Canada Law Journal.

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DIARY FOR APRIL.

1. Sun.... *Low Sunday.*
2. Mon.... Co. Ct. Term and Sitt. without jury begin.
5. Thurs.. Canada discovered, 1499.
7. Sat.... Co. Ct. term ends.
8. Sun.... *Second Sunday after Easter.* Sup. Ct. Act assented to, 1875.

TORONTO, APRIL 1, 1883.

WE have always had a high opinion of the intelligence of the officials of the Toronto Post Office, but were never really alive to their merits until now. A letter from England reached the Post Office a few days ago addressed merely, "The Editor of the leading legal publication, Toronto, Canada." It was at once forwarded to us. Incompetency might have sent it to the editor of the *Canadian Law Times*, or the editor-in-chief of the Ontario Reports, or of some other obscure publication. To the Toronto Post Office staff the address was of course amply sufficient to prevent any such blunder. We are not as yet informed whether the celebrated coloured postman had any share in this remarkable display of acuteness.

THE *Legal News*, after the lapse of three weeks, has plucked up courage to refer to our observations on the offensive article it published over the signature "R." criticising the judgment of the Supreme Court in *Grant* v. *Beaudry*. As our contemporary comes to hand just as we go to press we are unable to refer at any length to the writer's laborious effort to draw away attention from the points we made. We cannot at present do more than remark that silence on one of these points warrants us in supposing that "R." is simply the first letter in the name of one of those judges whose judgment was upset by the Supreme Court, and who, in such bad taste, uses the columns of a legal journal to speak of one of the most eminent of our judges, who felt it his duty to over-rule him, in such words as these:—"Mr. Justice Gwynne blundered in his law, as is his wont." The learned judge of the Court of Queen's Bench in Quebec (if we are right in assuming that he is the writer) has blundered very considerably (whether according to his wont or not we do not care to discuss) in not letting his impropriety be forgotten, instead of again rushing into print "*rabido ore*" to his own personal identification and further discredit.

CONSOLIDATION OF MORTGAGES.

The equitable right which a mortgagee, holding two or more mortgages on different estates, is entitled to exercise under the name of "consolidation," is sometimes improperly confused with another right which it resembles, but from which it is entirely distinct, which is called "tacking."

Tacking is the union of two or more debts upon *one* estate, so as that the owner of the equity of redemption may not redeem that estate except on the terms of paying all the debts; while consolidation is the union of two or more debts respectively charged on different estates, so as that the owner of the equity of redemption in any of those estates shall not be permitted to redeem any one of the estates without redeeming all. In other words, the right of tacking is a right to charge on a mortgaged estate not only the specific debt for which the mortgage was

given as security, but also other moneys due the mortgagee in respect of costs, charges or expenses incurred by him respecting the security, or in making necessary permanent improvements on the mortgaged property, or in protecting his security by the redemption of prior charges, or otherwise. As against the heir or beneficial devisee of a deceased mortgagor, the mortgagee would seem also to be entitled to tack to his mortgage debt, any judgment, specialty or even simple contract debt, due to him from the deceased mortgagor: (*McLaren* v. *Fraser*, 17 Gr. 533; *Re Haselfoot's Estate*, 13 Eq. 327, Coote 810.) But this right cannot be insisted on to the prejudice of other creditors; and this right to tack debts which are not a lien on the land can only be enforced as against the representatives of a deceased mortgagor who died entitled to the equity of redemption; as between mortgagee and mortgagor themselves there is no such right: (*Ferguson* v. *Frontenac*, 21 Gr. 188.)

Formerly, a subsequent encumbrancer, without notice of a prior encumbrance at the time of making his advance, might have cut out such prior encumbrance by acquiring the legal estate, or the best right to call for it. To this legal title he might tack his subsequent encumbrance, and resting on the principle that where the equities are equal the law must prevail, might therefore gain priority over the *mesne* encumbrance. This latter right, however, is now, as regards registered encumbrances, virtually abolished in Ontario by the Registry Act, R. S. O. c. 111, s. 81; but except in so far as the right of tacking conflicts with the provisions of the Registry Act it may still be enforced as formerly.

The right of consolidation, on the other hand, is an equity which a mortgagee, holding two or more mortgages made by the same mortgagor on different estates, has to insist that any party coming to redeem, shall not be permitted to redeem any of the mortgaged estates without redeeming all. This right of consolidation, notwithstanding what is said in *The Dominion S. & I. Society* v. *Kittridge*, 23 Gr. 631, to the contrary, is one that is within the provisions of the Registry Act, s. 81, and cannot, therefore, be insisted on as against an assignee of the equity of redemption claiming under a registered deed without actual notice: (*Brower* v. *Canada Perm. L. & S. Co.*, 24 Gr. 509; *Johnston* v. *Reid*, 29 Gr. 293; *Miller* v. *Brown*, 19 C. L. J. 54). In *Miller* v. *Brown*, also, Proudfoot, J., held R. S. O. c. 111, s. 81, to be retrospective in its operation.

It is a right, also, which is subject to certain other limitations and exceptions. Thus where one of the mortgaged estates (*e.g.*, a leasehold, or estate for life), has ceased to exist, there is no longer any right to consolidate a debt thereby secured, with any other mortgage debt: (*Re Raggett*, 44 L. T. N. S. 4; 50 L. J. Chy. 187). Neither can a mortgage of realty be consolidated with a mortgage of chattels, so as to throw the debt secured by the former on the latter, as that would be an invasion of the Bills of Sale Act, R. S. O. c. 119: (*Chesworth* v. *Hunt*, 5 C. P. D. 266; 42 L. T. N. S. 774; 49 L. J. C. P. 507). Neither is consolidation allowed where prior to the creation of the second mortgage, or prior to the two mortgages coalescing in one hand, the mortgagor had assigned his equity of redemption in one of the properties: (*Mills* v. *Jennings*, 13 Ch. D. 639, which afterwards came before the House of Lords under the title of *Jennings* v. *Jordan*, L. R. 6 App. C. 698; 45 L. T. N. S. 593; *Harter* v *Coleman*, 19 Ch. D. 630; 46 L. T. N. S. 154; 51 L. J. Ch. 481).

At one time it was held that an assignee of an equity of redemption took, subject not only to the equities of the mortgagee then subsisting, but also to the potential right of the mortgagee to consolidate the mortgage, of which the equity of redemption was assigned, with any other mortgages made by the same mortgagor, which might at any time afterwards come into his hands; but this view of the law which was laid down in

Tassell v. *Smith*, 32 L. T. O. S. 4; *Vint* v. *Padgett*, 31 L. T. O. S. 21; 2 De G. & J. 611; and *Bevor* v. *Luck*, 5 Eq. 537, is now overruled by the case of *Jennings* v. *Jordan*, to which we have above referred.

The right of consolidation may be claimed by the mortgagee as well in a suit to foreclose, as in one to redeem: (*Johnston* v. *Reid*, 29 Gr. 293; *Watts* v. *Symes*, 1 D. M. & G. 240; *Selby* v. *Pomfret*, 1 J. & H. 336; S. C. 3 De. G. F. & J. 585). But in an action for foreclosure against a purchaser of the equity of redemption of one of the estates, the plaintiff mortgagee has no right to consolidate any mortgage not in default: (*Cummins* v. *Fletcher*, 14 Ch. D. 699; 42 L. T. N. S. 859; 49 L. J. Ch. 117, 563); and it would seem from the principles laid down in that case, that the same rule applies where the action is against the mortgagor himself. But in an action for redemption, it would seem, on principle, that it is not necessary that all the mortgages should be in default in order to entitle the mortgagee to consolidate them.

In an action for foreclosure or sale by a prior encumbrancer, a subsequent incumbrancer may consolidate: (*Merritt* v *Stephenson*, 7 Gr. 22; *Ross* v. *Stevenson*, 7 P. R. 126).

The right of consolidation exists as we have seen by reason of two or more mortgages made by the same mortgagor, coming to the same hand, and it is not at all necessary that they should have originally been made to the same person.

The right to consolidate as against a purchaser of the equity of redemption in one of the estates may be lost by the conduct of the mortgagee in neglecting to give notice of his claim to consolidate, even though the purchaser has actual notice of the second mortgage: *Dominion S. and I. Co.* v. *Kittridge*, *supra*.

Although in a redemption suit a mortgagee may have a right to consolidate all the mortgages held by him against the same mortgagor, even though some of them be not in default; yet the plaintiff in an action for redemption has not a reciprocal right to insist on redeeming any mortgage not in default, nor yet any mortgage of which he is not the owner of the equity of redemption, even though it be one which the mortgagee, if he chose, might claim the right to consolidate. The privilege of consolidation being an equity which the mortgagee may insist on if he pleases, but which the mortgagor, or those claiming under him, cannot compel him to submit to. Thus, although the mortgagee may, if he pleases, treat two distinct mortgages as one security as against the mortgagor, yet the latter cannot insist on their being treated as one as against the mortgagee. In *Bald* v. *Thompson*, 16 Gr. 177, the mortgagee lent $2,000; to secure which, he took two mortgages on different properties to secure $1,000 each. He foreclosed one of these mortgages and afterwards parted with the property, and it was held that his so doing was no bar to a subsequent action for foreclosure of the other mortgage; although, if the two mortgages had been in fact one security, the mortgagee's parting with one part of the property under such circumstances would have been an obstacle in the way of foreclosing the residue: (*Gowland* v. *Garbutt*, 13 Gr. 578; *Munsen* v. *Hauss*, 22 Gr. 279).

RECENT ENGLISH DECISIONS.

A portion of the February number of the *Law Reports* for the Chancery Division still remains to be noticed.

SPECIFIC PERFORMANCE—AGENT'S MISREPRESENTATION.

Mullens v. *Miller*, p. 194, shows that misrepresentation by the agent of the vendor of real estate as to matters affecting the value of the property sold, is a good defence to a suit for specific performance. Bacon, V.C., in his judgment, says:—"A man employs an agent to let a house for him; that authority, in my opinion, contains also an authority to describe the property truly, to represent its

actual situation, and, if he thinks fit, to represent its value. That is within the scope of the agent's authority; and when the authority is changed, and instead of being an authority to let it becomes an authority to find a purchaser, I think the authority is just the same. I think the principal does thereby authorise his agent to describe, and binds him to describe truly, the property which is to be the subject disposed of; he authorizes the agent to state any fact or circumstance which may relate to the value of the property."

LAW OF MORTMAIN—INTEREST IN LAND.

There is little necessity to dwell long on the next case, *Jervis* v. *Laurence*, p. 202. The main point decided was that an assignment by way of mortgage of a portion of the rates levied on the occupiers of certain lands under an Act for the improvement of a certain estate, which rates were, under the Act, recoverable by distress, did not create an interest in land within the meaning of the Mortmain Act. Bacon, V.C., observes:—"A man who has a power of distress has no interest in the land. A landlord or lessor, while the lease subsists, has no present interest in the land; but he has a right to go, by common law and under the Act relating to distress of William and Mary, (2 W. & M. c. 5,) on to the land and then and there to take all such chattels as can properly be a subject of distress."

COVENANT TO BUILD—RUNNING WITH THE LAND.

The next case, *Andrew* v. *Aitken*, p. 218, may also be dismissed in a few words. Land was granted in fee in consideration of a rent-charge, and the deed of grant contained a covenant to build houses on the land, at the request of the grantor, the rent of which should be double the value of the rent reserved by the deed, without limiting any time within which such building was to be required. Fry, J., held that such a covenant was an unusually restrictive one, and, therefore, it was misrepresentation to say that the land was not subject to any covenants "unusually restrictive." He also said it might be that although the assignee of the grantee of the land was not liable affirmatively on such covenant, he might be called on to allow the house to be built in accordance with the covenant.

INJUNCTION.

The next case, *Attorney-General* v. *Acton Local Board*, p. 221, is a case in which an injunction was granted in the absence of proof of substantial damage, on the ground that the defendants by their pleading claimed a right to continue doing that which the Court held they were not entitled to do.

PUBLIC BODIES—PRIVATE RIGHTS.

This case is somewhat similar to that of *Northwood* v. *Township of Raleigh*, in which Boyd, C., recently delivered judgment, and which decides that the common law rights and liabilities in respect to the over-flowing of lands, are not affected by our Drainage Acts. Similarly, *Attorney-General* v. *Acton Local Board*, decides that notwithstanding the obligation imposed on a local board by the Imp. Public Health Act, 1875, to drain the district, their right to send the sewage of their district, directly or indirectly, into the sewers belonging to the sanitary authority of an adjoining district, is, in the absence of express enactment or agreement, no higher than the right of a landowner to send sewage from his land, on to the land or into the drains of a neighbouring laudowner. Fry, J., says:—"I consider it to be well established that local boards are bound to perform their statutory duties without injury to their neighbours. They cannot create a nuisance affecting a neighbour, and in my judgment, they cannot cast upon a neighbour a greater burden than he is already bound to bear."

WILL—CONSTRUCTION—DEATH.

The whole point of the next case requiring notice here, *Elliott* v. *Smith*, p. 236, appears in the following extract from the judgment (Fry, J.):—"It appears to me that by a series of cases, it has been decided that where there

is a gift to A., and 'if A. dies,' to B., that means a gift to B., if A. dies before the testator. I must apply that rule to this case." In this case, both the legatee and the testator went down in the *Princess Alice* steamship together, and there was nothing to show which was the survivor, and it was held that as it was not shown that the legatee died before the testator, the legacy fell into the residue.

WILL—POWER OF APPOINTMENT.

In the next case, *Willoughby Osborne* v. *Holyoake*, p. 238, a testatrix made her will, having at the date of making it, general powers of appointment over certain real and personal property, which was subject to gifts over in default of appointment. By her will she desired that her will should operate upon all property in which she had any interest, or over which she had any power of appointment or disposition; and she left all her property between A., B. and C. A. died in her lifetime. The question now was, whether the testatrix had by her will merely exercised her powers of appointment, in which case the share of A. would go over as in default of appointment, or whether she had devised the property subject to the power as her own, in which case there was an intestacy. Fry, J., says in his judgment, that the true mode in which Courts have to determine cases of this description, is undoubtedly expressed in the words of the Vice-Chancellor of Ireland, in *Re De Lusi's Trusts*, 3 Ir. L. R. 232:—"The question in all cases of the class now before me, is one of intention, namely, whether the donee of the power meant by the exercise of it to take the property dealt with out of the instrument creating the power for all purposes, or only for the limited purpose of giving effect to the particular disposition expressed." And he decided that on the construction of the will in the case before him the testatrix had made the property her own, so that on the death of A. in her lifetime the gift, even in default of appointment, did not take effect.

NATIONALITY—BRITISH SUBJECT.

Of the next case, *DeGeer* v. *Stone*, p. 243, it is only necessary to state the result arrived at, which was, that the *status* of natural-born British subjects, which, by the Acts 7 Anne, c. 5, 4 George II, c. 21, and 13 George III. c. 21, is conferred on children and grandchildren born abroad of natural-born British subjects, is a merely personal *status*, and is not, by these Acts, made transmissible to the descendents of the persons to whom that *status* is thereby given, and there is no foundation for the notion that by the common law of England the posterity of a natural-born British subject, though born abroad, must be treated as British subjects forever.

TRUSTEES.

The next case, *Worcester City Banking Co.* v. *Blick*, p. 255, illustrates the rule laid down in the well known case of the *German Mining Co.*, 4 D. M. & G. 19, that a trustee who *bona fide*, without any intention of benefitting himself, advances money of his own for the purposes of the trust estate, has a right to be indemnified. The case was simply one of a trustee who, without the slightest chance of benefit to himself, for the convenience of his *cestui que trust*, advanced a sum of money of his own to complete a purchase which otherwise was entirely within the trust, and within his power to make. Kay, J., held that he had a right to be indemnified in respect of this advance, and that notwithstanding the rule that where a trustee mixes his own money with trust funds, the whole heap resulting from that admixture belongs to the trust. As to this latter rule he observes:—"In strictness it only ought to be applied when it is impossible to make out how much was the trustee's money. Here there is no difficulty at all upon this point." And he held that though the trust estate had a first charge upon the purchased property for the amount of the trust moneys expended in purchasing it, the trustees had a right to indemnity subject to that right; and there was no reason why he should wait for his indemnity until the trust

estate had been turned again into money under the trust. As to this last point he says:—"It would be extremely harsh upon trustees, who are treated with all proper severity and quite harshly enough by the Rules of this Court, if, when they have a right of indemnity, it should be held that they are not to be allowed to enforce that right of indemnity until the estate happens to be turned into money under the trust contained in the settlement. I do not think there is any such rule. I think, if a trustee has a right of indemnity, he has a right to come to this Court to enforce it."

LUNATICS—CHANCERY—JURISDICTION.

In the next case, *Wilder* v *Pigott*, p. 263, Kay, J., asserts the jurisdiction of the Court of Chancery to bind the equitable interests of lunatics not so found by inquisition.

INFANT WIFE—CONFIRMATION OF SETTLEMENT.

This case also shows that a *feme covert* can during her coverture confirm a settlement of her property made during her infancy.

MARRIAGE SETTLEMENT—SEPARATE USE.

The last case in this number calling for notice is *Re Allnutt, Pott* v. *Brassey*, p. 275. The point decided appears a simple one, and is sufficiently stated in the head note. By an ante-nuptial settlement, the husband and wife covenanted with the trustees to settle all property to which the wife then was or during the coverture she or her husband in her right should become entitled by devise, bequest, or otherwise, "for any estate or interest whatsoever." During the coverture, the wife's father died, having by his will devised and bequeathed a moiety of his residuary real and personal estate to her "for her separate use," independently of any husband." Chitty, J., held that the moiety was bound by the covenant.

This completes the February numbers of the *Law Reports*.

A. H. F. L.

LAW SOCIETY.

HILARY TERM.—46 VICT., 1883.

THE following is the *resumé* of the proceedings of the Benchers during Hilary Term, published by authority:—

February 5th, 1883.

Present—The Treasurer, and Messrs. Crickmore, Bethune, Ferguson, Leith, Hoskin, McMichael, Moss, Read, Murray, S. H. Blake, and Kerr.

During this term the following gentlemen were called to the Bar, namely—William Renwick Riddel (gold medalist, with honors), Louis Franklin Heyd, William Burgess the younger, John Joseph O'Meara, Charles Coursolles McCaul, James Henry, Frederick William Gearing, James Albert Keyes, James Gamble Wallace, Harry Dallas Helmcken, Albert John Wedd McMichael, Hugh D. Sinclair, Christopher William Thompson, Walter Allan Geddes, James Thompson, John William Binkley, Richard Scougall Cassels.

The following gentlemen received certificates of fitness, namely—W. R. Riddel, A. E. H. Creswick, C. C. McCaul, A. Mackenzie, L. F. Heyd, R. A. Porteous, J. J. O'Meara, W. A. Geddes, W. R. Cavell, G. T. Ware, J. F. Canniff, P. S. Carroll, H. H. Robertson, E. E. Kittson, R. K. Cowan, W. G. Wilson, A. N. Duncombe, J. Dickenson, J. A. Palmer, J. W. Binkley, J. G. Wallace, F. Marskell, B. C. McCann, W. G. Shaw.

The following gentlemen passed the First Intermediate Examination, namely—H. J. Kelly (with honors), J. Thacker. Mr. Kelly was awarded First Scholarship, Mr. Thacker was awarded Second Scholarship. The following gentlemen passed, namely—T. D. J. Farmer, J. F. Williamson, W. Knowles, D. Faskin, J. Armstrong, F. E. Griffiths, T. B. Lafferty, A. J. Flint, H. A. Fairchild, J. Shilton, W. R. Smythe, W. E. Mitchell, J. M. Duggan, W. D. McPherson, G. E. Martin, A. M. Walton, A. H. Gross, C. B. Jackson, D. M. Howard, J. A. McAndrew, O. E. Fleming, P. F. Young, S. J. Young.

The following gentlemen passed the Second Intermediate Examination with honors, namely—C. A. Masten, First Scholarship; F. H. Keefer, Second Scholarship; H. H. Collier, Third Scholarship. The following gentlemen passed, namely—F. J. Palmer, H. J. Wickham, J. C. Grace, S. C. Smoke, J. Y. Cruikshank, F. L. Brooke, D. Armour, A. Sutherland, N. McMurchy, A. E. Grier, E. Bell, D. Urquhart, J. W. McCullough, W. M. Shoebotham, S. O. Richards, J. R. Miller, W. F. Church, J. S. Garvin, W. F. Sorley, W. H. Wardrope, G. Weir, W. A. Werrett.

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

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GRADUATES—Joseph Nason, Henry Wissler, Robert Kimball Orr, Henry James Wright.

MATRICULANTS—William H. Wallbridge.

JUNIORS—Joseph Tweedale Kirkland, William James Sinclair, Francis P. Henry, Michael Francis Harrington, Thomas Browne, Charles Albert Blanchet, John Hood, Jaffery Ellery Handsford, Albert Edward Trow, Ralph Robb Bruce, Edwin Harvey Jackes, William Herbert Bentley, Arthur Edward Watts.

ARTICLED CLERKS — William Sutherland Turnbull passed his examination as an Articled Clerk only.

The Report of the Committee on Discipline, on the complaint of Zebulon Landon, against a barrister and solicitor, was presented by the chairman of that Committee, and ordered to be considered on 6th February.

The Report of the Finance Committee was presented by the Chairman, and ordered to be considered on 6th February.

The Library Committee presented their Report, which was ordered to be considered on 6th February.

A letter from Mr. Glass was presented, resigning his seat as a Bencher.

Ordered, that a call of the Bench be made for Friday, 16th February, to elect a Bencher in the place of Mr. Glass.

The case of a Solicitor who, not being a Barrister, advertised himself as such, was referred to the Discipline Committee for enquiry and report.

February 6th, 1883.

Convocation met.

Present—The Treasurer, and Messrs. Maclennan, Mackelcan, Crickmore, Murray, Kerr, Moss, Martin, Ferguson, S. H. Blake, and Read.

The Report of the Select Committee on the subject of unlicensed conveyancers, was presented by Mr. Moss, as follows :—

The Committee appointed to consider the questions of unlicensed conveyancing, sales under powers contained in mortgages, and agents practising in Division Courts, beg leave to report as follows :—

1. As authorized by Convocation, the Committee met and held a conference with a number of members of the legal profession, who are also members of the Legislature, representing both sides of politics, with reference to the matters referred to the Committee.

2. After a lengthened discussion, those gentlemen expressed their opinion to be that it would not be feasible to get any legislation during the session then being held, and they would not advise that any attempt be made at present.

3. With regard to agents practising in Division Courts, they thought that a representation from Convocation to the County Court Judges against allowing fees to agents, would be acted upon in many cases.

(Signed) CHARLES MOSS,
Chairman.

Hilary Term, 1883.

The Report was read and received.

Ordered for consideration forthwith, and adopted.

The consideration of the Report of the Committee on Discipline in the matter of the complaint of Zebulon Landon, was postponed to the next meeting of Convocation.

The Report of the Finance Committee was brought up for consideration, and was adopted as follows :—

REPORT.

The Finance Committee beg leave to report as follows :—

1. Pursuant to their Report of the 14th February, 1879, approved by Convocation, they have caused the annual abstract of receipts and expenditure up to 31st December, 1882, to be prepared, and they submit it herewith to Convocation.

2. Pursuant to the 3rd clause of the above Report the Standing Committees on Reporting Legal Education, County Libraries Aid, and the Library, have prepared estimates of the probable Receipts and Expenditure for the year, in respect of their branches of the business, and their estimates have been submitted to this Committee.

3. Adopting mainly the views of the several Committees as to the probable Receipts and Expenditure, the Committee beg to summarize the estimates for the current year as follows :—

ESTIMATED RECEIPTS AND EXPENDITURE.

RECEIPTS.

Certificate and Term Fees, including arrears, fines and costs	$17,500 00	
Notice Fees	550 00	
Solicitors' Examination Fees	4,650 00	
Students' Admission Fees	6,500 00	
Call Fees	7,000 00	
Interest and Dividends	2,700 00	
Government payment for heating, lighting, and water	4,250 00	
Sundries—		
Fees on Petitions, Diplomas, and Certificates	120 00	
For Reports sold	375 00	
Commission and Fees on Telegraph and Telephone	328 00	
		$43,973 00

EXPENDITURE.

Reporting :—		
Salaries	$7,400 00	
Postage	103 00	
Printing	5,604 21	
Notes of Cases	300 00	
Advertising	6 00	
Appropriation for Digest	500 00	
" Election Reports	3,060 00	
		$16,973 21
Examinations :—		
Salaries	$3,200 00	
Scholarships	1,600 00	
Printing and Stationery	275 00	
Advertising	25 00	
Examiners for Matriculation	300 00	
Law Journal	100 00	
Medals	100 00	
		5,600 00
Library:—		
Books, binding and repairs		2,000 00

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General Expenses—		
Salaries, Secretary, Sub-Treasurer and Librarian	2,000 00	
Assistants	1,200 00	
Housekeeper	360 00	
		3,560 00
Lighting, Heating Water and Insurance :—		
Engineer and Assistant	600 00	
Gas rate	700 00	
Water rate	800 00	
Weighing Coal	10 00	
Fuel	2,900 00	
Repairs to Apparatus	350 00	
Carting coal and cutting wood	100 00	
		5,460 00
Grounds :—		
Gardener and Assistant	420 00	
Tools	5 00	
Cartage	60 00	
Labour	250 00	
Snow Cleaning	40 00	
		775 00
Sundries :—		
Auditor, $100; opening library at nights, $116	216 00	
Postage, $20; Stationery, $200	220 00	
Telephone rent	100 00	
Law costs	800 00	
Repairs, $400; Oiling floors, $15	415 00	
Removing matting, $20; clocks, $10	30 00	
Ice, $15; Term lunches, $500	515 00	
Cleaning windows, $20; Guarantee Co., $20	40 00	
Resume', $40; Dusting books, $10	50 00	
Telephone operator, $432; Tel. boy, $96	528 00	
Telephone Messages	8 00	
Petty charges, $25; P. O. Box, $6	31 00	
Fitting up wire-faced shelves	35 00	
Furniture repairs $30; New furniture, $50	80 00	
Printing, $50; Substitute for Williams during his illness, $164	214 00	
Insurance on stock of reports at Rowsell's	90 00	
		3,372 00
Extraordinary Expenditure :—		
Carpets and Curtains connected with improvements	350 00	
		350 00
County Library Aid :—		
Annual Grants—		
Hamilton, $288; Middlesex, $240	528 00	
Brant, $76; Frontenac, $72	148 00	
Peterboro', $92; Bruce, $80	172 00	
Supplementary Initiatory Grants—		
Frontenac	120 00	
Bruce	126 00	
Peterboro'	132 00	
Initiatory Grants—		
Ontario	267 00	
Probable applications from new libraries	500 00	
		2,002 00
		$40,892 21

As the new hall and the improvements connected therewith are now completed and paid for, the Committee think it convenient to give a statement of the financial condition of the Society; and for that purpose, to show the receipts and expenditure for the last four years.

(1) On the first day of January, 1879, the assets of the Society comprised :—

1. The grounds.
2. The old building.
3. The library of books.
4. The pictures and furniture.
5. The surplus stock of Canadian Reports.

Cash assets, viz.:

6.	Dominion Stock	$50,000 00	
	Cash in Bank	13,148 25	
	Savings Bank Departments	5,800 00	
			$68,948

(2) The receipts and expenditure for the last four years have been as follows:—

1879—Receipts	$45,348 70		
Expenditure	34,746 14		
Surplus			$10,602 56
1880—Receipts	$43,293 34		
Expenditure	37,059 43		
Surplus			$6,233 91
1881—Receipts	$49,731 70		
Expenditure	38,144 21		
" on building, etc.	32,865 88		
Over-expenditure			$21,278 39
1882—Receipts	$46,866 25		
Expenditure	40,777 32		
Expenditure on building and furniture	16,965 55		
Over-expenditure			$10,876 62

Balance at 31st December, 1882 :—

Debentures	$50,000 00	
Bank balance	3,606 90	
Cash in hand	22 81	
		$58,629 71

The Assets of the Society on the first of January, 1883, comprised :—

1. The grounds; 2. The old building; 3. The Library of books, consisting of (*a*) The Library as at first January, 1879; (*b*) Additions to the Library since first January, 1879, cost, $9,615 22; 4. The pictures and furniture consisting of (*a*) Those in existence first January, 1879; (*b*) Additions to pictures and furniture since January 1st, 1879, $4,749 30; 5. The surplus stock of Canadian Reports, consisting of (*a*) Stock, January, 1879; (*b*) Additions to surplus since 1st January, 1879; Selling price, $11,280 60, cost, $2,820 15; New building and improvements in old building, $48,096 95; cash assets as above, $53,629 71. In addition to which has been spent on additions to County Libraries since 1st of January, 1879, $3,700.

It will be observed that the cash assets have diminished as follows :—

Cash Assets, 1st January, 1879	$68,948 25	
" 1st January, 1883	53,629 71	
Diminution	$15,318 54	

But, on the other hand, other assets have increased as follows :—

Additions to Library	$9,615 22	
Additions to surplus stock of Reports	2,820 15	
Additions to pictures and furniture	4,749 30	
New building and improvements to old building	48,096 95	
Total	$65,281 62	
Deduct diminutions in cash assets.	15,318 54	
Net improvements in assets at cost price	49,963 08	
Irrespective of aid to County Libraries	3,700 00	

ABSTRACT OF BALANCE SHEET, 1882.

RECEIPTS.

Certificate and Term Fees		$17,827 50
Notice Fees	606 00	
Less Fees returned	2 00	
		604 00
Attorneys' Examination Fees	6,445 00	
Less Fees returned	1,070 00	
		5,375 00
Students' Admission Fees	8,200 25	
Less Fees returned	650 00	
		7,550 25
Call Fees	10,580 00	
Less Fees returned	2,715 00	
		7,865 00
Interest and Dividends		2,752 54
Government payment for Heating, Lighting, and Water		4,250 00
Received for Reports sold		450 88

LAW SOCIETY..

Sundries :—		
Received Telegraph Commission and Fees on Telephone messages...		191 08
Fees for petitions		176 50
Balance		10,876 62
Reporting :— EXPENDITURE.		
Salaries	$7,346 57	
Postage	200 31	
Printing	6,417 17	
Supreme Court Reports	2,025 00	
Notes of Cases	259 87	
		$16,248 92
Examinations :—		
Salaries	3,061 48	
Scholarships	1,480 00	
Printing and Stationery	229 30	
Advertising	44 70	
Engrossing Diplomas and Certificates	4 60	
Examiners for Matriculation	290 50	
Law Journal Account	30 00	
Prize	25 00	
		5,165 58
Library :—		
Books, Binding and Repairs		2,256 72
General Expenses—Salaries :—		
Secretary, Librarian, and Sub-Treasurer	2,000 00	
Assistants	1,266 70	
Housekeeper	292 25	
		3,558 95
Lighting, Heating, Water and Insurance :—		
Engineer and Assistant	565 00	
Gas	689 10	
Water	846 97	
Insurance	211 14	
Weighing Coal	10 00	
Fuel	2,930 04	
Repairs to Apparatus	341 86	
Carting Coal and Cutting Wood	124 42	
Sifter	6 00	
		5,724 53
Grounds :—		
Gardener and Assistant	400 00	
Tools	4 65	
Cartage	60 15	
Labour	209 38	
Snow Clearing, $36.94; Gravel, $278.75	314 69	
		988 87
Conversazione		1,396 00
County Library Aid		1,560 00
Sundries :—		
Auditor, $100, Postage, $19.14	119 14	
Advertising, $211; Stationery, $243.50	454 50	
Law Costs, $933.39; Portraits, $650	1,583 39	
Picture frames	145 00	
Repairs, $246.66; Term Lunches, $543.55	790 21	
Clocks, $10; Guarantee Co., $20	30 00	
Rubber Stamp, $2.50; Oiling floors, $3	85 50	
Ice, $15; Cleaning windows, $34.60	49 60	
Bell Telephone Company	100 00	
Teledhone Operator	466 34	
Telephone Messages, $7 21; Shifting books, $15.73	22 94	
Petty charges, $25; Labour, $30.68.	55 77	
Taking up matting and carpets	32 70	
Painting, $33.39; Resume, $30	63 39	
P. O. Box, $4; Locks and Keys, $21.42	25 42	
Furniture repaired	30 35	
		4,054 25
		$40,953 82
Expenditure on New Building		16,965 55
		57,919 37

Audited and found correct.

(Signed) HENRY W. EDDIS,
Auditor.

TORONTO, Feb. 1883

While congratulating the Society on these results, the Committee think it necessary to point out that the estimated expenditure for the current year will approximate closely to the estimated income.

It is true that this is to be partly accounted for by the extraordinary expenditure for the Election Reports.

But making allowances for this expenditure, the income and expenditure, as estimated, too nearly balance; and in view of the great complaints on the subject of business, the emigration to Manitoba, and the large increase in the past in the numbers of the profession, the Committee feel that it would be prudent to limit as far as possible the expenditure of the Society in the future, and to aim at the creation of a contingent fund, as formerly proposed, of at least $10,000, by means of the accumulation of the interest on investments.

In this view, it has been suggested that it may be well to reduce the expenditure on Supreme Court Reports by subscribing only for copies for the libraries, and arranging that in the regular reports should be published the reports of Ontario Appeals to the Supreme Court in cases of interest.

D. B. READ,
Chairman Finance Committee.

Ordered that the last paragraph, as to the Supreme Court Reports, be referred to the Committee on Reporting for enquiry and report.

The Report of the Library Committee, presented yesterday, was brought up for consideration, and is as follows :—

REPORT.

The Library Committee beg leave to report as follows :—

1. Attached is a list of books that have disappeared from the Library, the whereabouts of which the librarian, after search and enquiry, is unable to discover. By reference to the list it appears that most of these books are upon the curriculum, but they do not appear to have been loaned to students.

2. The Committee think that, with a view to securing if possible the return of these books, it would be advisable to notify the students that unless the books now out are returned within three months Convocation will have to consider the expediency of abolishing the privilege of borrowing books.

3 The librarian reports that in order to supply the present demand of students for books on the curriculum, it is necessary to keep six copies of each book required to be read for the intermediate examinations, and four copies of each required to be read for the finals. Attached is a list of such text books from which it appears that a large number of new volumes are required to make up the above number.

4. The Committee suggest that all books on the curriculum ought to be stamped and mark-

ed so as to prevent the destruction of their identity as the property of the Society, and that in the future great strictness should be observed in seeing that the books are returned by the days named in the receipts given for them.

5. With regard to opening the library at nights, the librarian states, and it appears from the returns, that except in very infrequent instances no advantage has been taken of this privilege by others than students, and that they come in small numbers merely to read the text books upon the curriculum, and some even bring their own books, merely using the library as a reading-room.

The Committee think that the opening of the library at nights should be abolished after the close of the present term.

Mr. Daley's engagement terminates on the 17th of this month. The Committee recommend that he be re-engaged until the end of the month, after which the librarian thinks his services may be dispensed with.

The Committee recommend that students requiring books for loan or for their own use in the library from the locked cases, be limited as to their applications to the following hours, namely: between 10 and 10:30 a.m., and between 3:30 and 4 p.m.

Signed, CHARLES MOSS.

Hilary Term, 1883.

The report was adopted.

Missing Books. — Broom.s Common Law, Brooms's Legal Maxims, Broom's Constitutional Law, Byles on Bills, Benjamin on Sales, Best on Evidence, Blackstone, Vol. I., Anson on Contracts, Greenwood on Conveyancing, Harris' Criminal Law, Walkem on Wills, Leith's Blackstone, old edition, Leith's Blackstone, new, Holmested's J. A., Leith's Williams, Smith on Contracts, Smith's Mercantile Law, Leggos' Forms, 2nd edition, Lewis' Equity Pleading, Smith's Com. Law, Taylor on Titles, 1873, Stephens on Pleading, Williams on Real Property, Maclennan's J. A., Taylor & Ewart's J. A., Pollock on Contracts, Hawkins on Wills, Smith's Equity, Students' Guide, Snell's Equity, Taylor's Equity, Taylor's Chy. Orders, Underhill on Torts, Cunningham and Mattinson, Wharton on Inn-keepers, Taylor on Landlord and Tenant, Leake on Contracts, Lewin on Trusts.

Students' Books now in the Library — 1 Walkem, 2 Broom's Common Law, 3 Broom's Legal Maxims, 3 Darts, 2 Haynes' Equity, 2 Greenwood, 1 Byles, 4 Leith's B. 1 Leith's B. N. S., 7 Leith's R. P. S., 2 Holmesteds, 4 Leith's Williams, 2 Smith's Contracts, 3 Benjamin, 2 Smith's Mercantile, 2 Powell, Smith's Common Law, 2 Taylor on Titles, 1869; 2 Taylor on Titles, 1873; 1 Stephen, 2 Williams' Rl., 3 Williams' Pers., 3 Maclennan, 2 Taylor and Ewart, 4 O'Sullivan, 2 Taswell Langmead, 2 Theobald, 2 Bests, 1 Walkem, 1 Pollock, 1 Hawkins, 3 Snell's Eq., Blackstone, Vol. I., 2 Story's Eq., 1 Taylor's Eq., Taylor's Chy. Orders.

Saturday 10th February, 1883.

Present—Messrs. Crickmore, Leith, Moss, J. F. Smith, Murray, Maclennan, Read, Foy, McMichael, Kerr, Ferguson.

In the absence of the treasurer Mr. Maclennan was elected chairman.

The Report of the Committee on Reporting was presented by Mr. Maclennan.

The Report was received, ordered for immediate consideration, and was adopted as follows:

REPORT OF REPORTING COMMITTEE.

The Committee on Reporting beg leave to report as follows:—

The Committee are happy to state that Mr. Lefroy, the reporter for the Chancery Division, has recovered from his serious illness, and is now vigorously engaged in his duties, and they are confident he will, in a very short time, bring up the arrears caused by his illness.

The Registrar of the Chancery Division and the other officers of that Division have very kindly taken a note of all judgments delivered during the illness of Mr. Lefroy, so that no decision of importance will be overlooked.

There are still a number of cases (about twenty-six) which ought to be brought out by Mr. Grant to complete volume twenty-nine of the Chancery Reports, as to which he states there are various difficulties which have caused delay. The Committee hope that these cases may soon be issued, and the volume completed. There are about fifty-six cases of Mr. Lefroy's which are in type, and which may be brought out in a short time.

The work in the Queen's Bench and Common Pleas Divisions is, as usual, thoroughly well attended to and up to time.

Mr. Harman has completed the arrears of Mr. Tupper's work, and he has also prepared the index of volume six, which is now ready to issue.

The work in the Court of Appeal is in a forword state, but there are six cases which have been in print since October which are not yet issued, although a number of more recent cases have been published.

The practice reporting is also well attended to, thirty-nine cases have been published since last term, and there are at present thirty other cases in type and in an advanced stage. The editor has informed the Committee that the preparation of the Digest is now in progress, and will be proceeded with as rapidly as possible.

Signed, JAMES MACLENNAN,

February 10th, 1883. *Chairman.*

The consideration of the Report of the Discipline Committee, on the complaint of Mr. Landon, was ordered to stand till Friday, 16th instant

The Secretary submitted the list of solicitors who have taken out their annual certificates pursuant to the standing order.

Mr. Moss, seconded by Mr. Smith, moved pursuant to notice—That the Secretary be directed to draw the attention of the Judges and Junior Judges of the County Courts to the practice under the Division Courts' Act, 43 Vict. Cap. 8, sect. 16, of allowing counsel fees to agents, not being barristers or solictors, appearing before the Judges in Division Court causes, and to represent to them that the allowance of such fees to such agents is very injurious to members of the profession, and to request their consideration of the question whether it is desirable that they should in any case exercise the discretion vested in them in favour of agents not being barristers or solicitors.

The motion was carried.

Mr. Read, Q.C., seconded by Mr. Moss, Q.C., moved that—The Benchers of the Law Society in Convocation in affectionate remembrance of Kenneth Mackenzie, Esq., Q.C., who, before his appointment to the position of Judge of the County of York, was for several years Bencher of this Society, place on record on the minutes of Convocation this expression of their feelings of regard for him during his life-time, of regret at his demise, and of condolence and sympathy with his widow and family in their bereavement.

Ordered that the Secretary be directed to send a copy of the above resolution to Mrs. Mackenzie. Carried unanimously.

Signed, JAMES MACLENNAN,
Chairman.

Convocation adjourned.

Friday, 16th February.

Present — Messrs. Crickmore, Hudspeth, Smith, Ferguson, Foy, Britton, Leith, Maclennan, Mackelcan, Moss, Hoskin, Murray, S. H. Blake, Read. Mr. Maclennan in the chair.

Mr. Hoskin, from the Discipline Committee, reported that a *prima facie* case is shown against two solicitors upon the charges made by Mr. Grace, and recommended that the charges be enquired into.

The report was received, ordered for immediate consideration, and adopted.

The petition of Mr. Grace was referred to the Discipline Committee for enquiry.

Convocation proceeded to consider the report of the same Committee in the case of Zebulon Landon against a barrister, which stood over for consideration until to-day.

Mr. Hoskin, seconded by Mr. Leith, moved the adoption of the report.

The report was adopted.

Mr. Hoskin moved that a copy of the report be transmitted both to the complainant and to the barrister in question, by the secretary.

Mr. Hudspeth seconded the motion, which was carried.

Mr. H. C. R. Becher was unanimously elected a Bencher in the place of Mr. Glass resigned.

Mr. Murray gave notice that he would on the first day of Easter Term next, move that the examination of Mr. William Clive Atkinson be allowed to stand as passed, and that a certificate be issued to him in said Easter Term next.

On the motion of Mr. Maclennan it was ordered that Mr. Harman be paid the sum of one hundred dollars for the preparation of the index to volume six of the Appeal Reports, in pursuance of the order of Convocation made last term.

Convocation adjourned.

SELECTIONS.

Hull v. *Bartlett* is a recent decision of the Connecticut Supreme Court of Errors, illustrating the rights and duties of an officer charged with the service of legal process in a civil proceeding. The facts were as follows: The defendant Bartlett, at the time, was deputy sheriff; a lawful writ of summons had been placed in his hands to be served on Mrs. Hull, who knowing that service was about to be made upon her, fled from town to town, and hid herself in many ways and places, resorting to extraordinary expedients and subterfuges to elude the officer. At last the defendant traced her, as he believed to the house of one Veits, where, upon inquiry, he was told that she had left in the morning. Permission to search was for a time denied, but afterwards granted; but she was not found in the house. Finally the door of a small outbuilding was discovered fastened. But no response could be obtained from any person within, after repeated calls. At last the defendant (having first obtained permission of the owner for that purpose) forced the door, and found a woman lying on the floor, with her head and face closely wrapped to prevent identification. The defendant repeatedly requested her to uncover her face in order that he might know who she was, stating his business. But after waiting long, she still kept her position and the covering over her face. He then, as gently as possible, raised her up and uncovered her face for the mere purpose of identifying her, that he might complete the service and make truthful return upon the writ.

"Under the circumstances of this case," the court proceeded to say, after stating these facts, "will the law justify an act on the part of the officer which would otherwise constitute an assault and battery? It was the

officer's duty, and he had a right to make personal service of the writ, and in the performance of this duty the plaintiff had no right to obstruct or resist him. If she did so, the defendant had an undoubted right to use all the force necessary to overcome such obstruction or resistance: (*Hagar and Wife* v. *Danforth*, 20 Barb. 16.) The right to overcome with necessary force all active resistance is clear, but is there the same right to overcome, by the same means, mere passive resistance? We think not. It is obvious that the plaintiff could do, or omit to do, many things to delay, hinder and embarrass the service of a writ not only with impunity, but without giving the officer any right to use force. She could flee from town to town and hide herself. She could make identification difficult by change of dress, by cutting or dyeing her hair, or blackening her face, or wearing a mask or a veil. The law must declare the circumstances and occasions when an assault is justifiable. It would not do to leave it to the jury to determine whether the conduct was reasonable unless the law first declares it to be a case for the use of such force. There are no authorities that determine the precise question that controls this case. It must be settled by the analogies of the law, and in such manner as to secure those immunities and rights which the law holds most precious. Suppose Mrs. Hull had fled before the officer, and had entered her own dwelling house, closing after her the outer doors; the law surely would have said to the officer, 'thus far and no further;' but the dwelling surely is not more sacred than the person of the dweller. The law has given every one an inherent right to immunity from interference with or injury to his body at the hands of any other person. The exceptions where an assault is justifiable are all founded on the highest necessity. We do not think the mere importance of identifying a person for the service of civil process comes up to the spirit and reason of any of the recognized grounds for justifying an assault."—*Central Law Journal.*

Simultaneously with the great scare about Wiggins' storm has arisen a scare among the newspapers about the great number of lawyers in this country. This scare has now reached Albany, and the *Evening Journal is* quite despondent over it. That excellent and usually courageous newspaper remarks: "In all Great Britain and Ireland, with a population approximating 37,000,0000, there are between 11,000 and 12,000 lawyers. In the United States, by a population larger by only 15,000,000, there are 65,000 lawyers; and in this State of ours, with a tenth of the country's population, abide a sixth of its entire body of lawyers. It will not do to explain the fact that there is a lawyer to every 3,000 people in Great Britain, while in America there is a lawyer to every 800 upon any hypothesis which asserts a marked difference between the needs of the two countries for legal activity. As a matter of fact we have a ridiculous excess of lawyers over here. In every city east of the Mississippi there are more lawyers than there are legitimate cases in court for them to take care of. . . The result of this state of affairs deserves to rank among the most grinding of our social evils. The harm which a professionally united band of men, with invention sharpened by poverty and zeal, robbed of tempering scruples by the pressure of creditors, can do in a community by stirring up litigations among citizens, inciting peaceable folks to sue each other, prolonging cases indefinitely by resort to every quibble and pretext possible under our loosely-drawn laws, and devoting all their collective ingenuity and skill to the work of making business for themselves at the expense of the public—cannot well be over-estimated. . . We look to see, sooner or later, a very decided expression of public opinion on this question of the supply of lawyers. In the eyes of the law they are officers of the courts. Logically there ought to be a limit to their creation, just as there is a limit to the creation of district attorneys, or constables, or letter-carriers. . . . Popular opinion has not been directed with much clearness or concentration towards this evil as yet, but it will be one of these days, and then we take it that a radical —perhaps too radical—reform will be wrought in the whole system." It seems to us that the *Journal* is unnecessarily frightened. As a class the lawyers seem to do pretty well—they are neither richer nor poorer than their fellows of other occupations. It is no more dangerous to have 65,000 lawyers than it is to have—what the census shows to be the fact—85,000 physicians and 41,851 barbers, to threaten our health and our throats. It is highly probably that the 12,000 "journalists" or the 19,000 plumbers make more mischief

than the 65,000 lawyers, and it is quite certain that the 285,000 milliners, dressmakers and seamstresses do. The idea of suppressing the lawyers by cutting off their privileges as "officers of the court" is decidedly unique. A small and privileged class of lawyers practising at the pleasure of the court, would be a rather dangerous body. There would be some constitutional objections in the way of this scheme. It is not the lawyers who make the litigation, but the litigation that makes the lawyers. The community should have all the law it wants, and all who desire should be permitted to be lawyers. Such communities are the freest and most prosperous. We do not object to the editors. A great many people think the press ought to be muzzled, but we do not share that opinion. We think the editors should be free to write all the nonsense they choose. But if the *Journal* writes many more columns after this fashion the *Troy Times* must look out for its laurels.—*Albany Law Journal.*

REPORTS

ONTARIO.

MUNICIPAL ELECTION CASES.

REG. EX REL CHOATE V. TURNER.

Qualification of township councillor—Irregularity of Deputy Returning Officer.

[London, Feb, 19.—ELLIOT, Co. J.

This was a writ in the nature of a *quo warranto*, calling upon the respondent to show by what authority he held the office of Township Councillor, made returnable before the county Judge of Middlesex.

Street, for the relator.

Magee, for the respondent.

ELLIOT, Co. J.—The respondent was declared to be elected by a majority of one vote, as Councillor for North Dorchester. The relator, by this application, seeks to have it declared that he is the person who had a majority of votes, and not the respondent.

The respondent has attacked the qualifications of the relator, affirming it to be insufficient. From an inspection of the assessment roll it appears that the relator, his father and a brother were jointly assessed for lots 1 and 2 in concession B, for $16,000. It is not stated on the roll in what capacity they were assessed, but after the assessment, and before the election it appears that it was arranged between the relator and his father that the former should convey to the latter all his interest in the said lands, which interest was confined to the south 100 acres, and that the father should lease this 100 acres to the relator for three years, at a rent of $300 a year. And this arrangement was carried into effect; the relator remained in possession of these 100 acres, which are said to be worth $6,000. It is contended for the respondent that, inasmuch as the relator at the time of the election had ceased to have the same estate in the land which he had when assessed, it must follow that his qualification is insufficient. I cannot adopt this view of the case.

When the relator was assessed he had a sufficient interest or estate in this land to qualify him, and at the time of the election he also had an interest or estate in the same land sufficient for that purpose. The objection appears to be purely of a technical character. It is admitted that the estate which he had in the land at the time of the assessment, and at the time of the election, was in either case sufficient for qualification, and I do not see that section 70 of the Municipal Act, which enacts what the qualification shall be, requires more than that the candidate's estate shall be of a sufficient quality and value, and that it shall be in the same land as that for which he was assessed. The spirit as well as the letter of the Act seems to be in favor of a qualification, whether it rests upon freehold or leasehold, or partly one and partly the other, so long as the candidate's estate is sufficient in value and continues to be in the land assessed. I think the relator's qualification was and is sufficient.

The respondent further objects that in the case of four voters, the Deputy Returning Officer took their votes as being those of persons incapable of marking their ballot papers, and did so without going through the formalities prescribed by section 144 of the Municipal Act. Two persons who had voted in this way were called as witnesses by the respondent. One of them swore that he was physically unable to mark the paper owing to a palsied affection which was plainly visible, and the other swore that he was illiterate and could not read the

names of the candidates. They both said they requested the Deputy Returning Officer to mark the ballot paper for them, which he did, and there was no reason to doubt that he complied strictly with their request. But the declaration mentioned in section 144, sub-sec. 3, and marked "D," was not made by either of these voters, nor was the declaration under the same section and marked "F" made by the Deputy Returning Officer. It is further said that one or two others—persons who are unknown, but who represented themselves unable to mark or to distinguish the names—put in their votes in a similar way, and without the declarations mentioned. The Deputy Returning Officer swears that he took those votes at the request of these voters, and that in each case he asked the agent of the respondent whether he was satisfied with what was done, and that his reply was in the affirmative, or at least his assent was signified. It is not shown that the result of the election was affected in any way by what the Deputy Returning Officer did, but it is suggested that it may have been affected by it. But this is purely conjectural, and not probable. By section 168 of the Municipal Act non-compliance with the rules as to the taking of the poll . . "shall not render the election invalid . . . if such non-compliance did not affect the result of the election." In *Regina ex rel. Walker* v. *Mitchell*, 4 P. R. 218, the successful candidate had only a majority of one. It appears that by a mistake of the returning-officer the name of a candidate had been omitted from the list until half the day of election had expired, and it was urged, with what appears to me much plausibility, that had it not been for this omission the result might have been very different. Nevertheless, Wilson, C. J., held that it did not appear to him, from what was shown, that the result would have been other than it was had the omission not occurred, and he held the election to be valid. If mere surmise or conjecture was allowed to be enough to invalidate an election, little ingenuity would be requisite to present a plausible reason for giving force to every irregularity, and I apprehend that comparatively few of these municipal elections, in the rural districts, are free from some defect of this description. In the case before me the Deputy Returning Officer has acted in that capacity on many previous occasions, without going through the formalities mentioned, and no objection has been made. This does not excuse his non-compliance with the Act on this occasion, but it tends to show that such omissions are not uncommon. And when the respondent was well represented by his agent, as he was at this election, and he allowed the Deputy Returning Officer to proceed as he did without any complaint, if not with his approval, I certainly must conclude that he consented to what was done. I do not think there is any sufficient reason that I should pronounce this election invalid upon any ground which the respondent has advanced.

I have, therefore, to pronounce the relator the duly elected Councillor by a valid election, which I do to the exclusion of the respondent.

As respects the question of costs, I should have felt disinclined to allow them to either party had the contest been confined to the question of the validity of the two ballot papers, because that was a matter exclusively within the cognizance of the returning-officer. But as the respondent has raised questions by which the controversy has been prolonged, and in which he has failed, I see no reason why the common rule should be departed from, which is that the unsuccessful party pay the costs, and I so direct.

COUNTY JUDGES' CRIMINAL COURT —COUNTY OF ONTARIO.

REGINA v. BAKEWELL.

Arson—Setting fire to a chattel within a dwelling house—32-33 Vict., c. 22, sec. 8.

Recklessly and wantonly, or even maliciously, setting fire to a chattel within a dwelling house, is not, under all circumstances, a felony within the meaning of the "Malicious Injury to Property Act," (32-33 Vict., c. 22, sec. 8, Dom.)

(Whitby.—DARTNELL, J.J.

The prisoner was committed for trial by a magistrate, and was indicted under the "Malicious Injuries to Property Act," sec. 8. It appeared in evidence that the prisoner, in a fit of drunken recklessness, struck a match, and set on fire a tissue paper "flycatcher" or ornament, attached to the ceiling of a room in a tavern, in the Village of Brooklin. The fire was extinguished without much damage being done.

DARTNELL, J.J.—The section of this Act under which the prisoner was indicted reads as

follows: "Whosoever unlawfully and maliciously sets fire to any matter or thing, being in or against any building, *under such circumstances that if the building were thereby set fire to, the offence would amount to a felony*, is guilty of felony, and shall, etc."

The prisoner's act was no doubt "unlawful," but that it was done maliciously could only be inferred from the act itself. The evidence shows it was the crazy and unthinking act of a man under the influence of liquor. Under these circumstances I do not think I can convict the prisoner. If the damages had exceeded $20 the prisoner could have been found guilty of a misdemeanor, under section 59, and, at any rate, the magistrate could have fined him under section 60. Instead of this he has committed him for a felony, and the prisoner has thus escaped from any punishment for a wanton and reckless act, which might unhappily have been followed by loss of much property, and perhaps of life itself.

Even if the malicious design to destroy by fire a chattel within the building had been proved, it does not follow that the firing of the building itself, as the probable or immediate effect of the act, would amount to a felony. The design or intent to fire the building itself, is, I take it, the *gravamen* of the charge. I am sustained in this view by the case of *Regina* v. *Childs*, (L.R. 1 Cr. Ca. Reserved 307), which was a case reserved upon an indictment under a similar clause in the English Criminal Statutes. In that case, although the jury found that the chattel had been unlawfully and maliciously set on fire, the Court was of opinion that no felony had been committed. Blackburn, J., in giving his opinion says, "Mr. Greaves, in his edition of our Consolidated Acts, (p. 165), says that if you set fire to one thing, under such circumstances that you are likely thereby to set fire to another thing, then, if the setting fire to the one thing is malicious, the setting fire to the other is so too. If that is good law, then the setting fire to the house here, if it had caught fire, would be felony. But it is not law, and the framers of the Act have failed to express the meaning they intended to express."

I find the prisoner not guilty of the felony as charged.

RECENT ENGLISH PRACTICE CASES.

WOOD v. WHEATER.

Imp. R. 17, r. 2, 42, r. 3—Ont. R. 116, 341—Foreclosure—Action for recovery of land.

[L. R. 22 Ch. D.

CHITTY, J.—A foreclosure action, although held in *Heath* v. *Pugh*, L. R. 6 Q. B. D. 345; 7 App. Cas. 235, to be an action for the recovery of land, is not an action for the recovery of the possession of land within the meaning of O. 42, r. 3, (Ont. R. 341). The effect of an order for foreclosure absolute is merely to bar the equity of redemption . . . Possibly, in future, it might be advantageous in every foreclosure action to add a claim for possesion.

[NOTE.—*As to an action for foreclosure being an action for the recovery of land, see Barwick v. Barwick, 21 Gr. 39.*]

COMPTON v. PRESTON.

Imp. O. 17, r. 2, 19, r. 3, 22, r. 9—Ont. R. 116, 127, 168—Pleading—Recovery of land—Counter-claim.

The provision of Imp. O. 17, r. 2, (Ont. R. 116), that no cause of action, except those specified in that rule, shall, unless by leave of the Court, be joined with an action for the recovery of land, applies to a counter-claim as well as to an original action.

[L. R. 21 Ch. D. 138.

The defendant, by counter-claim, sought to set up two causes of action; the first, a right to recover land; the other, a right to damages for deceit. No leave had been obtained to join the two causes of action.

FRY, J., held the joinder of the two causes of action in the counter-claim was, in its nature, embarrassing, and made an order excluding the defendant from the benefit of the counter-claim.

As to Imp. O. 17, r. 2, (Ont. R. 116), he says: "It is to be observed the terms of the rule are perfectly general, and it is difficult to see why a counter-claim for the recovery of land is not an action for the recovery of land. At any rate, that which is embarrassing, if joined in a statement of claim with an action to recover land, is likely to be embarrassing if joined in a counter-claim for the recovery of land. And, further, it would be absurd to hold that that which cannot be joined with a claim to recover land can be

joined with a counter-claim for the same purpose, for then the mere fact that a plaintiff claims a trivial amount of damages would release the defendant from the fetter of the rule, and enable him, without the leave of the Court, to join any cause of action with a counter-claim to recover land. Then it is important to enquire what are the principles on which the rules relating to actions for the recovery of land are founded. They are explained by JESSEL, M.R., in *Gledhill* v. *Hunter*, L. R. 14 Ch. D. 492. All these rules appear to me to apply equally whether the claim to recover land is raised in an original action or by a counter-claim.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COMMON PLEAS DIVISION.

FIRE INSURANCE ASSOCIATION ET AL. v. CANADA FIRE AND MARINE INSURANCE CO.

Re-insurance—Statutory conditions.

The Dominion Insurance Company insured one C. for $2,500, and re-insured $1,000 with defendants. Subsequently, an agreement was entered into between the Dominion Company and the Fire Insurance Association, which, after reciting the Company's determination to discontinue business, and their desire to be released from and guaranteed against loss on their existing risks, and their agreement to transfer all their existing business to the Association, and the agreement of the Association to relieve the Company, and to accept a transfer of their business and reinsure their risks, the Association agreed to and did thereby reinsure all the Company's existing risks, and bound and obliged themselves to pay and indemnify the Company against all losses on policies, and the expenses of adjusting same. The agreement provided that the Association should take and accept all insurances which the Company might have effected with any other company, with all and every the powers and rights of the Company. The good will of the Company was then assigned to the Association, and the Company were not to engage in business for five years. After the agreement had been entered into, a fire occurred by which C. sustained loss to the amount insured, which was paid by the Association, and this action was then brought to recover the re-insurance of $1,000 from the defendants.

Held, that the Association was entitled to recover such amount from the defendants for treating the agreement as a re-insurance, though more properly described as a transfer of the business, with its liabilities and collateral securities, if it was of the whole amount of the Company's liability, the Association having paid the whole loss to the Company, or what was the same thing, to C., were entitled, irrespective of any assignment, to contribution from defendants to the extent of the amount re-insured by them. If, however, it was only of the residue of C.'s risk, the defendants were still liable to the Company on their policy, and by the very terms of the agreement, it was effectually assigned to the Association, who acquired all their co-plaintiff's rights and interests in it.

Held, also, that the Fire Insurance Policy Act does not apply to a contract or policy of re-insurance so as to make it subject to the statutory conditions.

Robinson, Q.C., and *George Harman*, for the plaintiffs.

Osler, Q.C., for the defendants.

MCDONALD v. MURRAY.

Sale of land—Agreement—Uncertainty—Action to recover instalment—Necessity of tender of conveyance—Title.

By an agreement in writing for the sale of land for the price of $60,000, $4,000 was to be paid on the execution of the agreement, $40,795 within 60 days thereafter; and the balance to remain on mortgage. The purchasers paid the $4,000, but on the expiration of the 60 days, refused to pay the $40,795, to recover which this action was brought.

Held, that the provision as to the mortgage did not render the agreement void for uncertainty, for it was a matter to be settled by the election of the purchaser.

Held, also, that an action was maintainable to recover the $40,795, before a conveyance of the land was made; that it was the purchaser's duty to prepare and tender the conveyance for execution; that it was not necessary for the plaintiff to aver he had a good title; all he is required

to do is to make a good title when he can be called upon to do so; and he could not be so called upon until the last instalment was demanded, or the defendant showed a readiness or willingness to arrange that according to the terms of the contract.

A nonsuit entered at the trial was set aside, and a new trial granted to enable a plea of fraud to be tried.

J. K. Kerr, Q.C., and *C. J. Holman*, for the plaintiff.

McMichael, Q.C., for the defendants.

CORPORATION OF DUNDAS v. GILMOUR ET AL.

Action—Trial of questions between co-defendants—Delaying plaintiff—O. J. Act, Rule 112.

Held, under Rule 112 of the O. J. Act, where in an action the plaintiff is held entitled to recover against the defendant against whom the action is brought; the defendant is precluded from trying questions arising between himself and a co-defendant, added at his instigation, under Rule 108, in the trial of which the plaintiff has no interest, and which has the effect of delaying the plaintiff in his recovery.

Martin, Q.C., for the plaintiff.

Victor Robertson, for the defendant.

MCCANN v. CHISHOLM.

Lateral support to land—Action by tenant—Right to maintain.

Held, that an action against the proprietor of land for damage sustained to a building on the adjoining land by reason of the lateral support having been removed, may be maintained by the tenant of the land.

Osler, Q.C., for the plaintiff.

Moss, Q.C., for the defendant.

DUFF v. CANADIAN MUTUAL FIRE INSURANCE COMPANY.

Mutual Insurance Companies—Solicitor's costs—Separate branches.

Action to recover the sum of $3,343 for solicitors' costs from a Mutual Insurance Company.

Held [OSLER, J., dissenting], that under the Mutual Act (R.S.O. ch. 161), the plaintiff's remedy must be directed against the respective branches for which the services were, in fact, rendered; and in case of a deficiency of assets of any of the branches, the members of the other branches are not liable for the claims of the defaulting or insolvent branches.

Per OSLER, J.—A creditor of the Company, as is the case of the plaintiff, for a debt incurred as part of the necessary expenses of the Company, though in relation to the business of some branches only, is entitled to be paid out of the Company's moneys derived from assessments for losses and expenses on policy holders in other branches.

Duff, for the plaintiff.

Laidlaw (of Hamilton), for the Hydrant Branch.

Osler, Q. C., for the County Branch.

REGINA v. GOODMAN.

Criminal law—Prisoner committed on one charge and tried on another—Consent.

The prisoners were committed for trial on a charge of gambling on a railway train by playing a game called "three card monte." On the case coming before the County Judge, an indictment was preferred under 42 Vict. ch. 43, sec. 3, for obtaining money by false pretences. The prisoners' counsel objected to their being tried on a different charge from that on which they were committed. The Judge overruled the objection, and on the charge being read over to the prisoners, and it being explained to them that they had the option of either being tried forthwith, or remaining untried until the next sittings of the Oyer and Terminer and General Jail Delivery, they pleaded not guilty, and said they were ready for trial. The case then proceeded, and the prisoners' counsel cross-examined some of the crown witnesses, and at the close of the case took several objections to the proceedings, but made no objection to the case having been tried without the prisoners' consent. A writ of Habeas Corpus having been issued, and the discharge of the prisoners moved for,

Held, that the motion be refused.

Per WILSON, C.J.—It is unnecessary to decide whether the prisoners' remedy was by Habeas Corpus or Writ of Error, because upon the facts they were not entitled to take either of their remedies.

Per OSLER, J.—The prisoners having been imprisoned under the conviction of a Court of

Record, an objection of error in the proceedings must be by Writ of Error; that the Writ of Habeas Corpus was, therefore, imprudently issued, and should be quashed.

T. S. Jarvis, for the prisoners.

Delamere, for the Crown.

HILLOCK v. SUTTON.

Lease by person having title by possession to original owner—Effect of—Fraud in obtaining lease—Setting aside.

In 1867, the plaintiff purchased the land in question from N. who was in possession under a bond from P., the owner, which was registered, to convey the land on payment of the purchase money. The plaintiff entered into possession, and notified P. of his purchase, and P. gave a like bond to the plaintiff. The plaintiff at the time paid P. a portion of the purchase money, but made no further payments, and did nothing thereafter to acknowledge P.'s title, remaining in possession until 1880, thereby acquiring a title by possession. The defendant, who had purchased the interest of P.'s heirs in the land, and his solicitors who were aware of the existence of the bonds, and of plaintiff's possession, by representing to the plaintiff, who was an illiterate man, and ignorant of the effect of his possession, and who had no independent legal advice, that he had no title, persuaded the plaintiff to accept a lease from the defendant in the statutory form, for two years, at a nominal rent, containing the covenant to give up possession at the end of the term.

Held, that under the circumstances, the lease must be set aside; but even if allowed to stand, it would not constitute an acknowledgement of the defendant's title under the statute, so as to displace the plaintiff's title, for its effect would only be to estop the plaintiff from denying the plaintiff's title during its continuance.

Meyer (of Orangeville), for the plaintiff.

Osler, Q.C., for the defendant.

EMERSON v. NIAGARA NAVIGATION COMPANY.

Assault by purser—Liability of defendants—Summary conviction—Bar to civil remedy.

The plaintiff, who had purchased a special excursion ticket from Toronto to Niagara and return, by the Steamer *Chicora*, good only for the day of its date, and which had been taken up by the purser on that day, claimed the right to return by it on the following day, under an alleged agreement to that effect with the purser, which the purser denied. On the purser demanding the plaintiff's fare, and the plaintiff refusing to pay anything, the porter of the steamer, by the purser's direction, seized hold of and attempted to take as a lien for the fare, a valise which the plaintiff had in his hand, whereupon a scuffle ensued, and the plaintiff was injured.

Held [OSLER, J., dissenting], that the purser was not acting in the discharge of his duty in thus forcibly attempting to take possession of the valise out of the plaintiff's possession, and that, therefore, the defendants, the owners of the vessel, were not liable for his unauthorized act.

It appeared, also, that the purser had been summoned by the plaintiff for the assault before the Police Magistrate at Toronto, and convicted, and a fine imposed on him which he paid.

Per WILSON, C.J.—The imposition and payment of the fine for the assault, was a bar to any further proceedings, civil or criminal, for the same cause.

J. K. Kerr, Q.C., and *W. Roaf*, for the plaintiff.

D'Arcy Boulton, Q.C., for the defendants.

CUMMINGS v. LOW.

Reference—C. L. P. Act, sec. 189—Appeal.

An action for an account and delivery up of a trust estate, entered for trial at the Picton Assizes, was referred by the Judge at the Assizes, under an order, which was stated to be drawn up on reading the pleadings and hearing counsel, to the certificate of S. S. Lazier, Master of the Chancery Division at Picton, with all the powers of the Judge of the High Court as to certifying and amending pleadings, etc., and to enquire and report as to the plaintiff's right to bring the action; the defendant to have the right to claim all such fees and reasonable allowances for his care, pains and trouble, which in the Master's opinion he should show himself entitled to. The costs to be in the Master's discretion, and the whole report to be reviewed or appealed from according to the statute in that behalf.

Held, (by OSLER, J.)—A reference under sec. 189 of the C. L. P. Act, and that an appeal from

the finding of the Master was, therefore, regularly set down under the provisions of that Act, to be heard before a single Judge in Court.

The form of the order of reference observed upon, and the ordinary and well-known terms of reference, recommended to be followed.

McKee, for the plaintiffs.

Watson, for the defendant.

CHANCERY DIVISION.

Boyd, C.] [March 14.

BOYS' HOME v. LEWIS.

Will—Gift to trustees as a class—Construction—Compensation to executors—Interest on balance retained by executors.

Appeal from Master's report. Residuary gift to trustees in trust "to divide and pay the same to and among my legatees hereinafter named and my said trustees, or the survivor of them, in even and equal shares and proportions."

Held, the trustees took as a class, *i. e.*, one share, equal to the shares taken respectively by the legatees, for looking at the whole will it appeared the testator was speaking of the trustees in their official capacity, and regarding them as one legal person.

It is a principle of construction that the same meaning shall, as far as possible, be given to the same words in the same will.

Where there is a bequest of a share of the residuary estate to executors it is not to be inferred that the bequest was given in lieu of compensation, as in the case of a legacy of a definite sum, but it is nevertheless one of the elements to be considered in dealing with the question of compensation.

Held, in this case, the executors were entitled to compensation, notwithstanding a bequest to them of a share of the residue, because the amount of the residue was, when the will was made and after the testator's death, a matter of extreme uncertainty.

By the usual course of the Court interest is not chargeable against an executor till after the end of the first year *prima facie* the fund is then distributed, and if he keeps money thereafter in his hands without reason he will be charged with interest.

Held, in this case, there was no good reason for not charging the executors with interest upon the residue in their hands after the time when it was distributable. The usual rate of interest should be charged upon it from the time it might properly have been distributed or appropriated down to the time of its actual payment, or, if not yet paid, down to the present time.

S. H. Blake, Q.C., for the trustees.

E. Martin, Q.C., for defendant Rachel Evans.

J. M. Gibson, for the plaintiff.

Boyd, C.] [March 14.

SCANE v. DUCKETT.

Demurrer—Creditor's action—Bills of costs—R. S. O. c. 140, s. 32.

In an action to set aside a conveyance of land as an undue preference, and fraudulent and void under 13 Eliz. c. 5, and 27 Eliz. c. 4, the averment that the plaintiff sues on behalf of all other creditors is a mere formality, and not ground for demurrer. The objection that there is no such averment is, at the highest, one savouring of non-joinder, and is to be dealt with under Rules 103, 104.

In an action by a solicitor to recover the amount of a bill of costs, the fact that he does not, in his statement of claim, allege that the bill was delivered a month before action brought, pursuant to R. S. O. c. 140, s. 32, is not now, any more than before the Judicature Act, ground for demurrer, but if the defendant wishes to take the objection he must allege it as a ground of defence. Though under R. S. O. c. 140, s. 32, the right of action on a bill of costs may be suspended pending a month from delivery, nevertheless the solicitor is a creditor, and may as such, before the expiration of such month, bring an action to set aside a voluntary conveyance as fraudulent and void.

Wilson, for the demurrer.

Hoyles, contra.

PRACTICE CASES.

Proudfoot, J.] [Feb. 2.

RYAN v. FISH

Dower and damages for detention—Judgment of seisin—Mistake of solicitor—Discretion of Master—R. S. O. ch. 55, sect. 20.

In an action for dower and damages for detention of dower defendants appeared under

R. S. O. Cap. 55, sect. 20, filed acknowledgment of tenancy, consent to dower, etc. Plaintiff's solicitor thereupon entered judgment of *seisin*, issued writ of assignment of dower, and proceeded for damages. The judgment of *seisin* was held, at the hearing, to be final and conclusive, but leave was given to plaintiff to move in Chambers to vacate it.

The Master in Chambers made an order vacating the judgment.

Held, on appeal, affirming the Master's decision that the order was one, in the discretion of the Master, which was properly exercised under the circumstances in the plaintiff's favour, especially as judgment had been signed through mistake of her solicitor.

Hoyles, for the plaintiff.

J. D. King, (Berlin), for the defendant.

Mr. Dalton, Q.C.] [March 9.

WILSON V. COWAN.

Examination—Notice—Subpœna—O.J.A. sec.52.

The practice which prevailed in the former Court of Chancery with respect to examinations for discovery is continued by the O. J. A. sec. 52, and applies in the Chancery Division. Forty-eight hours notice of the examination is therefore not necessary to be given to a party to be examined, but only to the opposite solicitor. The party is only entitled to reasonable notice.

A subpœna dated prior to the issue of the appointment for examination is regular provided it was issued after the time when the party examining was entitled to examine.

Langton for the plaintiff.

H. Cassels, contra.

Boyd, C.] [March 20.

BRECKENRIDGE v. ONTARIO LOAN AND DEPOSIT CO.

Minutes of judgment, settlement of—Rule 416.

S. H. Blake, Q.C., for plaintiff, moved to vary the minutes of a judgment which had been settled by a local Registrar.

Hoyles, for defendant, opposed the motion.

The CHANCELLOR:—I am of opinion that the minutes should be varied as asked, but I think where the parties cannot agree to the terms of the minutes of a judgment before a Local Registrar, a direction should be obtained from the Judge to refer the matter to one of the Judgment Clerks under Rule 416, and as that course had not been pursued in this case the minutes must be varied, but I cannot make any order as to the costs except that they be costs in the cause.

BOOKS RECEIVED.

We acknowledge, with thanks, the following:—

PRINCIPLES OF THE COMMON LAW. By John Indermaur. 3rd edition. Stevens & Haynes, London, 1883.

EMPLOYERS' LIABILITY FOR PERSONAL INJURIES TO THEIR EMPLOYEES. By Charles G. Fall, Boston, U. S., 1883.

INDEX TO DOMINION ACTS AND IMPERIAL ACTS, Treaties and Orders in Council affecting Canada, printed with the Canadian Statutes. By F. B. Hayes and R. J. Wicksteed, Ottawa, 1882.

CLASSIFIED TABLE OF THE PUBLIC GENERAL STATUTES OF CANADA wholly or partly in force at the end of the Session of 1882, with remarks. By G. W. Wicksteed, Esq., Q.C., Law Clerk, House of Commons.

FLOTSAM AND JETSAM.

A recent number of the *London Law Journal* contains the following:—"The practice of experimenting before judges is likely to receive a check, if it is often followed by such results as happened in a case before Mr. Justice Pearson last week. Two German firms were disputing the exclusive right in certain patents for improvements 'in the production of coloring matters suitable for dyeing and printing.' The contention of the defendants was that the chemical means described in the specification were impossible because if the 'oxyazo-naphthalinoine' were to be united with the 'fuming sulphuric acid' of the strength therein described, it would be dangerous to human life; and an experiment *coram judice* was proposed. In an unguarded moment the judge consented, and adjourned into an empty room, where the baleful mixture was concocted by adding a teaspoonful of the unpronounceable liquid to an ounce of fuming sulphuric acid. The result was terrific. 'So dense and poisonous' were the effects of the fumes which arose, the judge, counsel, witnesses and bystanders fled,' with the utmost precipitancy, to avoid being asphyxiated on the spot."