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THE consideration of the new tariff reminds us that the profession have, as a class, an unnecessary burden of odium to bear in the minds of the uninitiated in their position of tax collectors to pay fees to certain court officials. If we were asked to offer a suggestion for a remedy, we should propose that the Ontario Legislature should meet only once every two years, and that the money which this annual gathering costs the public should go towards paying that which is now collected from litigants by way of stamps. Nobody wants the annual dose of legislation which our provincial legislators feel bound to give as an equivalent for their pay. The country would vastly prefer the large sum of public money thus annually wasted.

THE LAND TITLES ACT.

IN our review column we call attention to some of the alterations made in this Act under the auspices of the Statute Revision Commissioners, and, as we presume, largely upon the recommendation of the Master of Titles.

The Land Titles Office, at Toronto, was established with a view of testing how far owners of land in the city of Toronto and county of York would take advantage of the system. The result of this test, so far, seems to be favourable.

Last year this office nearly paid its way, the receipts being $4,300, and the expenses about $5,000. This may have the effect of encouraging outer counties to bring the Act into force in their localities. Under the law, as it now stands, this is a matter entirely within the power of the locality interested, as the municipal council of a county, city, or town, may pass a by-law declaring it expedient that its provisions should be extended to the locality. Upon this being done, and proper accommodation provided, the Governor in Council has authority under the Act to extend its operation by proclamation. This statute has been in force for a year, but we believe no locality has yet provided the necessary accommodation.

The Legislature last year, by 50 Vict. c. 15, extended the Act into the outlying districts, but this statute did not go into operation until the 1st of January last. Doubtless this extension was a wise step, as, if the system is a good one, it is important that it should be introduced at the earliest possible period into the unorganized territories, where a large number of patents are yet to be issued. The delay till the 1st of January was to permit of the system going into force under the provisions of the revised statute.

Local masters have been appointed at the following places:—

At Bracebridge, for the district of Muskoka; at Parry Sound, for the district of Parry Sound; at Sault Ste. Marie, for Algoma; at Port Arthur, for Thunder Bay; at North Bay, for Nipissing.

All patents in these districts are now transmitted by the Crown Lands Department to the local masters, and certificates under the Act issued by them to the patentees.

In Toronto the parties who have chiefly taken advantage of the Act are the owners of lands in the neighbourhood of the city, who are cutting them up into lots for the purpose of sale, and the value of mere farming land, or other land which has been fully improved by building, brought under the Act is comparatively small. The present value of land under the Act is between five and six million dollars. The transactions with reference to this land have been numerous, the number of registrations being over 2,000.

Possibly the amount required to be contributed to the Assurance Fund, one-quarter per cent. on the value, may stand in the way of the early extension of the Act to improved property, as this charge is a pretty heavy tax where expensive buildings have been erected, and the owners do not contemplate selling. It might be advisable for the Government to consider whether it would not be expedient to permit this to remain as a lien upon the property until the owner desires to deal with it. On the other hand it may be urged that it is absolutely necessary that the assurance fund should attain at an early period a considerable sum so that there may be funds on hand to make good any losses which may occur; undoubtedly losses will occur sooner or later even under the most careful supervision.

PROPOSAL FOR A LAW SCHOOL.

ONE of the most important matters which have come before the profession for many years is that connected with the scheme recently propounded for the establishment and maintenance of a law school. We have before us the proposal of the Joint Committee appointed by the Law Society and the Senate of the University of Toronto, for the advancement of legal education and the establishment and maintenance of a law faculty. It reads as follows:—

1. There shall be a Faculty of Law, under the joint management of the Law Society of Upper Canada and the University of Toronto.

2. In order to entitle a candidate to enter this faculty, he shall pass such a preliminary examination as may be prescribed by the Joint Committee hereinafter mentioned, subject to the approval of the Law Society and the Senate of the University.

3. The course of study shall extend over four years.

4. The University shall, at its own expense, make provision for the delivery of lectures and the holding of examinations, including preliminary examination, during the first and second years, and the Law Society shall make the like provision for the third and fourth years of the course.

5. The Joint Committee hereinafter mentioned shall indicate what subjects of instruction in jurisprudence (having regard to civil law, constitutional law and history, and international law), shall be undertaken by this University. The subjects upon which the Law Society will give instruction shall be such as it shall from time to time determine.

6. Students will be required to attend the course of lectures during each of the four years, and to pass the annual examination to be held at the end of each year.

7. Students of the first and second year must not be under articles or engaged otherwise than as students of the University.

8. Every student attending the lectures and the preliminary examination, and the first and second years, shall pay to the University such fees as it may prescribe in that behalf.

9. Every student attending the lectures and examinations of the third and fourth years shall pay to the Law Society such fees as it may prescribe in that behalf.

10. Every student who passes the four annual examinations shall be entitled to receive from the University the degree of LL.B. upon payment to the University of such fee for said degree as the University may prescribe in that behalf.

11. Every student who obtains such degree shall be entitled to be admitted by the Law Society to the degree of barrister-at-law, upon payment to the Law Society of such fee therefor as the Law Society may prescribe in that behalf.

12. Every student who has obtained said degree of LL.B., upon proof of service as an articled clerk for two years, shall be entitled to be admitted as a solicitor upon payment of such fees as are prescribed by the Law Society.

13. Subject to ratification by the Joint Committee hereinafter mentioned, appointments of examiners for the first and second years shall be made by the University, and those for the remaining years by the Law Society.

14. The results of all examinations shall be reported to the University Senate and to the benchers of the Law Society, who shall each have like powers in respect thereof as they now enjoy in respect of other reports of examinations.

15. The Joint Committee shall be composed of nine members, four to be chosen by the University, and five by the Law Society, annually in the month of May each year. Members of the said Committee shall continue in office until their successors are appointed. Any vacancy in said Committee shall be filled up by the body whose appointee may have ceased to be a member of the Committee, in such manner as such body shall determine; said Committee shall appoint one of their number chairman of said Committee.

16. The Joint Committee shall be charged with the carrying out of all matters of administration in connection with this scheme.

17. Nothing herein contained is intended to interfere with the existing regulations providing for admission by the Law Society to the degree of barrister-at-law, or for the granting of certificates of fitness.

18. The Law Society may, upon similar terms, enter into this scheme with any university in Ontario.

This is a subject which will require careful consideration. Nothing should be done hastily. There is much to be said in favour of the scheme, but there are several forcible objections to it in its present shape. These objections are fully stated by Mr. Worrell, in a letter which appears elsewhere in our columns.

A law school has been the dream of the profession for many years, but up to the present time no great success has attended the various efforts that have been made in that direction. One great difficulty is the fact that a good law school

requires the services (one might say, almost, the undivided services) of a staff of thoroughly competent men, with trained legal minds, who could devote their time almost entirely to the education of those committed to their charge. Such men, for example, as Frederick Pollock, and others well known in England. If the Law Society cannot afford to pay the sums required to secure the services of men of that stamp, and if the much larger resources of the University of Toronto can be utilized for the establishment of a law school which would be a credit to the English speaking Provinces of this Dominion, it certainly would be desirable for us to sit down quietly and discuss the situation and examine the proposed scheme, and, if no better one is suggested, make it as perfect as possible and adopt it.

Whether the scheme now formulated is the best that can be adopted, we are not at present prepared to say. Whatever is done, there should be for everyone desiring to enter our profession, in the first place, the foundation of a liberal education and the thorough training of the mind of the student, then a careful study of the theory of law in its wider aspect, and then a sufficient time given to learn the details of statute law, and the practice of the courts, and to acquire a knowledge of general business. As a rule, the three year university men are, at the end of their course, better fitted for the duties devolving upon them than those who take the longer course of five years without having the advantage of previous university training. It may, therefore, fairly be argued that the four years proposed by the new scheme, two years being devoted to theory, and two to practice, would give better results than the five years where students so frequently learn nothing except what they inhale from being surrounded for that length of time by a legal atmosphere. On the other hand, there are many who think that two years only devoted to practical study in an office is insufficient; and it certainly would be a serious evil to do anything which would lessen the number of those who are willing to take a course in arts before they study law.

In reference to the present suggestion, we gather that there is in the minds of some who discuss it a tinge of jealousy of Toronto University, which, perhaps, is not altogether unnatural; those interested in some of the smaller universities may not like the idea of any scheme which appears to them to give an undue preference to the University of Toronto. But, in answer to this, it may be said that if the latter can give the greatest advantages to the legal profession, these advantages should not be lost because other universities are not in a position to do as much. All these bodies are, however, we believe, to be consulted, and we presume nothing will be done without paying careful attention to any suggestions which they may think proper to offer.

We shall, doubtless, hear from others on the subject, and hope to refer to the matter again at an early date.

THE NEW TARIFF OF FEES AND DISBURSEMENTS.

IT has been found necessary to provide that the Consolidated Rules shall not come into operation until the 1st of April. The day selected for their coming into force is a suggestive one; we are in hopes, however, that no one contemplates perpetrating any foolish joke at the expense of the profession. The tariff of fees and disbursements, which is to be embodied in the Consolidated Rules, has been printed and distributed, and we have made a comparison of it with the tariff which it is intended to supersede.

The tariff is divided into two columns, in one of which are placed the fees according to the higher scale in the High Court and Court of Appeal, and in the other column the fees to be allowed according to the lower scale and in the County Courts.

With regard to the fees payable to solicitors and counsel, we observe a few necessary and welcome items have been added, which are not to be found in the former tariff. For instance:

"Instructions for petition when no writ of summons issued, $2.00, $1.00."

"Suing out any writ of execution, $6.00; $4.00."

"Renewal of any writ of execution, $4.00, $2.50."

"In both cases including placing same in sheriff's hands, all attendances and letters in connection therewith."

But, we presume, this fee does not include the disbursements paid for the writ, or to the sheriff. The following items have also been added:

"Instructions for special affidavit of disbursements, $2.00, $1.00."

"Demand of particulars, 50 cents, 50 cents."

"Particulars of claim, demand, set-off, or counter claim, five folios or under, $2.00, 75 cents."

"If exceeding five folios, per folio in addition, 20 cents, 15 cents."

"Perusal of affidavits and exhibits of a party adverse in interest, filed or produced on any application, when perusal is necessary, if twenty folios or under, $1.00, 50 cents."

"Drawing brief, for each folio above five, 10 cents, 10 cents."

"Appearance for each additional defendant, 20 cents, 10 cents."

We are also glad to see a little increase of liberality in the matter of counsel fees, *e.g.*, an item is added, "counsel fee on consultations, $5.00, $2.00"; and power is given to taxing officers generally, to allow increased counsel fees at trial to an amount not exceeding $40 to senior, and $20 to junior counsel.

A fee to counsel for settling appeal case, and reasons for, and against, appeal, of $5.00, $2.00, with power to increase to $20.00, $5.00.

The new tariff also expressly provides that counsel fees at arbitrations may be taxed on the same scale as at trials.

On the whole, we think the new tariff of fees will be welcomed by the profession as a move in the right direction, though it can hardly be said to have made any very perceptible increase in the remuneration of solicitors, and cer-

tainly not to the extent which the progressive cost of living would render just. Some additional relief to our over-burdened tax-collecting profession might have been granted by the reduction of disbursements ; but so long as a considerable class of officials are paid by fees it is perhaps too much to expect that the tariff of disbursements will be lowered.

Ever since the Judicature Act came into force it has been a matter of difficulty to know what were the proper court fees payable on any proceeding. The promulgation of the new tariff will, at all events, relieve both the profession and the officials of the court from this source of embarrassment. There is one feature which strikes us about this part of the tariff, and that is its needless prolixity. If we remember rightly, a tariff of disbursements was framed for the judges in the year 1885, with the assistance of the taxing officers, which, in fifty items, included all that is included in the present tariff, which is spread out over about 140 items. We do not think the expansion is any benefit, but rather the reverse.

In some few items it will be found that the disbursements are reduced, but the items on which reductions have been made are, for the most part, of rare occurrence, and therefore the reduction will be little felt. Some little difference of opinion will probably arise as to the effect of the item for entering an action for trial or assessment which is fixed at $2,00, 50 cents. The heading of the tariff states that it is inclusive of all fees expressly imposed by statute. R.S.O. (1887), c. 52, s. 148, expressly imposes a fee of $3.00 in the High Court, and $1.50 in the County Court, for cases entered for trial by jury. Is the new tariff intended to supersede this statutory fee? and if so, have the judges power to abrogate the express provisions of an Act of Parliament? Who can tell?

As an instance of the unnecessary prolixity to which we have referred, we observe the fees for entering judgment are spread over five items, *e.g.*:

"Every interlocutory judgment, or judgment by default, 50 cents, 30 cents;" "additional fee by statute, 60 cents."

"Every final judgment otherwise than judgment by default, 50 cents, 50 cents;" "additional fee by statute, 60 cents."

"Entering and docketing judgment, 50 cents."

This multiplication of items seems to us useless and somewhat confusing.

The fee for a commission to take evidence is reduced from $1.50 to $1.00, and the fee on a commission for taking affidavits or bail is reduced from $2.50 to $2.00.

On the other hand, the fees for attendance in the office of the Master in Ordinary are increased from $1.00 to $1.50 per hour, which will, of course, make a very considerable increase in the expense of references in his office. This increase, perhaps, may be justified on the ground that it is anomalous to have one scale of fees for the Local Masters, and another for the Master in Ordinary. The result of the increase being merely to make the fees in all the Masters' offices the same.

Some little difficulty may be experienced by some of the *ex-officio* Official Referees in knowing what to charge for attendances before them. The Regis-

trars, for instance, are entitled as Registrars to charge for "every reference, inquiry, examination, or other special matter, for every meeting not exceeding one hour, $1.00, 75 cents, and for every additional hour or less, $1.00, 50 cents; but in their capacity as Official Referees every attendance upon any proceeding, etc., is $1.50, 50 cents, per hour."

The fees for proceedings under the Quieting Titles Act seem to be largely increased. Formerly, in an uncontested case, the only fees payable to the Referee were fifty cents on each deed in the claim of title, but under the new tariff filings and attendances, reading affidavits, etc., etc., are all the subjects of a fee.

No fees are prescribed for admission of solicitors, or call to the bar. Is it intended in future that solicitors and barristers shall be admitted and called gratis?

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for February include 20 Q. B. D. pp. 145-296; 13 P. D. pp. 13-23; and 37 Chy. D. pp. 55-167.

PRACTICE—WRIT—SERVICE OUT OF JURISDICTION—CONTRACT AFFECTING LAND—LANDLORD AND TENANT—ONT. R. 45 *c*.

Taking up first the cases in the Queen's Bench Division, *Kay* v. *Sutherland*, 20 Q. B. D. 147 is deserving of notice. This was an action by an outgoing tenant of a farm in Yorkshire to recover from his landlord, who was ordinarily resident in Scotland, compensation for "tenant right according to the custom of the country;" and the question was whether this was a "contract obligation or liability affecting land" within the meaning of Ord. xi. r. 1 (Ont. R. 45 *c*), or a mere personal obligation. A Divisional Court (Stephen and Charles, JJ.) held that it was a contract affecting land within Ord. xi. r. 1, and that the case was distinguishable from *Agnew* v. *Usher*, 14 Q. B. D. 78, in which it was held that an action to recover rent due on a lease of land in England was not within the Rule.

PRACTICE—WRIT—SERVICE OUT OF JURISDICTION—WORK DONE OUT OF JURISDICTION—PLACE OF PAYMENT—ORD. XI. R. 1. (*e*), (ONT. R. 45 *c*).

Robey v. *Snaefell Mining Co.*, 20 Q. B. D. 152, is another case on the same point of practice. In this case the action was brought by a firm doing business in England, for the price of machinery erected by them in the Isle of Man for the defendants, a company carrying on business in the island. There was no agreement as to the place of payment. It was held by a Divisional Court (Stephen and Charles, JJ.) that it must be taken to be part of the contract that the plaintiff should receive payment in England, and that the action was therefore founded on a breach within the jurisdiction within the meaning of Ord. xi, r 1 (*e*). (Ont. Rule 45 *c*.)

PRACTICE—ADDING PARTIES—NON-JOINDER OF ONE OF SEVERAL JOINT-CONTRACTORS—ORD. XXI, R. 20; ORD. XVI, R. 11—(ONT. RULES 103, 142).

In *Pilley* v. *Robinson*, 20 Q. B. D. 155, a Divisional Court (Stephen and Charles, JJ.) held, on the authority of *Kendall* v. *Hamilton*, 4 App. Cas. 504, that when a plaintiff brings an action against one of several joint-contractors the defendant is entitled, as of right under Ord. xvi, r. 11 (Ont. R. 103), to have his co-contractors added as defendants, and is not obliged to resort to the third party procedure. The court in effect held, that though by Ord. 21, r. 20 (Ont. R. 142), pleas in abatement are abolished, yet that whenever a defendant could formerly have pleaded in abatement for non-joinder of parties, he may now apply under Ord. xvi, r. 11 (Ont. R. 103), to add such parties as defendants.

SOLICITOR AND CLIENT—RETAINER TO COLLECT DEBT.

James v. *Bicknell*, 20 Q. B. D. 164, is an appeal from the Lord Mayor's Court on a question involving the extent of a solicitor's authority to act for his client. In this case the solicitor had been retained to collect a debt. He proceeded and recovered judgment and issued execution, and upon the levy made under the execution, the goods were claimed by a third party, and the sheriff interpleaded: no special retainer, or instructions, were given by the client to engage in the interpleader proceedings, and the question was, whether the client was liable to the solicitor for costs of these proceedings paid by the solicitor to the sheriff and the claimant; the court (Wills and Grantham, JJ.) were unanimously of opinion that the client was not liable. A solicitor cannot, therefore, safely engage in any such collateral proceedings without the express and positive instructions of his client.

ARBITRATION, AGREEMENT FOR—SUING BEFORE ARBITRATION—CONDITION PRECEDENT—FIRE INSURANCE.

Viney v. *Bignold*, 20 Q. B. D. 172, was an action brought on a policy of fire insurance, in which the defendants pleaded that the policy was made subject to a condition, that if any difference should arise in the adjustment of a loss, the amount to be paid should be settled by arbitration, and the insured should not be entitled to commence any action on the policy until the amount of the loss had been referred and determined as therein provided, and then only for the amount so determined; that as differences had arisen, and the amount had not been referred or determined, it was contended by the plaintiffs that this furnished no defence in law, but the court (Wills and Grantham, JJ.), without calling on the defendant, upheld the defence.

RECEIVER—FUND IN DISCRETION OF TRUSTEES—ORDER AGAINST TRUSTEES FOR PAYMENT—PROHIBITION.

The main point involved in *The Queen* v. *Judge of C. C. of Lincolnshire*, 20 Q. B. D. 167, was very similar to that raised in *Fisken* v. *Brooke*, 4 App. R. 8. The defendant, a judge of a County Court, had made an order in an action pending in his court for the appointment of a receiver, to receive from trustees under a will,

a sum of money in their hands, and ordering the trustees to pay the interest to the receiver until the judgment in the action should be satisfied. By the will the trustees were directed to set apart and invest a fund, and at their absolute discretion to pay or apply the whole, or any part, of the income of the fund to, or for, the benefit of the judgment debtor in such manner, in all respects, as they should think proper. Under these circumstances the trustees applied to the High Court for a prohibition, and it was held by Pollock, B., and Hawkins, J., that as it depended altogether on the discretion of the trustees whether anything should be paid to the judgment debtor, the receiver could not be entitled to receive the interest in their hands, and that as they are strangers to the action, an order for payment could not be made against them; and the prohibition was therefore granted.

ARBITRATION—AGREEMENT TO REFER FUTURE DISPUTES—STAYING PROCEEDINGS—SUBMISSION, REVOCATION OF—C. L. P. ACT, 1854, s. 11 (R. S. O. 1887, c. 53, s. 38).

In *Deutsche Springstaff* v. *Briscoe*, 20 Q. B. D. 177, an appeal was taken from an order of Pollock, B., refusing to stay proceedings in an action. The application for the stay was based on the fact that, by an agreement between the plaintiff and defendant, it had been provided that if any dispute should arise touching that agreement, the dispute should be referred to the arbitration of two named arbitrators or their umpire, the provisions of the C. L. P. Act, 1854, to apply to the reference. A dispute having arisen under the agreement, the defendants gave notice to proceed to arbitration. The plaintiffs then brought an action to recover the moneys in dispute, and revoked their submission to the arbitrators. Under these circumstances the Divisional Court (Stephen and Charles, JJ.) held that the order of Pollock, B., was right, and that the defendant had no right to have the proceedings stayed under the C. L. P. Act 1854, s. 11 (R. S. O. 1887, c. 53, s. 38), because the submission having been revoked, there was no subsisting agreement to refer capable of being enforced. The *ratio decidendi* turns principally on the fact that the agreement to refer was not an agreement to refer generally, in which case it would have been irrevocable; but an agreement to refer to certain named arbitrators, whose authority was revocable.

CRIMINAL LAW—LARCENY BY A TRICK—MONEY DEPOSITED TO ABIDE EVENT OF A WAGER—FRAUD.

The Queen v. *Buckmaster*, 20 Q. B. D. 182, is a Crown case reserved, in which the law as to larceny is discussed. The prisoner was at a race-meeting offering to lay odds against different horses. He made a bet with the prosecutor, and the money which the prosecutor bet was deposited with the prisoner. The prosecutor admitted that he would have been satisfied if he had received back not the identical coins actually deposited, but others of equal value. The prosecutor won the bet, but the prisoner went away with the money, and when afterwards met by the prosecutor he denied that he had made the bet. The prisoner was convicted of larceny, and the court (Lord Coleridge, C.J., Pollock, B., and Manisty, Hawkins, and A. L. Smith, JJ.) upheld the conviction. Lord

Coleridge, C.J., says: "Here the prosecutor deposited the money with the prisoner, not intending to part with the property, for he was to have his money back in a certain event; whereas the prisoner, when he received the money, never intended to give it back in any event. It is true that the prosecutor would have been satisfied if he had received back, not the identical coins which he deposited, but other coins of equal value; but that does not show that he meant to part with his right to the money. In my opinion, the evidence shows that he meant to do nothing of the kind."

RECEIVER—MORTGAGEE IN RECEIPT OF RENTS—LEASE SUBSEQUENT TO MORTGAGE—ATTORNMENT OF TENANT OF MORTGAGOR TO MORTGAGEE.

Underhay v. *Read*, 20 Q. B. D. 209, was a contest between a receiver appointed at the instance of a judgment creditor of a mortgagor, and the mortgagee, as to the right of the latter to receive from the tenant of the mortgagor, under a lease made subsequent to the mortgage, the rents of the mortgaged property as against the receiver. By the order appointing the receiver the rights of the mortgagee were reserved, and default having been made in payment of the mortgage, the mortgagee had notified the tenant of the mortgagor under a lease made subsequent to the mortgage, that he required the tenant to pay his rent to him the mortgagee, and threatened him with legal proceedings if he did not, and the tenant accordingly paid his rent to the mortgagee. The receiver claimed that the payment was a breach of the receivership order, and that the tenant, notwithstanding the payment to the mortgagee, was liable to pay the rent again to him the receiver. The Court of Appeal (Fry and Bowen, L.L.J.), held affirming the Queen's Bench Divisional Court, that the tenant had not been guilty of any disobedience in paying his rent to the prior mortgagee, whose rights were reserved by the receivership order; and that the tenant having paid his rent under compulsion of law, and in consequence of his lessor's default, could set up such payment in answer to the claim of the rent by the receiver who claimed through the lessor. In arriving at this result, it is not very surprising to find that the Court of Appeal did not think it necessary to call on the counsel for the tenant.

EASEMENT—RIGHT OF WAY—IMPLIED RESERVATION—GENERAL WORDS—"APPURTENANCES."

In *Thomas* v. *Owen*, 20 Q. B. D. 225, the plaintiff and defendant were prior to 1873 tenants from year to year of adjoining farms: the plaintiff had for many years used a lane on the defendant's land, and had, from time to time, repaired it. In 1873 the landlord granted the defendant a lease of his farm, which contained no reference to the lane, but the metes and bounds of the demised property included the lane. In 1878 the landlord granted the plaintiff a lease of his farm, and all "appurtenances thereto belonging," in which no specific mention was made of the lane. The defendant having subsequently obstructed the plaintiff's use of the lane, the action was brought. The Court of Appeal (Lord Esher, M.R., Bowen and Fry, L.L.J.), affirming Mathew and Cave, JJ., held that

the lease of the defendant did not amount to a demise of the soil of the lane, free from the plaintiff's right of way, inasmuch as the lessor, not being in possession at the date of the lease, could not make such a demise without derogating from the grant to the plaintiff, under which his then existing tenancy was constituted; that there was an implied reservation of the right of way out of the defendant's lease; and that the right of way passed to the plaintiff by the lease of 1878, under the word "appurtenances."

RAILWAY SHARES—SHARE CERTIFICATE—NEGOTIABLE INSTRUMENT.

The question at issue in *The London and County Banking Co.* v. *The London and River Platte Bank*, 20 Q. B. D. 232, was whether share certificates issued by an American railway company were negotiable instruments. The certificates in question purported to certify that H. & Co., the company's correspondents in England, were entitled to twenty shares "transferable only in person, or by attorney in the books of the company." Upon the back of each certificate was indorsed a power of transfer under seal, which was in effect an absolute transfer of the shares mentioned in the certificate, followed by an irrevocable power of attorney "to the use of the above-named assignee to make any necessary acts of assignment and transfer of the said stock in the books of the company" this was signed by H. & Co., the names of the transferor and attorney being both left blank. The object of the power was to enable an English holder to appoint an attorney to act for him in America, where alone a transfer could be registered. It was proved that when thus signed in blank these certificates, by the usage of English bankers and dealers in public securities, were transferred by mere delivery, and were dealt with like bonds payable to bearer, but it was held by Manisty, J., that the certificates were not negotiable instruments, and were intended to pass by transfer only, and not by mere delivery. At page 239 he says: "Now it seems clear to me that this instrument could not be sued upon by the person holding it *pro tempore*, and could not therefore be negotiable, because when it was handed over by the transferor with the blank power of attorney, it could not be sued upon by that person until it was transferred on the register."

GRANT OF RIPARIAN LAND—CONSTRUCTION—BED OF RIVER, AD MEDIUM FILUM—REBUTTABLE PRESUMPTION.

Devonshire v. *Pattinson*, 20 Q. B. D. 263, affords incidentally another illustration of the doctrine on which *Thomas* v. *Owen*, *supra*, to some extent proceeded. A grant of land on the bank of a river was made in 1846; at the time the grant was made a fishery existed in the river fronting the land, and at the time of the grant this fishery was under lease to tenants; the grantees and their successors in title had never, until the acts complained of in the action, claimed or exercised any right of fishing over the bed of the river, but the grantor or his tenants of the fishery had always fished since the making of the grant without interruption: and it was held by the Court of Appeal (Lord Esher, M.R., Bowen

and Fry, LL.J.), affirming the judgment of A. L. Smith, J., that the presumption that the grant included the bed of the river, *ad medium filum*, was rebuttable, and that the existence of the lease of the fisheries at the time the grant was made, was a fact which precluded the conveyance from being construed as passing any part of the bed of the river.

LIBEL—NEWSPAPER CRITICISM OF STAGE PLAY—QUESTION FOR JURY.

In *Merivale* v. *Carson*, 20 Q. B. D. 275, the Court of Appeal (Lord Esher, M.R., and Bowen, L.J.) affirmed the decision of Mathew and Grantham, JJ., refusing a new trial. The action was for libel of a play written by the plaintiff. The libel consisted in a criticism of the play, published by the defendant in a newspaper. It was contended by the defendant that the play, being a matter of public interest, the occasion was privileged, and the action would not lie except on proof of express malice. But the Court of Appeal held that there was no privilege, and that it is simply a question for the jury in such a case, whether the criticism has gone beyond the limits of fair comment; and that question having been submitted to the jury, and they having found in favour of the plaintiff, the court refused to disturb the verdict.

PRACTICE—EVIDENCE—AFFIDAVIT—CROSS-EXAMINATION.

Proceeding to the cases in the Probate Division, the first case calling for a passing notice is *The Parisian*, 13 P. D. 16, in which a point of practice is disposed of. Under Ord. 37, r. 2, evidence in references in admiralty actions may be given by affidavit, and it was held by Butt, J., that it is in the discretion of the Registrar to refuse, if he think fit, to give weight to such evidence unless and until the deponent has been cross-examined on his affidavit, and when the deponent is a party to the action, he may, though resident abroad, be required to attend in England for cross-examination.

ADMINISTRATION—GRANT TO CREDITOR—ABSCONDING ADMINISTRATOR—REVOCATION.

In the goods of Bradshaw, 13 P. D. 18, a grant of administration had been made to a creditor who, after his debt had been satisfied, had absconded and could not be found, and a personal representative of the estate being required in an action in the High Court, the Probate Division revoked the grant to the creditor without citing him, and made a new grant to the next of kin.

WILL—EXECUTOR ACCORDING TO THE TENOR.

The only other case in the Probate Division is *In the goods of Lush*, 13 P. D. 20, in which it was held that directions contained in a codicil to a person substituted as a trustee, to get in all the testator's property and to distribute it in a certain manner after payment of funeral and other expenses, constituted the substituted trustee an executor according to the tenor.

EASEMENT—LIGHT—PRESCRIPTION—RESERVATION IN LEASE OF RIGHT TO OBSTRUCT LIGHT.

Turning now to the cases in the Chancery Division, *Mitchell* v. *Canhill*, 37 Chy. D. 56, first claims attention. In this case a land owner granted a lease to the plaintiff of a house and land, with their appurtenants, except rights, if any, restricting the free use of any adjoining land, or the appropriation, at any time thereafter, of such land for building, or other purposes, obstructive, or otherwise. And it was held by the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.) that the tenant might, notwithstanding the reservation, acquire under the Statute of Limitations, an easement to the enjoyment of light and air; and when more than twenty years after the making of the lease, a lessee of the adjoining land from the same landlord commenced to build in such a way as to obstruct the plaintiff's light, it was held the plaintiff was entitled to an injunction. The case is also worthy of note from the fact that an application for an interim injunction having, as the Court of Appeal held, been erronously refused, and the defendant having, in consequence, gone on and erected his building *pendente lite* it was held that the plaintiff, should he ultimately succeed in the action, would be entitled to a mandatory injunction for its removal.

FIXTURES—MORTGAGOR AND MORTGAGEE—LEASEHOLD.

Southport & West Lancashire Banking Co. v. *Thompson*, 37 Chy. D. 64, is a decision of the Court of Appeal (Cotton, Lindley and Lopes, L.JJ.), upon the construction of a mortgage of leaseholds, whereby it is determined that words which in a conveyance in fee are sufficient to pass trade fixtures, will have the same effect when the mortgage is of leasehold property by sub-demise, with this qualification, that in the latter case the absolute property in such trade fixtures as separate chattels, with the right to remove and sell them, will not pass to the mortgagee, unless an intention to that effect is apparent on the deed. A statement of Blackburn, J., in *Hawely* v. *Butlin*, 8 Q. B. D. 290, which apparently leads to the conclusion that the fixtures would not pass to the mortgagee of leaseholds, is explained.

LEASE—RESTRICTIVE COVENANTS—COVENANT NOT TO PERMIT NOISOME BUSINESS—UNDERLEASE—INJUNCTION.

Hall v. *Ewin*, 37 Chy. D. 74, is a case in which an unsuccessful attempt was made to extend the doctrine of *Tulk* v. *Moxhay*, 2 Ph. 774. The plaintiff demised a house for ten years to one Tarlington, subject to a covenant that the lessee, his executors, administrators and assigns, would not use the premises, or permit or suffer them to be used by any person for any noisome or offensive business. Tarlington granted an underlease of the house, which was assigned to the defendant Ewin. Ewin underlet the house to McNeff, who opened a wild beast show. The plaintiff brought an action for an injunction against both Ewin and McNeff to restrain the use of the house in that manner. There was no evidence that Ewin had consented to the use of the house, in the objectionable manner, and it did appear that after complaints had been made he had

requested McNeff to discontinue the exhibition. The Court of Appeal (Cotton, Lindley and Lopes, L.JJ.), overruling Kekewich, J., held that under these circumstances Ewin was not liable for not taking active proceedings against McNeff to prevent the misuser of the premises. Cotton, L.J., thus expounds the principle of *Tulk* v. *Moxhay*, at p. 79: "As I understand *Tulk* v. *Moxhay*, the principle there laid down was that if a man bought an underlease, although he was not bound in law by the restrictive covenants of the original lease, yet if he purchased with notice of those covenants, the Court of Chancery would not allow him to use the land in contravention of the covenants," but he goes on to say that the Court of Appeal, in *Haywood* v. *Brunswick Building Society*, 8 Q. B. D. 403, had held that the principle in *Tulk* v. *Moxhay* was not to be applied so as to compel a man to do that which would involve him in expense.

PRACTICE—WINDING UP—INSPECTION OF DOCUMENTS—R. S. C. c. 129, s. 81.

In re North Brazilian Sugar Factories, 37 Chy. D. 83, the Court of Appeal (Cotton and Lopes, L.JJ.) held, affirming Charles, J., that the power given by the Companies Act, 1862, s. 156 (R. S. C. c. 129, s. 81), of ordering inspection of the books and papers of a company in liquidation, is *prima facie* to be exercised only for the purposes of the winding-up, and for the benefit of those who are interested in the winding-up, and will not in general be exercised for the purpose of enabling individual shareholders to establish claims for their personal benefit against the directors or promoters; and that the section only applies to books and papers in the possession of the company and the liquidator, and does not enable the court to determine any question of right against third parties having the books in their possession, and claiming to be entitled to such possession. In this case, after the winding-up order had been made, a scheme was presented for forming a new company; and, this being approved by the court, the assets and books of the old company were handed over to the new company. Upon the other point the court practically reaffirmed what they had previously laid down *In re Imperial Continental Water Corporation*, 33 Chy. D. 314 (noted *ante* Vol. 23, p. 28).

SOLICITOR AND CLIENT—LIEN ON FUND RECOVERED—ASSIGNMENT OF FUND BY CLIENT—PRIORITY.

In *Macfarlane* v. *Lister*, 37 Chy. D. 88, a client assigned, by way of mortgage, his interest in a fund in litigation, and at the time of the execution of the mortgage gave a written order to his solicitor, who also acted for the mortgagee, to pay the claim of the mortgagee out of the first moneys which should come to his hands of the fund in question, which he duly forwarded to the mortgagee. A part of the fund was paid into court, and the solicitor, having obtained a charging order for his costs, a question arose as to whether the solicitor or mortgagee was entitled to priority. And it was held by the Court of Appeal (Cotton and Lopes, L.JJ.), reversing the order of Stirling, J., that although the fact of the solicitor having acted for both parties to the mortgage, would not have prevented his claiming priority in respect of his lien; yet as he

had received the order from his client and handed it over to the mortgagee, that amounted to a viritual adoption of the letter, and precluded him from setting up his claim in priority to the mortgagee.

VENDOR AND PURCHASER—RESCISSION—FORFEITURE OF DEPOSIT, DEFECT IN TITLE SUBSEQUENTLY DISCOVERED—ACTION TO RECOVER DEPOSIT.

In *Soper* v. *Arnold*, 37 Chy. D. 96, the Court of Appeal (Cotton, L.J., Hannen, P.P.D. and Lopes, L.J.) affirm the decision of Kekewick, 35 Chy. D. 384, noted *ante* Vol. 23, p. 294. It may be remembered that this action arose under the following circumstances: The plaintiff had agreed to purchase a parcel of land from the defendant, and paid a deposit of the purchase money. He accepted the title and prepared the conveyance, but when the time for completion arrived he was unable to raise the rest of the purchase money, and in pursuance of the conditions of sale, rescinded the contract, and three years afterwards the vendor resold the property. Upon the investigation of the title upon this re-sale, a fatal defect was found in the title, and the first purchaser then brought the present action to recover his deposit. But the Court of Appeal held that he was not entitled to recover. It may also be observed that Cotton, L.J., takes the same view of the case of *Hart* v. *Swaine*, 7 Chy. D. 42, as was recently taken by Ferguson, J., in *Cameron* v. *Cameron*, 14 Ont. R., 582 *et seq.*

TRADE MARK—REGISTRATION—DISTINCTIVE DEVICE.

In re Hanson's Trade Mark, 37 Chy. D. 112, Kay, J., held that a trade mark of which the only distinction is its colour cannot be registered. Thus a red, white and blue label, with the words "red, white and blue" printed across it, was refused registration as a trade mark.

LEASE—EXECUTOR TAKING POSSESSION OF LEASEHOLDS OF TESTATOR—MEASURE OF LIABILITY.

In re Bowes, Strathmore v. *Vane*, 37 Chy. D. 128, North, J., discusses, at considerable length, the measure of liability of an executor who enters into possession of leaseholds to which his testator died entitled, and comes to the conclusion that he is personally liable for the rent subsequently accruing, up to the actual letting value of the demised premises during that period, whereas the lessor's right as against the testator's estate would be merely to prove his claim for the whole amount of the rent, and to be paid as any other creditor is paid. But the learned judge held that the personal liability of the executor could only be enforced by action against him, and that such relief could not be granted in an administration suit except with the consent of the executor.

HUSBAND AND WIFE—FEMALE WARD OF COURT—COSTS OF SETTLEMENT.

The simple point decided in *De Stacpoole* v. *De Stacpoole*, 37 Chy. D. 139, was that when on the marriage of a female ward of court a settlement of her property was ordered, the costs of all parties, including the husband, of such settlement should be paid out of the *corpus* of the settled property.

PRACTICE—MOTION FOR JUDGMENT IN DEFAULT OF DEFENCE—RELIEF NOT CLAIMED.

Kingdon v. *Kirk*, 37 Chy. D. 141, is a decision of North, J., following *Gee* v. *Bell*, 35 Chy. D. 160, to the effect that where an action is heard in default of defence, judgment cannot be awarded for relief not claimed by the statement of claim. The action was for specific performance by a vendor. On the motion for judgment, the plaintiff asked simply a declaration of rescission, and the learned judge was of opinion that if that declaration were made the plaintiff ought to be ordered to pay the costs of the action, but as he had not, in fact, claimed by the statement of claim such relief, it could not be granted.

WILL—APPOINTMENT—REVOCATION—WILLS ACT (1 VICT. C. 26, S. 27)—R. S. O. 1887, C. 109, S. 29.

In re Gibbes, White v. *Randolf*, 37 Chy. D. 143, a testator executed a "testamentary appointment" under a general power. A month later he executed a will containing a residuary bequest, and not referring to the testamentary appointment. North, J., held that the will operated as an execution of the power, and as a revocation of the previous testamentary appointment. This is the second case, recently, in which the operation of the Act has had the effect of frustrating the obvious intention of the testator. See *Re Jones*, 34 Chy. D. 65, noted *ante* Vol. 23, p. 67.

INFANT—MARRIAGE SETTLEMENT—OMISSION—MISTAKE.

Mills v. *Fox*, 37 Chy. D. 153, is a decision of Stirling, J. By a settlement made in 1884 an infant, with the sanction of the court, executed a marriage settlement of certain property upon her marriage. As to part of this property she was entitled in tail, and, with the sanction of the court, she executed a disentailing deed for the purpose of vesting the property in the trustees of the settlement. It was afterwards discovered that this part of the property had in fact been expropriated, and the purchase money therefor had been paid into court. The marriage took place, and the lady in 1885 attained 21, and then disentailed the fund in court, and claimed to be absolutely entitled to it free from the settlement. But Stirling, J., held that, although the disentailing deed of 1884 was not effectual to bar the estate tail of the lady in the fund in court, and though in the absence of a contract binding the lady to settle the entailed estate, the settlement could not be rectified, yet inasmuch as the marriage and the settlement were sanctioned by the court on the faith of representations made on the lady's behalf, that she was entitled to the entailed property, the purchase money of which was represented by the fund in court, she was bound in equity to make good such representation, notwithstanding her infancy at the time it was made; and that, having now disentailed the fund and thus become the only person besides the trustees of the settlement who could claim any interest in it, she was precluded from setting up any title to it adverse to the trustees, who were therefore held entitled to the fund.

Reviews and Notices of Books.

The Land Titles Act, being chapter 116 *of the Revised Statutes of Ontario,* 1887, *with New Rules, Tariff of Fees, and References of Rules and Forms.* Toronto: Warwick & Sons, 26 and 28 Front Street West. 1888.

The little volume before us is simply a separate print of "The Land Titles Act," as settled by the commissioners who revised the Statutes of 1887. Its issue in this form will be found a great convenience to the increasing numbers who are interested in lands under this Act, as the Master of Titles has taken occasion to append foot-notes, with references to the rules and forms. The Act has been, to a considerable extent, re-arranged, and a number of amendments made, some of which we think will be found to aid in the practical working of the system.

We notice that all the provisions showing the various classes of persons who can apply for first registration are now collected together, instead of some being found at the beginning and others at the end.

Under section 8 there is given to a mortgagee whose mortgage is in default, and who has a power of sale, the right to apply to have the owner of the equity of redemption registered under the Act as owner. Where titles are somewhat complicated there is no doubt this will be of great benefit, and is an improvement upon the former clause, which authorized a mortgagee to apply to have himself registered, as it shows the title in accordance with the fact, and gets rid of embarrassments which attended the old provision. By section 28, the objects for which a "charge" may be given are very considerably enlarged. Under the former Act the charge could only be made for securing the payment of a *sum of money*, payable at an appointed time. Now it can be given as a security for any purpose for which it is deemed advisable to give it. By section 55 the necessity of a caution to preserve a Mechanics' Lien has been abolished, and the ordinary procedure under the Mechanics' Lien Act adopted, a reference to the number of the parcel under which the land is registered being, however, required.

We also notice a very important provision respecting trusts. It is, of course, absolutely necessary, in accordance with the principles of the Torrens system, that no enquiry should be requisite in respect of the performance by a trustee of his duty, and in order to accomplish this it is provided in the English Act that there should not be entered on the registry, or be receivable by the Master of Titles, any notice of trust, express, implied or constructive. By section 85 of the revised Act, it is now declared that describing the owner of any land or charge as a trustee, whether the beneficiary, or object of the trust, is mentioned or not, shall not be deemed a notice of trust within the meaning of this provision, and that this description shall not impose upon any person dealing with such owner the duty of making any enquiry as to the power of the owner in respect to the

land, or charge, or the money secured by the charge, or otherwise. We think this useful provision might, with manifest advantage, be extended so as to be part of the general law.

We also notice that several of the forms have been redrawn and simplified. The pamphlet contains a tariff of fees enacted by the Governor in Council, and an exhaustive index.

Notes on Exchanges and Legal Scrap Book.

THE LAWS' DELAYS.—People are prone to complain of the delay which so often ensues when a case goes to the Court of Appeal of this province. They may be thankful that they have not to abide the issue of an action in the Supreme Court of the United States. The business of that court is now rather more than three and a half years in arrears, so that cases entered early last year cannot, in the usual course of events, be decided by that august but tardy tribunal before the end of 1890. The constitution and jurisdiction of the court were established a century ago, when the population of the United States was less than one-fifteenth part of its present population, and its area about a fourth of its present area. The number of cases on the docket each year has increased during the last half century about fourteen fold, and all the signs point to a further increase. A remedy will have to be provided soon for this condition of affairs.

THE ENGLISH LAW SCHOOL IN JAPAN.—In our "Notes" in our May-June number, 1886, we published a long report of the Tokio English Law School, with comments thereon, which we learn were read with great interest by the legal profession in Japan. Since then, as we are informed, the school has grown in popularity to such an extent that its present buildings are inadequate to accommodate the students, who now number nearly 1,800. With the exception of an English barrister and Mr. Scidmore, our Vice and Deputy Consul-General, all of the lecturers are Japanese lawyers (about twenty-five in number), many of whom were educated and admitted to the bar in England or the United States, and the majority are graduates of the Imperial University, having been instructed by American professors of law. Up to the present their services have been given to the school gratuitously, and the income from tuition fees has been applied to the collection of a law library, and the purchase of land and erection of buildings. New and commodious quarters of brick are now in course of construction in one of the best localities in Tokio, and the Imperial Department of Education, in appreciation of the value of this institution, has lately made an annual grant to its promoters of 5,000 yen ($3,920).—*American Law Review.*

PERJURY A CONTEMPT OF COURT.—Perjury, apart from the penalty due to it as an indictable offence, is punishable as a contempt of court. We learn from the *Chicago Legal News* that Judge Pendergast committed Leopold Newhouse for ten days for contempt of court in testifying falsely in a matter before the court, and deferred the execution of the sentence for fifteen days on account of the illness of Newhouse's wife. Bail was taken for his appearance at the time named. The punishment, of course, is not for the crime of perjury, but for the imposition upon the court. Every court has the power to protect itself from imposition. The offender may still be indicted and punished for perjury. Judge Bradwell, when he was judge of the same court, committed a culprit to jail, and kept him there for one year, for pretending to die, and imposing upon the court by having his will presented for probate, so as to obtain a large sum of money for which his life was insured.

VICIOUS ANIMALS.—The Supreme Court of New Jersey held in *State* v. *Donohue*, that if an animal having no natural propensity to be vicious, commits an injury to the person of another, the owner is not liable unless he had previous knowledge of the vicious disposition. The fact that the owner of a dog permitted him to be at large on the highway when he inflicted the injury sued for, will not make the owner liable without proof of the *scienter*. We glean from an exchange that the facts were as follows:—The plaintiff, while walking on the public street in front of the defendant's premises, was bitten by the defendant's dog, which was lying unmuzzled on the sidewalk. Owing to the darkness of the night, the plaintiff did not see the dog until he sprang up and bit her. It also appears that a city ordinance prohibited the running at large of dogs in the street at any time without a muzzle. The plaintiff argued that the dog, lying on the sidewalk, contrary to the city by-law, was a nuisance, and the owner therefore liable. The court, in giving judgment, cited numerous English decisions concurring in the view that a dog is not of fierce nature, but rather the contrary, and that a demurrer to a declaration, which did not allege the defendant's knowledge of the vicious propensities of the animal, should be sustained. The American decisions support the same view. The court, in giving judgment, said that it might be that if the plaintiff, while on her way in the public streets, had unavoidably fallen over the dog, and thereby injured herself, the owner of the dog would have been liable in damages for such injury.

MARRIED WOMEN AND CREDITORS.—The opinion of the Supreme Court of Pennsylvania, delivered by Gordon, J., in *Blum* v. *Ross*, reported in the *American Law Register*, sustained the finding of an inferior court wherein it was held that where an insolvent opened a store and carried on business in the name of his wife, who signed for goods purchased, certain notes subsequently paid out of the proceeds of the business, but was not further known in the business, the obvious use of the wife's name was to defraud creditors. The Supreme Court held that

the refusal of the court below to submit the case to a jury was not erroneous. The court said that were the judgment of the court below to be reversed, then it would have to be admitted not only that a wife might acquire and hold property on her personal credit, but also that she might have and own, even as against creditors, the labor and earnings of her husband. The case did not come within the Act to protect the earnings of married women, for she had no such earnings. It is true she owned a house and lot, but she did not obtain the goods on the credit of that estate. The vendor was ignorant of its existence. The law of the State, as laid down in *Seeds* v. *Kahler*, is that while a married woman may buy goods on credit, it must be on the credit of her separate estate, and as against the creditors of her husband she must affirmatively establish that fact; though when she owns property sufficient in value to serve as the foundation of a credit, direct proof that the credit was based on it may not be necessary, for the jury may infer the fact from the circumstances surrounding the transaction. In the present instance there were no such circumstances as would warrant such an inference. Personally, beyond the signing of the notes, she was not known in the business. The whole matter was conducted by the husband, and without the slightest reference to her estate. The court below could not be be convicted of error in refusing to submit to the jury a case so wholly unsupported by facts.

Since the decision of the above case a new Act has been passed by the State of Pennsylvania, which provides that marriage "shall not be held to impose any disability on, or incapacity in, a married woman as to the acquisition, ownership, possession, control, use, or disposition of property of any kind in any trade or business in which she may engage." There are, however, two restrictions: one is that she cannot mortgage or convey real estate without her husband joining in the mortgage or deed; the other is that she shall be unable to become accommodation endorser, guarantee, or surety for another.

SEARCHING WITHOUT A WARRANT.—The English *Law Journal* gives an account of an unreported case in the County Court, wherein the right of police constables to search the premises of a person suspected of theft, though they had not a search warrant, was in issue. There had been a robbery of poultry from the premises of F., and information of it was given to the police. Certain footprints were found at a distance of five or six hundred yards from the scene of the theft. On the same night there had been an attempted robbery from a neighbouring house. The footprints were traced thither, and thence to the plaintiff's house. They were principally along a footpath which the plaintiff frequently traversed. The officers went in plain clothes, and, without a warrant, searched the plaintiff's house and out-houses. No charge had been made against the plaintiff. The counsel who argued the case said they could find no authority expressly in point, and his Honour Judge Jordan, failed to find a case decisive of the point, but on the analogies of other decisions, on general principles of law, and on the opinion of text-writers, he based his decision in favour of the plaintiff. "Every man's house is his castle" is an old maxim, against any

infraction of which the law guards jealously. Wigram, in the Justices' Note-Book, says "That a search-warrant is issued on an information upon oath." Addison on Torts says "That if a warrant is issued, and a search made without due authority on the part of the magistrate, it amounts to a trespass." In *Curzon* v. *Cundy*, 9 D. & R. 224, a constable was held to be a trespasser for taking some goods of the prosecutor's which were not mentioned in the warrant. Other authorities supported the same view. The contention of the defendants, that they were in a position similar to that of an officer who arrests a person on suspicion of felony, was not sustained. No stolen goods were found upon the premises; and, in the opinion of the learned judge, the constables had no reasonable cause to suspect that the goods stolen from F. were in the plaintiff's possession.

THE FUSION OF THE LEGAL PROFESSIONS.—Our English and Irish contemporaries are engaged in a discussion about the fusion of the legal professions. The suggested change has its warm advocates, and its earnest, almost bitter, opponents. The Solicitor-General, in a speech at Birmingham, urged the advantages of the suggested union, basing his advocacy on the ground that the present system is so expensive that it amounts to a positive denial of justice to all who have not abundance of money. It is contended by the supporters of fusion that it would be much cheaper for the poor man to employ a solicitor, having the right to represent him in all the courts, than to fee an advocate too. This need not take away from the rich man desirous of having an advocate of long experience and high standing, the privilege of being represented by counsel as at present. On the other hand it is contended that the effect of the proposal, if carried out, will be to cut down the bar to a few practitioners who have gained distinction as advocates, to secure for the rich man the practised advocate, and to leave the poor man to content himself with a solicitor insufficiently experienced in forensic work. It is asserted that, if the privileges of the bar are abolished, the poor man will have no advocate, because without those privileges few would care to adopt the bar as a profession.

To us in Canada, who have had long experience of the benefits resulting from the union of the functions of barrister and solicitor, the discussion is a reminder that the people of the old land have yet some problems to work out which were long ago successfully solved in the colonies.

The contention implied, if not expressed, that the present arrangement can secure for the poor man as able advocacy as can be obtained by his wealthy opponent, is contrary to experience and utterly untenable. The duality of the profession signally fails to do that, and it must materially increase the expense of litigation. It is interesting to note, too, that the discussion shows a growing sentiment in favour of brushing away the cobwebs, and laying bare gross cases of delay and injustice.

The profession and the legal publications, notably the English *Law Journal* and the Irish *Law Times*, have given much attention to the controversy. *Punch* has seized on the comical aspect of the evils feared by the opponents of a united

profession, and gives the following pen-picture of them, a picture all the more laughable that the evils are visionary:—

SCENE.—*Interior of the Royal Courts. An appeal being heard. Judges on the Bench. Members of the Combined Profession occupying seats once monopolised by the Bar.*

First Judge (addressing Small Advocate).—We are not quite accustomed to the new state of things, but is it not usual for Barsolistors to wear robes?

Small Advocate (aged 16).—B'leeve 'tis m'Lud; but, fact is, I am here on behalf of Mr. Jones, the Barsolistor, who is away serving a writ on a client, who requires special attention.

First Judge.—I suppose you are Mr. Jones's managing clerk?

Small Advocate.—No, m'Lud. Mr. Brown, Mr. Jones's managing clerk, is engaged in Chambers before a chief clerk, who is settling the remuneration of a receiver. Very important matter, m'Lud.

First Judge.—Then, who are you?

Small Advocate.—I am one of Mr. Jones's junior clerks, m'Lud.

First Judge.—And what are your duties?

Small Advocate.—Well, m'Lud, usually to assist in the sweeping out of the office, the writing of the addresses on the envelopes, and such like. When I'm not doing that, I have the pleasure of addressing your Ludships.

First Judge.—Has a junior clerk who assists in sweeping out the office as an ordinary duty the right of audience?

Second Judge (after consulting authority).—Clearly. (He points out passage to his colleague.)

First Judge (addressing Small Advocate).—I see that you have the right of audience. You can proceed.

Small Advocate.—Thank you, m'Lud. As I was saying when your Ludship was kind enough to interrupt me—as I was saying, the other day I was reading a law book in master's chambers—

Second Judge.—Can you give the name of your authority?

Small Advocate.—Well, m'Lud, to tell you the truth, I quite forget. I fancy it was Richards or Roberts, or somebody who had a Christian name for a surname. The book was all about "Substantial Estates," I think. Yes, I fancy it *must* have been—"Roberts on Substantial Estates." Something like that, you know, m'Luds.

First Judge.—Could it have been "Williams on Real Property?"

Small Advocate.—Why, I do believe, m'Lud, you have hit the nail on the right head! Well, m'Luds, I read in this here book that waste was quite different in law than in fact. So I believe my client was only exercising his just right when he cut down the wood in rear of the premises. He never wasted it, m'Lud, but sold it at a good price. (Argues for an hour or so.)

First Judge (at end of argument).—We shall give our decision on Tuesday week. (Dead silence.) Is there no other matter?

Aged Barsolister.—Hem—ha—ho. B'leeve, m'Lords, no other case ready. Fact is, m'Lords—hem—ha—ho. Counsel otherwise engaged. Fact is, m'Lords—hem—ha—ho. One Barsolister is finishing a bill of costs, another receiving instructions about a marriage settlement, and—hem—ha—ho—and a third examining securities in a box at the bank. My own learned leader, Mr. Silvertongue, Q.C., is at this moment—hem—ha—ho—particularly engaged. Fact is, m'Lords, Mr. Silvertongue, Q.C., is acting as a man in possession during the temporary absence of the representative of the Sheriff.

First Judge.—As there appears to be nothing further on the paper, we must adjourn, but I cannot help pointing out that the mixing of functions, once kept distinct, causes at times considerable inconvenience. (Scene closes in on the adjournment.)

DEATH OF SIR HENRY MAINE.—Sir Henry James Sumner Maine, who died on February 3rd, was born in 1822. He was educated at Cambridge, where he won distinguished honours in his university course, and he was afterwards a tutor of Trinity Hall. He held his tutorship for two years, and then, at the unusually early age of twenty-five, was appointed Regius Professor of Civil Law. He was appointed Reader in Jurisprudence at the Middle Temple in 1854, having been called to the bar four years earlier. He was also a legal Member of the Council of the Governor-General of India. It is as an author that this distinguished jurist has rendered his most valuable and permanent services. His "Ancient Law," "Village Communities," and "Early History of Institutions," are marked by depth and originality of thought, scholarly and accurate research, and high literary merit. His labours have thrown much light on the foundations of jurisprudence. The following estimate of him by Rev. H. Latham, also of Trinity Hall, Cambridge, we take from the English *Law Journal*:

"Sir Henry Maine never thrust himself forward; there was no dogmatism about him, neither was there the least trace of intellectual coxcombry or of looking down on tastes and pursuits which differed from his own. He never said a caustic or an unkindly thing. Even in those days he was remarkable for a mental quality for which I have no English word. He would lay his mind so close against the matter that was presented to him that he seemed to take off from it an impression accurate even to the faintest lines. His reputation," he concluded, "will grow with years, because he has enriched the world with new ideas, and pointed out sound methods of carrying on investigation. He helped men to understand their institutions, and started them on right tracks of thought. Many names which now are as well known as his will pass out of mind while his will be left to fame."

Correspondence.

LAW SCHOOL.

TO THE EDITOR OF THE CANADA LAW JOURNAL:

Dear Sir,—I understand that a scheme for the "establishment and maintenance of a law faculty" is now under consideration by the benchers in connection with the University of Toronto, and that proposals on the subject have been made by a joint committee of the Law Society and the Senate of the University.

As this scheme emanates from a committee on which "Toronto" was the only university represented, it is, perhaps, quite natural to find that it gives her an advantage over the other universities, which is scarcely fair to the members of the Law Society who are interested in the latter or not in sympathy with the former.

Convocation, however, has very wisely determined that the other universities shall be consulted before the matter is finally disposed of; and no doubt such amendments will be made as will enable all the universities in the Province to avail themselves, if they so desire, of a federation with the Law Society for the objects in view. That, however, is a question in which the universities are more interested than the legal profession. What the latter must be assured of before the scheme receives their endorsation, is that it will really afford an improvement in the character of legal education. When we compare the scanty course of lectures provided by our Society with the well-equipped law schools existing in many of the neighbouring states, and even in some of the smaller provinces of Canada, it must be admitted that we are not keeping pace with the age, or giving our students the same educational advantages as are enjoyed elsewhere. I wish, therefore, to record my sympathy with the movement in the direction of reform, while regretting that I cannot approve of the present recommendations. The following, among other objections, suggest themselves:—

1. The scheme entirely destroys the incentive which has hitherto existed to men taking the arts course in a university, before entering upon the technical study of law. Hitherto, a graduate in arts has been allowed to shorten the prescribed period of preparation for the bar by two years. Under the proposed change, which offers a student in four years an university degree in law, with all the incidental advantages of an arts degree, and makes him at the same time a barrister and solicitor, it is extremely improbable that many will devote three years to graduating in arts, three more to becoming entitled to practice, and have to take a still further course to attain a degree in law. There are but few, I think, who deny that a course in arts is highly desirable for those intending to enter the legal profession. A large proportion of the barristers who, of late years, have attained to positions on the bench, both in England and this country, are distinguished graduates of their universities, and no more notable example of the satisfactory result of such a training can be given than that afforded by the learned and scholarly judge who signs the report of the committee. The desirability of the general adoption of the course of study, which has produced such men as the Chancellor of Ontario, has been time and again advocated in eloquent speeches, delivered on educational and scholastic occasions, by the great lawyer, who is the head both of his profession and university, and I do not believe any of the committee will advocate a deviation from his advice.

2. It is true that the scheme (section 17) provides that nothing therein contained is intended to interfere with the existing regulations for call, and that, therefore, the bachelor of arts will still be able to become a barrister-at-law after three years' study. This is very much like providing dinner for the victim to whom you have administered an effectual poison. If, however, any of this class of law students should survive the premium offered for his extinction, he will be deprived of the opportunity for legal instruction, which he enjoys under the present regulations. In common with all other students, he has now the benefit of a complete course of lectures for three years of study, but, under the proposed scheme, he will have to content himself with the incomplete course of two years,

which the Law Society will dovetail into the university curriculum for the four years' students. As he will continue to pay the same fees as hitherto, this is, I think, a most unfair treatment of a class of students, from which the records of the past show that it is at least as advisable as from any other to draft the future lawyer.

3. The period which will be spent under articles is ridiculously short. Those of us who have been articled for a term of three years know how difficult it was to gain in that time an insight into the practice of the profession, and no one has ever heard even a five years' man assert that he had learnt more than was requisite to conduct a solicitor's business, with some degree of confidence in his own skill. Will a two years' dabbling by a schoolboy of sixteen in the depths of international law and Roman jurisprudence open a royal road to the imbibing of this knowledge in two brief years?

4. The question should, perhaps, be looked at solely from the students' point of view, and it may not be a proper subject for consideration, that the solicitor can no longer expect to derive from his articled clerk the assistance which he now enjoys from a student in his third, fourth, or fifth year. At the same time, we must bear in mind that the advantage is a mutual one, and the student who can floor his principal on the "Institutes," but render him no assistance in "the running of a suit," will not have the chance of deriving from his seniors those practical lessons which are so much more thoroughly taught and so much more easily learned by participation with a skilled practitioner in his actual work.

5. What I have said in regard to the short space allotted to acquiring a knowledge of practice, applies with still greater force to the study of the subjects, a knowledge of which should be acquired by a barrister before call. I do not understand that it is, nor do I well see how it could be, proposed to lessen the number of those subjects. If then the most diligent application to study for five, or in the case of more matured and trained intellects, for three years, barely suffices to acquire a knowledge of the elementary doctrines of law and equity, the learning of real property and the principles of evidence, as set out in the numerous text-books on the curriculum of the Law Society, is there any reason for hoping that this knowledge will be more thoroughly mastered in the short period of two years? or can we expect that the student who finds it hard enough to read the work required for call in five years will be able to read both that and the work required for a degree of LL.B. in four years?

6. Then, too, is not the natural order of study completely reversed by the proposed scheme? Can a boy of sixteen, fresh from school, intelligently pursue a course of reading in civil law, constitutional law and history, and international law, without some of the elementary training, which it is proposed to postpone until the last two years of his course? It seems very much like requiring mathematical students to devote their first year to the calculus, and their third to algebra.

7. Then after all, what is gained by inducing the students to crowd into a four-year cram what should be the subjects of double that period of matured intelligent study? By the rules of the Society (s. 5, ss. 10), a person can be

admitted as a student and articled clerk at the age of sixteen, and by the Act Respecting Barristers (R. S. O. c. 179, s. 1, ss. 1), he must be of the age of tweny-one years before he can be called to the bar, or admitted to practice as a solicitor. Therefore, the student who puts in his four years under the proposed scheme, will have a year after its conclusion, and before he can enter into the work of his profession, in which he will have nothing to do.

No doubt that year could be profitably employed by a probationer so inclined. but are not the chances very great that, emerging from a period of enforced discipline, freed from the obligation of his articles, and with no settled aim or occupation, he will enter on the enjoyment of a year's holiday, which will mar many a promising career. Far wiser would it be for the Society to arrange that the whole period of five years, from the enrolment of the student to the call of the barrister, shall be spent, as at present, in the systematic acquirement of that knowledge, both practical and theoretical, which is to be his future stock-in-trade.

There are other objections to the proposed scheme which I could point out, but I find I have already trespassed too much upon your space. I would, however, in closing, humbly submit to the committee that the basis of their reform is a wrong one. Improvement, I freely admit, is desirable in the course both of the Society and the universities, but have they not each a distinct field of work which cannot be profitably amalgamated? To the Law Society is committed the charge of supplying such instruction as will fit a man for the practical work of the lawyer, be he barrister or solicitor, while to the university it would appear fitting to encourage the scientific study of the principles of law. Let each equip itself for its own work, and hold out its honours and rewards for proficiency in its own branch, and we shall then have skilled practitioners emanating from the one and learned authors from the other; but let us not, by making a jumble of the work of both, produce men of whom in a limited sense it may be said that they are "Jacks of all trades and masters of none." Why should the Law Society resort to any other institution for assistance in the objects of its incorporation? It has hitherto been an autonomous body. Is it wise to invite interference from outside? Surely out of its ample revenues more could be afforded for the purpose of legal instruction than the paltry salaries of the present lecturers! And if not, why should lawyers alone of the three learned professions expect to obtain their education for nothing? Why should not the law student, like his medical brethren, pay well for the lectures which he requires.

Yours, etc.,

J. A. WORRELL.

DIARY FOR MARCH.

1. Thur ...St. David.
4. Sun.....*3rd Sunday in Lent.*
5. Mon....Holt, C.J., died, 1710, æt. 65.
6. Tues....Court of Appeal sits. Gen. Ses. and C. C. sittings for trials in York. York changed to Toronto, 1834.
11. Sun.....*4th Sunday in Lent.*
13. Tues....Lord Mansfield born, 1704.
17. Sat. ....St. Patrick's day.
18. Sun.....*5th Sunday in Lent.* Arch. McLean, 8th C.J. of Q.B., 1862. Princess Louise born, 1848.
19. Mon....P. M. Vankoughnet, 2nd Chancellor, 1862.
25. Sun.....*6th Sunday in Lent.*
28. Wed... Lord Romilly appointed M.R., 1851.
30. Fri.....Good Friday. B.N.A. Act assented to, 1867. Reformation in England began, 1534.

Reports.

[Reported for the CANADA LAW JOURNAL.]

Re HARRIS.

Quieting Titles—Advertisement—Posting at wrong Court House—Irregularity, waiver of—R. S. O. c. 113, ss. 45-46, Chy. O. 504.

Where the advertisement in a Quieting Title proceeding was posted at the Court House nearest the land in question, instead of at the Court House "of the county where the land lies," as required by Chy. O. 504.

Held, that the irregularity might, under R. S. O. 1887, c. 113, ss. 45-46, be waived.

[BOYD, C.—Feb. 25.

This was a proceeding under the Quieting Titles Act, in which the Referee of Titles at Toronto had given the usual direction for posting a copy of the advertisement at the court house, as required by Chy. O. 504. By mistake of the petitioner's solicitor the advertisement was posted at the court house of Dufferin, which was nearest to the land in question, instead of the court house of Peel, in which county the land was situate.

Upon the matter being submitted to the Chancellor by the Referee, he directed the objection to the regularity of the publication of the advertisement to be waived, having regard to the provisions of R. S. O. c. 113, ss. 45-46.

Elgin Myers, petitioner's solicitor.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Full Court.] [Feb. 6.

REGINA *v.* BEEMER.

Criminal law—Quashing conviction—Forum—O. J. Act—Canada Temperance Act—Police magistrate—Adjudication outside of territorial jurisdiction—41 Vict. c. 4, s. 9 (O.).

The jurisdiction to quash convictions was, at the time of the passing of the Ontario Judicature Act, in the Courts of Queen's Bench and Common Pleas respectively, and was exercised and exercisable by them respectively sitting in term; the Courts or Divisions of the High Court of Justice, mentioned in ss. 3 of s. 3 of the Act, can respectively exercise all the jurisdiction of the High Court of Justice in the name of the High Court of Justice; the sittings of these respective courts or divisions are analogous to and represent the sittings of the former courts of common law in term, and it is to the sittings of these courts or divisions that applications to quash convictions must now be made, having regard to the provisions of s. 87 and rule 484 of the O. J. Act, and of R. S. C. c. 174, s. 2, ss. 1, and s. 270. These courts or divisions are not to be confounded with the Divisional Courts, which are a distinct organization under the Judicature Act, and invested thereby with special functions. Sec. 28 of the Act, upon which the supposition that a single judge sitting in court had jurisdiction to quash a conviction was founded, refers to civil actions and proceedings only.

And where a single judge sitting in court heard and determined a motion to quash a conviction, an appeal to the judges of the Queen's Bench Division refusing to quash such conviction, was treated as a substantive motion to quash the conviction.

The police magistrate for the county of Brant, whose commission did not include the city of Brantford, convicted the defendant of an offence against the Canada Temperance Act, committed at a place in the county, outside of the city. The information was laid, the charge was heard and adjudicated upon, and the conviction was made, in the city of Brantford.

Held, that the magistrate had no jurisdiction to adjudicate in the city of Brantford; and that what he did was not authorized by 41 Vict. c. 4, s. 9 (O.).

The conviction was before the Act 50 Vict. c. 2, s. 7 (O.)

Irving, Q.C., *Moss*, Q.C., and *Delamere*, for the Crown.

Mackenzie, Q.C., for the defendant.

Street, J.] [Feb. 27.

WICKENS *v.* MCMEEKIN.

Principal and surety—Limited term of employment of principal—Subsequent extension—Construction of bond—Estoppel.

M. having been employed by the plaintiff as a sub-agent in the collection of money, etc., the defendants gave the plaintiff a bond to secure him against loss through M. The bond recited the appointment of M., and was conditioned that if M. should from time to time, and at all times thereafter, account and pay to the plaintiff, etc., and at all times during such period as he should act as agent, etc., pay all sums received, etc., to the plaintiff, then the obligation to be void. M.'s appointment was made before the date of the bond, and was only till the 31st December, 1884; but the defendants were not aware when they executed the bond, nor at any time afterwards till the trial of this action, that M.'s appointment was for a limited time. M., by subsequent arrangement, continued to act as agent after the year 1884, and the only defalcations committed by him were in November and December, 1886.

Held, notwithstanding the want of knowledge on the part of the sureties that the appointment recited in the bond must be taken to have referred to the appointment made before its date, and that the creditor and the principal could not, by an arrangement made after the liability of the sureties was created, be allowed to extend that liability beyond the period which originally formed its limit. The words found in the condition which would apply to the extended period did not justify the position that the sureties must have contracted with a view to a subsequent extension.

A letter was written by one of the sureties to the plaintiff on 17th December, 1886, in which he notified the plaintiff that from that date he withdrew his suretyship.

Held, that this could not estop the surety from denying his liability; and, even if it was to be read as showing that the surety assented to the continuation of the employment of M., it was immaterial.

Kitson v. *Julian*, 4 E. & B. 854, and *Sanderson* v. *Aston*, L. R. 8 Ex. 73, followed.

Robinson, Q.C., and *J. P. Galt*, for the plaintiff.

Moss, Q.C., and *A. D. Cameron*, for the defendants.

Practice.

Street, J.] [Feb. 7.

BANK OF HAMILTON *v.* BAINE.

Reference—C. L. P. Act, s. 197—Powers of Local Master—Absconding Debtors' Act, ss. 8 and 9.

Local masters have no greater powers in matters coming before them in Chambers, under the jurisdiction given them by the Ontario Judicature Act and 48 Vict. c. 13, s. 21, than those conferred upon the Master in Chambers, and from these powers the power of referring causes under the Common Law Procedure Act is excepted. A local master has, therefore, no power to make an order to proceed against an absconding debtor, upon default, after service of the writ of attachment, where such order contains a clause directing a reference under s. 197 of the Common Law Procedure Act. It is intended by ss. 8 and 9 of the Absconding Debtors' Act that only one order shall be made under which the plaintiff may proceed to judgment, and, therefore, where an order of reference is necessary, the order to proceed must be made by a judge who has jurisdiction to refer causes. The ex-

pression "the referring of causes under the Common Law Procedure Act" is not restricted to causes which have been begun by writ of summons.

Watson, for plaintiffs.

Aylesworth, for defendant.

MacMahon, J.] [Feb. 10.

REGINA *v.* DALY.

Criminal law—Conviction for vagrancy—Nature of offence.

The Act, R. S. C. c. 157, s. 8 (*f*), provides that "all persons who cause a disturbance in any street or highway by screaming, swearing, or singing, or by being drunk, or by impeding or incommoding peaceable passengers are loose, idle or disorderly persons within the meaning of this section." The defendant was convicted and committed for that he "unlawfully did cause a disturbance in a public street by being drunk, and then was a vagrant, loose, idle, and disorderly person within the meaning of the Act respecting vagrants."

The evidence disclosed that the defendant was drunk, and that he was guilty of impeding and incommoding peaceable passengers, but it negatived his causing a disturbance in the street by being drunk.

Held, that no offence of the nature described in the conviction and commitment was committed by the defendant, and an order was made for his discharge.

Delamere, for the Crown.

Morson, for the defendent.

Armour, C. J.] [Feb. 15.

BECKETT *v.* GRAND TRUNK RAILWAY CO.

Judgment—Date of entry—Rules 326, 327, 527 (*b*).

Although by rule 527 (*b*) judgment is not to be signed in cases tried by a jury till the time thereby prescribed, yet when signed, the entry of it, if the Divisional Court pronounces no different judgment from that of the trial judge, ought to be dated as of the day on which it was pronounced by the trial judge.

Rule 326 applies to all cases whether tried by a judge, jury or otherwise, in which the judgment is pronounced by the court or a judge in court, and rule 327 applies to cases in which the judgment has not been pronounced by the court or a judge in court.

Where the judgment pronounced by the trial judge upon the verdict of a jury was varied by a Divisional Court,

Held, that judgment should be entered as of the date on which the Divisional Court pronounced judgment.

Folinsbee, for the plaintiff.

Aylesworth, for the defendants.

Chy. Divisional Court] [Feb. 21.

GALL *v.* COLLINS.

Costs—Taxation—Solicitor's lien on fund—Locus standi of attaching creditor—Solicitor's negligence—Discretion of taxing officer—Certificate of taxation.

G., a judgment creditor of W. A. C., garnished a fund recovered by J. W. C., suing as the assignee of W. A. C. G. disputed the validity of the assignment from W. A. C. to J. W. C., and an issue was directed to be tried between G. and J. W. C. as to the portion of the fund which would remain after satisfying the claim of the solicitor of J. W. C., who had a lien upon the fund for his costs incurred in the recovery of it. Upon appeal from the taxation of these costs, before the trial of the issue,

Held, that G. had the right to be represented upon the taxation and appeal, as in one event he had an interest in the reduction of the solicitor's bill, and there could not be two taxations, one as against J. W. C. and the other as against G., if he succeeded in the issue.

The Court refused to interfere with the discretion of the taxing officer in allowing certain costs to the solicitor of proceedings which had been set aside in the action as irregular, and as to which G. alleged negligence and want of skill.

An informal certificate of taxation was written at the end of the bill of costs, showing

that it was taxed at so much, initialled by the taxing officer, and marked "filed" in his office.

Held, that this was not a sufficient filing of a certificate of taxation for the purposes of appeal to satisfy the rule laid down in *Langtry* v. *Dumoulin*, 10 P. R. 244.

McCallum v. *McCallum*, 11 P. R. 179 distinguished.

Street, J.] [Feb. 25.

INTERNATIONAL WRECKING CO. *v.* MURPHY.

Company—Shareholders—Use of corporate name in litigation.

A corporation has the same right as an individual to withdraw its name from litigation to which it has been made a party plaintiff, but of which it does not approve. The company itself is the proper plaintiff in actions for injury to the corporate property, and such an action by shareholders alone, showing no reason why the company had not instituted the proceedings, could not be sustained.

But where the complaint was that a majority of the shareholders had obtained possession of the company's name and the control of its affairs, and were using it improperly for their own benefit, and causing injury to the company's property.

Held, that an action could be sustained in the name of one or more shareholders, on behalf of themselves and all others except the defendants, against the company and the majority of the shareholders.

C. J. Holman, for plaintiffs.

Hoyles, for defendant.

Chy. Divisional Court.] [Feb. 21.

MCLENNAN *v.* GRAY.

Appeal from Master's ruling—Time—Reading depositions taken on former application.

An appeal from the ruling of a Master in the course of a reference should be brought on within a month from the date of the ruling, irrespective of the date of the certificate of such ruling.

In a mortgage action there was a reference to a Master for sale, etc. After sale and satisfaction of the plaintiff's claim out of the proceeds, a balance remained in court, which R. G. applied to the Master to have paid out to her. Upon such application R. G. was examined before the Master, who refused the application. An order was afterwards made by a judge referring to the Master to ascertain who was entitled to the fund, and to settle priorities. Upon such reference the Master ruled that the depositions of R. G. taken upon the former application could be read.

Held, reversing the decision of ROBERTSON, J., in Chambers, that the depositions could be read subject to the right of an opposing claimant of the fund to cross-examine R. G. upon them; R. G. to attend for such cross-examination upon payment of conduct money by the other claimant.

A. C. F. Boulton, for the defendant, Rosanna Gray.

Middleton, for the defendant, Allen.

Rose, J.] [Mar. 3.

GREENE *v.* WRIGHT.

Judgment—Motion under Rule 324—Material necessary.

In order to obtain under Rule 324 a speedy judgment before the time for appearance in an action has expired, a plaintiff must show that some injury or injustice is likely to happen or to be done to him if he is not awarded immediate relief.

And where the affidavit of a plaintiff stated that he verily believed it was necessary for the plaintiffs to get immediate judgment in order to protect their interests, and prevent any disposition of the estate that might be prejudicial to the creditors, but no facts were set out upon which such belief was founded, and the utmost shown was that the defendant was in financial straits, and had refused to submit his affairs to investigation, or to make an assignment.

Held, that a motion under Rule 324 for judgment before appearance must be refused.

B. E. Bull, for plaintiffs.

No one for defendant.

DIVISION COURT.

Div. Court, Ottawa.] [Dec. 10, 1887.

MASSON *v.* WICKSTEED.

Cheque of the President of an Incorporated Company—Personal liability.

This was an action brought to recover the value of a dishonoured cheque drawn by the defendant as President of the Coffee House Company, in his the plaintiff's favour, for wages due to him as manager.

The cheque read as follows :—

"Charge to account of Temperance Coffee House Company.

"Ottawa, 30th April, 1887.

"To the Bank of Montreal, Ottawa, pay to W. T. McCulloch, or order, the sum of Fifty Dollars.

"$50.00. "R. J. WICKSTEED,
"*Pres. O. T. C. H. Co.*"

LYON, Co. J., held that the defendant was personally liable for the cheque, although signed by him in his quality of President of Coffee House Company, because the corporate name of the Company was not included in the body of the cheque, or properly attached to it.

Law Students' Department.

IN compliance with numerous requests, we have decided to establish a Students' Department in the LAW JOURNAL, wherein information of interest to students will, from time to time, be given. In this number we publish some of the papers set at the examination before Hilary Term, 1888.

LAW SOCIETY EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.

REAL PROPERTY.

1. What was the object of the Statute of *Quia Emptores?*

2. What is meant by a feoffment with livery of seisin?

3. Explain the nature of an estate tail, and state what words are necessary to create it.

4. What is a use?

5. What is meant by a term of years?

6. What length of time is given to a person interested within which to register a will?

7. What is the difference between a surrender and a release?

SMITH'S COMMON LAW.

1. Is a husband liable in any case for a tort committed by his wife during coverture? If so, in what cases?

2. What implied authority has a wife to bind her husband for the price of goods which she buys (*a*) when she lives with her husband, (*b*) when she does not live with him?

3. Define *recapture* or *reprisal*; and explain on what conditions it is lawful.

4. Is there any difference between the power of an executor and that of an administrator to contract and do other acts before issue of probate or letters of administration respectively? If so, what, and why?

5. Explain the difference between a *penalty* and *liquidated damages.*

6. Define *stoppage in transitu.* How and when may it be exercised, and how defeated?

7. Explain what is meant by *conclusive* and *inconclusive presumptions* of law; and give an example of each kind.

EQUITY.

1. What is meant by the maxim, "Equality is equity?" Illustrate.

2. Distinguish between an executed and an executory trust.

3. A, assigns a debt due him from B, to C. C does not in any way communicate with B. In the meantime A makes another assignment of the debt to D, who notifies B of the same, and the money is paid to him. Has C any remedy against B? Explain.

4. Distinguish between a resulting trust and a constructive trust.

5. A and B entered into a contest in which it appears to the Court that their equities are in all respects equal. What principle will the Court proceed on in determining who should succeed? What maxim would govern the case?

6. If time is not made originally the essence of the contract, how can it be made so?

7. What is a *post-obit* bond?

ANSON ON CONTRACTS—STATUTES.

1. How far must revocation of an offer be communicated in order to rescind such offer?

2. Distinguish between motive and consideration as supporting a promise.

3. B, a lunatic, purchases a farm from A; pays for it, and dies. His representatives seek to recover from A the purchase money, on the ground of B's lunacy. How far ought they to succeed?

4. A agrees with B to sell him a picture, claiming it to be a Rubens. B buys the picture. It is found to be a copy, and B then seeks to rescind the agreement. How far would A's statement that the picture was a Rubens affect the sale?

5. A agrees in writing with B for the sale of certain lands. At the same time they agree that as part of the consideration for the purchase, B shall clear the timber on a certain part of the land. This clause is not put into the agreement as executed. B refuses to clear the timber because the written agreement does not call upon him to do so. How far should he succeed?

6. A in good faith accepts a bill of exchange for B, who has not given authority to A to accept. A expects B to ratify, but B does not. What is A's liability?

7. A note is dated at Toronto. An endorser gives his address verbally as Highland Creek. He resides in Whitby. Where should the notice of protest be sent to be sufficient?

Miscellaneous.

IN our Comments on Current English Decisions in the number of February 15, an error inadvertently crept into the note on *East and West India Dock Co* v. *Kirk*. On page 79 of that number, on the fourth line from the top of the page, for "time to make" read "leave to revoke."

FOND OF A JOKE.—A learned judge, who was very fond of a joke, was once called upon when presiding over an English court, to pronounce sentence upon a prisoner convicted of a capital offence. He did so in the following words: "I think we had better let the subject drop."

LITTELL'S LIVING AGE.—The numbers of *The Living Age* for February 25th and March 3rd contain Darwin's Life and Letters, and Cabot's Life of Emerson, *Quarterly;* Personal Experiences of Bulgaria, and the Evolution of Humour, *National;* Home Rule in Norway, *Nineteenth Century;* A Jacobean Courtier, *Fortnightly;* Mary Stuart in Scotland, *Blackwood;* A Night in the Jungle, *Macmillan;* Some Wiccamical Reminiscences, and The Romance of History—Bayard, *Temple Bar;* Unser Fritz, *Time;* Thackeray's Brighton, *All the Year Round;* with "A Tumbler of Milk," "The Five Horseshoes," and poetry.

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.