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THE Law School was formally opened on the 7th inst. Hon. Edward Blake, the Treasurer of the Law Society, presided, and addressed the assembled students, and the learned Principal delivered an address, in the course of which he sketched the history of law schools and their relations to the legal profession in England and the United States, and discussed the curriculum now in force. Several other distinguished legal gentlemen joined in congratulating the Law Society and the students on the successful establishment of the School. During the present session the first and second years will take the same lectures, but will be examined on different papers at the end of the term. Seven scholarships are to be given to each of these years on this examination. There are now about one hundred and twenty students in attendance.

LEGAL STATISTICS FOR 1888.

The Annual Report of Mr. Winchester, the Inspector of Public Offices, serves as a sort of barometer of the state of business in the profession; and it may therefore be useful as well as interesting to take a glance at some of the statistics he has gathered and which he presents in his report to the Government for 1888, which we have now before us.

We learn from the schedules to this report that during 1888, 4,954 writs of summons issued from the Q.B. and C.P. Divisions of the High Court, and 2,552 from the Chancery Division, or an aggregate of 7,506 writs. The amounts indorsed on these writs in the Q.B. and C.P. Divisions aggregated $7,019,635.47; and the aggregate in the Chancery Division was $3,888,974.12, or very nearly eleven million dollars altogether. Notwithstanding all efforts to decentralize business, it seems nevertheless to cling steadily to Toronto, where 2,428 of the writs issued. London, as usual, comes next to Toronto with 541, and Cornwall next with 299. There is one feature about this return we do not understand. The writs are supposed to issue alternately from the three Divisions, and yet in Ottawa the total number of writs in the Q.B. and C.P. Divisions together was 103, while the writs in the Chancery Division numbered 106; it would seem there that the clerk who issues the writs has been proceeding on the wrong principle of treating the Q.B. and C.P. Divisions as together constituting one Division.

But though 7,506 actions appear to have been commenced only 3,024 judgments appear to have been entered, and of these 2,427 were entered without trial, *i.e.*, the judgments were obtained by default or on motions for judgment, and only 597 after trial. In the County Courts 4,347 writs appear to have issued, of which nearly one-fourth were issued in Toronto. The total amount claimed was $904,-420.61. The total number of judgments entered in the County Courts was 2 4, of these 2,066 were entered without trial, and the remaining 228 after trial. By the former $476,712.28 damages and $30,362.43 costs were recovered, and by the latter $28,800.08 damages and $21,779.64 costs. We are unable to present similar statements of the amounts recovered in the High Court, as no returns are made to the Inspector from the Toronto offices.

During the year 1888 15,486 chattel mortgages were registered securing $7,255,419.51.

On turning to the record of business done in the Surrogate Offices we find that the total amount of personal property devolving during the year 1888 was no less a sum than $12,180,202.22, but we were somewhat surprised to find that the value of the realty devolving during the same period was only $3,015,053.48. The total number of probates granted was 2,236, and of letters of administration 1,272. Dividing the aggregate values of the estates devolved between the numbers of estates to which probate or administration were granted would give an average value to each of $4,331.

We cannot readily make a comparison between the statistics of 1888 and the year 1887, because in that year the totals were not added up in the schedule. Comparing them with 1886 the business appears to have steadily increased. The total number of writs of summons issued in the latter year from the High Court being 6,090, the amount for which they were indorsed being $8,787,407, against 7,506 indorsed for nearly $11,000,000. Further comparisons might be instituted, but it may suffice to say that all along the line the volume of business will be found to show a steady increase.

COMMENTS ON CURRENT ENGLISH DECISIONS.

We continue the Law Reports for August comprised in 23 Q.B.D., pp. 133-26 14 P.D., pp. 85-130; 41 Chy.D., pp. 437-577, and 14 App. Case, pp. 105-336.

TRUSTEE—DEPRECIATED SECURITIES—APPLICATION BY TRUSTEE FOR ADVICE—COSTS.

In re Medland Eland v. *Medland*, 41 Chy.D. 476, was a summary application to North, J., by trustees for advice as to their duty regarding certain mortgage securities belonging to the trust estate, which had fallen in value so that the mortgage debt had come to exceed two-thirds of the value of the mortgaged property. Some only of the beneficiaries were parties to the application. North, J., was of opinion that it was not the absolute duty of the trustees at once to call in the mortgage debt, but that they have a discretion which they must exer-

cise as practical men having regard to the circumstances of the case, such as the position and solvency of the mortgagor, and an inquiry was directed as to what should be done. North, J., was of opinion that he had no jurisdiction to award costs out of the trust estate, as all the beneficiaries were not parties to the application. On appeal, however, the Court of Appeal (Lord Esher, M.R., Cotton, and Fry, L.JJ.) held that the learned judge had jurisdiction to order payment of costs out of the estate and might direct any of the beneficiaries not before the Court to be notified as he should see fit, and the order of North, J., was therefore varied by reserving the costs until after the inquiry directed had been concluded.

WILL—CONSTRUCTION—"SURVIVING"—GIFT TO TENANTS FOR LIFE AND THEIR CHILDREN—GIFT OVER TO SURVIVING TENANTS FOR LIFE AND THEIR CHILDREN.

In re Bowman, Whitehead v. *Boulton*, 41 Chy.D., 525, Kay, J., was called upon to place a construction on the will of testatrix which bequeathed £8,000 to a trustee upon trust to invest and pay the income equally amongst the testatrix's four nieces during their respective lives; and after the decease of any of them to pay the principal of her share to her children as she should appoint, and in default of appointment, to them equally; the shares of sons to be vested at 21 and of daughters at 21 or marriage, with benefit of survivorship among them as to the original and accruing shares of any who should die before attaining a vested interest, and in case of any of her nieces dying without having had any children who should have attained a vested interest, she gave the share of such niece and the interest thereof upon trust, "to pay and dispose thereof to or among her (the niece's) surviving sisters and their respective children in the same manner as I have hereinbefore directed respecting their original shares," and she gave her residuary personal estate to her nephew. The four nieces survived the testatrix. One of them died, leaving children, and two others subsequently died without issue. The question was, whether the children of the niece who first died were entitled to participate in the shares of the nieces who subsequently died? Kay, J., answered this in the affirmative, holding that the scheme of the will indicated that it was the intention of the will to make a disposition *per stirpes*.

WASTE, PERMISSIVE—TENANT FOR LIFE AND REMAINDERMAN—RIGHTS AND LIABILITIES OF.

It is somewhat curious to find at this late date that *In re Cartwright, Avis* v. *Newman*, 41 Chy.D. 532, an attempt should be made for the first time to make the estate of a legal tenant for life, upon whom no duty to repair was imposed, liable for permissive waste at the suit of the remainderman. Kay, J., held that the claim being entirely without precedent must be disallowed.

PRACTICE—MORTGAGOR AND MORTGAGEE—COSTS—INTEREST ON COSTS WHEN ALLOWED.

In *Eardley* v. *Knight*, 41 Chy.D. 537, a point of practice was determined as regards mortgage actions, by Kay, J. An action brought by a mortgagor

against the mortgagee to set aside the mortgage, was dismissed, and judgment given in favour of defendant for foreclosure with costs, and upon appeal the judgment was affirmed and the defendant was given leave to add the costs of appeal to his security. In bringing in the mortgagee's accounts, the question arose as to whether the defendant was entitled to interest on the costs ordered to be paid to him, and from what date. Kay, J., determined that he was only entitled to interest on the costs which had been ordered to be added to his security, viz., the costs of the appeal, and on those costs only from the date of the certificate of taxation, and not from the date of the judgment.

PRACTICE—SERVICE OUT OF JURISDICTION—INJUNCTION—SEQUESTRATION—ORD. XI., R. 1, S.S. F, R. 2, (ONT. RULE, 271).

In re Burland, Burland v. *Broxburn Oil Co.*, 41 Chy.D. 542, which was an action to restrain the infringement of the plaintiffs' registered trade mark against the defendants, being a company having their registered office at Glasgow with branches at London, Manchester, and Hull, Chitty, J., gave leave to serve the writ out of the jurisdiction, because an injunction could be enforced by sequestration of the defendant company's property in England.

WILL—CONSTRUCTION—TRUST FOR BENEFIT OF SPECIFIED ANIMALS.

In re Dean, Cooper-Dean v. *Stevens*, 41 Chy.D. 552, is an instance of the eccentricities sometimes indulged in by testators. In this case the testator had bequeathed certain dogs and horses to trustees, and directed that an annual sum of £750 which he charged on his real estate should be applied for their maintenance for the period of fifty years if any of them should so long live, and any part of the £750 remaining unapplied was to be dealt with by the trustees at their sole discretion. It was contended that a trust for the maintenance of animals was invalid because there was no one to enforce it, and that the trustees were entitled to the £750 per annum for their own benefit; but North, J., held that the trust was valid and that the trustees were not entitled beneficially to the fund or even to the surplus not required for the maintenance of the animals, but whether the devisee or heir was entitled to the surplus he declined to determine in the absence of the latter.

PRACTICE—AMENDMENT AT TRIAL.

Edevain v. *Cohen*, 41 Chy.D. 563, was an action to recover furniture wrongfully removed, and for damages. Judgment had been obtained by the plaintiffs for the wrong now complained of, against other persons in another action. There was some evidence of acts done since the writ in the former action which might raise a fresh cause of action. After the conclusion of the evidence of the plaintiff and one defendant, the defendants applied to amend by pleading that the cause of action had merged in the judgment; but North, J., refused to permit the amendment, because if he did the plaintiff should be allowed to new assign, and adduce new evidence.

Power—Married woman—Direction to executors to pay debts—Appointment to executors—Charge of debts on property appointed.

In re DeBurgh Lawson, DeBurgh Lawson v. *DeBurgh Lawson*, 41 Chy.D. 568, a married woman who died in 1880, having a power of appointment in a colliery property, by her will directed her executrixes to pay her debts, and by virtue of the power appointed the colliery property to her executrixes upon certain trusts for the benefit of her children equally for life, and after the death of the survivor for the benefit of her grand-children equally. The testatrix was indebted at the time of her death, and the question arose whether these debts were charged on the colliery property. Stirling, J., on the authority of *Tanqueray-Willaume and London*, 20 Chy.D. 465, held that they were so charged.

Mortgagee—Sale—Incorrect particulars—Mistake—Compensation—Puisne incumbrancer.

The only remaining case to be noted in the Chancery Division is *Tomlin* v. *Luce*, 41 Chy.D. 573, in which Kekewich, J., appears to us to have arrived at a not very equitable conclusion. Mortgagees, acting under a power of sale, offered the mortgaged property for sale; by a mistake on their part in the particulars the roads on the property were stated to be kerbed. The vendors declined to complete without compensation, and the sale was completed, compensation being allowed, which it was admitted was reasonable. The present action was brought by second mortgagees for an account against the first mortgagees, and it was held that in the taking of the account the latter were chargeable with the sum allowed as compensation. Compensation for misdescription is allowed to a purchaser, as we understand it, on the principle that by reason of the misdescription the purchaser has been induced to give a larger price than he would have done had there been no misdescription; and the compensation is fixed at such sum as will fairly reduce the price to the figure that would have been given had there been no misdescription. If this is a correct view, we fail to see that there is any equity in giving a second mortgagee the benefit of that part of the price, which the mortgagee has been required to refund, by reason of the misdescription of the property.

We Proceed now to the Appeal Cases for August:—

Ship—Charter-party—Marginal note—Guarantee as to ship's capacity—Representation as to cargo.

Mackill v. *Wright*, 14 Appeal Case, 106, is the first calling for attention. In this case the question was, whether or not a charter-party guaranteeing the capacity of the vessel, could be qualified in its construction by a marginal note, made by consent of the parties, as to the size of the machinery intended to be carried as part of the cargo. By the charter-party in question, the vessel was to proceed to Glasgow and load all such goods, etc., as the charterers should tender, not exceeding what she could reasonably carry. It was provided that the freight should be a lump sum of £2,200, and the owners guaranteed that the vessel should carry not less than 2,000 tons dead weight, and should the vessel not carry the guaranteed dead weight there was to be a proportionate deduction from the freight. The cargo intended

to be carried was a general cargo, consisting in part of machinery, and a note was, by consent of the parties, made on the margin of the charter-party, specifying the "largest pieces" of machinery intended to be included in the cargo with their number, weight, and measurement. The charterers tendered a cargo not exceeding in the aggregate 2,000 tons dead weight, but the large pieces of machinery exceeded the number specified in the margin so that the whole cargo could not be carried. The vessel sailed with only 1,691 tons. The plaintiffs (the charterers) claimed an abatement of freight. It was admitted that the vessel was of the carrying capacity guaranteed, and it was admitted that 2,000 tons dead weight of the cargo tendered could not be carried on the vessel unless the coal which formed part of the cargo had been packed with the machinery, which was not done. The House of Lords was of opinion that the marginal note amounted to a representation on the part of the charterers, and the fact of the vessel having carried less than the guaranteed weight because the charterers tendered pieces of machinery in excess of their representation, did not entitle the charterers to any reduction of freight, and the decision of the Court of Session on this point was reversed. But their Lordships affirmed the Court of Session in holding that the stowage of the coal among the machinery without the consent of the shippers would not have been proper, and that it was the duty of the appellants to obtain the consent of the shippers.

EXPROPRIATION OF LAND FOR PUBLIC PURPOSE—COMPENSATION FOR "INJURIOUSLY AFFECTING" OTHER LANDS.

The case of *Essex* v. *Local Board of Acton*, 14 App.Cas. 153, which we noted ante vol. 22, p. 338, as *Queen* v. *Essex*, 17 Q.B.D. 447, when before the Court of Appeal, has at last reached the end of its tether in the House of Lords, and their Lordships have reversed the judgment of the Court of Appeal and restored that of Mathew and Day, JJ. The case involves two very important principles as regards the right to recover damages for the expropriation of lands for public purposes. In the first place their Lordships hold that the fact that a parcel of land is severed by the intersection of a railway does not destroy the unity of the parcel for the purpose of the owner claiming compensation in respect of it. Thus in the present case the lands claimed to be "injuriously affected" were separated from the lands expropriated, in part by other lands of the plaintiff, and in part by a railway; nevertheless the plaintiff was held entitled to damages for the lands injuriously affected; and in the next place, in estimating the damages, their Lordships held that the plaintiff was entitled, not only the damages accruing from the construction of the public works for which the land was expropriated, but also the injury which would result from the carrying on the works when constructed. The works in the present case were sewage works, and the compensation was allowed on the basis of the deterioration of value likely to result to the surrounding property from the existence of such works in the neighbourhood, even though no nuisance might be caused. There is one passage in the judgment of Halsbury, L.C., which is worth extracting. He says: "The good sense of mankind recognizes the fact that occasional negligence is one of the

ordinary incidents of human life, and the common law, which embodies the common sense of the nation, proceeds upon common sense assumptions. I do not think it is any answer to tell people who complain of the establishment of sewage works in their neighbourhood that if, and when, the sewage works become a nuisance, in the real and proper sense of that word, such works can be restrained by injunction. Land is certainly more marketable when it is free from works of that character than when such works are established, although the neighbours may have the ordinary rights of citizens to engage in litigation against such works when they become a nuisance."

NEGLIGENCE—CONTRACT BY SERVANT TO DO DANGEROUS WORK ON THIRD PERSON'S PREMISES—CONTRACTOR—MAXIM "VOLENTI NON FIT INJURIA."

The case of *Membery* v. *Great Western Railway Co.*, 14 App.Cas. 179, was an action brought by the plaintiff to recover damages for injuries sustained by him under the following circumstances: The defendant company had agreed with the master of the plaintiff that the latter should shunt the defendants' trucks upon their line, and should supply horses and men for that purpose, the defendants to provide boys to assist in the shunting when they had boys, and when they had not the shunting was to be done without boys. For several years the plaintiff as a servant of the contractor shunted trucks on the defendants' track, sometimes with, and sometimes without, boys. The operation of shunting was, as the defendant knew, dangerous to any man performing it without assistance. The plaintiff on one occasion asked the defendant's foreman for a boy, but as the company could not provide one, proceeded to shunt trucks, and without any negligence on his part was injured by a truck running over him. At the trial a too sympathetic jury gave the plaintiff a verdict for £50. The Divisional Court (Mathew and A. L. Smith, JJ.,) refused to set aside the verdict, because they were of opinion that there was evidence of negligence on the defendants' part, and that under *Thomas* v. *Quartermaine*, 18 Q.B.D. 685, and *Yarmouth* v. *France*, 19 Q.B.D. 647, it was a question for the jury whether the plaintiff was *volens* within the meaning of the maxim *volenti non fit injuria*, and that there was evidence that the plaintiff did not act voluntarily. But on appeal to the Court of Appeal the verdict was set aside, and the action dismissed, on the ground that even if there was evidence of negligence on the part of the defendants, the plaintiff had acted voluntarily and with full knowledge of the danger he ran. This decision the House of Lords now sustains, both on the ground last mentioned, and also on the ground that there was no evidence of any negligence or breach of duty on the part of the defendants towards the plaintiff, and therefore he had no cause of action. On the much discussed question of the applicability of the maxim *volenti non fit injuria*, Lord Bramwell offers some pithy observations, holding in effect that whenever a man is not physically constrained, and he can at his option do a thing or not, and he does it, the maxim applies, and evidently regards the two cases above mentioned as establishing a "novel doctrine." Lord Herschell, however, is careful not to commit himself to any opinion as to the correctness of those decisions. The unsubstantial character of the plaintiff's case is thus neatly put by Lord Halsbury:

"The matter comes, therefore, to this, that the liability which is sought to be cast upon the company is that they have contracted with a man to shunt their trucks, that he has employed in his turn a servant of his to shunt the trucks, and that because it is said that it cannot be done without other assistance the railway company, forsooth, are under some particular contract to supply that which is necessary to be supplied in order that the thing may be done safely. My Lords, it seems to me to reduce the whole question to something too ludicrous to give verbal expression to."

LIBEL—PRIVILEGE—REPORT OF PROCEEDINGS IN COURT OF JUSTICE—PUBLICATION OF JUDGMENT ALONE—EVIDENCE.

Macdougall v. *Knight*, 14 App.Cas. 194, is an appeal from the decision of the Court of Appeal 17 Q.B.D. 636, noted ante vol. 22, p. 395. The action was for libel in publishing a judgment of North, J., which contained reflections on the plaintiff, and which reflections the Court of Appeal, on the case being subsequently brought before it, thought were not justified by the evidence. The jury found that the pamphlet was a fair, accurate, and honest report of the judgment of North, J., and that it was published by the defendants *bona fide*, and with the honest intention of making known the facts of the case in order to protect their reputation and in reasonable self-defence; and that the publication was not malicious, which were the only issues raised on the pleadings. The plaintiff made no application to enter judgment for himself, notwithstanding the finding of the jury; but the plaintiff applied to the Divisional Court for a new trial, merely on the ground of misdirection, in the judge at the trial telling the jury that the occasion was privileged, and in telling them that if the pamphlet was a fair and honest report of the judgment its publication was privileged: and in not telling them that to be privileged it must be a fair and accurate report of all the proceedings at the trial; and also on the ground that the judge at the trial ruled that the plaintiff was not entitled on the pleadings to object that the paragraph of the defence which justified the publication, and upon which the plaintiff had taken issue, was bad in law; and also on the ground that the judge at the trial refused to allow the plaintiff to amend his reply by alleging that this paragraph of the defence was bad in law. The only point, however, argued before the Divisional Court and the Court of Appeal was whether the publication, being a separate and independent part of the proceedings, published alone and without disclosing all that took place at the trial, was privileged. Their Lordships were of opinion that the plaintiffs not having at the trial required the judge to put other questions than he did, to the jury, was too late in objecting on the score of non-direction either in the Divisional Court or the Appellate Court: and that not having by his pleading taken any objections to the legal validity of the defence set up, on the ground that the publication of the judgment alone without the evidence was not privileged, he was precluded from relying on that objection in appeal. Their Lordships were, however, of opinion that the publication of the reasons of judgment alone without the evidence or other proceedings, might, in some cases, be libellous, if properly attacked; and

that there is no presumption that a judgment contains a fair and full statement of all the matters upon which the judge is adjudicating; but that that is a question to be proved by evidence.

CANAL COMPANY—MINES UNDER, OR NEAR, CANAL—COMPENSATION FOR NOT WORKING MINES—RIGHT OF ACTION FOR INJURY TO CANAL.

Knowles v. *Lancashire & Yorkshire Railway Co.*, 14 App.Cas. 248, we noted ante vol. 24, p. 171, when before the Court of Appeal as *Lancashire & Yorkshire Railway Co.* v. *Knowles*, 20 Q.B.D. 391. The House of Lords affirm the decision of the Court of Appeal. It may be remembered that by an Act empowering a company to make a canal, it was provided that nothing in the Act should affect the right of any owners of lands to the mines and minerals under the lands to be made use of for the canal, and that it should be lawful for the owners to work the mines, not thereby injuring the canal. By another section it was provided that the canal company might treat and agree with the owners for any minerals necessary to be left for the security of the canal, and if they could not agree compensation was to be fixed by certain commissioners. Certain owners of minerals having notified the canal company that they intended to work the minerals under the canal the company refused to treat or pay any compensation therefor, and the owners then went on and worked the minerals, and thereby injured the canal; and the question was whether they were liable for such injury, and it was held that they were, and that they should have proceeded under the Act to obtain compensation.

MORTGAGOR AND MORTGAGEE—TENDER—DETINUE—REMEDIES OF MORTGAGOR ON REFUSAL OF TENDER.

Bank of New South Wales v. *O'Connor*, 14 App.Cas. 273, disposes of a question on the law of mortgage of general interest. The plaintiff was a mortgagor, and having, as he claimed, made a legal tender of the mortgage debt to the mortgagee which was refused, brought the present action of detinue to recover his title deeds. The Judicial Committee of the Privy Council reversed the Supreme Court of New South Wales, and held that the action would not lie and that the plaintiff's only remedy was a suit for redemption, a tender improperly rejected not being equivalent to payment.

CROWN GRANTS OF LAND—RESERVATION IN PATENT OF RIGHT TO RESUME PART OF LAND GRANTED.

Cooper v. *Stuart*, 14 App.Cas. 286, though a decision under the law of New South Wales seems nevertheless to involve a question of interest in this Province. The question involved in the case was as to the validity of a reservation contained in a Crown grant of a right to the Crown to resume any quantity of the land granted, not exceeding ten acres, as may be required for public purposes. Similar reservations may be found, we believe, in many old patents issued in this province. It was contended that the reservation was repugnant to the grant, and therefore void; but the Judicial Committee held that it was not, but that when the resumption took effect it operated as a defeasance. Their Lordships also held that whether or not the Crown in England would be affected by the

rule against perpetuities, such rule was, nevertheless, inapplicable in 1823 to Crown grants of land in New South Wales, or to reservations or defeasances in such grants to take effect on some contingency more or less remote, and only when necessary for the public good.

B.N.A. ACT, 1867, S. 109—RIGHTS OF PROVINCE TO PRECIOUS METALS AFTER CONVEYANCE OF LANDS BY PROVINCE TO DOMINION.

The constitutional question involved in *The Attorney General for British Columbia* v. *The Attorney General for Canada*, 14 App.Cas. 295, was whether after the conveyance of public lands within the railway belt in British Columbia to the Dominion of Canada for the purposes of the construction of the Canadian Pacific Railway, the Province or the Dominion was entitled to the precious metals under such lands. The Supreme Court decided the question in favour of the Dominion, but the Judicial Committee reversed the judgment, and held the Province remained entitled to the precious metals notwithstanding the conveyance to the Dominion, on the ground that mines of gold and silver belong to the Crown by virtue of its prerogative, and that this prerogative right remained in the Province, not having been expressly granted by the conveyance of the lands to the Dominion.

GRANT OF ADMINISTRATION VESTS TITLE AS FROM DEATH—RIGHTS AND LIABILITIES OF HUSBAND AS WIFE'S ADMINISTRATOR.

Harding v. *Howell*, 14 App.Cas. 307, is a case which, though decided under the law of Victoria, is of some practical interest in this Province, as to the effect of our Devolution of Estates Act. The facts of the case were simple. A wife died, entitled to lands under certain voluntary conveyances from her husband. Her husband after death purported to convey these lands to a purchaser for value. Subsequently the husband took out administation to his wife's estate. It was held by the Judicial Committee that the effect of the letters of administration was to vest the wife's estate in the lands in question in the administrator as from the date of her death as trustee to realize and distribute them according to law as assets of her estate, and that if the conveyance by the husband was *bona fide* for value, the husband was guilty of a breach of trust; and if not *bona fide* it was inoperative; and in either view the husband was chargeable with the value of the lands.

PRACTICE—AMENDMENT OF RULE NISI—DISCRETION OF COURT.

The short point of practice disposed of by the Judicial Committee in *Australian Navigation Co.* v. *Smith*, 14 App.Cas. 318, was simply this: Both parties at the trial treated an issue as one which should be decided by the judge and not the jury, and the appellants afterwards moved for a new trial on the ground that the judge had decided wrongly. On this application he applied for leave to

amend his motion by setting up that the judge should have left such issue to the jury, and their Lordships were of opinion that the Court below had exercised a sound discretion in refusing the amendment.

ADMISSION TO PRACTICE AS AGENT IN THE PRIVY COUNCIL.

In re Twidale, 14 App.Cas. 328, the Judicial Committee refused to admit a gentleman, who was a pleader in the High Court of Calcutta, to be registered as an agent to practice in the Privy Council, on the ground that the Rules of 30th of March, 1870, only authorized the Committee to admit persons who had been admitted as solicitors in India or the colonies, and the applicant had not been admitted as a solicitor.

EXPROPRIATION OF LANDS—RIGHT OF EXPROPRIATOR TO CALL FOR A TRANSFER.

The Colonial Secretary of Natal v. *Behrens*, 14 App.Cas. 341, is authority for the proposition that when a statute authorizes the expropriation of land or a patent reserves right to the Crown to resume part of the land granted, but is silent as to the making of any transfer, the expropriator is not entitled to call upon the owner of the lands expropriated or resumed to execute a transfer thereof, and a provision in an Act requiring an owner to transfer upon payment of compensation does not apply to cases where land is authorized to be taken under a reservation in a patent, or under a statute, without any compensation.

Reviews and Notices of Books.

Federal Government in Canada. By Dr. J. G. BOURINOT.

The interesting and exceedingly instructive series of lectures delivered in June last, before Trinity University, Toronto, is now republished in full in the Historical and Political Science Series of the Johns Hopkins University, of Baltimore. The demands on our space prevent us from reviewing these lectures in this issue, but we purpose referring them in our next number.

Notes on Exchange and Legal Scrap Book.

BANKING LAW.—The tendency to specialization in legal practice is marked, and as the community increases in wealth, and the intricacy of the relationships brought about by advancing civilization is multiplied, this tendency must be strengthened. Its effect on legal journalism has hitherto not been marked. Among the recent candidates for professional recognition and subscriptions is one which gives its attention to our department. Its name indicates its chosen field. *The Banking Law Journal* is published semi-monthly at New York. Thomas B. Paton is the editor and proprietor. This magazine has now reached its ninth number, and promises to be a valuable addition to the already somewhat long list of legal periodicals. It is carefully edited, and its articles are of much interest. We cordially welcome it as an exchange.

A JURY AT A PRAYER MEETING.—A somewhat peculiar set of circumstances led to an application for a new trial in *Shaw* v. *State*, which was granted. The case was noted in the *Albany Law Journal* a short time ago. The facts are given in the following extract from the judgment of the Supreme Court of Georgia, before which the motion for a new trial was argued: These affidavits show, in substance, that pending the trial and after the argument to the Jury had begun, night came on, and the court took a recess until the following morning, and instructed the bailiff who had charge of the jury, and the jury themselves, not to allow any one to speak to them, or to speak in their presence about the cause, nor to discuss it among themselves until the argument in the case was concluded; that during that night the bailiff took the jury from the jury-room (where he was ordered to keep them) to a church where a prayer-meeting was being held, conducted by the pastor, who was the active prosecutor in the case; that upon their arrival at the church, the prosecutor, Mr. Hooten, politely assigned the jury to seats in the church, separate and apart from the congregation, and that he addressed the jury. The affidavits further show that upon the termination of the exercises the jury left the church and mixed with the crowd, some of the congregation going out before and some after the jury. The State introduced a number of affidavits to show that while the jury attended the meeting at the church, they were given seats wholly apart from the congregation, and that no reference was at any time made to "any law case whatever;" that they left the church in a body in charge of the bailiff, without mixing with the crowd, and without any person having any opportunity to have a conversation with them, either while they were at the church or when they were leaving it; and that the prayer to which reference is made on the seventh ground of the motion made no further reference to the court and jury in said case than to ask "that the blessings of God might rest upon our government, with its officers, and that God would bless the officers of the court then in session, that they might be guided aright in the discharge of their duties." The bailiff, who was in charge of the

jury, made an affidavit that during the trial no one spoke of the case in the presence of the jury, and that nothing was said about the prisoner in their presence; that he was careful to guard them, and not thinking that it was improper, had gone with them to the prayer-meeting; that on their way to and from church they did not separate, nor was anything said to them, or any of them, or in their presence, about the case; and that at the church they were seated apart from the congregation, and that the usual services were held, and nothing was said about the case. The jurors also made affidavits, in which they say that they attended the prayer-meeting in a body and did not disperse or separate; that they were provided with seats together, apart from the rest of the congregation; that the services were such as are usual at prayer-meetings, and that nothing was said by any one in reference to the case. The conviction was reversed and a new trial was granted.

Dreams Before the Law Courts. — In the year 1695 a Mr. Stockden was robbed and murdered in his own house, in the parish of Cripplegate. There was reason to believe that his assailants were four in number. Suspicion fell on a man named Maynard, but he succeeded at first in clearing himself. Soon afterwards a Mrs. Greenwood voluntarily came forward and declared that the murdered man had visited her in a dream, and had shown her a house in Thames Street, saying that one of the murderers lived there. In a second dream he displayed to her a portrait of Maynard, calling her attention to a mole on the side of his face (she had never seen the man), and instructing her concerning an acquaintance who would be, he said, willing to betray him. Following up this information, Maynard was committed to prison, where he confessed his crime and impeached three accomplices. It was not easy to trace these men, but Mr. Stockden, the murdered man, again opportunely appeared in Mrs. Greenwood's dreams, giving information which led to the arrest of the whole gang, who then freely confessed, and were finally executed. The story is related by the curate fo Cripplegate, and "witnessed" by Dr. Sharp, then Bishop of York.

On this story be it remarked that Mrs. Greenwood's dreams only verified suspicions already aroused. Maynard had been suspected at first; her dream brought home the guilt to him. It did not deal with his accomplices until Maynard, in his turn, had implicated them.

A somewhat similar incident came before a legal tribunal nearly a century afterwards, when two Highlanders were arraigned for the murder of an English soldier in a wild and solitary mountain district known as "the Spital of Glenshee." In the course of the "proof for the crown," to use the phrase of Scottish law, another Highlander, one Alexander McPherson, deposed that on one night an apparition appeared to come to his bedside, and announced itself as the murdered soldier, Davies, and described the precise spot where his bones would be found, requesting McPherson to search for and bury them. He fulfilled but the first part of the behest, whereupon the dream or apparition came back, repeated it, and called its murderers by their names.

It appears that, with the strangely stern common sense which in Scotland exists side by side with the strongest imaginative power, the prisoners were acquitted principally on account of this evidence, whose "visionary" nature threw discredit on the whole proceedings. One difficulty lay in the possibility of communication between the murdered man and the dreamer, since the one spoke only English and the other nothing but Gaelic. Years afterwards, however, when both the accused men were dead, their law agent admitted confidentially that he had no doubt of their guilt.

Singularly enough, a story strikingly similar in many of its details found its way before a criminal tribunal in our own century.

In the remote and sequestered Highland region of Assynt, Sutherland, a rustic wedding and merry-making came off in the spring of 1830. At this festivity there figured an itinerant peddler named Murdoch Grant, who, from that occasion, utterly disappeared. A month afterwards, a farm servant, passing a lonely mountain lake, observed a dead body in the water, and on its being drawn ashore the features of the missing peddler were recognized. He had been robbed, and had met his death by violence. The sheriff of the district, a Mr. Lumsden, investigated the affair without any result, in his searches being aided by a well-educated young man of the neighborhood, one Hugh McLeod, ostensibly a school-master, but then without employment.

One day the sheriff, chancing to call at the local post office, Macleod's name, probably owing to the part he was taking in these investigations, came into the conversation, and the postmaster casually remarked that he should not have thought Macleod so well off, he having recently changed a £10 note at his shop. Mr. Lumsden's suspicions were aroused by this, and on his asking Macleod a few questions on the matter he proved the young man to be untruthful. Therefore he put him under arrest, and caused his home to be searched. But none of the peddler's property being found there, and no other suspicious circumstance transpiring, he was about to be released, when a tailor named Kenneth Fraser came forward with the following extraordinary story:

In his sleep he declared that the Macleods' cottage was presented to his mind, and that a voice said to him in Gaelic, "The merchant's pack is lying in a cairn of stones, in a hole near their house." The directions given in this dream were carried out by the authorities; articles belonging to Grant were discovered, and the murdered man's stockings were presently found in Macleod's possession. He was accordingly charged with the crime. Kenneth Fraser formulated the evidence of his dream with great firmness and consistency. Macleod was condemned and executed, but not before making a full confession of his guilt.

Here, again, as in the case of Mrs. Greenwood, we may notice that the dream is only revealed after suspicion had been already aroused. Fraser was a boon companion of Macleod's, and it has been suggested that in their carousings he got some hint of his comrade's terrible secret. A somewhat similar explanation might serve to account for McPherson's dream of the murdered English soldier, and even the antique visions of Mrs. Greenwood. The form of a dream was a

convenient one in which either to veil a guilty complicity, or, in the case of the Highlanders, to escape that imputation of being an "informer" which is so hateful to the Celtic heart.

There is, however, an equally modern and less remote instance of a similar sort. In 1828, in Suffolk, Maria Martin was slain by her false lover—a crime known in sensational literature as "The Murder in the Red Barn." The step-mother of the deceased (says Mr. Chambers in his "Book of Days") gave testimony on the trial that she had received in a dream that knowledge of the situation of the body of the victim which led to the detection of the murderer.

The late Mr. Serjeant Cox, at a meeting of the Psychological Society in the year 1876, narrated a remarkable case which had come within his own experience in which dreams had played an important part, and the evidence for which he had himself heard given on oath in open court.

A murder had been committed in Somersetshire. A farmer had disappeared and was not to be found. Two different men, living in different villages, some distance from where the farmer had disappeared, both had a dream upon the same night, and stated the particulars to the local magistrates. They said they had dreamed on that particular night that the body was lying in a well in the farm-yard. No well was known to be there at all, so the two men were laughed at. Some persons, however, went to the yard and, although there was no appearance of a well, they at last found one under some manure, and the body was in it; then, of course, on the principle of the proverb, "He who hides can find," the public began to suspect the two men themselves. But it was finally proved that the farmer had been murdered by his own two nephews, who had afterwards disposed of his body thus. Before these dreams the dreamers had known nothing about the well in the yard. The nephews were hanged for their crime.—*Argosy.*

JUDGES WHO HAVE NOT RETIRED.—A London news agency circulated a rumor to the effect that the Master of the Rolls would resign his position before the long vacation, and that he would be succeeded by the Attorney-General. The statement should be read with a great deal of reserve. Lord Esher has already been retired at least four times—by the newspapers. Just before the long vacation the legal atmosphere of the east end of the Strand becomes charged with rumors, and the ubiquitous reporters of the law courts are busy with their speculations. Months back they started the canard that the Lord Chief Justice was anxious to retire, and he was only prevented from doing so by the fear that Sir Richard Webster would be promoted to his position. Lord Coleridge has taken up a strong position on the Home Rule question, and it is well known that he has not viewed Sir Richard's conduct of the Parnell Commission with particular favour. But for none of these reasons does he still retain the most lucrative judicial appointment next to the Lord Chancellorship. The explanation of these unfounded and somewhat absurd rumors is that judges are in the habit of retiring during the long vacation, and immediately a member of the bench is entitled to his pension the gossips begin to make free with his name.

They do this on the assumption that when a judge's term of service has expired he is anxious to wipe the dust of the law courts from his feet, and retire to the enjoyment of his well-earned pension. This is not by any means the rule, and indeed, except in cases of old age or failing health, judges stick to their post long after they have "served their time." The life of a judge must be an agreeable one, as we rarely hear of one retiring, except under urgent physical circumstances, until he can do so full of honours.

A judge is entitled to retire on a pension after a service of fifteen years. Five members of the High Court of Judicature have served that time and are entitled to the pension. They are, Sir James Hannen, President of the Probate, Divorce and Admiralty Division; Lord Esher, Master of the Rolls; Mr. Justice Denman, Baron Pollock and Lord Chief Justice Coleridge. Hence we may expect the usual paragraphs to go the round of the London papers during the next fortnight, on the possibility or the probability of some of these gentlemen vacating their distinguished posts.

Sir James Hannen was appointed twenty-one and a half years ago. He has untied more matrimonial knots than any man in Great Britain, but he will be more conspicuously mentioned in history in connection with the Parnell commission. As this inquiry is adjourned over to the next sittings, it is clear that Sir James does not contemplate immediate retirement. The President's salary is no more than that of his coadjutor, Mr. Justice Butt, or any of the common-law judges.

Lord Esher was promoted from the common-law side of the courts to the virtual presidency of the Appeal Court. He attains his majority this month. Of a spirited temperament, Lord Esher sometimes gets a little impatient with vacillating counsel. He has a large development of the humorous faculty, possesses keen perspicacity and legal acumen, has an intuitive grasp of technique, and a splendid physique. In his youthful days he was a noted athlete. He was famous for his skill in rowing, and between 1840 and 1845 he was thrice a member of the Cambridge crew. He stands six feet in his stockings, is in robust health, and the rumor which yesterday found its way into some papers is but idle conjecture. As Master of the Rolls he draws £6,000 a year.

Next to Lord Coleridge Mr. Justice Denman is senior puisne judge. His health has not been of the best lately. He is in his seventieth year, and earned his retiring allowance in October two years ago. Baron Pollock is sixty-six, and was entitled to retire last January twelvemonth. He is not quite so good of hearing as he used to be. If there are any vacancies during the ensuing long vacation caused by the retirement of full-service judges, one or both of the last named will disappear from the list.

Lord Coleridge draws the highest salary among what may be called the regular judges, his services being appraised at £8,000 a year. For forty years Lord Coleridge has been the political friend and admirer of Mr. Gladstone, with whose Home Rule proposition he is in hearty accord. He is a fearless, intrepid, conscientious judge. He only sat in Parliament eight years, viz., 1865-1873, but in that short time he successfully graduated through the solicitor-general and

attorney-generalships. In 1873 he declined the Mastership of the Rolls, but in the same year was appointed Chief Justice of the Court of Common Pleas on the death of Sir William Bovill; and nine years ago he succeeded Sir Alexander Cockburn as Lord Chief Justice of England.

In February next Mr. Justice Field will be entitled to leave the Bench, and as he is exceedingly deaf, he will probably avail himself of his pension at an early date. If you met Sir William Ventris Field in the Strand, you would hardly think that the light step and jaunty air belonged to a man who six years ago attained the "allotted span." Sir William is very jealous of the honour of solicitors. He was articled to a firm of solicitors himself in the '30's, and later on was a member of the firm of Thompson, Debenham & Field.

Baron Huddleston, who received a judgeship in the same year as Mr. Justice Field, has been on the sick list for some months, and several more or less veracious statements have appeared with reference to his pending retirement. He will probably, however, retain the office for another six months. Sir John Walter Huddleston is the last of the Barons of the Court of Exchequer. When he travelled the Oxford Circuit he appeared in almost every case of importance, and particularly distinguished himself for his splendid defence of Cuffy the Chartist, of Mercy Newton in her three trials, of Mrs. Firebrace in the Divorce Court, and of Pook for the Eltham murder. He also assisted Sir Alexander Cockburn in the prosecution of Palmer, the notorious poisoner. As a politician he was a most unsuccessful candidate for parliamentary honours. Six times he was defeated at the poll, but was eventually successful at Canterbury, and again at Norwich.

Mr. Justice Manisty and Mr. Justice Hawkins were both appointed to the judicial bench thirteen years ago. Sir Henry Manisty is the son of a late vicar of Edlingham, and a most extraordinary travesty of justice was brought to light several months back. Some years ago two men were indicted before Sir Henry for burglary and attempted murder at the very vicarage in which Sir Henry was born. The men were found guilty, and Sir Henry sentenced them to penal servitude for life. When the men had "done" several months other men confessed to the crime, and were eventually convicted, the wronged men being released and compensated by Parliament. Sir Henry tried the actions for libel against Lord Chief Justice Coleridge, brought by the man who sought to be, and now is, the Chief's son-in-law. The jury awarded the plaintiff £2,000 damages, but the judge reversed the decision and entered the verdict for the defendant. This action caused some surprise, which was not lessened by the report that Lord Coleridge and Mr. Justice Manisty were not on terms of personal friendship at the time. Sir Henry is in his eighty-second year. His hearing is not so very good, but he is a painstaking and industrious judge.

Mr. Justice Hawkins is as well known at Epsom as he is at the Old Bailey. He is a great authority on all matters concerning the turf, and is a prominent member of the Jockey Club. He long ago earned the title of "hanging judge." It is said he has sent more people to the gallows than any other man living in the same period of time. It is noticed that when a wretch is before him on the capital charge he is exceedingly temperate in tone and language, but he observes

an inflexible firmness after the verdict. As a counsel he had a distinguished career. He appeared for Simon Bernard, who was tried as an accessory to the conspiracy against the life of the Emperor Napoleon in 1858. He was in the great Roupell cases; he led the defence in the famous convent case—*Saurin* v. *Starr;* and when the present leader of the House of Commons seat was petitioned against he saved it for him. As a piece of masterly cross-examination the way in which he handled Mr. Bagient in the first Tichborne trial stands almost unrivalled. When the claimant was prosecuted by the Crown Mr. Hawkins led for the Crown; and the Gladstone and Von Reable cases were among his victories in the Divorce Court. Before he was elevated to the Bench he held a general retainer for the Jockey Club. On the Bench he is noted as the manufacturer of indifferently good jokes. Sir Henry recently followed the example of his distinguished Chief and married a young and pretty lady. He usually wears a brown jacket, and a silk hat far back on his head. To see him and Baron Huddleston leaving the law courts and walking arm-in-arm through Holywell Street is a sight for the gamin.

Mr. Justice Stephen, who tried Florence Elizabeth Maybrick for the murder of her husband, was raised to the Bench in 1879. He was a great criminal lawyer, and the most successful of his books, which has become a standard work, is "The Law of Evidence." He speaks as if he had adopted Demosthenes' recipe for stuttering.

The other members of the common-law Bench are Justices Mathew, Cave, Day, Smith, Wills, Grantham, and Charles. Sir James Charles Mathew was promoted from the junior bar; Sir Lewis William Cave edited, in conjunction with Mr. Bell Stones, "Practice of Petty Sessions"; and Sir John Charles Day edited "Common Law Procedure Acts," and "Roscoe's Nisi Prius"; Sir A. L. Smith is a member of the Parnell commission; Sir William Grantham was well known as a politician, and Sir Arthur Charles is one of the youngest judges of modern times.

There are only two ex-members of the judicial Bench alive. Sir James Bacon is ninety-one, and continued in harness until three years ago. When he retired there was a unique scene in the Chancellor's Court. The attorney-general and most of the leading members of the Bar said *au revoir* to him in neat and touching speeches. Sir William Robert Grove was an eminent electrician before he was promoted to the Bench. He contrived the powerful voltaic battery which bears his name. He was Professor of Experimental Philosophy at the London Institution, and his address on the "Continuity of Natural Phenomena" before the British Association in 1866 demonstrated that the changes in the organic world, in the succession of organized beings, and in the progress of human knowledge, resulted from gradual minute variations. He made several discoveries in electricity and optics.

When a judge retires from the Bench he does so in an unostentatious manner, generally writing to the Lord Chancellor to be relieved during a vacation, and at the next sittings a new judge takes his place, and is formally congratulated by the Bar.—*Herald, London Edition.*

DIARY FOR OCTOBER.

1. Tues...County Court Non-Jury Sittings except in York. Maritime Court sits. William D. Powell, 5th C J. of Q.B., 1816.
6. Sun.... *Sixteenth Sunday after Trinity.*
7. Mon....County Court Sittings for Motions, except in York. Henry Alcock, 3rd C.J. of Q.B., 1802. R. A. Harrison, 11th C.J., of Q.B., 1875.
12. Sat.....County Court Sittings for Motions, except in York. end. Columbus discovered America, 1492.
13. Sun.....*Seventeenth Sunday after Trinity.* Battle of Queenston, 1812. Lord Lyndhurst died 1863 æt. 92.
15. Tues...English law introduced into Upper Canada, 1793.
18. Fri.....St. Luke.
19. Sat.....County Court Sittings for Motions in York end. Last day for notices for Prim. Exam.
20. Sun.....*Eighteenth Sunday after Trinity.*
21. Mon....County Court Non-Jury Sittings in York. Battle of Trafalgar, 1805.
22. Tues...Supreme Court of Canada sits.
23. Wed...Lord Lansdowne, Governor-General, 1883.
27. Sun.....*Nineteenth Sunday after Trinity.* Hon. C. S. Patterson, appointed Judge of Supreme Court, 27th October, 1888. Hon. Jas. MacLennan appointed Judge of Court of Appeal, 27th October, 1888.
29. Tues...Primary Examinations.
31. Thu....Admission of graduates and matriculants. All Hallows' Eve.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

MACLENNAN, J.]

HAY *v.* BURKE.

Bills and notes—Notice of dishonour—To what place to be addressed—Place designated under signature—R.S.C., c. 123, s. 5.

Where it is intended to designate under the provisions of R.S.C., c. 123, s. 5, a place to which notice of dishonour may be sent other than the place at which the bill or note is dated, it is sufficient if the name of a place is written under or beneath the signature of the party. "Under his signature" does not mean that the name of the place must be written by the party's own hand; it may be written by another person if that other person had in any manner any kind of authority from the party to write it.

Where a place had been so designated, the holder of the instrument may send notice to the party's place of residence or place of business.

Cosgrave v. *Boyle*, 6 S.C.R., 165, considered and applied.

Judgment of the First Division Court of Wentworth affirmed.

MacKelcan, Q.C., for the appellant.

G. F. Shepley for the respondent.

[June 29.

McDONALD *v.* JOHNSTON.

New trial—Trial without a jury—Rejection of evidence.

This was an appeal by the plaintiff from the judgment of STREET, J.

The action was brought to set aside a conveyance made by the plaintiff in favour of the defendant, and in the statement of claim it was charged that the conveyance in question was never executed or delivered by the plaintiff, but that the alleged execution thereof was obtained by the defendant's fraud, and that the plaintiff signed the conveyance thinking that he was signing another instrument relating to the estate of his deceased wife. There was also a general charge that the execution of the conveyance had been obtained by the fraud and undue influence of the defendant, but there were no specific allegations as to the nature of the fraud or undue influence. The statement of defence was a mere general denial of the allegations set out in the statement of claim. At the trial the plaintiff tendered evidence as to the defendant having induced him to drink to excess about the time of the transaction in question; as to the plaintiff's want of education or business capacity and other evidence of that nature, and also evidence as to the position of the wife's estate and as to the transactions between the parties in connection with it, but the learned Judge ruled that this evidence could not be introduced under the general allegations contained in the statement of claim, and at the end of the case gave judgment in favour of the defendant.

The plaintiff appealed, and the appeal came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 23rd and 27th of May, 1889.

The Court were of opinion that the exclusion of evidence had been pushed too far, and that for a proper determination of the real merits of the case it would be advisable to admit evidence of every circumstance, declaration, or negotiation between the parties, which could throw any light on conduct or motive, and they ordered a

new trial, costs to abide the final result, each party having leave to amend.

Moss, Q.C., and *Code* for the appellant.

J. H. Macdonald, Q.C., for the respondent.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

FALCONBRIDGE, J.] [Sept. 9.

In re ARMSTRONG AND THE TOWNSHIP OF TORONTO.

Municipal corporations—By-law in aid of harbor works—Raising money by loan—Time of repayment uncertain—R.S.O., c. 184, s. 340, s-s. 2; s. 293, s-s. 1—Submitting by-law to electors—Day fixed for taking votes—Motion to quash—Applicant voting against by-law not estopped—Costs.

Section 340 of the Municipal Act, R.S.O., c. 184, which authorizes municipal councils to pass by-laws for contracting debts, etc., provides, s-s. 2, that the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest, from the day on which such by-law takes effect.

A by-law of a municipality to raise by way of loan $3,000 to aid in repairing harbour works, provided that the debentures should be made payable annually, the first payment to be made on the 15th day of December in the year next succeeding the year in which the "repairs will have been completed."

Held, that as the time of repayment was uncertain, the by-law was not in accordance with s. 340, s-s. 2, and was therefore illegal and should be quashed.

Semble, also, that it was a fatal objection to the by-law that the day fixed by it for taking the votes of the electors thereon was more than five weeks after the first publication, contrary to s 293, s-s. 1, of the Act.

Held, also, that the applicant had not by voting *against* the by-law disentitled himself to apply to the court to quash it, or to the costs of his motion.

E. G. Graham for the applicant.

Beynon, Q.C., and *Ritchie*, Q.C., for the township.

GALT, C.J.] [Sept. 27.

Re NOBLE *v.* CLINE.

Prohibition — Division court — Territorial jurisdiction—Where cause of action arose.

The plaintiff resided in the district of Algoma and the defendant in the county of Wentworth. The defendant telegraphed from Wentworth an order for a ton of fish to be sent him by the plaintiffs, and the latter shipped the fish from Algoma to Wentworth. The plaintiffs sued for the price of the fish.

Held, on motion for prohibition, that the whole cause of action arose in Algoma, and a Division Court there had jurisdiction.

Cowan v. *O'Connor*, 20 Q.B.D., 640, and *Newcomb* v. *De Roos*, 2 E. & E., 271, followed.

Shepley for the plaintiff.

Aylesworth for the defendant.

Chancery Division.

Div'l Ct.] [June 12.

Re WALLIS *v.* VOKES.

Mechanics' Lien—Prior conveyance—Notice of lien to purchaser—Validity of lien—Proceedings to realize—Summary application to discharge.

S. was the owner of a lot upon which he was building four houses, and W. was his plumbing contractor, doing the work on all at a specified sum for each house. He commenced his work in September, 1887, and finished about May, 1888. V was the contractor for the brickwork, and as such was on the premises from time to time while the work was going on, and was not paid by S. V. purchased one of the houses, which was conveyed to him by S. by deed dated Dec. 1st, 1887, and registered Feb. 20th, 1888. On Feb. 24th, 1888, W. registered his lien on the whole property. Both V. and W. alleged that they knew nothing of the other's transaction. On an appeal from ROBERTSON, J., who held (affirming the Master in Chambers) that V. had notice of W.'s claim and that his summary application to have his lien discharged must be dismissed with costs, the Court were evenly divided.

Per PROUDFOOT, J. A lien should be registered against anyone whose rights are acquired during the progress of the work, and if not so

registered it becomes absolutely void unless proceedings are taken to realize within thirty days. No proceedings were taken within that time by W., and the lien not being registered ceased against the subsequent owner to be a lien at all.

Hynes v. *Smith*, 27 Gr., 150, and *McVean* v. *Tiffin*, 13 A.R. 1, followed.

Per FERGUSON, J. The real question is not whether there was a val d registration of the lien, but whether the judgment of ROBERTSON, J., affirming the refusal of the Master to discharge the lien on a summary application was right. The Master was justified in so refusing.

Wanty v. *Robins*, 15 O.R., 474, referred to.

Geo. MacDonald for the appeal.

Masten contra.

Div'l Ct.] [June 10.

MASON *v.* BERTRAM *et al.*

Master and Servant—Workman's Compensation for Injuries Act—Damages—Death from accident—Reasonable expectation of benefit from life of deceased.

The plaintiff's son had grown up and was intending to study to be a doctor, in which course the plaintiff intended to aid him by furnishing the necessary money. Just before he commenced such course he entered the employment of the defendants in their machine shop, and was injured by the falling of some iron lathes, from the effects of which he died. In an action by his father as administrator it was

Held, that under the circumstances the plaintiff could have no reasonable expectation of benefit from the son's life, and that the verdict obtained at the trial should be set aside and a nonsuit entered.

A notice of action under the Workman's Compensation for Injuries Act does not require to be signed or to be given on behalf of anyone.

Osler, Q.C., for the motion.

Lynch Staunton contra.

ROBERTSON, J.] [Sept. 2.

WILLIAMSON *et al. v.* WILLIAMSON.

Will—Absence of subscribing witnesses—Want of proof of their existence or handwriting—Action to establish will.

In an action to establish a will which was produced in the handwriting of the testator, purporting to be executed in the presence of two subscribing witnesses, who could not be found and whose handwriting could not be proved, a motion for judgment asking to have the will established and probate thereof granted, notwithstanding that all parties interested consented, was dismissed and the application refused on the ground that sufficient evidence had not been produced to show that such will was the will of the testator under R.S.O., c. 109, s. 12.

Millican for the plaintiffs.

Weir for the defendants.

FERGUSON, J.] [Aug. 29.

THE CORPORATION OF THE CITY OF KINGSTON *v.* THE CANADA LIFE ASSURANCE COMPANY.

Assessment and taxes—Insurance Company—Head office and branch office—Meaning of "branch" or "place of business" in Assessment Act—Assessment of income at branch office.

The defendants were a Life Assurance Company with their head office in H., and transacted business by agents in K., where they received applications for insurances which they forwarded to the head office, from which all policies were issued ready for delivery—the premiums on same also being collected in K. In an action by the corporation of the city of K. to recover taxes assessed against the defendants on income, in which the defendants contended that they had no place of business in K., that their only place of business was in H., and that their business was of such a nature that they could not be assessed at K., but might elect, and in fact had elected, under R.S.O., c. 193, s. 35, s-s. 2, to be assessed at H. on their whole income, and were consequently not liable to plaintiffs. It was

Held, that the defendants had a branch or place of business at K., that as the evidence was that the agent at K. could show each year the gross amount of his receipts; and as the words "gross income" were used in the statute, the amount of premiums received year by year at K. was assessable at that branch or agency, and that the plaintiffs were entitled to succeed.

Walkem, Q.C. and *Agnew* for plaintiffs.

Bruce, Q.C., for defendants.

Full Court.] [Sept. 9.

BANK OF MONTREAL *v.* BOWER.

Will—Devise—"Wish and desire"—Precatory trust—Estate in fee.

Held, affirming the decision of Ferguson, J., 17 O.R., 548 that the words of the will in question did not create a precatory trust, and that the wife took the property absolutely.

Per BOYD, C.—If the entire interest in the subject of the gift is given with superadded words expressing the motive of the gift, or the confident expectation that the subject will be applied for the benefit of particular persons, but without in terms cutting down the interest before given, it will not now be held, without more, that a trust has been thereby created.

Moss, Q.C., and *Kidd* for the defendants.

Robinson, Q.C., and *Code* for the plaintiffs.

Full Court] [Sept. 12.

ROBLIN *v.* MCMAHON.

Statute of limitations—Acknowledgment—Depositions in another action—21 Jac. 1. c. 16—R.S.O., 1887, c. 123, s. 1.

In an action for a debt incurred more than six years before writ issued, two documents were relied on as constituting such acknowledgments as stopped the running of the statute of limitations. One was a letter from the defendant in which he said: "I am of the opinion that it will be impossible for me to pay you anything until my son's estate is wound up, which will not be before the last of March or the beginning of April."

The other was a part of the examination of the defendant in a certain other action brought for the administration of his said son's estate, the examination being in reference to a claim set up by the defendant against the said estate, in which he admitted the receipt of the money for which the present action was brought, and stated that he was responsible to the testator of the present plaintiff who was an executor for it. There was evidence, also, that the son's estate was wound up, and that the defendant received more than sufficient to pay the plaintiff's claim.

Held, affirming the decision of Falconbridge, J., that the letter was a sufficient acknowledgment under the statute, and meant that on the son's estate being wound up, the defendant would pay, and the said estate having been wound up, anything conditional in the letter had been ascertained.

Held, also, that the statute was satisfied by an acknowledgment made and signed as in the testimony of the defendant in the administration action.

C. J. Holman for the defendant.

Masten for the plaintiff.

ROSE, J.] [Sept. 17.

BLAIN *v.* PEAKER.

Assignment for creditors—Personal estate only—48 Vict., c. 26, (O.)

An assignment for the benefit of creditors, though confined in terms to the assignor's personal estate, professed to be drawn under 48 Vict., c. 26, O.

Held, that it was nevertheless not within the Act; and this action, being brought by the assignee to set aside a chattel mortgage, must be dismissed with costs.

It is clear that it was intended under the Act to bring all the estate into the hands of the assignee for general distribution.

Meyers for the plaintiff.

McFadden for the defendant.

BOYD, C.] [Sept. 25.

REDICK *v.* SKELTON.

Arbitration and award—Publication, what is—Right of arbitrators to declare lien.

Motion to continue an injunction.

Held, that an award is published (for the purpose of regulating the time for an application to set it aside) when the parties have notice that it may be had on payment of charges. It is not needful that there should be notice of the contents of the award before it can be said to be published.

Arbitrators, upon a reference to settle disputes between partners, found the balance due from the firm to one of the partners, and that this balance was a lien upon the assets to be paid out of them specifically.

Held, that they had the power to give this direction, and the partner in question had power to sell to satisfy that lien out of the specific property applicable of which he was joint owner.

C. J. Holman for the applicant.

Marsh contra.

BOYD, C.] [Sept. 25.

RE CHANDLER AND CHASE.

Will—Construction—Life estate—Remainder to sons—Rule in Shelley's case.

Vendor and purchaser application.

A will contained the following clause: "To my son, G. W., I give and bequeath during his lifetime the s. e. ¼ of said lot 4 before mentioned, and at his death to go to and be vested in his son W.C., or in case other sons should be born to my son G.W. then to be equally divided between all of the boys."

Held, that G. W. took a life estate only, and that there was a vested remainder in fee in his sons as a class which would let in all born before his death.

Atkinson, Q.C., for the vendor.

Holman for the purchaser.

BOYD, C.] [Sept. 26.

RE NORTHCOTE.

Will — Construction — Devise — Restraint on alienation.

After a devise to his son C. of certain lands his heirs and assigns for ever, a testator added that his devise to C. was subject to this express condition, that he should not sell or mortgage the land during his life, but with power to devise the same to his children as he might think fit in such way as he might desire.

Held, that the case was governed by *Re Winstanley*, 6 O.R. 315, and that the property was not clothed with a trust in favour of the children, but the devisee took it in fee simple with, however, a valid prohibition against selling or mortgaging it during his life.

J. R. Roaf for purchaser.

J. M. Clark for vendor.

Practice.

MR. DALTON.] [Sept. 7.

SHAW *v.* CRAWFORD.

Notice of trial—Action in Chancery Division—Assizes—Chancery sittings—Right of defendant to give notice of trial—Rule 654.

In an action in the Chancery Division in which no jury notice had been given, the defendant gave notice of trial for the Assizes, beginning 10th September, 1889, and the plaintiff for the Chancery Sittings, beginning 4th November, 1889.

Held, that under Rule 654 either party has the right to give notice of trial for the next sittings, whether an Assize or a Chancery sittings; and the plaintiff cannot take away the right from the defendant by giving notice of trial for a later sittings.

The plaintiff's motion to set aside the defendant's notice of trial was therefore refused.

Palmateer v. *Webb*, 7 C.L.T., Occ.N., 244, distinguished.

C. A. Durand for plaintiff.

R. S. Neville for defendant.

MR. DALTON.] [Sept. 21.

ESSERY *v.* GRAND TRUNK RAILWAY CO.

Solicitors—Agents in county towns—Posting up papers where no agent booked—Rules 203, 204, and 461.

Where a solicitor has not entered the name of an agent for him in a county town, service of papers in an action where the proceedings are being carried on in such county town cannot be effected upon him by posting up copies in the office of the local registrar there, if he has the name of a Toronto agent duly entered.

Rules 201, 204, and 461 considered.

Macnish for plaintiff.

Aylesworth for defendants.

BOYD, C.] [Sept. 24.

GIRVIN *v.* BURKE—BURKE *v.* GIRVIN AND SPENCE.

Consolidation of actions—Conduct of consolidated cause—Priority in time—Burden of proof—Scope of actions.

In determining which party is to have the conduct of a consolidation of two cross-actions, the main *indicia* to be regarded are, which action was first begun? Upon whom does the chief burden of proof lie? Which action is the more comprehensive in its scope?

And where G. first sued B. for cancellation and delivery up of four promissory notes made by G. and S. jointly to B., and also for cancellation of an agreement in relation to which the notes were given; and B. afterwards sued G. and S. upon three of the four notes in question; and substantially the same issues were raised in

both actions, the making of the notes being admitted by G. and S. in the pleadings, the actions were consolidated, and G. was allowed to proceed with his action, S. being added as a party to it.

C. J Holman for Burke.

D. Armour for Girvin and Spence.

BOYD, C.] [Sept. 24.

BANK OF HAMILTON *v.* STARK.

Postponing trial—Terms of order—Securing debt—Rule 681.

In ordering the postponement of a trial the Master in Chambers has a discretion under Rule 681 to impose terms.

And where, upon the defendants' application to postpone the trial, the Master so ordered upon their giving security for part of the amount sued for,

Held, that the term was properly imposed.

W. M. Douglas for plaintiffs.

D. Henderson for defendants.

BOYD, C.] [Oct. 8.

In re DINGMAN AND HALL.

Leave to appeal—Report of referee—Time—Judgment on further directions, effect of—Jurisdiction of judge in chambers and in court.

Held, that after the report of a referee has become absolute and a judgment on further directions founded thereon has been pronounced, drawn up, and entered, a Judge in Chambers has no jurisdiction to entertain an application for leave to appeal; nor could any appeal be entertained unless the judgment on further directions were set aside; and that could not be done even by a Judge in Court, but only by the proper appellate tribunal.

Hoyles for Dingman.

Kilmer for Hall.

BOYD, C.] [Sept. 24.

LATOUR *v.* SMITH.

Costs—Taxation—Costs of unnecessary proceedings or witnesses—Discretion of taxing officer—Rules 1195, 1215—Costs of præcipe order.

By the judgment on further directions the plaintiffs were awarded the costs of the action and reference. Upon appeal from the taxation of such costs, the defendant contended that the plaintiffs should not be allowed the costs of attendances and witnesses in the Master's office relating to items in the account in question as to which the plaintiffs failed.

Held, that the plaintiffs were entitled to all the costs properly, fairly, and reasonably incurred upon the reference, but not to costs of unnecessary proceedings or witnesses; and costs of witnesses called to establish something on which the party calling them failed, were in the discretion of the taxing officer.

Rules 1195 and 1215 considered.

Held, also, that upon taxation only one attendance should be allowed on obtaining a præcipe order.

Langton for plaintiffs.

Middleton for defendant.

BOYD, C.] [Oct. 1.

Re BAKER.

Solicitor and client—Taxation of bill of costs after payment, and death of solicitor—Delay in applying—Special circumstances—Terms.

A bill of costs rendered by a solicitor in October, 1888, was paid shortly afterwards, but upon the undertaking of the solicitor, contained in letters written by him, that the payment was to be subject to the taxation of the bill at any time. The solicitor died in May, 1889, and no application for taxation was made till the 2nd of September, when an *ex parte* order was obtained from the Master in Chambers for taxation, the letters of the solicitor not being produced nor any special circumstances shown. Upon the application of the executor of the solicitor to the Master to set aside his *ex parte* order the letters were produced.

Held, that the Master was not bound to vacate his first order, although it was wrong; but, there being no imputation of bad faith, was right in giving leave to amend the order so as to do substantial justice; and, notwithstanding the death of the solicitor after being paid, there was jurisdiction to order a taxation as against his representative, under the circumstances.

The application being within the year came under s. 46 of the Solicitor's Act, R.S.O., c. 147, and "special circumstances" to justify a taxation existed in the fact of the letters having been written by the solicitor; but the delay of the applicants and the death of the solicitor

were reasons for imposing terms; and it was ordered that upon the taxation the books of the solicitor should be *prima facie* evidence of the correctness of his charges; or if the books were not available that the bill should be so taxed as to throw the *onus* of impeaching any charges on the applicants.

George Bell for the executrix.

George Ritchie for the applicants.

BOYD, C.] [Oct. 2.

SANDERSON *v.* ASHFIELD.

Costs—Action for price of work—Inferiority of work—Not subject of set-off in counter-claim.

The plaintiff claimed $1,205, the balance of the contract price for work done, and the defendant claimed that by reason of imperfect work the balance should be reduced by $900. The defendant was allowed $266.54 in respect of his claim for reduction, and the plaintiff therefore recovered $938.46.

Held, that what the defendant claimed was neither a set-off nor a counter-claim; and as the plaintiff had substantially succeeded he should get the general costs of the action and reference, less the costs incurred by the defendant in establishing the items of improper work in which he succeeded.

Cutler v. *Morse*, 12 P.R. 594, followed.

John Greer for the plaintiff.

Walter Read for the defendant.

Miscellaneous.

OSGOODE HALL LIBRARY.

Latest additions.

Abbott's Trial Brief in Criminal Cases, New York, 1889.

Allan's Law of Good-will, London, 1889.

Baker's War with Crime, London, 1889.

Bell's Principles of the Law of Scotland, 9th ed., 2 vols., Edinburgh, 1889.

Bourinot's Constitution of Canada, Montreal 1888.

Bradlaugh's Rules House of Commons, London, 1889.

Butterworth's Railway and Canal Traffic, London, 1889.

Butterworth s Railway and Canal Commission, London, 1889.

Chambers' Public Libraries, 3rd ed., London, 1889.

Clode's Law of Tenement Houses and Flats, London, 1889.

Drummond & Smith's Judicature Acts (Ireland), Dublin, 1889.

Endlich & Richards' Rights and Liabilities of Married Women, Philadelphia, 1889.

George's Mississippi Digest, 1818-70, Philadelphia, 1872.

Hageman on Privileged Communications, Princeton, 1889.

Hampden (Rev. Dr.) Jebb's Report of Case, London, 1849.

Heidelberg's Mississippi Digest, vols. 45-64, Albany, 1888.

Howell & Downey's Maritime Court Rules, Toronto, 1889.

Journal du droit International Prive, Tome 15, Paris, 1888.

Kelleher's Savigny on Possession in Civil Law, Calcutta, 1888.

Kelleher's Specific Performance and Mistake, Calcutta, 1888.

Kent's Commentaries on American Law, Philadelphia, 1889.

Kerr—The Student's Blackstone, 10th ed., London, 1887.

Law Reports, Consolidated Digest 1886-8, London, 1889.

Lawson's Law of Patents, 2nd ed., London, 1889.

Lindley's Law of Companies, 5th ed., London, 1889.

Lyon's Medical Jurisprudence, Calcutta, 1889.

Maine's International Law, London, 1889.

Manual of Military Law, London, 1887.

Maudsley on Mental Responsibility, 4th ed., London, 1885.

Megone's Companies Acts Reports, vol. 1, parts 1-5, London, 1888-9.

Morgan on House-owners, Holders, and Lodgers, London, 1889.

Nelson's Private International Law, London, 1889.

Powell's Law of Printers and Publishers, London, 1889.

Powis' Sinking Fund and Instalment Tables, Toronto, 1889.

Prideaux's Conveyancing, 14th ed., 2 vols., London, 1889.

Rentoul on Abortion, Edinburgh, 1889.

Robinson's Reminiscences, Bench and Bar, London, 1889.

Saunders' Precedents of Indictments, 2nd ed., London, 1889.

Scottish Law List, Edinburgh, 1889.

Selden Society Publications, vol. 2, London, 1889.

Smith's Master and Servant, London, 1889.

Speeches of H.R.H. Prince of Wales, 1863-88, London, 1889.

Stewart's Law of Wills, London, 1889.

Thring on Joint Stock Companies, 5th edition, London, 1889.

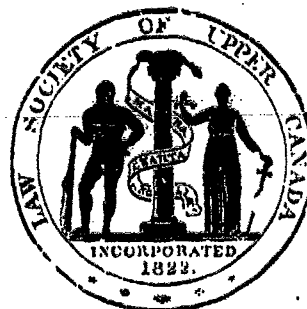
Webster's Conditions of Sale, London, 1880.

Westlake's Private International Law, London, 1889.

LITTELL'S LIVING AGE.—The numbers of *The Living Age* for the weeks ending October 5th and 12th have the following contents: Italy Drifting, by the Marchese Alfieri de Sostegno, *Nineteenth Century;* Russian Characteristics, *Fortnightly Review;* Wordsworth and the Quantock Hills, *National Review;* Elephant-Kraals, *Murray's Magazine;* Spanish and P rtuguese Bull-Fighting, *Fortnightly;* The Court of Vienna in the Eighteenth Century, *Temple Bar;* The Origin of Modern Occultism, *National Review;* Parallels to Irish Home Rule, by Edward A. Freeman, *Fortnightly;* Eucalyptus, Pine, and Camphor Forests, *Gentleman's Magazine;* Lepers at the Cape: Wanted, a Father Damien, *Blackwood's Magazine;* A Real Working Man, *Macmillan's Magazine;* vers" and "The Minister of Kindrach," and poetry and miscellany.

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

Law Society of Upper Canada.



TRINITY TERM, 1889.

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

Sept. 2nd.—John Garner Kerr, with honours and silver medal; James Ross, with honours and bronze medal; George Ross and Walter Scott MacBrayne, with honours; and James McCullough, Alfred Edmund Lussier, George William Bruce, Frederick McBain Young, John Wesley Roswell, John Howard Hunter, John Gordon Gauld, Angus MacNish, George Frederick Henderson, Horace Bruce Smith, George Luther Lennox, Herbert Holman, Joseph Frederic Woodworth, Henry Warrington Church, Alexander Stuart, Charles Daniel Macaulay, William Woodburn Osborne, Daniel Sharp Kendall, Frank Sangster, Harry Herbert Johnston, Owen Ritchie, Robert McDowall Thomson, Frederick Rohleder, John William Seymour Corley, Andrew Elliott, Francis James Roche.

Sept. 3rd.—Walter Dymond Gregory.

Sept. 13th.—Magloire Routhier.

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

Sept. 2nd.—J. G. Kerr, A. E. Lussier, G. Ross, F. Reid, C. D. Macaulay, J. G. Gauld, J. F. Woodworth, T. Graham, W. W. Osborne, T.A. Rowan, D. S. Kendall, H. Miller.

Sept. 3rd.—F. H. Keefer, G. N. Beaumont, J. A. Chisholm, J. Ross, H. Holman, J. W. S. Corley, H. H. Johnston, D. M. Robertson, J. W. Roswell, F. M. Young, G. W. Bruce.

Sept. 7th.—O. Ritchie, J. A. Ritchie.

Sept. 13th.—A. W. A. Finlay.

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

E. B. Ryckman, with honours and 1st scholarship; W. Wright, with honours and 2nd scholarship; D. A. McKillop, with honours and 3rd scholarship; A. G. Mackay and W. H. Nesbit, with honours; F. Pedley, R. C. Gillett, W. G. Richards, H. L. Drayton, R.M. Graham, D. O'Brien, S. E. Lindsey, H. J. Minnhinnick, W. E. L. Hunter, A. Crozier, J. P. Dunlop, J. A. Ferguson, W. McBrady, G. S. Kerr, J. H. McChie, F. B. Mosure, T. A. Beaument, A. C. Boyce, J. J. Hughes, J. H. Cooper, W. J. Kidd, E. M. McIntyre, H. L. Puxley, W. H. Kennedy, M. R. Allison H. Carpenter, J. J. Drew, W. L. Morton, C. Murphy, and J. McKean.

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

T. C. Thomson, with honours and 1st scholarship; A. T. Hunter, with honours and 2nd scholarship; W. E. Gundy, with honours and 3rd scholarship; J. G. Harkness, C. L. Crassweller, T. M. Higgins, B. S. Lefroy, G. Wilkie, W. F. Robinson, N. P. Buckingham, and H.D. Leask, with honours; W. T. Elliott, E. Pirie, C. F. Gilchriese, L. G. McCarthy, J. B. Ferguson, W. A. Cameron, J. A. Harvey, W. A. Baird, H. F. McLeod, G. H. D. Perryn, W. H. P. Walker, N. Kent, S. S. Reveler, J. Lennon, J. Kerr, T. L. W. Porte, J. O. Dromgole, G. R. Sweeny, C. Pierson, and W. M. Shaw.

The following gentlemen were entered on the books of the Society as Students-at-law, viz.:

Graduates.—Francis King, Percy Mahood, George Edward Jefferson Brown, Walter McClennan Allen, Edward Washington Drew, Robert James Gibson, John Henry Henderson, John Strachan Johnston, D'Arcy Richard Charles Martin, James Henry MacGill, Fletcher C—— Snider, John Donald Swanson.

Matriculants.—Benjamin Morton Jones, John Gilmour Hay, Alfred Erskine Hoskin, George Just Reiner, Henry Campbell Small.

Junior Class.— Charles Merritt Marshall, George Hamilton Pettit, William Thomas Henderson, Walter Gow, William Norman Tilly, Ralph John Slattery, Henry Joseph Patterson, John Pierce Stanton, Corsellis Hodge, William Farquhar Gurd, Alphonso Macfarlane, David Elroy Smith, Edward Chanay Attrill, William Duncan Moss, Evan Stevenson, James F——, J—— Cashman, William Alexander Douglas Grant, James White Graham, John Robert Logan, Samuel James Cooley, Norman St. Clair Gurd, Covert Emerson Jarvis.

Articled Clerks.—Thomas Kingston Allan, James Gilchrist Burnham.

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

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

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

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

CURRICULUM OF THE LAW SCHOOL, OSGOODE HALL, TORONTO.

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

Lecturers, E. D. ARMOUR. A. H. MARSH, LL.B.

Examiners, R. E. KINGSFORD, LL.B. P. H. DRAYTON.

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

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

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

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

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

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

Unless required to attend the school by the rules just referred to, the following Students-at-Law and Articled Clerks are exempt from attendance at the School:

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

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

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

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

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

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

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

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

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

CURRICULUM.

FIRST YEAR.

Contracts.

Smith on Contracts.

Anson on Contracts.

Real Property.

Williams on Real Property, Leith's edition.

Common Law.

Broom's Common Law.

Kerr's Student's Blackstone, books 1 and 3.

Equity.

Snell's Principles of Equity.

Statute Law.

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

In this year there will be two lectures each day except Saturday, from 3 to 5 in the after-

noon. On every alternate Friday there will be no lecture, but instead thereof a Moot Court will be held.

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

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

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

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

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

SECOND YEAR.

Criminal Law.

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

Real Property.

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

Personal Property.

Williams on Personal Property.

Contracts and Torts.

Leake on Contracts.
Bigelow on Torts—English Edition.

Equity.

H. A. Smith's principles of Equity

Evidence.

Powell on evidence.

Canadian Constitutional History and Law.

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

Practice and Procedure.

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

Statute Law.

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

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

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

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

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

THIRD YEAR.

Contracts.

Leake on Contracts.

Real Property.

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

Criminal Law.

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

Equity.

Lewin on Trusts.

Torts.

Pollock on Torts.
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.

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

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

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

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

GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

CURRICULUM OF THE LAW SOCIETY OF UPPER CANADA.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with clause three of this Curriculum, and presenting to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present a Certificate of having passed, within four years of his application, an examination in the sub-

jects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be), on conforming with clause three of this Curriculum, without any further examination by the Society.

3. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, on or before the fourth Monday before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Bencher and pay $1 fee; and on or before the day of presentation file with the Secretary a petition and a presentation signed by a Barrister (forms prescribed), and pay prescribed fee.

4. The Law Society Terms are as follows:—

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

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

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

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

5. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday of June of the same year.

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

7. Full term of five years, or, in the case of Graduates, of three years, under articles, must be served before Certificates of Fitness can be granted.

8. Service under Articles is effectual only after the Primary Examination has been passed.

9. When the time of an Articled Clerk expires between the third Saturday before Term and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit only, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

10. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favorable to the Student or Clerk, and all Students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

11. Candidates for call to the Bar must give notice signed by a Bencher, on or before the fourth Monday before Term. Candidates for Certificates of Fitness are not required to give such notice.

12. Candidates for Call or Cert ficate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

13. No information can be given as to marks obtained at Examinations.

14. A Teacher's Intermediate Certificate is not taken in lieu of Primary Examination.

15. All notices may be extended once, if request is received prior to day of Examination.

16. Questions put to Candidates at previous Examinations are not issued.

FEES.

Notice Fee	$ 1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM for 1889.

Students-at-Law.

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

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

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

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.

Composition.

Critical reading of a selected Poem:

1889—Scott, Lay of the Last Minstrel.

1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.

Translation from English into French Prose.

1888 }
1889 } Souvestre, Un Philosophe sous le toits.

1889—Lamartine, Christophe Colomb.

or NATURAL PHILOSOPHY.

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

Articled Clerks.

In the year 1889, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.

Arithmetic.

Euclid Bb. I., II., and III.

English Grammar and Composition.

English History—Queen Anne to George III.

Modern Geography—North America and Europe.

Elements of Book-keeping.

RULE *re* SERVICE OF ARTICLED CLERKS.

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

First Intermediate.

Williams on Real Property, Leith's edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and Cap. 123, Revised Statutes of Ontario, 1887, and amending Acts.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44, the Consolidated Rules of Practice, 1888, the Revised Statutes of Ontario, 1887, chaps. 100, 110, 143.

For Certificate of Fitness.

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

For Call.

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

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