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THE Torrens System of land registration has certainly taken kindly to the Prairie Province, and the latter to it. *The Western Law Times* in its last issue gives a short statistical summary of the results since its introduction on the 1st of July, 1885, when the Winnipeg office, originally the only one, and having jurisdiction over the whole province, was opened. In March, 1889, Land Titles Districts were established, and there now remain only six registration divisions under the old system. In the five years succeeding the inauguration of the new system, 7971 applications were received. There were 7653 registrations by way of transfer or mortgage and 10994 certificates issued. The expenditure during that period was more than one hundred thousand dollars, but the receipts were considerably over that sum; and the offices are now not only self-sustaining, but yield a revenue to the Government. Our contemporary estimates the value of the land brought under the system at considerably over fifteen million dollars. It is stated to be the intention of the present Government, as soon as it has been recouped for the expenditure of past years, to reduce the fees, thus making the offices self-sustaining only.

WE believe in economy. We think, however, that there is a line beyond which economy is unnecessary, and we have an instance in point which immediately concerns the profession. Until about the year 1884 the Law Society considered, naturally enough, that it was proper and essential that the profession should be supplied with the reports of the Supreme Court of Canada, as well as with those of this Province. About that year the society became imbued with a desire to economize—some have, indeed, called it parsimony—and in consequence thereof, the supply of Supreme Court Reports was cut off: the profession apparently being given to understand that if they should require the decisions of the court of last resort in this country, they must not expect their annual fees to cover the expense of the issue. The old arrangement between the Dominion Government and the Law Society enabled the latter to obtain copies for the profession at the low price of one dollar per volume. As the reports of the Supreme Court now cover so wide a field, every member of the profession must continually turn to them for the latest and, usually, the ultimate decision on the point in question. True economy is avoidance of unnecessary expense. This expense is, we think, fully warranted. The newly-elected benchers have inaugurated numerous reforms and curtailed needless expenses; let them curtail more—if, indeed, it be necessary—in order to have in hand the funds required to provide all barristers and solicitors whose fees are not in arrear

with a copy of the decisions of the highest court in this Dominion. Some of the benchers, we know, agree with us in this. We would urge on such to move in this matter, and we feel sure that they will be supported by the majority of the profession throughout the Province.

THE library at Osgoode Hall, considered to be one of the best law libraries on this continent, has been in the past unfortunate in not having had in charge of it a librarian who was able to devote his entire time to the important requirements of a position necessitating continued and arduous work on any one who would conscientiously endeavor to fulfil its duties. The new blood infused this year into the benchers of the Law Society considered rightly that the work of librarian and of secretary of the society could not be efficiently performed by one man, and relieved the late librarian of his duties as such, thus enabling him to devote his entire time to his other offices of secretary and sub-treasurer. The courteous and obliging assistant librarian was retained, and applications were received for the important position, in which a man of varied attainments, and general as well as technical knowledge, was so urgently needed. We are aware that many names were before the committee appointed to deal with the applications, and some of them of men with more or less claim on the society, as well as the names of persons eminently qualified to undertake a work which long since should have emerged from one of mere routine. In view of this, the selection of Mr. W. G. Eakins may well be considered a recognized tribute to that gentleman's ability. It does not detract from the merit of the appointment when we know that he is a member of some years' standing of the society which has chosen him, and that he is also "conversant with men and manners much" by his connection with a leading newspaper of this city. A distinguished course at the University of Toronto, embracing, as it did, several departments of university work, will be a guarantee of scholarly attainments; and we desire, in passing, to congratulate both the committee and the newly-chosen incumbent on the appointment.

THE old saying that a lawyer cannot draw his own will, of which we have a remarkable instance, among many others, in the case of Lord St. Leonards, is again borne out by the decision of the New York Court of Appeals in the matter of the will of the well-known lawyer, Samuel J. Tilden. His will appeared to express in explicit terms the desire of the testator to establish a free library in the city of New York, but owing to the indefiniteness in the object of the trust it was held void.

The facts shortly were that the testator gave the residue of his estate to his executors and trustees in trust, to obtain an act of incorporation of an institution to be known as the "Tilden Trust," "with capacity to establish and maintain a free library and reading room in the city of New York, and to promote such scientific and educational objects as my said executors and trustees may more particularly designate." By the will it was also provided that if such an

institution should be incorporated satisfactorily to them within the life of the survivor of two specified lives in being, the executors and trustees were authorized to organize the corporation, and convey to its use the residue of the estate, or so much as they should deem expedient. The will further provided that in case said institution should not be soin corporated, or if for any reason the executors and trustees should deem it expedient so to convey or apply said fund, or any part thereof, to the said institution, then they were authorized to apply the same "to such charitable, educational and scientific purposes" as in their judgment would render the same "most widely and substantially beneficial to the interests of mankind." The trustees duly obtained the charter and conveyed to the institution the residuary estate. It was held by a closely divided court that the trust was void for want of a certain designated beneficiary, for uncertainty and indefiniteness in the objects thereof, and for excess of discretion in the trustees.

In the recent case of *Read* v. *Williams*, 35 N.Y.S.R. 909, 26 N.E. 730, a bequest of the residue of the estate after the same should be converted into money "to such charitable institutions . . . as my executors, by and with the advice of" a person named, "shall choose and designate," was held to be void, both as a trust and as a power in trust, for want of a designated beneficiary or class of beneficiaries.

Bishop Hurst, of the Methodist Episcopal Church, having probably these decisions in mind, does not believe in taking any chances of a bequest being lost, and asks intending donors to the American University at Washington to present their gifts in their lifetime rather than bequeath them by will, and gives as his reason that "the risk is too great and the issues too serious in these days to entrust too confidently one's benevolent plans to the doubtful mercies of discontented heirs and industrious attorneys."

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for November comprise (1891) 2 Q.B., pp. 545-582; (1891) P., pp. 325-348; (1891) 3 Ch., pp. 81-241; and (1891) A.C., pp. 297-498.

CRIMINAL LAW—ILLEGAL EVIDENCE RECEIVED—INTIMIDATION—TRADE UNION THREAT OF STRIKE UNLESS EMPLOYER CEASED TO EMPLOY NON-UNION MEN—CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 (38 & 39 VICT., C. 86), S. 7, S-S. 1—(R.S.C., C. 173, S. 12, S-S. 1).

Connor v. *Kent* (1891), 2 Q.B. 545, was a case stated by a recorder for the opinion of the court in a prosecution for intimidation under the conspiracy and protection of the Property Act, 1875 (38 & 39 Vict., c. 86), s. 7 (R.S.C., c. 173, s. 12). It appeared by the case stated that the court had received and acted upon the evidence of the accused, and the court therefore quashed the conviction on the simple ground that this evidence had been improperly received. *Gibson* v. *Lawson* is another case included in this report, and is also a decision

upon a case stated by magistrates upon a prosecution under the same statute. Section 7 provides that "every person who with a view to compel any other person to abstain from doing, or to do any act which such other person has a legal right to do, or abstain from doing, wrongfully and without legal authority, (1) uses violence to or intimidates such other person, or his wife, or his children, or injures his property . . . shall, on conviction, be liable," etc. In this case the appellant and respondent were workmen in the same yard and were members of different trade unions. The trade union to which the respondent belonged resolved to strike if the appellant did not leave the union to which he belonged and join the respondent's union. The respondent informed the appellant of this resolve without using any threat of violence to the appellant's person or property in case of refusal. The appellant refused to join the respondent's union and was dismissed by his employer in order to avoid a strike: but the appellant swore that "he was afraid, because of what the respondent had said, that he would lose his work and could not obtain employment anywhere where the respondent's society predominated numerically over his own society." The court (Lord Coleridge, C.J., Mathew, Cave, A. L. Smith, and Charles, JJ.) were agreed that no case of intimidation within the statute had been made out. With regard to the cases of *Reg.* v. *Devitt*, 10 Cox C.C. 592; and *Reg.* v. *Bunn*, 12 Cox C.C. 316, in which Lord Bramwell and Lord Esher are reported to have held that the statutes on the subject of trade unions had in no way altered or interfered with the common law, and that strikes and combinations expressly legalized by statute may yet be treated as indictable conspiracies at common law, the court considered such a proposition as "contrary to good sense and elementary principle," and they cast over such indefensible decisions the ever-ready mantle of judicial charity by adding, "and the reports, therefore, cannot be correct." *Curran* v. *Treleaven*, a decision on a cognate subject, is also included in this report. In this case the appellant was a secretary of a trade union and the respondent was a coal merchant, and in order to prevent the respondent from employing non-union men the appellant and two other secretaries of trade unions informed him that if he did not cease to do so they would call off the members of their respective unions. After a meeting of the unions, at which it was resolved to adopt this course, the appellant and the other secretaries, in the presence of the respondent, who was invited to attend, made the following statement to the respondent's workmen and others who were assembled: "Inasmuch as Mr. Treleaven still insists on employing non-union men, we, your officials, call upon all union men to leave their work. Use no violence; use no immoderate language; but quietly cease to work and go home." The union men, in consequence, ceased to work, and it was held by the court that there was no evidence of any intimidation by the appellant within the meaning of the statute. The court repudiate the idea that, because the result of a strike may be detrimental to an employer, therefore the promotion of it is an indictable offence at common law. Where there is no malice in fact, and the strike is promoted to benefit the workmen, even though the employer be injured, yet the agreement to strike under such circumstances is neither illegal nor actionable.

EASEMENT—RIGHT OF WAY—MORTGAGE OF SERVIENT TENEMENT WITHOUT RESERVATION OF RIGHT—IMPLIED RESERVATION—WILL—DEVISE—IMPLIED GRANT.

Taws v. Knowles (1891), 2 Q.B. 564, was an action brought to recover damages for interruption of an alleged right of way. Both plaintiff and defendant claimed title under a testatrix who had been owner of both the dominant and servient tenement. The dominant tenement she had occupied herself, and the way in question was over a passage, which led from the house she occupied, through the servient tenement (which she let to a tenant), to a street. This was not a way of necessity, but was used by her from time to time. In 1882 the testatrix had mortgaged the servient tenement without reserving the right of way over it. She subsequently died, and by her will devised the dominant tenement to the plaintiff's predecessor in title and the servient tenement to the defendant. The will contained no reference to the right of way. The defendant redeemed the mortgage and took a conveyance from the mortgagee. Under these circumstances, A. L. Smith and Grantham, JJ., held that, as no right of way was reserved by the mortgage and as the way was not a way of necessity, all right of way through the passage was extinguished by the mortgage; and that consequently the right of way had not passed to the plaintiff's predecessor in title under the will, and they dismissed the action. Upon appeal, the court (Lindley, Fry, and Lopes, L.JJ.) refused to decide whether or not the way did or did not pass under the will subject to the mortgage: but they affirmed the decision on the ground that as both plaintiff and defendant were volunteers, the plaintiff had no equity to deprive the defendant of the larger estate he had acquired by the conveyance from the mortgagee; but, though dismissing the appeal, they did so subject to the right (if any) of the plaintiff to redeem the mortgage. *Phillips* v. *Low*, 92 L.T. 26, is another case recently decided by Chitty, J., bearing on the questions involved in this case.

TRUSTEE—MORTGAGE BY CESTUI QUE TRUST—MISREPRESENTATION, LIABILITY OF TRUSTEE FOR—PERSON CONTRACTING WITH C.Q.T.—INCUMBRANCES—NOTICE OF INCUMBRANCE TO TRUSTEE—FRAUD.

Low v. *Bouverie* (1891), 3 Ch. 82, was an action in which an incumbrancer on the interest of a *cestui que trust* sought to make the trustee liable for misrepresenting the amount of the prior incumbrances on the interest of the *cestui que trust* of which notice had been given to him (the trustee). There was no doubt that the misrepresentation had been made in fact, but it was admitted that it had been made without fraud, and that it was due to negligence or forgetfulness. The representation was made in answer to a letter from the plaintiff's solicitors stating, as a reason for the inquiry, that their clients "were doing business with" the *cestui que trust*, but not stating that any advance was intended to be made on the strength of the information obtained from the trustee. The defendant stated certain incumbrances, but not all of which notice had been given. But he did not state that those mentioned were all. Under these circumstances, as there was no actual fraud, the Court of Appeal (Lindley, Bowen, and Kay, L.JJ.) held that under *Derry* v. *Peek*, 14 App. Cas. 337, the trustee was

not liable on the ground of deceit, neither could he be made liable on the ground of breach of duty, warranty, or estoppel, and they reversed the decision of North, J., who had given judgment against the defendant. The Court of Appeal discuss very fully how far trustees are under any obligation to furnish such information, and come to the conclusion that they are under no such obligation, either to their *cestui que trust* himself or to any one claiming under him. They also discuss the question as to when an estoppel arises by virtue of a representation, and point out that it is only where a party can claim that the facts shall be held to be true as they are represented that that doctrine can be invoked. In the present case, to hold the defendant to the representation that there were the incumbrances which he had mentioned, would not assist the plaintiffs, because he had not made the negative statement that there were no others. The cases of *Moff* v. *Bank U.C.*, 5 Gr. 374; *Cook* v. *R. C. Bank*, 20 G. 1, and *Dominion Savings and Investment Society* v. *Kitridge*, 23 Gr. 631, may be referred to as showing how an estoppel may arise by virtue of a representation. The result of the law as laid down by the Court of Appeal is (1) that a trustee is under no obligation to give any information at all as to incumbrances on the interest of his *cestui que trust*: (2) that if he does give information he is not liable for any negligent misrepresentation made by him, provided he has not made it fraudulently, with intention to deceive; nor is he bound by it as a warranty where there is no contract nor intention to contract: (3) that no estoppel arises unless the statement made is so clear and unambiguous as to prevent the person making it from setting up the true state of facts; *e.g.*, if the defendant in this case had said there were no incumbrances on the interest of his *cestui que trust* except those he mentioned, he might have been estopped from setting up the contrary; but the defendant's letters being ambiguous and being consistent with the fact that the incumbrances he mentioned were all he knew of, or remembered, no estoppel could arise Estoppel, as Bowen, L.J., explains, is merely a rule of evidence, and no action for damages can be founded on it, and an estoppel can only arise where the language is clear and unambiguous: and, as Kay, L.J., observes, the doctrine of estoppel does not apply to an action of deceit because "in such an action the plaintiff relies, not on the truth of the statement, but upon its falsehood; and he is bound to prove not only that the representation was untrue, but also that it was made fraudulently."

COSTS—"FULL COSTS," MEANING OF.

In *Avery* v. *Wood* (1891), 3 Ch. 115, the Court of Appeal determined that where an action is dismissed with "full costs" pursuant to the terms of a statute authorizing "full costs" to be awarded, the costs are to be taxed in the ordinary way between party and party. See 14 P.R. 407, 411.

REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT., C. 57), S. 8 (R.S.O., C. 111, S. 23.)—SUIT TO RECOVER LEGACY—EXPRESS TRUST—IMPLIED TRUST.

In re Davis, Evans *M ore* (1891), 3 Ch. 119, is a decision which we have already referred to, (see *ante* p. 514). As we have already stated, the Court of

Appeal (Lindley, Fry, and Lopes, L.JJ.) decided that in a suit against an executor for a legacy the executor may set up the Statute of Limitations as a bar to its recovery, notwithstanding he is an implied trustee of it; this being, as we have already observed, contrary to the ruling of the Ontario Court of Appeal in *Cameron* v. *Campbell*, 7 A.R. 361. In a late case, *Strader* v. *Harkness* (not yet reported), Boyd, C. we believe has also held that a defence of the Statute of Limitations is a good defence to an action against an executor for a legacy when there is no express trust.

WILL—CONSTRUCTION—"SHARES," MEANING OF—DEBENTURE STOCK.

In re Bodman, Bodman v. *Bodman* (1891), 3 Ch. 135, the sole point for adjudication was whether under a bequest of all a testator's "shares" in a public company his debenture stock would pass. The testator at the time of his will had ten £10 shares and £200 of debenture stock in the company, and Chitty, J., held that the debenture stock did not pass, because by the Companies' Act there was a material difference between the ordinary proprietary shares and debenture stock of a company, the holders of the latter not being members of the company and having no right to vote at any meeting of the company, and being entitled merely to a fixed rate of interest whatever the net profits might be. A *dictum* of James, L.J., in *Attree* v. *Howe*, 9 Ch.D. 649, that debenture stock "is of the same nature as other stock of a company," is to be understood, not as an absolute and unqualified statement, but merely in relation to the point decided in that case.

SOLICITOR'S LIEN—TITLE DEEDS HELD BY MORTGAGEE—COSTS OF MORTGAGEE'S SOLICITOR—PAYMENT OF MORTGAGE—MORTGAGOR'S RIGHT TO HIS DEEDS.

In re Llewellin (1891), 3 Ch. 145, Chitty, J., reaffirms a well-established principle in regard to the law governing a solicitor's lien, viz., that a solicitor's right of lien on deeds is limited to the interest of his client in the deeds; and if his client is bound to deliver up the deeds, his solicitor cannot retain them for costs due by his client. In this case the deeds in question were held by the solicitor as solicitor for a mortgagee: the mortgagor had paid off the mortgage and obtained a release from the mortgagee, and claimed to have the title deeds delivered up to him. The solicitor refused to deliver up the deeds, claiming a lien thereon for costs due to him by the mortgagee for costs of an attempted sale of the mortgaged property incurred on the instructions of the mortgagee. Chitty, J., ordered the solicitor to deliver up the deeds and pay the costs of the application. It may be well to notice that the order was made on a summary application in the matter of the solicitor; and but for the fact that the deeds had originally come to the solicitor's hands as solicitor for the mortgagor, it would have been necessary to bring an action to recover them.

WILL—CONTINGENT REMAINDER—EXECUTORY DEVISE.

Dean v. *Dean* (1891), 3 Ch. 150, is a decision of Chitty, J., on one of those knotty points of real property, which arose upon the construction of a will, the

point being whether a limitation in a will was to be construed as creating a contingent remainder or an executory devise. The devise in question was to A. for life, and from and after the decease of A. to the use of such child or children of A. living at his decease, and such issue then living of the child or children of A. then deceased, as either before or after the death of A. should attain the age of twenty-one or die under that age leaving issue. Here it is obvious that if the devise were to be construed as a contingent remainder on the death of A. leaving an infant child or children, or any infant child or children of a deceased child, the devise would fail, because the limitation in favor of the remainderman could not take effect immediately on the determination of the life estate; whereas, if construed as an executory devise, the limitation would take effect on the children attaining twenty-one. The case was complicated by there being conflicting decisions Chitty, J., following *Re Lechmere* v. *Lloyd*, 18 Ch.D. 524, and *Miles* v. *Jarvis*, 24 Ch.D. 633, in preference to *Brackenbury* v. *Gibbons*, 2 Ch.D. 417, decided that the limitation must be regarded as an executory devise. It may be that in Ontario the question discussed in this case is not of much importance, having regard to the provisions of R.S.O., c. 100, s. 29.

TRADE UNION, POWER OF, TO ACQUIRE AND HOLD LAND—DEVISE TO A FOR HIS LIFE AND THE LIFE OF HIS HEIR, EFFECT OF—DEVISE TO A SOCIETY NOT AUTHORIZED TO TAKE BY DEVISE.

In re Amos, Carrier v. *Price* (1891), 3 Ch. 159, two interesting points of real property law are decided by North, J., also arising upon the construction of a will, dated in 1871, whereby a testator devised and bequeathed freehold and leasehold land to a devisee for his life and the life of his heir, "after which it becomes the property of the Boiler Makers and Iron Ship Builders' Society." The first problem to be solved was, What was the legal effect of a devise to a man for life and for the life of his heir? It was argued that the testator had attempted to give an estate unknown to the law, that an estate *pour autre vie* must be for the life of a person ascertained during the tenant's own life. But North, J., held that the devise was legally valid, and that the effect of it was to give to the devisee an estate for his own life and for the life of the person who should be ascertained to be his heir at his decease. The next problem was as to the effect of the gift in remainder to the society, which was a trade union society, not a corporate body, but empowered by statute to hold and acquire land "by purchase." It was contended that "purchase" means "acquire otherwise than by descent or escheat," but North, J., was of opinion that the statute simply empowered the society to acquire land for money and did not enable the society to acquire land by devise, and therefore that the devise to the society was void: and as to the freehold, the land vested in the heir at law; and as to the leasehold, it passed to the next of kin.

EQUITABLE CONTINGENT REMAINDER—FAILURE OF LIFE ESTATE—40 & 41 VICT., C. 33—(R.S.O., C. 100, S. 29).

In re Freme, Freme v. *Logan* (1891), 3 Ch. 167, is another decision on the law relating to contingent remainders. The question was whether a contingent

remainder of an equity of redemption created prior to 40 & 41 Vict., c. 33, which after that act had become clothed with the legal estate, was defeated by the failure of the prior life estate before the remainder could take effect in possession. North, J., held that as an equitable contingent remainder is not subject to the legal rule that makes a legal contingent remainder liable to be destroyed by the failure of the prior particular estate, so the fact that it had subsequently become clothed with the legal estate could not make it subject to the legal rule, and therefore that the limitation was valid and subsisting, notwithstanding the failure of the particular estate. See R.S.O., c. 100, s. 29. This act, we may observe, though somewhat on the lines of the English act, is very differently worded.

SETTLEMENT—CONSTRUCTION—COVENANT TO SETTLE AFTER ACQUIRED PROPERTY.

In re Crawshay, Walker v. *Crawshay* (1891), 3 Ch. 176, a somewhat curious point was raised. The defendant on his marriage in 1881 had agreed to settle any property he might thereafter acquire under the will of his mother, who was then alive. She died in 1889, and by her will left him a life interest in a sum of money, but subject to a clause that if he alienated or attempted to alienate his interest in the fund his interest should cease and the subsequent trusts be accelerated. The trustees desired the opinion of the court whether the execution of the agreement for a settlement had worked a forfeiture under the will. North, J., came to the conclusion that the property in question was not within the covenant, and therefore that there had been no forfeiture.

WILL—BEQUEST TO A CLASS—VESTED OR CONTINGENT GIFT—PERIOD OF ASCERTAINMENT OF CLASS—REMOTENESS.

In re Mervin, Mervin v. *Crossman* (1891), 3 Ch. 197, the rule against perpetuities receives a further illustration. A testator by his will, made in 1848, gave his residuary real and personal estate upon trust for sale, etc.; and, after giving certain annuities, directed the trustees to hold the investments and income thereof, "upon trust to pay and divide the same equally between the children of my son, viz. (naming five), and any other children who may hereafter be born, as and when they shall respectively attain twenty-five years," and the testator gave his trustees power, "in the meantime, to pay and apply the whole or any part of the remainder of the increase of the investments for the maintenance and education of such grandchildren during their minority"; and also to pay and apply for the benefit or advancement of his said grandchildren, or any of them, "any part not exceeding one-half of the capital to which they or he may be entitled expectant on their, his, or her attaining twenty-five years." At the testator's death in 1879 his son had five children living, three were subsequently born, and all were still living. His eldest child attained twenty-five in January, 1890. Stirling, J., held that none of the grandchildren took vested interests, but that the gift was a gift to a class, which must be ascertained when the first of the grandchildren attained twenty-five; and that the gift was therefore void for remoteness,

because at the death of the testator none of the children of the son had attained twenty-five. "All the children then living might have died without attaining twenty-five, so that it might have happened that the class to take was not ascertained until after the expiration of a life or lives in being and twenty-one years afterwards, that is, beyond the limit allowed by the rule against perpetuities."

ADMINISTRATION—DEBT OWED TO ESTATE BY BENEFICIARY BARRED BY STATUTE OF LIMITATIONS—DEBTS OWING BY BENEFICIARIES, WHEN TO BE BROUGHT INTO ACCOUNT—SPECIFIC GIFTS.

In re Akerman, Akerman v. *Akerman* (1891), 3 Ch. 212, a testator gave shares of his residuary real and personal estate to three of his sons. The sons owed the testator's estate for moneys advanced by the testator to them in his lifetime, but the right of action for the debt was barred by the Statute of Limitations. The point Kekewich, J., was called on to decide was whether in making the division of the residue these debts were to be brought into account as against the respective shares of the debtors, and he determined that they must, together with 4% interest thereon from the testator's death. Another point was also raised as to certain specific devises and bequests of freehold and leasehold estates to the three sons, and he held that they were respectively entitled to their specific gifts without first making good what, if anything, was due in respect of their indebtedness to the testator's estate.

STATUTORY RIGHT TO COMMIT DAMAGE—COMPENSATION—FAILURE OF SPECIAL STATUTORY TRIBUNAL—JURISDICTION OF HIGH COURT TO ASSESS COMPENSATION.

In *Bentley* v. *Manchester, Sheffield & L. Ry. Co* (1891), 3 Ch. 222, the defendants had acquired a statutory right to commit damage to the plaintiff's property. The statute bound the defendants to make compensation for the damage, to be assessed by a tribunal specially constituted; that tribunal had ceased to exist, and the defendants claimed that the plaintiff was without remedy; but Romer, J., held that under such circumstances the High Court has jurisdiction to assess the compensation.

TRUSTEE—BREACH OF TRUST—RESIDUARY PERSONAL ESTATE HELD ON TRUST—STATUTE OF LIMITATIONS—TRUSTEE ACT, 1888 (51 & 52 VICT., c. 59) s. 8—(54 VICT., c. 19, s. 13 (O.)).

In re Swain, Swain v. *Bringeman* (1891), 3 Ch. 233, is a decision of Romer, J., under the Trustee Act, 1888, s. 8, the provisions of which were adopted in Ontario at the last session (54 Vict., c. 19, s. 13 (O.)). The action was brought by a *cestui que trust* under a will of a testator who died in 1872 against a surviving executor and trustee for a breach of trust, and to compel him to make good an alleged loss of £1800 occasioned thereby. Under the will the trustees and executors were directed to realize the residuary personalty, and pay the income, with the rents of the realty, to the testator's widow during widowhood, she maintaining and educating her family. The real estate was devised to them in trust to sell when the youngest son attained twenty-one, and a specified sum was then directed to be invested for the widow and the income paid to her during life or widowhood, and on her death or marriage the sum so to be invested was to be divided

among the testator's daughters. Instead of realizing the residuary personalty, the executors and trustees allowed the widow and children to live on the testator's farm, which the trustees worked, and maintained the widow and children out of the profits until 1882, when the youngest son attained twenty-one, and the residuary personalty and realty were then sold. The present action was commenced by one of the sons in 1890, the widow being still alive. Romer, J. held that the action was not one for a legacy to which the lapse of twelve years could be pleaded under 37 & 38 Vict., c. 57, s. 8 (R.S.O., c. 111, s. 23), but an action for a breach of trust to which "no existing Statute of Limitations applied" before *the Trustee Act of* 1888 (54 Vict., c. 19 (O)) was passed; and that under s. 8 of that act (s. 13 of Ontario Act) the lapse of six years was a good defence in bar of the action. We may note that the Ontario statute does not apply except to actions commenced after 1st January, 1892.

Notes on Exchanges and Legal Scrap Book.

JOINT WILL—VALIDITY.—A joint will executed by two brothers, revocable at the will of either, is valid. *Hill* v. *Harding*, Ky., 17 S.W. Rep. 199.

WITNESS—EVIDENCE.—When a witness has been in a position to know the facts, but his memory has grown dim, what he thinks he recollects is, if relevant, admissible in evidence in connection with the other testimony. *Harris* v. *Nations* (Tex.), 15 S.W. 262.

EXECUTORY CONTRACT—WASTE.—The maxim that equity regards that as done which in good conscience ought to be done will not be applied in favor of one in possession of land under an executory contract of purchase, so as to enable him to waste or destroy the property or impair the vendor's security before the contract is performed. *Miller* v. *Waddingham* (Cal.) 11 L.R.A., 510; 25 Pac., 688.

CRIMINAL LAW—HOMICIDE—MANSLAUGHTER.—One who goes to another's house, where the inmates are quiet and inoffensive, and, with pistol in hand, originates a difficulty, and undertakes to intimidate them, and by his conduct causes a person to shoot him, is guilty of voluntary manslaughter, if after being shot he pursues and kills such person. *Main* v. *Commonwealth*, Ky., 17 S.W. Rep. 206.

MARRIED WOMEN—SERVICES.—A married woman may recover in her own right for services rendered by her in caring for another than her husband, though the person cared for resides in the house with herself and husband as a member of the family, but not for board and provisions without proving that the husband did not furnish them. *Stamp* v. *Franklin* (Sup. Ct.), 35 N.Y.S.R., 828; 12 N.Y. Supp., 391.

SALE—BUILDING MATERIALS.—The words "building materials" in a contract of sale of material to be removed from a certain lot of ground do not include fixtures and appliances contained in the building for supplying heat, for lighting by gas, and for the distribution of water.—*Labbé* v. *Francis*, Montreal, L.R., 7 S.C.

CHINESE EXCLUSION ACT—DEPORTATION.—Where a Chinese person has been convicted of being unlawfully in the United States, and the evidence shows that he entered the United States from Canada, after having been in that country for a time, he must be returned to Canada, under the act which provides that such person shall be removed to "the country whence he came." *In re Mah Wong Gee*, U.S.D.C. (Vt.), 47 Fed. Rep. 433.

PROFESSIONAL CIPHER.—The practice has often been exposed of sending to young lawyers, for collection, claims which have been given up by older practitioners and even the most indefatigable dunning agencies. It betokens a touching faith in the power of mere youth on the part of the creditors, but the custom is rather hard on the young attorney. We have often thought that some private professional cipher might be agreed on which, if found imprinted on a venerable but not quite outlawed promissory note, would save any attorney into whose hands it came from squandering energy over it.—*N. Y. Law Journal.*

MARRIAGE LAWS.—THE CANADA LAW JOURNAL for June 1st contains an interesting letter from a resident in the North West Territories, which declares that: "An important question which is likely to engage the attention of jurists in the near future is the legitimacy of so-called marriages solemnized after the Indian customs of our aborigines." With the natives, it seems, "it is a marriage in good faith; but "the wily white man does not so regard it," and is constantly "attempting to repudiate his so-called wife and legally contract another marriage." This state of things probably is not unlike the state of things in Burmah, where the union of an Englishman and a Burmese woman is (or used to be) of very frequent occurrence. The validity of marriages of the kind was fully considered in *Bethell* v. *Hildyard*, L.R., 38 Ch. Div., 220, where a marriage had taken place in Bechuana land between an Englishman and a Bechuana woman, in Bechuana fashion. This marriage was pronounced to be invadid, on the ground that a marriage of the kind, performed in a foreign country, is not a valid marriage according to the law of England unless it be formed on the same basis as marriages throughout Christendom, and be in its essence "the voluntary union for life of one man and one woman to the exclusion of all others."—*Indian Jurist.*

TAVERN-KEEPER'S VOLUNTARY SUBMISSION TO A POPULAR VOTE.—*The Law Journal* relates that "a very odd, probably unique, proceeding has just been been witnessed in a Westmoreland village, near Kendal. Most businesses,

including that of a publican, are carried on primarily for the benefit of the owner, and it is indeed an edifying spectacle to find an innkeeper appealing to his fellow-parishioners as to whether they think his inn a benefit or a nuisance to the neighborhood. Yet this has happened in the case of an ancient tavern at Burneside. There was many years ago a beershop in Drury Lane where they refused to serve any customer with more than one drink. The proprietors of the Anglers' Arms at Burneside for many years past, deeming themselves physicians or moralists as well as publicans, appear to have exercised a like discretion, and often declined to serve applicants with liquor. The present owners have even gone a step further, and a week or two ago deliberately invited the opinion of the ratepayers by the issue of voting-papers, and undertook, if a substantial majority should be in favor of the discontinuance of the business, to close the house for the purposes of alcoholic refreshment." On the vote being taken it was found that the people had decided that the house should remain open.

"WHILE THERE IS LIFE THERE'S HOPE" is a motto which doubtless did not occur to the plaintiff in the insurance case tried recently in New York. The proceedings had a most sensational termination, the plaintiff's husband, upon whose supposed death she was claiming money from an insurance society, suddenly appearing in court. Put very briefly, these were the facts of this remarkable case. John H. Gately disappeared in 1888. On July 21st, 1890, a body was found which was identified by Gately's widow as that of her husband. The remains were buried by the widow, who then claimed $3,200 from the insurance company, her husband being insured for that amount. The company refused payment on the ground that the evidence of death was insufficient. Mrs. Gately then brought an action, which was tried one day last week. It was, however, speedily brought to a close by Gately himself walking into court. His appearance caused a great sensation, and a verdict for the insurance company was given by the jury without leaving their seats. The most sanguine litigant could not hope to win with so much against her.—*Law Gazette.*

Reviews and Notices of Books.

A Guide to Criminal Law. By Charles Thwaites. Third edition, London: Geo. Barber, 1891.

This work is intended for the use of students reading for the Bar Examination. The fact that it has reached its third edition shows that it has been found useful by students. We have compared the general sketch of criminal law in this book with our criminal statutes, and find little difference except in the matter of punishments, and of recent English statutes not yet adopted in Canada. The student for the final who has read his Harris carefully and concludes with a perusal of the general sketch and the questions and answers in this little manual need have no fear of the paper on criminal law.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1891.

The following is a *résumé* of the proceedings of Convocation during the above Term :—

The following gentlemen were called to the Bar, viz. :

May 18th.—Thomas Milton Higgins, Robert McKay, William James Fleury, John Fosberry Orde, George Wilkie, John Alexander Fergason, Samuel King, James Edmund Jones, Honore Chatelain, Robert B. Henderson, Norman Mackenzie, Thomas Alexander Gibson, John Albert Taylor, Alexander Grant Mackay, Edward Francis Blake, Edward Gerald Fitzgerald, Frederick Forsyth Pardee, Henry Langford, Robert Alexander Montgomery, William Cameron Smith, Gordon Waldron, D'Arcy Fenton, Hugh Macdonald, Percy Allan Malcolmson, David Mackenzie, William Havelock Garvey, Patrick Kernan Halpin, Charles Edwin Oles, Matthew Wilkins.

May 19th.—Frank Stewart Mearns, James Albert McMullen, Horatio Clarence Boultbee, William Hardy Murray.

June 6th. James Hales, D. Grant, Edward Mortimer, Alexander Grant McLean, Harold Jamieson, Robert Moore Noble.

June 30th.—Norman Phelps Buckingham.

The following gentlemen were granted Certificates of Fitness as Solicitors, viz. :

May 18th.—John Fosberry Orde, John Albert Taylor, Harper Armstrong, Frederick Forsyth Pardee, Edward Gerald Fitzgerald, D. Fenton, Ashman Bridgeman, William Havelock Garvey, Robert B. Henderson, Thomas William Scandrett, Edward Lindsay Middleton, Matthew Ford Muir, Joseph Braun Fischer.

May 19th.—James Duncan Lamont, William Hardy Murray, Norman Mackenzie, William James Fleury, James Albert McMullen, D. W. Baxter, Newton Wesley Rowell, William Cameron Smith.

May 20th.—Samuel King.

June 6th.—Robert Alexander Montgomery, George Wilkie, Thomas Alexander Gibson, Horatio Clarence Boultbee, Gordon Waldron, James Hales, Harold Jamieson.

June 30th.—Arthur Crowe, Thomas Milton Higgins, William Frederick Hull, David Mackenzie, Henry Langford, Norman Phelps Buckingham.

The following gentlemen passed the Second Intermediate Examination, viz. :

T. H. Lennox, J. H. Rodd, L. P. Duff, W. D. Card, G. F. Blair, W. J. McCammon, E. Donald, H. A. Stewart, E. G. Rykert, N. Jeffrey, I. B. Irwin, L. B. C. Livingstone, J. R. Milne, H. A. Lavall, F. W. Gladman, H. E. McKee, P. S. Lampman, M. O. Street, G. G. Duncan.

The following gentlemen passed the First Intermediate Examination, viz. :

James T. Scott, John McCready, Edward W. Lewis, P. A. LaRose, A. Nugent, Hugh Matheson, Charles O'Connor, J. F. McMaster, James McLennan, G. S. Bowie, T. H. Grant, J. M. Farrell, A. E. Garrett, W. Stamworth, F. M. Brown, Allan McLennan, G. G. Thrasher.

The following gentlemen were entered as Students-at-Law and Articled Clerks, viz.:

Graduates.—John Douglas Kennedy, Arthur Breden Cunningham, Charles Theophilus Des Brissay, George Drewry, Daniel P. O'Connell, Geo. F. Peterson, Francis G. Kirkpatrick, David Allen Burgess, David Wesley Jameson, George Arthur Bell, Alfred William Briggs, Walter Ellis Buckingham, George Bennett Burson, Henry Zane Churchill Cockburn, Thomas David Dockeray, Duncan Donald, Alexander Tasken, George Howard Ferguson, Hugh McEwen, John Milton Godfrey, William Heard Harris, Arthur Thomas Kirkpatrick, Gordon Laing, William James Moran, Patrick J. O'Rourke, Henry C. Pope, Hugh Edward Rose, John Sale, John Manning Scott, Russell M. Thomson, Uriah Morley Wilson, Henry Montgomery Wood, George Alexander M. Young, C. R. McKeown.

Matriculants.—J. L. Killoran, G. H. Thompson, E. J. Butler, E. J. Deacon, G. F. Kelleher, O. E. Klein, A. Langlois, J. E. McPherson, D. A. McDonald, J. E. McMullen, J. W. Payne, J. A. Supple, F. W. Tiffin, J. P. White, P. A. Manning, M. J. O'Reilly, M. A. Secord, H. H. Wood, O. A. Langley, H. H. Bicknell, W. A. McCord, I. H. Addison.

Convocation met.

Present.-- Messrs. McCarthy, Moss, Guthrie, Strathy, Barwick, McDougall, Hoskin, Irving, Riddell, Mackelcan, Hardy, Shepley, Idington, Fraser, S. H. Blake, Ritchie, Britton, Bruce, Teetzel, Kerr, Martin, and Aylesworth.

The Secretary declared and reported the following gentlemen to be elected Benchers of the Society for the ensuing five years, viz.:

Messrs. W. R. Meredith, Charles Moss, A. J. Christie, Colin Macdougall, James Magee, Donald Guthrie, B. B. Osler, Edward Martin, Christopher Robinson, B. M. Britton, Arthur S. Hardy, John Hoskin, Christopher F. Fraser, H. H. Strathy, F. MacKelcan, D'Alton McCarthy, John Bell, George F. Shepley, Alex. Bruce, J. V. Teetzel, A. B. Aylesworth, George H. Watson, Z. A. Lash, J. K. Kerr, Walter Barwick, Æmilius Irving, Charles H. Ritchie, William Douglas, W. R. Riddell, and John Idington.

On motion of Mr. Hoskin, seconded by Mr. Moss, the Honorable Edward Blake was unanimously elected Treasurer for the ensuing year.

The minutes of the last meeting were read and approved.

Ordered, that leave be granted to Mr. Hoskin to introduce rule to amend Rule 30.

Ordered, that the petition of Miss Clara Brett Martin for admission as a Student-at-Law be referred to a Special Committee composed of Messrs. S. H. Blake, D. Guthrie, Idington, Meredith, Moss, Riddell, Shepley, Martin, and McCarthy.

The Secretary reported that he had been served on the 15th of April with notice of an application to reinstate Mr. J. G. Currie on the Roll of Solicitors,

and that the solicitor of the Society had appeared, according to the exigency of the notice, and had the matter enlarged till after the first day of Convocation.

Ordered, that the matter be referred to the Discipline Committee, and that the solicitor be instructed to obtain further enlargements if necessary.

Ordered, that the consideration of Mr. Justice Rose's letter, enclosing a letter from C. W. Yomex to W. R. Riddell alleging improper conduct on the part of a solicitor, do stand till the Saturday next after the appointment of the Standing Committees.

Ordered, that the word "nine" in Rule 30 be struck out and the word "twelve" substituted therefor.

Ordered, that Messrs. Bruce, Hoskin, Irving, Meir, Strathy, McCarthy, Shepley, Martin, Moss, Lash, and Riddell, be a Special Committee to strike the Standing Committees to be elected in accordance with Rule 29.

Mr. Hoskin, on behalf of Mr. Irving and himself, presented their Report on the application of Mr. G. M. Gardner to the Provincial Legislature for an act to admit the said Gardner to practice in Ontario as a solicitor as follows:

(1) That a bill with this object in view was introduced at the late session, and that your Committee had a lengthy correspondence with the Attorney-General, pointing out the reason why an act to the above effect should not pass.

(2) That ultimately the bill was withdrawn.

(3) That this is the third time that the said Gardner has made application for the purpose aforesaid to the Legislature, and your Committee would suggest that Convocation should appoint a committee to prepare between this and the next meeting of the Legislature such matter as will enable them to oppose any further application of the said Gardner to the Legislature.

Ordered, that Mr. Barwick be added to the above Committee.

Ordered, that the report of the Discipline Committee on Mr. Armstrong's complaint against Mr. W. G. Fisher, a solicitor, be considered on 23rd May instant.

Ordered, that the letter of W. H. Vandersmissen, Librarian, Toronto University, in reference to presenting the University with a complete set of Reports from the time when they became the property of the Society, be referred to the Reporting Committee to report how far the request can be complied with and the whole cost involved.

The Report of the Legal Education Committee on the Primary Examinations was received and read as follows:

The following candidates for admission were entered on the books of the Society as Students of the Graduate Class, viz.:

(1) John Douglas Kennedy, Arthur Breden Cunningham, Charles Theophilus Des Brissay, George Drewry, Daniel Patrick O'Connell, George Frederick Peterson, and Francis Grant Kirkpatrick.

(2) That the following candidates were entered as Students-at-Law of the Matriculant Class, viz.:

James Lawrence Killoran, George Herbert Thompson, Edward James Butler, Ernest John Deacon, George Frederick Kelleher, Otto Edward Klein, Alexander Langlois, James Edgar Macpherson, Donald Alexander McDonald, James E. McMullen, John Webber Payne, Joseph Alfred Supple, Frederick William Tiffin, John Percival White, Percy Alexander Manning, Michael Joseph O'Reilly, Melvin A. Secord, Herbert Harold Wood, Oliver Aylmer Langley, Hugh Harry Bicknell, Willian Arthur McCord.

Ordered, that the above-named gentlemen be entered as members of the Law Society.

Ordered, that leave of absence be extended to Mr. Grasett to 1st September next, and that the Finance Committee see that his duties are properly performed in the meantime, with power to make such arrangements as may be necessary in the premises.

Ordered, that leave of absence be granted to Mr. Esten, during vacation from first July to first September, and his salary to be continued as usual, and that his salary up to 31st August be paid in advance if he shall so desire.

Ordered, that the Finance Committee arrange for any temporary assistance required by reason of the absence of Mr. Esten.

The Report of the Special Committee on Standing Committees was read and adopted.

Tuesday, May 19th.

Convocation met.

Present—Messrs. Riddell, Ritchie, Irving, Moss, Martin, Strathy, Barwick, McDougall, Shepley, McCarthy, Meredith, Teetzel, Kerr, Aylesworth, Watson.

The minutes of the last meeting were read and approved.

Mr. Moss, from the Legal Education Committee, reported the regulations made for the examinations in the Law School and under the former system for the present term.

Ordered, that Charles R. McKeown be admitted as a graduate as of Easter Term, 1891, and that his time run from the first day of this term.

The Legal Education Committee reported respecting the acts relating to the call to the Ontario Bar of Ministers of Justice of Canada not already members thereof, and to the admission as solicitors of barristers of certain standing.

The Committee suggest the framing of proper regulations for the carrying into effect the provisions of the act in regard to the admission of barristers as solicitors.

The Report was read and adopted.

Ordered, that so much thereof as relates to framing rules and regulations as to the admission of barristers as solicitors be referred to the Legal Education Committee.

The Report of the Examiners on the First and Second Intermediate Examination was received and adopted.

The Report of the Secretary on the standing of the candidates was received and read.

Ordered, that the following gentlemen be allowed their First Intermediate Examination, viz.:

J. T. Scott, J. J. McCready, E. W. Drew, P. A. C. LaRose, A. Nugent, H. Matheson, Charles O'Connor, J. F. McMaster, J. K. McLennan, G. S. Bowie, T. H. Grant, J. M. Farrell, A. E. Garrett, W. Stamworth, F. M. Brown, A. McLennan, G. G. Thrasher.

Ordered that the following gentlemen be allowed their Second Intermediate Examination, viz.:

T. H. Lennox, J. H. Rodd, L. P. Duff, W. D. Card, G. F. Blair, W. J. McCammon, E. Donald, H. A. Stewart, E. G. Rykert, N. Jeffrey, I. B. Irwin, L. B. C. Livingstone, J. R. Milne, H. A. Lavall, F. W. Gladman, P. S. Lampman, M. O. Street, G. G. Duncan, H. E. McKee.

The Report of the Principal of the Law School on the work of the School during the past term was laid on the table.

The Secretary laid before Convocation the order of the High Court of Justice, dated the third day of March, A.D. 1891, in the matter of Henry Auber Mackelcan, a solicitor, ordering that the said Henry Auber Mackelcan be struck off all existing rolls of attorneys and solicitors, and off the roll of the Supreme Court, and that he be not entered on any future list of the Supreme Court that may be made up, and the certificate of the Registrar of the Chancery Division of the High Court of Justice, certifying that, in pursuance of the said order, the name of the said Henry Auber Mackelcan was on the tenth day of March, A.D. 1891, by the Assistant-Registrar, struck off all existing rolls of attorneys and solicitors of the said High Court of Justice in open court, pursuant to the direction of the Honorable Mr. Justice Ferguson, then presiding.

Ordered, that the said Henry Auber Mackelcan be suspended from the Society, and that the Secretary do give the notice required by Rule 123.

Mr. Martin gives notice that he will move to have the question of Law School fees payable by students referred to the Finance Committee.

The Secretary read a letter from the Registrar of the University of Toronto with regard to the reception of a Committee of the Senate of the University, with a view to securing to graduates in the Faculty of Arts the benefits of the provisions in the rules of the Society with reference to the exemption of such graduates from one year's attendance at lectures in the Law School.

Ordered, that the letter be referred to the Legal Education Committee, and that the said Committee be appointed to meet the Committee of the Senate as requested, and to report the result of such conference.

Ordered, that the Secretary be instructed to inform Mr. Joseph Prevost that the rules do not contain any provisions to meet his application for admission.

Ordered, that the letter from the Attorney-General's Department of May 7th, 1891, enclosing a letter from Messrs. O. Ormiston, L. K. Murton, and L. T. Barclay, be referred to the Legal Education Committee.

Ordered, that the letter of Mr. Mortimer Clark in reference to the establishment of a Widows' Fund be referred to the Finance Committee.

Ordered, that the payment of the architect's next certificates in favor of contractors be referred to Messrs. Irving and Moss, with power to draw checks for the required payments.

Ordered, that Mr. Harford Ashby's letter of 14th March, 1891, enclosing a copy of a Belleville newspaper, be received, and that no action in regard to the matters set forth in it be taken by Convocation while they are *sub judice*.

Saturday, May 23rd.

Convocation met.

Present—Messrs. Idington, Martin, Meredith, Shepley, Watson, Ritchie, Riddell, Barwick, Aylesworth, Bruce, Irving.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and confirmed.

Ordered, that the further consideration of the Report of the Discipline Committee upon the complaint of Mr. Armstrong against W. G. Fisher be adjourned to the next meeting of Convocation, and that Mr. Fisher be notified through his solicitor that Convocation will then take action in the matter, and that he will be at liberty to attend before it.

The Standing Committees were then elected in pursuance of Rule 29 as amended as follows:

Finance.—Messrs. S. H. Blake, Watson, Irving, Lash, Martin, Ritchie, Barwick, Hoskin, Bruce, Riddell, Douglas, Strathy.

Reporting.—Messrs. Britton, Aylesworth, McCarthy, Mackelcan, Ritchie, Teetzel, Shepley, Sir Adam Wilson, Osler, Magee, Macdougall, Idington.

Discipline.—Messrs. Bruce, Christie, Kerr, Mackelcan, Magee, Robinson, Shepley, Aylesworth, Hoskin, Guthrie, Sir Adam Wilson, Watson.

Library.—Messrs. S. H. Blake, Aylesworth, Watson, Riddell, Proudfoot, Moss, Robinson, Shepley, Irving, Barwick, Guthrie, Strathy.

County Libraries' Aid.—Messrs. Britton, Bruce, Guthrie, Hardy, Christie, Kerr, Meredith, Osler, Martin, Douglas, Strathy, Idington.

Legal Education.—Messrs. Ritchie, Hoskin, Barwick, Lash, Mackelcan, Meredith, Martin, Robinson, Moss, Teetzel, Riddell, Macdougall.

Journals and Printing.—Messrs. Idington, Britton, Bell, Fraser, Lash, Magee, Moss, Douglas, Kerr, Christie, Teetzel, Macdougall.

Ordered, that the Legal Education Committee and Messrs. Irving, McCarthy, Osler, and Shepley, be the Law School Building Committee for the present year.

Ordered, that the question of the Law School fees payable by students be referred to the Finance and Legal Education Committees for consideration and report.

Mr. Martin gave notice that he would move that one copy of the Exchequer Reports be ordered for and supplied to each of the County Libraries at the expense of the Law Society, and that the propriety of supplying the Supreme Court Reports to the profession be considered

Mr. Riddell gave notice that he would move that the expense of lunches for Benchers be no longer paid out of the funds of the Society.

Mr. Watson gave notice that at the next meeting he would move for the appointment of a committee to consider the question of unlicensed conveyancers.

The Secretary was directed to issue notices to members of Standing Committees of meeting on Friday, 29th inst., to elect chairmen and other business.

Friday, May 29th.

Convocation met.

Present—Sir Adam Wilson, and Messrs. Martin, Strathy, Aylesworth, Teetzel, Kerr, Guthrie, Irving, Douglas, Ritchie, Mackelcan, Meredith, Britton, Lash, Barwick, Shepley, Riddell, Watson, Macdougall.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of last meeting were read and approved.

The petitions of Daniel E. Sheppard and Thomas F. Lyall for call to the Bar under the new act were referred to the Legal Education Committee.

Ordered, that the letters of Messrs. Lount & Marsh of 18th and 27th inst., on the subject of the application of the Honorable J. G. Currie to the Supreme Court of Judicature, to be reinstated as a solicitor of the Court, be referred to the Discipline Committee with the reference in Mr. Currie's case already made to them.

The Report of the Discipline Committee on the case of Armstrong against Fisher was brought up for consideration.

Ordered, that Mr. Fisher should appear before Convocation with his counsel.

Mr. Fisher having appeared, the said report was read to him,

A resolution founded on the report was then carried:

Ordered, that Mr. Fisher attend before Convocation.

Mr. Fisher attended and the resolution was read to him.

Ordered, that the subject of Mr. Martin's motion in regard to supplying one copy of the Exchequer Reports to the County Libraries, and to supplying the profession with the Supreme Court Reports and the question of the reduction of the price of the digest now being compiled, be referred to the Reporting Committee.

Mr. Riddell's motion, that the expense of the lunches for Benchers should be no longer paid out of the funds of the Society, was lost on a vote of 12 to 4.

Ordered, that the question of unlicensed and unauthorized conveyancing be referred to the following committee, viz.:

The Attorney-General, and Messrs. Aylesworth, Barwick, Britton, Christie, Douglas, Fraser, Guthrie, Hardy, Idington, Macdougall, Magee, Meredith, Moss, Riddell, Ritchie, Shepley, Strathy, Teetzel, and Watson.

Saturday, June 6th.

Convocation met.

Present—Messrs. Moss, Teetzel, Martin, Britton, Watson, Meredith, Hardy, Irving, Barwick, Ritchie, Shepley, Osler, and Aylesworth.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The Report of the Examiners of the Law School on the Third Year Examination, and on the examination for Honors in connection with the Third Year, was presented as follows:

The following gentlemen have passed their Third Year Examination, viz.:

William Stewart, N. Simpson, A. B. Armstrong, J. S. Denison, R. C. Gillett, C. F. Maxwell, J. J. Warren, T. H. Lloyd, F. R. Martin, Wm. Johnston, W. C. McCarthy, W. A. Lamport, J. F. Tannahill, F. R. Blewett, W. M. McKay, J. A. D. Leask, W. M. Campbell, J. Hales, N. P. Buckingham, W. A. Leys, H. Jamieson, G. F. Downes, W. H. Hodges, G. S. McDonald, A. S. Burnham, W. A. Baird, F. A. Haugh, F. Ritchie, J. N. Anderson, D. Grant, J. McBride, R. T. Harding, Edward Mortimer, C. H. Glassford, A. G. McLean, L. A. Smith, R. N. Noble, T. B. P. Stewart, J. H. D. Hulme, R. A. Hunt, A. J. Anderson, J. E. Cook, W. E. Burritt, J. B. Pattullo, J. A. Mather, J. W. Winnett, C. B. Rae, L. V. McBrady, R. G. H. Perryn, A. Bedford-Jones, W. J. McDonald, D. O'Brien, L. T. D. Hector, J. P. Deacon, N. Kent, G. R. Sweney, W. E. L. Hunter, S. T. Evans, K. H. Cameron, N. D. Mills, James Lennon, S. A. C. Greene.

The following gentlemen passed the Examination for Honors in connection with the third year, viz.:

(1) N. Simpson, (2) J. S. Denison, (3) C. F. Maxwell and J. J. Warren, equal, (4) W. A. Lamport, (5) Wm. Johnston.

The Legal Education Committee presented their Report thereon as follows:

The following gentlemen, who have duly passed the Law School Examination for the third year and are certified by the Principal to have duly attended the required number of lectures and whose papers for call are certified by the Secretary to be correct, are entitled to be called to the Bar forthwith, viz.:

Messrs. J. Hales, N. P. Buckingham, D. Grant, E. Montgomery, A. G. McLean.

The following gentlemen who passed the Law School Examination for the third year failed to attend the required number of lectures, but the Principal certifies that such failure was due to illness, viz.: H. Jamieson, R. N. Noble.

The Secretary reports that the papers for call are correct. The Committee recommends that they be called to the Bar forthwith.

The other gentlemen who are certified by the Examiners to have duly passed the Law School Examination for the third year are not entitled to be called to the Bar at present, and their cases are not dealt with until the time arrives when they are entitled to present themselves for call.

The Report was read and adopted.

Ordered, that so much of the Examiner's Report as relates to the examination of gentlemen whose time to be called to the Bar has not arrived shall stand for the present, and that as the time for call for candidates on Honor Examinations has not yet arrived the Report on Honors do stand.

Ordered, that the application of Mr. E. Cross to be admitted as a student be not granted, as not coming within the rule.

Ordered, that the petition of Mr. L. U. C. Titus to be restored to the Roll of Solicitors be referred to the Discipline Committee with a request that they instruct the solicitor to have the application postponed till after the Discipline Committee have an opportunity to make enquiries and report to Convocation on June 30th, or to a further day if found expedient, and that Mr. Shepley be requested to act as convener of the Discipline Committee for this purpose.

The letter from the Osgoode Hall Lawn Tennis Club in regard to a dressing-room was deferred till after the completion of the new building.

Ordered, that Duncan Donald's petition for leave to put in a notice fot admission *nunc pro tunc* be granted.

Ordered, that Mr. Moss, Q.C., be appointed a member of the Senate of the University of Toronto to represent the Law Society.

The rule respecting graduates of the Military College at Kingston was read a second and third time and passed, and is as follows:

(1) A cadet of the Royal Military College who has received his diploma of graduation shall be entitled to be admitted on the books of the Society as a Student-at-Law or Articled Clerk, and subject to the same terms and conditions as a graduate in the Faculty of Arts is or shall for the time being be entitled to admission thereon.

(2) Every such cadet shall be entitled to be called to the Bar and to be admitted and enrolled as a solicitor after the like period of service and on and subject to the like terms and conditions as are and shall for the time being be applicable to a graduate in the Faculty of Arts.

(3) The provisions of these rules shall apply retrospectively, so as to entitle any such cadet who has heretofore been admitted on the books of the Society and has not yet been called to the Bar or admitted and enrolled as a solicitor to apply to be so-called or admitted and enrolled after the like period of service as is required in the case of Graduates of Arts.

The Secretary was directed to prepare a list of the solicitors who can apply to Convocation under the amendment to Rule 120 for call to the Bar and a circular with the approval of the Finance Committee for transmission to each of such solicitors.

Tuesday, June 30th.

Convocation met.

Present—Messrs. Moss, Bell, Shepley, Mackelcan, Martin, Barwick, Ritchie, Aylesworth, Lash, S. H. Blake, Irving, Bruce, Strathy, Watson, Macdougall, Douglas.

In the absence of the Treasurer, Mr. Irving was appointed Chairman.

The minutes of the last meeting were read and confirmed.

On motion duly made, a resolution of condolence with the widow and family of the late Right Honorable Sir John A. Macdonald was passed.

Ordered, that the same be engrossed and forwarded to Lady Macdonald.

Ordered, that the service of J. O'Donnell Dromgole be allowed.

Ordered, that the consideration of the Report of the Legal Education Committeee on the case of Mr. D. B. S. Crothers be deferred until the second day of Trinity Term.

Ordered, that Mr. T. H. Addison be admitted as of the first day of Easter Term, 1891.

The Legal Education Committee reported the results of the first and second year examinations of the Law School.

Ordered, that the following gentlemen be allowed their first year examinations, viz.:

Messrs. J. C. Haight, W. E. Woodruff, W. A. Fraser, A. T. Thompson, W. A. H. Kerr, D. Plewes, A. H. Sinclair, G. H. D. Lee, George Kelly, W. R. Givens, G. A. Harcourt, J. F. Smellie, W. A. Wilson, J. W. Mallon, A. F. McMichael, Alexander Smith, John Lamont, C. F. E. Evans, J. G. Campbell, G. J. Ashworth, J. A. McKay, W. B. Wilkinson, N. B. Eagen, W. H. Holmes, R. Bradford, A. C. McMaster, W. Brydone, W. C. Hall, J. T. Thomson.

Ordered that the following gentlemen be allowed their second year examinations, viz.:

Messrs. C. H. Barker, J. H. Moss, A. Y. Blain, F. C. Snider, S. V. Blake, D. R. Tate, F. W. McConnell, W. Cross, R. M. Lett, J. D. Swanson, A. E. Scanlan, R. L. Johnston, G. A. Kingston, J. G. Smith, J. E. Jeffrey, H. J. Martin, J. D. Spence, R. J. Gibson, M. J. O'Connor, G. E. J. Brown, B. M. Aikens, W. H. Grant, G. St. V. Morgan, F. C. Cooke, D. R. C. Martin, F. King, W. J. Boland, J. E. O'Connor, G. C. Biggar, T. B. Martin, W. T. J. Lee, F. S. Costello, W. M. Allen, F. M. Canniff, J. R. Blake, J. Henderson, J. N. Fish, J. B. Quinton, S. Griffin, H. F. McLeod, E. C. Senkler, J. H. Coburn, M. A. Brown, A. Bain, W. J. Dick, W. D. Earngey, Strachan Johnston, J. T. Copeland, A. S. Macdonald, C. R. Hamilton, T. R. E. McInnes, F. Jones, T. C. Gordon, C. S. Coatsworth, W. Carney, G. E. Powell, S. F. Houston, H. W. Maw.

So much of the Reports as referred to Honors and Scholarships was referred to a Special Committee composed of Messrs. Lash, Bruce, and Watson.

On motion of Mr. Lash, it was ordered

That of the candidates who may be found by the Special Committee to have passed with Honors at the Law School Examinations held in June, 1891, and allowed to them in lieu of the First and Second Intermediate Examinations

respectively, the first of such candidates of each class be awarded a scholarship of one hundred dollars, the second a scholarship of sixty dollars, and each of the next five a scholarship of forty dollars.

The Report of the Discipline Committee on the case of Mr. L. U. C. Titus was presented.

Ordered, that instructions be given to the solicitor to appear on the petition for reinstatement, and to ask the Court to direct it to stand over until Mr. Titus has applied to Convocation with respect to the matter and has satisfied Convocation of the propriety of his application.

The County Libraries Aid Committee presented their report in reference to the County of Simcoe Law Association.

Ordered, that the usual initiatory grant be made to the association, which will amount to six hundred and ten dollars, being double the amount of the cash paid in, but not exceeding the maximum sum of twenty dollars or each practitioner in the county.

The County Libraries Aid Committee presented their Report recommending:—

(1) That a loan of five hundred dollars be made to the Carleton Law Association, under the provisions of Rule 78, to be repayable in two equal yearly payments, and that security be given for such repayment in the form adopted in other similar cases.

(2) That a loan be made to the County of Norfolk Law Association of one hundred and sixty dollars, the conditions of the loan to be the same as recommended in the case of the Carleton Law Association above referred to.

(3) That a loan of two hundred and fifty dollars be made to the County of Perth Law Association on the same conditions.

(4) That the County of Wellington Law Association be granted an allowance equal to the cost of the Supreme Court Reports from the date of the incorporation of the Association, and that the amount, when established to the satisfaction of the Chairman of this Committee, be paid to the County of Wellington Law Association.

Ordered accordingly.

Mr. Blake, from the Special Committee, presented their Report on the petition of Clara Brett Martin to be admitted as a student, submitting that authority was not intended to be given to the Law Society to admit women as members thereof, and that the statutes, rules, and regulations do not authorize it, and that the prayer of the petition should not be granted.

Ordered, that a copy of the Report be sent to every Bencher, including the memorandum of cases, and that the consideration of the Report be deferred to the second day of Trinity Term, 1891.

(*To be continued.*)

DIARY FOR DECEMBER.

1. Tues... General Sessions and County Court sittings for Trial in York.
3. Thur....Chancery Division High Court of Justice sits.
4. Fri.....Last day for paying fees for Annual Certificates.
5. Sat.....Michaelmas Term ends.
6. Sun.....*2nd Sunday in Advent.* Rebellion broke out, 1837.
7. Mon.....Rebels defeated at Toronto, 1837.
8. Tues.....County Court sittings for Trial except in York. Sir W. Campbell, 6th C.J. of Q.B., 1825.
10. Thur....Niagara destroyed by U.S. troops, 1813.
13. Sun.....*3rd Sunday in Advent.*
15. Tues.....J. B. Macaulay, 1st C.J. of C.P., 1849.
17. Thur....First Lower Canadian Parliament met, 1792.
18. Fri.....Slavery abolished in the United States, 1862.
19. Sat.....Fort Niagara captured, 1813.
20. Sun.....*4th Sunday in Advent.*
21. Mon.....St. Thomas. Shortest day.
24. Thur....Christmas Vacation begins.
25. Fri.....Christmas Day.
26. Sat.....St. Stephen. Upper Canada made a province, 1791.
27. Sun.....*1st Sunday after Christmas.* St. John. J. G. Spragge, 3rd Chan., 1869.
28. Mon.....Innocents' Day.
31. Thur....Montgomery repulsed at Quebec, 1775.

Reports.

ONTARIO.

COUNTY COURT, COUNTY OF YORK.

(Reported for THE CANADA LAW JOURNAL.)

JONES *v.* PAXTON.

Division courts — Transcript of judgment— R.S.O. (1887), c. 51, s. 223—Nullity or irregularity—Negligence of sheriff.

Where a judgment was obtained in a Division Court in one county, and, without execution being issued thereon, a transcript was issued to a Division Court of another county and an execution issued thereon and returned *nulla bona*, and a transcript then obtained to the County Court of the latter county, it was

Held, that the judgment of the County Court was a nullity, since the transcript did not show the return to the writ in the original Division Court, as required by R.S.O., c. 51, s. 223; and

Held, also, that a sheriff sued for negligence in making a return to an execution from the County Court can set up as a defence the nullity of the judgment.

[Toronto, Oct. 30th, 1891.

This was an action against a sheriff for false return and negligence. The jury found negligence, and fixed the damages at $80. A motion was made for a new trial or verdict for the defendant.

It was admitted, upon the argument, that the judgment upon which the writ of *fi. fa.* issued, and in respect of the due execution of which the negligence is assigned, was a transcript from the Fourth Division Court of the County of Ontario. Upon the original Division Court judgment, no execution was issued in the Fourth Division Court of Ontario. Prior to the Division Court judgment being made a judgment of the County Court, a transcript had been sent to the Fifth Division Court of the County of York, and execution issued thereon, and duly returned *nulla bona;* but nothing was done in the home court until the transcript was issued to the County Court of York. The defendant contended that the so-called County Court judgment was and is utterly void, and all proceedings thereon; and that the defendant, a sheriff, can avail himself of this fact as a defence to the present action against him for damages for negligence.

The plaintiff contended that, at most, the defects complained of were mere irregularities and that being such the sheriff cannot avail himself of them as a defence, he being a stranger to the proceedings: *Macdonald* v. *Crombie*, 2 O.R. 246; *Glass* v. *Cameron*, 9 O.R. 715.

Aylesworth, Q.C., for the plaintiff.

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

MCDOUGALL, Co. J.:—Let us first consider whether the failure to issue execution in the Division Court where the judgment was first obtained is a mere irregularity, or whether in consequence of the failure to do so the judgment is a nullity. *Farr* v. *Robins*, 12 C.P. 35, decided that where the transcript to the County Court did not contain a statement that a *fi. fa.* against goods had issued in the original Division Court the transcript was informal and the judgment a nullity, and that no *fi. fa.* lands could issue thereon. Draper, C.J., stated: "The legislature having adopted the principle that an execution against lands must be founded on a record, and as the Division Court is not a court of record, they have provided a method by which its judgment may be made a record of the County Court, and thereupon an execution against lands may issue; but in order that the transcript may become a judgment of record, they have required that it should, amongst other things, show the date of issuing execution against goods, and the return to that writ. The objection is not to irregularities in the proceedings anterior to the judgment, nor can I look upon this transcript as having become the judgment of the County Court, because it is not such a transcript as, upon filing and entry, the statute clothes with that character.

There is no such judgment, unless this transcript filed and entered be one, and that, as appears to me, is not such a judgment, because the transcript does not contain what the statute requires."

In *Hope* v. *Groves*, 14 C.P. 393, it was held that a transcript of a judgment to the County Court, regular on its face, was a nullity, it being shown as a fact that the transcript did not disclose the true nature of the proceedings taken in the Division Court, which were commenced by writ of attachment and not by an ordinary summons. John Wilson, J., said that the legislature had pointed out the way to make judgments of Division Courts judgments of the County Court, and, the statutes not having been complied with, he held all the proceedings taken upon the so-called County Court judgment void, and set aside a sale of land had upon a *fi. fa.* issued upon a judgment apparently regular on its face, but defective in fact, as appeared when the actual proceedings had in the Division Court were enquired into.

In *Burgess* v. *Tully*, 24 C.P. 594, it was expressly held that an execution against goods and chattels must issue out of the Division Court in which the judgment was originally recovered, and be returned *nulla bona*, before a transcript of the judgment could be transmitted and filed in the County Court. That case was like the present one, in that there had been a transcript to another Division Court, and execution against goods issued in this last mentioned court and returned *nulla bona*. All proceedings under a judgment similar to the one in question, in all respects as to its defects, were held void. The judgment is therefore bad on its face, in not showing the issue and the return of *nulla bona* against goods of an execution in the Division Court in which the judgment was originally recovered. It is a nullity and cannot be amended or cured, because the statutory condition has not been performed which enables it to be made a judgment of the County Court.

Next, can the circumstances of the judgment, being a nullity, be set up by the sheriff, the defendant, as an answer to an action against him for negligence? The case of *Lane* v. *Chapman*, 11 Ad. & El. 966, is directly in point; for there it was expressly held that a marshal who was sued for an escape could avail himself of the defence that the judgment was a nullity. Lord Denman, in that case, says that the question to be determined was whether the judgment was absolutely void, under certain statutes, for he said: "If it was, no reason has been assigned or authority cited that satisfies us that the marshal might not avail himself of its being void as a defence to the action."

Mr. Aylesworth referred to an amendment made to section 218 of the Division Court Act passed in 1882; but, after careful consideration of that amendment, I fail to see that it in any way qualifies or varies the statutory requirements necessary to constitute a Division Court judgment a valid judgment in the County Court.

I must, therefore, direct the verdict herein in favor of the plaintiff to be set aside, and judgment entered for the defendant with costs.

MECHANICS' LIENS.

(Reported for THE CANADA LAW JOURNAL.)

WATSON *v.* KENNEDY.

Mechanics' lien—Summary proceeding to enforce—53 Vict., c. 37, s. 25—Jurisdiction of Master—Claims of other lien holders—Costs.

The expression in the Mechanics Lien Act, 53 Vict., c. 37, ss. 25 & 26, "lienholder entitled to the benefit of the action," means one who has substantial, not apparent, rights which are capable of being enforced in the action.

Therefore, a lienholder who, on the day the plaintiff instituted his proceedings, appeared to have a registered lien on the property in question, but who, the day preceding, had signed a discharge which was not registered until after the registration of the Master's certificate in this action, was held not to be entitled to the benefit of the action, and the plaintiff could not add his claim to the other lienholders' claims, so as to make the aggregate amount sufficient to give the High Court jurisdiction.

Where a statutory tribunal has no jurisdiction over the subject matter of a proceeding, it can award no costs.

Observations on the jurisdiction of a Master, under the act simplifying procedure in mechanics' lien actions (53 Vict., c. 37), to add parties to the summary proceedings under that act.

[Toronto, Nov. 7th, 1891.

This was a proceeding to enforce a mechanics' lien begun in the Master's office under the provisions of the act to simplify the procedure for enforcing mechanics' liens, 53 Vict., c. 37.

The facts sufficiently appear from the judgment.

Church for the plaintiff.

O. Macklem, Cooper, and Poole, for other parties.

THE MASTER IN-ORDINARY :—The plaintiff seeks to amend his statement of claim herein by adding, as defendants claiming liens on the land in question, the following parties: McMullen Brothers and Millichamp, who claim a lien to the amount of $98; and McTaggart & Leishman, who had registered a lien to the amount of $151.29. These sums, when added to the amount claimed by the plaintiff ($94.50), make $343.79.

But it is admitted that the lien of McTaggart & Leishman had been discharged by a certificate of discharge, dated 7th October, and registered on the 8th October, after the registration of the certificate issued on the same day (8th October) in this proceeding, and the question is: Can the amount of McTaggart & Leishman's lien be added to the other two, so as to give the High Court jurisdiction to entertain this claim?

The 25th section of the Act of 1890 enacts that the plaintiff in these proceedings shall be deemed sufficiently to represent "all other lienholders entitled to the benefit of the action;" and, by section 26, a right to apply to have the carriage of the proceedings is conferred upon "any lienholder entitled to the benefit of the action." If the Act had used the expression "all other *registered* lienholders," I think the case of *Hall* v. *Pilz*, 11 P.R. 449, would have disposed of the question. That case construed the expression "all the lienholders of the same class who shall have *registered* their liens" as meaning all those who had an apparent right by virtue of the registration of their liens. But this later Act omits the word "registered," and by its use of the words "entitled to the benefit" excludes from the rights represented in the plaintiff's proceedings those not so entitled, and thus limits the plaintiff's representative action to those who have substantial, not apparent, rights in the subject-matter which are capable of being judicially enforced in the action. The rule in such representative actions is that no persons should be made parties to such actions but those claiming some right: *Alloway* v. *Alloway*, 2 Con. & L. at p. 512; and the plaintiff in such action must have a common interest with the persons he seeks to represent: *Fawcett* v. *Lauric*, 1 Dr. & Sm. 192; 7 Jur. N.S. 61. As says Lord Cottenham, L.C., in *Mozely* v. *Alston*, 1 Phil. 798, the relief which is prayed in a representative action must be one in which the parties whom the plaintiff professes to represent have all of them an interest identical with his own. And in *Gray* v. *Pearson*, L.R. 5 C.P. 568, it was held to be a rule of procedure in England, and also one affecting all sound procedure, that the proper person to bring an action is the person whose right has been affected; and this rule, when extended to representative actions, includes all persons there represented. As an illustration of this rule, the case of *Pryce* v. *Belcher*, 4 C.B. 867, may be cited, where, in an action brought against a returning officer by a person who had an apparent right to vote by being entered on the register of voters, but who had lost his right by non-residence, it was held that having lost his right to vote he had no cause of action. The court held that the foundation of his right of action was an injury to his right to vote, and as he had no such right he had suffered no injury.

As to the plaintiff's right to amend, I may add that the case of *Bickerton* v. *Dakin*, 20 O.R. 192, 695, shows that the Master may give leave to amend the plaintiff's statement of claim as a pleading in a proper case. But the cases as to the power of a court to amend, so as to give itself jurisdiction, are not harmonious. In *Jackson* v. *Ashton*, 10 Peters U.S. 480, STORY, J., intimated an opinion that the court of first instance had power to amend the proceedings by inserting a necessary allegation which would give the court jurisdiction. But in *Taylor* v. *Addyman*, 13 C.B. at p. 316, Maule, J., observed that a county court judge had no power to allow amendments in a proceeding which was not within his jurisdiction; that he could neither amend nor adjourn, nor do anything else, as the proceeding was *coram non judice*. And in *Austin* v. *Dowling*, L.R. 5 C.P. 534, it was held improper for a county court judge to admit evidence of a matter which was beyond the jurisdiction of the county court.

There is also a question whether a Master has jurisdiction, in these summary proceedings, to issue any process making persons lienholders, mortgagees, or execution creditors, who have not been named on the record parties to the action against their will. They may come in voluntarily and submit to be bound by the proceedings. The act may intend that such persons should be named on the record in the

first instance; for it is silent respecting the power to add parties, and the rules (if imported into this statutory jurisdiction) give Masters only a delegated jurisdiction to add certain classes of parties after a judgment of the court has declared the rights to be litigated in the action. This new jurisdiction is statutory, and is governed by well-understood rules of construction; but as a decision is not necessary in this case, it may be proper to reserve the question for further consideration and argument. But see *McPherson* v *Gedge*, 4 O.R. 246.

Without deciding as to the right to amend, I must, on the question of the plaintiff's right to claim the benefit of the amount of McTaggart & Leishman's lien, so as to give the High Court jurisdiction, hold that, as those parties had discharged (but not registered) their lien on the day before this action was commenced, they were not "lienholders entitled to the benefit of this action." As I have, therefore, no jurisdiction in this action, I can give no costs; see *Re Isaac*, 4 M. & Cr. 11, and *Re Charity Schools of St. Dunstan*, L.R. 12 Eq. 537.

MASTER'S OFFICE.

(Reported for THE CANADA LAW JOURNAL.)

IN RE BENNETT.

Quarantine—Right of widow to.

A widow is entitled to residence in house of deceased husband, and to maintenance out of his estate, for forty days after his death.

[MASTER IN ORDINARY, Oct. 10th, 1891.

This was an administration proceeding, in which a reference was directed to the Master in Ordinary. The widow of the intestate, whose estate was in administration, claimed to be relieved from accounting for certain quantities of wheat, potatoes, pork, apples, pickles, preserves, and firewood—all of the value of $31.58—used by her for her maintenance on the farm of the testator for the forty days' period of quarantine succeeding the death of her husband.

J. C. Hamilton for the widow.

Baird for next of kin.

MR. HODGINS, Q.C., Master in Ordinary:—The right of a widow to quarantine is thus stated in an old authority (Termes de la Ley): "Quarantine is where a man dyeth seized of a manor-place and other lands, whereof the wife ought to be endowed; then the woman may abide in the manor-place and there live of the store and profits thereof the space of forty days, within which time her dower shall be assigned." In *Callaghan* v. *Callaghan*, 1 C.P. 348, Sir James Macaulay, C.J., referred to a widow's quarantine as "a right to reside in the dwelling-house concurrently with the heir, and to receive her reasonable maintenance during forty days after her husband's death." See also *Lucas* v. *Knox*, 3 O.R. 453.

I think, therefore, that the widow is entitled to be relieved from accounting for the $31.58 claimed by her.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.] [Nov. 16.

DAVIES v. GILLARD.

Assignments and preferences—R.S.O., c. 124, s. 2—Chattel mortgage to creditor by insolvent debtor over all his property—Pressure—Collusion.

In an action to have a chattel mortgage made by a debtor to certain creditors declared fraudulent and void, as against other creditors, it was found at the trial that at and before the time of the execution of the mortgage the debtor was in insolvent circumstances and unable to pay his debts in full, as he well knew; that the mortgagees were well aware of the fact and took the mortgage with a full knowledge of it; that their object in taking the mortgage was to obtain security for their their debt; that the necessary effect was to defeat, delay and prejudice the creditors of the mortgagor, and to give the mortgagees a preference over the other creditors; and that the mortgagees, at and before the execution of the mortgage, knew that it would have such effect. It also appeared that the property covered by the chattel mortgage was all that the debtor had, and that he knew that he had many creditors who could not be paid.

Held, per ARMOUR, C.J., at the trial, following *Molsons Bank* v. *Halter*, 18 S.C.R. 88, that

the mortgage was not assailable under R.S.O., c. 124, s. 2, notwithstanding the findings of fact, because the mortgagees had requested the debtor to give them the security.

The judgment was reversed in the Divisional Court.

Per FALCONBRIDGE, J. It follows from the findings of fact that the pressure was merely a sham pressure—a piece of collusion.

Per STREET, J. There was *bonâ fide* pressure, but the doctrine of pressure does not apply where the debtor has transferred the whole of his property.

W. Cassels, Q.C., and *J. W. Curry*, for the plaintiffs.

W. F. Walker, Q.C., for the defendants.

MITCHELL *v.* MCCAULEY.

Landlord and tenant—Rent reserved—Acceleration of payment by issue of execution against tenant—Landlord procuring issue of execution—Responsibility of tenant—Right of distress—Payment of amount due under execution—Election—Forfeiture of term—Severance of reversion—Apportionment of rent—Evidence of consent of tenant—Distress on wrong premises—Ratification—Re-entry—Notice—R.S.O., c. 143, s. 11, s-s. 1—Covenant running with reversion—Benefit of acceleration clause—Assignee of part of reversion.

A lease contained a provision that in case any writ of execution should be issued against the goods of the lessee (the plaintiff), the then current year's rent should immediately become due and payable, and the term forfeited. The lessor having assigned part of the reversion to W. and part to the defendant, the latter gave information to a creditor of the plaintiff, which led to the plaintiff's being sued in the Division Court and suffering judgment, on which execution issued, and thereupon the defendant distrained upon the plaintiff's goods by virtue of the acceleration clause, there being no rent otherwise due.

In an action for wrongful distress, the trial judge found that the defendant had procured the obtaining of the judgment against the plaintiff, and that it had been paid before the distress without any seizure, and he was of opinion that the defendant could not treat it as accelerating the payment of the rent, and gave judgment for the plaintiff.

Upon appeal to a Divisional Court, the two judges composing it failed to agree.

Held, per STREET, J., (1) that the recovery of the judgment against the plaintiff was ascribable to his own default in not paying upon being served with the summons, and he alone was responsible for the consequences.

(2) That the payment of the amount of the execution without seizure before the defendant had elected to take advantage of its issue did not take away the right to distrain; for the acceleration of the rent and the forfeiture of the term were two distinct matters, and a lessor, not having elected to forfeit the term, might lawfully distrain for the accelerated rent.

Linton v. *Imperial Hotel Co.*, 16 A.R. 337, followed.

(3) That the rent was properly apportioned between W. and the defendant; for it was sufficient evidence of the plaintiff's consent to the apportionment made by his landlords that he had (though he said he always paid the whole rent to them together), on at least one occasion, made separate arrangements with W. for the payment of his proportion of it.

(4) That the action of the defendant's bailiff in first making a distress upon the part of the demised premises of which the reversion was in W. did not bind the defendant, in the absence of ratification by him, and did not therefore exhaust his right of distress.

Lewis v. *Read*, 13 M. & W. 834, and *Ferrier* v. *Cole*, 15 U.C.R. 561, followed.

(5) That the distress was not so connected with the right of re-entry as to bring it within s. 11, s-s. 1, of R.S.O., c. 143, requiring a notice to be given.

(6) That the acceleration clause was to be read as part of the covenant for the payment of the rent and as qualifying the time fixed for payment, and, as such, it was a covenant running with the reversion.

(7) That the acceleration clause made the rent (upon the happening of the event) payable as rent reserved, and was not to be construed as a condition which had been destroyed by the severance of the reversion.

Per ARMOUR, C.J. The rent distrained for was not payable by virtue of any reservation in the lease, but solely by virtue of the condition, and the benefit of such a condition does not pass to the grantee of a part of the rever-

sion so as to entitle him to distrain for a breach thereof.

Douglas, Q.C., for the plaintiff.

Aylesworth, Q.C., for the defendant.

[Nov. 20.

RE MCPHERSON *v.* MCPHEE.

Prohibition—Division Court—Judge reserving judgment without naming hour—R.S.O., c. 51, s. 144—Prejudice—Waiver.

Decision of STREET, J., *ante* p. 444, 21 O.R. 280, affirmed on appeal.

Douglas Armour for the plaintiff.

M. Wilkins for the defendant.

THOMPSON *v.* CLARKSON.

Assignments and preferences—Inspector of insolvent estate—Purchaser of estate from assignee—R.S.O., c. 124.

An inspector of an insolvent estate appointed by the creditors under R.S.O., c. 124, who acts towards the assignee in an advisory capacity, cannot become a purchaser of the estate.

Semble, *per* ARMOUR, C.J., that a private sale by an assignee to an ordinary creditor would also be open to objection.

Watson, Q.C., for the plaintiff.

Delamere, Q.C., for the defendants Ray and Street.

George Bell for the defendant Clarkson.

Chancery Division.

BOYD, C.] [Sept. 3.

RE THE ESSEX LAND AND TIMBER CO. TROUT'S CASE.

Mortgage to secure endorsations—Winding-up proceedings—Petition—R.S.C., c. 120, s. 48—Jurisdiction—R.S.C., c. 129, s. 39—Relief by foreclosure or sale.

A president of a company had taken a mortgage from the company to secure him on endorsations and had assigned it to the bank which made the advances; but on settlement by him with the bank for the amounts due had obtained a reassignment, and applied by petition, in winding-up proceedings, for an order to the liquidator to convey to him the equity of redemption in the mortgaged lands, as they were not worth the amount of his liability

Held, on the evidence, that there was no violation of s. 48, R.S.C., c. 120.

Held, also, that under R.S.C., c. 129, s. 39, there was jurisdiction in the court to make the order, and that it was a matter of convenience and discretion as to when an action would be directed or summary proceedings would be sanctioned, and the usual order for foreclosure or sale was made.

D. E. Thomson, Q.C., for the petitioner.

E. D. Armour, and *C. J. Holman*, for execution creditors.

W. M. Douglas for the liquidator.

BOYD, C.] [Oct. 2.

MURRAY ET AL. *v.* BLACK ET AL.

Will—Devise—Products and services charged on land—Tender of, and refusal to accept—Compensation.

A testator by his will devised his farm to his grandson, charged with the supply of certain products and personal services in favor of a daughter and a granddaughter.

On a disagreement between the parties, a tender of the products and services was made and refused, and an action was brought to have them declared a charge on the land and for a money compensation.

Held, on an appeal from a master, that the refusal of the products did not deprive the plaintiffs of the right to afterwards recover their value, but that no compensation should be allowed for the personal services proffered and refused.

Laidlaw, Q.C., for the plaintiffs.

H. Cassels for the infant defendant.

J. A. Macdonald for the tenants.

BOYD, C.] [Oct. 20.

DAME *v.* SLATER ET AL.

Husband and wife—Wife's separate estate—Agreement to charge—"Sole"—"Separate."

A husband agreed to sell certain land, and his wife, who was married to him in 1866 without any marriage settlement and had acquired property in 1870, under a deed to her, her heirs and assigns, "to and for her and their *sole* and only use forever," joined in the agreement for the purpose of securing its being carried out and charged her land to the extent of $1,000.

Held, that in such a conveyance the word "sole" may or not mean "separate," according

to the context, but that in this case the wife's land was charged.

A. W. Aytoun-Finlay for the plaintiff.

Hoyles, Q.C., for the defendants.

BOYD, C.] [Nov. 2.

SWEETLAND *v.* NEVILLE.

Married woman—Separate estate—Money in saving bank—Gift of husband.

Where it appeared that a married woman, on the day of entering into a money bond, had deposited in her name in the post office savings bank a certain sum of money which the evidence showed was money given to her by her husband, but of which, as against her husband, she seemed to have the absolute disposal by his consent and wish,

Held, that this was sufficient on which to found a proprietary judgment against the wife, though it was not shown that the bond was not executed at an earlier hour than that at which the money was deposited.

Henderson for the plaintiff.

R. Lees, Q.C., for the defendant.

FERGUSON, J.] [Nov. 7.

JUDSON *v.* CITY OF TORONTO.

Municipal corporation—Ridge of ice—Negligence.

The plaintiff was injured by slipping upon a ridge of ice on a sidewalk opposite a vacant lot. The ridge ran lengthwise of the sidewalk and about the middle of it, and was about four inches high along its middle line, and with a base of about fifteen to eighteen inches wide, the slope of its side being a sharp inclination. The rest of the sidewalk was clear, having had all snowfalls removed from it by the defendants' men, who, however, having no proper implements for removing the ridge of ice, had allowed it to remain. It appeared that the ridge was formed by people travelling along the sidewalk after the snow had fallen in a sort of path or line before the snow had been shovelled off. The defendants had full notice of the existence of this ridge.

Held, that they were responsible in damages to the plaintiff.

J. A. Macdonald for the plaintiff.

H. M. Mowat for the defendants.

Practice.

BOYD, C.] [Nov. 17.

IN RE WILLIAMS AND MCKINNON.

Administrator ad litem—Rule 311—Devolution of Estates Act—Real estate—Application before action.

Rule 311, though in existence (s. 11 of 48 Vict., c. 13 (O.)) before the passing of the Devolution of Estates Act, may be applied as to realty falling under the operation of that act.

If it appears that there is no personalty, or personalty of such trifling amount as will not suffice to answer the claims made in respect of the deceased's real estate against which litigation is brought or is impending, administration *ad litem* made be granted under the rule, limited to the real estate in question.

An application for appointment of an administrator *ad litem* is properly made before action.

Hoyles, Q.C., for the applicant.

J. Hoskin, Q.C., for the infants.

VAUGHAN ROAD CO. *v.* FISHER.

Consolidation of actions—Identity of issues—Test action—Staying proceedings—Separate assessments of damages.

Four actions were brought by the same plaintiffs against different defendants for damages for trespass in refusing to pay toll and forcing past the toll-gates. The pleadings were identical, and the main issue was common to all the actions; but it was admitted that if the plaintiffs had a substantial cause of action, there must be a separate assessment of damages in each case.

Upon a motion by the defendants to consolidate the actions,

Held, that one of the actions should be tried as a test for all, and that proceedings in the other actions should be stayed till the test action should have been determined, after which the assessments should proceed according to the result on the main question; or, if the defendants would each submit to pay the largest amount of damages that might be awarded in the test action, that all proceedings should be stayed in all actions, except that in which the plaintiffs expected to recover the largest amount, and such action should be alone litigated.

C. W. Kerr for the plaintiffs.

A. G. F. Lawrence for the defendants.