Canada Law Journal.

VOL. XVII. FEBRUARY 15, 1881. No. 4.

DIARY FOR FEBRUARY.

2. Wed....Final Examination for Attorneys.
3. Thurs..Final Examination for Call.
4. Fri.....Final Examination for Call with honours.
6. Sun.....5th Sunday after Epiphany. Hagarty, C. J., C. P., sworn in, 1856.
7. Mon...Hilary Term begins.
10. Thurs..Queen Victoria married, 1840.
11. Fri.....R. E. Caron, Lieut.-Governor of Quebec, 1873.
13. Sun. ...Septuagesima Sunday.
14. Mon...Last day to move against Municipal Elections.
15. Tues...Supreme Ct. sitt.
17. Thurs..Re-hearing Term in Chancery begins. William Osgoode, first C. J. of U. C., died 1824.
18. Fri.....Canada settled by the French, 1534.
19. Sat.....Hilary Term ends.
20. Sun.....Sexgaesima Sunday.
27. Sun.....Quinquagesima Sunday. Sir John Colborne, administrator, 1838.
28. Mon....Indian mutiny began, 1857.

TORONTO, FEBRUARY 15th, 1881.

THE labours of Messrs. Robinson and Joseph in the publication of their digest of Ontario Reports is now at an end, and the result is before most of our readers. We must defer our remarks on the subject until our next issue.

THE Government at Ottawa has, as yet, given no sign as to who is to take the vacant seat in the Court of Appeal. There are so many rumours and so conflicting, that it is difficult to keep pace with them. The general feeling is, we believe, in favour of the appointment of the Chancellor, or of Chief Justice Hagarty; the former, more likely, as it is said an "Equity" Judge would be desirable to fill the place of the late lamented Chief.

THE remains of the late Chief Justice Moss, were interred on the 9th inst., in the St. James' cemetery. The University authorities and the Law Society were both desirous of showing their respect to the memory of the deceased by a public funeral; but at the request of his widow, the ceremony was of a simple and private character, attended only by his brother Judges and personal friends. The memory, however, of one of Canada's greatest sons is engraved on the hearts of those who knew him, and written on the pages of our history.

WE publish in this number some further decisions by County Judges which will be read with interest. Division Court procedure is not, perhaps, a study much relished in Toronto; and the habit here is to despise it. In country places, however, this is not so much the case, and it cannot be denied that as the local courts increase in their jurisdiction, so will professional interest increase in their practice. The decision of Mr. Justice Cameron in *Mead* v. *Creary*, *post* p. 82, is also an important one in this connection.

THE last case as to the rights of the finder of lost money seems to be *Hamaker* v. *Blanchard*, in the Supreme Court of Pennsylvania. The finder was a servant girl who picked up a roll of bills in the parlor of a hotel. The girl handed the money to her master, to be given to the supposed owner. As, however, this individual did not turn up, the finder brought suit to establish her right to the money; and it was held that she was entitled to it as against all the world but the rightful owner. The decision, though in accordance with well established principles, is somewhat a blow to the domestic maxim that "all waifs and strays belong to the mistress of the house."

The following advertisement appears in an Oshawa paper:

"I am prepared to do all manner of conveyancing at charges lower than any one in town, also to collect accounts, attend to Division Court business, collecting of rents, letting houses, posting books and making out accounts, etc.

"N.B.—Legal advice free of charge."

The extract from which the above was taken has been sent to the Attorney-General, so that the proper authority may know the kind of thing country practitioners are subjected to. The man who has the cheek to advertise as this impostor does has also the hardihood to give advice to any one on any subject brought before him. The not unlikely result might be ruin to the person advised. It will be no answer in the mouth of those who are responsible for legislation that "it served him right." The ignorant public ought to be protected as well against legal quacks as against medical quacks. How legislators can reconcile it to their legisla ive conscience to give this subject the go by we cannot understand.

RIGHT OF QUEEN'S COUNSEL TO DEFEND PRISONERS.

Though the legal atmosphere has been much disturbed of late by the questions whether the Dominion or a Provincial Government has the right to appoint a Queen's Counsel, and whether such appointment confers a "title of honour," and so comes from the Crown as *fons honoris*, or means only an "office," or a general retainer from the Crown, which entitles the barrister holding a patent as "oneof Her Majesty's Counsel learned in the law" to pre-audience in Court, owing to "the dignity of his client," nothing has as yet been said respecting the peculiar duty of a Queen's Counsel—long known and still recognized in England—not to appear against the Crown in any civil or criminal cause unless by special license.

In Gude's Crown Practice (v. 2, p. 599) a form of petition for this license is given. It sets forth that the petitioners are prosecuted at the suit of the Crown, and then proceeds "That——, one of Your Majesty s Counsel learned in the law would be very useful for your petitioners in defending them therein. Your petitioners therefore humbly beg Your Majesty would be graciously pleased to grant your Royal dispensation to the said ——, to be of counsel for your petitioners in their defence."

The form of license is given at p. 390 of the same work, and after reciting the petition, reads: "We being graciously pleased to condescend to this request, do accordingly, by these presents, dispense with the said——, and grant him our Royal license to be of counsel," etc. A note to the form states: "The certificate from the Secretary of State's office is considered sufficient for counsel to authorize him to receive the brief, without having the license itself."

The relations of Queen's Counsel to the Crown, may, be better understood when it is stated that the two principal members of that select body, are Her Majesty's Attorney and Solicitor-General; and if either of these counsel who are more especially Her Majesty's law officers can, without license, take briefs against the Crown, *a fortiori*, may those holding the subordinate rank and office of Her Majesty's Counsel, take briefs and be engaged in causes against the Crown.

The first barrister appointed by the Crown to be a Queen's Counsel was Lord Bacon, in 1590. His appointment was that of Counsel Extraordinary to the Queen; but no fee was then attached to the office. Soon after the accession of James I, he was constituted by Letters Patent, "King's Counsel," having been previously knighted.

The next appointment of King's Counsel was in 1668, when Sir Francis North received a silk gown. It is said that, being desirous of making himself known at Court as an anti-Parliamentarian lawyer, he volunteered to argue for the Crown before the House of

Lords the great Parliamentary case of the *King* v. *Sir John Elliot, Denzill Hollis, and others*, (3 St. Tr. 294,) and his argument so pleased the Duke of York (afterwards James II.) that he induced the King to appoint him one of His Majesty's Counsel.

From early days a fee or retainer of £40 a year was attached to the office. Some writers say that Lord Bacon was the first to receive this fee; while others say that Sir Francis North received £40 as his fee in the case referred to, and that thenceforward it became the annual fee or retainer of a King's or Queen's Counsel. And after 6th Anne, c. 7, s. 24, (1708) the appointment was held to confer an "*office* of profit," which disqualified a member of the House of Commons from sitting in Parliament, without re-election. (*a*)

It seems to have been the rule as early as Sir Francis North's time, that a King's Counsel could not appear in any civil or criminal cause against the crown. In the civil case of *Smith* v. *Wheeler*, 1 Mod. 38, (1669) the reporter states:

"In this case Serjeant Maynard was about to argue that the residue of the term was not forfeited to the King.

Kelynge, C. J., Brother Maynard you would do well to be advised, whether, or no, you being of the King's Counsel, ought to argue against the King?

Maynard answered, that the King's Counsel would have but little to do, if they should be excluded in such cases; and that Serjeant Crew argued Haviland's case in which there was the like question.

Twisden, J. In *Stone and Newman's case*, Cro. Car. 427, I know the King's Counsel did argue against estates coming to the Crown; but if my lord thinks it not proper, my brother Maynard may give his argument to some gentleman of the bar, to deliver for him." And thereupon Serjeant Maynard handed his brief to Mr. Jones, who argued the case the following Term.

The next authority in order of date is Sir William Blackstone. In the 3rd vol. of his Commentaries, p. 30, he says: "The King's Counsel answer, in some measure, to the advocates of the revenue, *Advocati fisci*, among the Romans. For they must not be employed in any cause against the Crown, without special license, in which restriction they agree with the advocates of the fisc."

Mr. Christian, in his edition of Blackstone, adds: "Hence none of the King's Counsel can publicly plead in Court for a prisoner, or a defendant in a criminal prosecution, without a license, which is never refused."

Coming down to later times, we find that in the case of *Regina* v. *Jones*, 9 C. & P. 404, Mr. Cresswell, Q. C., was instructed to argue the case for the prisoner on a point reserved for the consideration of the fifteen Judges. The reporter states:—"The case was to have been argued before the Judges in Easter Term, 1840; but it being stated by C. Cresswell, who was instructed to argue for the defendant, that he had not obtained a license from Her Majesty, under the royal sign manual, to argue against the Crown, and that he had only received a certificate from the Secretary of State's office, the Judges directed the case to stand over till Trinity Term, that Her Majesty's license might be obtained."

The reporter adds in a foot note that, "The Attorney and Solicitor-General, a Queen's Sergeant, or a Queen's Counsel, can not appear in a case against the Crown, (even

(*a*) In ordering a writ for a new election it was called "the *office* of one of His Majesty's Counsel learned in the law." The constituencies vacated by the appointment were: *Berealston* (1715), 18 Com. Jour. 334; *Higham Ferrers* (1726) 20 Com. Jour. 722: *Newport* (1730) 21 Com. Jour. 587; *Dorchester* (1735) 22 Com. Jour. 563; *Stamford* (1737) 23 Com. Jour. 22; *Dorchester* (1742) 24 Com. Jour. 333; *Cirencester* (1745) 25 Com. Jour. 35; *Bath* (1751) 26 Com. Jour. 299; *Knaresborough* (1765) 30 Com. Jour. 441; *Calne* (1815) 70 Com. Jour. 73; *Newport* (1816) 71 Com. Jour. 164; *Plympton Earle* (1824) 79 Com. Jour. 501.

if the Crown be a nominal party only) without a license under Her Majesty's sign manual. To obtain the license a petition is presented to Her Majesty. This petition is left at the Secretary of State's office, and a sum of £1. 10s. paid, on which a certificate is given; and the license is then prepared, to which Her Majesty's sign manual is obtained. Serjeants, and Counsel who have Patents of Precedency, may appear in cases against the Crown without any such license."

Serjeant Woolrych, in his Lives of Eminent Serjeants (p. xvii.,) explains the origin of these latter appointments. "The King's Counsel were gratified with a salary of £40 per annum. The rank thus salaried was held to be an office under the Crown. Hence, when a member of Parliament became King's Counsel he vacated his seat. This was, in more senses than one, a manifest inconvenience. A new election is ill-relished by the member; and if he were of the party of the Government, the loss of a supporter was hazarded. A remedy suggested itself. By investing the fresh 'silk gown,' with a 'Patent of Precedency,' the person on whom it was conferred received no salary, and consequently was not an officer of the Crown, and thus retained his seat. And he had this further advantage. He was to take precedence next after the King's Counsel last made, and his leadership at the Bar was thus secured to him. He had also the right to be called within the Bar."

In the case of *Regina* v. *Bartlett.* 2 C. & K., 321, at the Hereford Assizes in 1846, Mr. Whateley, Q. C., before the case was called, stated that a brief had been delivered to him for the defendant in the case of a criminal information, at the suit of a private prosecutor, and that a letter had been sent to the Secretary of State for the Home Department, to ask that a license might be granted to him, as a Queen's Counsel, to allow him to plead against the Crown, but to this letter no answer had, as yet, been received. He stated that he felt a difficulty in the matter, as he had been informed that on the Norfolk circuit a Queen's Counsel had conducted the defence of a misdemeanor after an application had been made to the Secretary of State for a license, and before an answer was received, it being considered that after such an application, a license was always granted as a matter of course, if the case was not a Government prosecution.

The Lord Chief Justice, (Sir Thomas Wilde, afterwards Lord Chancellor Truro,) said, "I think there must be a license, or at least a letter from the Secretary of State."

The reporter adds, "As neither a license nor a letter from the Secretary of State arrived before the trial of the case, Mr. Whateley returned his brief."

In Cox's English Government (1863) the writer says (p. 375) "Queen's Counsel, or Her Majesty's Counsel learned in the law, are barristers who by an honorary appointment as servants of the Crown, obtain certain rights of pre-audience at the Bar. They have a nominal salary as servants of the Crown, and must not be employed in any cause against its interest without special license from the Crown which is, however, never refused."

Without citing further authorities we may add the following from the Transactions of the Juridical Society (vol. 2, p. 483): "Queen's Counsel have practically no duties whatever, corresponding to their title; for the most part, they have never to advise or act for the Crown; and they undertake no responsibilities by virtue of their appointments, beyond the negative duty of not appearing against the Crown, unless licensed so to do."

The result of these authorities would seem to be that, if Queen's Counsel in this country are "officers of the Crown," and occupy a position analogous to that of Queen's Counsel in England, they cannot appear in civil or criminal causes against the Crown without a license. But if their position is analogous to that of Barristers with patents of precedency there, then they are not restricted in the

cases they may be retained to defend, and may without such license appear in cases against the Crown.

The question is one for those holding the "office" of Queen's Counsel to consider and settle; or failing their doing so, then it may be raised by some daring "junior" in a criminal trial in one of our Courts, and the status of Queen's Counsel again discussed, together with the further question: whether a Patent of Precedence, instead of a Patent as Queen's Counsel, would be more appropriate recognition of professional rank in this country.

T. H.

THE DECLINE OF CIRCUIT LIFE.

There appeared in a recent number of the *Law Review* an article on this subject, which, though its practical importance is confined to the English Bar, cannot fail to possess considerable interest from a literary and historical point of view for members of the profession everywhere. The writer, after referring to the momentous changes which have been effected of late years in legal practice, in spite of the traditional conservatism of lawyers, calls attention to the fact that the leaven of innovation is beginning to work even in matters of social and professional organization, such as the forms and customs which have been from time immemorial associated with the circuits. In his opinion "it requires no seer's vision to perceive that the old spirit of the circuit life has fled: that there have long been, and still are, influences at work that are slowly altering and new moulding the circuit system, which influences, in spite of the retention of old names and observances, are likely at no distant date to accomplish the complete effacement of the old circuit system with all its attendant observances."

Among these influences, not the least potent are the marvellously increased facilities of locomotion which have been introduced during the present century. The "pomp and circumstance" which in olden times attended upon the advent of the judges in the assize towns, and the time-honoured observances associated with the circuits, were intimately connected with the slowness, and consequent dignity, of their movements. When the headlong speed of railway trains supplanted the dignified discomfort of the post-chaise in the office of carrying the ministers of justice to their destination, a fatal blow was dealt at many old customs and observances connected with circuit life, which were felt to be mere relics of feudalism, and no longer suitable to the changed conditions of modern life. In this, as in many more important matters, "the old order changeth, yielding place to new," and habits and customs which were full of a living interest and significance for one generation, become in the next the objects of antiquarian curiosity, or, at most, of a sentimental regret. The following passage furnishes a curious illustration of the inconveniences entailed upon the counsel who went the Northern Circuit in the good old days of bad roads and rumbling post-chaises: "So important a feature was the question of roads and locomotion considered "upon the northern iter," that when the business at any Assize town extended into the Commission Day of the next town, counsel were privileged to appear in court that day without their robes: the reason being that ordinarily these would have been consigned to the baggage-waggon, or the clerks, and were already *en route* for the next circuit town. Long after the reason for it had ceased to exist this rule was religiously observed by the members of the Northern Circuit as one of their especial privileges, and on the last occasion of its observance, not many years ago, we recollect how shocked the judge who, in the days of his youth, had been at the Equity Bar, looked at the indignity put upon him, as he supposed, by this want of dress, and his puzzled and not altogether

satisfied look, even after the explanation had been given and the privilege claimed."

It must be admitted that the great advances which have been made in modern times in travelling facilities and other conveniences have been accompanied by the elimination, to a certain extent, of those elements of romance and adventure which the art of the poet and the novelist have taught us to associate with the less easy and comfortable life of our forefathers. This, however, is a loss which the Canadian judge or counsel can bear with equanimity, as his luxurious 'Pullman' carries him with speed and safety to his destination, especially when he reflects on the hardships and perils which his less fortunate predecessors were often called on to endure. We quote from the article in the *Law Review* a passage which throws the contrast of the present and the former days into strong relief.

"In those days there was a certain amount of romance and adventure in circuit life—when Thurlow rode the Western Circuit on a horse procured 'on trial;' Eldon went the 'Northern iter' on a hired horse, but was obliged to borrow one for the youth who rode behind him, in charge of the saddle-bags, in the capacity of clerk; and North, afterwards Lord Keeper Guilford, when riding the Norfolk Circuit, got mellow and had to be put to bed in a public-house, while 'the rest of the company went on for fear of losing their market' (Campbell's *Lives of the Chancellors*, Vol. III., p. 441). Even the perils of the road had to be shared by the gentlemen of the long robe in comparatively recent times. Thus we find that Mr. Wood and Mr. Holroyd (both of whom were afterwards raised to the Bench), when crossing Finchley Common on their way to join the Northern Circuit, were stopped by a gentleman of fashionable appearance, who rode up to the side of the carriage and begged to know 'what o'clock it was.' Mr. Wood, with the greatest politeness, drew out a handsome gold repeater and answered the question; upon which the stranger, drawing a pistol, presented it to his breast and demanded the watch. Mr. Wood was compelled to resign it into his hands, and the highwayman, after wishing them a pleasant journey, touched his hat and rode away. The story became known at York, and Mr. Wood could not show his face in court without some or other of the Bar reminding him of his misfortune by the question, 'What's o'clock, Wood?'

Even supposing the circuiteer was fortunate enough to escape falling into the hands of highwaymen and to accomplish his toilsome journey to the assize town in safety, his troubles were by no means at an end. During that journey he had been debarred from availing himself of any public mode of conveyance, lest he might thereby fall into company with some attorney, and so get an unfair advantage over his brethren in the all-important matter of securing briefs—so strict in those days was the etiquette of the profession,—so sternly was its face set against the contamination of 'base fees!' This so reprobated practice of cultivating the good graces of the attorneys was termed "hugging," a crime the temptations to which were felt to be so powerful, that the most vigorous penalties and restrictions were resorted to in order to check and punish it. "Arrived at the circuit town, he (*i. e.* the barrister on circuit) could not enter it before the Judges, or at least not before mid-day of the Commission Day, so that all might have a fair start in the race for briefs; and even when he had got within the 'happy hunting grounds,' he was not allowed to stay at, or frequent, any public inn, lest the same temptations to 'hugging' and other undue influences should be presented to him—but he must go into lodgings, for which, of course, he had generally to pay an exorbitant price, there being no keener appreciators of circuit etiquette than the landladies. In some of the northern towns they used to adopt a sort of sliding scale of charges—a certain price if you had no business, an extra guinea if you

had. If he was fortunate enough to know an attorney in the place, or be related to one there, he could not stay with him, or dine with him, or even call on or be civil to him, without contravening the circuit code; and were he even known to utter, in public, his opinion that any attorney 'was a most estimable and highly respectable gentleman,' he was certain to have to pay a fine to the circuit mess. Even the very judges were, so to speak, strangers in the land, an old statute of the 8 Richard II., making it unlawful for any one to ride circuit in a county of which he was a native, or in which he inhabited, without a writ of *non obstante*."

This old-fashioned strictness of professional etiquette undoubtedly had a beneficial effect in establishing a high standard of honour amongst the members of the Bar; it must also have had a tendency to foster those social and friendly sentiments which are still, as we believe, the distinguishing characteristic of the "learned brothers" of the Bench and the "learned friends" of the Bar, although, from the changed circumstances of the times it which we live, they no longer find expression in the "High Jinks" of the circuit mess, or the Revels of the Inns of Court. Strange, indeed, to nineteenth century ideas at least, were the sights to be seen at these revels, "where, as in the Middle Temple Hall, the Master of the Revels after dinner sang a 'carroll or song, and commanded other gentlemen there then present to sing with him and the company;' or when, as in Gray's Inn, after dinner, 'a large ring was formed round the fire-place, when the Master of the Revels taking the Lord Chancellor by the right hand, with his left took Mr. Justice Page, who, joined to the other Serjeants and Benchers, danced about the coal-fire according to the ceremony three times, while the ancient song, accompanied with music, was sung by one Toby Aston, dressed as a 'barrister,' in 1773."

In reading the accounts of this joyous legal Saturnalia, and contrasting it with the grave and business-like way in which the lawyers of the present day take their relaxations, one is tempted to believe that Wordsworth was right in saying that "the world is too much with us," and that in the stress and hurry of modern life, men have forgotten the art of amusing themselves, and as the witty Frenchman said, take their pleasures too sadly. No such indictment will lie against the intellectual giants of Bench and Bar in the olden days, when it was thought no matter for surprise or blame "that an occupant of the Woolsack, when a member of the Oxford Circuit, should have occupied the office of Cryer, holding a fire-shovel in his hand as the emblem of his office; that Lord Eldon, while he was Attorney-General of the Northern Circuit mess, indicted Sir Thomas Davenport at the Grand Court at York, for murdering a boy 'with a certain blunt instrument of no value, called a long speech;' or that Serjeant Prime was fined by the Grand Court of his circuit for setting a boy to sleep by his eloquence." It was then thought an excellent joke "that a late Chief Baron had been crowned with a punch-bowl at York, 'in the days when he went circuiting;' and that such men as Alderson, Tindal, Serjeant Cross, and others joined in a quadrille to the tune of 'Fol de rol rol,' but Alderson, setting-off-wrong, put the rest out, and the whole was soon a scene of confusion."

It must not be forgotten that all this unrestrained hilarity and practical joking was associated with those sentiments of professional honour and friendship which it was the special aim of the Circuit Courts to countenance and promote, and we may fitly close this article with a final quotation from the source from which we have already drawn so largely: "There seems to be a general consensus of opinion as to the tendency of the amusements of the circuit table to promote friendship and to bring the leaders of the profession in contact with the juniors, and thus produce a feeling of harmony and good will amongst the Bar, which was productive of

he best effects. The terms of intimacy in which the counsel who went the circuit lived, are pointed to as one of the chief characteristics of those days; and the free interchange of opinions between seniors and juniors as giving rise to sentiments of kindness and respect; and indeed, the strictness with which the etiquette of the Bar is maintained in England is alleged to be owing, in a great measure, to the institution of the Circuit Court for the trial of all breaches of professional etiquette."

Such, amid what may appear its grotesque follies, were the ends aimed at, and in no small measure attained by the circuit life of bygone times, and in these present days when some (though happily but few) members of the profession are not ashamed to borrow the advertising arts of the quack and the Cheap John, we may be permitted to pay its departed glories the tribute of a respectful regret, and to express the hope that however its forms may change and decay, its spirit and essence may never wholly pass away.

NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

QUEENS BENCH.

VACATION COURT.

Osler J.] [Jan. 21.

IN RE EGLESTON V. TAYLOR.

Award void pro tanto.

In an award which is valid as to part and void as to remainder, if the void part can be separated from that which is valid, it should be rejected as surplusage.

In such a case, the proper course to pursue is to discharge generally a rule to set aside the award.

See Rees v. *Waters*, 16 M. & W. 263, *and Re Goddard & Mansfield*, 1 L. M. and P. 25.

Spencer, for the Rule.

J. E. Rose, contra.

CRATHERN V. BELL.

Continuing guarantee—Payment to person not the holder of.

The defendant gave to the plaintiff a guaranty in the following words :—" In consideration of C. & C. accepting the notes of J. G., at four, eight, and twelve months, for $751 each, in full satisfaction and discharge of their claim against the late firm of J. G. & Co., I hereby do, to the extent of $751, guarantee the payment of the first two of the said notes as they mature according to their tenor and effect." C. & C. endorsed the first note to persons to whom at maturity the defendant, at G.'s request, paid $275, being the extent to which G. was unable to meet the note. On the maturity of the second note the defendant paid to plaintiffs $476, being the balance of the sum of $751, for which he had made himself liable by his guaranty. An amount in excess of the sum guaranteed was paid altogether on the first two notes, which were not, however, paid in full.

Held, on demurrer, that, in the absence of an express or implied request from the plaintiff, the defendant could not avail himself of the payment to the holders of the first note as a partial discharge of his guaranty, as it was a voluntary payment, and that the guaranty was a continuing one, and on satisfaction of the first note remained available to the plaintiffs as a guaranty of the second, to the extent to which it had not been exhausted in making good the first note.

Britton, Q. C., for demurrer.

Bethune, Q. C., contra.

COMMON PLEAS.

VACATION COURT.

Cameron, J.] [January.

CLARK V. FARRELL.

Stat. Anne, ch. 14, sec. 1—Claimant of goods seized—Non-removal from demised premises.

Held, by CAMERON J. that the statute of Anne, ch. 14, sec. 1, which provides that goods seized under execution shall not be removed from demised premises until the rent due is satisfied, applies only as between the execution creditor and the landlord, and not to persons otherwise claiming the goods, as lien holders under chattel

mortgages, against whom notice is not deemed equivalent to a distress.

Semble, also that the statute does not apply when the goods are not removed from the demised premises.

J. Crickmore, for the claimants.
J. B. Clarke, for the landlord.
Aylesworth, for the Sheriff.

IN BANCO—FEBRUARY 8.

HEADSTROM V. TORONTO CAR WHEEL COMPANY.

Contract—Action for non-acceptance—Failure to deliver goods in accordance with contract—Promissory note—Payment.

This was an action for breach of contract to accept a quantity of iron of a brand known as the "Depore," and the question was whether certain iron tendered to the defendant complied with the contract, namely—a coming within the said contract.

The Court, on the evidence set out in the case, held that it did not, being iron of a different brand called Menomine iron, and therefore the defendants were not liable.

There was also a count on a promissory note given to the plaintiffs in the course of their iron transactions; but which the court on the evidence, also set out in the case, held to have been paid, except as to $19.64, for which the plaintiff was held entitled to a verdict.

Hector Cameron, Q. C., and *Bigelow*, for the plaintiffs.

George Kerr and *Akers*, for the defendants.

FREEHOLD LOAN AND SAVINGS SOCIETY V. FARRELL.

Building societies—Note as collateral security by persons not members—Validity—Motion by plaintiff—Right of defendant to raise defence not coming within plaintiff's motion.

Held, that under C. S. U. C., ch. 53, sec. 40, and 36 Vict., ch. 104, sec. 9, D., the latter act specially relating to the plaintiffs, a Loan and Savings Society thus were empowered to take as collateral security for a mortgage given by a person not a member of the company, the promissory note of a person also not a member of the company.

In the mortgage in this case, to which the note of the defendant was given as collateral security, no interest was specified, but it was paid in advance until Feburary, 1878, but thereafter it was paid at the end of the year instead. It appeared that in Feburary, 1878, a new mortgage had been executed by this mortgagor, and handed to the company, but which they said they never accepted, as the terms upon which they agreed to accept it, namely the procuring of a new note from defendant as collateral security, had never been done, and that they held to this first mortgage and note. The learned judge at the trial found in the plaintiff's favor on this point.

Held, that the defendant was not, on a motion by the plaintiffs, to enter a verdict for them on another point, no motion having been made by him, in a position to shew that the finding of the learned judge was erroneous.

Robinson, Q. C., for the plaintiff.
Ferguson, Q. C., for the defendant.

CHAMBERLAIN V. TURNER, *et al.*

Assessment and taxes—Taxes when due—Demand.

On the 2nd of April a by-law was passed by the corporation of the City of Toronto imposing a tax rate for the year 1880, and on the same day another by-law was passed making provision for the payment of the taxes over $5.00 by instalments, and declaring that all taxes should be paid on the 4th June, 1880, but that on prompt payment of the first instalment on the said 4th June, the time would be extended for the payment of the other instalments to days named, and on such non-payment an additional charge of 5 per cent. was imposed. It was also expressly provided that nothing therein contained should affect or diminish the collector's right, when he deemed it expedient, after a proper demand made, to proceed at any time before the said several days, to collect the said taxes by distress, &c. By the statute the right to distrain was given on neglect to pay fourteen days after demand; and that such demand should be made by calling at least once at the party's residence, &c., and demanding the taxes.

The statute also provided that all taxes levied for any year should be considered to be imposed and to be due from the 1st January thereof, and end on 31st December, unless otherwise expressly provided by by-law. The tax collector, about the 20th May, left with the plaintiff, whose taxes were over $5.00, a tax bill in accordance with the above by-law, stating that the taxes were due on 4th June, but such payment could be made by instalments, &c. : and that non-punctuality wholly forfeited such right, but rendered the party's goods liable to distress on neglect to pay fourteen days after demand. After the 4th June, without any further demand, the tax collector issued his warrant to the bailiff, who distrained the plaintiff's goods on the 12th, and sold them on the 18th June.

Held, that the taxes were not due until the 4th June, and that no demand could be made until that date, and therefore the levying of the taxes before that date, even if otherwise a demand, could not be deemed to be such: and quære, whether the mere leaving of such a tax bill, even after the 4th June, could be deemed to be a demand.

Held also, that the insertion in the by-law of the discretionary power to the collector to distrain at any time was improper.

The plaintiff was therefore held entitled to recover the value of his goods sold.

McCarthy, Q. C., and *A. M. Macdonald*, for the plaintiff.

J. E. Rose and *McWilliams*. for the defendant.

COMMON LAW CHAMBERS

IN RE MURPHY V. CORNISH.

Osler J.] [Jan. 15.

Appeal to sessions by defendant—Prohibition.

Held, that the prosecutor of a complaint cannot appeal from the order of a Magistrate dismissing the complaint.

By R. S. O., ch. 74, sec. 4, the practice as to appeals is assimilated to that under 33 Vict., ch. 27, which confines the right of appeal to the defendant.

Aylesworth, for the defendant.

W. R. Mulock, for other parties.

IN RE MEAD V. CREARY.

Cameron J.] [Jan. 21.

Division Court—Garnishee—Attachment—Prohibition—Jurisdiction.

The garnishees held $500 belonging to the defendant. The plaintiff claimed the right to attach this money in a Division Court, to the extent of his judgment, amounting to $72.25.

Held, that the jurisdiction of Division Courts in garnishee proceedings is limited to debts within the proper competence of such courts to try, and a prohibition was therefore ordered.

Held, that under 43 Vict., ch. 8, secs. 10 and 14, notice of intention to dispute the jurisdiction of a Division Court is only necessary when the cause of action, being within Division Court jurisdiction, is brought in the wrong court.

Aylesworth, for plaintiff.

Roaf, for garnishees.

Mr. Dalton.] [Feb. 4.

GHENT V. MCCOLL.

Judgment debtor—Attachment—Costs.

Held, that a judgment creditor, whose judgment is for costs, cannot examine his judgment debtor under R. S. O., ch. 50, sec. 304, nor garnish debts due to him, this section requiring the judgment to be for a substantial cause of action.

A judgment creditor in such a case may examine his judgment debtor under R. S. O., ch. 49, sec. 17.

Caswell, for judgment creditor.

Henderson (Ferguson, Bain, Gordon & Shepley), for judgment debtor.

Leonard (Jones Bros. & McKenzie), for garnishee.

Mr. Dalton.] [Feb. 8.

MORGAN V. AULT.

Pleading—County Court—Abatement.

The defendant pleaded to an action in Superior Court that there was a suit pending in a County Court, brought by the plaintiff's against the defendant for the same cause of action.

Held, that the plea should aver that the cause of action in the first suit was within the jurisdiction of the County Court.

Hellmuth, for plaintiff.

Aylesworth, for defendant.

CHANCERY

Spragge C.] [Jan. 12

HAMILTON PROVIDENT AND LOAN SOCIETY V. BELL.

Principal and agent—Valuer of land—Liability of for loss.

The paid agent of a loaning Society, who professed to be skilled, and had a knowledge in the valuing of lands, was held liable to the Soci- a loss sustained by them by reason of a false report of such agent.

Silverthorne v. *Hunter*, 5 App. R., 157 distinguished.

Muir, for plaintiffs.

Spragge, C.] [Jan. 12

IRWIN V. YOUNG.

Voluntary deed—Independent advice—Costs.

Where it was shewn that a voluntary deed had been executed without independent advice, where the grantor stood in such a relation to the grantee, as that he was likely to be under his influence, the Court, [SPRAGGE C.,] owing to the peculiar relationship of the parties, set the conveyance aside, although no fraud or moral wrong could be imputed to the grantee; and although it was probable, from all the circumstances of the case, that if the contents and legal effect of the instrument had been fully explained to the grantor by an independent legal adviser, the grantor would still have executed the deed though probably with some modifications in the details. The relief was granted without costs, however, as no case of actual fraud was established, in this following *Lavin* v. *Lavin* 27 Gr. 567.

Boyd, Q.C., and *Robertson*, Q.C., for plaintiff.

Osler, Q.C., and *Lazier* for defendants.

Bruce, for infants.

Spragge C.] [Feb. 2.

BANK OF TORONTO V. IRWIN.

Re-formation of mortgage—Fraudulent conveyance.

A mortgage had been executed by defendant I. reciting that it had been agreed to be given to secure notes held by the plaintiff, and containing covenants for title, was reformed by substituting for one of the parcels inserted by mistake, which did not belong to I. another lot proved to be his at the time of creating the mortgage; and being the only lot owned by him.

After the creation of the mortgage, M. purchased from I. the substituted lot at an absurdly inadequate price, and the sale being otherwise attended with suspicion, was set aside as fraudulent under the statute of Elizabeth.

A writ was in the hands of the sheriff at the suit of the plaintiff against I., at the time of the dismissal of a bill filed by I. to redeem the plaintiff, and at the time of the sale to M., which dismissal had under the circumstances the effect of a decree of foreclosure against I.

Held, notwithstanding, that the plaintiffs might proceed to recover their debt against I., they being in a position to reconvey the mortgaged premises.

Spragge C.] [Feb. 2.

CHAMBERLAIN V. SOVARS.

Judgment creditor—Mortgagor and mortgagee—Principal and surety.

A judgment creditor with execution in the hands of the sheriff against the lands of the defendant S., which lands were subject to a mortgage to L., whose executors were defendants in a suit to redeem. At the hearing the Court [SPRAGGE C.] declared the plaintiff entitled to the same relief as upon a bill by a *puisne* incumbrancer against a prior mortgagee and the mortgagor; and that notwithstanding R.S.O. chap. 49, sec. 5, inasmuch as he could not establish his right in the County Court in which he had recovered his judgment, so as to obtain as effectual a remedy as that sought in the redemption suit, he might resort to equity to obtain relief.

The executors of B. were also liable upon the judgment recovered by the plaintiff, and by their answer set up that they were liable only as sureties for the defendant S. All parties interested were represented in the suit, and no one objecting thereto, a reference was granted at the instance of B.'s executors, in order that they might establish the fact of suretyship, in which case they would be entitled to the same relief as was granted in *Campbell* v. *Robinson*, 27 Gr. 634.

Spragge C.] [Feb. 2

HOLTBY v. WILKINSON.

Will, construction of—Vested remainder—Falsa demonstratio.

A testator devised certain real estate "to be owned, possessed, and inherited by my wife during her natural life subject to the further provisions of my will," followed by a devise to "W. G. when he is of the age of twenty-three years, two hundred acres, or if sold before he arrives at the years mentioned, that some other lot of land or money amounting in value to the above mentioned lot be given him in lieu thereof:"

Held, that the wife took a life estate with a vested remainder over to W. G.

Held, also, that "two hundred acres of land, the west half of lot No. 14" was *falsa demonstratio* of the west half; the testator having referred to the whole lot as being two hundred acres in a subsequent part of the will.

Blake V. C.] [Feb. 4

PIERCE v. CANAVAN.

Mortgagor and mortgagee—Purchase of part of mortgaged estate—Liability of purchasers.

B., the owner of two parcels of land (D. and E.), mortgaged them to one J., who assigned the security, after which J. obtained from B. a transfer of his equity of redemption. Shortly afterwards J. sold a portion of lot D to P., who sold and conveyed to the plaintiff who, a few days later obtained from J. a conveyance of the remainder of the lot (D); the plaintiff on each occasion paying his purchase money in full and receiving a conveyance with covenants as to title; and J. at a subsequent date sold the remaining lot (E) to one C., who sold and conveyed his interest to the defendant Canavan. The agreement throughout was that J. was to discharge the mortgage.

The Court [BLAKE V. C.] under these circumstances *held*, that the plaintiff was entitled to call upon the owners of lot E to the extent of the value thereof to indemnify him against the claim under the mortgage, that lot being liable in their hands for the full amount of the incumbrance, in the same manner and to the same extent as it had been liable in the hands of J.; in this respect following the cases of *Parker* v. *Glover*, 24 Gr. 537; *Clark* v. *Bogart*, 27 Gr. 450; *Nicholls* v. *Watson*, 23 Gr. 606; *Clarkson* v. *Scott*, 25 Gr. 373.

Blake, V. C.] [Feb. 7.

STAMMERS v. O'DONOHUE.

Specific performance—Signature of parties to contract—False statements as to state of property.

It is not necessary that the name of a party to a contract for the sale of property should be actually signed thereto; it is sufficient if the alleged contract is in writing and is subsequently recognized by one of the parties thereto in any writing signed by him or his agent. Therefore, where property was sold by auction and the contract was duly signed by the purchaser, but was not by the vendor or the auctioneer acting in the matter of the sale, and subsequently in consequence of delays on the part of the purchaser, the attorneys for the vendor, (one of whom was the vendor himself,) wrote, "Re S's purchase we would like to have it closed," and referring to certain representations made in advertisements of sale, "they were not made any part of the contract of sale. . . . Have the goodness to let us know whether the vendor will pay cash or give mortgage. If the latter, we will purchase it at once and send you draft for approval," and on a subsequent occasion, "Re S.'s purchase. Herewith please receive deed for approval," and on another occasion the vendor himself wrote, "I shall take immediate steps to enforce the contract.

Held, that there was sufficient in writing signed by the party to be charged to take the case out of the Statute of frauds; and that the purchaser was entitled to a specific performance of the agreement for sale.

Although a vendor is allowed great latitude in the statements or exaggerations he may make as to the general qualities and capabilities of lands he is about to offer for sale, still he will not be permitted to make direct misstatements and misrepresentations as to matters of fact which would naturally have the effect of inducing parties resident at a distance to bid for the property; therefore, where an advertisement of property about to be sold, was described as being "a farm of 81½ acres, twenty acres

cleared and fenced," on the faith of which the plaintiff purchased; when in fact there was not any clearing, neither was there any fencing made upon the premises. The Court [BLAKE, V. C.] in pronouncing a decree for specific performance at the instance of the purchaser, directed a reference to the master to make an allowance in respect of the matters misrepresented, and ordered the vendor to pay the costs of the suit.

Blake V. C.] [Feb. 7.

MORRIS v. MEADOWS

Mortgages—Sale of lands subject to mortgage—Right to call on purchaser to pay off mortgages.

M. sold a lot of land to C. which was subject to a mortgage for $1600, which C. agreed to pay off, this being in reality the consideration for the conveyance. C. having died his representatives sold the land to a *bona fide* purchaser who covenanted to pay off the $1600 mortgage, and default having been made in payment the mortgage premises were sold to the plaintiff who received a conveyance and therefore instituted proceedings against C's. representatives to compel payment of the mortgage debt of $1600. A demurrer for want of equity was allowed, the demand, which was a personal one, against the representatives of C. remaining with M. the original vendor.

Blake, V. C.] [Feb. 7.

FERGUSON v. FERGUSON.

Constructive trustee—Statute of limitations—Costs.

The defendant, in consideration that his father would convey to him certain lands in the township of Caledon, undertook and agreed to convey to a younger brother 100 acres of land in the township of Artemesia. The father conveyed the land to the defendant, but instead of his conveying to the brother as he had agreed, he sold the property more than twelve years before bill filed, the plaintiff being then at least twenty-one years of age.

Held, that under these circumstances the defendant was merely a constructive trustee, and that the plaintiff's right to call for a conveyance was barred by the statute of limitations; but the defendant having denied the agreement to convey, which, however, the evidence clearly established, the court [BLAKE, V. C.] on dismissing the bill, refused to give the defendant his costs.

CHANCERY CHAMBERS.

Referee,]
Proudfoot, V. C.] [Dec., 1880.

ELLIOTT v. GARDNER.

Dismissing bill for want of prosecution.

In a suit to set aside a conveyance of the equity of redemption in certain lands as fraudulent against creditors, one sitting of the Court having been lost, a defendant, the grantee of the equity of redemption, moved to dismiss the bill for want of prosecution. More than two weeks before the sittings commenced the plaintiff's solicitors were notified to file replication and proceed to a hearing, but did not do so. The excuses offered by the plaintiff were that the defendant was a material witness, and was absent prior to the hearing, and that the property had been sold under a power of sale contained in one of the mortgages, and little or no surplus remained after paying the mortgagees. It appeared that no efforts had been made to find the defendant in order to subpœna him as a witness at the hearing, and that the sale of the land did not take place until a month after the sittings at which the cause might have been heard.

Held, that the delay was not excused, and the bill should be dismissed.

Held, also, that failure of the defendant to comply with an order to produce did not under the circumstances of the case deprive him of the right to move to dismiss. *Semble* that a plaintiff cannot in answer to a motion to dismiss, ask to have the bill dismissed without costs, but must make a substantive motion for that purpose.

Langton, for defendant, (appellant.)
Hoyles, for plaintiff, (respondent.)

Spragge, C.] [Jan.

RE BENDER.

Devisee raising money on mortgage.

By his will C. B. devised to his wife "the whole of his real and personal estate upon trust, to take and receive all the rents and profits thereof, and thereout to pay all and any amounts due on the house on John street and also the one on King street, and also just debts, and to support herself and children until such time as the youngest child should attain the age of 21 years, and then to divide as directed. There were six children, the youngest of whom was four years and ten months old.

This was an application by the widow for leave to raise by way of mortgage on the King street property $13,000 at 6 or 6½ per cent. for the purpose of paying off certain existing mortgages amounting to $11,000 at 8 per cent., and with the balance putting up an addition in the rear of the building. The premises in question were leased for a term which would shortly expire. The warehouse not being large enough for lessees to transact their business, they offered, if an addition was put up in the rear of it, to renew for a term, and pay, besides rent, $100 yearly in reduction of the cost of the addition, and 10 per cent. on such cost until the same should be recouped to the estate.

It appeared that the addition would considerably increase the value of the property, as well as of the lessee's business. It also appeared that the testator had been a member of the lessees' firm, and part of his personal estate consisted of a bond from them for the testator's share of the business. It was considered that the payment of the amount of the bond would be accelerated by an extension of the lessee's business.

SPRAGGE C. granted the application.

Spragge, C.] [Jan. 31.

RE DONALD MCMILLAN

PATTERSON V. MCMILLAN.

In a partition matter before a local master under G. O. 640, the defendant, who occupied the property, claimed an absolute title by possession, under the Statute of Limitations.

The Master continued the enquiry and proceeded to take evidence.

Hoyles asked for the direction of the Court.

Symons appeared for the plaintiff.

SPRAGGE, C. directed the plaintiff to file a bill within two weeks, and parties to go to a hearing at the ensuing sittings at Cornwall, costs to be costs in the cause.

Referee.]

Proudfoot, V. C.] [January.

KNOWLTON V. KNOWLTON.

Security for costs—Nominal plaintiff—Waiver.

A petition by the defendant to reduce the amount of alimony allowed in the suit came on to be heard on the 5th Oct. Counsel for the plaintiff appeared and procured an enlargement for two weeks to answer affidavits, and the same day demanded and received copies of them. On 19th October counsel appeared and obtained a further enlargement for two weeks, but before the time expired applied for an order for security for costs on the grounds stated below.

Held, without expressing an opinion on the merits, that the plaintiff had waived her right, if any to security for costs.

Black, for petitioner.

Hoyles, contra.

MASTER'S OFFICE

The Master.] [Jan. 11.

FERGUSON AND ENGLISH & SCOTTISH INVESTMENT CO.

Costs—Mortgagor and mortgagee — 42 Vict., c. 20, s. 11, (Ont).

A mortgagor is entitled under 42 Vict., c. 20, s. 11, to obtain an appointment to tax the mortgagee's costs of sale under the power in the mortgage, notwithstanding that the mortgage is executed before the passing of the act.

G. H. Watson, for mortgagor.

Davidson, for mortgagee.

REPORTS.

ONTARIO.

COUNTY COURT OF MIDDLESEX.

STEWART v. FORSYTH.

Division Court Act, 1880, Sec. 2—Jurisdiction. —Money demand—Claim ascertained and signature of defendant.

The defendant bought an article from plaintiff and signed an agreement to that effect, which concluded thus: "which I agree to take @ $100 and settle for as follows: give my note for $20, payable Jan., 1881, (and then describing three other notes amounting in all to $90) and an old machine to be taken at $20.

Held, that the claim was a money demand and that the amount of the claim was ascertained by the signature of the defendant within the meaning of the Div. Court Act, 1880, sec. 2.

[London, Jan., 1881.

This was an application for County Court costs under the following circumstances.

The plaintiff sold a reaping machine to the defendant, and the latter then signed a written order for it, concluding with the following words: "which I agree to take at $110 and settle for as follows:—

Give you my note for $20 payable Jan., 1881.
also " " $20 " " 1882.
also " " $25 " " 1883.
also " " $25 " " 1884.
and an old machine to be taken at $20.

The plaintiff had a verdict which would entitle him to County Court Costs, unless under the Division Court Act of 1880, he could have brought his action in the Division Court.

The declaration set out the sale, the agreement to give the notes, which the defendant refusal to give.

Macbeth asked for the certificate because the claim was not a money demand, and because the damages were not ascertained by the signature of the defendant, and were unliquidated.

Taylor, contra.

ELLIOT, Co. J.—The plaintiff contends that his claim in this declaration is not a debt or a money demand, but is for unliquidated damages and therefore not within the new jurisdiction conferred by the second section of the Division Court Act of 1880. If the plaintiff's claim, as set out in his declaration, is not a debt in the technical sense, I think it is certainly a money demand. The expression appears to me to be a generic term, whereby actions, which are founded in money, are distinguishable from those which sound in damages only. Thus actions for malicious prosecutions, trespass &c., are not founded originally on any money basis —money is not concerned in their inception. But if this is not a money demand what is it? The plaintiff sold a machine for $110 and has not been paid. In whatever form he may put his claim, it is a money demand.

Secondly, as to the contention that the damages are unascertained by the signature of the defendant. If it were clear that the plaintiff could not recover under the count on the special agreement the full price of the machine, but that recourse must be had to some indeterminate mode of computation, there might be more room for the plaintiff's contention. But according to Mayne on Damages the plaintiff could sue on the special agreement as the plaintiff has done, and could recover the whole price for which the notes were to be given: *Hutchinson* v. *Reed*, 3 Camp. 329. If then, the jury could give the full price of the machine under that count, the price is ascertained by the defendant's signature, and the action is clearly within the jurisdiction of the Division Court. *Mussen* v. *Price*, 4 East 147, and other cases to which the plaintiff has referred, turn upon the form of the pleadings, and do not materially bear upon the question before us, which is one of jurisdiction under a new statute.

It is clear that when the defendant refused to give the notes, the plaintiff could bring an action against him in one shape or another immediately. The only question would be in what form should the declaration be framed. Shall it be for goods sold or delivered, or on the special agreement to give the notes and the refusal? Now, if the defendant had sued in the Division Court, a technical question relating to a matter of pleading would have no weight. All that the plaintiff is required to do there is to give a reasonably clear notice of his claim. If he had sued for the price of the machine in that court, and had produced the written agreement signed by the defendant fixing the price at $110, and showed the defendant's refusal to give the notes, the judge or jury could have given $110, or some lower sum, unless the defendant could show good reason to the contrary. In *Rugg* v. *Weir*, 16 C. B. N. S., 477, the plaintiff was allowed to recover on the declaration for goods

sold and delivered in a case resembling this, and Willes J. said that even if the declaration had been deemed insufficient because it was not framed on the special agreement, he would have regarded the case as one in which an amendment would be allowed. There is ample power to amend in Division Court proceedings. And if such an amendment were permissible in the Superior Courts, surely if there should be an objection to the form of the notice of claim in the Division Court, an amendment of a similar notice would be proper there. I am not clear that there was any credit actually given is this case at all. It might well be contended that according to *Nickson* v. *Jackson*, 3 Stark. 227, and *Rugg* v. *Weir*, 16 C. B. N. S., 477, there was only an option given to the defendant to give promissory notes, which he having refused to do, the plaintiff was at liberty to sue forthwith for the price. But I do not enter into this question.

There was here a writing by which the original amount of the plaintiff's claim is ascertained by the signature of the defendant, and it appears to me that the application of the new act would be improperly restricted by allowing variations in forms of pleading to affect the jurisdiction it confers.

Certificate refused.

SECOND DIVISION COURT—DISTRICT OF MUSKOKA.

CHRISTIE, *Primary creditor*, MCLEAN, *Primary debtor*, *and* WHITESIDE, *Garnishee.*

Division Courts Act—Attachment of debts.

Sec. 14 of Div. Courts Acts, 1880, does not refer to cases where there is a total want of jurisdiction, but to cases brought in a wrong Court.

[Bracebridge, Dec. 24, 1880.

This was an action brought by the primary creditor to recover from the primary debtor the sum of $214, balance of an unsettled account.

No notice disputing the jurisdiction had been given.

When the case came on for hearing, objection was taken that the claim was beyond the jurisdiction of the Court.

Pepler, for the primary creditor, however, contended that as the primary debtor had not given notice disputing jurisdiction, under the provisions of 42 Vict., cap. 8, sec. 14, R. S. O., this Court, by that section of the Act had jurisdiction to try the case. He cited Sinclair's Division Court Act of 1880, p. 32, note (f).

The learned judge who heard the case, held that he had no jurisdiction to try the case, and stated that he had so held in the case of *Nicholls* v. *Harston*, in Third Division Court tried at Huntsville on the 18th of August last, when a similar question as to jurisdiction was raised; but, at the request of Mr. Pepler, and in order to afford him an opportunity of furnishing him, if he could do so, with authorities in support of his contention, he postponed the giving of judgment. The following was his judgment:

LOUNT, Co. J.—I am of opinion that sect. 14 of the Act of 1880 does not refer to cases where there is a total want of jurisdiction (as when the amount sued for is beyond what could properly be adjudicated upon or the cause of action was one which could not be maintained in a Division Court), but merely to such matters as those to which section 11 of the same Act refers, that is, suits entered in the wrong court, &c. In such cases the defendant is not at liberty to object to the jurisdiction unless he has given the necessary notice to that effect. Notwithstanding the *quasi* generality of this 14th section, the wording of the latter part of it shows, in my opinion, that it was the intention of the Legislature that only in cases of the kind I have mentioned (that is, cases which might properly have been entered in some other Division Court of the same or some other county, and which had been entered in the wrong Division Court) that jurisdiction to try was intended to be given by the omission of the notice disputing such jurisdiction. The words used are, "that in default of such notice disputing the jurisdiction of such court, the same shall be considered established and determined, and all proceedings may thereafter be taken as fully and effectually as if the said suit or proceeding had been *properly commenced, entered, or taken in such court*," the latter words show that proceedings beyond the jurisdiction of Division Courts generally, were never contemplated, because no proceedings beyond their jurisdiction could be ever *properly commenced, entered*, or *taken* in *such court*. In cases like this, where the amount sought to be recovered is beyond the jurisdiction of the court, the latter words, "*such court*," mean not Division Courts generally, but the particular Division Court.

I think there is no doubt that such is the proper construction of this section of the Act, for it never could have been the intention of the Legislature, by consent of the parties to a suit, to give jurisdiction to Division Courts to try actions specially excepted from the jurisdiction of such courts by the 53rd section of the Division Courts Act (such as ejectments, libel, slander, &c., &c.), but such would be the effect should it be held that omission to give notice disputing same, gives jurisdiction in all cases, no matter what the amount sued for or the nature of the action.

Since the hearing of this case I have consulted Chief Justice Wilson and His Honour Judge Gowan, on the question of jurisdiction raised, and I am authorized by both of these eminent judges to say that they fully concur with the view I have taken at the hearing on this point.*

It therefore is adjudged that this case be dismissed, and that the primary creditor do pay $2.40 for primary debtor's costs, and $1 for garnishee's trouble in attending this court—to be paid in fifteen days.

* The above view of the Act is in accordance with that expressed by Mr. O'Brien in his Division Court Manual, 1880, pp. 35, 36.

LAW STUDENTS' DEPARTMENT.

An article on Legal Education by a valued contributor is unavoidably held over until next number.

The Osgoode Literary and Legal Society held on Friday evening, the 4th ult., its thirteenth public meeting in the Court of Common Pleas, the chair being taken by the Hon. Chief Justice Wilson. Mr. T. A. Gorham gave a reading entitled "A Thrilling Sketch," after which a debate took place upon the following subject: *Resolved*, "That it would be advisable to abolish the customs duties between Canada and the United States, similar tariffs being imposed upon imports from other countries, and the revenue so derived divided according to population." The affirmative was upheld by Mr. A. Stuart and Mr. W. J. Cooper, and the negative by Mr. G. G. Mills and Mr. T. H. Gilmour. In summing up the arguments the chairman congratulated the speakers on both sides on the able manner in which they had handled the subject, and for the research they had shown in the preparation of their addresses. He was of opinion that the supporters of the affirmative had proved that such a treaty would be beneficial to Canada and could be effected without causing any ill feeling between Canada and England, and consequently without injury to our commercial relations with the mother country. He therefore decided in favour of the affirmative. During the course of his remarks, the chairman impressed upon the students present the necessity for such a Society as that into which they had formed themselves. He showed them how essential it was for them to practise the art of public speaking in their youth, if they wished to rise to professional eminence in after life; and before closing he gave them some valuable practical hints as to the means by which they might improve their powers of debate. A vote of thanks was passed on behalf of the Society and tendered by the President to the Chairman, expressing their grateful appreciation of his kindness in allowing the students the use of his court room for their meeting, and consenting to take the chair. In reply, the chairman said he was only too happy to assist the Society "out of Chancery, (where meetings had previously been held,) that he took a great interest in its welfare, and had derived much pleasure from his attendance on the present occasion.

We trust that the Society is fully alive to the interest which is being manifested by the profession in its work, and, judging from the large attendance of students at the late meeting, we feel confident in asserting they do appreciate it.

The following is the result of the recent examinations for Barristers and Attorneys in order of merit:

CERTIFICATE OF FITNESS.

J. A. Allan, W. F. J. Dickson,, H. E. Crawford, N. Nesbitt, T. D. Cumberland; all without oral for merit.

J. B. McKillop, J. Doherty, C. Campbell, P. H. Drayton, W. B. Carrol, G. H. Smith, A. O'Heir, W. White, H. Buchannan, W. A. Bishop, P. Mackeown.

CALL TO THE BAR.

W. F. J. Dickson, J. A. Allan, N. Nesbett, T. D. Cumberland, P. H. Drayton, J. B. Mc-

Killop, C. Campbell, J. Doherty, G. Gibson, P. Mackeown, all without oral of merit.

J. C. L. Armstrong, J. P. Curran, J. Harley, R. Boultbee, H. Buchannan, J. A. Skinner, A. Dawson, W. A. Wilkes, D. E. Sheppard, W. White.

The following gentlemen passed the Honour examination for call:—W. F. T. Dickson, J. A. Allan, W. Nesbitt.

THE LATE CHIEF JUSTICE MOSS

The following were the remarks of Mr. Justice Burton on the opening of the Court of Appeal on the day following the news of the death of the Chief Justice of that Court:—

"My colleagues agree with me that it is not fitting to proceed with the ordinary duties of the day without some allusion to the loss the profession, the public, and especially the members of this Court, have sustained by the death of the eminent Judge who but a few short days since filled the position of President of this Court and Chief Justice of Ontario.

It is perhaps a singular coincidence that within a few weeks death has robbed this and the Mother Country of two of their most distinguished judges, both of them men in the prime of life, to whom there appeared to be opening a brilliant future, and as to each of whom, I may say, I think without exaggeration, a national loss has been sustained. Each of them, however, has left an imperishable monument of his learning and ability in the reports of their published judgments, which may well be referred to as models of judicial style.

Many of those who now hear me have listened with pleasure and admiration to the oral judgments delivered from where I am now sitting by the distinguished judge whose death we are now deploring, and must have been struck with the simplicity, ease, and grace of manner, combined with depth of thought and elegance of diction, with which those utterances were delivered; but few beyond his intimate acquaintances were aware of the untiring energy with which he investigated those cases requiring more careful preparation, or that the rising sun has occasionally found him still engaging in examining and verifying the authorities upon which he proposed to base his decisions.

His loss is too recent, and my appreciation of it too keen, to permit me to make more than a passing reference to his personal and social qualities—"To know him was to love him." My heart is too full for me to venture to say more.

We may, one and all of us, whether on the Bench, at the Bar, or the youngest student entering for the first time the portals of the profession, safely adopt him as our model, combining as he did in his own person the kind and courteous gentleman, the brilliant and able advocate, the upright and impartial judge.

I wish that I had the command of language to do justice to his many virtues and his great intellectual gifts; but I yield to none of his numerous friends in admiration of his character, and in tender and affectionate regard for his memory."

Mr. Christopher Robinson, Q.C., on behalf of the Bar, expressed the admiration and love felt for the late Chief Justice and the general regret at his untimely decease. The Chief Justice was, he said, pre-eminent in every department of public and private life, with this advantageous peculiarity, that throughout his career he had never provoked jealousy in those whom he had outstripped. All had united in regarding him as *facile princeps* among them.

At a recent convocation of the Benchers of the Law Society held at Osgoode Hall, the following resolution was adopted:—"That convocation desires to place on record the deep sense of loss which it, in common with the whole country, feels by reason of the death of the Honorable Thomas Moss, Chief Justice of Ontario, and to offer to his widow and family its respectful sympathy for them in their sad bereavement. In his death the Law Society loses one who in the years of his presence in convocation as a Bencher rendered most valuable service to the profession and to the country by the energy and wisdom which he brought to the promotion of legal education, and to whom in latter years it could ever look back for encouragement and advice. His corteous urbanity of manner and amiability of disposition won to him the hearts of those who enjoyed the privilege of his friendship, while his profound scholarship, his unimpeachable integrity, and his eminent ability, commanded universal respect and admiration. In him the province has lost one of its ablest and most distinguished sons, and one of its most erudite and brilliant judges."

CORRESPONDENCE.

Unlicensed Conveyancers.

To the Editor of the CANADA LAW JOURNAL.

SIR,—Under the head of correspondence I noticed in your journal for this month an article on "Unlicensed Conveyancers" signed "X. Y." Although I cannot altogether agree with your correspondent on the subject, with your permission I would like to express my views through your journal.

As far as my experience is concerned, I think it is as broad as it is long whether the profession get protection in this branch or not; if we don't get the conveyancing to do, we do get the suits which are occasioned by the ignorance of these "Unlicensed Conveyancers" in this branch, which more than makes up the loss for conveyancing. I may safely say that a half of the conveyancing done in our town is done by these fellows, and also that a good portion of our business is in rectifying titles which have been made bad by their blunders; a person who has once suffered by their mistakes (which are frequent), is the first to use his influence in condemning them. I don't think the profession will lose anything; rather I think, they gain by not bothering on this matter, and let those who employ these "Unlicensed Conveyancers" suffer the consequences.

Yours, &c.,
E. F.

SPRING ASSIZES, 1881.

Eastern Circuit.

MR. JUSTICE BURTON.

Pembroke.....Monday, 28th March.
Perth.....Monday, 4th April.
Ottawa.....Monday, 11th April
Cornwall.....Monday, 25th April.
L'Original.....Monday, 2nd May.

Midland Circuit.

MR. JUSTICE OSLER.

Belleville.....Monday, 21st March.
Kingston.....Monday, 4th April.
Brockville.....Monday, 11th April.
Napanee.....Monday, 18th April.
Picton.....Monday, 25th April.

Victoria Circuit.

MR. JUSTICE GALT.

Brampton.....Monday, 14th March.
Whitby.....Tuesday, 22nd March.
Peterboro'.....Tuesday, 29th March.
Lindsay.....Monday, 4th April.
Cobourg.....Monday, 11th April.

Brock Circuit.

MR. JUSTICE MORRISON.

Stratford.....Monday, 28th March.
Walkerton.....Monday, 4th April.
Goderich.....Monday, 11th April.
Woodstock.....Monday, 18th April.
Orangeville.....Monday, 25th April.
Owen Sound.....Thursday, 28th April.

Niagara Circuit

MR. JUSTICE ARMOUR.

Hamilton.....Tuesday, 15th March.
Milton.....Thursday, 24th March.
Cayuga.....Monday, 28th March.
Welland.....Thursday, 31st March.
St. Catharines.....Tuesday, 5th April.

Waterloo Circuit.

MR. JUSTICE CAMERON.

Barrie.....Tuesday, 15th March.
Guelph.....Tuesday, 29th March.
Berlin.....Monday, 11th April.
Brantford.....Monday, 18th April.
Simcoe.....Tuesday, 26th April.

Western Circuit.

MR. JUSTICE PATTERSON.

Sarnia.....Monday, 28th March.
London.....Monday, 4th April.
St. Thomas.....Monday, 18th April.
Sandwich.....Monday, 25th April.
Chatham.....Monday, 2nd May.

Home Circuit.

THE CHIEF JUSTICE OF THE C. P.

Toronto.....Tuesday, 15th March.
(Assize and Nisi Prius.)
Toronto.....Tuesday, 19th April.
(Oyer and Terminer.)

CHANCERY SPRING CIRCUITS, 1881.

The Hon. V. C. Proudfoot.

Toronto—Wednesday, April 20.

The Hon. the Chancellor.

WESTERN CIRCUIT.

Woodstock—Tuesday, March 15.
London—Monday, March 21.
Chatham—Tuesday, March 29.
Sandwich—Monday, April 4.
Sarnia—Friday, April 8.
Stratford—Thursday, April 14.
Goderich—Wednesday, April 20.
Walkerton—Tuesday, April 26.

EASTERN CIRCUIT.

The Hon. V. C. Blake.

Ottawa—Thursday, April 28.
Cornwall—Tuesday, May 3.
Brockville—Thursday, May 5.
Kingston—Monday, May 9.
Lindsay—Monday, May 16.
Peterboro'—Thursday, May 19.
Cobourg—Monday, May 23.
Belleville—Monday, May 30.

HOME CIRCUIT.

The Hon. V. C. Proudfoot.

Guelph—Monday, March 20.
Brantford—Monday, March 21.
Simcoe—Thursday, March 24.
St. Catharines—Monday, March 28.
Whitby—Thursday, March 31.
Barrie—Monday, April 4.
Owen Sound—Friday, April 8.
Hamilton.—Monday, April 12.

Law Society of Upper Canada.

OSGOODE HALL.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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 upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and presenting to Convocation his diploma or a proper certificate of his having received his degree.

All other candidates for admission as articled clerks or students-at-law shall give six weeks notice, pay the prescribed fees, and pass a satisfactory examination in the following subjects:—

Articled Clerks.

Ovid, Fasti, B. I., vv. 1-300; or,
Virgil, Æneid, B. II., vv. 1-317.
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.

Students-at-Law.

CLASSICS.

1880.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero in Catilinam, II., III., IV.
- Virgil, Eclog., I., IV., VI., VII., IX.
- Ovid, Fasti, B. I., vv. 1-300.

1881.
- Xenophon, Anabasis, B. V.
- Homer, Iliad, B. IV.
- Cicero in Catilinam, II., III., IV.
- Ovid, Fasti, B. I., vv. 1-300.
- Virgil, Æneid, B. I., vv. 1-304.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a selected Poem:—
1880.—Elegy in a Country Churchyard and the Traveller.
1881.—Lady of the Lake, with special reference to Cantos V. and VI.

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:—
1880.—Souvestre, Un Philosophe sous les Toits.
1881.—Emile de Bonnechose, Lazare Hoche.

or, NATURAL PHILOSOPHY.

Books.—Arnott's Elements of Physics, 7th edition, and Somerville's Physical Geography.

A student of any University in this Province who shall present a certificate of having passed, within four years of his application, an examination in the subjects above prescribed, shall be entitled to admission as a student-at-law or articled clerk (as the case may be), upon giving the prescribed notice and paying the prescribed fee.

INTERMEDIATE EXAMINATIONS.

The Subjects and Books for the First Intermediate Examination, to be passed in the third year before the final Examination, shall be:—Real Property, Williams; Equity, Smith's Manual; Common Law, Smith's Manual; Act respecting the Court of Chancery; O'Sullivan's Manual of Government in Canada; the Dominion and Ontario Statutes relating to Bills of Exchange and Promissory Notes, and Cap. 117, R. S. O., and amending Acts.

The Subjects and Books for the Second Intermediate Examination to be passed in the second year before the Final Examination, shall be as follows:—Real Property, Leith's Blackstone, Greenwood on the Practice of Conveyancing, (chapters on Agreements, Sales, Purchases, Leases, Mortgages, and Wills); Equity, Snell's Treatise; Common Law, Broom's Common Law; Underhill on Torts; Caps. 49, 95, 107, 108, and 136 of the R. S. O.

FINAL EXAMINATIONS.

FOR CALL.

Blackstone, Vol. I., containing the Introduction and the Rights of Persons, Smith on Contracts, Walkem on Wills, Taylor's Equity Jurisprudence, Harris's Principles of Law, and Books III. and IV. of Broom's Common Law, Lewis's Equity Pleading, Dart on Vendors and Purchasers, Best on Evidence, Byles on Bills, the Statute Law, the Pleadings and Practice of the Courts.

FOR CERTIFICATE OF FITNESS.

Leith's Blackstone, Taylor on Titles, Smith's Mercantile Law, Taylor's Equity Jurisprudence, Smith on Contracts, the Statute Law, the Pleadings and Practice of the Courts.

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

The Primary Examinations for Students-at-Law and Articled Clerks will begin on the Second Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

Printed by RUSSELL, MOORE & Co., 35 Adelaide St. West