Canada Law Journal.

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DIARY FOR MARCH.

17. Thur.....St. Patrick's Day.
18. Fri.....Arch. McLean, 8th C. J. of Q. B., 1862.
19. Sat.....P. M. Vankoughnet, and Chancellor, 1862.
20. Sun.....*4th Sunday in Lent.* Lord Mansfield died, 1775, æt. 89.
27. Sun.....*5th Sunday in Lent.*
28. Mon .....Lord Romilly app. M. R., 1851.
30. Wed.....B. N. A. Act assented to 1867. Reformation in England began, 1534.

TORONTO, MARCH 15, 1887.

OUR correspondent in "Our English Letter" makes some sensible remarks on the treatment of counsel by the Bench. What a pleasant thing it must be to argue cases before the House of Lords. Judicial experience is a good thing and this journal has recognized it before now; but we see no reason why it should go hand in hand with that irrelevant talk and distracting and irritating interruption which so often wastes the time of the public at Osgoode Hall. We refer especially to that class of questions and remarks which would not be made if the Judge had patience to listen attentively to the whole argument of counsel without interrupting them. We cannot, on this subject, improve on the remarks of our correspondent, to which we refer the reader.

THE world moves, and modern improvements meet us at every turn. Not the least important time-saving machine (if we may so call him), which we meet with nowadays, is the ubiquitous stenographer, and his attendant satellite, the type writer. He has turned up, however, we must confess, in a somewhat unexpected quarter. In a recent case he was summoned to a certain learned judge's private room, and into his listening ear was poured for half an hour or more, the strains of judicial eloquence, which being duly indited in the hieroglyphics peculiar to the craft, a notification was made to the solicitors for the parties that judgment had been delivered.

Thus, in an easy and expeditious manner, the judicial soul unburthened itself of reasons—but here comes the rub. The suitors, naturally enough, were curious to know the reasons which had been given for the judgment, but on application to the depository of judicial wisdom, that functionary failed to see any obligation on his part to make a transcript of his notes, except at so much per folio. This method of delivering judgment, while it has its advantages, so far as the judicial and reportorial side of the question is concerned, may possibly be viewed with different feelings by those who were wont to enjoy gratis a treat for which they must now, perforce, either dance attendance on the reporter or shell out hard cash. We presume a judge is not bound to give reasons for his decisions. But if he does, it is generally understood that he should give them in open court. It is possible that in the particular case referred to there may have been some reason for this mode of procedure. We have heard, however, that this is not an isolated case, and for fear of its becoming a common practice we have thought proper to refer to it.

AT the recent sitting of the Divisional Court a case came before the court in which the facts were very similar to those in *McDonald* v. *McDonald*, 44 U. C. Q. B. 291, and counsel cited that case and relied on it as an authority, and the Court felt itself very much pressed by that decision, and would probably have given judgment in accordance with it, had not Mr. Moss, Q.C., who happened to be on the other side, been able to satisfy the Court by reference to the books of the Registrar of the Court of Appeal, that the case had been reversed by the latter Court. In giving judgment the learned Chancellor drew attention to the inconvenience which may result from the decisions of the Court of Appeal not being reported when they reverse or vary the reported decisions of the inferior tribunals. We think that it ought to be an inflexible rule with the reporters of the Appellate Courts to report every decision of those Courts which reverses or materially varies the reported decision of any inferior court. It is sometimes concluded, because a decision is delivered orally, that therefore it is unimportant, and not worth reporting, but whenever the decision materially affects a previously reported case, there can be no doubt that it ought to be reported. It is here that the intelligence and industry of the reporter find a field for their exercise. It is but fair to add that the responsibility for the omission to report *McDonald* v. *McDonald* in Appeal does not rest with the present learned reporter of that Court.

OUR ENGLISH LETTER.

To an era of sensational t has succeeded one of peaceful a: energetic work. At the present moment there is not, so far as your correspondent is aware, a single case, either in progress or in prospect, which is of such a character as to fascinate the public mind. Nor has there been such a case during the present sittings of the courts, unless *Allcard* v. *Skinner* can be brought within the category; but if the truth must be told, that case was watched chiefly with the view of ascertaining the judicial capacities of Mr. Justice Kekewich. It had been said, in no measured language, that the appointment partook of the nature of a "job," and, of a truth, there seemed to be no particular reason for the choice of the Lord Chancellor. Now, however, it appears to be generally admitted that whether or no, strong reasons existed for the elevation of Mr. Justice Kekewich, the Lord Chancellor made a good selection, and added to the list of Equity Judges a man thoroughly capable of doing his duty in a satisfactory manner. The rumours of judicial changes hinted at in my last communication turn out to be, as I anticipated, without foundation. Justices Grove, Field and Denman still sit upon the bench, and are likely to sit there as long as any of their brethren for all that is known to the contrary. In fact, there is but a single new appointment to chronicle; that is to say, Mr. Macnaghten, Q.C., has become Lord Macnaghten, and now sits in judgment upon the propositions of law laid down by the very men before whom he lately practised. It is somewhat early to attempt a criticism upon the appointment; but there can be little doubt concerning the ability and the learning of the appointee, a man who is said to have declined more than once the honour of an ordinary judgeship.

The mention of this appointment brings

me to the verge of a suggestive subject. In the House of Lords there are now engaged in hearing appeals from the Court of Appeal the Lord Chancellor, Lord Herschel and Lord Macnaghten. Between them they possess every variety of experience in forensic practice; yet it may be said, with substantial truth, that none of them are possessed of judicial experience. Nevertheless it would be difficult to find in the world, and impossible to discover in this country, a court of equal competence and courtesy. The judges never interrupt; they give even junior counsel credit for the possession of common sense; they are careful not to disturb the thread of an advocate's argument. The moral appears to be that it is better to be before a man fresh from experience at the bar than to be subjected to the tender mercies of a judge who has forgotten the difficulties of argument. Certain it is that both upon the common law side and upon the equity side there are judges, and plenty of them, to whom an occasional visit to the House of Lords would teach an invaluable lesson in the treatment of counsel. The beauty of the thing is that in the House of Lords there is no waste of time. An advocate lays the whole of his argument before the court in the shape upon which he has deliberately fixed his choice. Secure against irrelevant questions from the Bench, he is never distracted by the discussion of side issues; equally secure against interruptions by his opponent, he is encouraged to state his case with almost judicial precision and completeness, for the Lords will not by any means permit one counsel to interrupt another, and they apply this rule with equal strictness, even when the most eminent of Queen's Counsel is opposed to the most insignificant of juniors.

Profesional topics are scarce just now. Common law judges are for the most part absent upon the circuits which are just drawing to a close, and the circuits are, as usual, the subject of complaint. This time the criticism has taken a new form, the result of which will be, in the immediate future, a fresh reorganization of the circuit system. It has been discovered that the practice of sending single judges round a circuit is inconvenient to everybody, and particularly wasteful as far as the time of the Bar is concerned; it has been discovered also that grouped assizes are more than unpopular in the provinces. What the outcome may be is more than it would be safe to predict. The chances are rather in favour of the old system which, after working fairly well for a great number of years, was altered in unnecessarily precipitate deference to a cry which had no substantial foundation. London suitors, in a frame of mind easily to be understood in the case of the inhabitants of a great capital, assumed that they were entitled to greater facilities than their brethren in the provinces. Hence came an alteration intended to give the advantage to the London suitor. The intention was not realized, for less time still elapses in the country than in London between the writ and the judgment, but in the meanwhile several counties were placed at great inconvenience and expense, especially in relation to the transport of prisoners. The whole truth of the matter is that the staff of judges is inadequate, and that there is no justification for the inadequacy. The law already pays its own expenses, but the delays of the law deter many suitors from seeking redress. More judges would mean increased litigation at greater speed. It used to be said that the object of the legislature ought to be the discouragement of litigation; but before "litigation" we must read "frivolous and unnecessary." It was never the aim of any wise lawgiver to make the machinery of justice so slow that men should be deterred from insisting on their rights.

Temple, Feb. 13.

LAW SOCIETY.

MICHAELMAS TERM, 1886.

The following is a résumé of the proceedings of Convocation on the 28th and 30th December, 1886, and of Hilary Term, 1887.

TUESDAY, 28TH DECEMBER, 1886.

Convocation met.

Present—Messrs. Irving, Maclennan and Murray.

There being no quorum at eleven o'clock in the forenoon of the said day, being thirty minutes after the hour of meeting, the senior barrister present adjourned the meeting of Convocation to half-past ten o'clock in the forenoon of Thursday next, the 30th December instant.

THURSDAY, 30TH DECEMBER, 1886.

Convocation met.

Present—The Treasurer, and Messrs. Cameron, Falconbridge, Ferguson, Foy, Guthrie, Irving, Kerr, Lash, Maclennan, McMichael, Martin, Morris, Moss, Murray and Smith.

The minutes of last meeting were read and approved.

Mr. Murray, from the Committee on Finance, laid on the table the agreement between the Society and the caretaker, A. Gilly, proposed by the Finance Committee.

Ordered, That the Committee be authorized to complete the agreement.

Mr. Irving, from the Library Committee on the reference of the petition of students as to the increase of books for students' use, moved that they be authorized to purchase certain additional copies, viz.:

4 copies Best on Evidence.
4 " Byles on Bills.
3 " Benjamin on Sales.
2 " Dart on Vendors and Purchasers.
2 " Harris on Criminal Law.
2 " Leith's Williams' on Real Property.
2 " O'Sullivan's Government in Canada.
2 " Pollock on Contract.
4 " Smith's Common Law.
2 copies Smith's Equity Jurisprudence.
4 " Smith's Mercantile Law.
2 " Taylor's Equity.—Carried.

The petition of T. Hislop was read.

Ordered, That the prayer be not granted.

The petition of A. A. McTavish was read.

Ordered, That the prayer be not granted.

Mr. Moss gave notice that on the first day of next Term he will introduce a rule to regulate the fees to be paid by Articled Clerks who, having passed the Primary examination therefor, afterwards desire to pass the primary examination for, and be entered as Students-at-Law.

Ordered, That the draft of the Consolidated Rules as settled at the last meeting of Convocation, be submitted by the chairman of the Committee on Journals and Printing, to the visitors for their approval in so far as required by law.

Convocation adjourned.

HILARY TERM, 1887.

The following gentlemen were called to the Bar during Hilary Term, 1887, viz:—

February 7.—Allan Macnab Denovan, John Samuel Campbell, Richard Henry John Pennefather, Alexander William Marquis, Patrick Macindoe Bankier, William Thomas McMullen, William Highfield Robinson, Edward Wilson Boyd, John Ross.

February 8.—Alexander Lillie Smith, Thomas Francis Lyall, George Cooper Campbell, Stephen Alfred Jones, Robert Urquhart McPherson, James Moir Duncan, George Wheelock Burbidge (special case).

February 12.—John James Smith, James Hampden Burnham.

February 18.—Oscar Ernest Fleming (special case), Frank Norman Raines.

The following gentlemen were granted certificates of fitness, viz.:—

February 7.—D. O. Cameron, W. K. Cameron, J. M. Rogers, R. H. J. Pennefather, L. G. Drew, A. C. F. Boulton, A. D. Creasor, J. E. O'Meara, T. Hislop, F. McPhillips, O. L. Spencer, P. M. Bankier, G. H. Kilmer.

February 8.—F. A. Munson, A. L. Smith, G. C. Campbell.

February 12.—J. S. Campbell, M. J. McCarron, S. A. Jones, J. H. Burnham, R. G. Fisher, J. S. Skinner, G. S. Wilgress.

February 18.—R. S. Hayes.

The following gentlemen passed the First Intermediate Examination, viz.:—E. O. Swartz, honors and first scholarship, and Messrs. G. W. Bruce, D. H. Chisholm, F. B. Geddes, J. T. Hewitt, F. S. Mearns, A. E. Cole, G. W. Littlejohn, V. C. McGirr (as student only), H. B. Cronyn, W. C. Mikel, S. H. Bradford, M. S. Mercer, R. E. Lazier, P. K. Halpin, A. S. Ellis, W. J. L. McKay, W. A. Thrasher, N. Mills, A. G. Farrell, F. Rohleder, J. W. S. Corley, A. E. Baker, W. A. Smith, E. L. Elwood, A. A. Adams.

The following gentlemen passed the Second Intermediate Examination, viz.:—H. L. Dunn, honors and second scholarship, and Messrs. T. Reid, W. H. Wallbridge, F. Smoke, A. Stevenson, W. Green, C. A. E. Blanchet, W. E. Fitzgerald, W. C. Fitzgerald, E. C. Emery, R. Ruddy, R. M. Dennistoun, A. R. Bartlet, W. D. Gregory, C. R. Hanning, E. H. Jackes, G. F. Bradfield, J. Coutts, A. D. Dickson, J. E. Hansford, F. C. Jarvis.

The following gentlemen were admitted into the society as Students-at-Law:—

Graduates.—E. Elliott, D. Hooey, S. S. Reveler, G. A. Cameron, A. Constantineau, A. W. Anglin.

Matriculants.—W. R. Garrett, V. C. McCarthy, N. W. Ford, J. H. H. Hoffman, J. J. Warren.

Juniors.—W. M. Campbell, R. Parker, J. S. Denison, W. G. Owens, F. R. Martin, J. B. McLeod, J. G. Farmer, J. E. Cook, F. W. Wilson, A. B. Armstrong, O. Watson, S. A. C. Greene, H. R. McConnell, J. Anderson, F. Elliott, J. W. Winnett, A. S. Burnham, J. H. D. Hulme.

Articled Clerks.—W. H. P. Walker, G. Macdonald.

MONDAY, 7TH FEBRUARY, 1887.

Convocation met.

Present.—Messrs. Falconbridge, Hoskin, Irving, Kerr, Mackelcan, McMichael, Martin, Moss, Purdom and Robinson.

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

The minutes of last meeting were read, approved and signed by the Chairman.

The report of the Finance Committee in the matter of the Hon. W. McDougall was received and adopted.

Mr. Murray presented the second report on Finances from the same committee, which was read as follows:—

To the Benchers of the Law Society in Convocation:—

The Finance Committee beg leave to report as follows:—

They have caused a balance sheet of the receipts and expenditure for the year 1886 to be prepared and audited by the Society's Auditor.

They have also prepared a sheet shewing the estimates for the year 1887 and submit same herewith.

The report was adopted.

ABSTRACT OF BALANCE SHEET FOR 1886.

RECEIPTS.

Certificate and Term Fees ... $20185 50		
Less Fees returned..... 60 50		
		$20125 00
Notice Fees..... $659 00		
Less Fees returned..... 2 00		
		657 00
Attorneys' Examination Fees. $7368 00		
Less Fees returned..... 906 00		
		6462 00
Students' Admission Fees.... $8440 00		
Less Fees returned..... 960 00		
		7480 00
Call Fees..... $13390 00		
Less Fees returned..... 2425 00		
		10965 00
Interest and Dividends.....		3335 35
Sundries—		
Fees on Petitions, Diplomas, etc.		116 00
Reports sold.....		1480 04
		$50620 39

EXPENDITURE.

Reporting—		
Salaries..... $8933 34		
Printing..... 11618 21		
Notes of cases..... 205 87		
		$20757 42
Examinations—		
Salaries..... $3200 00		
Scholarships..... 1400 00		
Printing and Stationery.... 281 50		
Examiners for Matriculation 236 50		
		5118 00
Library—		
Books, Binding and Repairs. $2879 39		
New Catalogue..... 1311 [illegible]		
County Libraries Aid ..... 23[illegible] 02		
		6496 41
General Expenses—		
Salaries—		
Secretary, Sub-treasurer and Librarian..... $2000 00		
Assistants..... 1358 30		
Housekeeper 360 00		
		3718 30

Lighting, Heating, Water & Insurance—		
Gas	$184 41	
Water	96 02	
Insurance	140 00	
Fuel, including payment to Government for two years, $1700	2037 70	
Repairs to apparatus	86 99	
Carting coal and cutting wood	2 25	
		2547 37
Grounds—		
Gardener and Assistant	$675 32	
Tools	64 40	
Cartage	6 00	
Labour	14 25	
Snow clearing	28 43	
		788 40
Sundries—		
Postages	$84 17	
Advertising, including *Law Journal* account	168 50	
Stationery, Printing, etc	307 17	
Law costs	603 43	
Furniture	112 40	
Repairs	335 22	
Term lunches	652 55	
Telephone office	394 57	
Auditor	100 04	
Sanitary Engineers, McDougall & Gray, $100; Scrutineers, $400	500 00	
Carpenter, $111.36; Résumé, $60.02	171 38	
Repairs to clocks, $10; Law Charts, $7.50	17 50	
Caretaker, $10; Ex. Coll. Huron and Erie Deb. $10,000, $9.25	19 25	
Woodenware, $10.05; Map, $8	18 05	
Distributing Catalogues	11 75	
Estimating value of books in Library	50 00	
Attendance on Painters	14 75	
Guarantee Co., $20; Oiling floor, $18.25	38 25	
Cleaning windows, $34; Dusting books, $22	56 00	
Gratuities, Messrs. Brown & Macrae	20 00	
Petty expenses	37 75	
		3712 73
Balance		7481 76
		$50620 39

Audited and found correct.

(Signed) HENRY WM. EDDIS,
Auditor.

TORONTO, 27th Jan., 1887.

Mr. Moss presented the report of the Committee on Legal Education, on the case of Thomas Urquhart, which was adopted.

The petition of Mr. G. W. Burbidge was presented and read.

Ordered, That it be referred to a special committee, composed of Messrs. Maclennan, Mackelcan and Moss, to ascertain whether Mr. Burbidge has complied with the Rules of the Society, and also to report upon his examination before them, upon the subjects which are now prescribed for call in accordance with Rules 94 and 95.

Mr. Moss, pursuant to notice, introduced a Rule to give effect to the joint report of the Legal Education and Finance Committees, on the subject of the admission of Articled Clerks and Students-at-Law.

The Rule was read a first and second time, and is as follows:

That Rule 2 of Section V. be amended by adding thereto the following:

2. (*a*) Any person who has passed the preliminary examination for Articled Clerk, on subsequently presenting himself within five years thereafter for examination for Student-at-Law, shall pay instead of $50, the sum of $10.

And that Rule 3 of Section XV. be amended by adding after the figures $50, "unless he shall have within the preceding five years passed the preliminary examination for Articled Clerks, in which case he shall pay, instead of $50, the sum of $10."

The Rule was ordered to be read a third time to-morrow.

The letter and petition from W. H. Sibley were received and read.

Ordered, That the report of the Committee in the matter of W. H. Sibley be adopted.

Ordered, That Mr. J. Winchester be appointed Inspector of County Libraries, and that he be paid the sum of $100 for his inspection of the Libraries for the year 1887.

The Special Committee on Honors and Scholarships presented their report, which was received, read and adopted.

Ordered, That Mr. E. O. Swartz be declared to have passed the First Intermediate Examination with honors, and be paid the sum of $100, the amount of the first scholarship.

Ordered, That Mr. H. L. Dunn be declared to have passed the Second Intermediate Examination with honors, and be paid the sum of $100, the amount of the first scholarship attached to this Examination.

Convocation adjourned.

TUESDAY, 8TH FEBRUARY, 1887.

Convocation met.

Present—Messrs. Falconbridge, Ferguson, Hoskin, Irving, Lash, Mackelcan, Moss and Murray.

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

The minutes of the last meeting were read, approved and signed by the Chairman.

Ordered, That the Rule relating to the fees to be paid by Students-at-Law and Articled Clerks, which had been read a first and second time on the 7th inst., be now read a third time.

The Rule was read a third time and passed.

Mr. Hoskin presented the report of the Discipline Committee, with reference to the complaint of the Trustees of the General Hospital, reporting that a *prima facie* case had been made out.

The report was received.

Ordered, That it be considered on the first Tuesday of Easter Term next.

Ordered, That the Secretary be instructed to erase the name of W. H. Sibley from the Roll of Students-at-Law and Articled Clerks, and from such books or rolls as his name appears in of record as Student-at-Law or Articled Clerk.

Ordered, That Messrs. Ferguson, Hoskin and Lash be added to the Special Committee to examine into the papers and qualifications of Mr. G. W. Burbidge, a candidate for call to the Bar under the Rules in special cases.

The Special Committee, to whom was referred the special case of Mr. G. W. Burbidge, presented their report stating that the said G. W. Burbidge had complied with all the Rules of the Society in that behalf, and was entitled to be called to the Bar.

The report was received, read, considered and adopted.

Convocation adjourned.

SATURDAY, 12TH FEBRUARY, 1887.

Convocation met.

Present—Messrs. Hoskin, Irving, Lash, Mackelcan, Maclennan, McMichael, Meredith, Moss, Murray, Osler and Robinson.

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

The minutes of the last meeting were read, approved and signed by the Chairman.

Mr. Maclennan presented the report of the Reporting Committee which was read, considered and adopted.

A petition from the members of the Bar of Ontario, in reference to the 50th anniversary of Her Majesty's accession to the Throne was received.

Ordered, That a special call of the Bench be made for the first Tuesday of Easter Term, to take the petition into consideration.

The petition of Mr. John MacGregor was read and considered.

Ordered, That the petition be referred to the Reporting Committee for consideration and report.

The Secretary laid before Convocation the List of Solicitors who had taken out their Annual Certificates.

Ordered, That the same be submitted at the next meeting of Convocation.

Convocation adjourned.

FRIDAY, 18TH FEBRUARY, 1887.

(Subject to confirmation at next meeting of Convocation.)

Convocation met.

Present—Messrs. Foy, Irving, Lash, Maclennan, Moss, Murray and Osler.

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

The minutes of the last meeting were read, approved and signed by the Chairman.

The report of the Reporting Committee, on the petition of John MacGregor, was read, approved and adopted.

The Secretary laid on the table a statement of Insurance Policies current.

It was referred to the Finance Committee to consider his observations thereon.

The letter of E. E. Kittson, Secretary of the Hamilton Law Association, was read.

Ordered, That Mr. Kittson's letter, in so far as it refers to students' books, be referred to a special committee, consisting of the Finance Committee and Messrs. Moss, Meredith, Britton and McMichael, to report to Convocation upon the subject, together with the system to be adopted to carry out the Rules of Convocation, relating to students' books for County Libraries,

and further, to report to Convocation upon rules to be observed by students on the occasions of obtaining and borrowing students' books.

Ordered, That the letter from Mr. J. R. Cartwright on the subject of his Digest of Constitutional Cases, be referred to the Reporting Committee with power to act, if necessary, to act before next Term.

The Secretary, in pursuance of the order of Convocation of 12th inst., submitted the List of Solicitors who had taken out their Certificates for the period ending on the first day of Michaelmas Term, 1887.

Convocation adjourned.

REPORTS.

ONTARIO:

ASSESSMENT CASE.

IN THE COUNTY COURT FOR THE COUNTY OF BRANT.

(Reported by W. D. Jones, Esq., Barrister-at-.aw.)

IN RE PEARSON.

Tax exemption—"The Assessment Amendment" Act, 1885—Parsonage—Superannuated minister of the Methodist Church.

On a claim for exemption under section 12 of the Assessment Amendment Act, 1885, it appeared that the claimant was a superannuated minister of the Methodist Church. He had no business or calling other than the duties incident to his office as superannuated minister; was without charge of any congregation or circuit; but was expected to do occasional ministerial work when required. He was not paid any ministerial stipend or salary, but paid a small allowance from the superannuated ministers' fund. The house on which exemption was claimed was owned and occupied by himself; not provided for by the church or any congregation, and not a parsonage provided for the minister by the congregation where he resided. There was a parsonage occupied by the officiating minister in that place.

Held, that the claimant was not entitled to exemption.

In re appeal of Rev. S. M., 22 C. L. J. 341, concurred in.

(Brantford.—Jones, Co. J.

Appeal by Rev. Thomas D. Pearson from the Court of Revision of the city of Brantford.

The appellant, a superannuated minister of the Methodist Church, was assessed for his dwelling $4,000.00. In his appeal to the Court of Revision he claimed that it was exempt to the extent of $2,000.00, under the 12th section of "The Assessment Amendment Act, 1885," as a parsonage, or dwelling occupied as such. The Court of Revision disallowed his appeal, and from that decision he appealed to the county judge.

A. J. Wilkes, for the Court of Revision.

Mr. Pearson in person.

JONES, Co. J.—The 12th section of "The Assessment Amendment Act, 1885," provides that "the stipend or salary of any clergyman or minister of religion while in actual connection with any church, and doing duty as such clergyman or minister, to the extent of one thousand dollars and the parsonage, when occupied as such or unoccupied, and if there be no parsonage the dwelling-house occupied by him with the land thereto attached, to the extent of two acres, and not exceeding two thousand dollars in value. This sub-section shall not apply to a minister or clergyman whose ordinary business or calling at the time of the assessment is not clerical, though he may do occasional clerical work or duty."

Mr. Pearson, as appears from his examination before me, is a superannuated minister of the Methodist Church. He has no business or calling other than the duties incident to his office as such superannuated minister. As such he has not charge of any congregation or circuit, but is expected to do such occasional preaching and ministerial work as may be required of him from time to time.

Mr. Pearson does not receive any ministerial "stipend or salary" from any congregation, but is paid a small allowance annually from the superannuated ministers' fund of the Methodist Church, the amount so received being in proportion to the number of years he has been in the active work of the ministry of the church before superannuating.

The house for which the exemption is claimed is owned and occupied by himself. It is not provided for him by the church, or by any congregation. In his evidence he says that it is not a parsonage, but that there is a parsonage provided for the minister of the congregation in Brantford, where he, Mr. Pearson, worships, and which is occupied by that minister, and is allowed the exemption as a parsonage as provided under the Act.

I think that the word "parsonage" in the section referred to means a house or dwelling used as the residence of a minister in charge of a circuit or congregation. I do not think that the appellant's house is such a parsonage. If it were, then it might happen that though there were but one minister in charge of a circuit or congregation, there might be a half a dozen parsonages, if there

were that many superannuated ministers residing on that circuit.

I think also that the first part of the section shows that the class of men entitled to this exemption are those only that are in the ordinary service of the church as ministers in charge of congregations. The words "stipend or salary" mean in their ordinary acceptation an annual payment as wages for services annually performed. Mr. Pearson is in receipt of no such stipend or salary.

I regret that in coming to this decision I have had to differ from the judgment given by his Honor Judge McDougall as reported in the *Law Journal* for 1886, page 158. But I agree with the judgment of McDonald, County Judge, as reported in same volume, page 341. I concur in the opinion expressed by Judge McDougall that the legislature should so amend this section as to make its proper construction free from doubt, and more especially so now, as there are conflicting decisions as to its proper interpretation.

I affirm the decision of the Court of Revision and dismiss the appeal.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEEN'S BENCH DIVISION.

QUEEN v. WALKER.

Canada Temperance Act, 1878, *sections* 108, 109, 111, 119—*Search warrant, when proper to be issued—Certiorari, when taken away—Presumption that liquor kept for sale, when created by the finding of appliances for sale—Municipal by-law under the Act—Search warrant and conviction quashed with costs.*

An information charging defendant with having sold intoxicating liquor was laid before two justices of the peace, and immediately afterwards a further information to obtain a search warrant was sworn by the same complainant before the same two justices. Thereupon, a warrant to search the premises of defendant was issued, under the hand and seal of one only of the two justices: upon the search being made three bottles were found, each containing intoxicating liquor, and it was sworn that there were also found in defendant's house other bottles, some decanters and glasses, and a bar or counter.

On the day following the search, the complainant laid a new information before the same two justices of the peace, charging defendant with keeping intoxicating liquor for sale. Upon the hearing, the constables who executed the search warrant were the only witnesses examined, and on their evidence the defendant was convicted.

Upon motion to quash the search warrant and conviction,

Held, that sections 108 and 109 of the Act were intended to provide process *in rem* for the confiscation and destruction of liquor in respect of which a use prohibited by the Statute was being made, and not to provide a means of obtaining evidence on which to found a prosecution or support one already begun.

Held, also, that this warrant in this case was illegal because issued by one justice of the peace only.

Held, that the operation of section 111 of the Act in taking away the right to certiorari, is confined to the case of convictions made by the special officials named in the section.

Held, further, that the presumption of keeping liquor for sale created by section 119 of the Act, arises only where the appliances for sale of liquor mentioned in the section, together with the liquor, are found in Municipalities in which a prohibitory by-law passed under the provisions of the Canada Temperance Act is in force.

As it appeared that in this case the search warrant had been issued, and the defendant's premises searched, for the mere purpose of possibly securing evidence upon which to bring a prosecution, the justices of the peace and the informant were ordered to pay the defendant's costs.

REGINA v. FRENCH.

REGINA v. ROBERTSON.

Canada Temperance Act, 1878—Adjournment for more than week—32-33 Vict., ch. 31, sec. 46 (D.)—Conviction quashed—Consent—Jurisdiction.

Where the magistrate adjourned the hearing of a case under the Canada Temperance Act, 1878, for more than a week, contrary to 32-33 Vict., ch. 31, sec. 46 (D.), the conviction was quashed, but without costs.

Semble, The consent of the defendan. to the adjournment, if proved, would not have given jurisdiction.

CHANCERY DIVISION.

Div'l Court.] [January 8.

RE MOOREHOUSE v. LEAK.

Mechanics' Lien—R. S. O. c. 120—Jurisdiction of Master in Chambers to annul the registration of a lien—Directing issue—Time of filing lien.

The Master in Chambers has jurisdiction to entertain a motion under R. S. O. 120, s. 23, to annul the registry of a mechanics' lien when the amount in question is over $200.

The question as to whether an issue should be directed to try an issue as to a mechanics' lien rests in the discretion of the judge.

The time within which a lien must be filed is not measured by the durations of the deliveries under the contract between the material man and the contractor, but by the completion of the work by the contractor for the owners for whom he is working.

J. B. Clarke, for the owner.

F. Hodgins, for the lien holder.

Ferguson, J.] [January 19.

CLARKSON v. ONTARIO BANK.

Assignments for benefit of creditors—48 Vict. c. 26 (O.)—Retrospectivety—Intra vires.

Demurrer to a statement of claim.

Held, following *Broddy* v. *Stewart*, that 48 Vict. c. 26 (O.), is *intra vires* the Provincial Legislature.

Held, also, the plaintiff seeking by his pleading to invalidate certain payments of money made by an insolvent debtor within thirty days prior to his making an assignment under the said Act, but before the said Act came into force), that the plaintiff's pleading could not be sustained either on the ground of the statute being retrospective, or on the ground that what the plaintiff sought to obtain was defined and given by s. 3, sub-s. 3.

Moss, Q.C., for demurrer.

Macdonald, Q.C., contra.

Ferguson, J.] [January 24.

CITY OF LONDON v. CITIZENS INS. CO.

Guarantee—Sureties to same principal debtor but by separate contracts—Contribution—Discharge.

Action on a guarantee policy of defendants' company, whereby the honesty in office of B., the plaintiff's chamberlain, had been guaranteed, who, however, had been guilty of large defalcations. It appeared that one D. had also given the plaintiffs a similar bond guaranteeing B.'s honesty in office. The defendants contended that the plaintiffs had released D. from liability under his bond, and that this operated as a release of themselves. The defendants did not contract jointly with D., nor did D. contract with them—they could not be considered as joint contractors or joint sureties.

Held, under these circumstances, that even if it were the case that D. had been wholly released by the plaintiffs, the defendants would not be discharged *in toto* from liability on their contract, but only to the extent of the right of contribution from D., which they had lost by D.'s release.

Ward v. *National Bank of New Zealand*, L. R. 8 App. Cas. 765, followed.

Soon after B.'s defalcations were discovered he died, and after his death his executrix handed over certain of his property to a trustee who was also an officer of the plaintiffs, to realize and apply the money therefrom towards satisfying B.'s defalcations, but without indicating to what part of such defalcations it should be applied. The trustee applied it towards satisfaction of the earlier of B.'s liabilities, in respect to which the defendants

were not liable, since by a condition of their policy they were not liable except for losses occurring within a year before notice of claim made to them.

Held, that the case was similar to a payment made by a debtor to a creditor without express appropriation, in which case the creditor could appropriate it, and the defendants had no right to complain of the appropriation made in this case.

Held, also, that the defendants should pay interest on the amount due from them, from three months after the proofs of loss were delivered.

Meredith, Q.C., for plaintiffs.

Rae, for defendants.

Creelman, for the guarantee company, which had been added as parties.

Proudfoot, J.] [February 2.

COMSTOCK v. HARRIS.

British ship—Alien mortgagee—Imp. Stat. 17 & 18 Vict. c. 104.

The mortgagee of a British ship is not an owner within the meaning of Imp. Stat. 17 & 18 Vict. c. 104, and there is no provision in that Statute to prevent an alien being a mortgagee.

James Maclennan, Q.C., for the mortgagee plaintiff.

Lash, Q.C., for the mortgagor defendant.

Proudfoot, J.] [February 23.

RE CANNON, OATES v. CANNON.

Administration order—Effect in saving claims from being barred—Champertous agreement.

After the decision in this case, noted *supra* p. 55, and in November, 1886, the notes in question were handed back to H. & Co. On November 30th, 1886, H. & Co. obtained leave from the Master to come in and prove their claim. From this order M. E. C., the administratrix, now appealed, on the ground that at the time of the order of administration being made, H. & Co. were not the holders of the notes, and that before they came back into their hands they were barred by the Statute of Limitations, and that H. & Co. were bound by the above decision against the notes in O.'s hands.

Held, that the order of administration, which was made before the period allowed by the Statute of Limitations had expired, prevented the remedy on the notes being barred.

Held, also, that H. & Co. might assert their title to the notes, and prove upon them notwithstanding the champertous agreement with O.

McMichael, Q.C., and *A. Hoskin*, Q.C., for the appeal.

Arnoldi, contra.

Proudfoot, J.] [February 23.

WOODWARD v. MCDONALD.

Reference to arbitration—Scope of reference—Construction of agreement.

By a consent judgment in an action between members of a certain association for the sale of lubricating oil, it was provided that "all matters which may hereafter come into dispute between the association or board of directors thereof, or any member or members . . relative to the said agreement" (sc., the original agreement of association), "or any alleged breach of non-observance thereof, or of any of the rules or regulations made or to be made by the said board thereunder, and all matters of complaint by any member or members against any other member or members in respect of the premises," should be referred to arbitration as therein specified.

Acting under the agreement, the board had fixed a certain sum to be paid per gallon to the association by the parties thereto, on the sale of any lubricating oil.

A dispute now arose on the motion of one of the members as to whether the three cents per gallon were payable on sales made by one member of the association to another, and whether the rate was payable upon the proportion of distilled petroleum used in making axle grease.

Held, that these matters were properly within the scope of the arbitrator under the above clause in the judgment, though they amounted to a dispute upon the construction of the agreement, and the rules made under it.

Street, Q.C., for the defendant, McDonald.

Magee, for the plaintiffs.

PRACTICE.

Boyd, C.] [February 14.

COMSTOCK v. HARRIS.

Discovery—Examination of party resident out of jurisdiction—Appointment and subpœna—Conduct money—Convenience—Production of books—Staying action.

When a party to an action who lives in a foreign country comes within the jurisdiction, service upon him of an appointment and subpœna, as in the case of resident litigants, is sufficient to compel his attendance; and it lies upon the party so served to object at the time to the payment made for conduct money.

It is not reasonable that books in constant use in business should be brought into the jurisdiction from a foreign country for the purposes of an examination, unless the examiner in the course of the examination rules that they are necessary.

Upon failure of the plaintiff to attend for examination, pursuant to the subpœna and appointment served upon him, the action should not be stayed till he does attend; it is sufficient to impose a stay for a definite time.

Langton, for the plaintiff.

Holman, for the defendant.

Rose, J.] [March 1.

WRIGHT v. WRIGHT.

Interlocutory costs—Staying proceedings—Trespass.

Where the plaintiff is acting in good faith his action should not be stayed for non-payment of interlocutory costs; and an action of trespass is in that respect in no way different from any other.

Stewart v. *Sullivan*, 11 P. R. 529, followed.

Beck, for the plaintiff.

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

Chancery Divisional Court.] [March 5.

TEMPERANCE COLONIZATION SOCIETY v. EVANS.

Jury notice—Money demand—Preliminary question—Severing issues—Rule 256, O. J. A.—Trial judge—C. L. P. Act, sec. 255.

The order of PROUDFOOT, J., *ante* p. 37, striking out the jury notice was reversed, and the jury notice restored.

Held, a proper case in which to exercise the power under Rule 256, O. J. A., of severing the action so as to have that part of it which is preliminary tried first, the defendants having a *prima facie* right to a jury (unless the judge at the trial dispenses with one), as to the main matter in controversy, viz., the plaintiffs' demand for payment of instalments due under the scrip contract; while the other claim of the plaintiffs, viz., for a declaration of their right to specific performance of settlement duties, could be better tried without the intervention of a jury.

Per PROUDFOOT, J., who retained his former opinion. The court or a judge has power by the C. L. P. Act, s. 255, to act before the trial by striking out the jury notice, and the power should be exercised when it is perfectly clear that the issues are such that they cannot be properly tried by a jury; the question should not in every case be left to the trial judge to determine.

Hoyles, and *A. D. Cameron*, for the defendants.

Lount, Q.C., and *A. H. Marsh*, for the plaintiffs.

Chancery Divisional Court.] [March 5.

ANDREWS v. CITY OF LONDON.

Costs, scale of—"Event"—Trial—Rule 511—Set-off.

The parties by consent allowed a verdict for the plaintiff for $1, to be taken before the judge at the assizes, to be altered according to the result of a reference agreed upon, and also agreed that the costs should abide the event. The action was for damages for negligence, and the award was in favour of the plaintiff for

$85. A question having arisen as to the scale of costs,

Held, following *Watson* v. *Garnett*, 3 P. R. 74, and *Hyde* v. *Beardsley*, 18 Q. B. D. 246, that "costs to abide the event" does not mean that the plaintiff, if successful, shall necessarily have full costs, but that he shall have such costs as, under the statutes and rules of court, a plaintiff recovering the amount that he recovers by the event is entitled to.

Held, also, following *Cumberland* v. *Ridout*, 3 P. R. 14, that the final judgment by means of the reference was to be regarded as obtained without a trial, and the costs therefore depended upon Rule 511, under which the taxing officer was directed to proceed.

There should be no set-off of costs; such a result is not contemplated by Rule 511, and it is not a fair construction to incorporate with it the provisions of R. S. O. c. 50, s. 347, that section being restricted to a case where there is a trial.

White v. *Belfry*, 10 P. R. 64, commented upon.

Shepley, for the defendants.

Aylesworth, for the plaintiff.

Chancery Divisional Court.] [March 5.

MCGUIN v. FETTS.

Receiver—Right of action—Amendment.

A receiver has no right to sue in his own name for a debt due to the person or corporation whose assets he has been appointed to receive; nor can that right be conferred on him by an order made without notice to the alleged debtor, authorizing him to sue in his own name.

But where, by an *ex parte* order made in the suit in which the plaintiff was appointed receiver, he was authorized to bring actions in his own name for the collection of debts due to a certain Grange, and brought this action pursuant thereto, it was

Held, that an amendment should be made, adding the Grange as co-plaintiffs, without security being given for their costs.

Reeve, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

Chancery Divisional Court.] [March 5.

KNAPP v. KNAPP.

Interim alimony—Disbursements—Separate estate—Status of married women.

The peculiar practice of awarding interim alimony and disbursements in alimony suits is founded on the presumption that the husband has everything and the wife nothing, but when the contrary appears the presumption is done away; and the court will, on applications for *interim* alimony, consider the question of the wife's ability to maintain herself out of separate estate or other sources of income, such as her earnings and allowances from her friends.

And where the wife had been living apart from her husband for five years, and had been supporting herself out of the rents of houses owned by her, and by taking boarders, and through assistance rendered by members of her family, the court refused to award *interim* alimony, but directed the husband to pay the prospective cash disbursements of the plaintiff's solicitors upon their undertaking to account it.

Per BOYD, C. The change in the status of married women under recent legislation has no effect upon the law as to alimony, unless the wife is actually in receipt of such independent and separate means of support as will enable her to live and pay the costs of litigation without alimentation pending the action for alimony.

H. J. Scott, Q.C., for the defendant.

Holman, for the plaintiff.

Rose, J.] [March 8.

CHICK v. TORONTO ELECTRIC LIGHT CO.

Costs, scale of—Rule 218—Money paid into court with defence.

The plaintiff in an action in the High Court of Justice claimed $296.14, the balance of an account of $896, for rent and goods sold and delivered.

The defendants in their statement of defence admitted a liability of $170.30, but claimed a credit of $81.14, leaving a balance due of $89.16, which they brought into court with their defence.

The plaintiff served notice under Rule 218

accepting the amount paid in full of the claim, and proceeded to tax his costs. Upon taxation a question arose as to the scale of costs.

Held, that the provision in Rule 218, that the plaintiff may tax his costs, does not give him costs according to any higher scale than if he had entered judgment for the sum which he received out of court; the costs should therefore be on the County Court scale, as the whole amount of the account was over $800, and the amount admitted by the defendant was $170.30.

Lefroy, for the defendants.

W. T. Allan, for the plaintiff.

IN RE DOYLE V. HENDERSON.

Rescinding order—Powers of judge—Appeal.

A motion made to the Master in Chambers on the 27th October, 1886, to rescind his own *ex parte* order of 13th October, 1886, allowing the executrix of the plaintiff to issue execution for the costs of a motion for prohibition, was referred to a judge in chambers. The motion was made after execution had been issued and placed in the sheriff's hands.

Held, that neither the Master nor the judge in chambers had the power to rescind the order; and the motion was too late to be treated as an appeal.

McNab v. *Oppenheimer*, 11 P. R. 223, followed.

Stainer v. *Evans*, W. N. Dec. 25, 1886, p. 210, considered.

V. MacKenzie, Q.C., for the defendant.

W. H. Blake, for the plaintiff.

IN RE THE WESTERN FAIR ASSOCIATION V. HUTCHINSON.

Prohibition—Division Court—Corporation—Question of fact.

Motion for prohibition to a Division Court on the ground that the Western Fair Association did not exist in fact or in law, and could have no title to the grand stand in dispute, and therefore the court had no jurisdiction to enforce the judgment in the suit.

Held, that the question of corporation or no corporation was one of fact, and that the decision thereon was not reviewable in prohibition.

Aylesworth, for the defendant.

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

HAMILTON LAW ASSOCIATION.

A special general meeting of the Association was held yesterday at the Library to consider the proposed revision of the rules relative to practice.

Mr. Irving, Q.C., the President, was in the chair, and the following gentlemen were present:—Messrs. Mackelcan, Q.C., Martin, Q.C., Lazier, H. A. Mackelcan, Culross, Bicknell, K. Martin, Bruce, Q.C., Waddell, Duff, Burton, Gausby, P. D. Crerar, Kittson.

The following report of the Legislation Committee appointed by the Trustees was read:

"At the request of the Trustees the Legislation Committee have examined the draft of the proposed Revised Rules for Practice, to take effect with the Consolidated Statutes, and beg to report as follows:

"As the proposed Rules were only received a few days ago, and but one copy could be obtained from Mr. Langton, it was impossible to examine them at all critically. Some suggestions, however, have been made which your Committee would recommend for consideration; they appear in the schedule to this report; these refer to the Rules as framed.

"In order that all the Rules of Practice may be completely consolidated, your Committee think it would be desirable to abolish all prior Acts and Rules in any way affecting practice or procedure, and to declare that in all matters unprovided for, the provisions of the Consolidated Rules shall, as nearly as may be, apply, so that in any such matters an analogous practice may be created.

"Your Committee also think that in any event the practice should be precisely the same in all divisions.

"Your Committee think that a sufficient time has now elapsed to test the working of the Judicature Act, and that a favourable opportunity is now presented for effectuating the main object of that Act in abolishing all distinctions between the Courts. And they would recommend that steps be now taken to obtain a complete and perfect fusion of the three Divisions of the High Court of Justice, so that all may not only possess the same jurisdiction but may exercise it in exactly the same way.

"As the questions for consideration are of great importance, your Committee would suggest the desirability of having a convention of delegates from all the Law Associations of the Province in order that the views of the Bar generally may be ascertained, as it might be desirable to delay the issue of that portion of the statutes relating to the practice until next year, if similar ideas are entertained throughout the Province."

On motion this report was adopted.

The resolutions of the County of York Law Association on the same subject were read, and on motion the following were adopted:

1. One judge should sit in each week for the disposal of all business of the High Court required to be done in Court and in Chambers without regard to the Divisions in which the actions are pending.

2. A uniform practice should be adopted in all the divisions of the High Court, including therein the practice at the sittings of the various Divisional Courts.

3. It would be expedient to have four sittings, held at permanent and fixed dates for the trial of non-jury cases at two or more of which sittings jury cases shall be tried, as may be determined by several orders of the court.

4. And earnest effort should be made to secure a suitable increase of the judges' salaries.

Messrs. Martin, Q.C., and Mackelcan, Q.C., and Teetzel, were appointed delegates to represent the Hamilton Association at any meeting to be held in Toronto on the subject of the revision of the rules.

A letter was read from the Vice-President, Mr. Justice Robertson, resigning his position on account of his appointment to the Bench, and the following resolution was carried:

"That the Association take this opportunity of congratulating Mr. Thomas Robertson, Q.C., on his appointment to the Bench, and expressing their appreciation of his uniform kindness and courtesy as Vice-President of the Association, and the hope that he may long be spared to adorn the high and honourable position to which he has been promoted."

And Mr. Justice Robertson was also requested to dine with the Association.

In view of the important changes which are now taking place in connection with the revision of the practice a hope was expressed that members of the Bar throughout the Province would join in the movement and give it as much strength as possible. The Toronto, London and Hamilton Associations are taking active steps in the matter, but the hearty co-operation of the Bar throughout the Province is very desirable.

MR. WICKSTEED, Q.C.

WE take great pleasure in extracting from the columns of the Ottawa *Citizen* the following references to an old friend of this journal, Mr. G. W. Wicksteed, Q.C., late Law Clerk of the House of Commons. The country has in him lost a most valuable and faithful servant. We trust he may live long to enjoy his well earned repose.

"When the next Parliament meets, one familiar face of the official staff will be missing. It has been known to three generations of politicians, and its absence cannot but be felt, especially by the older members who return to Ottawa. We allude to Mr. Wicksteed, who for nearly half a century has performed the important duties of law clerk to the Canadian Legislative Assembly and House of Commons. After this long period of official life, at his own request he has been relieved of his duties. Dr. Wilson, so long his efficient assistant, has been appointed to the position, with the creditable distinction of the recommendation of Mr. Wicksteed to succeed him.

"There are few men in any career, who have so ably, so continuously and so unexceptionably played their part on life's stage; close upon his ninetieth year, retaining his faculties, his memory, with unimpaired power, and, what is more remarkable, with all the geniality, with that milk of human kindness which are to be found in young and hopeful men, as yet unsoured by disappointment. Mr. Wicksteed is still the charm of the society which numbers him among its members. As we write of him we seem to go back to an epoch known to us only as history. Nelson's funeral took place on the 9th January, 1805. Mr. Wicksteed has a perfect recollection of having been sent from his uncle's house in Cecil street to Coffee House in the Strand, from the balcony of which he saw the last honours paid to the great admiral as his coffin was carried eastward to St. Paul's.

"Mr. Wicksteed was induced by his uncle, Mr. Justice Fletcher, brother to Sir Richard Fletcher, of the Engineers, who fell at Saint Sebastian, to try his fortune in Canada. He arrived in 1821, in his twenty-second year, and, as was natural with such an introduction, his attention was directed to law. In those days French was of infinitely more importance to any one seeking a public position than it is at present.

"When Mr. Wicksteed arrived in Canada, Lord Dalhousie was Governor-General; one of the noblest and purest characters in Canadian history. At that date French-Canadian political thought was in the infancy of its training, and at the interval of half a century there are few high-toned French-Canadians who can read the part taken by the prominent among their countrymen without a blush. French was then indispensable. However fully the Merchant Tailors' School had furnished Mr. Wicksteed with an acquaintance with Horace and Tacitus, Xenophon and Thucydides, it had given him but a superficial knowledge of the language of Moliere. But this very classical training enabled Mr Wicksteed rapidly to master the language. The universal character of grammar, the Latin etymology of much of the French, his training, which had taught him how to study, came to his aid. Very soon the question was resolved into a matter of memory: to learn words in French which differed from those in English. We believe it was Mr. Wicksteed who translated into English, in their day the celebrated ninety-two resolutions of Mr. Papineau. Mr. Wicksteed became a student of Mr. Gugy, and in 1828 was appointed assistant law clerk to the Provincial Legislature. During the stormy period which succeeded, in the days of Lord Aylmer and Lord Gosford, on the suspension of the constitution after the rebellion, Mr. Wicksteed was attached to the office of Mr. Ogden, then Attorney-General. On the Union of Canada in 1841, he was appointed law clerk to the young Assembly of Canada, and has filled the same position in the parliament of the Dominion, the whole period extending over fifty-eight years.

"The versatility of his attainments, and his varied reading have been of much assistance to Mr. Wicksteed in the execution of his arduous, and somewhat prosaic, duties. The mere lawyer finds it difficult to drop the barbarism of phrase to which he was accustomed in his young days, hence Acts of Parliament are often marked by a verbiage which cumbers rather than is explanatory. There is the opposite extreme which is tempted to sacrifice prudence of phraseology to a brevity which would be seemly if it gave security, but which not unfrequently fails in its purpose. It is the true ability which can steer between these excesses. The long experience of Mr. Wicksteed, blended with a rare judgment, and based on a well-balanced, well-educated mind, have given an impress to the statutes drawn up by him, so that their language is precise and free from ambiguity, commanding the respect of the first lawyers in the country.

"The abilities of Mr. Wicksteed led to his frequent employment on important commissions. On every occasion when his services have been appealed to, he has shown the strong good sense, and undeviating integrity of his character. And this ability has been enlisted under many varied conditions. Few men indeed have lived to see such changes. When he came to the country the first steamboat had been but twelve years on the Saint Lawrence. The Lachine Canal had not been commenced. The only improve-

ments to navigation were the three small *batteaux* locks, constructed, shortly after the conquest, to escape to some degree, the 'Cascades' 'Cedars' and 'Coteau' Rapids. The population of the two Provinces scarcely reached four hundred thousand—of which under one-third was in Western Canada. At this date the historian traces the introduction of luxury, and the political theorist bewails the commencement of the lines of party; whereas on the other hand, the mind educated to politics can recognize no other means of carrying on a Government, as the teachings of the last two centuries since the Revolution of 1688 establish. The theorist sees the evils of the system, many of which are undeniable. He fails to understand the restraints which the system exacts, and that it is only by the spirit of compromise that Government can be practically carried on. At this date Montreal had some eight thousand inhabitants. Toronto was little more than a large self-asserting village. Manufacturers were few. There was little enterprise. Every interest was in its infancy. The whole development of the country lay in the future. Mr. Wicksteed has lived to see Canada extend across the Continent. The disunited provinces, which in those days knew little of each other but by name, formed into a concrete unity. During the whole of this fifty-eight years, Mr. Wicksteed has advanced with the movement; and in his happy cosmopolitanism, he is as much at home in our present condition as when he translated in the House of Assembly at Quebec in the days of Lord Dalhousie, or aided Mr. Ogden in drawing up Ordinances for the Special Council.

"No man ever retired from public life more respected and honoured. Faithful to every Administration while in power, he fulfilled his obligations, without servility and with consistent integrity. No betrayed confidence was ever traced to his faithlessness. The feeling of respect was universal with all brought in contact with him. His career is one to be held forth for our youth to follow. He possesses a reputation so untarnished, so high, so good, that he will be long remembered, especially by the older members. Whatever the abilities and experience of Dr. Wilson—and we have no desire in any way to throw doubt upon them, he has to succeed in his path of difficult duty to a series of traditions which will exact his greatest efforts.

"Mr. Wicksteed's thorough training, his great ability, his suavity of manner, his unfaltering industry, his reliability never at fault in his fifty-eight years of professional life, upwards of half a century of which was passed in the Legislature, will long preserve his memory in the corridors, where his form will no longer have official recognition; while his return to private life must command the good wishes of all who know him, either by reputation or who have the good fortune to enjoy his friendship."

NEW LAW BOOKS.—Lawyers as well as other workmen must keep themselves supplied with the most approved tools. The Blackstone Publishing Company, of Philadelphia, propose to meet a pressing need of the profession by publishing a series of text books in a manner which must meet with a ready response from the profession. We should advise our reader to send to Messrs. Carswell & Co., their agents in Canada, for circulars on the subject.

CORRESPONDENCE.

FLORENTINE JUSTICE.

To the Editor of the LAW JOURNAL:

Tennyson intimates in "Locksley Hall" that the world has not improved during the last fifty years, and very likely the same author would take the view that there has been no improvement during the last four hundred years. I have lately been perusing the autobiography of Benvenuto Cellini, a worthy Florentine artist who lived about three hundred and fifty years ago, and who seems to have handled the sword as effectively as the chisel.

It seems this worthy was induced to go to France during the reign of Francis I. to execute some marvellous works of art. The king gave him a palace in Paris, with grounds attached, for the purpose of enabling him to live in a becoming state, and at the same time to construct certain statues which were then being made for the adornment of the king's palace at Versailles. It would also seem that some trespassers had squatted on Benvenuto Cellini's premises, and so far as we can judge from his story, in a not very creditable manner. He, however, did not bring ejectment, nor did he avail himself of any legal process to be rid of the intruder, but quickly and quietly expelled him by main force from his premises, and this procedure he carried out in an effective manner, on at least two occasions.

It is perhaps not amiss to permit the old worthy to describe in his own language the calamities that befell him owing to his somewhat rash conduct, and at the same time the very peculiar method he took to punish those who, as he says, perjured themselves in order to maintain a successful action against him. I quote his language, with a few explanatory notes of my own

"Just at this juncture, the second person whom I had driven out of the precincts of my castle, had commenced a lawsuit against me at Paris, affirming that I had robbed him of several of his effects at the time that I dislodged him.

"This suit occasioned me a great deal of trouble, and took up so much of my time, that I was frequently on the point of forming a desperate resolution to quit the kingdom. It is customary in France to make the most of a suit which they commence with a foreigner, or with any other person who is not used to law transactions; as soon as they have any advantage in the process, they find means to sell it to certain persons who make a trade of buying lawsuits. There is another villanous practice which is general with the Normans, I mean that of bearing false witness; so that those who purchase the suit immediately in-

struct five or six of these witnesses, as there happens to be occasion; by such means, if their adversary cannot produce an equal number to contradict and destroy their evidence, and happens to be ignorant of the custom of the country, he is sure to have a decree given against him. Both these accidents having happened to me, I thought the proceedings highly dishonourable. I therefore made my appearance in the great hall of the Palais at Paris in order to plead my own cause, where I saw the king's lieutenant for civil affairs, seated upon a grand tribunal. This man was tall, corpulent, and had a most austere countenance; on one side he was surrounded by a multitude of people; and on the other with numbers of attorneys and counsellors, all ranged in order upon the right and left; others came one by one, and severally opened their causes before the judge. I observed that the counsellors who stood on one side sometimes all spoke together. To my great surprise this extraordinary magistrate, with the true countenance of a Plato, seemed by his attitude to listen now to one, now to another, and constantly answered with the utmost propriety. As I always took great pleasure in seeing and contemplating the efforts of genius, of what nature soever, this appeared to me so wonderful that I would not have missed seeing it for any consideration."

It will be observed that running a lawsuit on speculation is by no means a modern invention, though I think the successful promoter of this suit must have been a lawyer in disguise. However, we find that the victory was not altogether with the successful party, who, it seems, secured judgment, for he details in a very modest (and considering the age), becoming manner the method he adopted to get the better of the person who claimed the damages, as well as of the person who promoted the suit.

"To return to my suit; I found that when verdicts were given against me, and there was no redress to be expected from the law, I must have resource to a long sword which I had by me, for I was always particular to be provided with good arms. The first that I attacked was the person who commenced that unjust and vexatious suit, and one evening I gave him so many wounds upon the legs and arms, taking care, however, not to kill him, that I deprived him of the use of both his legs.

"I then fell upon the other, who had bought the cause, and treated him in such a manner as quickly caused a stop to be put to the proceedings; for this and every success I returned thanks to the Supreme Being."

It might be supposed from this that actions for assault did not then lie, but it is not unlikely that our hero was befriended by the king.

Benvenuto Cellini some years previously had a difficulty when living in Rome, which resulted in the death of his opponent, and when some friend of the victim demanded his punishment of Clement V., the Pope said: "You do not understand these matters; I must inform you that men who are masters in their profession, like Benvenuto, should not be subject to the laws; but he less than any other, for I am sensible that he was in the right in the whole affair."

The author of *Obiter Dicta* thinks that our ancient friend was as untruthful as Falstaff, but I am glad to find that J. A. Symonds, who has written so much on the subject of Italian Rennaissance, and who must be as capable as any living writer of forming a proper estimate of the characters of the celebrated people of the time, has come to the conclusion that he was on the whole a truthful man.

Yours, AMICUS CURIÆ.

LIMITATION OF ACTIONS.

To the Editor of the LAW JOURNAL:

SIR,—In your last issue I wrote a letter as to the views I entertained in respect to charges upon lands, when the charge itself was aided by a covenant for payment. On a more careful perusal of *Hunter* v. *Nockolds*, I find that this case is not an authority for my view. The case is simply an authority that where a charge is sought to be enforced against lands not in the hands of the grantor of the charge, but six years' arrears of interest can be secured as against the lands. Lord Chancellor Cottenham in his judgment intimated, as an *obiter dictum*, his opinion to be that the result would have been different if the remedy were sought from the grantor, that is if the lands were yet the lands of the grantor, and the reason he gives for this opinion is that cap. 42, 3 & 4 Wm. IV., Imperial Act (in effect cap. 61 R. S. O.,) was passed in the same session, and at a very short interval after 3 & 4 Wm. IV., cap. 27, Imperial Act (in effect 4 Wm. IV., cap. 1 U. C.), and as the first statute permits actions to be brought upon covenants for twenty years after the moneys payable thereunder are due, he thought in order to give effect to both statutes that while the charge against lands was extinguished at the end of six years, still if the plaintiff could invoke a covenant in aid of the debt, he could collect twenty-years' arrears from the grantor. Vice-Chancellor Wigram seemed to think in *Du Vigier* v. *Lee*, 2 Hare 326, that where the charge contained a covenant, the limitation as regards six years' arrears did not apply at all, but *Hunter* v. *Nockolds* overruled this case. The court in *Lewis* v. *Duncombe*, 29 Beav. 175, and *Boyer* v. *Woodman*, L. R. 3 Eq. 313, accepted as law this dictum of Lord Chancellor Cottenham.

In *Sutton* v. *Sutton*, the court refused to recognize *Hunter* v. *Nockolds* as an authority, on the ground that the Imperial Legislature, in passing cap. 57, 57 & 58 Vict., which deals with the limitations of actions as regards charges upon lands and other matters, did not re-enact or refer to cap. 42, 3 & 4 Wm. IV. The court seems to have taken a very common sense ground, that if a charge be extinguished at a certain period a covenant in aid of that charge would be extinguished at the same period, and this very likely would have been the decision of *Hunter* v. *Nockolds* were it not the Lord Chancellor felt himself bound to give some effect to 3 & 4 Wm. IV., cap. 42, section 3. The 37 & 38 Vict. cap. 57, Imperial Act, was very largely enacted in 38 Vict. cap. 16 (cap. 108 R. S. O.), and if *Sutton* v. *Sutton* be held to have been well decided in this Province, and I think it will be eventually so held by our Court of Appeal, then, no doubt, *Allan* v. *McTavish* will be overruled. It may not be amiss to point out that the earliest of our statutes respecting the limitation of charges upon lands is 4 Wm. IV., cap. 1, and the earliest of our statutes respecting limitation of actions upon covenants, etc., is 7 Wm. IV., cap. 3, some three years afterwards, and not as in England, some three weeks after.

Yours, W. H. MCCLIVE.

Law Society of Upper Canada.

OSGOODE HALL.

MICHAELMAS TERM, 1886.

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

November 15th.—Robert Stanly Hays, Wellington Bartley Willoughby, Frederick Stone, Trevussa Herbert Dyre, Franklin Montgomery Gray, Edward Arthur Lancaster, Lorenzo Clarke Raymond, Delos Rogest Davis, John Michael Macnamara, Henry Clay, Eudo Saunders, Archibald McAlpine Taylor, Alexander Fraser.

November 16th.—William James Tremeear, John Robertson Millar, David Alexander Givens, George Francis Burton, Henry Smith Osler, Walter Stephens Herrington, Duncan Ontario Cameron, Osric Leander Lewis, Francis McPhillips, Frederick George McIntosh, Archibald McKechnie, Edward Ellis Wade.

November 20th.—Donald C[illegible]vin Hossack.

December 4th.—Herbert [illegible]enry Bolton.

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

November 15th.—A. M. Denovan, A. M. Taylor, O. L. Lewis, W. B. Willoughby, F. Stone, W. S. Herrington, R. Vanstone, R. F. Sutherland, A. Fraser, S. McKeown, C. B. Jackson, D. H. Cole, R. H. Pringle, A. B. Cameron, E. W. Boyd, F. E. Titus.

November 16th.—A. W. Wilkin, F. M. Gray, G. F. Burton, W. J. Tremeear, D. B. S. Crothers, H. G. Tucker, J. J. Smith.

November 20th.—H. Morrison, H. W. Bucke, F. G. McIntosh, N. J. Clarke, J. R. Shaw.

December 4th.—H. J. Dawson.

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

M. H. Ludwig, with honors and first scholarship; J. M. Palmer, with honors and second scholarship; E. H. Britton, with honors and third scholarship, S. A. Henderson, with honors; and Messrs. J. H. Hunter, S. D. Lazier, R. G. Smyth, H. H. Johnston, J. T. McCullough, A. Collins, E. E. A. DuVernet, H. Harvey, J. Irving Poole, G. C. Gunn, W. A. Skeans, R. L. Elliott, R. M. Macdonald, W. Pinkerton, G. D. Heyd, O. Ritchie, W. L. B. Lister, M. C. Bigger, R. L. Gosnell, H. E. McKee, R. O. McCulloch, F. J. Travers, H. F. Errett, M. F. Muir.

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

F. A. Anglin, with honors and first scholarship; W. S. Hall, with honors and second scholarship; J. T. Kirkland, with honors and third scholarship; N. F. Davidson and A. Morphy, with honors; and Messrs. T. Scullard, H. S. W. Livingston, F. P. Henry, R. R. Hall, A. Saunders, F. A. Drake, H. R. Welton, J. M. Quinn, J. Y. Murdoch, A. F. May, W. L. M. Lindsay, D. R. Anderson, T. Browne, R. J. Maclennan, H. B. Smith, W. S. Turnbull, R. K. Orr, T. A. Wardell, H. N. Roberts, A. E. Trow, A. C. Camp, H. M. Cleland, W. W. Jones.

The following gentlemen were admitted into the Society as Students-at-Law:

Graduates.—Bidwell Nicholls Davis, Robert Elliott Fair, Lennox Irving, Ralph Johnston Duff, Donald Roderick McLean, James Wilson Morrice.

Matriculants.—Frederick Billings, George Davidson Grant, William Alexander Baird, Henry John Deacon Cooke, Christopher Lucy, Louis Vincent McBrady, John Flemi[illegible]ston Tannahill, Robert Talbot Harding, Alexander Robertson Walker, William Henry Williams.

Junior Class.—C. P. Blair, C. F. Maxwell, W. F. Langworthy, J. A. Harvey, G. B. Wilkinson, J. McBride, H. C. McLean, F. R. Blewett, J. B. Pattullo.

Articled Clerks.—T. H. Lloyd, J. Lennox, H. W. Maw.

CURRICULUM.

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

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

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

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

5. The Law Society Terms are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FEES.

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

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM FOR 1887, 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

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

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

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

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

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

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.

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

HISTORY AND GEOGRAPHY.

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

Optional Subjects instead of Greek:—

FRENCH.

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

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

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

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

RULE RE SERVICE OF ARTICLED CLERKS.

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

First Intermediate.

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

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

Second Intermediate.

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

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

For Certificate of Fitness.

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

For Call.

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

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

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