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ONE of the most carefully prepared law books, looked at as a scientific treatise on most difficult subjects, and without doubt the most learned of any Canadian law book that has been published for many years, is Mr. Leith's Treatise on the Real Property Statutes. We are surprised, therefore, to learn that the edition has not been disposed of. The price has, we understand, been reduced to $2. No professional man who pretends to be conversant with the subjects dealt with therein can afford to be without it.

OUR attention is again called to the somewhat weary and unsavory subject of Q.C., by letters from correspondents, one of which we publish elsewhere, and by clippings sent us from the country press. The recent extraordinary multiplication of Her Majesty's Counsel by patents from Ottawa and patents from Toronto, and still more patents from Ottawa, and still more again from Toronto, will make it somewhat difficult to remember who is, and who is not, entitled to have the letters "Q.C." tacked to his name. So many gentlemen have been selected for this honour, who have not, to say the least, taken a very prominent position at the bar, or in any public way made apparent the extraordinary legal abilities, the possession of which has led to their being selected to be of Her Majesty's Counsel, that the ordinary mind is somewhat dazed and confused in the bewildering attempt to remember their names. One cannot always have a copy of the Ontario and Canada Gazette at hand to refer to, at the same time no gentleman would wish to be thought wanting in courtesy to a brother practitioner, and address him as plain "barrister" when he was really entitled to be called "Q.C." It would almost seem desirable to address everybody as "Q.C.," except those who may have been known to have refused the questionable honour, if any such there be, and we think there must be some of that sort. In this way probably a few persons might be erroneously entitled, but this would be a great deal better than hurt the feelings of a weak brother. In former days when distinguished ability of some kind or another in the profession had already made the name of a recipient of the honour familiar to his brother practitioners, there was not much difficulty in keeping track of the Q.C. part of the bar; but since gentlemen of distinction have taken to hiding their lights under a bushel, so that

few but the lynx-eyed advisers of Her Majesty are able to discover the faintest glimmer, the few dozen of gentlemen who are left to sport stuff gowns are placed at a sore disadvantage. Another correspondent suggests that if each one of the new legion pays out his good money for his $20 patent, the Government may be in a position to reduce the Customs duties on silk attire.

An occasional contributor, whose opinion is of weight, writes us as follows:—"The great delays in publishing the Supreme Court reports suggest the thought that the reportorial staff is greatly over-worked or lacks energy. The staff consists of an editor, a reporter and an assistant editor—large enough, we think, to report the decisions of five Judges, who hold about four sessions a year and have no circuit work, and now no Exchequer Court duties. But this triune force keep back the publication of the reports with great energy. No. 1 of the current volume (16) contains two judgments delivered on the 13th and 14th December, 1888; while in No. 2 are sandwiched the judgments of January and March, 1889, in chronological disorder, and it ends with a part of a judgment delivered on the 15th January, 1889. Our Ontario Reports are also troubled with chronological disorder, but they give us judgments delivered last September, and our Appeal Reports those delivered in November, 1889. The English Law Reports are as usual ahead of all other reports, and show that expeditious reporting can be realized when the staff is energetic and well supervised. The number for January, 1890, contains judgments delivered in England as late as 27th Nov. and 5th December last. Surely a little more energy at Ottawa would be commendable." The above is commended to the parties interested. We do not see why there should be this delay in the Supreme Court Reports, except that we have often heard of a difficulty in getting the judgments from some of the Judges, for which we presume there is some good reason. If there is no explanation, the point would seem to be well taken by our correspondent.

TRANSFERS OF STOCKS OF CORPORATIONS.

It is assumed, for the purpose of the following remarks, that the only requisites for the valid transfer by the registered owner of shares of the stock of a bank or other corporation are that a proper transfer be executed by such owner, that it be entered in the proper book of the bank or corporation and be duly accepted by the transferee. Other requisites may exist as to certain corporations, according to their charters; but on the assumption above the ordinary course appears to be merely for the person registered on the books as owner, either in person or through some one acting under a power from him, to execute a transfer, which (with the power, if executed under a power) is produced at the place of transfer, the transfer being then entered in the proper book and accepted therein

by the transferee, who then or afterwards pays the purchase money. As a general rule no certificate of ownership in the transferor is ever produced, nor is any given to the transferee as owner, at least till after the transaction is completed.

It is proposed to consider here in what position as to danger of loss by reason of defect in title in his vendor, a purchaser, as transferee, incurs on such a transfer, as also on transfer accompanied by other circumstances. Under the term purchaser must be understood a mortgagee or any other who gives value in money or otherwise.

The first case as to facts to be considered is that of *transfer* to a purchaser, either *forged* or under a *forged power*, and registry by the corporation of the purchaser as owner on his acceptance in the proper book; no other material facts existing.

In *Hildyard* v. *Southsea Co. and Keate*, 2 P.W. 76, Keate bought, on a transfer to him under a forged power, stock of the company, the property of the plaintiff, and thereafter the company paid Keate the dividends. The court held the transfer to be void and Keate liable to refund the dividends. It was said by the court:—"When Keate bought it was incumbent on him, and at his peril, to see that the letter of attorney was a true one; it was more his concern and in his power to enquire into the reality of this letter than of any other person—as to the company they were but conduit pipes—and it would be of public use that those who accept transfers of stock under letter of attorney should be obliged to take strict care of its validity, for no other person can be so properly concerned to do it."

There can be no doubt as to the above decision so far as relates to the true owner not being deprived of his shares or dividends in case of forgery where there has been but one sale (*see Barton* v. *North Stafford Railway*, and other cases hereinafter referred to), but the difficulty arises as to who is to suffer the loss where there is a sub-purchaser from a purchaser under a forged transfer or power who has been registered as owner. So far as the purchaser's loss under the above decision is concerned the case once was questioned, and was commented on with some disfavour, by the Lord Chancellor in a subsequent case of *Ashby* v. *Blackwell*, 2 Eden 299. That case, however, cannot be regarded as expressly overruling the prior one, for the decision rested chiefly on gross negligence in the company in allowing the transfer, and so alluded to by Cotton, L.J., in *Sim* v. *Anglo-American Company*, 5 Q.B.D. 200.

This case, therefore, does not directly overrule Hildyard's case as to loss to the purchaser; and it is to be remarked that, when, on the question of loss to a purchaser being argued in *re Bahia and San Francisco Company* hereafter mentioned the Hildyard case was referred to, Mr. Justice Blackburn did not deny the correctness of the decision, but merely distinguished the case from the Bahia case then being argued, on the ground that in the latter case the right of a sub-purchaser from a transferee under a forged transfer was in question. In Collins on Banking, p. 276, it is said, "If the name of the lawful holder has been forged to a transfer, which is duly registered in the books of the bank, he can compel the purchaser, though a *bona fide* purchaser, to redeliver

the shares to him, and the bank to cancel the transfer." No cases are referred to. In Thring on Joint Stock Companies (5 ed. 1889, p. 151), it is said that the purchaser under a forged power, to whom even a certificate of ownership has issued, has no claim to indemnity for loss, as he is to be taken as having acted on the faith of the transfer, not of the certificate. See also *Barton* v. *London & North-Western Railway Company*, 38 Chy.D. 144, hereafter referred to; *Sloman* v. *Bank of England*, 14 Sim. 475; *Taylor* v. *Midland Railway Co.*, 28 Bea. 287; *Midland Railway Co.* v. *Taylor*, in App., 8 H. L. Ca. 751; *Sims* v. *Anglo-American Co.*, 5 Q.B.D. *Waterhouse* v. *London & South-Western Railway Co.*, hereinafter referred to, is a strong case, showing that the loss must fall on the purchaser on the *mere fact* of his buying under a forged power or transfer, though obtaining registry and certificate to himself.

There are cases wherein the conduct of the *owner* of stock or other property may be of such a character, by *negligence* or otherwise, as to preclude him, as against the corporation or others misled by it, from objecting to an unauthorized transfer. Thus where a customer of a bank in drawing a cheque had left sufficient space in it to enable the forger to fill in the words "three hundred and" in the body, and to add the figure 3 before the other figures, and the bank without negligence on its part paid the cheque as altered, it was held to be such negligence of the customer as to disentitle him to recover from the bank; *Young* v. *Grote*, 4 Bing., 453.

The negligence must be "in or immediately connected with the transfer itself" (per Parke B., in *Governor of Bank of Ireland* v. *Trustees of Charities*, 5 H. L. Ca. 410), and not remotely connected with the act of transfer. In that case the Trustees (a corporate body) allowed their secretary to have their corporate seal in his possession, he fraudulently affixed it to powers of attorney, and under them sold out stock of the Trustees in their name in the Bank. It was held there was no such negligence as "alone would warrant a jury in finding that the Trustees were disentitled to insist on the transfer being void." See also *Waterhouse* v. *London & S.W. Ry. Co.*, hereafter referred to; and *Merchants* v. *Bank of England*, 56 L.T.N.S. 665. *Waterhouse* v. *London & S.W. Rv. Co.* 41 L.T.N.S. 553, was a case wherein the confidential clerk of C. obtained the key of the box in which was kept the certificate by defendants of C., being owner of shares in their Company, and forged a transfer which was acted on by the Company, who transferred to the defendant and gave him a certificate of ownership; the clerk received the purchase money on the transfer. The defendant sought to bring himself within the case of *Hart* v. *Frontino*, hereinafter referred to, on the ground that, relying on the certificate being true he was prejudiced in not pursuing a remedy, under the Stock Exchange Rules, against the agent selling broker; he did not rely on any payment of the purchase money on faith of the certificate. The judge found he was not prejudiced by the giving of the certificate, and that C. was not precluded by any negligence on his part from his right to the stock, and the defendants were not liable to the plaintiff, who had to suffer the loss notwithstanding the certificate granted to him. It does not appear that any directions were given as to surrender of the certificate. Again, in the language of Cairns, L.C., "the real

owner may estop himself by conduct and representation from questioning the title of a transferee, who honestly takes from a dishonest holder:" *Williams* v. *Colonial Bank*, 38 Chy.D. 399.

In a late case, *Barton* v. *North Stafford Railway Company*, 38 Chy.D. 458, stock in the Company stood registered in the names of two who were co-executors and trustees; one forged the name of the other to transfers, signed himself, sold the stock, received and misappropriated the proceeds of sale. The transfers were registered by the Company. Afterwards a new co-trustee was appointed in the place of the forger. The claim of the plaintiffs was that the defendants should reinstate them in like stock to that sold. It was held that the transfers as between the plaintiffs and the Company were nullities; that the Company should register the old and new trustees as joint owners; and that though one co-executor might make a valid transfer of a chattel, yet that rule did not apply in this case, which was governed by the Companies' Clauses Act (England). The rights or liabilities of the purchasers of the stock were not determined but reserved for future consideration, though made parties to the suit.

The result of the cases as to the above is that the real owner is not deprived of his stock by transfer on a forgery, and can compel its replacement or an equivalent in value, unless he has been, as above alluded to, so negligent as to have facilitated the forgery, or by his conduct and representations have estopped himself, as between himself and the corporation, from denying its validity; that the purchaser as from him is to suffer the loss, though registered as transferee; and if the owner, instead of proceeding against the purchaser and the corporation to be reinstated as to the stock, obtain equivalent in value as damages from the corporation, the purchaser must indemnify it. The corporation may, however, be guilty of such negligence as to preclude it from claim to indemnity; or, if the transfer be decreed to be cancelled and the true owner reinstated, to suffice to render the corporation liable in damages for their value to the purchaser; see *Ashby* v. *Blackwell, supra;* and the remarks above of Cotton, L.J., thereon; and those of Blackburn, L.J., given below in *Societe* v. *Walker*.

Next, take the case of such a purchaser under a forged transfer or power, or of one having from some other cause no title, but registered as owner and producing a certificate of ownership from the corporation, selling to a *sub-purchaser* who becomes registered as owner. In this case it seems the corporation must bear the loss: certainly where by the terms of its charter the certificate is made *prima facie* evidence of ownership—and must indemnify the sub-purchaser, and reinstate the name of the original true owner on the registry as owner, or possibly, indemnify the owner and leave the shares to the sub-purchaser. And it would seem that this would equally be so though there were no certificate to the seller, if the purchaser before transfer were perfected and before payment of the purchase money should on enquiry be informed by a duly authorized officer of the corporation that the seller was owner, such officer being also then told that unless the answer were in the affirmative the transfer would not be carried out; the nature of the transaction should also be mentioned; per Lush, J., in the Bahia case hereafter referred to (p. 593), and see below *Cook* v. *Canadian Bank*, per Blake, V.C., 20 Chy. 1.

What might be the law in a case where there was no certificate of ownership to the seller, or enquiry as above, but mere registry of the supposed owner who sells and transfers, is by no means so clear. In Hart's case, hereafter mentioned, Lord Bramwell seemed to consider registry of a seller as owner as equivalent to a certificate of ownership in him so far as the matter of loss to his vendee might be in question on claim by such vendee against the corporation for indemnity.

Hart v. *Frontino* and the Bahia cases below show the safety of a purchaser who buys and pays on the faith of a certificate of ownership to his vendor, or of information from a duly authorized official of the corporation that the vendor is owner. Hart's case, *Hart* v. *Frontino*, L.R. 5, Ex. 111., was one in which (to put it shortly) the plaintiff had bought and paid for shares and received a duly executed transfer and a certificate to his vendor, but neither he nor the seller was then registered as owner. The seller was afterwards registered and compelled to pay a call on the shares, whereon the plaintiff purchaser had himself registered as transferee and got a certificate of ownership, and then repaid the seller the calls. The title of the seller was bad. The court held the corporation liable to the plaintiff purchaser for the value of the shares. The judgment was based on the ground of the plaintiff having repaid the call on the faith of having been entered by the corporation as owner, and of his having been given a certificate of ownership. Mr. Baron Bramwell seemed to consider registry as important as a certificate on the question of loss, but he based his judgment on the ground above.

In *re Bahia and San Francisco Railway Company*, L.R. 3, Q.B. 584, the registered owner left her share certificate with her broker, who forged a transfer from her, and left it with the secretary for registry. The secretary wrote to the owner notifying her that a transfer had been left, but, receiving no reply, he registered the transfer and placed the names of the transferees on the books and gave them a certificate of ownership. The transferees sold the shares, and the purchasers became registered as owners, and paid on the faith of the registry of their vendors as owners and of the certificate to them. It was held that those certificates to the vendors amounted to a statement by the corporation that they were entitled, and that a purchaser from them having acted on that certificate, the corporation could not deny his claim, and he was entitled to damages for loss of the shares which were ordered to be restored on the registry books in the name of the original owner. The court in giving judgment based it entirely on the giving the *certificate* and *the acting on faith of it*; the court did not rely on the registry, and their not doing so appeared to Lord Bramwell as singular.

It will be observed that whilst, as above stated, a purchaser is safe as to indemnity by the corporation when buying on the faith of its certificate, or if the answer to his enquiry is that his vendor is registered owner, since then he can say that he bought on the faith of such statement, and so is within the principle on which the Hart and Bahia cases were decided, yet his position is still undecided when, without any such certificate or enquiry, he becomes registered transferee from, and pays to, one having no title, though registered as owner, and *after* payment obtains a certificate of ownership. In such case he cannot say he

bought on the faith of any statement by the corporation. As Hildyard's case as above is law, then if mere registry of his vendor as owner be not equivalent to a warranty by the corporation that the vendor is owner; then his position is doubtful.

Till a decision that registry of a vendor is equivalent in its effect to a certificate to him of ownership, it would be prudent in some cases for an intending purchaser on a transfer to him and before payment to require production to him of a certificate of ownership in the vendor, or a statement by some official having authority to bind the corporation that the vendor is owner, the purchaser informing the official of his intended purchase as above mentioned.

The writer does not lose sight of the fact that in many of the English cases, including the Hart and Bahia cases, the shares were numbered, as required by the Joint Stock Companies' Act, and that the certificates were made *prima facie* evidence of title; nor of the fact that a certificate may remain in the hands of a person after a transfer by him, and that such person may attempt to make another sale and transfer, as to which see Waterhouse case above.

Questions as to the loss on defect in title to shares bought may arise not merely on forged transfers, or powers of attorney, but in other cases, as for instance where a vendor who stands on the books as, and transfers designating himself as *trustee*, and has no authority to sell or transfer; or where the purchaser knows, or the facts are such that he had good reason to believe that his vendor was a trustee; or where a *sheriff has seized* shares, and afterwards a purchaser accepts a transfer without any enquiry of the corporation or search by him at the sheriff's office, as in case of purchase of goods or lands; or where, as in the case of bank shares, a *lien* exists in favour of the corporation on their stock for debts due the corporation at the time of proposed transfer. In this latter case an instance is afforded by *Cook* v. *Royal Canadian Bank*, 20 Chy. 1, the head note of the report of which is as follows:—

"A bank agent, being about to make advances on the security of stock of another bank, applied to the officers to ascertain what claims the bank held against the stock, when he was informed that there was overdue paper to the amount of $500; (the banks had a lien on their stock for debts of its shareholders). Before completing the arrangement as to transfer of the stock another claim, which was current in one of the agencies of the bank, was returned unpaid; it was held that the bank had a right to a lien on the stock for the additional sum before allowing the transfer to be carried out in their books. The owner of bank stock being about to assign it, procured from one of the agents of the bank a memorandum on the back of a power of attorney to transfer the stock in the words, 'No liability at the Galt office;' it was held that this was not such a representation to the intending transferee as bound the bank; and that the bank were entitled to hold the stock for the amount of a draft which had been discounted at the Galt office and then in the hands of an agency in Montreal." The Vice-Chancellor in his judgment referred to the fact that the bank agent was not informed of the purpose for which the information was asked, and so had no notice of its importance.

That a purchaser or other person dealing with another as to stocks will be the loser where the stock stands in the name of the owner as *trustee*, thus, "A. B., trustee," or "in trust," and the purchaser knows, or has reason to know, there is a trust, and the owner transfers, having no power so to do, is afforded by the case of *Bank of Montreal* v. *Sweeny*, 12 App. Ca. 617. In that case money belonging to the plaintiff was invested for her by one Rose in shares of a company, and they were placed in his name "in trust," and he transferred to one Buchanan for his own private benefit, as Buchanan acting as agent for the Bank, and as their trustee, well knew. Both Buchanan and the Bank were aware that the stock stood in the name of Rose "in trust." Under the judgment the plaintiff was held entitled to an account from the bank. It does not appear whether or no in this case there was any clause in the charter of the company, as in the Banking and Joint Stock Company Acts, that the corporation shall not be bound to see to the execution of any trust, etc. The writer apprehends that that clause, as usually worded, applies only between the corporation, the trustee, and the beneficiaries for whom he is trustee, for the protection of the corporation, and not as between the beneficiaries and a purchaser who knows, or has good reason to know, that his vendor is trustee, and does not satisfy himself of the trustee's power to sell. See as to the effect of such a clause the remarks of Kay, J., in 28 Bevan 298. In *Sheffield* v. *London Joint Stock Bank, Royal Bank, et al.*, 13 App. 333, the respondent Banks had acquired the legal title from M. of certain stocks and bonds as security, and though they were to be regarded as having the complete legal title, and purchasers for value, yet as, in the language of Lord Bramwell, "they had notice of the infirmity of the title of M., *or* of such facts and matters as made it reasonable that inquiry should be made by them into such title," the appellant was held entitled against the respondents, except to the extent to which M. had advanced to one E. £26,000 on transfer of the stocks and bonds as security, which amount only E. had authority from the appellant to raise thereon. The respondents claimed to hold for a larger amount, viz., the indebtedness of M. See also *Dodd* v. *Hills*, and *Roots* v. *Williamson*, hereinafter, as to trusts.

Where the seller has done all on his part requisite to complete transfer, but the buyer has not, such as by omitting to sign in the books of the company the acceptance necessary, or otherwise, the following cases bear on the respective positions of the seller, purchaser, and company, such as when claims are put in by claimants under prior rights, future liability for calls, liability to sale under execution against, or insolvency of either party. These considerations depend chiefly on the requirements as to transfer of the act of incorporation of the company or of the deed of settlement creating it. A reference to the cases will show the importance for the safety of buyer and seller respectively that the transfer should be valid and complete. Thus, for instance, if not complete, the seller might continue liable for future calls; or by subsequent dealing with a purchaser in good faith defraud a prior purchaser who had not completed his title. In *Dodd* v. *Hills*, 2 H. & M. 424, the transferor was in fact a trustee for the plaintiff of shares in a company, of this the defendant

purchaser had no notice till after he had bought in good faith and got a transfer. After this he received notice from plaintiffs of the trust in his favour, and thereon registered the transfer, which registry was necessary to complete title: held entitled against the plaintiff. This case was commented on in *Roots* v. *Williamson*, 38 Chy.D. 485, and distinguished from that case on the ground that it did not appear the company had notice of breach of trust before the transfer sent for registry, which was the case in *Roots* v. *Williamson*, and that in *Dodd* v. *Hills* the purchaser completed his inchoate right by registry, and so acquired a legal title as against the plaintiff's equitable title, whilst the defendant in *Roots* v. *Williamson* never obtained registry. In that case W. held shares in trust for plaintiff, and as security for his indebtedness to defendants executed a transfer to them, delivering also the certificate of ownership. The defendants did not comply with what was requisite to obtain registry as owners. The company received notice from plaintiff of her claim, and subsequently declined to register. Held, that defendants had not a complete legal title, and that plaintiffs prior equitable right prevailed over the inchoate right of defendants. It was remarked in the judgment that the transfer was not on a sale, but to secure a debt.

It seems to be a not uncommon practice in England for the corporation to notify the person registered in their books as owner when a transfer as from such person is brought for registry. In *Societe Generale* v. *Walker*, 11 App. Ca. 20, Blackburn, L.J., stated that even if a transfer were in order and accompanied by the certificate, if any, the company were not bound to register at once, and entitled to delay to make reasonable enquiries before registering, and that such was the general practice, as he believed. It was not necessary, he said, to consider whether the company were bound to enquire.

This last case was one involving the law as to incomplete transfers in blank, fraud in making two transfers, conflicting equitable rights of the transferees, effect of certificates of ownership, and of their delivery to, and production by, one of the two transferees. Selborne, L.C., advised the House of Lords as to their judgment; and Stirling, J., in *Roots* v. *Williamson* (of which the facts are given above) said, "the following propositions were sanctioned by His Lordship's authority in that case:

"1. A mere inchoate title by an unregistered transfer is not equivalent, for the purpose of defeating a pre-existing eqitable title, to a legal estate in the shares.

"2. The title by transfer is to be deemed inchoate only (within the meaning of the last proposition) until (at the earliest) all necessary conditions have been fulfilled to give the transferee, as between him and the company, a present absolute unconditional right to have the transfer registered.

"3. A company which, before a transfer has ceased to transfer an inchoate title only, receives notice of a prior equitable title, is not necessarily bound to act on such transfer, so as to effectuate a fraud till then incomplete."

The expression in the third proposition "before a transfer has ceased to transfer an inchoate title" means, it is apprehended, so long as a perfect transfer is not registered, and is such as to give the transferee the right named within the second proposition: thus, for instance, if registry of a perfect transfer should

only be delayed by the company for the sole reason of enabling them to make enquiries or notify the person named in the transfer as transferror according to the practice in England; as to which see the remarks of Bramwell, L.J., above.

In *Goodwin* v. *The Ottawa Company*, 22 U.C.R., 186, the plaintiff was held not entitled to a mandamus to defendants to compel them to enter him on the register as a shareholder, he having bought at *sheriff's sale*, and the sheriff not having complied with the Act, which required service by him on the Company within 10 days after sale of copy of the writ, with his certificate as to the sale and purchasers. See also *Woodruff* v. *Harris*, 11 U.C.R., 490; *Brock* v. *Ruttan*, 1 C.P. 218.

Magnus v. *Queensland Bank*, 36 Chy.D. 25, 37 Chy.D. 466, shows the responsibility and duty of a bank, taking a transfer of stock as security for a loan, to see, when the loan is paid off, that the *re-transfer* is made *to the proper party*, under such circumstances as in this case, which were substantially as follows: There were three co-trustees, of whom G. was one; they all executed a transfer to officials of, and as trustees for, the Bank, on representation by G. to his two co-trustees that it was advisable to sell the stock: on the same day G. borrowed from the Bank, who, on the hearing, alleged that G. represented that his co-trustees authorized him to pledge the stock. The loan was paid off, and the Bank, instead of retransferring the stock to all the co-trustees, transferred to purchasers from G., who received the purchase money and misappropriated it. The Bank was held liable. The facts are to be gathered from both reports. The Bank here neglected the execution of a *duty*, rather than of an implied trust. It does not appear whether the Bank was by its charter exonerated from seeing to the execution of trusts in the mode usual in Canada; but even though it had been, the writer apprehends it would not have been protected.

ALEX. LEITH.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for December are continued:

In *Whitby* v. *Mitchell*, 42 Chy.D. 494, Kay, J., was called on to determine the legal effect of a deed of appointment made under a marriage settlement, whereby lands were limited to the use of the husband and wife successively for life, with remainder to the use of their issue (born before any appointment made), as they should by deed appoint. The husband and wife by the deed in question appointed part of the lands to the use of their daughter for life, for her separate use without power of anticipation, and after her decease, to the use of such persons as she should by will appoint, and in default of appointment to the use of her children living at the date of that deed, as tenants in common in fee. Kay, J., held that the only way to try the validity of the deed of appointment was to read the limitations therein contained with the original settlement; and so doing, it was clear that the appointment made by the deed was invalid

except so far as it gave a life estate to the daughter, because the subsequent limitations offended against the rule of law which forbids the limitation of land to an unborn person for life, with a limitation over to any child of such unborn person. This rule of law, he held, was an absolute rule, and independent of the rule against perpetuities. He therefore made a declaration that the deed of appointment was void, so far as it affected to restrain the appointee from anticipation, and to give her a testamentary power of appointment, and to give the property in default of appointment to her children.

WILL—CONSTRUCTION—GIFT TO CHARITY—PERSONS NOT UNDER 50—"AGED" PERSONS WITHIN 43 ELIZ., C. 4.

In re Wall Pomeroy v. *Willway*, 42 Chy.D 510, a will came up for construction whereby the testator had directed that the interest of a fund should be for ever divided into annuities of £10 each, and be paid half yearly "to an equal number of men and women not under fifty years of age, Unitarians who attend Lewin's Mead Unitarian Chapel, or Chapelsty in Bristol; a tablet to be placed in Lewin's Mead Chapel to give information of gift, otherwise how should the deserving know of it." Kay, J., held that this was a good charitable gift for the benefit of "aged" persons within 43 Eliz., c. 4.

COMPANY—REDUCTION OF CAPITAL—REDUCING PART OF SHARES ONLY—ULTRA VIRES—(SEE R.S.C., C. 119, S. 19.)

In re Union Plate Glass Co., 42 Chy.D., 513, an application was made to Kay, J., to sanction a resolution reducing the capital of a joint stock company, which he refused to do, on the ground that the resolution provided merely for the reduction of some of the shares; this he held to be *ultra vires* of the company, notwithstanding the cases of *Re Barrow Hæmatite Steel Co.*, 39 Chy.D., 582, and *Re Quebrada Railway Co.*, 40 Chy.D., 363, which he declined to follow.

WILL—LEGACY PAYABLE OUT OF PROCEEDS OF LAND—INTEREST, FROM WHAT TIME PAYABLE.

In re Waters, *Waters* v. *Boxer*, 42 Chy.D., 517, the question arose, from what time a legacy payable out of land on the death of a tenant for life bore interest. The testator by his will devised his real estate to his wife for life, and after her death he directed it to be sold by trustees, who were, out of the proceeds, to retain £1000 and interest at 4% to the date of retainer, upon trust for his daughter and her children. And he empowered the trustees to postpone the sale for three years after the death of his wife, and declared that the rents of the unsold real estate should be applied as the income of the proceeds of sale would be applied if the lands had been sold and the proceeds invested. The wife survived the testator, and died; and about two and a half years after her death the trustees proposed to sell the land, and the question was whether the £1000 legacy and the capitalized interest thereon to the death of the widow, carried interest at 4% per annum, payable out of the rents of the real estate from the death of the widow, or only from the expiration of one year from her death.

Kay, J., decided that the interest was payable out of the rents from the date of her death.

TRUSTEE—SETTLEMENT—CONSTRUCTION—POWER TO APPOINT NEW TRUSTEES—DONEE APPOINTING HIMSELF TRUSTEE.

In re Skeats, Skeats v. *Evans*, 42 Chy.D., 522, the donees of a power of appointment contained in a settlement, whereby they were empowered in certain contingencies to appoint any "other" person or persons to be new trustees of the settlement, executed an appointment whereby they purported to appoint one of themselves a new trustee—but this Kay, J., held to be invalid both on the ground that the power to appoint new trustees was fiduciary, and therefore a donee of the power could not appoint himself,and also because by the terms of the power it was required that the person appointed a new trustee should be some "other" person than the person making the appointment.

SETTLEMENT—CONSTRUCTION—TRUST FOR WIFE'S NEXT OF KIN—TIME FOR ASCERTAINING NEXT OF KIN.

In *Clarke* v. *Hayne*, 42 Chy.D., 529, the point adjudicated upon turned upon the construction of a marriage settlement made in 1839, whereby property was settled on the wife for life, and after her death, for her husband for life, and after the death of the husband and wife, in trust for the persons who, under the statutes made for the distribution of the estates of intestates, would then be entitled thereto in case the wife having survived her husband, were to die possessed thereof and intestate. The wife died in the lifetime of her husband, and the persons who were her next of kin at the time of her death, were not altogether the same as those would have been her next of kin had she survived her husband. Kay, J., decided that the persons who were entitled were those who would have been next of kin had the wife survived her husband and died intestate immediately after him. The cases of *Druitt* v. *Seaward*, 31 Chy.D., 234, and *Re Bradley* 58, L.T.,N.S., 631, he declined to follow.

WILL—CONSTRUCTION—"SECURITIES FOR MONEY"—VENDOR'S LIEN.

In *Callow* v. *Callow*, 42 Chy.D., 550, the short question was whether a bequest of "all securities for money" would include money due to the testator in respect of which he had a vendor's lien for unpaid purchase money. Chitty, J., held that it would, and in doing so expressed some doubt as to the correctness of the decision of Page Wood, V.C., in *Goold* v. *Teague*, 7 W.R., 84.

COSTS—TAXATION—THIRD PARTY—DELIVERY OF BILL OF COSTS—ORDER OF COURSE FOR TAXATION.

In re Robertson, 42 Chy.D., 553, there had been a sale of land by two co-owners who acted by separate solicitors; and the solicitor of one of the vendors having made out his bill against his client, sent it to the solicitor of the other co-owner, who sent it to the purchaser. The purchaser, as a third party liable to pay the bill, then obtained an order of course for taxation of the bill on an allegation that it had been delivered to him. The present application was

then made by the solicitor to stay all further proceedings under the order, and it was held by Chitty, J., that the allegation that the bill had been delivered was a material one, and was not satisfied by a merely constructive delivery, and that in the circumstances of this case there had been no delivery to the purchaser, and therefore that the order had been irregularly obtained.

APPOINTED FUNDS—PAYMENT OF PART—SUBSEQUENT LOSS—DEFICIENCY—HOTCHPOT.

In re Bacon Hutton v. *Anderson*, 42 Chy.D., 559, certain trust funds had been appointed in pursuance of a power in a deed which contained no hotchpot clause, and certain of the appointees were rightly paid a portion of the fund so appointed to them. Subsequently, owing to an unavoidable loss, the trust fund became insufficient to pay all the appointees in full, and the question arose whether under the circumstances, in the division of the residue, those who had been partly paid were bound to bring the amounts they had received into hotchpot; but Chitty, J., held they were not, but that, on the contrary, the balance of the fund belonged to all the appointees in proportion to the unpaid amounts.

WILL—BEQUEST OF ANNUITY—ADMINISTRATION OF ESTATE—RIGHT OF ANNUITANT TO HAVE ESTATE REALIZED.

In re Parry Scott v. *Leak*, 42 Chy.D., 570, a testator bequeathed annuities of £700 charged on his property, which consisted of two freehold theatres and two leasehold theatres. Each of the leasehold and one of the freehold theatres was subject to a mortgage amounting to £12,500. The testator gave the residue of his estate to his next of kin. The theatres produced more than sufficient income to pay the annuities and they had been punctually paid. The annuitants, however, claimed to have the leasehold theatres sold, and the mortgages paid out of the proceeds, and the balance invested, in the mode in which funds under the control of the Court are invested to provide for the payment of the annuities. The residuary legatees, on the other hand, proposed that the executors should raise by mortgage of one of the leasehold theatres sufficient to pay off the mortgages, and to secure the annuities by first mortgage on the two freehold theatres, which produced a net income of about £1600, the charge of the annuities on the residue of the estate (subject to the new mortgage) remaining undisturbed. North, J., decided that the annuitants were not entitled to have the leasehold theatres sold, but (the estate being cleared by the payment of the testator's debts, etc.), they were only entitled to have the annuities sufficiently secured, and he considered the security proposed sufficient.

COMPANY—WINDING UP—JURISDICTION—UNDERTAKING FOR PUBLIC BENEFIT.

In re Barton Water Co., 42 Chy.D., 585, North, J., came to the conclusion that he had power to make an order for the winding up of a water company upon which powers for the public benefit had been conferred by the proper authority, although it might not be possible to sell the undertaking and property of the company without an Act of Parliament.

MORTGAGOR AND MORTGAGEE—MORTGAGEE IN POSSESSION—RECEIVER OF MORTGAGED ESTATE.

In re Prytherch, Prytherch v. *Williams*, 42 Chy.D., 590, the law regarding the appointment of receivers of mortgaged estates is discussed by North, J., who held that the Court has under the Judicature Act, s. 25, s.s., 8, a discretion as to the appointment of a receiver; that a receiver may be appointed at the instance of a legal mortgagee, but that he has no absolute right to a receiver, and that the power given by the above section may be exercised at the trial as well as upon an interlocutory application; and, lastly, that a mortgagee who has once taken possession cannot relinquish it, so as to escape liability, at his pleasure, and that as a general rule the Court will not assist him to get rid of his responsibility as a mortgagee in possession, by appointing a receiver at his instance. Speaking of the position of a mortgagee in possession, the learned judge says at p. 600: "In my opinion, when he once takes upon himself the burden which is imposed on all mortgagees who are in possession, he must continue to perform the duty, and he cannot when he pleases elect to give it up." He refused to appoint a third person receiver, but with the assent of the mortgagors, he appointed the mortgagee himself receiver, without salary, and without security.

MUNICIPAL BY-LAW—NEW STREET—BUILDING ON NEW STREET.

In *Hendon* v. *Pounce*, 42 Chy.D., 602, the validity of a municipal by-law came in question, which provided that every new street laid out should be at least 40 ft. in width, and that every person who should construct a new street, shall provide at one end, at least, of such street, an entrance of a width equal to the width of such street, and open from the ground upwards. This by-law was held to be *intra vires* and reasonable, and that it prevented a land owner from constructing a new street upon his land until he had provided an entrance to the new street of the specified width, even though the entrance could only be made over the land of another person, over which he had no control; and it was also held by North, J., that the construction of a new street included building houses abutting on it, and that a land owner could not, until an adequate entrance had been provided, erect houses abutting on the proposed new street.

MORTGAGOR AND MORTGAGEE—RIGHT TO REDEEM DISPUTED—INTEREST—COSTS.

In *Kinnaird* v. *Trollope*, 42 Chy.D., 610, we have the concluding stage of the action, the original hearing of which is reported in 39 Chy.D., 636, noted *ante* vol. 25, p. 107. The action, it may be remembered, was brought by the mortgagee, on the covenant against the mortgagor. The mortgagor had assigned his equity of redemption, and the assignee had executed a further charge in favor of the mortgagee. The defendant applied to stay proceedings on payment of the amount due on the covenant, and claimed that on payment of the amount, the plaintiffs should assign the mortgaged estate, but this they refused to do, unless paid the further charge also; this contention was decided against them, as appears by the former report of the case. An account was then taken, and the Chief Clerk certified the amount due down to the day appointed for payment. The defendants applied to vary this certificate by disallowing all interest

subsequent to the application to stay the proceedings—but Stirling, J., held that the application to stay the proceedings was not equivalent to a tender, and that interest was consequently payable up to the payment of the principal—and on the further consideration of the action, he disallowed the plaintiff any costs occasioned by their having unsuccessfully disputed the defendant's right to redeem.

SETTLED ESTATE—TITLE DEEDS—CUSTODY OF DEEDS—EQUITABLE TENANT FOR LIFE.

In re Burnaby, 42 Chy.D., 621, Stirling, J., decided that an equitable tenant for life, of a settled estate, is entitled to the custody of the title deeds of the estate, upon undertaking not to part with them without the consent of the trustees, and to produce them to the trustees on all reasonable occasions.

JOINT STOCK COMPANY—PROFITS APPLIED TO EXTENSION OF WORKS—BONDS BEARING INTEREST IN PAYMENT OF DIVIDENDS.

In *Wood* v. *Odessa Waterworks Co.*, 42 Chy.D., 636, an application was made to Stirling, J., to restrain the directors of a company which had applied its profits in the construction of productive works, from issuing, in pursuance of a resolution which had been passed at a meeting of the shareholders, bonds bearing interest in payment of dividends. The articles of association empowered the directors, with the sanction of the company, to declare a dividend "to be paid" to the shareholders. It was held that the proposed issue of bonds was not warranted by the articles, and the injunction was granted.

APPOINTMENT—REVOCATION—APPOINTMENT BY WILL—SUBSEQUENT INCONSISTENT APPOINTMENT BY DEED WITH POWER OF REVOCATION—WILL SPEAKING FROM DEATH—WILLS ACT, 1 VICT. C. 26, S.S. 19, 23, 24, 27—R.S.O. C. 109, S. 26.

In re Wells Hardisty v. *Wells*, 42 Chy.D., 646, a husband having power to appoint by deed, with or without power of revocation and new appointment, or by will among the children of his marriage, in 1869 made his will in express exercise of the power in favor of his four children. In 1878 by deed, reciting a previous appointment made in 1864 with a power of revocation, he revoked the appointment thereby made, and appointed the fund between his four surviving children and the three children of his deceased child. In 1883 he made the appointment made by the deed of 1878 in favor of his eldest son irrevocable, and died in 1888. Under these circumstances three questions arose, first whether the will of 1869, which under the Wills Act s. 24 (R.S.O. c. 109, s. 26) speaks from the testator's death, operated as a revocation of the appointment made by the deed of 1878. Secondly, whether the will operated as to the share invalidly appointed in favor of the grandchildren; and thirdly, whether the eldest son was bound to elect between real estate which devolved on him under the settlement as tenant in tail, and the interest appointed by the deed of 1878, or by the will, and it was held by Stirling, J., that as the deed bore date after the will there was sufficient evidence of a "contrary intention" within s. 24 of the Wills Act, (R.S.O., c.109, s. 26), and that consequently the will did not speak from the death

of the testator so as to revoke the appointment by the deed of 1878; that as to the share invalidly appointed by the deed of 1878 in favor of the grandchildren, the will operated; and lastly, that the eldest son was not put to any election as regarded the benefits taken under the deed of 1878; but that he was as regarded those taken under the will, because the will took effect by operation of law and independently of the intention of the testator.

TRUSTEES—SOLICITOR—COSTS IMPROPERLY INCURRED—COSTS OF ACTION AGAINST TRUSTEES.

In re Weall, Andrews v. *Weall*, Chy.D., 674, was an action by a tenant for life against trustees, claiming that certain costs which the trustees had allowed their solicitor to deduct from the rents collected by him should properly have been charged against the *corpus*, and that others were improperly incurred, the contention of the plaintiff was upheld, and Kekewich, J., ordered the defendants to pay the costs of the action. In the judgment of the learned Judge will be found some useful observations on the duty and liability of trustees as regards solicitors employed by them.

THIRD PARTY—INDEMNITY—COSTS.

Blore v. *Ashby*, 42 Chy.D., 682, was an action for specific performance. The defendant pleaded that he was not liable, on the ground that he signed the contract as agent for another person. The defendant served this other person with a third party notice, and the third party appeared and took no further proceedings. The defendant obtained an order that the question as to the liability of the third person should be tried as soon as might be after the trial of the action. At the trial the third party appeared by counsel and claimed to have the question tried between him and the defendant immediately after the trial of the action without obtaining any direction as to the pleadings or otherwise; this it was held he was entitled to do, and that if the defendant wished for any such directions he should have taken steps to have them given. The trial resulted in favor of the plaintiff as against the defendant, and the question of the liability of the third party was determined in favor of the defendant. The third party was ordered to pay the costs of the third party proceedings between him and the defendant, but the defendant having set up a defence which had failed was ordered to pay the costs of the action.

INJUNCTION—INJURY TO ADJOINING HOUSE—CELLAR—STOVE—REASONABLE USE.

In *Reinhardt* v. *Mentasti*, 42, Chy.D., 685, Kekewich, J., granted a perpetual injunction under somewhat peculiar circumstances. The defendants, who kept a hotel in London, had put up a stove in their kitchen, the heat of which rendered the cellar of the plaintiff in the adjoining house unfit for storing wine. The learned Judge decided that although the defendants were acting reasonably in the use of their house, yet as they caused, what he considered, serious annoyance and injury to the plaintiff, the Court was bound to interfere and protect the plaintiff; and that the jurisdiction of the Court did not depend on the question of reason-

able use. This certainly seems a somewhat extreme application of the maxim *sic utere tuo ut alienum non lædas*, and it is doubtful whether the exigencies of life in this country would permit of its application here to the same extent.

Correspondence.

OUR QUEEN'S COUNSEL.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Your remarks in a late number of THE LAW JOURNAL anent the recent appointment of Q.C.s cannot fail to commend themselves to the profession as a whole, as well as to the public. Nothing could more effectually bring this "order" into utter contempt than such an indiscriminate increase in its numbers as we have just witnessed.

So soon as a distinction of any sort is conferred upon persons unworthy of it, just so soon does it cease to have any value, and this is precisely the case with the appointment in question.

It is safe to say that in no other part of the British empire are Police Court practitioners and Division Court advocates similarly honoured.

Her Majesty's "patent" no longer affords any evidence that its Canadian possessor has either forensic power, literary ability, or professional standing of any sort, and many of those who have been thus favoured are not even men of respectable talents.

That the appointing power should have been prostituted in such a manner is very much to be regretted, and cannot be too strongly condemned.

But my object in writing to you is not to point out what everybody knows, but rather to ask the question (and to endeavour to answer it), does not this extraordinary exercise of governmental power convey to us some lesson? And here let me say that we are not dealing with any new phenomenon, but merely with a new development of phenomena already well established, and which serves to show us once again the baneful influence of party politics. And this is the lesson I desire to enforce.

The truth is, the "machine" politician has laid his slimy hand upon this "institution," and robbed it of its value, bringing it, as he has brought everything else subject to his control, into disrepute. It is every year becoming more painfully evident that the substantial interests of the country are being completely subordinated to the interests of "party." Every device that can be originated, no matter how questionable, is not only tolerated but welcomed by the professional politician, so long as it will serve to strengthen the "party" to which he belongs. No sacrifice is considered too great, no expenditure too heavy, no inconsistency too glaring, no compact too demoralizing, no favouritism too rank, no shock to our moral sense too severe, if it will either bring votes, discharge political obligations, or revive the flagging zeal of some party political hack, and

many of the recent appointments are merely a link in this "endless chain" of political expediency.

But the remedy proposed by your correspondent to establish in Canada the discarded order of Sergeant-at-Law, abolished years ago in England, would not mend matters, for a very obvious reason—political considerations would enter into the appointment, and unworthy persons would soon creep into the ranks of the Sergeants.

No; the remedy is not to be found by the creation of a new order, but rather by the abolition of the present one, or else a radical change in the method of appointing its future members. The appointment itself must of course still rest with the Government as representing the Queen, but the appointing power should in no case be exercised except at the instance of some learned and independent body, such, for example, as a board whose members are chosen from the Faculties of all the Universities, or by the Judges of the Supreme Court.

If the discussion of this question only leads to a clearer apprehension of the evils of our present governmental system in the matter of patronage and preferment—based as it is on the pernicious doctrine that *every party political service must be rewarded*—it will have done good. The constant application of this doctrine is so demoralizing in its effects that healthy political sentiment, to say nothing of healthy political action, has been all but destroyed.

Independence is practically unknown, and wherever it presents itself the machine politician pronounces it a heresy and the party "organizer" is instructed, if possible to discredit and destroy it, although it is the only remedy for the present deplorable condition of things.

As to whether the people are sufficiently alive to the magnitude of the evil to apply the remedy which is practically in their hands is open to grave doubt.

Yours, etc.,

January 20th, 1890. ONLOOKER.

WHO MAY SOLEMNIZE MARRIAGE?

To the Editor of THE CANADA LAW JOURNAL:

The case of *Lawless* v. *Chamberlain*, argued recently before Chancellor Boyd, at Ottawa, and decided by him against the petitioner, exposed an usurpation of powers which has been fostered by carelessness in the draftsmen of our Ontario Statutes, and winked at by people, owing to their proverbial indifference to what is everybody's business.

The action was brought by Mr. Lawless, sr., to annul the marriage of his infant son, on the grounds of minority and the want of parents' consent.

The so-called marriage ceremony was performed by one R. M., in the city of Ottawa. The said R. M., had been admitted as a missionary minister into the Methodist connexion some twenty-five years back. For the purpose of increasing his usefulness and value as a missionary, he obtained the degree of M.D. from an Ontario College, and then set sail for the West Indies. After a short term

of service there, he resigned, as being a confirmed invalid. He came to Ottawa, was put on the Methodist ministers' superannuated list, was restored to robust health and has since so continued. He does no active pastoral work now, nor has he any congregation, but earns his living as, and styles himself, a physician, surgeon, public vaccinator, and coroner. Besides carrying on this plurality of occupations, he does what is complained of more particularly, namely, he performs, illegally, as I think, the ceremony of marriage. This biographical notice is necessary to the argument.

The plea advanced by the said R. M. in extenuation of his conduct as a "coupler," is, that once a minister always a minister. Having once received the faculty of performing the ceremony of marriage, he retains it under all conditions and changes of life, office and domicile. He points triumphantly to R.S.O., c. 131, s. 1, and is stubbornly defiant. This section reads as follows: "(1) The ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rites and ceremonies of the churches or denominations to which they respectively belong, and resident in Ontario, may, by virtue of such ordination or appointment, and according to the rites and usages of such churches or denominations respectively, solemnize the ceremony of marriage between any two persons not under a legal disqualification to contract such marriage." At the trial above mentioned, Chancellor Boyd was of the opinion that R. M. was duly qualified in this direction.

Let us examine more closely, and by the light of other times and other statutes see whether it ever had been or was now the intention of the legislature to permit a superannuated minister, *i.e.*, one no longer attached to any congregation or religious community as its minister, and not doing duty as such, to solemnize the ceremony of marriage. In the case in point before us, we find a man responsible to no ecclesiastical authority or subject to no such supervision; without a church, chapel, or meeting house in which to perform the ceremony, or wherein to keep the books registering its solemnization; and yet performing one of the most responsible offices of a minister.

The contention of R. M. strikes me as absurd, and if his interpretation of chapter 131 is correct, then it certainly looks as if common sense, research, and the wisdom of experience had been ignored when this chapter was drafted.

Confining ourselves in the first instance to the Acts of the Parliament of Upper Canada and the Province of Ontario, and the Acts of old Canada relating to this Province, we first meet with 38 Geo. III., chap. 4 (1798), the ancestor of all marriage Acts in this Province. Under its provisions the minister officiating had to be ordained. He had to prove his ordination before the Justices of Quarter Sessions, and produce seven persons who would declare him to be the minister of their congregation or religious body. A certificate from the Quarter Sessions issued, certifying that he was the settled minister, etc. The certificate of marriage ran to this effect: "I, E. F., minister of the community of———, at ——," etc.

11 Geo. IV., chap. 36 (1831), sec. 3, reads as follows: "It shall and may be lawful for any clergyman or minister of any church, society, congregation or

religious community of persons professing to be members of the Church of Scotland, Presbyterians, Methodists, etc., who shall be authorized, etc., to solemnize the ceremony of marriage," etc.

10 & 11 Vict. (1847), chap. 18, sec. 2, reads: "No clergyman or minister of any denomination of Christians, unless he shall have taken the oath or affirmation of allegiance before the Registrar of the County in which he shall officiate as such clergyman or minister, etc., shall," etc.

By 20 Vict. (1857), chap. 66, secs. 3 & 4, it is provided that every clergyman or minister shall, immediately after the solemnization by him of any marriage, enter in a book by him kept for that purpose, which book shall be and continue to be the property of the church or denomination to which he shall belong at the time of such marriage, a true record of such marriage, etc. (See also R.S.O. (1887), chap. 131, sec. 19.) In the event of the death or removal of any minister, it shall be the duty of his successor, or other person having the legal custody of the book referred to, etc.

We now come to the Consolidated Statutes of Upper Canada (1859). Sec. 1 of chap. 72 gives almost the identical wording to be found in the Revised Statutes of Ontario for 1877, chap. 124, and the Revised Statutes for Ontario (1887), chap. 131, sec. 1, which we have already quoted. But there is this important difference to be observed between them, viz., that in the two last named collections the words "church," "churches," "denomination," "denominations," are all spelt without capital letters; whereas sec. 1 of the C.S.U.C., chap. 62, is printed as follows: "(1) The Ministers and clergymen of every church and religious denomination in Upper Canada, duly ordained or appointed according to the rites and ceremonies of the Churches or Denominations to which they respectively belong and resident in Upper Canada, may," etc. This, I claim to be conclusive of the matter; the "church" is the individual and particular body of worshippers to which the minister is attached as pastor; and "Churches" or "Denominations" mean that religious body as a whole of which the "church" is one part.

I have proved, I think, by the historical method, that according to the law of Ontario, in order to solemnize marriage it is not sufficient to be or have been a minister or clergyman; such minister must have under his religious charge a congregation or community of souls. The shepherd must have his flock and sheepfold to claim the full privileges and all the emoluments of a shepherd.

To show this to be a rational and business-like regulation, we may state that in the Province of Quebec "Acts of Marriage" are inscribed in registers kept for each Protestant church or congregation or other religious community. These registers are furnished by the churches, congregations or religious communities, and are kept by the rector, curate, or other priest or minister having charge of these congregations, etc.

In England marriages must be celebrated either in a church of England, a registered building, or in the superintendent Registrar's offices.

To conclude, I think that in the case of *Lawless* v. *Chamberlain* the so-called marriage by the multifarious practitioner R. M. was voidable as having been per-

formed by an unauthorized officiator; and the marriage thus voidable can be rendered void by proceedings commenced and persevered in within a reasonable time after the ceremony—which was done in the particular case under consideration.

RICHARD JOHN WICKSTEED.

Ottawa, December, 1889.

[We publish the above as the subject is interesting. As to whether he is right in his contention, we give no opinion. He may be, but we cannot say that we agree with all the lines of argument he advances.—ED. C.L.J.]

Notes on Exchanges and Legal Scrap Book.

CHANCELLOR KENT.—He was one of the many distinguished sons of Yale, where he graduated in 1781. After graduating, the future Chancellor began reading law with Egbert Benson, then Attorney-General, and afterwards one of the judges of the Supreme Court of New York; but law was not his only reading. All good reading became a ruling passion, varied by extensive studies in the ancient and modern classics.

Taking his degree of Master of Arts in course, in September, 1784, he was admitted an attorney of the Supreme Court in January, 1785, and the following April married happily and settled in Poughkeepsie, then a mere country village.

In 1787, the great political events of the time called for a decision in his mind of the federal question, with the decided result of his embracing those principles adorned by Jay, Hamilton, and other eminent men of that party. It has been noticed that of all graduates of Yale who have lived in the history of their times, none have fallen under the charge of lukewarmness or indecision; it does not seem to be in the atmosphere of those college elms. This was as true of Calhoun as of Evarts, of Kent as of Waite. This is testified to by the universal use of the first volume of Kent's Commentaries, published after nearly forty years' belief in the principles which are to-day styled National.

As an example of the polished yet forcible style of his celebrated Commentaries, we extract the following passages on the powers and jurisdiction of the Supreme Court (Vol. I., 296):—

"The judicial power in every government must be co-extensive with the power of legislation. It follows, as a consequence, that the judicial department of the United States is, in the last resort, the final expositor of the Constitution as to all questions of a judicial nature. Were there no power to interpret, pronounce, and execute the law, the government would either perish through its own imbecility, as was the case with the articles of confederation, or other powers must be assumed by the legislative body, to the destruction of liberty.

"That the interpretation of treaties, and the cases of foreign ministers, and maritime matters, are properly confided to the federal courts, appears from the close connection those cases have with the peace of the Union, the confusion

that different proceedings in the separate States would tend to produce, and the responsibility which the United States are under to foreign nations, for the conduct of all its members.

"The other cases of enumerated jurisdiction are evidently of national concern, and they constitute one of the principal motives to union, and one of the principal cases of its necessity, which was the insurance of domestic tranquility. The want of a federal judiciary to embrace these important subjects was once severely felt in the German confederacy, and disorder, license, and desolation, re'gned in that unhappy country until the establishment of the imperial chamber by the Emperor Maximilian, near the close of the fifteenth century; and that jurisdiction was afterwards the great source of order and tranquility in the Germanic body."

The interval between 1787 and the publication of the Commentaries, a period of nearly forty years, was passed in a little politics, as a member of the New York Legislature in 1790, 1792, and 1796; in his law lectures at Columbia College in 1794-5, and in 1824; but chiefly as Justice of the State Supreme Court, from 1798 to February, 1814, and as Chancellor until July 23, 1823, when he had attained the constitutional age for retiring—sixty years.

Perhaps the great service which Chancellor Kent rendered in his judicial capacity, was the habit he set of preparing a written opinion in every case of sufficient importance. It had been the judicial custom to deliver oral opinions, and the habit of delivering written opinions became exceedingly valuable when he became Chancellor Kent. The powers of the Court were not clearly defined, there was a lack of precedents, and there was only a small coterie of practitioners. All this was altered by Kent's industry, learning, and aptness in conducting the business of the Court. Hence the language of the Bar of New York city, when affectionately taking leave of the retiring Chancellor:—

"During this long course of services, so useful and honourable, and which form the most brilliant period of our judicial history, you have, by a series of decisions, in law and equity, distinguished alike for practical wisdom, profound learning, deep research, and accurate discrimination, contributed to establish the fabric of our jurisprudence on those sound principles that have been sanctioned by the experience of mankind, and expounded by the enlightened and venerable sages of the law."

It is not surprising to know that some have thought that such a man, either from constitutional diffidence, or habits of study, appeared not to feel the confident possession of the powers requisite to insure renown at the Bar. But, as a judge, the Bar gave universal testimony of his personal kindness, pureness, and gentleness of heart, and uniform and uninterrupted course of generous, candid, and polite treatment.—*Current Comment.*

DIARY FOR FEBRUARY.

1. Sat.....Sir Edward Coke born 1552.
2. Sun.....*Septuagesimia.*
3. Mon.....County Court Non-Jury Sittings in York. Hilary Term commences. High Court of Justice Sittings begin.
5. Wed.....W. H. Draper, 2nd C.J. of C.P., 1856.
9. Sun.....*Sexagesima.* Union of U. and L. Canada, 1841.
10. Mon.....Queen Victoria married 1840. Canada ceded to Great Britain, 1763.
11. Tues.....T. Robertson appointed to Chy.Div., 1887.
15. Sat.....Hilary Term and High Court of Justice Sittings end.
16. Sun.....*Quinquagesima.*
17. Tues.....Supreme Court of Canada sits.
18. Wed.....Ash Wednesday.
20. Thu.....Chancery Division High Court of Justice sits.
23. Sun.....*First Sunday in Lent.*
24. Mon.....St. Matthias.
28. Fri.....Indian Mutiny began 1857.

Reports.

ONTARIO.

HIGH COURT OF JUSTICE.

(Reported for THE CANADA LAW JOURNAL.)

FINN *v.* MILLER. RATHBONE *v.* MILLER.

Mechanics' liens- Annulling registration.

Mortgagees had advanced most of their mortgage monies to the mortgagor, for purposes of paying off a prior mortgage and for improvements on the premises, when F. filed his lien for work done and materials provided, and within ninety days began action not making the mortgagees parties. R. also took like proceedings to enforce a lien, and made the mortgagees parties but did not serve them.

The mortgagees, under power of sale, notified F. and R. and other registered lien holders and sold the premises.

On motion of the mortgagees, order was made annulling the registry of all the liens and *lites pendentes*, the mortgagees being ordered to pay such balance of the proceeds of the premises into Court, under the Act respecting the Law and Transfer of Property, as should be in their hands after satisfying mortgage claim and costs.

[CHAMBERS, Nov. 18, 1889—MR. DALTON.

Messrs. J. and W. MacLaren held a mortgage for $6,000, registered 23rd October, 1888, on lands of A. C. Miller, and had advanced for purposes of the loan all but a small portion of the mortgage money when notified on 2nd Feb., 1889, of the filing of a lien by James Finn, who registered his certificate of *lis pendens* on March 9th, 1889. Rathbone also filed lien on Feb. 15th, 1889, and *lis pendens* on April 13th, 1889, making the mortgagees parties, but not serving them. They were not parties in Finn's action. Liens were also filed by other mechanics and material men against Miller and the premises in question.

Messrs. MacLaren, when default was made in payment of interest on their mortgage, gave notice under their power of sale to the mortgagor and all the lien holders and on the 2nd of Nov., 1889, sold the property at auction for a sum in excess of the mortgage debt.

They now applied, showing these facts and that the purchaser required the liens and registration of the two *lites pendentes* to be removed as clouds on the title; and they so asked.

J. C. Hamilton for the mortgagees:—The applicants should not have been made parties to the lien suits, *McVean v. Tiffin*, 13 A.R., 1.; *Reinhart v. Shutt*, 15 O.R., 325. The liens being registered after the mortgage, are subject to its provisions, and the power of sale having been duly exercised after notice, the holders of liens can now have no right to interfere with the land but at most to stand in the mortgagors position as to any surplus. The Court has authority so to declare and annul the registrations under sec. 30, s.s. 8 of the Mechanics' Lien Act.

Gilray for Finn.

J. H. Reeves for Rathbone.

W. H. Irving, for Watson, another lien holder, objected.

D. Faskin, for a subsequent mortgagee claimed that the balance should be paid to him.

THE MASTER IN CHAMBERS:—The order should go as asked. The thirtieth section of the Act meets the case. The purchaser under the power of sale in this mortgage should not have any cloud upon his title, but the lien holders and all others who may claim the surplus should have opportunity to advance their claims upon it. The order will therefore go annulling all registrations of liens subsequent to the applicants' mortgage, but they to pay into Court in the usual manner under R.S.O., cap. 100, sec. 15, any balance in their hands after satisfying principal, interest, and costs.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

HALDIMAND ELECTION CASE.

Election Law—Corrupt act—Bribery by agent —Proof of agency.

An election petition charged that H., an agent of the candidate whose election was attacked,

corruptly offered and paid $5 to induce a voter to refrain from voting. The evidence showed that H. was in the habit of assisting this particular voter, and that being told by the voter that he contemplated going away from home on a visit a few days before the election and being away on election day, promised him $5 towards paying his expenses. Shortly after the voter went to the house of H. to borrow a coat for his journey, and H.'s brother gave him $5. He went away, and was absent on election day.

Held, that the offer and payment of the $5 formed one transaction and constituted a corrupt practice under the Election Act.

The proof of H.'s agency relied on by the petitioner was that he had been active on behalf of the same candidate at former elections; that he had attended a committee meeting held on behalf of the candidate and took part in going over the list of voters, and that he acted as scrutineer in the election in question. It was also shown that there was no regular organization of the party at the election, but the candidate had addressed a mass meeting of the electors and stated that he placed his interests in their hands. It was contended that every member of the party was therefore constituted his agent.

Held, affirming the judgment of the trial Judge, Ritchie, C.J., dissenting, and Taschereau J., hesitante, that the agency of H. was sufficiently established to make the candidate liable for his acts, and the candidate was rightly unseated for bribery by H.

Appeal dismissed with costs.

Aylesworth for appellant.

McCarthy, Q.C., for respondent.

CHAGNON *v.* NORMAND.

Appeal—Jurisdiction—Supreme Court Act, sec. 29 (b)—Future rights—Quebec Election Act—Action for penalties for bribery—Effect of judgment—Disqualification.

By Art. 414 of the Revised Statutes of Quebec any person guilty of bribery at a provincial election is liable to a penalty of $200 for each offence for which any person may sue.

By Art. 429, any person convicted on indictment of such bribery is disqualified for seven years from being a candidate at an election or holding office under the Crown.

N. brought an action for bribery under Art. 414 against C., in which penalties to the extent of $400 were imposed on C. The Court of Queen's Bench affirmed the judgment imposing such penalties and C. sought to appeal to the Supreme Court of Canada. On motion to quash the appeal for want of jurisdiction,

Held, that even if the judgment imposing penalties had the effect of disqualifying C. as if he had been convicted under Art. 429, no appeal would lie. The only ground of jurisdiction would be that future rights would be affected by the judgment, but under sec. 29 (b) of the Supreme Court Act the future rights must be affected by the matter actually in controversy and not by something collateral thereto.

Semble, that the judgment would not have the effect of so disqualifying C.

Appeal quashed with costs.

J. J. Gormully for respondent.

Christopher Robinson, Q.C., for appellant.

HOOD *v.* SANGSTER.

Action for partition and licitation of property—Partnership—Plaintiff's interest less than $2,000—Not appealable—R.S.C. ch. 153, sec. 29.

An action was instituted by the respondent against the appellant for the partition and licitation of a cheese factory, etc., in order that the proceeds might be divided according to the rights of the parties who had carried on business as partners. The judgment appealed from ordered the licitation of the factory and its appurtenances. On a motion to quash the appeal by the respondent on the ground that the matter in controversy was under $2,000, the appellant in answer to the respondent's affidavit filed another affidavit showing that the total value of the property was $3,000, but it being admitted that the respondents (plaintiff) claimed but one-half interest in the property, it was

Held, that the matter in controversy and claimed by the respondent not amounting to the sum or value of $2,000, the appeal should be quashed with costs.

Appeal quashed with costs.

Duclos for respondent.

MacLennan, contra.

MONTREAL STREET RAILWAY CO. *v.* RITCHIE.

Injunction—41 Vict., ch. 14, sec. 4, P.Q.—Action for damages—Want of probable cause—Damages other than costs.

Where a registered shareholder of a company

finding the annual reports of the company misleading applies after notice for a writ of injunction to restrain the company from paying a dividend and where, upon such application the company do not deny even generally the statements and charges contained in the plaintiff's affidavit and petition, there is sufficient probable cause for the issue of such writ, and consequently the defendant, who upon the merits has succeeded in getting the injunction dissolved, has no right of action for damages resulting from the issue of the injunction.

Per TASCHEREAU, J.:—Where a party maliciously and without reasonable and probable cause has instituted civil proceedings against another, the latter has a right of action for damages resulting from such vexatious proceedings. *Brown v. Gugy*, 16 L. C. Jur. 227, approved of.

Appeal dismissed with costs.

Geoffrion, Q.C., and *Abbott*, Q.C., for appellants.

Lonergan and *Lafleur* for respondents.

SCAMMELL *v.* JAMES.

Appeal—Jurisdiction—Security for costs—Benefit of bond for—Practice.

S. brought an action by writ of capias in the Supreme Court of New Brunswick against J., who was arrested and gave bail. By the practice in bailable actions in that Province it was necessary for the defendant to enter into special bail within a specified time after his arrest, and judgment must be entered within a specified time after such special bail is entered into. The plaintiff delayed signing judgment, and on application to a Judge in Chambers an order was made discharging the bail and directing an exonoretur to be entered on the bail bond. On motion to the full Court this order was sustained and the plaintiff appealed to the Supreme Court of Canada. The proceedings in the Court below and on appeal were in the original suit against J., and the bond for security for costs was made in favor of J.

Held, that the bail, the parties principally interested in the appeal, not being entitled to the benefit of the security for costs, the appeal could not be entertained for want of security, and the time for giving security having elapsed, the defect could not be remedied.

Held also, that the matter was one of the practice of the Court below and on that ground not appealable.

McLeod, Q.C., and *C. A. Palmer* for the appellants.

I. A. Jack, Recorder of St. John, for the respondent.

WHITE *v.* PARKER.

Appeal—Jurisdiction—Death of plaintiff—New cause of action—Lord Campbell's Act—Actio personalis moritur cum persona.

P. brought an action against a railway conductor for injuries received in attempting to board a train. He was non-suited on the trial of the action, and the Supreme Court of New Brunswick set aside the non-suit and ordered a new trial. Between the verdict and the judgment of the Court below P. died, and a suggestion of his death was entered on the record in the Court below. On appeal to the Supreme Court of Canada from the judgment ordering a new trial,

Held, that by the death of P. a new cause of action arose, under Lord Campbell's Act, in favor of his widow and children and the original action was, therefore, entirely gone and could not be revived. There being, therefore, no cause before the Court the appeal was quashed without costs.

E. McLeod, Q.C., for appellant.

W. Pugsley for respondent.

MCDONALD *v.* GILBERT.

Partnership—Proof of—Names of parties on letter heads—Action for trifling amount.

G. bought goods from a person representing himself as agent of a firm in Toronto, and the goods were sent from Toronto to G. at St. John, N.B. In order to get the goods G. was obliged to pay the freight, which he demanded from the firm, claiming that by his agreement with the agent he was to receive the goods at St. John on payment of the price. Some correspondence passed between G. and the firm, and letters were received by G. written on paper containing the name of the firm and under it the names of individuals. In an action by G. to recover the freight,

Held, affirming the judgment of the Supreme Court of New Brunswick, that the representation of the agent, coupled with the receipt of the

said letters, was sufficient *prima facie* evidence that the persons whose names were printed on the letter heads constituted the said firm.

It appeared that the amount for which the action was brought was only twenty-two dollars, and the Court, though unable to refuse to hear the appeal, expressed strong disapproval of the appellant's course in bringing an appeal for such a trifling amount.

Appeal dismissed with costs.

Weldon, Q.C., for appellants.

Barker, Q.C., for respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Ct.] [Dec. 20.

MEAD *v.* TOWNSHIP OF ETOBICOKE.

Municipal Corporations—Highway carried over railway—Liability of municipal corporation—Liability of railway company—R.S.O., c. 184 s., 531.

Notwithstanding any liability which may be cast by statute upon a railway company to maintain and repair a bridge and its approaches by means of which a highway is carried over their railway, such highway is still a public highway, and as such comes within the provisions of the Municipal Act, R.S.O., c. 184, s. 531, requiring every public road, street, bridge, and highway to be kept in repair by the municipal corporation, who are not absolved from liability for default by the liability, if any, of the railway company.

Laidlaw, Q.C., and *Kappele* for the plaintiff.

Robinson, Q.C., and *McMichael*, Q.C., for defendant Township of Etobicoke.

McCarthy, Q.C., for defendants G. T. R. Co.

Chancery Division.

Full Court.] [Dec. 23.

RE ROMAN CATHOLIC SEPARATE SCHOOLS.

Roman Catholic Separate Schools — Public Schools Act, R.S.O., 1887, c. 225.

In answer to questions submitted by the Minister of Education,

Held, 1. If the assessor is satisfied with the prima facie evidence of the statement made by or in behalf of any ratepayer that he is a Roman Catholic, and thereupon (seeking and having no further information) places such person upon the assessment roll as a Separate School supporter—this ratepayer though he may not by himself or his agent give notice in writing pursuant to section 40 of Separate Schools Act (R.S.O.. 1887, c. 227) may be entitled to exemption from the payment of rates for public school purposes,—he being in the case supposed assessed as a supporter of Roman Catholic Separate Schools.

2. The Court of Revision has jurisdiction on application of the person assessed, or of any Municipal elector (or ratepayer, as in the Separate Schools Act sec. 48 (3), c. 227 R.S.O.) to hear and determine complaints.

(*a*) In regard to the religion of the person placed on the roll as Protestant or Roman Catholic, and

(*b*) As to whether such person is or is not a supporter of public or separate schools within the meaning of the provisions of law in that behalf, and

(*c*) (which appears to be involved in (*b*)) whether such person has been placed in the wrong column of the assessment roll for the purposes of the school tax,

It is also competent for the Court of Revision to determine whether the name of any person wrongfully omitted from the proper column of the assessment roll should be inserted therein upon the complaint of the person himself or of any elector (or ratepayer).

3. The assessor is not bound to accept the statement of, or made on behalf of any ratepayer under R.S.O. 1887, c. 225 sec. 120; (2) in case he is made aware or ascertains before completing his roll that such ratepayer is not a Roman Catholic, or has not given the notice required by section 40 of the Separate Schools Act, or is for any reason not entitled to exemption from Public School Rates.

4. (*a*) A ratepayer, not a Roman Catholic, being wrongfully assessed as a Roman Catholic and supporter of Separate Schools, who, through inadvertence or other causes, does not appeal therefrom is not estopped (nor are other ratepayers) from claiming with reference to the assessment of the following or future year that he is not a Roman Catholic.

(*b*) A ratepayer, being a Roman Catholic and appearing in the assessment roll as a Roman Catholic and supporter of Separate Schools, who has not given the notice in writing of being such supporter mentioned in section 40 of the Separate Schools Act is not (nor are the other ratepayers) estopped from claiming in the following or future year that he should not be placed as a supporter of Separate Schools with reference to the assessment of such year, although he has not given notice of withdrawal mentioned in section 47 of the Separate Schools Act.

Moss, Q.C., for the Attorney-General.
Dr. O'Sullivan, contra.

Robertson, J.] [Dec. 23.

RE IRON CLAY PAVING COMPANY.

Company—Director—Purchase by director of property of company sold under mortgage—Liability to account—Winding up—Constitutional law.

One Turner, a director of the Company, purchased property of the Company in 1888 at a sale by mortgagees of the property for a sum of $8,400, and in 1889 he obtained $23,000 for the same property. In winding up proceedings of the Company under the Dominion Winding Up Act the liquidator claimed that he could not as director purchase for his own benefit, but that he held the land as a trustee for the Company.

Held, affirming the decision of the Master in Ordinary that this contention was correct, and that Turner was liable and accountable for whatever profit he might have received on a sale by him of the lands, and that by reason of his refusing to pay over or to account for such profits he had become properly adjudged guilty of a breach of trust within the meaning of section 83 of the Dominion Winding up Act.

Held, also that the Ontario Winding up Acts do not apply when the application for winding up is made by a creditor on the ground of insolvency, because the local Legislature has no jurisdiction in matters of insolvency.

W. Cassels, Q.C., and *D. McDonald* for Turner.

C. Robinson, Q.C., and LeVesconte for Liquidator.

BOYD, C.] [Nov. 27, 1889.

MACKLIN *et al. vs.* DANIEL *et al.*

Will—Devisee—Investments for legacies—"Paying out"—What time intended—Division of residue.

A testator gave two legacies to become due and payable in three and four years respectively from his decease, and instructed his executors to invest the same and pay the interest to the beneficiaries, and directed the investment of two separate sums for the benefit of two other devisees (one of whom was his sister), with a direction to pay them the interest for their lives, and proceeded, "And should there be a residue or surplus after paying out the foregoing bequests, I will that the same be equally divided between my sisters and S. G. B., or the survivors of them at the time of winding up the affairs."

Held, that the time for the division of the residue was when sufficient funds were invested to produce the legacies and fulfil the directions of the will, and that it was not postponed until the legacies were paid over or to any subsequent time.

A. Cassels for the executors, the plaintiffs.

J. C. Hamilton, for Mrs. S. J. Reesor, a residuary devisee.

W. M. Douglas for the two sisters.

Boyd, C.] [Dec. 20.

PHELPS *v.* ST. CATHARINES & NIAGARA RAILWAY CO.

Railways—Bonds—Debentures—Charge on the "undertaking"—Earnings of Road—44 Vict. c. 73, O. s. 35.

Appeal from an order of the Local Judge at St. Catharines directing an issue between the plaintiffs who sought to attach certain moneys of the defendants, being a bank deposit of moneys collected from the earnings of the Road on the one part, and the bond holders of the defendants who claim a charge upon said moneys on the other part.

The Act of Incorporation of the defendants Railway, 44 Vict. chap. 73, O. sec. 33, enacted that the bonds of the defendants were to be "taken and considered to be the first and preferential claims and charges upon the undertaking."

Held, that the bond holders under the above section were entitled to a preferential charge

upon the above deposit. In Railway parlance the "undertaking" has been defined to mean the complete work from which returns of money or earnings arise, and a charge upon the undertaking means that these earnings are liable for the satisfaction of the charge.

Aylesworth, for the appellants.

Collier, contra.

OSGOODE HALL LIBRARY.

(COMPILED FOR THE CANADA LAW JOURNAL.)

Latest additions:

American and English Encyclopædia of Law vol. 10, implied trusts—injunctions, Northport, 1889.

Ball's Irish Legislative Systems, (1172-1800) Dublin, 1889.

Barron's Conditional Sales Act, Toronto, 1890.

Beven on Negligence, London, 1889.

Birdseye's New York Revised Statutes, vol. 1., N.Y. 1889.

Brown and Powles on Divorce, 5th ed., London, 1889.

Carter on the Provinces of the Written and Unwritten Law, New York, 1889.

Carpmael's Patent Laws, 2nd ed., London, 1889.

Clerk and Lindsell's Law of Torts, London, 1889.

Daniel's Commission Cases, London, 1889.

Dicey on the Constitution, 3rd ed., London, 1889.

Elphinstone on Interpretation of Deeds, (bl. ed.) Philadelphia, 1889.

Fraser on Libel, London, 1889.

Gover on Advising on Titles, London, 1889.

Halkett and Laing's Dictionary of Anonymous Pseudonymous Literature, etc., four vols., Edinburgh, 1882-8.

Harris on Criminal Law, 5th ed., London, 1889.

Herbert on Adulteration, London, 1884.

Jordan's Analysis of Anson on Contract, Cincinnati, 1890.

Kelly on Newspaper Libel, London, 1889.

Kenyon (Lord) Life of, edited by G. T. Kenyon, London, 1873.

Lely and Peck's Precedents of Leases, London, 1889.

Marcy and Dodd on Originating Summons, London, 1889.

Mews' Consolidated Digest, 1884-8, London, 1889 (3 copies).

Montgomery's Land Tenure in Ireland, Cambridge, 1889.

Munro's Constitution of Canada, Cambridge, 1889.

Osborne on Trusts, London, 1889.

Owen's Declaration of War, London, 1889.

Phillips' Comparative View of Criminal Jurisprudence, Calcutta, 1889.

Smith's Equity Jurisprudence, 14th ed., London, 1889.

Snell's Equity, 9th ed., London, 1889.

Snow's Annual Practice, 1889-90, London, 1889.

Southeastern Reporter, volumes 1-8, St. Paul, 1887-9.

Southwestern Reporter, volumes 1-10, St. Paul, 1887-9.

Townshend on Libel and Slander, 4th ed., New York, 1890.

Urlin and Shearwood on Income Tax, London, 1888.

Wheaton on International Law, 3rd ed., London, 1889.

Winslow on Artistic Copyright, London, 1889.

Wynne's Boville Patent, London, 1873.

NOTE.—Additional copies of the books on the law course have been added to the Students' Lending Library, in the east wing, Osgoode Hall.

Appointments to Office.

COUNTY JUDGE.

Wentworth.

Alexander Bruce, of Hamilton, to be Deputy-Judge of the County Court of the County of Wentworth.

REGISTRARS.

York.

Peter Ryan, of Toronto, to be Registrar of Deeds in and for the Registry Division of East Toronto, such appointment to take effect on and from the 1st day of January, 1890.

Province of Ontario.

Sutherland Malcolmson, of Goderich, to be Deputy-Registrar of the Maritime Court of Ontario, *vice* Henry McDermott, deceased.

POLICE MAGISTRATES.

Brant.

Thomas Woodyatt, of Brantford, to be Police Magistrate in and for the City of Brantford, *vice* James Weymess, deceased.

Dundas.

William Bow, of West Winchester, to be Police Magistrate in and for the Village of West Winchester, in the County of Dundas.

Essex.

Alexander Bartlet, of Windsor, to be Police Magistrate in and for the North Riding of the County of Essex (saving and excepting the Township of Anderton) as constituted for the purposes of the Legislative Assembly, and in and for the Township of Tilbury West in the South Riding of the said County of Essex.

CORONERS.

Haldimand.

David Thompson, of Cayuga, Doctor of Medicine, to be an Associate-Coroner within and for the County of Haldimand.

Stormont, Dundas, and Glengarry.

Watson Parish Chamberlain, of Morrisburg, Doctor of Medicine, to be an Associate-Coroner within and for the united counties of Stormont, Dundas, and Glengarry.

DIVISION COURT CLERKS.

Bruce.

Angus Martyn, of Ripley, to be Clerk of the Ninth Division Court of the County of Bruce, *vice* Angus McKay, resigned.

Haldimand.

David T. Rogers, of Cayuga, to be Clerk of the Second Division Court of the County of Haldimand, *vice* Thomas Bridger, resigned.

Northumberland and Durham.

Soford F. Dixon, of Colborne, to be Clerk *pro tempore* of the Seventh Division Court of united counties of Northumberland and Durham, the appointment not to continue longer than six months.

Wellington.

John Livingstone, of Harriston, to be Clerk of the Tenth Division Court of the County of Wellington, *vice* A. C. R. Saunders, resigned.

DIVISION COURT BAILIFFS.

Essex.

William L. Hughson, of Harrow, to be Bailiff of the Fourth Division Court of the County of Essex, *vice* George Pearce, resigned.

Leeds and Grenville.

Harvey Edwin Lawrence, of Spencerville, to be Bailiff of the Tenth Division Court of the united counties of Leeds and Grenville, *vice* P. Snyder, resigned.

Middlesex.

Lorenzo Winchester Stevens, of London, to be Bailiff of the Ninth Division Court of the County of Middlesex, *vice* Isaac Nixon, resigned.

Simcoe.

Geo. A. Nolan, of Tottenham, to be Bailiff of the Third Division Court of the County of Simcoe, *vice* S. H. Washburn, resigned.

Wellington.

Henry Torrance, of Harriston, to be Bailiff of the Fourth Division Court of the County of Wellington, *vice* John Livingstone, resigned.

COMMISSIONERS FOR TAKING AFFIDAVITS

Dominion of Canada.

Robert Tuthill Litton, of Melbourne, Victoria, Australia, to be a Commissioner under R.S.C., c. 135, sec. 92, to administer oaths and take and receive affidavits, declarations, and affirmations in or concerning any proceeding had or to be had in the Supreme Court of Canada or in the Exchequer Court of Canada.

Province of Ontario.

Joseph Grose Colmer, of London, England, to be a Commissioner for taking affidavits within and for the United Kingdom of Great Britain and Ireland for use in the Courts of Ontario.

Geo. William Burton, of No. 7 Queen Street, Cheapside, England, to be a Commissioner for taking affidavits within and for the City of London and not elsewhere, for use in the Courts of Ontario.

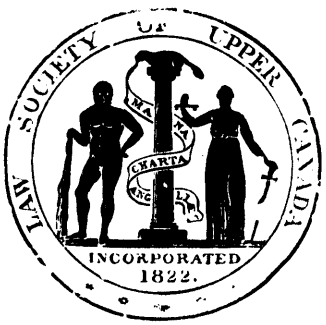
Miscellaneous.

LITTELL'S LIVING AGE.—The numbers of *The Living Age* for the weeks ending Jan. 25th and Feb. 1st, contain Robert Browning, Brazil, Past and Future, and A Lumber-Room, *Contemporary;* Pope, and Robert Browning, *National;* Cardinal Lavigerie and the Slave-Trade, A Winter's Drive from Sedan to Versailles and round Paris during the Siege, Browning and Tennyson, and In the Days of the Dandies, *Blackwood's;* The Romance of History, Jacqueline de Laguette, *Temple Bar;* Strangers Within our Gates, *Cornhill;* The Father of Low-German Poetry, Granville Sharp

and the Slave-Trade, and A Ballad of East and West, *Macmillan's;* Children and the Poets, *Leisure Hour;* The Cats of Ancient Egypt, *English Illustrated Magazine;* Housekeeping in Crete, *All the Year Round;* The Intellectual Effect of Old Age, *Spectator;* Browning's View of Life, *St. James';* with "The Green Door," "Zoe," and Poetry.

For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year) the subscription price ($8) is low; while for $10.50 the publishers offer to send any one of the American $4.00 monthlies or weeklies with *The Living Age* for a year, both postpaid. Littell & Co., Boston, are the publishers.

Law Students' Department.



TRINITY TERM, 1889.

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society which came into force June 25th, 1889, and September 21st, 1889, respectively, copies of which may be obtained from the Secretary of the Society, or from the Principal of the Law School, Osgoode Hall, Toronto.

Those Students-at-Law and Articled Clerks, who under the Rules are required to attend the Law School during all the three terms of the School Course, will pass all their examinations in the School, and are governed by the School Curriculum only. Those who are entirely exempt from attendance in the School will pass all their examinations under the existing Curriculum of The Law Society Examinations as heretofore. Those who are required to attend the School during one term or two terms only will pass the School Examination for such term or terms, and their other Examination or Examinations at the usual Law Society Examinations under the existing Curriculum.

Provision will be made for Law Society Examinations under the existing curriculum as formerly for those students and clerks who are wholly or partially exempt from attendance in the Law School.

Each Curriculum is therefore published herein accompanied by those directions which appear to be the most necessary for the guidance of the Student.

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, Q.C.
Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.
Examiners R. E. KINGSFORD, LL.B. P. H. DRAYTON.

The School is established by the Law Society of Upper Canada, under the provisions of rules passed by the Society with the assent of the Visitors.

Its purpose is to promote legal education by affording instruction in law and legal subjects to all Students entering the Law Society.

The course in the School is a three years' course. The term commences on the fourth Monday in September and closes on the first Monday in May; with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's Day.

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive

The School term, if duly attended by a Student-at-Law or Articled Clerk is allowed as part of the term of attendance in a Barrister's chambers or service under articles.

By the Rules passed in September, 1889, Students-at-Law and Articled Clerks who are entitled to present themselves either for their First or Second Intermediate Examination in any Term before Michaelmas Term, 1890, if in attendance or under service in Toronto are required, and if in attendance or under service elsewhere than in Toronto are permitted, to attend the Term of the School for 1889-90, and the examination at the close thereof, if passed by such Students or Clerks shall be allowed to them in lieu of their First or Second Intermediate Examinations as the case may be. At the first Law School Examination to be held in May, 1860, fourteen Scholarships in all will be offered for competition, seven for those who pass such examination in lieu of their First Intermediate Examination, and seven for those who pass it in lieu of their Second Intermediate Examination, viz., one of one hundred dollars, one of sixty dollars, and five of forty dollars for each of the two classes of students.

Unless required to attend the school by the rules just referred to, the following Students-at-

Law and Articled Clerks are exempt from attendance at the School:

1. All Students-at-Law and Articled Clerks attending in a Barrister's chambers or serving under articles elsewhere than in Toronto, and who were admitted prior to Hiliary Term, 1889.

2. All graduates who on the 25th day of June, 1889, had entered upon the *second* year of their course as Students-at-Law or Articled Clerks.

3. All non-graduates who at that date had entered upon the *fourth* year of their course as Students-at-Law or Articled Clerks.

In regard to all other Students-at-Law and Articled Clerks, attendance at the School for one or more terms is compulsory as provided by the Rules numbers 155 to 166 inclusive.

Any Student-at-Law or Articled Clerk may attend any term in the School upon payment of the prescribed fees.

Every Student-at-Law and Articled Clerk before being allowed to attend the School, must present to the Principal a certificate of the Secretary of the Law Society shewing that he has been duly admitted upon the books of the Society, and that he has paid the prescribed fee for the term.

The Course during each term embraces lectures, recitations, discussions, and other oral methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

During his attendance in the School, the Student is recommended and encouraged to devote the time not occupied in attendance upon lectures, recitations, discussions or moot courts, in the reading and study of the books and subjects prescribed for or dealt with in the course upon which he is in attendance. As far as practicable, Students will be provided with room and the use of books for this purpose.

The subjects and text-books for lectures and examinations are those set forth in the following Curriculum:

CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.
Kerr's Student's Blackstone, books 1 and 3

Equity.

Snell's Principles of Equity.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures each day except Saturday, from 3 to 5 in the afternoon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

The number of lectures on each of the four subjects of this year will be one-fourth of the whole number of lectures.

The first series of lectures will be on Contracts, and will be delivered by the Principal.

The second series will be on Real Property, and will be delivered by a Lecturer.

The third series will be on Common Law, and will be delivered by the Principal.

The fourth series will be on Equity, and will be delivered by a Lecturer.

SECOND YEAR.

Criminal Law.

Kerr's Student's Blackstone, Book 4.
Harris's Principles of Criminal Law.

Real Property.

Kerr's Student's Blackstone, Book 2.
Leith & Smith's Blackstone.
Deane's Principles of Conveyancing.

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

Bourinot's Manual of the Constitutional History of Canada. O'Sullivan's Government in Canada.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday from 10.30 to 11.30 in the forenoon, and from 2 to 3 in the afternoon respectively and on each Friday there will be a Moot Court from 2 to 4 in the afternoon.

The lectures on Criminal Law, Contracts, Torts, Personal Property, and Canadian Constitutional History and Law will embrace one-half of the total number of lectures and will be delivered by the Principal.

The lectures on Real Property and Practice and Procedure will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

The lectures on Equity and Evidence will embrace one-fourth of the total number of lectures and will be delivered by a lecturer.

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.

Hawkins on Wills.

Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.

Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.

Pmith on Negligence, 2nd edition.

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.

Smith's Mercantile Law.

Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

Statutes, Rules, and Orders relating to the jurisdiction, pleading, practice, and procedure of the Courts.

Statute Law.

Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

In this year there will be two lectures on each Monday, Tuesday, Wednesday, and Thursday, from 11.30 a.m. to 12.30 p.m., and from 4 p.m. to 5 p.m., respectively. On each Friday there will be a Moot Court from 4 p.m. to 6 p.m.

The lectures in this year on Contracts, Criminal Law, Torts, Private International Law, Canadian Constitutional Law, and the construction and operation of the Statutes, will embrace one-half of the total number of lectures, and will be delivered by the Principal.

The lectures on Real Property, and Practice and Procedure will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

The lecturers on Equity, Commercial Law, and Evidence, will embrace one-fourth of the total number of lectures, and will be delivered by a lecturer.

GENERAL PROVISIONS.

The term lecture where used alone is intended to include discussions, recitations by, and oral examinations of, students from day to day, which exercises are designed to be prominent features of the mode of instruction.

The statutes prescribed will be included in and dealt with by the lectures on those subjects which they affect respectively.

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court.

At each lecture and Moot Court the roll will be called and the attendance of students noted, of which a record will be faithfully kept.

At the close of each term the Principal will certify to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student will be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures of each series during the term, and pertaining to his year. If any student who has failed to attend the required number of lectures satisfies the Principal that such failure has been due to illness or other good cause, the Principal will make a special report upon the matter to the Legal Education Committee. For the purpose of this provision the word "lectures" shall be taken to include Moot Courts.

Examinations will be held immediately after the close of the term upon the subjects and text books embraced in the Curriculum for that term.

Examinations will also take place in the week commencing with the first Monday in September for students who were not entitled to present themselves for the earlier examination, or who having presented themselves thereat, failed in whole or in part.

Students are required to complete the course and pass the examination in the first term in which they are required to attend before being permitted to enter upon the course of the next term.

Upon passing all the examinations required of him in the School, a Student-at-Law or Articled Clerk having observed the requirements of the Society's Rules in other respects, becomes entitled to be called to the Bar or admitted to practise as a Solicitor without any further examination.

The fee for attendance for each Term of the Course is the sum of $10, payable in advance to the Secretary.

Further information can be obtained either personally or by mail from the Principal, whose office is at Osgoode Hall, Toronto, Ontario.