, and in trespass for arrest,

Held, per ARMOUR and O'CONNOR, JJ., that the claim for malicious arrest could not be maintained because the order directing the arrest had not been set side. Per WILSON, C.J., it did sufficiently appear it had been set aside.

Dickson, Q.C., for motion.

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

O'Connor, J.]

REGINA v. GRAVALLE.

By-law—Con. Mun. Act 1883, sec. 503, sub-sec. 6—Conviction quashed.

By-law under sub-sec. 6, sec. 503, Con. Mun. Act 1883, and conviction thereunder,

Held, not bad, for not embodying or referring to the exceptional proviso as to time mentioned in sec. 500; for this sec. does not refer to the subject of sub-sec. 6, of sec. 503; and apart from that, sec. 500 is expressly limited to municipalities in which no market fees are imposed, whereas here there were such fees.

Such by-law is not *ultra vires*, express power being given, by sec. 503, to pass a by-law respecting the matter mentioned in sub-sec. 6; and

Held, that as the reasonable or unreasonable exercise of the power could only be entertained on a motion to quash the by-law, the objection was not open on this motion, which was to quash the conviction. But

Held, that the conviction was bad for imposing but one penalty while covering two several and distinct offences.

Clement, for motion.

Maclennan, Q.C., contra.

CHANCERY DIVISION.

Boyd, C.] [January 20.

MURPHY v. THE KINGSTON AND PEMBROKE R. W. CO.

Consolidated Railway Act of 1879—42 Vict. c. 9, D.—Expropriation of land—Plans and book of reference—Limits of deviation.

The defendants having in 1872 filed their plan and book of reference, under the Railway Act, showing their terminus at a certain point, and having built and used their line up to that point, desired in 1885 to extend their line about one third of a mile further on, and took proceedings to expropriate certain land required for that purpose, and possession having been refused, applied to a county judge for an order for immediate possession. In an action for an injunction to restrain the Company proceeding before the judge, on the ground that no new plan and book of reference showing the land required had been filed, and in which the Company contended that none were necessary as they were within the limits of deviation of one mile provided for by the statute. It was

Held, that deviation is a term not to be restricted to a lateral variance on either side of the line, but may mean a change *de via* in any direction within the prescribed limits whether at right angles to, or deflecting from or extending beyond the line.

Britton, Q.C., for plaintiff.

Cattanach, for defendant.

Proudfoot, J.] [January 28.

PLATT v. GRAND TRUNK RAILWAY CO.

Action—Breach of covenants for title—Continuing damages—Survivorship—Motion to set aside order of revivor.

This action was brought by S. P., to whom the defendants had conveyed certain lands for a mill site and certain easements and privileges having reference to the said mill site with the usual covenants for title. S. P. now complains that the defendants had no title so to convey to him, and that his quiet enjoyment of the premises had been interfered with by persons having a better right, and he claimed for all damages sustained and to be

sustained by reason of the breach of the covenants for title. After the case was set down for hearing, S. P. died intestate, and his administratrix obtained an order of revivor which it was now sought to set aside on the ground that the right of action, if any, was not one that survived to the representatives of S. P., or that if it did survive it survived to the real representatives, or to the real and personal representatives jointly.

Held, that as to damages which accrued during the lifetime of S. P. his administratrix is entitled to sue for the same; but that the action had nothing to do with damages which might have accrued since that time, for which *semble* the heir or devisee might bring an action, and the motion was therefore dismissed.

In the case of such covenants running with the land where only a formal breach takes place in the life of the ancestor the remedy for damages accruing after his death passes to the heir or devisee; but where not only the breach has taken place but damages had accrued in the lifetime of the ancestor the remedy for these damages passes to the personal representatives.

S. H. Blake, Q.C., for the motion.

Maclennan, Q.C., contra.

Boyd, C.] [February 17.

RE PERCY, STEWART v. PERCY.

Administration — Arrears of dower — Dower in equity of redemption—Instalment mortgage—Appeal from the master's report.

This appeal arose out of the administration of the estate of Thomas Percy, who died on February 2nd, 1882. The usual administration order was made with a reference to the Master at Walkerton on February 14th, 1884. It appeared in the Master's office that the only real estate which the deceased died possessed of was a certain hotel property. The Master, in the course of the administration proceedings, sold this on November 13th, 1884. It appeared that this hotel had been purchased by the deceased, subject to a then existing mortgage upon it. The Master, therefore, allowed the widow, Margaret Percy, dower in the surplus only of the purchase money left after discharging the amount of the mortgage. A claim was made, however, by Margaret Percy for a further sum as arrears of dower. It appeared that she had been in possesion of the property from her husband's death by herself, or her tenants, up to the administration proceedings, and she had received certain rents. The master fixed the arrears of dower by taking the amount of rents received plus an occupation rent, fixed by him for a time when the widow was herself in possession, deducted from the amount thus arrived at a certain sum paid for taxes by the widow during that period, and certain other sums paid during that period by the mortgagees for insurance, and he also charged her with a certain sum as interest on the mortgage debt, charging same at ten per cent., and he gave the widow as arrears of dower one third of the balance. It appeared, however, that the mortgage was an instalment mortgage, being payable in instalments composed of principal and interest together. The present appellants contended that the widow should have been charged with one-third of all the instalments which fell due during the period referred to, and also with one-third of the taxes and the insurance money paid upon the property.

Held, that the appeal arising in respect of arrears of dower, the husband not having died seized in fee so as to give the widow legal dower, she was not entitled to arrears as of right, but only on the equitable consideration of the Court, which would be exercised in her favour by not requiring her to account for all rents received, and the arrears of dower should be fixed by deducting from the rents received, and the occupation rent fixed by the master, the amounts properly and actually expended by the widow on taxes, insurance, repairs and payments on the mortgage, and then allowing her one-third of the balance for the arrears of dower.

A. H. F. Lefroy, for the appellant.

N. W. Hoyles, for the respondent.

COMMON PLEAS DIVISION.

RE MCINTYRE AND SCHOOL TRUSTEES OF BLANCHARD.

Public schools—Dismissal of scholar—Action—Mandamus.

On 3rd December, 1884, a public school teacher dismissed the plaintiff, a boy of 13 years of age, for disobedience, speaking impudently when questioned about it, and refusing to be punished for misconduct. The matter was brought before the school trustees, and a meeting of the trustees held, and action taken in the matter; but a subsequent meeting was held, only two of the trustees being present, the third trustee not having been notified, when they decided that the son could return to school when he expressed regret to the teacher for his misconduct. The boy then returned to the school, but did not apologize. He remained there for several days without being interfered with, but the teacher did not give him any instruction. It did not appear that the teacher was acting under instructions from the trustees. In an action in the Division Court against the schoolmistress and trustees, the judge dismissed the action against the schoolmistress but held the trustees liable.

Held, on appeal to the Divisional Court, that the trustees were not liable.

Smith, for the appeal.

Shepley, for the defendant.

MASSIE V. TORONTO PRINTING COMPANY.

Libel—Excessive damages—New trial.

Action for libel. The libel consisted in letters published in the defendants' newpaper, reflecting on the plaintiff as warden of the Central Prison. The defendants refused to give the names of the writers of the letters, and so assumed the responsibility. The jury found for the plaintiff with $8,000 damages. The Court, under the circumstances, directed the verdict to be reduced to $1,000 with costs, if paid before the 1st April, and the plaintiff elected to take such amount, but if not then paid by defendants the order should be discharged. If plaintiff did not so elect, a new trial was directed with costs to be paid by defendants.

W. Nesbitt, for the plaintiff.

O'Donohoe, Q.C., for the defendants.

MCROBERTS V. STEINHOBB.

Fraudulent conveyance—Intent—R. S. O. ch. 118; 47 Vict. ch. 10, sec. 3 (O.).

When there is a bona fide debt, secured by a chattel mortgage given thereon, the mortgage cannot be avoided by simply showing that the debtor was insolvent, and intended to give the mortgagee a preference. To avoid the transaction under R. S. O. ch. 118, there must be a concurrence of intent on the part of the debtor and the creditor taking the mortgage; and the amendment made by 47 Vict. ch. 10, sec. 3, does not affect the matter.

Shepley, for the plaintiff.

W. H. Meredith, Q.C., for the defendants.

MCCONKEY V. CORPORATION OF BROCKVILLE.

Municipal corporation—Flooding of cellar—Private drain connecting with street drain—Notice—Liability.

Action against the defendants for the flooding of the plaintiff's cellar by the stoppage of a drain, whereby the water and filth from the sewers of private houses and the surface from the street passing down the drain to be dammed back through plaintiff's drain upon his premises. The obstruction was caused by a private individual, S., who had a drain connecting with the street drain, which was not known to the defendants, but was known to the plaintiff; and though he complained to some members of the corporation of the water, etc., being backed up, did not inform of the nature of the obstruction. The drain was a covered drain running under the sidewalk for a considerable distance, the end of the drain being near plaintiff's premises, but not extending so far as them: and he connected his private drain therewith. There was no by-law requiring property owners to drain their premises into the drain, and their use of it was entirely voluntarily. There was no complaint as to the insufficiency of the drain or as to the manner of its construction.

Held, that the defendants were not liable.

Arnoldi, for the plaintiff.

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

GRAY V. CORPORATION OF DUNDAS.

Municipal corporations—Sewer connecting with creek—Fouling creek—Liability.

The defendants had a drain on Main Street in the town of Dundas for carrying off the surface water of the street, along and across the street, and then through private property until it reached a creek. Certain screw works were carried on on Main Street near where the drain was. The proprietors of these works obtained permission to connect with the defendants' drain. Complaints being made of the drain being fouled by noxious matter from the works, the proprietors used an old cellar as a reservoir to contain the noxious matter from the works that had been formerly carried off by their drain. The noxious matter from the cellar, it was alleged, filtered through from the cellar into the drain, and was thus carried into the creek. The drain, without the infiltration into it from the cellar, from which it is distant twenty-six feet, would not convey anything injurious into the creek. The plaintiff was a riparian proprietor on the creek, and had a factory thereat, and brought an action against the defendants for the alleged fouling of the waters of the creek, whereby the plaintiff was prevented from using the waters of the said creek for domestic purposes, and for his said factory.

Held, that the action was not maintainable.

Lount, Q.C., for the plaintiff.

Osler, Q.C., for the defendants.

MCGIBBON V. NORTHERN ETC., RY. CO.

Railways—Fire caused from engine—Evidence.

Action of negligence against the defendants in the conduct of their engine, whereby, as alleged, fire escaped therefrom and destroyed the plaintiff's property. It appeared that as the engine passed the plaintiff's stable and combustible manure heap, steam was put on which, it was urged, had the effect of causing a larger quantity of sparks to pass through the netting of the smokestack: but there was no evidence to show that a larger quantity of sparks did escape, or that the fire was caused thereby. It was further urged that the fire was caused from the ashpan; and as evidence thereof a cinder, too large to come from the smokestack, was picked up on the manure heap; but it did not clearly appear whether the cinder was from coal or wood—the engine burning coal. The fire that broke out in the manure heap was put out, and about five minutes afterwards a fire broke out in a barn adjoining the plaintiff's, and consumed both. No evidence was given of any faulty construction in the engine; but it was shown to be of approved make, with proper appliances to prevent, as far as possible, the escape of fire.

Held (ROSE, J., dissenting), that there was no evidence of negligence to go to the jury: and the case was properly withdrawn from the jury.

Lash, Q.C., for the plaintiff.

D'Arcy Boulton, Q.C., for the defendants.

INTERNATIONAL WRECKING AND TRANSPORTATION CO. V. LOBB.

Salvage — High Court — Jurisdiction — Admiralty rules—Services performed on request—36 Vict. ch. 54, (D.).

The schooner Huron was stranded on the northern shore of Lake Erie. The master telegraphed to the manager of a wrecking company at Detroit for tugs and wrecking apparatus. With their assistance the schooner was rescued and brought into a safe port. This action was then brought in this Court to recover an amount, made up chiefly of *per diem* charges for the tugs and apparatus, which exceeded the value of the vessel.

Held, that the action was a salvage action, and that the admiralty rules as to salvage awards and apportionment thereof, applied, though the action was brought in the High Court; that the maximum salvage award is a moiety of the *res* saved; and that wrecking companies are governed by the law of salvage as well as ordinary vessel owners.

Held, also, that the services were no less salvage because performed upon request.

Kerr, Q.C., and *Moss*, Q.C., for the plaintiffs.

Osler, Q.C., and *R. Gregory Cox*, for the defendant.

CANADA ATLANTIC R. W. CO. V. CAMBRIDGE.

By-law—Bonus—Aid to Dominion Railway—Promulgation—Effect of—Clerk casting vote—Majority of electors—Advertisement—Engineer's certificate.

A by-law was passed by the defendants granting aid to plaintiffs' railway—a Dominion railway. The vote for and against the by-law was equal, and

the clerk gave a casting vote in favour of the by-law, and it was then finally passed by the council. There was no resolution passed by the council designating the paper in which the notice was published, but the paper was the one usually employed for such purposes, and the account rendered therefor was passed, and paid by the council.

Held, following the judgment of PROUDFOOT, J., in *Canada Atlantic* v. *Corporation of Ottawa*, that under sec. 559, sub-sec. 4 of Mun. Act, R. S. O. ch. 174 (sec. 628 of Act of 1883), a grant by way of bonus may be made to a Dominion railway.

Held, also, that the promulgation of a by-law, though validating any defect in the form of or substance of the by-law, does not affect a matter not within the proper competency of the council to ordain; and, therefore, would not apply to cure the defect of the council in finally passing a by-law which had not received as required a majority of the votes of the electors; but *held*, there was a majority in this case, as the clerk had the right to give the casting vote.

Held, also, the advertisement was sufficient.

It was objected that the work had not been performed, and that a certificate to that effect, given by the engineer, was untrue; but

Held, that not only did the evidence not sustain the objection; but that the question was for the engineer, and he had given his certificate.

McCarthy, Q.C., and *Chrysler*, for the plaintiffs.

Maclennan, Q.C., for the defendants.

PRACTICE.

Mr. Dalton, Q.C.] [February 26.

TATE v. THE GLOBE PRINTING CO.

Examination of party—Pleading—Libel—Rule 285, O. J. A.

In an action of libel charging the publication in a newspaper of a report of, and editorial comments upon, the trial of the plaintiff for the abduction of a girl, K., an order was made, under Rule 285, O. J. A., for the examination of the plaintiff before delivery of defence, in order to enable the defendants to frame their defence. The examination was limited to the damages claimed by the plaintiff, and his conduct with and towards K.

Osler, Q.C., for defendants.

Murray (Brampton), for the plaintiff.

O'Connor, J.] [March 2.

RE GORDON v. O'BRIEN.

Prohibition—Division Court—Splitting amount to give jurisdiction—R. S. O. ch. 47, sec. 59—Ascertainment of amount.

The defendant rented certain premises from the plaintiff for a year, agreeing, in writing, to pay monthly $125 therefor. When the rent had become four months in arrear the plaintiff entered three plaints in a Division Court against the defendant, each for a month's rent, $125.

Held, that the sums claimed in the three plaints were payable under the one contract, and would have been included in one count in the old system of pleading, and therefore that the division into three was improper under R. S. O. ch. 47, sec. 59.

Held, also, that the defendant's signature to the memo. of lease could not be construed as ascertaining the amounts claimed in the plaints; and prohibition was ordered.

Woods, Q.C., for the defendant.

Idington, Q.C., for the plaintiff.

Mr. Dalton, Q.C.] [March 2.

GONEE v. LEITCH.

Changing venue—Cross actions—Balance of convenience.

The plaintiff herein having laid the venue in Toronto, the defendant brought a cross action laying the venue at London. The two actions were consolidated by order in Chambers.

Held, that both parties being in the position of plaintiffs, the rule as to the plaintiff's right to lay the venue where he chose could not be applied, and the only question was whether London or Toronto was the more convenient place for both parties; and the balance of convenience being in favour of London the place of trial was changed accordingly.

W. H. P. Clement, for defendant.

Kappele, for plaintiff.

Boyd, C.] [March 10.

QUAY v. QUAY.

Taxation—Appeal—Local registrar — Enlarging time—Jurisdiction of Master in Chambers — Certificate — Confirmation — Taxing Officer — Revision.

Appeals from the taxation of costs by local registrars are subject to the eight days' limit prescribed as to appeals from orders of Masters and local judges, as was held in *Stark* v. *Fisher*, *ante*, p. 32, but the time for appealing may be enlarged by the Master in Chambers or a judge.

The certificate of a local registrar as to the result of the taxation by him of the costs of an action is not to be treated like the report of a Master, which is appealable until confirmed by the lapse of a month from the making, and two weeks from the filing of the same.

It is a convenient practice when any case is made on appeal from taxation as to several items, or on the ground of general exorbitancy, to refer the whole bill to one of the taxing officers at Toronto, as upon a revision.

Holman, for the defendant.

W. H. P. Clement, for the plaintiff.

CORRESPONDENCE.

COMMISSIONERS FOR TAKING AFFIDAVITS.

To the Editor of the LAW JOURNAL.

DEAR SIR,—Herewith I send you copies of correspondence had between a person, whose name for obvious reasons I do not give, and myself.

Would it not be well if all County Court judges declined, unless under special circumstances, to recommend the appointment of any person as a commissioner for taking affidavits unless and until he signed an undertaking not to do any manner of conveyancing, etc., for reward, and if the Chief Justices and Justices of the High Court declined to appoint any person other than a solicitor, or in some special case, unless and until such an undertaking was furnished?

Truly yours,

A COUNTY COURT JUDGE.

[COPY.]

————, February 1st, 1886.

To ————, Judge, etc.

DEAR SIR,—During the last year I have been doing conveyancing in this neighbourhood. I find it would be considerably to my advantage if I were a commissioner. I also see by the statutes that the mode of proceeding is to petition the judges of the High Court through the judge of the County Court.

Now, if your Honor will kindly endorse the enclosed petition and forward it to its proper place of destination you will confer a great favour. I have carried the original petition till it is rather dirty looking, but have rewritten it as you will perceive. Use either of them you think proper.

I have the honour to be, Sir,

Your obedient servant ————.

————, 2nd February, 1886.

Mr. ————

———— P.O.

DEAR SIR,—I have received your letter and the petition in reference to your being appointed a commissioner to take affidavits. I believe it will be necessary for you yourself to address a letter to the judges of the High Court (to the Chief Justice and Justices) asking for the appointment—the object being that they may see your handwriting and judge of your fitness. Before I can recommend your appointment I must receive from you an undertaking in writing like the underneath, or to same effect. If you proceed in the matter you had better arrange with some solicitor to forward the papers to Toronto, and obtain the commission—if granted—or you might send them yourself to the proper officer at Toronto.

Truly yours,

————.

Form of undertaking.

I, ————, do hereby undertake, agree and promise that if I am appointed a commissioner of the High Court of Justice for Ontario for taking affidavits, I will not directly or indirectly, for hire or reward, or gain or hope thereof, do any manner of conveyancing, or prepare or draw any will, lease, agreement or other instrument whatever. (This to be dated and signed.)

P.S.—This will not prevent your drawing a deed or other paper for your own business, or for a neighbour as long as you make no charge for doing it.

————, February 7th, 1886.

To ————,

Judge of County Court

DEAR SIR,—Your favour of Feb. 2nd is at hand, and in reply beg to state that if the promise or undertaking of which you sent me a copy is imperative to my appointment I do not desire it. I make enough by writing deeds, mortgages, leases, wills and agreements to pay a hired man to work on the farm, and the only reason I had for asking for the appointment was that I would not have to erase the words "a commissioner, etc.," and substitute J. P. when I signed the affidavit of the

witness. Hoping that I have not caused you too much trouble already I ask you to destroy the petition sent you.

I have the honour to be, Sir,
Your obedient servant ————.

POACHERS ON PROFESSIONAL PRESERVES.

To the Editor of the LAW JOURNAL:

Please give the following the prominence it deserves, and don't drop the name, etc:

CASH FOR OATS.

The undersigned is paying the highest price in cash for Good Oats delivered in Whitby.

He represents first-class English and Canadian insurance companies, and writes deeds, mortgages, bonds, wills, leases and other legal documents carefully, neatly, and cheaper than is done elsewhere.

Money to loan.

W. B. PRINGLE
Notary Public, Whitby.

"Cash for Oats" will catch the farmer's eye every time. Our county is overrun by these "Poachers" upon our preserves.

Yours, etc., A. B. C.

To the Editor of the LAW JOURNAL:

DEAR SIR,—I believe that about every class of labour in Canada, except that of solicitors, is protected either by statute law or unions. Skilled mechanical labour can protect itself by unions, but the practice of law, or medicine, or the sale of drugs, etc., cannot be thus confined to its professors.

Physicians and surgeons have obtained exceedingly stringent protective Acts, and the veterinary surgeon is also secured in his profession by law. A barrister as such need not fear competition as the Court protects him, and the solicitor is also cared for as to suits in the Courts. But the greatest portion of a solicitor's business is advising in and effecting transfers of property by deeds, mortgages and wills, protesting bills and notes, and proving wills, etc., in the Surrogate Courts.

If it is of sufficient importance to protect the physician, dentist, druggist and veterinary surgeon in their several callings, it is certainly of equal importance to the public to keep its great commercial interest in the hands of qualified persons.

I believe no other professional man serves so long or pays as much fees as the barrister and solicitor; yet what requires at least eight or ten years of study to qualify himself for, he finds is being done at prices below his ability to compete with, by brokers, conveyancers, J.P.'s, insurance agents, bookkeepers and every one else who learns to copy a deed, and I think that to make things even such persons should either obtain certificates of qualification or cease from conveyancing. Our Law Society and legislators should see to this evil under which country solicitors, especially, labour.

COUNTRY SOLICITOR.

Leamington, Feb. 26, 1886.

To the Editor of the LAW JOURNAL:

SIR,—Perhaps some of your readers would be under obligat' ns to you if you would supply them with a form of petition to be used in making requests of municipal corporations, as one was handed to me a few days ago, one that was evidently prepared by the master hand of a "conveyancer." I will supply it to you that you may in time supply it to your readers for their edification. I copy it exactly as it appears in the original, apart from the spaces. It is as follows:

To the Reeve and Council
of the Township of ————.

GENTLEMEN,—

Your petitioners (rate payers) of the Township of ——desire to form a new school section some where on the twelfth concession of the said township.

1st. We complain that the section now, as it exists, is two large.

2nd. The School House is not Central.

3rd. There are to great a nomber of scholar for one Teacher.

And as in duty bound your petitioners do ever pray.

Dated at ————,

This 5 day Jany., A.D. 1886.

To the credit of the parties for whom it was prepared I may add that they concluded they might better be without a petition than to use the one of which the foregoing is a copy.

Yours, A SUBSCRIBER.

NATURALIZATION OF ALIENS.

To the Editor of the LAW JOURNAL:

DEAR SIR,—It is said that large numbers of aliens were induced to become naturalized throughout the Province, in the latter part of last year, with a view to voting at the municipal elections in January; and that they were put through, in many places, in a cheap and expeditious manner, by persons anxious that they should vote in some particular way.

When naturalizations are effected in this way, there is danger of looseness in the observance of legal formalities; and little or no inquiry is made as to the character for loyalty, or otherwise, of the applicant, particularly where a "cheap job" is undertaken by some non-professional man. Citizenship has been described as a precious possession, to be highly prized; it certainly involves consequences of no small moment to a man and his family; and in view of the importance of the question, it would, no doubt, be better if persons who contemplate naturalization would attend to it at a time, other than during the excitement of approaching elections, and with the assistance of a practising solicitor whose knowledge of the law would ensure accuracy in the proceedings.

To assist my brethren in the profession, who may be called upon in such matters, I beg to append the following. The column for solicitor's fees is, of course, left open.

☞ STEPS in a common Naturalization, uncontested, procured through a Solicitor. The Act and Orders-in-Council prescribe certain fees, as under, marked*; Solicitor's or Counsel fees would be in analogy to charges for similar services in Court tariffs.

	Solicitor's Fees.	Disbursements.
		$ cts.
Instructions		
Preparing statutory declaration of Householder vouching for applicant (*evidence under sec. 12*), and administering same		
Preparing oath of Residence		
" " of Allegiance		
For administering oath of Allegiance		40*
Preparing and granting (*or* attending for) certificate B., Sec. 12		
Attendance presenting certificate in open Court on first day of sitting		
Attendance on last day of sitting, filing same and obtaining certificate of Naturalization (Form C.)		
Paid Clerk of Court (Sec. 22)		25*
If certificate required to be registered in the Land Office, under Sec. 21, 22, add		
Attending Registry Office		
Paid Recording		50*
" for Search and Certificate Copy of same		25*

For special cases reference should be made to the Act.

Yours, etc.,

LEX.

Law Society of Upper Canada.

SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

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

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

Students-at-Law.

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

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical Analysis of a Selected Poem:—

1884—Elegy in a Country Churchyard. The Traveller.

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

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,

Translation from English into French prose.

1884—Souvestre, Un Philosophe sous le toits.

1885—Emile de Bonnechose, Lazare Hoche.

OF NATURAL PHILOSOPHY.

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

First Intermediate.

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

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

Second Intermediate.

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

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

For Certificate of Fitness.

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

For Call.

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

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

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

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

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

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

5. The Law Society Terms are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six

months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

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

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

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

FEES.

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

PRIMARY EXAMINATION CURRICULUM

FOR 1886, 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1886.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Cæsar, Bellum Britannicum.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. VI.

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

1888.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (vv. 133.)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

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

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

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

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical reading of a Selected Poem:—
1886—Coleridge, Ancient Mariner and Christabel.
1887—Thomson, The Seasons, Autumn and Winter.
1888—Cowper, the Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

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

1886, 1888, 1890 — Souvestre, Un Philosophe sous le toits.

1887, 1889 — Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

Cicero, Cato Major; *or*, Virgil, Æneid, B. I., vv. 1-304, in the year 1886: and in the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.
Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-Keeping.

Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.