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DIARY FOR AUGUST.

2. Sat.....Battle of the Nile, 1798.
3. Sun.....*8th Sunday after Trinity.*
6. Wed.....Duke of Edinburgh born, 1844.
10. Sun.....*9th Sunday after Trinity.*
12. Tues.....Primary Examinations.
13. Wed.....Sir Peregrine Maitland, Lt. Gov. U. C., 1818.
17. Sun.....*10th Sunday after Trinity.*
18. Mon.....Gen. Hunter, Lt. Gov. U. C., 1799.
19. Tues.....First Intermediate Examinations.
21. Thur.....Second Intermediate Examinations.
24. Sun.....*11th Sunday after Trinity.*
25. Mon.....Francis Gore, Lt. Gov. U. C., 1806.
26. Tues.....Solicitors' Examination.
27. Wed.....Barristers' Examination.
31. Sun.....*12th Sunday after Trinity.*

TORONTO, AUGUST 1, 1884.

THE Ontario Bench has a large proportion of common law judges—some say it is "overweighted with common law." In 1874 when the Court of Appeal was reorganized there were five equity men on the Bench—one in Appeal, three in Chancery, and one, Mr. Justice Gwynne, in the Common Pleas. In 1883, when a fifth Appeal Judge was added, there were only three equity men among the judiciary. The fifth Appeal Judge was to assist in the business of the High Court and "especially of the Chancery Division thereof." Now there are only two judges who have had an equity training, while eleven have been taken from the common law bar, viz.: five in Appeal, three in the Common Pleas Division, two in the Queen's Bench Division (one judgeship vacant), and one in the Chancery Division.

THE question of the disputed boundary between Ontario and Manitoba has been settled by the Judicial Committee of the Privy Council; and the western limit given to Ontario in the Arbitration between the Dominion and Ontario, in 1878, has been held to be the legal boundary of Ontario on the west. The dispute between the Dominion and Ontario as to the northern boundary of the latter was not submitted to the Judicial Committee.

OUR ENGLISH LETTER.

(From our own Correspondent.)

DURING the whole of the past week the interest both on the public and the legal profession has been centred upon Charles Bradlaugh's trial at Bar. It is a noticeable fact that this peculiar and not altogether pleasant personage upon the modern political stage has a knack of presenting to the courts novel combinations of circumstances. When, for instance, he sued Mr. Newdegate for maintenance all the researches of some half-a-dozen men were unsuccessful in discovering a case exactly on all fours with Mr. Bradlaugh's. There are hundreds of cases in which contracts have been held void for maintenance and for champerty, but there is not a single case which runs parallel to Mr. Newdegate's except the case of *Wallis* v. *the Duke of Portland* reported in Brown's Cases in Parliament. There too a difference was to be found, for *Bradlaugh* v. *Newdegate* was a direct proceeding grounded upon the offence of maintenance, while the facts of *Wallis* v. *the Duke of Portland* were that the Duke of Portland had promised to pay the plaintiff a certain sum of money in the contingency of his successfully bringing an election petition against the sitting member for Colchester. The plaintiff founded an action on the promise, but the contract was held void on the ground that it involved maintenance. So, too, the present case is one of a novel

character, and the three presiding judges will have as much difficulty in explaining the law as the jury will find in deciding upon the facts. The case is certainly not one in which any prudent man would care to anticipate the decision of the Court; and, as a proof of the veracity of this statement, it may not be amiss to introduce a criticism which is attributed to the oldest and the most experienced of the law reporters. He looks forward, he says, to the realization of the dream of his life, which is to hear three judges sum up in triangular opposition to one another before a jury of whom no two will be in agreement. The presiding judges, Lord Coleridge, Baron Huddleston and Mr. Justice Grove are a good tribunal for the purpose. The second is, according to report, a thorough believer; the first has the religious feelings of a thoroughly respectable member of graceful society; the third is a man of science and an Agnostic. We had all hoped to listen to the summing-up on yesterday morning, but the sudden indisposition of the Chief Justice who has fallen a victim to lumbago has further delayed the end of a trial in which the agony had already been intensely prolonged.

The Privy Council are engaged in the consideration of a Canadian appeal upon a question of paramount importance to the profession in the shape of a case entitled *Reg.* v. *Doutrè*. There is a double question involved, firstly as to whether a member of the Canadian Bar is entitled to proceed by way of Petition of Right for the recovery of a quantum meruit for services rendered to the Crown, and secondly whether the rights of the parties are to be governed by the law of Quebec, Ontario, Nova Scotia or England. The circumstances are probably familiar to your readers, and consist in the fact that Mr. Doutrè, Q.C., was not satisfied with a fee of $8,000 which was awarded to him for services in connection with the Fisheries Commission in Nova Scotia. In this opinion he was supported by the Exchequer Court of Canada and also, nominally speaking, by the Supreme Court of the Dominion. That is to say, the Court consisting of six judges was equally divided, and judgment was therefore given for the respondent in the appeal.

The circuit question has at last received a final solution. For the future no more than ten judges will ever be absent from town simultaneously. That is a fact which has been known for some little time; but the ingenious system by which it is to be managed has only just been published and proven, if it proves nothing else, that the old system was a very bad one, and that the judges in council assembled are thoroughly familiar with the intricacies of Bradshaw's Railway Guide.

In touching on the case of Mr. Doutrè I missed an opportunity of mentioning another case of a purely English character with regard to the subject of recovering fees. A rather disreputable member of the English Bar has recently attempted to use the disciplinary jurisdiction of the Court with the view of enforcing payment of fees by a solicitor whom he alleged to have defrauded him. The solicitor in question gave a very different account of the circumstances, saying that the barrister had induced him to guarantee the payment by him (the barrister) of certain tradesmen's accounts in a town in the Midlands, and that he had retained the funds because, owing to the default of the barrister, he had been compelled to pay the money due. Mr. Justice Mathew characterized this as a most unwarrantable and discreditable attempt to use the disciplinary machinery of the Court for a thorough unrecognized and illegitimate purpose.

London, June 21.

NOTES OF CANADIAN CASES.

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SUPREME COURT.

Ontario.] [June.

CANADA SOUTHERN RAILWAY CO. v. PHELPS.

Railway Company—Negligence—Damages — Fire communicated from premises of the company.

This was an action commenced by the respondent against the appellants for negligence on the part of the appellants in causing the destruction of the respondent's house and outbuildings by fire from one of their locomotives. The freight shed of the company was first ignited by sparks from one of the Co.'s engines passing Chippawa station, and the fire extended to respondent's premises. The following questions, *inter alia*, were submitted to the jury, and the following answers given :—

Q.—Was the fire occasioned by sparks from the locomotive ?

A.—Yes.

Q.—If so, was it caused by any want of care on the part of the company or its servants, which, under the circumstances, ought to have been exercised ?

A.—Yes.

Q.—If so, state in what respect you think greater care ought to have been exercised ?

A.—As it was a special train and on Sundays, when employees were not on duty, there should have been an extra hand on duty.

Q.—Was the smoke stack furnished with as good apparatus for arresting sparks as was consistent with the efficient working of the engine ? If you think the apparatus was defective, was it by reason of its not being of the best kind, or because it was out of order ?

A.—Out of order.

Verdict for plaintiff, $800.

On motion to set aside verdict, the Queen's Bench Division unanimously sustained the verdict.

On appeal to the Supreme Court.

Held, affirming the judgment of the Court below, that the questions were proper questions to the jury, and that there was sufficient evidence of negligence on the part of the appellants' servants to sustain the finding.

If a railway company are guilty of default in the discharge of the duty of running their locomotives in a proper and reasonable manner, they are responsible for all damage which is the natural consequence of such default, whether such damage is occasioned by fire escaping from the engine coming directly in contact with and consuming the property of third persons, or is caused to the property of such third persons by fire communicating thereto from property of the railway company themselves, which had been ignited by fire escaping from the engine coming directly in contact therewith.

H. Cameron, Q.C., and *Kingsmill*, for appellants.

Bethune, Q.C., for respondent.

BADENACH v. SLATER.

Trust deed for benefit of creditors—Power to sell on credit—Not fraudulent preference.

In a deed of assignment for the benefit of creditors the following clause was inserted : "And it is hereby declared and agreed that the party of the third part, his heirs, etc., shall, as soon as conveniently may, collect and get in all outstanding credits, etc., and sell the said real and personal property, hereby assigned, by auction or private contract, as a whole or in portions, for cash or on credit, and generally on such terms and in such manner as he shall deem best or suitable, having regard to the object of these presents." B. *et al.*, who were execution creditors of the assignors, attacked the validity of the assignment to S. No fraudulent intention of defeating or delaying creditors was shown.

Held (affirming the judgment of the Court below), that the fact of the deed authorizing a sale upon credit did not, *per se*, invalidate it, and the deed could not on that account be impeached as a fraudulent preference of creditors within the Act R. S. O., cap. 118.

Appeal dismissed with costs.

Gibbons, for appellant.

Foster, for respondent.

NEILL v. THE TRAVELLERS' INSURANCE CO.

Policy—Condition—Voluntary exposure to unnecessary danger.

The plaintiff (appellant) brought an action to recover upon a policy of insurance effected by the respondents upon the life of her deceased husband, J. N., who met his death during the currency of the policy from being run over by a train of cars upon one of the lines of the Northern Railway through the company's yard at Toronto. In answer to the plaintiff's claim the respondents set up the following amongst other defences:—

By their fourth plea, they invoked a condition to which the policy sued on was subject, to wit: "no claim shall be made under this policy when the death or injury may have happened in consequence of voluntary exposure to unnecessary danger, hazard or perilous adventure." The uncontradicted evidence was that the deceased was killed by the train coming against the vehicle in which he was driving alone on a dark night in what was called a network of railway tracks in the company's station yard at Toronto at a place where there was no roadway for carriages.

Held (affirming the judgment of the Court below, 7 App. R. 670), that the undisputed facts established by the plaintiff shewed "that the deceased came to his death in consequence of voluntary exposure to unnecessary danger," and that, therefore, respondents were entitled to a non-suit.

Lash, Q.C., for appellant.

Robinson, Q.C., and *D. McCarthy*, Q.C., for respondents.

STAMMERS v. O'DONOHUE.

Vendor and purchaser—Specific performance—Contract—Vendor's name.

This was an appeal from a judgment of the Court of Appeal for Ontario, confirming a decree of the Court of Chancery, ordering specific performance of a contract of sale alleged to have been entered into between the parties under the circumstances stated in the report of the case (28 Gr. 207).

Held, that although the vendor's name was not mentioned in the agreement signed by the auctioneer, the subsequent letters of the vendor and his admissions were sufficient to constitute a complete and perfect contract between the appellant as vendor and respondent as purchaser within the statute of frauds.

O'Donohue, Q.C., appellant in person.

Bain, Q.C., for respondent.

Manitoba.]

SINNOTT v. SCOBLE ET AL.

Permits to cut timber (Man)—Rights of holders of—Dominion Lands Act, 1879, *sec.* 52.

On the 21st November, 1881, S. *et al.*, obtained a permit from the Crown Timber Agent, Manitoba, "to cut, take and have for their own use from that part of Range 10 E., that extended five miles north and five miles south of the Canadian Pacific Railway track, the following quantities of timber: 2,000 cords of wood, 35,000 ties—permit to expire on May 1st, 1882." A similar permit was granted to M. Sinnott & Co., dated 10th February, 1882, authorizing the cutting, removing, etc., of 25,000 ties. In February, 1882, under leave granted by an order in Council of 27th October, 1881, S., D. & T. cut timber for the purposes of the construction of the C. P. R. from the lands covered by the permit of 21st November, 1881. S. *et al.*, by their bill of complaint, claimed to be entitled by their "permit" to the sole right of cutting timber on said lands until the first of May, 1882, and prayed that the defendants, S. D. & T., be restrained by injunction from cutting timber on said lands, and be ordered to account for the value of the timber cut. S. D. & T. justified their acts under the order in Council of 27th October, 1881, and denied the exclusive possession or title to the lands or standing timber.

Held (affirming the judgment of the Court below), that the holders of "a permit" as the one question are not, during its currency, vested with any enforcing power, or rights to the possession of the lands or the standing timber, and that S. *et al.*'s permit amounted to no more than a permission or right to enter on the land and cut the quantity specified on the permit.

McCarthy, Q.C., for appellants.

H. Cameron, Q.C., and *Kennedy*, for respondents.

COURT OF APPEAL.

RE ALGOMA ELECTION.

Practice—Striking out improper statements in petition.

It is the duty of the Court to prevent as far as possible the introduction of the heated language of the election contest into its formal proceedings. Therefore, where, on a motion to a Judge in Chambers, six paragraphs of the petition had been ordered to be expunged on the ground that they contained charges of gross corruption against persons not parties to the proceeding and which, if true, evidence thereof could be given on the trial under other paragraphs of the petition, it appeared on an appeal from the order of such Judge that in another paragraph (the 12th), a charge was made against the returning officer of having purposely placed one of the polling places in an inconvenient locality, by reason of which many voters were prevented from voting; alleging that the returning officer did not act impartially, "but, on the contrary, had lent himself to and became and was the pliant and subservient tool of the said" (naming certain members of the local Government) "or some or one of them and improperly acted under their directions and instructions, with a view to and for the purpose of aiding in the election of," etc., the Court did not feel itself confined to those matters which the respondent thought it necessary in his own interests to bring to their notice, and, in dismissing the appeal, ordered the objectionable portion of such 12th paragraph to be struck out and the appellant to pay the costs of the motion and of the appeal from the order made thereon.

McCarthy, Q.C., for the appeal.

Bethune, Q.C., and *Johnston*, contra.

MAGURN V. MAGURN.

Husband and wife—Alimony—Counsel fees.

A judgment had been given declaring the plaintiff entitled to alimony from her husband, who thereupon appealed to the Court of Appeal. On motion of the plaintiff an order was made by Osler, J. A., directing the husband to pay a sufficient sum to cover the fee necessarily payable by the wife to her counsel, although if it became necessary to reconsider the practice of ordering the husband to pay his wife's disbursements in suits of this nature he would be strongly disposed to think that, owing to the altered status of married women, the reason for it had ceased to exist.

Langton, for the application.

C. Millar, contra.

O'SULLIVAN V. HARTY.

Administration—Agent of Administrator—Costs.

In 1876 J. F. O'S. died intestate in New Brunswick, and the plaintiff—his brother—endeavoured to obtain the administration of his estate, but, owing to his financial position, he was unable to do so, until the defendant, W., and one J., consented to become security for him, which they did on being indemnified. Letters were accordingly granted to him, and the several securities belonging to the estate converted into money, except some English railway stock, which was handed over to the defendants, but which the plaintiff declined to assist them in realizing. In pursuance of an agreement to that effect, proceedings were instituted in one of the Probate Courts in England with a view of ascertaining the next of kin and to obtain a final decree for the distribution of the estate, when it was ascertained that six other persons were so entitled, and on the taking of the accounts in July, 1878, it appeared that each was entitled to $1,135.11, but owing to the plaintiff's continued refusals to join in disposing of the scrip, the defendants, in whose hands the funds of the estate had been deposited, were unable to settle with the several persons entitled. The plaintiff made a claim of $2,500 upon the estate for his commission and expenses incurred in getting in the estate, and in November, 1880, filed a bill to compel the defendants to pay $1,000 commission and his share of the estate, and also to hand over to him the shares of the other next of kin. At the hearing a decree was made declaring the defendants entitled to their costs as between solicitor and client and ordering the plaintiff to execute all papers necessary to dispose of the railway stock; directed the defendants within two months to settle with the next of kin, other than the plaintiff, and if, after settling with the next of

kin, a balance should remain in their hands, they should pay such balance to the plaintiff.

Held, that the defendants were in reality agents for the plaintiff, and on no principle of fair dealing ought the other persons interested in the estate be called upon to pay the costs of the litigation, and the same were properly payable from the share of the plaintiff in the fund.

Bethune, Q.C., and *Whiting*, for the appeal.

Moss, Q.C., and *O'Sullivan*, contra.

From Chy. Div.]

TRINITY COLLEGE v. HILL.

Mortgage—Absent defendant—Service.

Where proceedings were instituted in 1876 against persons interested in a mortgage estate, one of whom was resident out of the jurisdiction, and the usual decree and account was made and taken; and the application to make such decree absolute was not made until May, 1882, and in the early part of the month following a petition was presented praying that the defendants might be allowed to redeem, alleging the ignorance of the absent defendant of the proceedings until his return to the country, a few days before signing the petition, and the ignorance of both defendants of any proceedings subsequent to the filing of the bill; and that the defendant upon whom the bill was served was about ninety years old and of feeble intellect, unfitted to transact business.

It was shown that in March, 1882, before the order making the decree absolute, the plaintiffs had sold to one Grattan, who bought, relying on the plaintiff's title under the final order of foreclosure which, on its face, was expressed to be subject to the general orders of Chancery 114, 5, 6.

Under the circumstances the Court (reversing the order of Boyd, C.) made an order to open the foreclosure on the usual terms of paying principal, interest and costs of plaintiffs and of the purchaser (not including any costs of the appeal, of which each party should bear their own), together with any costs incurred by the purchaser in connection with his purchase of the property, and in default of payment on or before 1st October next, appeal to be dismissed with costs.

Bain, for appeal.

Vankoughnet, Q.C., and *Hoyles*, contra.

DUNLOP v. DUNLOP.

Conveyance obtained by undue influence.

In an action to restrain waste it was shown that the plaintiff obtained from his father a deed of the premises in question, the father, however, swearing that he supposed when executing the document that it was his will he was making, and the conveyancer who prepared the deed admitted in his evidence that he might have suggested to the subscribing witness not to talk too much to the old man about the writing, as perhaps he would not sign it; and the deed as prepared was silent altogether as to certain provisions and payments that were to be made, as alleged by the plaintiff. The Court reversed the Decree pronounced by the Court below, ordered the bill to be dismissed with costs, and the deed to be delivered up to be cancelled.

G. T. Blackstock, for the appeal.

Edwards, contra.

REGAN v. WATERS.

Surrogate Court—Mental capacity.

On the trial of an issue, directed by the Surrogate Judge, before a jury, evidence was given as to the mental capacity of the testator by persons acquainted, and having frequent intercourse, with him, the grant of probate being opposed by the widow on the ground, amongst others, of mental incapacity. The judge at the trial being of opinion that the witnesses examined were not of a class qualified to give scientific evidence withdrew the case from the jury, and gave judgment in favour of the plaintiffs, granting probate of the will, which he afterwards refused to set aside. On appeal, a new trial was directed and the costs of appeal ordered to be paid by the plaintiffs, as the opinions of such witnesses might "be of more or less value according to their skill, or experience or aptitude for judging of such matters all which tests would be applied by the jury; and mere opinions unsupported by facts justifying them would be rejected altogether without reference to the witness being called as an expert or not professing to speak in that somewhat indefinite character."

McCarthy, Q.C., for appeal.

R. M. Meredith, contra.

McDONALD v. BULLIVANT.

Mortgage, etc.—Merger.

The defendant had created a mortgage on certain lands, which he subsequently conveyed to one P., the conveyance being silent as to whether it was a sale of the equity of redemption merely or an absolute sale, the payment of the mortgage being part of the consideration. The defendant subsequently became insolvent and included this in his schedule as an indirect liability, and the mortgagee obtained from P. an assignment of his interest to his wife in order, as he stated, to prevent a merger.

In a proceeding by the mortgagee against the defendant an award was made in favour of the plaintiff, which the defendant moved to set aside. The motion was refused by Galt, J., and on appeal to this Court that judgment was affirmed with costs.

A. Hoskin, Q.C., for the appeal.

W. Cassels, Q.C., contra.

McEWAN v. McLEOD.

Practice—Interest on judgment.

Where an appeal is made against a judgment in any personal action which is affirmed on appeal, interest is allowed for such time as execution has been stayed by the appeal; but where the plaintiff refrained from entering up his judgment until after the decision in appeal, this court refused to order interest to be allowed on the amount of the verdict; leaving the plaintiff to apply to the Court below for relief by entering the judgment *nunc pro tunc*.

Aylesworth, for the application.

Holman, contra.

HUGHES v. BOYLE.

Appeal bond—Costs on discontinuing appeal.

Where appeal proceedings are abandoned by giving notice of discontinuance, the respondent, if he desires, may proceed, upon the bond given as security to effectually prosecute the appeal, to recover his costs from the sureties of the appellant. He is not obliged to apply to the Court below and sign judgment for them there against the appellant.

Donovan, for the appellant.

C. Millar, contra.

From Co. Ct., York.]

PALIN v. REID.

Innkeeper—Gratuitous bailee.

The plaintiff had been for some time a guest of the defendant—an innkeeper—and on leaving the inn after paying his bill, left a box containing some papers and books alleged to be of value to the plaintiff, in the room of the inn used for storing baggage, etc., the plaintiff intending to take it away the day following, but owing to the illness of the plaintiff he did not call for it for several weeks afterwards, when it was discovered that the box was lost. The plaintiff was not to pay anything by way of storage, etc., and it was shown that defendant had not been guilty of any negligence in the matter. In an action brought to recover the value of the box and contents at the trial before Burnham, J. C. C. O.—sitting for the judge of the County of York—a verdict was entered for the defendant, which, in the following term, was set aside by the learned Judge and a verdict entered for the plaintiff for $50.

An appeal from this judgment was allowed with costs, and the rule to set aside the verdict discharged with costs.

Osler, Q.C., and *O'Sullivan*, for the appellant.

Delamere, for the respondent.

From Co. Ct., York.]

GODDARD v. COULSON.

Mechanics' Lien.

The defendants contracted with one C. for the execution of the stonework upon certain buildings. C. never completed the work, but during the progress thereof was paid in good faith sums exceeding the value of the work actually done by him on the building before he abandoned the contract.

Held (reversing the judgment of the learned Judge of the Court below), that a sub-contractor with C. could not enforce payment of his claim out of the ten per cent. reserved under the Act 41 Vict. ch. 17, sec. 11, as security for the payment of the claims of sub-contractors.

Ritchie, for the appeal.

Snelling, contra.

From Co. Ct., Perth.]

FARROW v. TOBIN.

The defendant, as bailiff of a Division Court, seized two horses, waggon, etc., of the plaintiff under an execution against another person, which, on an interpleader proceeding were decided to be the goods of the plaintiff, and at the end of three weeks plaintiff obtained possession of them from the bailiff. In an action brought by the plaintiff against the defendant for damage done to the horses during the time they were in his possession, the jury, under the direction of the judge, found a verdict for the plaintiff and $80 damages, which verdict the judge subsequently refused to set aside.

Held (affirming the judgment of the County Court), that the finding of the judge on the interpleader proceedings formed no ground of defence to the suit for damages for the alleged injury to the property.

Woods, for the appeal.

Smith, Q.C., contra.

From Co. Ct., Grey,]

HARRIS v. MOORE.

Oral evidence to explain agreement—New trial—Discretion of judge.

The plaintiffs agreed to sell to the defendants a water-wheel, "and place the same in position" for $150, but the defendants refused payment upon the ground that the wheel had not been properly placed, and did not, in fact, perform the work stipulated for. The jury rendered a verdict in favour of the defendants, which the judge of the County Court set aside and directed a new trial—costs to abide the event. On appeal this Court refused to interfere with the discretion of the Judge of the Court below considering that the term "placed in position" was so indefinite that the defendant was at liberty to show what was meant thereby; the writing, by such parol evidence, not being added to or varied, but only rendered intelligible. Under the circumstances the Court refused to make any order as to the costs of the appeal.

Falconbridge, for the appeal.

Creasor, Q.C., contra.

From Co. Ct., Perth.]

WEINHOLD v. KLEIN.

Lease of lands—Agreement as to allowance out of rent by reason of thistles being in the fields.

The plaintiff rented to the defendant a field for the purpose of growing flax at an agreed rental of $10 an acre. In answer to the claim for rent, the defendant attempted to show that he had sustained damage by reason of the ground being full of thistles, and that an allowance was to be made for the thistles.

Held (affirming the judgment of the Court below), that the jury were properly told, for their guidance in adjusting such allowance, how the defendant had himself settled with other persons who had thistles in their flax fields.

Woods, for the appellant.

Osler, Q.C., for respondent.

From Co. Ct., Halton.]

MCKINDSEY v. ARMSTRONG.

Garnishee proceedings.

E. A. conveyed lands and chattels to one B. upon trust to convert the same into money, to pay debts, etc., and as to any balance remaining upon trust to pay the same to R. A., son of E. A., or if the party of the second part (B) should see fit he might invest the same in the purchase of a homestead and convey the same to R. A., his heirs, etc.

Held (reversing the judgment of the Court below), that there was not any debt due from B. to R. A. that could be garnisheed by the creditors of R. A.

Aylesworth, for appeal.

Beaty, Q.C., contra.

From Co. Ct. Waterloo.]

MCLEAN v. BRETHAUPT.

Stoppage in transitu—Seizure of goods sold under execution.

The plaintiff sold W. G. a quantity of leather, which was to be sent by plaintiff to the purchaser by railway. The shipping bill contained, amongst others, the following condi-

tions: "In all cases . . . the delivery of goods will be considered complete and the responsibilities of the company shall terminate when the goods are placed in the company's shed or warehouse . . . when they shall have arrived at the place to be reached upon the railway of the company. The warehousing of them will be at the owner's risk"—who was to be liable for any charges for storing them otherwise than in the warehouse of the company. "Storage will be charged on all freight remaining in the depots over forty-eight hours after its arrival."

While the leather remained in the warehouse of the Railway Company, the purchaser requested that it might be stored by the company's servants, he agreeing to pay—but not paying—the charges for freight thereon, and subsequently the sheriff paid the charges thereon, seized the leather and removed the same from the stores of the Railway Co. under a writ of attachment sued out by the defendants.

Held, that this did not deprive the vendor of his right to stop the goods in transitu.

Robinson, Q.C., for the appeal.

J. K. Kerr, Q.C., and *A. Galt*, contra.

From Co. Ct., Middlesex.]

GARNER v. HAYES.

Contract.

One M. agreed with the defendant for the erection of a dwelling house for the defendant in two months from date, and if M. neglected to build the house defendant was to be at liberty to purchase material and employ workmen to finish it and deduct cost of material, etc., out of the contract price. The plaintiff agreed to supply M. with lumber to be used in the building, and M., after a portion of the lumber had been placed in the building, gave plaintiff an order on defendant for $341.46 "for lumber used in your house, one month after the building is completed," which the defendant accepted. M. failed to complete the building, and the defendant did so in accordance with the terms of the agreement.

Held (affirming judgment of the Court below), that to the extent of the balance of the agreed price for the building remaining in defendant's hands, he was liable to pay the plaintiff, notwithstanding M. did not complete the building, the terms of the order including lumber which had previously been used in the building as well as that subsequently placed therein.

Macbeth, for the appeal.

R. M. Meredith, contra.

QUEEN'S BENCH DIVISION.

Cameron, J.] [May 7.

SHAFFER v. DUMBLE.

Replevin — Detention — Conversion — Evidence— Married woman—Gift by husband—Separate estate—R. S. O. c. 125.

The plaintiff was executor of H. D., widow of T. D., whose executor the defendant was. The plaintiff claimed a piano in the house lately occupied by the widow, of which the defendant had the key. At an interview between the plaintiff and defendant, the latter claimed the piano, but said he was willing to leave the question of the ownership to a person to be named. The plaintiff left him, promising to write, and afterwards did write, saying he had decided to bring the matter before the proper court. Subsequently the plaintiff's solicitor wrote the defendant offering to release all demands upon the defendant giving up all claim to the piano, to which the defendant's solicitor answered that he could not comply with the demand. The defendant commenced an action, in which the title to the piano would come in question. The plaintiff's solicitor having again written to ask whether possession of the piano would be given, the defendant's solicitor wrote that it was perfectly safe where it was, and that the action commenced would decide the question. He also wrote that the plaintiff would not have to put the law in motion.

Held, in an action of replevin, assuming the piano to be the plaintiff's, that there was no evidence of trespass or conversion to support the affirmative of the issue that the defendant did not take or detain the piano.

The evidence showed that the husband had purchased the piano and had made a present of it to his wife by putting it in the house where

they lived, and subsequently recognizing her right to it.

Held, that the piano did not form part of the wife's separate estate, as the husband could not at common law make a gift *inter vivas* of this description of property, so as to prevent its passing to his personal representatives, and that there was no evidence of an intention on his part to constitute himself a trustee of the piano for his wife.

Riddell, for plaintiff.

J. W. Kerr, for defendants.

CHANCERY DIVISION.

Div'l. Ct.] [June 19.

CAMPBELL V. COLE.

Married woman—Separate trader.

The plaintiff, a married woman, professed to be carrying on business separate from her husband, but the latter got his means of subsistence out of the profits of the business, took ready money as he pleased, was actively engaged in the management of the business, in buying and selling goods, conducting correspondence, keeping books, etc., and in the transaction in which the debt to the defendant was incurred appeared as principal, though husband and wife swore that he was in all things but the wife's agent. The goods in the shop having been seized under the defendant's execution and claimed by the plaintiff; the jury in an interpleader issue found for the plaintiff, but the Court set aside the verdict and directed judgment to be entered for the defendant.

Osler, Q.C., for the claimant.

Cassels, C.C., and *Stonehouse*, for the execution creditor.

Div'l. Ct.] [June 14.

IN RE WINSTANLEY & CARRICK.

Vendors and purchasers' Act—Will, construction of—Devise in fee simple—Partial restraint on alienation.

After devising certain land to one of his daughters, the testator proceeded: "the remaining lot . . I bequeath to my daughter, E. R., and that she shall not dipose of the same only by will and testament, and if either of my daughters shall depart this life without leaving issue, then and in such case the survivor shall be possessed of the share of the deceased sister."

Held, on appeal from the judgment of PROUDFOOT, J., that E. R. took an estate in fee simple with an executory devise over, but that the restriction upon alienation, being partial, was valid.

J. H. McDonald, for vendor.

W. N. Miller, for purchaser.

Div'l. Ct.] [June 19.

BANK OF TORONTO V. HALL.

Execution — Partnership and separate creditors — Priority of writs.

L. having a judgment against a firm of R. & Co., which was in insolvent circumstances, issued execution and directed the sheriff to levy the amount on the separate goods of R., a member of the firm. The plaintiffs had a subsequent execution in the sheriff's hands, issued upon a judgment against R. individually, and the sheriff was directed on this writ to levy the amount on the goods of R. The sheriff sold R.'s goods and applied the proceeds first upon L.'s execution, after verbal notice from the plaintiff that they claimed the proceeds of R.'s separate property as applicable first to their writ. The plaintiffs then brought this action against the sheriff for a false return.

Held (PROUDFOOT, J., dissenting), reversing the judgment of PROUDFOOT, J., that L. had priority over the plaintiffs' writ on the separate goods of the debtor.

Per PROUDFOOT, J., the equitable principle of administering an insolvent estate between separate and partnership creditors should be applied, and priority given to the plaintiffs on the separate property of the debtor.

Robinson, Q.C., for plaintiff.

G. T. Blackstock, for defendant.

Div'l. Ct.] [June 19.

IN RE CORNISH.

Mechanic's Lien—Two successive contractors—Liens of creditors of first contractor—Computation of ten per cent.

A contractor having performed a certain amount of work on a building, failed to complete it, whereupon his surety entered into an agreement with the owner to complete it. Creditors of the original contractor now claimed liens for material furnished.

Held, that the ten per cent. of the contract price

which the owner was bound to retain to meet such liens should be computed upon the price payable to the original contractor *for the work done* by him.

Snelling, and *G. H. Ritchie*, for the lien holders.

A. Cassels, for the owner.

Ferguson, J.] [May 14.

GARDINER v. CHAPMAN.

Riparian proprietor—Canal—Polluting waters—Injunction—Rideau Canal—Rights of Riparian proprietors.

Held, that the plaintiff was entitled to an injunction restraining the defendant from constructing certain works which would interfere with the plaintiff's rights as a riparian proprietor on the banks of the Rideau Canal.

There was a continuous sheet of water from the plaintiff's land to the track of vessels navigating the canal, of sufficient depth to be navigable for boats of considerable size. This sheet of water was not part of the canal proper, though a portion of the river through the bottom of which the canal was constructed.

Held, that the plaintiff had the same rights in respect of this sheet of water as he had in respect of the canal under the Act 8 Geo. IV., cap. 1, sec. 157, which enacts that it shall be lawful for owners and occupiers of lands adjoining the canal to use any boats thereon for the purpose of husbandry, etc.

Walkem, Q.C., and *J. B. Walkem*, for plaintiff.

Britton, Q.C., and *McIntyre*, Q.C., for defendant.

Ferguson, J.] [June 11.

HILL v. HILL.

Administration — Accounts — Costs of establishing second will—Allowance to executor of first will—Tenant for life—Repairs—Costs.

The defendant being executrix under a first will paid out of the estate the costs of an action brought to test the validity of this will as against a subsequent will which resulted in the second will being established. The evidence at the trial showed that for many years the testator had been mentally and physically weak, and many witnesses thought that he was incapable of making a will at the time the second was made. Under an order of reference to take the accounts of the defendants as executrix under the first will the Master allowed to the defendant in her accounts the amount of costs paid.

Held, on appeal that the Master rightly allowed them.

The defendant was tenant for life under the will, and the testator further devised to her the income of all investments of which the testator died possessed for her own use and also the principal of such investments as she might require to use for her own benefit. She repaired the buildings on the land of which she was tenant for life out of the investments bequeathed to her, and the Master allowed her this sum in her account.

Held, that the amount was properly allowed.

The defendant took out probate under the first will and acted as executrix thereunder until the second will was established. The judgment in this case directed a reference to ascertain the amount with which she was chargeable, and an account of her dealings with the estate.

Held, that the costs of all parties, including the defendant, should be paid out of the estate.

Plumb, for the plaintiff.

Howell, for the defendant.

Ferguson, J.] [June 12.

CLARKE v. THE UNION FIRE INSURANCE CO.

Insurance—Lex loci contractus—Agency.

The defendants signed and sealed policies in blank and sent them to an agent in New York who, on effecting an insurance, filled up and delivered them. The policy in this case was delivered August 8th, 1880; the fire occurred August 10th, and the premium was paid by cheque August 11th, which cheque was accepted by the New York agent and forwarded to Toronto, the Co.'s head office, but was returned by the Co. and refused.

On an attempt to prove a claim under the policy in the Master's Office it was contended that the filling up and the issuing of the policy in New York (and the acceptance by the agent there of the premium—which was a cheque payable to the order of the Co.—brought the contract within the laws of the State of New York), would bind the Co., but the Master held (19 Can. L. J. 363) that the contract was made in Toronto, where the policy was signed and sealed; and on an appeal from the Master it was

Held, that the Master was right. That the contract was governed by the law of Ontario. That the law defining the business engagements is that of the place where the corporation has its seat. That the agent in New York had no authority to bind the Co. by any contract not in accordance with the policy sued on, and that he had no power to settle any disputed matters, as they had to be referred to the principal whose place of business was in Ontario.

Falconbridge, for the claimants.

Foster, for the plaintiff.

Bain, Q.C., and *A. C. Galt*, for the defendants.

Boyd, C.] [June 19.

MARTIN v. EVANS.

Judgment—Action on to set aside invalid assignment—Technical defect in judgment—Partnership and separate creditor—Costs.

In an action on a County Court judgment to set aside an assignment for the benefit of creditors as invalid, it is no defence that the County Court judgment was signed in pursuance of an order under Rule 324, which was made in chambers instead of in court, the time for moving against it in the County Court having elapsed.

An assignment by a partner of his separate estate which placed his partnership creditors on an equality with his individual creditors was held bad.

Wilson and *Bell*, for plaintiff.

Atkinson and *Christie*, for defendent.

Proudfoot, J.] [June 25.

BALL v. THE CROMPTON CORSET CO.

Patent of invention — Invention — Infringement — Patentable article—Mechanical equivalent.

F. was the patentee of an article, and in an action for alleged infringement of the patent the defendants set up that S. was the inventor. It appeared that F. and S. applied for a joint patent in the U. S. A., both alleging that the article was F.'s invention. Being told that a joint patent could not be granted, the invention was patented in F.'s name alone. S. afterwards interfered and evidence was taken, but S. finally abandoned his claim, as he said for want of means to prosecute it.

Held, on this evidence that the defence that S. was the inventor was not made out. The plaintiff's patent was for an article known as "Florsheim's Gore," part of the description of which was "in an elastic gore, gusset, or section, . . the springs arranged in groups and made of a continuous length of coiled wire." The defendants manufactured a similar gore, the only variation being that, instead of continuing the coiled spring from group to group of the spring, they severed the wire and connected the groups of springs with a cord.

Held, merely an attempt to evade the patent, and that it was an infringement.

A patent was granted in England in 1866 to M. for improvements in the manufacture of elastic gussets, which, instead of weaving India rubber springs into the fabric, the India rubber springs were secured between two pieces of material by stitching in parallel lines along each side of the rubber spring, and instead of inserting the rubber springs in separate pieces, the rubber after traversing the fabric was turned round and caused to return parallel to its first course and secured by stitching the fabric alongside of it as before, thus making a continuous spring. A process of puckering the fabric in stitching it was also described in the patent, and a mode of making a margin of inelastic material. The plaintiff's patent substituted a coiled wire spring for India rubber and inclosed it in a tube and arranged the tubes in groups; the springs did not extend to the margin, but were stayed at their ends by inelastic material, and the spring was continuous.

Held, that the coiled wire was only a mechanical equivalent for the India rubber spring, and that it did not possess any element of invention.

Held, also, that the arrangement of the tubes in groups was not new, nor was it a patentable invention.

Cassels, Q.C., and *Akers*, for plaintiff.

Maclennan, Q.C., *Osler*, Q.C., and *Biggar*, for defendants.

Osler, J.A., and Ferguson, J.] [June 30.

CANADA ATLANTIC RAILWAY CO. v. THE CITY OF OTTAWA.

Railway Bonus.

Judgment was given in this, sustaining the judgment of Proudfoot, J.

Gormally, for plaintiffs.

Maclennan, Q.C., and *McTavish*, for defendants.

Ferguson, J.] [June 30.

HILL v. MACAULAY.

Assessment and taxes—Invalid assessment—Tax sale.

Where the plaintiff's land was assessed as one with that of another proprietor adjoining it for several years, and was finally sold for the arrears of taxes so charged.

Held, that the assessment was bad and the sale void.

Held, also, that the case did not come within R. S. O. cap. 180, sec. 118, which provides that the treasurer may, on receiving satisfactory proof, that any parcel of land on which taxes are due has been subdivided, he may receive the proportionate amount of tax chargeable upon any of the subdivisions and leave the other subdivision chargeable with the remainder, and that he may divide any parcel returned as in arrear into as many parts as the necessities of the case may require.

Dougall, Q.C., and *Holton*, for the plaintiff.

Cassels, Q.C., and *Clute*, for the defendant.

COMMON PLEAS DIVISION.

MCKAY v. CUMMINGS.

Malicious arrest—General issue by statute—Necessity of pleading—Evidence.

In an action for malicious arrest it appeared that the plaintiff, a guest at an hotel in St. Catharines, on awakening in the morning at about six o'clock, discovered that he had been robbed of his gold watch and chain and about $50 in money. He sent for the chief of police, and on his arrival met him on the street outside the hotel, informed him of his loss, and requested him to search the house, which the defendant refused to do without a search warrant. An altercation then took place which ended in defendant calling plaintiff an impostor, and arresting him and taking him to the police station, when, after being detained for a few minutes, he was discharged. The defendant attempted to justify his action by stating that he arrested plaintiff for breach of one of the city's by-laws in swearing on the street, but the evidence failed to establish that this was the cause. The jury found a general verdict for the plaintiff with $200 damages. They also specially found in answer to a question to that effect put to them, "that the defendant honestly believed that his duty as constable called upon him to make the arrest." The learned judge thereupon entered a nonsuit holding that defendant should have received notice of action. The general issue by statute, R. S. O. ch. 73, was not pleaded, and the statement of defence was not framed so as to enable defendant to avail himself of it, and there was no evidence on which the special finding of the jury could be supported.

Under these circumstances the nonsuit was set aside and judgment entered for the plaintiff with the $200, the damages assessed.

Osler, Q.C., for the plaintiff.

J. K. Kerr, Q.C., for the defendant.

SUTHERLAND v. COX, ET AL.

Brokers—Agreement to carry stock on margin—Failure to purchase stock—Right to recover margin—Custom.

The defendants assumed a contract made by the plaintiff with one F., a broker, under which F. was to carry 500 shares of Federal Bank stock on margin for the plaintiff for a definite time. The defendants received from F. $3,440, margin paid to him by plaintiff, but it appeared that defendants never had and did not carry any stock for the plaintiff, but was, as it is termed, "short" on this particular stock.

Held, that the plaintiff was entitled to recover from the defendants the amount so paid over to them as margin.

The custom of brokers commented on.

D. E. Thomson and *Henderson*, for the plaintiff.

J. K. Kerr, Q.C., and *Lash*, Q.C., for the defendants.

MCKERSEE v. MCLEAN.

Seduction—Service—Right to maintain action.

In an action of seduction it appeared that the girl seduced was the grandniece of the plaintiff. On her father and mother's death, which occurred when she was about twelve years old, she went to live with the plaintiff, and from thence went out to service to various persons, and at the time of the seduction and for three years previously was in service with one C., retaining the wages she earned for her own use. While in C.'s service she was seduced

by defendant in the month of April, she being at that time about nineteen years old. In June following she went to Detroit for a couple of weeks, and from thence to the plaintiff's, where she resided until she was sick, when she went to the hospital, where she was confined. While at the plaintiff's she worked and did whatever was required of her; the plaintiff treated her as if she was at home, as her guardian.

Held, that the plaintiff could not recover, for that the right of action for the alleged wrong was not vested in the plaintiff but in the person, who was master of the girl at the time of her seduction.

Ashton Fletcher, for the plaintiff.
J. K. Kerr, Q.C., for the defendant.

RICHARDSON v. JUNKIN.

Trespass — Title to land—Pleading—O. J. Act, Rules 128, 148—Costs.

By Rule 148 every material averment alleged in the former pleading is not to be taken as expressly claimed, unless expressly admitted by the pleading of the opposite party, but that the silence as to any allegation—which, read with Rule 128, means every material allegation —is not to be sustained into an implied admission. When, therefore, silence is not maintained, but an answer is given which is insensible, if it is not to be read as admitting certain statements in the former pleading, such statements must be taken as admitted.

A statement of claim alleged that defendant entered into possession of the plaintiff's premises under a verbal lease for a year: that he left before the expiration of his term, and wrongfully removed, and took away and converted to his own use, certain fixtures which had been put in by the defendant under an agreement with plaintiff whereby plaintiff remitted three months rent; and alleging by such removal and conversion injury to the premises and loss to the plaintiff. The statement of defence alleged that in order to render said premises fit for the purpose required, namely, a shop, it was necessary to refit the premises by putting in the fixtures in question, it being agreed that on defendant leaving he should be allowed to remove said fixtures. At the trial the jury found for the plaintiff with $50 damages, and the learned judge refused to certify to entitle the plaintiff to full costs. The taxing officer ruled that without a certificate the plaintiff was only entitled to tax Division Court costs, with a right to the defendant to set off full costs and he taxed the costs accordingly. The plaintiff appealed to Galt, J. in chambers, who affirmed the taxing officer's ruling.

Held, on appeal to the Divisional Court, affirming the judgment of Galt, J., that the effect of the statement of defence was to admit the agreement and the entry thereunder, and the only question in issue was the right to remove the fixtures, and, therefore, the title to land did not come in question, and plaintiff, without a certificate, was not entitled to tax full costs.

It was urged that because the defendant failed in his defence he was not entitled to costs of and subsequent to his statement of defence.

Held, that this might have been urged before the judge at the trial for the exercise of his discretion, but was not a ground for appeal.

George Bell, for the plaintiff.
Aylesworth, contra.

HEPBURN v. PARK.

Chattel mortgage—Preference—Consideration—Statement of.

In the case of a mortgage of goods, in order to create a fraudulent preference, not only must there exist a fraudulent intent in the mind of the mortgagor, but also in that of the mortgagee.

In this case it was objected that there was such fraudulent intent. The learned judge at the trial found, and the Divisional Court sustained his finding, that there was no such intent on the part of the mortgagee. The Court was also of opinion that the evidence would warrant the conclusion that no such intent existed on the mind of the mortgagor. The mortgage was, therefore, held good.

Part of the consideration of the mortgage was covered by a note, which was discounted by the mortgagee at a bank. The mortgagee being a merchant and having received the note in course of business from his customer.

Held, that from the mere fact of the note being discounted at the bank, the Court could

not assume that the debt represented by the note must be deemed to be paid, and the remedy on the note to be alone looked to; and therefore the amount of the indebtedness on the mortgage could not be said to be untruly stated.

MacKelcan, Q.C., for the plaintiff.

Walker (of Hamilton), for the defendant.

REG EX REL. STEWART V. STANDISH.

Public schools—Trustee—Contract—Vacating seat.

When a school trustee, who was a medical practitioner, acted on his professional capacity under engagement by the Board in examining the pupils attending the school as to the prevalence of an infectious disease, and made a charge of $15 therefor, which the Board ordered to be paid.

Held, that this disqualified him as such trustee, and rendered his seat vacant.

A rule for leave to exhibit an information in the nature of a *quo warranto* to test defendant's right to retain his seat was decided to be made absolute without costs, unless within ten days the defendant should admit he had forfeited his seat, and consent to the board declaring it vacant, in which case the rule was to be discharged without costs.

Alister Clark, for the applicant.

Caswell, for the respondent.

WALTON V. SIMPSON.

Contract—Fraud—Waiver—Finding of jury.

A contract induced by fraud is not void, but voidable, merely at the option of the party affected or prejudiced thereby; and when the party affected adopts the contract induced by fraud, the discovery of a new incident of the fraud does not revive the right to repudiate.

In this case, there being no finding by the jury that the defendant had knowledge of and had waived the fraud, a new trial was directed.

Bethune, Q.C., for the plaintiff.

Akers, contra.

TUCKETT V. EATON.

Seizure after payment of debt—Malice—Damages excessive.

After the amount of a judgment recovered in a Division Court had been paid, the plaintiff's goods were seized by the Division Court bailiff under an execution issued thereon. In an action for such seizure the jury found for the plaintiff with $1,500 damages.

Held, under the circumstances set out in the case, the damages were clearly excessive.

Held, also, that the action would not lie without proof of malice, and that no malice was shown.

Osler, Q.C., for the plaintiff.

Shepley, for the defendant.

LANDREVILLE V. GOUIN.

Accident—Snow and ice falling from roof of house—Liability—Notice.

In an action for damages sustained by the plaintiff, who was walking along the street, by reason of snow and ice falling from the roof of the defendant's house and injuring him, it appeared that about half an hour before the accident happened the defendant was notified of the dangerous character of the roof, but took no precautions to prevent an accident.

Held, Rose, J., dissenting, that the defendant was liable.

Hector Cameron, Q.C., and *Frank Macdougall*, for the plaintiff.

McCarthy, Q.C., for the defendant.

MCCLURE V. KREUTZEGER.

Sale of goods—Acceptance—Quantum meruit.

The defendant purchased from the plaintiff a carload of "No. 1 green hoops," to be delivered at the railway station. On the arrival at the station they were removed by the defendant to his own place, and some of the hoops were used by him. He then wrote to the plaintiff that he was astonished at his sending such dry and rotten hoops for first-class green hoops and if he had seen them before they were at his place, he would not have touched them; that there were only 7,300 in the car instead of 7,400, as stated by plaintiff; that he enclosed a bill which was the amount he intended to pay, and not a cent more, because they were not worth that; and if plaintiff would accept the amount offered, to let defendant know by return mail and he would remit. In answer to this the plaintiff, through a solicitor, threatened

suit, when defendant replied that if plaintiff would not accept this he must go on and sue.

Held, that there was evidence to go to the jury of an acceptance of the hoops and agreement to pay on a *quantum meruit*.

Bethune, Q.C., for the plaintiff.

Clement (of Berlin), for the defendant.

COMMERCIAL NATIONAL BANK OF CHICAGO v. CORCORAN.

Foreign corporation—Right to hold goods—Transfer of—Warehouse receipts—Bills of Sale Act—Banking Act.

Interpleader issue to try the title to goods.

C. & Co., carrying on business in Chicago, in the State of Illinois, for the manufacture of mill machinery, had certain machinery manufactured for them in Stratford, Ont., by the T. & W. manufacturing company, which was warehoused with M. & T. at Woodstock, Ont. C. & Co. being pressed by the plaintiffs, their bankers in Chicago for collateral security for two of their notes of $5,000 each, discounted by the bank, endorsed over to the bank the warehouse receipts for these goods. At the maturity of the notes, C. & Co. not being in a position to retire them, in pursuance of an arrangement made to that effect, the warehouse receipts were cancelled and new ones, dated 12th October, 1883, made out direct to the plaintiffs. On 3rd September, 1883, C. & Co. had made an assignment to a trustee for the benefit of their creditors. On 22nd November the defendants placed a writ of execution in the sheriff's hands against C. & Co., under which these goods were seized. It was expressly found that there was no fraudulent preference or intent.

Held, that the plaintiffs, a foreign corporation, could hold personal property in Ontario; that, C. & Co. being resident in the State of Illinois, the transfer of the property must be governed by the law of that State, according to which it was ruled, subject to whatever rights the trustee for creditors had, that the effect of the warehouse receipts to the plaintiffs was to transfer the property and possession in the hands of the plaintiffs subject to the trustee's rights, and, therefore, there being a change of possession, the Bills of Sale and Chattel Mortgage Act did not apply.

Held, also, that the Banking Act did not apply.

The goods were, thefore, held to be the plaintiffs as against the defendants.

J. K. Kerr, Q.C., for the plaintiffs.

Idington, Q.C., for the defendants.

LAW v. CORPORATION OF NIAGARA FALLS.

Municipal corporation—Drainage—Liability for overflow.

Many years before defendants' municipality was laid out, a culvert was constituted by one F., for a railway company on their lands, which adjoined the creek in question. By reason of the culvert the water brought down by the creek was not carried off, but overflowed on to the plaintiff's land. The creek was the natural drain for the surrounding country, but defendants used it to a small extent for the drainage of the town. It was expressly found that the flooding would not have been occasioned by the water brought down through the defendants uses of the creek; but that the water brought down from the area drained apart from defendants' uses would have alone caused the damage.

Held, that the defendants were not liable for the damage sustained.

J. K. Kerr, Q.C., for the plaintiff.

Osler, Q.C., for the defendants.

CAIN v. JUNKIN.

Crown grant—Error—Evidence—Possession.

In 1851 J. purchased the whole of lot 20 from the Crown, the lot nominally containing 200 acres, and described in the Crown Lands books as containing 175 acres, more or less. On 30th October, 1852, before taking out his patent he sold and assigned by a written assignment to R. the east half or part of the lot described as "seventy-five acres, neither more nor less." In 1863 R. sold to B. his interest in the parcel described as containing seventy-five acres, more or less, and as being composed of the east part of the lot. On 22nd July, 1883, B. took out a patent for his portion, the land being described as seventy-five acres, more or less, being all the lot except the west 100 acres. On 28th August, 1868, J., who retained all he had not sold to R., took out a patent himself, the land being described as the west 100 acres,

without the words more or less, these words having been erased from the printed form on which the patent was written. Subsequently B. reconveyed to R., through whom the plaintiff claimed by mesne conveyances, the plaintiff claiming as one of the heirs of his father, and as having acquired the title of the other heirs. J., after obtaining his patent, conveyed the northerly and southerly portions respectively of the 100 acres to his two sons, James and William, respectively. About the time J. took out his patent, by instruction from the plaintiff's father, a surveyor ran a line dividing the seventy-five acres from the one hundred acres; and in 1874 produced another line over that run under instructions to lay off the seventy-five acres, which he did, and plaintiff's father and the defendant jointly erected a fence on such line. The actual acreage it appeared exceeded 175 acres by some eleven acres, the surplus coming within the portion patented to B. The actual occupation under B.'s patent was confined to the seventy-five acres.

Held, that under the circumstances it could not be held that the patent to B. was issued in error, so as to enable the defendants to claim the surplus of eleven acres.

Held, also, that defendants failed to show any possessory title to such surplus except as to a small portion thereof.

Pousette, for the plaintiff.

Hudspeth, Q.C., and *G. H. Watson*, for the defendants.

WHEELER ET AL. v. WILSON.

Company—Stock, cancellation of—Fraud—Laches.

The defendant was an original shareholder in a joint stock company, and as holder thereof was elected a director. Before being elected, a statement, prepared by the company's secretary was published by them, setting forth that the company was in a flourishing condition and earning a ten per cent. dividend. On the faith of such statement defendant subscribed for new shares in the company. Soon afterwards the defendant suspected that the statement was incorrect and threatened legal proceedings to compel the company to cancel the stock, whereupon a resolution was passed directing the books to be examined, and on such examination the statement was found to be false and misleading, and the company practically insolvent. A meeting of the shareholders was then called and a by-law passed cancelling the stock. After the defendant's subscription for the new stock, and before the cancellation, as also before the defendant became aware of the falsity of the statement, the plaintiff became a creditor of the company. The plaintiff obtained a judgment against the company, and sued defendant for the amount of the new stock unpaid by him.

Held, that the plaintiff could not recover; that there was power to cancel the stock; that the cancellation was duly made; and that the defendant was not guilty of any laches.

Allan Cassels, for the plaintiff.

J. K. Kerr, Q.C., for the defendant.

Burton, J.A.]

MOFFAT v. SCRATCH.

Crown grant—Surrender—Evidence of.

Certain land was granted by the Crown to one W., but subsequently in consequence of an alleged surrender of the land to the Crown, a new grant was made to the defendant's vendor, after the form of W.'s patent, and before the alleged surrender the land was sold for taxes. The only evidence of the alleged surrender was an endorsement on the back of the new patent, which stated that the land was surrendered by one M., the attorney mentioned the annexed power, but no power of attorney was produced, and the surrender was signed by M. as principal, and not as attorney for any named principal.

Held, in ejectment, that under the circumstances, the plaintiff claiming under the tax title was entitled to recover the land as against the defendant claiming under the new patent.

J. H. Ferguson, for plaintiff.

T. M. Morton, for defendant.

Osler, J.A.]

CAMERON v. CANADA FIRE AND MARINE INSURANCE COMPANY.

Insurance—Proofs of loss—Delivery as soon as possible after fire—Actual cash order of property—Property outside of Ontario—R. S. O. ch. 162.

The Fire Insurance Policy Act, R. S. O. ch. 162, does not apply to property outside of Ontario.

Action on a policy of insurance against fire and

packing, etc. By one of the conditions of the policy, it was provided that the proofs of loss should be delivered as soon after the fire as possible. The fire occurred on the 17th September, 1881, and the proofs of loss were not delivered until the middle of May, 1882, when they were objected to and returned to the insured who re-delivered them in the same condition in the month of July following. The only reason given for not delivering them sooner, was that it was not convenient to do so.

Held, that the condition was not complied with.

Another condition required that the proofs of the loss or damage was to be estimated according to the actual value of the property, *i.e.*, what it could have been actually sold for in cash at the time of loss, and the affidavit should state the actual cash value of the property. In the printed form of proofs of loss, which were used, the words actual cash value were struck out and a statement substituted giving the cost of replacing the whole property destroyed, and the cost of the property at the time it was put into the ice-house being in 1880, a year previous to the insurance being effected.

Held, this was not a compliance with the conditions.

Under these circumstances there would be no recovery on the policy.

Rose, J.]

RE MILLOY AND CORPORATION OF ONONDAGA.

By-law—Animals running at large—Unreasonableness—Mode of enforcing penalties—Indians and Indian Lands—Motion to quash amending by-law after year from passing of original by-law.

By by-law No. 84, passed by the Township of Onondaga, on the 29th May, 1882, certain animals therein named, were prohibited from running at large. Clause 5 provided *that except between the 10th May, and the 1st December in any year*, it should not be lawful for the owners of any other animals not thereinbefore mentioned or indicated to allow or permit the same to run at large. Clause 6 imposed a fine or penalty not exceeding $5 for every offence, but the imposition of any such fine was not to relieve the animals from the operation of any by-law relating to pounds or poundkeepers, or for any trespass or damages committed or done by them, by reason of their being so permitted to run at large. Clause 7 provided for the recovery of fines or penalties (not adding the words "and costs") under sec. 421 *et seq.* of the Summary Convictions Act, and in the event of no distress for imprisonment, etc., unless such fine or penalty and costs, including costs of committal, be sooner paid. By by-law No. 97, passed on 9th July, 1883, after reciting that the object was to prevent all animals of any age or description running at large at all seasons of the year, amended by-law 84 by striking out from Clause 5 the words in italics. A motion to quash By-law 97, was made after a year from the passing of By-law 84, but within the year after the passing of By-law 97.

Held, that the by-law was not oppressive and unreasonable as extending to all animals and all seasons of the year, inasmuch as the by-law was no wider than the statute under which it was passed.

An objection that the provision of the by-law as to levying fines, was *ultra vires* in that sec. 492, sub-sec. 2, provided a mode of recovery, *i.e.*, by sale of the animals impounded, and hence that secs. 421 *et seq.* did not apply; but held that the objection was taken under a misconception of facts in that the by-law was not nor did it profess to be a pound by-law; and it was by no means clear that these sections would not apply to a pound by-law.

Quære as to the effect of the omission of the errors "and costs" in the clause providing for the penalty, but as these were not taken in the rule, it was not considered.

A further objection was that the by-law should have been limited in its provisions so as not to extend to the Indian lands within the township; but the learned judge refused to quash on this ground (1) because the quashing a by-law is not imperative but discretionary; (2) and if it were quashed the original by-law would remain. (3) It would only be quashed, as to the Indians and Indian lands. (4) The applicant is not prejudiced and this is not a substantial objection. (5) and the Indians who are alone affected are not complaining.

The cases in which an amending by-law may be moved against, after the expiry of a year from the passing of the original by-law considered.

V. Mackenzie, Q.C., for the applicant.

Wilson, Q.C., contra.

Law Society of Upper Canada.

OSGOODE HALL.

EASTER TERM, 47 VICT., 1884.

During this term the following gentlemen were entered on the books of the Society as Students-at-Law:—

Graduates—C. I. T. Gould, S. C. Warner, W. T. Kerr, Ernest Heaton, F. M. Field, John A. Davidson, H. H. Langton.

Matriculants—A. A. McMurchy, J. F. Edgar, A. L. Baird, J. A. Macdonald.

Juniors—A. McDonell, J. G. Gauld, C. D. Scott, H. Scott, H. F. Errett, J. G. Kerr, T. Graham, W. J. McKay, H. Millar, W. B. Scane, D. T. K. McEwan, C. Pierson, E. M. Lake, R. M. Thompson.

The following gentlemen were called to the bar, namely:—

David K. I. McKinnon, honor man and gold medalist; Alexander Mills, honor man and bronze medalist; Alexander W. Ambrose, Alfred Craddock, Edmund Sweet, William J. Code, William A. Dowler, Andrew C. Muir, Edwin R. Reynolds, Thomas B. Shoebotham, Charles H. Cline, James W. Hanna, Robert N. Ball, Gerald Bolster, Robert Christie, William Cook, Robert A. Pringle, Jos. Walker, Arthur W. Morphy, John W. Russell.

BOOKS AND SUBJECTS FOR EXAMINATIONS.

Articled Clerks.

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

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

Students-at-Law.

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

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

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a Selected Poem:—
1884—Elegy in a Country Churchyard. The Traveller.
1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,
Translation from English into French prose.
1884—Souvestre, Un Philosophe sous le toits.
1885—Emile de Bonnechose, Lazare Hoche.

or NATURAL PHILOSOPHY.

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

First Intermediate.

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

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

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Gov-

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

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

For Certificate of Fitness.

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

For Call.

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

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

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

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

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

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

5. The Law Society Terms are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FEES.

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

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