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IT is always well that people should act up to their convictions. Mr. R. J. Wicksteed, of the Law Department in the House of Commons, having taken strong ground to the effect that a notary public should be required to take an oath of office, called upon the judge of the County Court to administer to him, as a notary, an oath in the form usually taken by these officials in England. We do not quite see the authority that the county judge had for administering the oath, except on the principle alluded to by a well-known text writer, that judges frequently act without law, and in some cases have power to make rules for their own guidance. We think Judge Ross must have had these two propositions in his mind when he administered the oath.

REPORT OF THE MASTER OF TITLES.

The last Report of the Master of Titles shows that the Torrens system of registration of titles is making satisfactory progress. Although the actual volume of business done in the Toronto office during the past year appears to have been somewhat less than in the preceding year, and notwithstanding the reduction of the fees of office, it is satisfactory to find that the receipts were still more than sufficient to cover the expenses of the office by $1245.45. During the year, land to the value of $922,680 was brought under the Act. The present value of lands now under the Act in the County of York is estimated to be no less than $11,000,000. The amount at the credit of the Assurance Fund is now $13,318.27, of which $12,365.38 has been paid in respect of lands in the County of York, and the remainder, $952.89, in respect of lands in the districts.

The petty expense of bringing the land under the Act in the case of newly-patented lands in the districts is, we find from the Report, very unreasonably regarded as a grievance, notwithstanding the expense is less than would be incurred if the patent were registered in full under the old method of registration.

The table appended to the Report is interesting; it shows the value of each parcel brought under the Act during the past year, and the office fees paid on each parcel. The comparatively small amount of these fees must strike everyone with some surprise. The highest amount paid for fees was $76.70, in respect of a parcel valued at $7,100. But the fees for registering two other parcels valued at $20,000, and another valued at $50,000, were only $6.50. The fees, we presume, vary with the circumstances of each case. Those in which the title is short and free from difficulty involve a very trifling outlay, while those where the title is more involved necessitate a larger expenditure.

On the whole, we think the public is to be congratulated on the low average of office fees required on a first registration. According to the table this appears to be, on fifty-eight applications, and property valued at $922,680, only 15½ mills in the dollar.

CONSTITUTIONAL LAW IN THE UNITED STATES.

"The Unwritten Constitution of the United States" is an attractive title for a book, and we took up Mr. C. G. Tiedeman's recent work with a good deal of interest. Mr. Dicey, in his lectures on the law of the constitution, has done much to make our ideas clear upon the subject of written and unwritten constitutional law, as well as many other things. Unwritten constitutional law is not law strictly so-called at all, it is convention; what may be called constitutional morality. In Mr. Tiedeman's book, therefore, we expected to find much interesting information on conventions of the American constitution, of the same character as those which govern with us such matters as when an adverse vote calls for a resignation of a ministry, the precise limits of the resistance to the popular house which it is open to the second chamber to exercise, and so on. We are compelled to say—after two careful perusals—that Mr. Tiedeman's book is something like a once famous lecture of the late Artemus Ward, entitled "The Babes in the Wood," wherein he was wont to discourse on many and various matters, but declined to make any remarks upon the unfortunate babes, because he said he was sure his audience knew much more about them than he did. Almost, if not quite, the only chapters in Mr. Tiedeman's book which really deal with unwritten constitution seem to be those on the Electoral College, and the re-eligibility of the President. The conventional rule which grew up so early in American constitutional history, that the presidential electors were not entitled to exercise any discretion of their own in the choice of a President, though undoubtedly the intention of the written constitution was that they should do so, does seem to us to fairly come within what are known as unwritten constitutional rules, and so, certainly, does the rule (so far as it really exists) that no man shall have more than two terms of office as President.

There seems to us a good deal of confusion of thought in this little book, though in many ways its chapters are interesting. Wherever by virtue of judicial decisions, or otherwise, a departure from the literary theory of their written constitution has established itself among the Americans, the author claims that as part of the unwritten constitution. For example, in the chapter on the inviolability of corporate charters and of charter rights, Mr. Tiedeman deals with the interpretation placed by the courts upon that clause of the constitution which provides that "No State shall pass any law * * impairing the obligation of a contract," commencing with the Dartmouth College case onwards. But the decisions of the courts on constitutional points, recorded and referred to thereafter as precedents, form part of the written constitutional as much as any statute or fundamental document. It certainly is most strange to

see decisions of the judges treated as unwritten law. Again, we think a study of Professor Dicey's lectures would have prevented this confusion of terms.

If Mr. Tiedeman had been content with the alternative title to his work given on his title page, viz., "A Philosophical Inquiry into the Fundamentals of American Constitutional Law," it would, we think, have designated more accurately the actual contents of the book than the title which he places more prominently forward. It certainly more correctly designates the contents of the interesting chapter on the origin and development of constitutional law, in which the development of the American constitutions, Federal and State, is traced out, and that on the doctrine of natural rights in American constitutional law.

The chapter on the constitution in the war of secession explains how the President successfully resisted writs of *habeas corpus* issued by the proper tribunals during the time of the war, taking upon himself to substitute martial law for civil law, and says our writer: "Even though there be an inexplicable contradiction between the practices of military rule and the express limitation of the written constitution, the rule which is actually enforced in time of war is the true constitutional rule, and not that which in time of peace the Supreme Court of the United States declares to be the proper rule." This seems to us a very anarchical doctrine, and to rest upon a confusion of thought, but it well illustrates a main idea of the writer of this work. Mr. Tiedeman is full of the idea, no doubt perfectly true in a certain sense, that constitutional law, as in fact all other law, is "the resultant of all the social and other forces which go to make up the civilization of the people." But Mr. Tiedeman is apparently not willing to wait until this resultant has taken the form of a properly constituted enactment or law in the ordinarily accepted meaning of the word. In the first chapter he quarrels with Austin's definition of a law, as "a rule of conduct prescribed by the supreme power of the State." We confess we are on the side of Mr. Austin. This, says Mr. Tiedeman, has led to the general adoption, "as an axiomatic truth, of a most serious error concerning the origin and development of municipal law." But Austin is not speaking of the origin and development of municipal law; he is speaking of what municipal law is after it has been originated and developed. Mr. Tiedeman prefers to say that a legal rule is "the product of social forces reflecting the prevalent sense of right" (p. 9). Would the Austin school of jurists, he asks triumphantly, "claim that there was no law on the borders of American civilization, where the only government is the vigilance committee, and where the only court of justice is presided over by Judge Lynch?" We fear that Mr. Tiedeman does not distinguish clearly between morality and law. There is a morality in such a community, and by vigilance committees, White Caps, *et hoc genus omne*, that morality may be very forcibly imposed upon recalcitrants; but the rules of this morality are not rules of law, because they are not enactments of any permanently constituted body in whom authority has been vested by or on behalf of the community to make such rules and impose them on the people. Where there is no constituted authority, there can be no law, properly so-called.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for June comprise (1891) 1 Q.B., pp. 669-799, and (1891) 2 Ch., pp. 1-185.

HUSBAND AND WIFE—AUTHORITY OF HUSBAND TO DEPRIVE WIFE OF LIBERTY—REFUSAL OF WIFE TO LIVE WITH HUSBAND.

The Queen v. *Jackson* (1891), 1 Q.B. 671, is the now celebrated case in which the right of a husband to seize his wife and detain her in his custody was discussed by the Court of Appeal (Lord Halsbury, L.C., Lord Esher, M.R., and Fry, L.J.). The facts of the case were that the husband and wife were married in 1887, and within five days afterwards the husband went to New Zealand, it then being intended that the wife would follow him as soon as he got settled. During his absence the wife went to live with her sisters and brother-in-law. She wrote to her husband to return to England, which he did, but on his return she refused to live with him. He obtained a decree for the restitution of conjugal rights in the Matrimonial Court, which she refused to obey. The husband then took two other men and seized his wife on a Sunday as she came out of church, and carried her off in a carriage to his own house, where he detained her. A writ of *habeas corpus* was granted at the instance of the wife directed to the husband, whose return to the writ embodied the above facts, and was held to be no answer in law, and the wife was ordered to be set at liberty. The *dicta* in the books as to the power of a husband over the person of his wife, which lay down that a husband may not only confine his wife in custody, but also administer corporal castigation, were denied to be a correct statement of the law, and the result of this decision would appear to be that a husband who desires to retain the society of his wife must rely on moral suasion, and that the law will not uphold him in any physical restraint of her person, or in the infliction of any corporal chastisement. The case has raised a good deal of discussion, some apparently thinking the proper and necessary authority of the husband over his wife is undermined and destroyed; but where a wife's society can only be secured by the exercise of such acts as Mr. Jackson found necessary to adopt, we do not think many husbands will think her society is worth having at all. Where husband and wife cannot live together except on the terms of the husband becoming the wife's gaoler, it is evident that matters have reached such a point that it is better for them to live apart, and it would not be desirable that the law should sanction any compulsory action on the part of the husband to constrain his wife to live with him against her will. The paucity of actual authority to be found in the books on the subject is pretty conclusive evidence that moral and not legal suasion has been sufficient in the past to maintain the marital relationship, and those who are alarmed at this decision have not much foundation for their fears.

ELECTION—STATUTE MAKING ELECTION VALID—VOID ELECTION—DISQUALIFIED PERSON ACTING—PENALTY FOR ACTING WHEN DISQUALIFIED.

De Souza v. *Cobden* (1891), 1 Q.B. 687, is a sort of sequel to *Hope* v. *Sandhurst*, 23 Q.B.D. 79, in which it was decided that women are not eligible for election

under the Municipal Corporations Act of 1882. By s. 41 of that Act a person acting without being qualified liable to a fine not exceeding £50 for each offence, and by s. 73 the Act provides that every election under the Act not called in question within twelve months after the election is to be deemed to have been to all intents a good and valid election. The defendant, a lady, was elected as a member of the council, no proceedings were taken within the twelve months to set aside the election, and after the lapse of the twelve months the defendant acted and voted on five occasions as a member of the council. The action was brought to recover the penalties for so acting. The Court of Appeal (Lord Coleridge, C.J., Lord Esher, M.R., and Fry, L.J.), affirming the decision of Day, J., determined that s. 41 did not apply to elections of persons who were absolutely disqualified, but only to elections which possibly might be good, and that therefore it would not relieve a disqualified person from liability to the penalty under s. 41.

STATUTE—CONSTRUCTION OF STATUTE—RETROSPECTIVE EFFECT OF STATUTE.

In re Williams & Stepney (1891), 1 Q.B. 700, is a case upon the construction of a statute, in which the point was whether or not it was retrospective in its operation. By the Arbitration Act, 1889 (52 & 53 Vict., c. 49), s. 2, "a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule to the Act," one of which is "that the costs of the reference and award shall be in the discretion of the arbitrators or umpire," and by s. 25, the Act "shall apply to any arbitration commenced after the commencement of this Act under an agreement or order made before the commencement of the Act" (*i.e.*, before 1st January, 1890). The arbitration in this case was held after 1st January, 1890, under an agreement made before that date, which did not give power to award costs. The arbitrators nevertheless, acting under the Act, awarded costs. The Divisional Court (Mathew and Day, JJ.) were of opinion that s. 2 did not apply to submissions made before the Act, and that s. 25 merely applied to arbitrations under agreements made before the Act, to those provisions of the Act relating to the conduct of an arbitration, but could not be held to alter the contract of parties without their consent.

LANDLORD AND TENANT—FORCIBLE ENTRY—REMOVING ROOF OF HOUSE—INJURY BY LANDLORD TO TENANT'S FURNITURE—TRESPASS.

In *Jones* v. *Foley* (1891), 1 Q.B. 730, the plaintiff was tenant to the defendant of a cottage, and on the expiration of his tenancy had wrongfully refused to give up possession. The defendant was desirous of rebuilding the cottage, and while the plaintiff was still in occupation the defendant's workmen set to work without any personal violence to remove the roof, and in so doing portions of the roof fell on the plaintiff's furniture and injured it. The action was brought to recover damages for the injury to the furniture. The plaintiff had applied to justices for a warrant under the provisions of a statute, directed to a constable to give defendant possession after the expiration of twenty-one days from the date of the warrant. The twenty-one days had not expired when the proceedings to re-

move the roof were begun. The plaintiff contended that the removal of the roof under the circumstances amounted to a forcible entry, and that until the twenty-one days had expired his possession could not be interfered with. Day and Lawrance, JJ., however, held that the plaintiff had no cause of action, and that the issue of the warrant did not extend the rights of the tenant nor limit those of the lessor. The plaintiff was a trespasser, and the injury done to his furniture was not due to the defendant's act, but to his own obstinacy.

PRACTICE—APPEAL—ORDER, WHETHER INTERLOCUTORY OR FINAL—POINT OF LAW RAISED BY PLEADINGS—ORDER DISMISSING ACTION.

In *Salaman* v. *Warner* (1891), 1 Q.B. 734, a point of law had been raised by the pleadings which had been submitted to the adjudication of the Court, and the result was that the point was determined in favor of the defendant, and the action was consequently dismissed. On an appeal being brought, a preliminary objection was taken that the order of dismissal was a final and not an interlocutory one, and therefore the notice of appeal was insufficient. The Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) overruled the objection. The rule which the Court lays down for deciding whether an order is "final" or "interlocutory" is a somewhat artificial one. It is this: If the decision is one which, whichever way it is given, will finally dispose of the action, it is "final"; if, on the other hand, the decision if given in one way would not finally dispose of the matter in litigation, then it is "interlocutory." In the present case the decision, if it had been given in favor of the plaintiff, would not have finally determined the matter in litigation; therefore the order was "interlocutory," and the objection was overruled.

In ordinary parlance an interlocutory order is generally understood to be an order made on some proceeding arising in the course of an action, and not finally disposing of the action itself. But an order which dismisses the action on a point of law would be generally considered, we think, about as final as it well could be, inasmuch as it would be a bar to any other action for the same cause. From this decision, however, it would appear that this opinion is not well founded.

ASSIGNMENT OF DEBT—ASSIGNEE OF DEBT, RIGHT OF, TO SUE—TRUST IN RESPECT OF MONEYS RECOVERED—JUDICATURE ACT, 1873 (36 & 37 VICT., C. 66), S. 25, S-S. 6—(R.S.O., C. 122, S. 7).

In *Comfort* v. *Betts* (1891), 1 Q.B. 737, the Court of Appeal (Lord Esher, M.R., and Fry and Lopes, L.JJ.) decided that an assignment of a chose in action may be absolute so as to entitle the assignee to sue for its recovery in his own name, under the aforementioned provisions of the Judicature Act (see R.S.O., c. 122, s. 7), notwithstanding there is a trust declared of the proceeds of such chose in action in favor of the assignor and others. In the present case the assignment was made by a number of creditors of the defendant, whereby they assigned their debts absolutely to the plaintiff, on trust out of the proceeds to pay the assignors such proportionate part thereof as should represent the amount of the debt due to them respectively, or such part thereof as might be recovered; and it was held the plaintiff was entitled to sue in his own name.

SHIP—CHARTER PARTY—ADVANCE FREIGHT TO BE PAID, "IF REQUIRED"—DEMAND OF ADVANCE FREIGHT AFTER LOSS OF CARGO—LIABILITY OF CHARTERER.

In *Smith* v. *Pyman* (1891), 1 Q.B. 742, the Court of Appeal (Lord Esher, M.R., and Fry, L.J.) determined that under a charter party entitling the ship-owner to advance freight, "if required," the ship-owner is not entitled to demand advance freight after the vessel is wrecked and the cargo lost.

CRIMINAL LAW—BREACH OF STATUTORY DUTY, WHEN INDICTABLE—REMEDY FOR OFFENCE CREATED BY STATUTE.

The Queen v. *Hall* (1891), 1 Q.B. 747, was an indictment for breach of a duty imposed by statute on the defendant, and a motion was made to quash the indictment on the ground that the statute having imposed a penalty for breach of its provisions, and the offence not having been previous to the statute an offence at common law, no indictment would lie; and after an elaborate review of the authorities, Charles, J., so held, and quashed the indictment. Where a statute, however, imposes an additional remedy for an offence which was previously indictable at common law, there the remedies are cumulative.

STATUTE—CONSTRUCTION.

In *Kennedy* v. *Cowie* (1891), 1 Q.B. 771, a question as to the proper construction of a statute was determined by Day and Lawrance, JJ. The statute in question, which was the Conspiracy and Protection of Property Act, 1875, enacts that it shall not apply to seamen; and the question was whether an offence against a seaman was excluded from the Act by this section; and it was held that, although seamen could not be punished for an offence under it, yet an offence against a seaman was not excluded from the provisions of the Act.

CLAIM AND COUNTER-CLAIM—COSTS—LIEN—SOLICITOR, LIEN OF—MONEY PAID INTO COURT.

In *Westacott* v. *Bevan* (1891), 1 Q.B. 774, the plaintiff claimed £742 for work; the defendants paid £500 into court, with a denial of liability, and also counter-claimed for damages for the plaintiff's delay in completing the work. The plaintiff proceeded with the action, and £426 was found due to him on his claim; and £200 to the defendants on their counter-claim. The plaintiff's solicitor, under a statute of which we have no counterpart in Ontario, claimed a charge on the £500 paid into court for his costs, as being money "recovered or preserved" through his instrumentality; but the Court (Wills and Vaughan Williams, JJ.) were of opinion that although under the English acts the plaintiff might have taken the £500 out of court and abandoned the residue of his claim, yet, as he had not done so, his solicitor, under whose advice he proceeded with the action, could not be said to have "recovered or preserved" the £500, but rather the reverse. It was also argued that at any rate the claim and counter-claim were distinct actions, and therefore the plaintiff's solicitor was entitled to a charge on the £465 recovered on the claim; but the court came to the conclusion that a claim and counter-claim are not for all purposes distinct actions; and here, as the claim and counter-claim arose out of the same transaction, it was only the ultimate balance, after deducting the counter-claim, which could be said to have

been recovered or preserved by the solicitor's exertions. The Chancery Divisional Court at its recent sittings, we believe, came to a similar conclusion in the case of *Flett* v. *Way*.

CONTRACT—JOINT CONTRACTORS—MARRIED WOMAN A JOINT-CONTRACTOR—JUDGMENT AGAINST ONE JOINT-CONTRACTOR—RES JUDICATA.

In *Hoare* v. *Niblett* (1891), 1 Q.B. 781, an attempt was made to establish an exception from the general rule, that a judgment against one of two or more joint-contr ctors discharges the rest in the case where one of the joint-contractors was a married woman, contracting in respect of her separate property; but the Court (A. L. Smith and Grantham, JJ.) decided that the exception could not be maintained.

BANK OF ENGLAND—MANDAMUS—LIST OF STOCK TRANSFERRED TO NATIONAL DEBT COMMISSIONERS—INSPECTION BY PERSON WITHOUT INTEREST.

In *The Queen* v. *Bank of England* (1891), 1 Q.B. 785, an application was made for a mandamus to compel the Bank of England to permit the applicant to inspect a list of unclaimed stock, transferred under Act of Parliament to the National Debt Commissioners. The applicant claimed no personal interest in any stock so transferred, but desired to obtain information for the purpose of his business, which was that of a "next of kin and unclaimed money agent." According to the statute directing the transfer, the bank were required to keep a list of stock so transferred, which list is to be "open for inspection at the usual hours of transfer." The Court (A. L. Smith and Grantham, JJ.) refused the application, being of opinion that as the applicant had no *bonâ fide* interest in any stock transferred, he had no right to claim to inspect the list; and the motion was therefore refused. It appears from this case that no stock is transferred by the bank until every reasonable effort has been made to find the owner; and that the lists published by agents, to a large extent, refer to stock which has long since found claimants.

STATUTE—CONSTRUCTION.

Fletcher v. *Fields* (1891), 1 Q.B. 790, was a case stated by justices, the point of law involved arising on the construction of a statute prohibiting the loading or unloading of "coal" on or across a footway between certain hours, and imposing a penalty for breach of its provisions. The question was, whether "coke" was included in the term "coal." A. L. Smith and Grantham, JJ., held that the statute being a restriction of the liberty of the subject was not to be extended beyond its precise terms.

WILL—TRUST FOR IMPROVEMENT OF LANDED ESTATE—ACCUMULATION—THELLUSSON ACT (39 & 40 GEO. 3, C. 98)—(52 VICT., C. 10, S. 2).

In *Vine* v. *Raleigh* (1891), 2 Ch. 13, the question arose as to the effect of the will of a testator, which directed that his residuary estate should be laid out in the purchase of a landed estate, and out of the income thereof that an annuity should be paid to his nephew for life, and that the surplus income should, during the life of the nephew, be expended in the purchase of additional land "or in the

improvement of the landed estate, and in maintaining in good habitable repair the houses and tenements on the property." It was conceded that so far as the direction to invest the surplus income in the purchase of additional land was concerned it was a direction to accumulate, and would be within the Thellusson Act, and could not extend beyond the period of twenty-one years from the testator's death. It was, however, contended that the direction to apply the surplus in improvements and repairs was also an attempt to accumulate and could not extend beyond the twenty-one years. Chitty, J., held that the latter direction did not fall within the statute, and on appeal his decision was affirmed; but the Court of Appeal (Lindley, Lopes and Kay, L.JJ.) added a declaration that the application of the income to purposes the expense of which ought to be defrayed out of capital was not authorized by the will. The Court of Appeal were of opinion that all improvements in substance which could in any fair sense be regarded as coming under the words "maintaining in good habitable repair the houses and tenements on the property" are outside the Thellusson Act altogether. But building houses on the land would be within the Act.

MANDATORY INTERIM INJUNCTION—ERECTION OF BUILDINGS AFTER NOTICE OF MOTION FOR INJUNCTION—ATTEMPT TO ANTICIPATE INJUNCTION.

Daniel v. *Ferguson* (1891), 2 Ch. 27, shows that a defendant who attempts to anticipate an injunction by proceeding with the erection of a building objected to by the plaintiff, after notice of the plaintiff's motion for an interim injunction, does so at his own risk; and if he turns out to be in the wrong, the court will not only restrain him by an interlocutory injunction from further proceeding with the building, but will also compel him to remove that part of the erection made after notice of the plaintiff's motion was served. The order of Stirling, J., so directing was affirmed, on appeal, by Lindley and Kay, L.JJ.

PRACTICE—ACTION AGAINST FIRM—PARTNERS RESIDENT OUT OF JURISDICTION—JURISDICTION—AMENDMENT OF WRIT—SERVICE OUT OF JURISDICTION—RULE 64 (ONT. RULE 271).

In *Indigo Co.* v. *Ogilvy* (1891), 2 Ch. 31, the effect of the rules allowing a partnership to be sued in the firm name again came up for consideration. The facts of the case were somewhat involved, but may be briefly stated as follows: The plaintiffs were an English firm, and had entered into contracts with Gillanders & Co., an Indian firm, for the manufacture and purchase of indigo. Ogilvy & Co. were the English correspondents of Gillanders & Co., and there were some partners common to both firms, and some of the partners were resident in India. Gillanders & Co. consigned indigo to Ogilvy & Co., and the action was commenced by the plaintiffs against Ogilvy & Co., in the firm name, claiming the indigo; and all the members of the firm, both those in England and those in India, appeared. The plaintiffs then obtained an *ex parte* order to amend their writ by adding Gillanders & Co. as defendants, and making consequential alterations in the writ, and also obtained leave to serve the amended writ out of the jurisdiction. Under this order they amended the writ by adding Gillanders & Co. by the firm name as defendants, and also amended the claim indorsed on the

writ by adding a claim in respect of breaches of two agreements made between the plaintiffs and Gillanders & Co., which were not included in the original writ. On motion of Gillanders & Co., North, J., set aside the order to amend as irregular. On appeal, the Court of Appeal (Lindley and Kay, L.JJ.) held (1) that as the firm of Ogilvy & Co. was composed of partners resident out of the jurisdiction, the writ originally issued was irregular and could not properly have issued as against such partners without leave; (2) that for the like reason Gillanders & Co. could not be added as defendants by amendment. They therefore, though dismissing the appeal, directed that the plaintiffs should be at liberty to amend the writ by substituting for the names of the two firms the names of the several partners thereof residing in England, with liberty to the partners who resided abroad to withdraw their appearances, but without prejudice to the plaintiffs' applying for leave to join as defendants all or any of those members of the two firms who resided in India. It would therefore appear from this decision that where any members of a firm are resident abroad, the firm cannot properly be sued in the firm name. See also *Western National Bank of N.Y.* v. *Perez* 64 L.T.N.S. 542.

Notes on Exchanges and Legal Scrap Book.

SIGNATURE TO A WILL.—A prominent and wealthy citizen in a New Jersey town was dying in his bed. His will, hastily drawn, was placed before him, and a pen put into his hand with which to make the signature of his name or subscription mark upon the paper. He was asked if it was his will, and assented. He made an effort to write. One stroke was accomplished, when his head sank upon the pillow, the pen dropped from his hand, and his heart ceased to beat. He was dead in the sight of the witnesses. This was in New Jersey, and the point, whether or not the will was executed, is for the courts of that State to decide. In some States the case would be a very doubtful one. It might depend upon the point whether the single stroke of the pen actually made was the "subscription" which the deceased intended to make, whether he had completed the subscription of the will when death palsied his hand.—*The Central Law Journal.*

DEATH PENALTY FOR TRAIN-WRECKERS.—In connection with the recent attack by brigands upon a railway train in Turkey, when by something like a miracle no serious bodily harm was received, it is interesting to note that the State Legislature of California has passed a law enacting that convicted train-wreckers shall in future be punished with death. "Only those who are conscientiously opposed to capital punishment in any case," says the *Railway World*, "can make any logical objection to such a statute. The average murderer slays but one; the train-wrecker may kill a hundred. Many who are called murderers perhaps never intended to deal a fatal blow. In countless instances the homicide has been committed under a sudden impulse or under ter-

rible provocation. But the man who stealthily watches his chance, and who contrives, with the precision of a clock-maker and the cruelty of a fiend, to so adjust obstructions as to imperil the lives of scores of human beings, is a monster of depravity. Rarely, indeed, is there any clumsiness in the arrangement. Every detail is regulated with scientific accuracy. In the small hours, when the chance of detection is only as one in a thousand, does the train-wrecker do his work."—*Law Journal.*

SURETYSHIP FOR INFANTS.—A recent decision of the Recorder of London in the Lord Mayor's Court seems to have occasioned considerable consternation among the numerous traders who lay themselves out for doing business with minors; and indeed, before *Peach* v. *Makins*, the case in question, there appears to be no authoritative judicial determination reported of a legal crux which must have frequently occurred. The plaintiff sold a bicycle to an infant on what is familiarly known as the hire system; that is, under a contract that the minor should pay for the machine by certain periodical instalments, and that in default of the payment of any one of these instalments the whole of the purchase money should become forthwith payable to the vendor. These payments by the minor were guaranteed by a person of full age, who undertook, by a clause in the contract, to discharge the liabilities of the minor in case the latter made default. The minor having made default, the action was brought by the vendor against the guarantor, as surety for the minor. In answer to the plaintiff's claim the defence was successfully set up that, inasmuch as no debt existed or could legally exist between the plaintiff and the minor, the defendant guaranteed nothing, and reliance was placed on the dicta of Lord Selborne in *Lakeman* v. *Mountstephen* (30 L. T. Rep. N. S. 437; L. Rep. 7 H. of L., p. 24): "There can be no suretyship unless there be a principal debtor . . . and until there is a principal debtor there can be no suretyship. Nor can a man guarantee anybody else's debt unless there is a debt of some other person to be guaranteed." Acting upon this exposition of the law, the Recorder, no question of fact being in dispute, entered a verdict for the defendant.—*Law Times.*

THE IMPUNITY OF PERJURY.—Some time ago we dwelt at length on the wide prevalence of perjury, and on the almost complete impunity with which it can be practised. The writer who recently furnished to one of the magazines a humorous article on "The Decline of Lying" was miserably unacquainted with the law courts of his country. Prosecutions for perjury are scarcely known; convictions are still rarer, if that be possible. Nothing is easier than lying; and lying on oath is not perceptibly less easy than lying informally, as, for example, on a tombstone. Unless a man lie right in the face of documents or patent facts, he may invent his own evidence with perfect safety and literary effect. And even if he should run against an awkward obstacle of the kind, it is always open to him to *explain*. Direct proof of perjury is extremely difficult to find. Without direct poof, apparently, prosecutors do not care to venture on a charge.

Nor need this cause wonder; for stupid men, and hasty men, and simple men are so rife in the world that there always lurks just a faint possibility of convicting an innocent person. The Attorney-General was asked in the House of Commons, the other day, whether he would call the attention of the Public Prosecutor to the case of *Evelyn* v. *Hurlbert*, with a view to seeing whether sufficient evidence existed on which to base a prosecution of one or other of the parties to the suit for perjury; and in reply he said that there must be the most careful investigation as to whether any or either of them can be convicted of that crime. A sensational case has thus its uses in bringing into prominence ugly features which are by no means less common in obscure and humdrum actions. We again repeat our humble opinion, that prosecutors ought to be a little more courageous in cases of perjury. Skilled witnesses, of course, we can never hope to reach by a charge of this kind. A skilled witness of experience never commits perjury. His is an innominate offence. But there ought to be some *nomen juris* invented to cover the practice of maintaining that the laws of nature and of logic are by no means uniform in their operation, and that science says black or says white according as the pursuer or defender has cited you.—*Journal of Jurisprudence.*

A Dog Attempting an Alibi.—A writer in *Rod and Gun* relates the following incident of the "friend of man": "While staying in Devonshire last week at a farm, I had a practical illustration of an interesting case of sheep-worrying. Looking out of my bedroom window just as it was daylight, I saw a flock of ewes that had recently lambed tearing about the field as if alarmed; and I quickly discovered that two dogs were hunting them. I woke up the farmer, and we were soon on the spot; but the dogs were too quick for us, and we could only identify one of them, which we recognized as belonging to a farm about three miles off. They had killed and partially eaten two lambs, and seriously mauled three others. My friend at once got out his gig; and we drove off to the farm from whence we thought the culprit hailed, expecting to reach there before the dog. On arriving, we told the owner of the animal our errand, and he at once invited us to come and see his sheep-dog, which could not possibly have committed the crime, as he was shut up of a night in the stable. There, truly enough, did we find the collie, looking half asleep and curled up in a corner among the straw. His owner triumphantly pointed him out; but he was a peculiarly marked dog, and we had both spotted him, and, moreover, there was a broken window in the stable, and traces of dirty, and apparently recent, claw-marks on the wall. My farmer looked in the brute's mouth, and thought there was wool on the teeth; but the owner contended that that proved nothing, as the dog had been among his own sheep the previous evening. I then suggested that a dose of salt and water might prove if any mutton had been recently devoured; and, the two farmers consenting to this, we dosed poor collie accordingly, and in a few minutes he disgorged a quantity of raw lamb with the wool on it, unmistakably recently killed. The case was admitted proved, and the neighbors speedily came to terms as to the question of damage.

To me it seemed a most interesting case of canine intelligence that two scamps of dogs, one we know having sheep within a few yards of him, should not attempt any sport on their own ground; but should deliberately meet some miles off, and then, when interrupted, tear off to their homes, and, like a human criminal, endeavor to prove an *alibi* by being found asleep in bed about the time when the murder was committed."

NEGLIGENCE OF VALUERS.—Valuers who are negligent with the business of their clients will find little to comfort them in the decision of the Court of Appeal in *Scholes* v. *Brook* (noted in 91 L.T. 77), upon which we commented in a recent article upon "The Liability of Valuers." The decision of Mr. Justice Romer in the court of first instance (63 L.T. Rep. N.S. 837) has been affirmed, and our summary of the law concerning valuations remains correct. A mortgagee may be either (*a*) a stranger to, or (*b*) a client of, the valuer. If (*a*) he is a stranger, his action against the valuer can only succeed as an ordinary action of deceit, in which he is now, thanks to *Derry* v. *Peek* in the House of Lords (61 L.T. Rep. N.S. 265; 14 App. Cas. 337), compelled to allege and prove fraud, fraud being the essence of the action. If, on the other hand, (*b*) the mortgagee is a client of the valuer's—albeit the valuer is to be paid by the mortgagor out of the money advanced or otherwise—if there is a "contractual relation" between the valuer and the proposed mortgagee, and the valuer knows that he is valuing the property in the interest of the proposed mortgagee, then all that the mortgagee has to prove as plaintiff is that the valuer did not use reasonable skill and care in preparing the valuation. This proved, the valuer is liable in damages; this non-proven or disproved, he escapes. But Mr. Justice Romer and the Court of Appeal have now held that in *Scholes* v. *Brook* there was a contractual relation between the plaintiff and the valuers, that the valuers were guilty of negligence, and were legally responsible for the damages caused by that negligence. Mortgagees can no longer rely upon the decision of Mr. Justice Chitty in *Cann* v. *Wilson* (59 L.T. Rep. N.S. 723; 39 Ch. Div. 39), the first case in which negligent valuers were hit, for that decision was anterior to *Derry* v. *Peek*. But if they can show a contractual relation between themselves and the valuers, they can lean without distrust upon *Scholes* v. *Brook*, unless—which is very unlikely—that case should go to the House of Lords and be decided differently there.—*Law Times.*

ABOUT WITNESSES.—The strange statements, extraordinary admissions, prompt retorts, funny mistakes, crooked answers, and odd distortions of the Queen's English, heard in the courts, would make a plethoric volume of amusing reading. From an old English magazine we gather the following anecdotes of witnesses, some of which, we trust, will prove new to the readers of the *Green Bag*.

The subjects of legal vivisection do not find the process so agreeable to themselves as it is interesting to uninterested listeners. The old fellow who had

"married three wives and buried them lawful" would probably have preferred keeping to himself the fact that a buxom laundress declined to make him a happy man for the fourth time in his life because he was not prepared to take her to church in a basket-carriage drawn by six donkeys.

The witness-box is prolific in malapropisms. The man whose friend could not appear in court by reason of his being just then superannuated with drink; the Irish woman whose husband had often struck her with impunity, although he usually employed his fist; the gentleman who found a lady in the arms of Morpus; and the Chicago dame, who indignantly wanted to know who was telling the story when the judge suggested that when she spoke of the existence of a family fuel she must mean family feud—might one and all claim kindred with Sheridan's deranger of epithets. Nor could Dogberry himself have shown to greater advantage than a police-officer, when, upon the stand in New York court, he related how one Nelson had punched him twice in the head and scratched his face without aggravating him to use his club, because it went against his feelings to mistreat a human being; winding up what he termed his "conciseful" narration with: "I am willing to be let upon, your honor, but not altogether. The law must be dedicated; give him justice tampered with mercy."

The London policeman who found arrears of fat upon the blouses of two men suspected of purloining from a butcher would have smiled in scornful superiority to hear the Glasgow constable deposing that a riotous Irishman "came off the Bristol boat wi' the rest o' the cattle, and was making a crowd on the quay, offering to ficht him or any ither mon." "Well," asked the baillie, "did he stand on his defence when you told him to move on." "No, your honor, he stood on the quay." Were members of the force always so exact, the magistrate who asked a street Arab, before putting him on his oath, what was done to people who swore falsely, would not have had his ears shocked with the reply, "They makes policemen out of 'em."

Euphemisms are wasted upon lawyers, since they will insist upon having their equivalents. Said one witness: "He resorted to an ingenious use of circumstantial evidence." "And pray, sir, what are we to understand by that?" inquired the counsel. "That he lied," was the reply of the witness, whose original statement was worthy of the doctor who testified that the victim of an assault had sustained a contusion of the integuments under the orbit, with extravasation of blood and ecchymosis of the surrounding tissue, with abrasion of the cuticle—meaning simply that the sufferer had a black eye. Another witness testified that the plaintiff's character was "slightly matrimonial." Being called upon to explain, he answered, "She has been married seven times."

In a trial at Winchester a witness failing to make his version of a conversation intelligible by reason of his fondness for "says I" and "says he," was taken in hand by Baron Martin, with the following result: "My man, tell us now exactly what passed." "Yes, my lord. I said I would not have the pig." "And what was his answer?" "He said he had been keeping it for me, and that he—" "No, no; he could not have said that; he spoke in the first person." "No, my lord; I was the first person that spoke." "I mean, don't bring in

the third person; repeat his exact words." "There was no third person, my lord—only him and me." "My good fellow, he did not say he had been keeping the pig; he said, '*I* have been keeping it.'" "I assure you, my lord, there was no mention of your lordship at all. We are on different stories. There was no third person there; and if anything had been said about your lordship, I must have heard it." The Baron gave in.

A Jew, speaking of a young man as his son-in-law, was accused of misleading the court, since the young man was really his son. Moses, however, persisted that the name he put to the relationship was the right one, and, addressing the Bench, said, "I was in Amsterdam two years and three quarters; when I comes home I finds this lad. Now the law obliges me to maintain him, and consequently he is my son-in-law."

"Well," said Lord Mansfield, "that is the best definition of a son-in-law I ever yet heard."

A most inexcusable want of recollection was displayed by a benedict, who thought he had been married only three years, while he had not the faintest notion when or where he made his wife's acquaintance. A woman never pretends to ignorance on such matters, oblivious as she may be regarding the number of birthdays she has seen. Forgetting that a woman should be at least as old as she looks, a lady told a Paris magistrate she was twenty-five. As she stepped out of the box, a young man stepped in, who owned to twenty-seven. "Are you related to the previous witness?" he was asked. "Yes," said he, "I am her son." "Ah!" murmured the magistrate, "your mother must have married very young." The inquiry as to age was met by an Aberdeen spinster with a protest against an unmarried woman being expected to enlighten the public on such a subject. Finding that of no avail, she admitted she was fifty, and, after a little pressure, owned to sixty. Counsel then presumed to inquire if she had any hopes of getting a husband, and was rebuffed for the impertinence with: "Weel, sir, I winna tell a lee; I hinna lost hope yet, but I wudna marry you, for I am sick o' your palaver."

An examiner's perseverance is not always successful in eliciting the desired answer. "Was there anything in the glass?" asked a counsel of a somewhat reluctant witness. "Well, there was something in it," he replied. "Ah! I thought we should get at it in time," observed the triumphant questioner. "Now, my good fellow, tell us what that something was." The good fellow took time to think over it; at last he drawled out, "It was a spoon." Equally unsatisfactory from a legal point of view was the following short dialogue: "You have property, you say; did you make it yourself?" "Partly." "Are you married?" "Yes." "Did your wife bring you anything?" "Yes." "What?" "Three children." The witness had the best of that bout. The information imparted was as little to the purpose as the answer to the question: "When you called upon Mr. Roberts, what did he say?" propounded to a voter before an election committee. Before the man could open his mouth to reply, the question was objected to. For half an hour counsel argued the matter; then the room was cleared that the committee might consider the subject. After the lapse of

another half-hour the doors were opened, and the chairman announced that the question might be put. All ears were strained to catch the impending disclosure. But the mountain did not bring forth even a mouse. "What did Mr. Roberts say?" asked the counsel; and the witness replied: "He wasn't at home, sir; so I didn't see him."—*Green Bag.*

COSTS AGAINST COMPANIES.—Intimately connected with the questions recently discussed in this journal, in the course of an article entitled, "Solicitors and Company Promotion," there is a further question as to the circumstances in which a solicitor, who renders services in the promotion of a company, can claim payment of his costs by the company after registration. It becomes necessary to consider in such cases whether the solicitor has agreed to look to the company, on the company's authority, for payment of his charges; or whether he must rely on the promoters, upon whose retainer he has, in fact, acted. It is said, indeed, that the promoter, even though there be no express contract, is entitled to compensation out of the funds of the company for his preliminary services, provided the company can fairly be held to have adopted and derived benefit from such services. But this proposition, which can only be allowed with some reserve, gives the promoter's solicitor no direct remedy against the company; indeed, no such remedy arises even when the company have expressly agreed with the promoter to pay the solicitor's charges (see *Re Hereford, etc., Waggon Company*, 35 L.T. Rep. N.S. 40; and *Re Empress Engineering Company*, 43 L.T. Rep. N.S. 742). Of more explicit effect, however, is the decision of Cotton, Lindley, and Fry, L.JJ., in *Re Rotherham Alum and Chemical Company* (50 L.T. Rep. N.S. 219). There M., a promoter *pro hac vice*, employed P. as his solicitor in the formation of a company to take over M.'s business. The articles provided that all expenses incurred in and about the formation of the company should be paid by the company. After the incorporation of the company, P. acted as its solicitor, and M. officiated as one of the directors. Both were present at a meeting of the first directors, when P. asked for payment of his costs connected with the formation of the company, and when a conversation ensued tending to show that the company would pay them, but nothing to that effect was recorded on the minutes. At a subsequent meeting a resolution was proposed by M. and passed, that a cheque for £39 4s. 6d. should be given to P. in discharge of a certain part of the costs: that is to say, for the actual amount which the solicitor had had to pay to the printers of the memorandum and articles of association. Nothing more was paid, and the company presently was wound up under a compulsory order. The solicitor then carried in his bill of costs, but the taxing master, to whom the bill was referred in due course by the chief clerk, taxed off all the items prior to the date of the registration of the company.

Vice-Chancellor Bacon refused to disturb the taxation. The solicitor went to the Court of Appeal, and it was urged on his behalf (1) that the company had recognised his claim by a payment on account; (2) that what had taken place at the meeting before mentioned amounted to a novation; (3) that the company,

having had the benefit of the solicitor's services, was bound to pay for them. On neither of these grounds did the appellant succeed. No one appeared to oppose the claim or to sift the evidence on which it was formed, but, shortly stated, the view of the court was, that it was for the solicitor to show a contract, and that no sufficient evidence was forthcoming. Could he, apart from an express agreement, establish his claim? The articles, it is true, bound the company to pay the preliminary expenses, but, said Lord Justice Lindley, the solicitor "was no party to the articles." A provision in an Act of Parliament may enable an outsider to sue, because it gives rise to a statutory obligation, of which the person named can take the benefit (an action for debt on a statute is, or was, a well-known form of action at common law), but an agreement, whether contained in articles of association or any other form of document, between A. and B., that B. shall pay C., gives C. no right of action against B. It is simply a question of who are the contracting parties. The theory that where one person gets the benefit of another's services he is bound to pay for them is fallacious, or, at all events, not universally true. "If," said Lord Justice Lindley, by way of illustration, "I order a coat and receive it, I get the benefit of the labor of the cloth manufacturer; but does any one dream that I am under any liability to him?"

It is important to remember that, if in the case already noticed the solicitor had brought his action against the company simply on the ground that he had done the work charged for, and that the articles provided for payment of such expenses, he would not have succeeded. Articles of association simply constitute a contract between shareholders *inter se*. Sec. 16 of the Companies Act, 1862, does not give them any wider effect, even where the solicitor is expressly named as such in the articles. *Eley* v. *Positive Government Security, etc., Company* (34 L.T. Rep. N.S. 190) is in point. There the solicitor was so named in the articles, which further provided that he should transact all the legal business of the company "for the usual and accustomed fees and charges, and shall not be removed from his office except for misconduct." Lord Cairns, L.C., in dealing with this case, made some general remarks which professional men, connected with companies, have perhaps not heeded very carefully. After pointing out the limited character of the publicity given to the appointment, his Lordship said: "I also wish to reserve my judgment as to whether a clause of this kind is obnoxious to the principles by which the courts are governed in deciding questions of public policy; but it does appear to me a grave question whether a contract, under which a solicitor is not bound to give any particular services, but the company, on the other hand, are bound to employ him on all their business . . . is a contract which the court would enforce. I prefer to reserve my judgment on the validity of such an agreement until a case arises which calls for a decision on that point."

But, whatever may be the true view of the policy of binding or attempting to bind a company to employ a particular solicitor, secretary, or manager, it is now abundantly clear that it cannot be done by merely providing for the appointment in the articles of association. Such an article is either a stipulation which would

bind the members, or else it is merely a mandate to the directors. In the latter character such articles are still much in vogue in company circles. The mandate may frequently operate as a moral obligation to which the directors readily give effect, but its legal value is absolutely *nil*. Of course, however, if the solicitor can establish the fact of his employment for or on behalf of the company he would be entitled to remuneration for the work actually done. A company, as Lord Cairns explained, may act under their seal, or by the signature of the directors, or possibly by a resolution of the board. But, unless in either of these ways the solicitor gets his retainer, an article purporting to nominate him as the company's legal adviser will be of no avail if the directors choose to ignore it.

The principle laid down in *Eley* v. *Positive, etc., Company (ubi sup.)*, was followed later in *Browne* v. *La Trinidad* (37 Ch. Div. 1), where the board had removed a director, notwithstanding an article purporting to fix the duration of his office for a number of years. The court refused to give effect to the article notwithstanding the fact that the director in question was a shareholder, and claimed the benefit supposed to be conferred by s. 16 of the Companies Act, 1862. It was pointed out that there could be no contract between the plaintiff and the company until shares were allotted to him, and that "it would be remarkable that upon the shares being allotted to him a contract between him and the company as to a matter not connected with the holding of shares, should arise." It is therefore well settled that "contracts" of the class referred to cannot be enforced either on the common law side or in equity. It was thought, however, by some persons that a binding contract might be effected if the person intending to claim the benefit of the supposed contract actually subscribed the memorandum of association. This idea was dispelled by the decision of Mr. (now Lord) Justice Kay in *Re Dale* v. *Plant Limited* (W.N., July 6th, 1889). His Lordship decided that the secretary was not entitled, even in the circumstances mentioned, to prove in the winding up for damages in respect of an alleged agreement made between him and the promoters and confirmed by the directors in conformity with a clause in the articles authorising them to do so. Such a contract is incapable of confirmation. The plaintiff, for his services as secretary, was only entitled to a *quantum meruit* remuneration for work done: and, of course, given the like conditions, the same principle would equally apply in the case of a solicitor.—*Law Times.*

DIARY FOR JULY.

1. Wed.....Dominion Day. Long vacation begins.
2. Fri.....Quebec founded by Champlain, 1608.
3. Sun.....*6th Sunday after Trinity.* Battle of Chippewa, 1814.
4. Mon.....County Court Sittings for Motions, except in York. Surrogate Court Sittings.
5. Tues.....Col. Simcoe, Lieut.-Governor of Ontario, 1792.
6. Thur.....Importation of slaves into Canada prohibited, 1793.
7. Fri.....Christopher Columbus born, 1447.
8. Sat.....Battle of Black Rock, 1812.
9. Sun.....*7th Sunday after Trinity.*
10. Mon.....Sir John B. Robinson, 7th C.J. of Q.B., 1829.
11. Wed.....Manitoba entered Confederation, 1870.
12. Fri.....Franco-German war began, 1870
13. Sun.....*8th Sunday after Trinity.* Quebec capitulated to the British, 1629.
14. Mon.....British Columbia entered Confederation, 1871
15. Wed.....W. H. Draper, 5th C.J. of Q.B., 1863. W. B. Richards, 3rd C.J. of C.P., 1863.
16. Thur.....Upper and Lower Canada united, 1840.
17. Fri.....Battle of Lundy's Lane, 1814.
18. Sat.....St. James. Canada discovered by Cartier, 1534
19. Sun.....*9th Sunday after Trinity.*
20. Mon.....Wm. Osgoode, 1st C.J. of Q.B., 1792
21. Wed.....First Atlantic cable laid, 1866.
22. Thur.....Relief of Derry, 1689.

Early Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.] [June 22.

THE QUEEN *v.* WM. F. MCCURDY ET AL.

The Expropriation Act (R.S.C., c. 39)—Assignment of rights of land expropriated previously acquired by lease—Effect of new leases between same parties—Compensation—Assignment of—Chose in action against the Crown—Evidence.

An agreement by a proprietor to sell land to the Crown for a public work, followed by immediate possession, and, within a year, by a deed of surrender, is sufficient under s. 6 of the Expropriation Act (R.S.C., c. 39) to vest the title to such land in the Crown and to defeat a conveyance thereof made subsequent to such agreement and possession, but prior to such surrender.

1. Under s. 11 of the said Act the compensation money for any land acquired or taken for a public work stands in the stead of such land, and any claim to or incumbrance upon such land is converted into a claim to compensation, and such claim once created continues to exist as something distinct from the land, and is not affected by any subsequent transfer or surrender of such land. *Partridge* v. *The Great Western Railway Co.* (8 U.C.C.P. 97); *Dixon* v. *Baltimore and Potomac Railway Co.* (1 Mackay 78), referred to.

2. Where a chose in action was assigned, *inter alia*, for the general benefit of creditors and all the parties interested were before the court, and the Crown made no objection, the court gave effect to such assignment.

Quære: In the absence of acquiescence in such an assignment, are the assignee's rights thereunder capable of enforcement against the Crown?

3. In a case of expropriation the claimant is not obliged to prove by costly tests or experiments the mineral contents of his land (*Brown* v. *The Commissioners of Railways*, 15 App. Cas. 240, referred to). Where, however, such tests or experiments have not been resorted to, the court or jury must find the facts as best it can from the indications and probabilities disclosed by the evidence.

BURBIDGE, J.] [June 25.

MARTIN *v.* THE QUEEN.

Injury to person on a public work—Negligence of servant of the Crown—Brakesman's duty in putting children off car when trespassers—Damages.

1. The Crown is liable for an injury to the person received on a public work resulting from negligence of which its officer or servant, while acting within the scope of his duty or employment, is guilty.

City of Quebec v. *The Queen* (2 Ex. C.R. 252) referred to.

2. One who forces a child to jump off a railway carriage while it is in motion is guilty of negligence.

3. The fact that the child had no right to be upon such carriage is no defence to an action for an injury resulting from such negligence.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

STREET, J.] [May 18.

ARMSTRONG *v.* AUGER.

Sale of land—Contract of sale—Local improvement rates—Incumbrances—Taxes—Vendor and purchaser—Independent covenants—Equitable relief—Payment into Court.

A contract for sale of lands provided for payment of the purchase money in quarterly instal-

ments; when half was paid the vendor was to convey and give the usual statutory covenants; the purchaser was to pay taxes from the date of the contract.

In an action to recover instalments under the contract,

Held, that local improvement rates imposed by municipal by-laws, the work under which was done before the contract, were incumbrances to be discharged by the vendor, but rates imposed after the contract were not so.

Re Graydon and Hammill, 20 O.R. 199, followed.

Les Ecclesiastiques de St. Sulpice de Montreal v. *City of Montreal*, 16 S.C.R. 400, distinguished.

Held, also, that the covenant for payment of instalments and the covenant against incumbrances were independent, and the vendor was entitled to judgment for the instalments; but the purchaser was entitled to show the existence of incumbrances as an equitable ground of relief, and, the time for completion of the contract not having arrived, to pay into Court as much of the purchase money as might be necessary to protect him against the incumbrances.

McDonald v. *Murray*, 11 A.R. 101, and *Tisdale* v. *Dallas*, 11 C.P. 238, distinguished.

Fullerton, Q.C., for the plaintiffs.

Marsh, Q.C., for the defendant.

ROSE, J.] [Dec. 23, 1890.

Div'l Court.] [June 5, 1891.

IN RE MCKAY *v.* MARTIN.

County Court—Jurisdiction—Ascertainment of amount—R.S.O., c. 47, s. 19, s-s. 2—Transferring action to High Court—54 Vict., c. 14, retrospective.

An action was brought in a County Court to recover the amount of a broker's commission on the sale of land. The defendant disputed his liability and the action was tried by a jury, who found that the plaintiff was entitled to recover $250. The amount was not ascertained otherwise than by the agreement of the parties, as found by the jury.

Held, by ROSE J., that the amount was not ascertained within the meaning of R.S.O., c. 47, s. 19, s-s. 2, and the County Court had no jurisdiction.

Robb v. *Murray*, 16 A.R. 503, followed.

Held, by the Divisional Court, that the Act 54 Vict. c. 14, passed after the determination that the County Court had no jurisdiction, was retrospective, and enabled the action to be transferred to the High Court.

Carscallen, Q.C., for the plaintiff.

Furlong for the defendant.

STREET, J.] [July 4.

RE G.

Land Titles Act—R.S.O., c. 116, s. 23, s-s. 5—Evidence—Woman past child-bearing—Registration.

Land was devised to the petitioner for life, with remainder in fee to her children surviving her. At the age of fifty-six the petitioner and one of her children (all the other surviving children having conveyed their shares to her) applied under the Land Titles Act, R.S.O., c. 116, to be registered as owners with absolute title.

The petitioner's monthly periods began at the age of eleven; she was married in her twenty-second year, and bore children rapidly till her thirty-sixth year, when her tenth child was born; five months after this her periods, having regularly continued, suddenly ceased, and up to the time of the application had never returned.

The evidence of a physician, who had made a medical examination of the petitioner, showed that senile atrophy of the uterus and ovaries had proceeded so far that it would be a moral impossibility for pregnancy to take place.

Held, having regard to the provisions of s. 23, s-s. 5, of the Act, that the Master should have accepted the evidence as sufficient proof that the petitioner was physically incapable of child-bearing, and should have acted upon it by granting the registration.

H. W. Mickle for the petitioners.

J. R. Cartwright, Q.C., for the Attorney-General, representing the Land Titles Act Assurance Fund.

Practice.

STREET, J.] [June 24.

MCILROY *v.* MCILROY

Notice of trial—Service of before defence filed—Irregularity—Close of pleadings—Rule 654

On the last day for delivering the statement of defence, which was also the last day for

giving notice of trial for a sittings of the Court at which the plaintiff wished to go down, the plaintiff, without waiting for the statement of defence, delivered a joinder of issue and served notice of trial before two o'clock in the afternoon. Before three o'clock the same day the defendants delivered their defence. The defendants were in no default.

Held, that the notice of trial, being delivered before the close of the pleadings, was irregular under Rule 654 and should be set aside.

Broderick v. *Broatch*, 12 P.R. [illegible], distinguished.

C. J. Holman for the plaintiff.

C. W. Kerr for the defendant.

C. J., Div'l Court.] [June 27.

CONNOLLY *v.* MURRELL.

Discovery—Privilege—Communications between husband and wife—R.S.O., c. 61, s. 8.—Solicitor withdrawing from examination.

The decision of STREET, J., 14 P.R. 187, was affirmed on appeal to the Divisional Court GALT, C.J., and MACMAHON, J.).

E. R. Cameron for the plaintiff.

Talbot Macbeth for the defendant.

OSLER, J.A.] [June 27.

SIMPSON *v.* CHASE.

Attachment of debts—Adjusted insurance moneys—Division Court attachment—Appeal to Court of Appeal—Time for giving security—Service of garnishee summons—Local agent of foreign insurance company—Defence of garnishee—Notice of rejection—Time—R.S.O., c. 51, ss. 149, 178, 182, 185, 188—Rule 935.

1. Security upon a Division Court appeal may be given by deposit after the ten days' delay allowed by s. 149 of the Division Courts Act, R.S.O., c. 51.

2. Service of a Division Court after judgment garnishee summons upon the local agent of a foreign insurance company, whose powers were limited to receiving and transmitting applications,

Held, effective, having regard to the provisions of ss. 182 and 185, s-s. 3, of R.S.O., c. 51.

3. Where the defence of the garnishee is put in after the expiration of the eight days from service of the summons allowed by s. 188, s-s. 2, of R.S.O., c. 51, so long as it is put in in sufficient time to enable the creditor to give notice rejecting it, and for the clerk to transmit such notice to the garnishee, the latter is not bound to attend the trial if such last mentioned notice is not given, and the creditor cannot proceed to the trial of the action until that is done.

4. A claim under an insurance policy for a loss, the amount of which has been settled and adjusted, is not a debt which can be attached under s. 173 of R.S.O., c. 51; and Con. Rule 935 does not apply to Division Courts.

Semble, even if it did, that such a claim could not be attached so long as the insurance company's right to have the money applied in rebuilding was open.

Aylesworth, Q.C., for the appellants.

C. L. Lewis for the respondent.

FERGUSON, J.] [July 3.

TURNER *v.* CROZIER.

Sheriff—Poundage—Allowance in lieu thereof—Rule 1233—Goods seized not those of execution defendant.

Where goods seized by a sheriff under execution were afterwards found not to be the goods of the execution defendant,

Held, that the sheriff was not entitled under Rule 1233 to an allowance in lieu of poundage in respect of the goods seized.

C. D. Scott for the plaintiff.

Aylesworth, Q.C., for the sheriff.

MACMAHON, J.] [July 4.

MCLEAN *v.* ALLEN.

Receiver—Right to bring an action in name of person beneficially entitled—Request—Delay.

A receiver appointed, by way of equitable execution, to receive the share of a judgment debtor under a certain will, applied for an order for leave to bring an action in the name of the debtor for construction of the will. The receiver had not requested the debtor to bring the action, and upon the application the latter expressed his willingness to do so and to proceed without unnecessary delay.

Held, that the receiver would have been en-

titled to the order if the debtor had refused to bring the action or had delayed unreasonably.

No order was made, but leave was reserved to the receiver to apply again if the debtor did not proceed with diligence.

A. McLean Macdonell for the receiver.

D. W. Saunders for the judgment debtor.

Notes of United States Cases.

NEW JERSEY SUPREME COURT.

NEW YORK L. E. & W.R.R. *v.* BALL.

Negligence—Riding in baggage-car.

The plaintiff, who had purchased a ticket for a journey upon defendant's railroad, entered a combination smoking and baggage-car on one of the trains. Such car was the last one on the train; the forward compartment thereof was fitted up as a place for smokers, and the rear end of it was arranged for the carriage of the baggage. Every seat in the smoking compartment was occupied, and plaintiff passed into the baggage compartment. There was a rule of the company, of which plaintiff, however, was ignorant, requiring employees not to permit passengers to ride in baggage-cars. An accident occurred through a collision by a train in the rear.

Held, that the plaintiff, while taking the risk of any injury from dangers inherent in the construction and use of that portion of the car as a baggage compartment, had not, under the circumstances, assumed risks of injury from extraneous causes, and that his action for damages would lie.

EXCHEQUER COURT RULES.

In pursuance of the provisions contained in the 55th section of "The Exchequer Court Act," it is ordered that the following rules in respect of the matters hereinafter mentioned shall be in force in the Exchequer Court of Canada:

1. Rule 116 of the Exchequer Court of Canada is hereby repealed, and the following substituted therefor:

TRIALS.—RULE 116.

When any action is ripe for trial or hearing, a judge may, on application of any party and after summons served on all parties to the suit, fix the time and place of trial and hearing, and may direct when and in what manner and upon whom notice of trial or hearing together with a copy of the judge's order is to be served, and such notice and order shall be forthwith served accordingly.

Sittings of the Exchequer Court of Canada, at which any action ripe for trial or hearing may be set down for trial by either party thereto, upon giving the opposite party ten days' notice of trial, or by consent of parties, and without taking out any summons, or obtaining any directions as hereinbefore provided, may be held at any time and place appointed by a judge, of which notice shall be published in the *Canada Gazette*.

Such sittings will be continued from day to day until the business coming before the court is disposed of.

On the first day of each of such sittings, the court will hear any argument of demurrer, special cases, motion for judgment, appeal from the Report of the Registrar or other officer of the court, or other motion, application or business which cannot be transacted by a Judge in Chambers.

2. Rule 120 of the Exchequer Court of Canada is hereby repealed and the following substituted therefor:

RULE 120.

In case the judge is unable from any cause to attend on the day fixed for any sitting or for the trial of any issue, such sitting or trial shall stand adjourned from day to day until he is able to attend.

AUTUMN ASSIZES, 1891.

HOME CIRCUIT.

Rose, J.

Orangeville	Monday	7th Sept.
St. Catharines	Monday	14th Sept.
Milton	Monday	21st Sept.
Brampton	Thursday	24th Sept.
Toronto—Criminal	Monday	28th Sept.
Toronto—Civil	Monday	5th Oct.

MID-LAND CIRCUIT.

Armour, C.J.

Barrie	Tuesday	8th Sept.
Hamilton	Tuesday	15th Sept.

Whitby	Tuesday	22nd Sept.
Belleville	Monday	28th Sept.
Lindsay	Monday	5th Oct.
Peterborough	Thursday	8th Oct.
Cobourg	Monday	12th Oct.
Picton	Tuesday	20th Oct.

NORTH-WESTERN CIRCUIT.

Falconbridge, J.

Goderich	Monday	7th Sept.
Woodstock	Monday	14th Sept.
Owen Sound	Monday	21st Sept.
Guelph	Monday	28th Sept.
Brantford	Monday	5th Oct.
Walkerton	Monday	12th Oct.
Stratford	Monday	19th Oct.
Berlin	Monday	26th Oct.

SOUTH-WESTERN CIRCUIT.

Mac Mahon, J.

Chatham	Monday	14th Sept.
Sandwich	Monday	21st Sept.
Sarnia	Monday	28th Sept.
London	Monday	5th Oct.
St. Thomas	Monday	19th Oct.
Simcoe	Monday	26th Oct.
Cayuga	Monday	2nd Nov.
Welland	Thursday	5th Nov.

EASTERN CIRCUIT.

Street, J.

Perth	Monday	7th Sept.
L'Original	Thursday	10th Sept.
Ottawa	Monday	14th Sept.
Pembroke	Wednesday	23rd Sept.
Cornwall	Tuesday	29th Sept.
Brockville	Monday	5th Oct.
Kingston	Monday	12th Oct.
Napanee	Monday	19th Oct.

CHANCERY AUTUMN SITTINGS.

Ferguson, J.

Toronto	Wednesday	21st Oct.

The Chancellor.

Kingston	Monday	14th Sept.
Simcoe	Monday	21st Sept.
Ottawa	Monday	26th Oct.
Cornwall	Monday	2nd Nov.
Belleville	Thursday	5th Nov.
Brockville	Thursday	12th Nov.

Ferguson, J.

Brantford	Monday	7th Sept.
Cobourg	Thursday	10th Sept.
Peterborough	Monday	14th Sept.
Barrie	Monday	5th Oct.
Hamilton	Monday	12th Oct.
Whitby	Monday	19th Oct.

Robertson, J.

Lindsay	Monday	7th Sept.
Stratford	Thursday	10th Sept.
St. Catharines	Wednesday	14th Oct.
Owen Sound	Monday	19th Oct.
Guelph	Thursday	22nd Oct.
Woodstock	Monday	26th Oct.

Meredith, J.

Walkerton	Monday	14th Sept.
St. Thomas	Monday	21st Sept.
Goderich	Monday	5th Oct.
Chatham	Monday	12th Oct.
Sandwich	Monday	19th Oct.
Sarnia	Monday	2nd Nov.
London	Monday	9th Nov.

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Latest additions:

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Beauchamp (J. J.), The Jurisprudence of the Privy Council, Montreal, 1891.

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Firth (T.W.S.), Liability of Employers, London, 1890.

Girouard (D.H.), The Bills of Exchange Act, 1890, Montreal, 1891.

Goddard (J.L.), Law of Easements, 4th edition, London, 1891.

Houston (W.), Constitutional Documents of Canada, Toronto, 1891.

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Lawson (J.D.), Rights, Remedies and Practice Index-Digest, San Francisco, 1891.

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Neilson (G.), Trial by Combat, Glasgow, 1891.

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Serrell (G.), Equitable Doctrine of Election, London, 1891.

Sharp (W.P.), Supplements Nos. 1 and 2 to Civil Code of Lower Canada, Montreal, 1889-90.

Stokes (A.), British Colonies, London, 1783.

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Weir (W.A.), Civil Code of Quebec, Montreal, 1890.

Williams (M.), Later Leaves—Further Reminiscences, London, 1891.

Law Students' Department.

LAW SCHOOL.

At a meeting of Convocation held on the 30th June, some matters of special interest to law students in connection with the Law School were dealt with by the Benchers.

Under the rules as they stood prior to that date a student not being a graduate of a university, who was obliged to attend three courses of lectures at the Law School, was compelled to take them in the third, fourth and fifth years of his service under articles. In other words, he had to attend in consecutive years and in all the later years of his studentship.

By an amendment of the rules passed on the 30th ult., these students may, at their option, take the first year of their course during the first or second year of their service under articles or attendance in barristers' chambers upon giving notice to the principal at least one week before the commencement of the session of the school.

Another change made is in the fee to be paid for attendance at the lectures.

Hitherto it has been $10 each session, but upon the joint report and recommendation of the Finance and Legal Education Committees, to which the question of the fees to be paid was some time ago referred by Convocation, the fee to be hereafter paid has been increased to $25.

Notice has been given of a proposal to amend the rules with regard to the award of medals and scholarships, and the matter will be taken up next term.

Under the existing rules there can be awarded among the successful honor candidates in the third or final examination in the Law School one gold medal, one silver medal, and one bronze medal, and there can be awarded among the successful honor candidates in each of the first and second year examinations, one scholarship of $100, one of $60, and one of $40.

It is now proposed to offer a further stimulus to the students by increasing these awards by awarding one gold, two silver, and three bronze medals in the final, and one scholarship of $100, one of $60, and five of $40 each, in the first and second year courses of the school.

EXAMINATION BEFORE EASTER TERM: 1891.

SECOND INTERMEDIATE.

Snell's Equity.

Examiner: A. W. AYTOUN-FINLAY.

1. What trusts are excepted from the provisions of the Statute of Frauds requiring trusts in general to be manifested in writing?

2. What is necessary to render a post-nuptial settlement good, against a subsequent purchaser for value, under the 27 Eliz., c. 4?

3. In what respects are Charities favored by equity above individuals, and in what respects are they treated with disfavor?

4. What are the three heads under which bequests or legacies may be classed? Give examples of each.

5. Under what circumstances will the Court remove children from the custody of the father, and commit them to the care of a guardian?

6. "Ignorance of the law excuses no man." How is the application of this maxim limited?

7. Under what circumstances will oral evi-

dence be received where there is a written instrument relating to the matter in issue?

8. Where the debtor has not appropriated a payment of money, may the creditor appropriate it in satisfaction of a debt already barred by the Statute of Limitations?

9. Explain and illustrate the principle—"Once a mortgage always a mortgage."

10. What is the rule as to satisfaction of legacies by subsequent legacies:

(*a*) Where the legacies are given by the same instrument?

(*b*) Where the legacies are given by different instruments?

Williams on Personal Property.

Examiner: A. W. AYTOUN-FINLAY.

1. What is the distinction between "chattels real" and "chattels personal"?

2. A. finds a valuable gold ring. He is ignorant of the real owner. He takes it to B., a jeweller, to have it valued, and, on telling B. that he had found it, B. retains it, not claiming property therein, but only on the ground that he does so until the real owner is discovered. Can A. bring an action of trover against B.? Give the reason of your answer.

3. What formalities are requisite to effect the alienation of personal property?

4. A. grants his chattels personal to B. by deed, there being no valuable consideration therefor. Afterwards A. assumes to revoke his grant. What are the rights of the parties?

5. In what case may the property in goods pass from one person to another by payment of their value, without actual sale?

6. What is the nature and effect of a writ *fieri facias*?

7. Explain briefly the following terms: (*a*) bottomry bond; (*b*) respondentia; (*c*) jettison; (*d*) general average.

8. To what extent does the mere participation in the profits of a business impose liability for the debts incurred in carrying it on?

9. A. gives a written guarantee to B. in the following words: "In consideration of the sum of $2,000, at present due by C. to you, for goods sold and delivered to him six months ago, I hereby guarantee payment of the same." B. brings action on this guarantee and A. defends. What is the legal position of the parties?

10. What title only is a vendor of shares in a joint stock company bound to show?

Leith's Blackstone.

Examiner: M. G. CAMERON.

1. Explain the different modes by which Colonies are established or acquired and what system of laws is to be considered in force?

2. What is the difference between an annuity and a rent charge, and give an example of each?

3. Is the word successors necessary in a grant of land to a corporation aggregate? Explain.

In what way does such a grant differ from an ordinary fee simple?

4. Enumerate the *incidents* to a tenancy in tail.

5. A. conveys by deed duly executed a parcel of land to B. in fee. B. had prior to the conveyance made an agreement with A. to reconvey to him by way of mortgage to secure the unpaid purchase money. B. carries out his agreement without his wife joining. Is she entitled to dower? Explain.

6. What is the difference between a tenant for life and a tenant for years with regard to their right to emblements?

7. What are the necessary requisites to the establishment of a title by prescription?

Common Law—Constitutional Law.

Examiner: F. J. JOSEPH.

1. Briefly state the constitution of the Superior Courts of Ontario, and what is the jurisdiction of County Courts in actions for the recovery of land.

2. What is the distinction between a good consideration and a valuable consideration, and will either of these considerations support a voluntary conveyance?

3. Malice is the gist of an action for libel. When will the law presume that the publisher acted maliciously?

4. How may a tenant deprive himself of the right to remove fixtures?

5. A. purchases a desk at a public auction; on examining it after it is delivered to him, he finds a large sum of money in a drawer of the desk. Can A. keep the money?

6. Define "duress" and what effect has it on a contract?

7. A., an infant, draws a bill of exchange in favor of B. on an incorporated company, which is duly accepted. B. endorses it to C., who, without endorsing it, discounts it at the bank. The bill at maturity is dishonored. What are the rights of the bank against the several parties mentioned?

CALL.

Equity and Evidence.

Examiner: A. W. AYTOUN-FINLAY.

1. A. insures the life of B., his child, in the child's own name, but for his, A.'s, benefit. B. dies. The insurance company makes no objection as to want of insurable interest.

Do the policy moneys belong to A. or to the estate of B.?

What is the equitable principle involved?

2. A., a trustee, has been guilty of a breach of trust. He makes good the breach out of his own property, and, immediately thereafter, assigns as an insolvent for the benefit of creditors.

How far is the transfer to the trust estate a fraudulent preference, and to what extent is the trust estate liable?

3. A mortgagee takes possession of the mortgaged estate by giving notice to the tenants to pay their rent to him.

A number of the tenants of the mortgagor are tenants for terms of years, the terms being created subsequently to the date of the mortgage.

How are these tenancies affected by the mortgagee taking possession?

4. A., a vendee of land, has obtained possession of the property, and thereafter an action for specific performance of the contract of sale is commenced.

What terms are ordinarily imposed upon the vendee in equity?

5. Trust property in the care of a trustee is alleged by him to be stolen.

How far is he responsible for the loss?

6. What is meant by pre-appointed or casual evidence?

Must it appear in any prescribed form?

Harris' Criminal Law.

Examiner: A. W. AYTOUN-FINLAY.

1. A. obstructs officers of the law in their efforts to apprehend B., a supposed criminal.

What is the legal measure of the offence of which A. is guilty?

2. What is the distinction between libel and slander?

Give examples of indictable slander.

3. A. and B. are indicted and tried together for conspiracy to extort money from C., by threatening to injure his reputation.

There is some evidence against A., who is found guilty, whilst B. is found not guilty, by the jury.

What course must be taken by the court, and why?

4. A., a roofer, being on top of a building, sees B., against whom he has a grudge, passing on the sidewalk below.

As if by accident, he drops a heavy adze from edge of the roof; an expression which he uses to a companion at the same time sufficiently showing his intent to injure B.

The tool misses B., and fatally injures C., a complete stranger to A.

Is A. guilty of any crime? Explain briefly.

5. A., an infant, hires furniture under the hire and purchase system, and afterwards, without the knowledge of the person supplying the furniture, removes and sells it.

Is A. guilty of any offence, and, if so, how?

6. In what respects is the admission or rejection of evidence at trial ground for a new trial?

7. Is evidence as to the character of parties to a civil action ever admissible?

If so, under what circumstances?

8. Under what circumstances is self-harming evidence admissible, in civil and criminal cases respectively?

9. How far is the evidence of petty jurors admissible to prove alleged misconduct of other jurors in the jury room, during the consideration of a verdict?

Blackstone: Theobold on Wills, Law, and Pleadings and Practice.

Examiner: M. G. CAMERON.

1. Is a will in all cases revocable? If so, has B., with whom A. has made a covenant not to revoke a will, any, and, if so, what remedy in case of a breach of the covenant?

2. A. directs B., his son, to sign his name to his will. C. and D., the two witnesses, are present when B. signs, and see him do so, and they

sign in the presence of A. Is that a sufficient acknowledgment so as to render the will valid?

3. By his will A. gives $1,000 to B., and by a codicil the legacy to B. is revoked, and the same legacy is given to C., who predeceases the testator. Is the legacy to B. revoked? Explain.

4. Where a will which has not been revoked at the testator's death cannot be found, what evidence wil be required to prove its contents?

5. What presumption is raised where a will bearing an execution or attestation clause is unexecuted or unattested, and how may each presumption be rebutted?

6. In what cases will the court appoint a receiver of infants' estates?

7. To procure an order for the allowance of service of a writ of summons out of the jurisdiction, what must be shown?

8. When, if at all, will a demurrer for misjoinder of parties be proper?

9. What are the rules as to vouching accounts? When should vouchers be produced, and when will items be allowed without voucher?

10. In order to enable a party, without leave, to plead and demur to the same pleading at the same time, what steps must be taken?

Dart on Vendors and Purchasers.

Examiner: M. G. CAMERON.

1. Is a trustee always bound to convey at the request of the *cestui que trust?* Explain.

2. At what time does the vendor's liability in respect to defects of title end? If A. purchases a parcel of land from B., pays the whole of his purchase money and goes into possession, but is subsequently evicted by an adverse claimant, C., what, if any, claim has he against A.?

3. Where a conveyance is executed, but the whole of the purchase money is not paid over, and there is an incumbrance upon the property which it is intended should be discharged, what precautions should a purchaser, under such circumstances, take?

4. The contract for sale fixes a certain day for completion. It is not completed on that day owing to the purchaser's delay. His purchase money, nevertheless, has been lying idle and appropriated to the purchase and he has not been in possession. Is he bound to pay interest, and, if so, from what period? What are his rights, if any, against the vendor?

5. Is there any exception to the rule that when the purchaser is in actual possession or receipt of the rents and profits he must pay interest upon his purchase money from the time fixed for completion of the contract? Explain.

Constitutional Law—Contracts.

Examiner: F. J. JOSEPH.

1. To what extent is the common law of England in force in a colony obtained by conquest or acquired by occupancy; and what Imperial Acts affect colonies with independent legislatures?

2. What are the powers of the Crown as to restraining a subject from leaving the country or compelling him to leave the country?

3. By whom must a notice of dishonor of a bill be given, and what are the requisites of such notice?

4. May the holder of a note or bill fill in his own name where no payee's name is mentioned; and should he do so, under what circumstances (if any) can he recover against the drawer or acceptor?

5. What is meant by a "holder in due course"?

6. What are the liabilities of an infant partner or shareholder—(*a*) during infancy, (*b*) after he attains twenty-one years of age?

7. A., by letter, offers to sell a house to B. for a certain sum, and gives him a week to accept the offer. During the week, A., unknown to B., offers the same house to C., who accepts A.'s offer; subsequently, but within the week, and before A. withdraws his offer to B., B. accepts A.'s offer. What are the rights of B. and C.?

8. A debt is barred by the statute. What are the rights of a creditor who has

(*a*) A lien on the goods of the debtor for a general account?

(*b*) A lien for a particular debt?

(*c*) Where he receives money from the debtor?

(*d*) Where the debtor sues him for another claim?

(*e*) Supposing the creditor is an executor of the debtor, can he retain out of the estate such a debt?

Law Society of Upper Canada.

Regulations for the Admission of Barristers as Solicitors under 54 Vict., c. 25.

1. Any persons applying for a certificate of qualification to be admitted as a solicitor under the provisions of the Act 54 Vict., c. 25, shall furnish proof—

(*a*) That notice of his intention to apply for such certificate, signed by a Bencher, was given to the Secretary at least two months preceding the first day of the term in which he intends to apply for such certificate;

(*b*) That notice of his intention as aforesaid was also published once a week, for at least two months preceding the first day of such term, in some newspaper in the county town of the county in which such person resides;

(*c*) That he was duly called to the bar prior to the first day of January, 1891, and has been in actual practice, and that he still remains a member of the bar in good standing, and that since his call no adverse application to disbar him or otherwise to disqualify him from practice as a barrister has been sustained, and that no charge is pending against him for professional or other misconduct;

(*d*) That he has passed the usual examination prescribed for admission to practise as a solicitor;

(*e*) That he has paid the fees payable by candidates for admission to practise as a solicitor.

2. The notice mentioned in sub-sections (*a*) and (*b*) shall be in the following form, viz.:—

"Law Society of Upper Canada.

"Mr.....(some Bencher) gives notice that Mr. A. B., who has been called by the Law Society to the degree of barrister-at-law prior to the first day of January, 1891, will next term apply to the Law Society for a certificate under the corporate seal of the Society of his fitness and capacity, and that he is in all respects duly qualified to be admitted as a solicitor.

"As of.....term, 189....

.....

(Bencher's Signature.)

3. The Secretary shall receive such notice upon payment of one dollar, and shall make two lists containing the names, additions, and residences of the persons intending to apply as aforesaid, and affix one of such lists in a conspicuous place in his office, and the other in Convocation Hall.

4. The certificate to be granted shall be in the following form:

"These are to certify that Mr. A. B., who has been called by the Law Society to the degree of barrister-at-law prior to the first day of January, 1891, having now satisfied the Society of his fitness and capacity, and that he is in all respects duly qualified to be admitted as a solicitor, may be admitted and enrolled as a solicitor in accordance with the provisions of the statutes in that behalf.

"In testimony whereof I, E. B., Treasurer of the said Society, have to these presents affixed the seal of the said Society, at Osgoode Hall, this.....day of.....in the year of Our Lord one thousand eight hundred and.....and the..... year of Her Majesty's reign.

"J. H. E., "E. B.,
"*Secretary.* "*Treasurer.*"

5. The person applying for and obtaining such certificate shall pay therefor the sum of two dollars.

Standing Committees for 1891.

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Messrs. John Hoskin (Chairman), A. B. Aylesworth, Alexander Bruce, A. J. Christie, Donald Guthrie, J. K. Kerr, F. Mackelcan, Jas. Magee, C. Robinson, G. F. Shepley, G. H. Watson, Sir A. Wilson.

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SPECIAL COMMITTEES, 1891.

LAW SCHOOL BUILDING COMMITTEE.

Messrs. Charles Moss (Chairman), Walter Barwick, John Hoskin, Z. A. Lash, Colin Macdougall, F. Mackelcan, E. Martin, W. R. Meredith, W. R. Riddell, C. H. Ritchie, C. Robinson, J. V. Teetzel, Æ. Irving, D. McCarthy, B. B. Osler, G. F. Shepley.

SPECIAL COMMITTEE ON UNLICENSED CONVEYANCERS.

Messrs. The Attorney-General, A. B. Aylesworth, Walter Barwick, B. M. Britton, A. J. Christie, W. Douglas, C. F. Fraser, D. Guthrie, A. S. Hardy, J. Idington, Colin Macdougall, James Magee, W. R. Meredith, Charles Moss, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy, J. V. Teetzel, G. H. Watson.

SPECIAL COMMITTEE ON THE ADMISSION OF MISS CLARA BRETT MARTIN AS STUDENT-AT-LAW.

Messrs. S. H. Blake, D. Guthrie, J. Idington D. McCarthy, E. Martin, W. R. Meredith Charles Moss, W. R. Riddell, G. F. Shepley.

THE LAW SCHOOL, 1891.

LEGAL EDUCATION COMMITTEE.

CHARLES MOSS, Q.C., *Chairman.*

W. BARWICK.	E. MARTIN, Q.C.
JOHN HOSKIN, Q.C.	W. R. MEREDITH, Q.C.
Z. A. LASH, Q.C.	W. R. RIDDELL.
C. MACDOUGALL, Q.C.	C. H. RITCHIE, Q.C.
F. MACKELCAN, Q.C.	C. ROBINSON, Q.C.
J. V. TEETZEL, Q.C.	

This notice is designed to afford necessary information to Students-at-Law and Articled Clerks, and those intending to become such, in regard to their course of study and examinations. They are, however, also recommended to read carefully in connection herewith the Rules of the Law Society, copies of which may be obtained from Principal of the Law School, Osgoode Hall, Toronto.

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

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

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

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

Principal, W. A. REEVE, M.A. Q.C.

Lecturers: E. D. ARMOUR, Q.C.
A. H. MARSH, B.A., LL.B., Q.C.
R. E. KINGSFORD, M.A., LL.B.
P. H. DRAYTON.

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

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

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

Students before entering the School must have been admitted upon the books of the Law Society as Students-at-Law or Articled Clerks. Admission is to be gained during Easter and Trinity terms only. The steps required to procure such admission are provided for by the rules of the Society, numbers 126 to 141 inclusive.

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

The Law School examinations at the close of the School term, which include the work of the first and second years of the School course respectively, constitute the First and Second Intermediate Examinations respectively, which by the rules of the Law Society, each student and articled clerk is required to pass during his course; and the School examination which includes the work of the third year of the School course, constitutes the examination for Call to the Bar, and admission as a Solicitor.

Honors, Scholarships, and Medals are awarded in connection with these examinations. Three Scholarships, one of $100, one of $60, and one of $40, are offered for competition in connection with each of the first and second year's examinations, and one gold medal, one silver medal, and one bronze medal in connection with the third year's examination, as provided by rules 196 to 205, both inclusive.

The following Students-at-Law and Articled Clerks are exempt from attendance at the School.

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

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

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

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

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

Students and clerks who are exempt, either in whole or in part, from attendance at The Law School, may elect to attend the School, and to pass the School examinations, in lieu of those under the existing Law Society Curriculum. Such election shall be in writing, and, after making it, the Student or Clerk will be bound to attend the lectures, and pass the School examination as if originally required by the rules to do so.

A Student or Clerk who is required to attend the School during one term only, will attend during that term which ends in the last year of his period of attendance in a Barrister's Chambers or Service under Articles, and will be entitled to present himself for his final examination at the close of such term in May, although his period of attendance in Chambers or Service under Articles may not have expired. In like manner those who are required to attend during two terms, or three terms, will attend during those terms which end in the last two, or the last three years respectively of their period of attendance, or Service, as the case may be.

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

The Course during each term embraces lectures, recitations, discussions, and other oral

methods of instruction, and the holding of moot courts under the supervision of the Principal and Lecturers.

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

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

FIRST YEAR.

Contracts.

Smith on Contracts.
Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

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

Equity.

Snell's Principles of Equity.

Statute Law.

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

SECOND YEAR.

Criminal Law.

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

Real Property.

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

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts English Edition.

Equity.

H. A. Smith's Principles of Equity.

Evidence.

Powell on Evidence.

Canadian Constitutional History and Law.

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

Practice and Procedure.

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

Statute Law.

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

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

Dart on Vendors and Purchasers.
Hawkins on Wills.
Armour on Titles.

Criminal Law.

Harris's Principles of Criminal Law.
Criminal Statutes of Canada.

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
Smith on Negligence, 2nd edition

Evidence.

Best on Evidence.

Commercial Law.

Benjamin on Sales.
Smith's Mercantile Law.
Chalmers on Bills.

Private International Law.

Westlake's Private International Law.

Construction and Operation of Statutes.

Hardcastle's Construction and Effect of Statutory Law.

Canadian Constitutional Law.

British North America Act and cases thereunder.

Practice and Procedure.

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

Statute Law.

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

During the School term of 1890-91, the hours of lectures will be 9 a.m., 3.30 p.m., and 4.30 p.m., each lecture occupying one hour, and two lectures being delivered at each of the above hours.

Friday of each week will be devoted exclusively to Moot Courts. Two of these Courts will be held every Friday at 3.30 p.m., one for the Second year Students, and the other for the Third year Students. The First year Students will be required to attend, and may be allowed to take part in one or other of these Moot Courts.

Printed programmes showing the dates and hours of all the lectures throughout the term, will be furnished to the Students at the commencement of the term.

GENERAL PROVISIONS.

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

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

The Moot Courts will be presided over by the Principal or the Lecturer whose series of lectures is in progress at the time in the year for which the Moot Court is held. The case to be argued will be stated by the Principal or Lecturer who is to preside, and shall be upon the subject of his lectures then in progress, and two students on each side of the case will be appointed by him to argue it, of which notice will be given at least one week before the argument. The decision of the Chairman will be pronounced at the next Moot Court, if not given at the close of the argument.

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

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

The percentage of marks which must be obtained in order to pass any of such examinations is 55 per cent. of the aggregate number of marks obtainable, and 29 per cent. of the marks obtainable on each paper.

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

Students whose attendance at lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations at their own option, either in all the subjects, or in those subjects only in which they failed to obtain 55 per cent. of the marks obtainable in such subjects. Students desiring to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society, at least two weeks prior to the time fixed for such examinations, of their intention to present themselves, stating whether they intend to present themselves in all the subjects, or in those only in which they failed to obtain 55 per cent. of the marks obtainable, mentioning the names of such subjects.

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

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

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

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